DIRECTOR OF PUBLIC PROSECUTIONS

NORTHERN TERRITORY OF AUSTRALIA

A N N U A L

R E P O R T

2010-2011

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS NORTHERN TERRITORY

TWENTY-FIRST ANNUAL REPORT

FOR YEAR ENDED 30 JUNE 2011

Director of Public Prosecutions
Northern Territory

Richard Coates

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Australia

30 September 2011

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

Dear Attorney-General

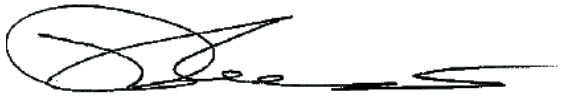
ANNUAL REPORT 2010-2011

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 2010 to 30 June 2011.

This year's Report includes the complete statement of guidelines issued and published pursuant to section 25 of the ***Director of Public Prosecutions Act***. It was determined during 2011 to comprehensively review and republish the entirety of the guidelines to ensure they were fully up to date and consistent with legislative and procedural changes affecting the criminal justice process. New or amended guidelines will continue to be published in the Annual Report, but existing guidelines will be available on the ODPP (website www.nt.gov.au/justice/dpp) or on request. It is hoped that the information contained within the Report and on the website in respect of the office will advance public knowledge of its operations and its role in the criminal justice system.

The statement of these various guidelines provide Crown prosecutors and others engaged in law enforcement with clear guidelines for the making of various decisions which arise in respect of prosecutions. They are intended also to inform the public generally of the considerations upon which those decisions are made.

Yours sincerely



RICHARD COATES

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OFFICE LOCATIONS

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

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DARWIN NT 0801

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2. **SOUTHERN REGIONAL OFFICE ALICE SPRINGS**

1st Floor
Centrepoint Building
Cnr Hartley St & Gregory Tce
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PO Box 2185
ALICE SPRINGS NT 0871

Telephone: (08) 8951 5800
Fax: (08) 8951 5812

3. **KATHERINE OFFICE**

Level 1
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PO Box 1295
KATHERINE NT 0851

Telephone: (08) 8973 8813
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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.*

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.

DIRECTOR'S OVERVIEW

What had become an environmentally responsible, slim Annual Report has had to be expanded this year to incorporate the revised Director's Guidelines. These were previously updated in January 2005 however legislative reforms and procedural changes have necessitated a number of revisions to that document. I am indebted to Jack Karczewski QC, Dr Nanette Rogers SC, Paul Usher and my Executive Assistant Patricia Smith for their efforts in revising the Guidelines.

Earlier this year the Government amended the Criminal Code to remove *double jeopardy* as a consideration in Crown appeals against sentence. The amendment followed a recommendation of the Double Jeopardy Law Reform COAG Working Group Report 2007 to the Council of Australian Governments and the Standing Committee of Attorneys-General. Western Australia, New South Wales, Victoria and South Australia had already enacted similar legislation. In Queensland, the Court of Appeal has an *unfettered discretion* so double jeopardy has not been an issue with Crown appeals in that State.

It is likely that the Northern Territory amendment (s.414(1A) of the *Criminal Code*) will be interpreted in a similar manner to the way in which corresponding provisions have been interpreted by interstate appellate courts. That will mean that whereas double jeopardy considerations will no longer prevent a court from allowing a Crown appeal or require a court to impose a reduced sentence on a successful Crown appeal, factors other than double jeopardy can still be taken into account by the court in its residual discretion to dismiss a Crown appeal despite inadequacy of sentence.

The Victorian Court of Appeal[1] when dealing with the issue of the *residual discretion* held:

> *Among the factors that might be relevant to the exercise of the Court's discretion to dismiss an appeal despite inadequacy of sentence having been demonstrated, are delay, parity, the totality principle, rehabilitation and fault on the part of the Crown.*

[1] *DPP v Karazisis & Ors* [2010] VSCA 350 at [104]

After citing with approval a decision of the NSW Court of Criminal Appeal, the Victorian Court also observed that because of the legislature's removal of double jeopardy:

> *The notion that Crown appeals should be rare and exceptional no longer applies as a sentencing principle to which this court must have regard*[2]*.*

However when introducing the legislation into the Northern Territory Parliament, the Honourable The Attorney-General and Minister for Justice said:

> *I stress the amendment does not affect the underlying principles in relation to prosecution appeals, namely, that prosecution appeals should be rare; an appeal court will only intervene when it identifies error and the court has a discretion to refuse to intervene even if an error is established*[3]*.*

Whereas the legislative removal of double jeopardy considerations has abolished *rarity* of Crown appeals as a sentencing principle, I respectfully agree with the Attorney that there are other sound policy reasons for Crown appeals continuing to be rare. This is why the Director's Guideline 17.5(1) still provides:

> *prosecution/Crown appeals are rare. They should be brought to enable the courts to establish and maintain adequate standards of punishment for crime, to enable idiosyncratic decisions to be corrected and to correct sentences that are so disproportionate to the seriousness of the crime as to lead to a loss of confidence in the administration of criminal justice;*

In previous reports I have referred to the high levels of violent offending by indigenous Territorians. Unfortunately that trend has not abated. Over the past 10 years there has been a 400% increase in the number of aboriginal offenders sentenced to prison for serious assaults. In over 80% of those cases the victim was an aboriginal woman who had been in a domestic relationship with the offender. Although the high rate of incarceration is no doubt providing some temporary relief for the victims it is not deterring the men from committing further offences of violence on their release from prison. The suggestion by some media commentators that mandatory sentencing would solve the problem is clearly not supported by the facts. Whilst the criminal justice system should hold aboriginal men accountable for the violence being visited upon the most vulnerable in their community, more needs to be done to address the systemic issues which are causing the despair and dysfunction within the indigenous community.

The Government's new *Enough is Enough* alcohol reforms represent a radical shift in the Territory's traditional laissez-faire approach to alcohol policy. These positive measures will hopefully have a beneficial impact on alcohol fuelled violence. The

[2] *Karazisis* (ibid) at [120] see also *R v JW* (2010) 7 NSWLR 7
[3] Second Reading Speech Hansard 23/02/11

government is also to be commended for the *New Era in Corrections* suite of programs which will provide courts with a number of new, better resourced, non-custodial sentencing options.

I once again take this opportunity to express my appreciation for the dedicated effort and professionalism of all staff over the past year.

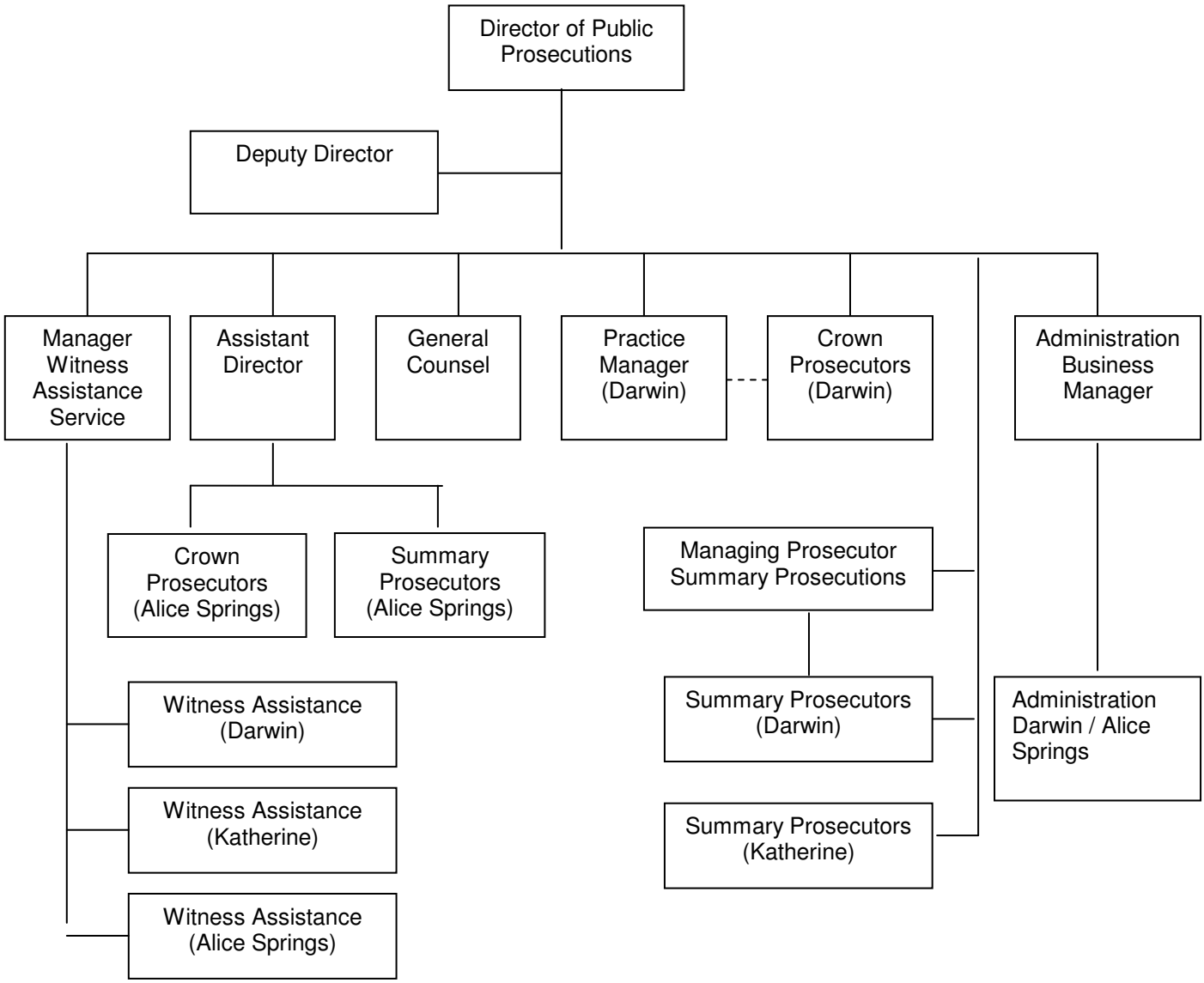
Directions

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 2011

ODPP ORGANISATION CHART



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 2011 the total number of staff was 69.7. The average full time equivalent staff numbers for the financial year was 66.69.

Level	Total	Female	Male
Director	1		1
ECO3	4	1	3
ECO1	4	1	3
SP2	4	1	3
SP1	6.2	4.2	2
P3	4.1	2.5	1.6
P2	12	6	6
P1	1		1
Total Legal Staff	**36.3**	**15.7**	**20.6**
SAO2	1	1	
P2	3	2	1
AO5	5.5	4.5	1
AO3	1.5	0.5	1
Total WAS Staff	**11**	**8**	**3**
SAO1	1		1
AO5	4.8	4.8	
AO4	3	3	
AO3	12.6	12.6	
AO2	1	1	
Total Support Staff	**22.4**	**21.4**	**1**
GRAND TOTAL	**69.7**	**45.1**	**24.6**

OUTPUT PERFORMANCE MEASURES

Performance Measures		2010-11 Estimate	2010-11 Actual	2009-10 Actual	2008-09 Actual
Quantity	New Matters	1400	**1482**	1603	1590
	Finalisations				
	-Supreme Court pleas	220	**235**	268	254
	-Supreme Court trials	50	**66**	63	60
	-Supreme Court withdrawn	50	**49**	46	53
	-not committed to the Supreme Court	20	**2**	2	N/A
	-Summary hearings/pleas	815	**794**	735	N/A
	-Summary withdrawn	245	**212**	229	N/A
	-Appeals at all levels	75	**64**	57	58
	WAS Clients	1100	**1536**	1363	1024
	Duty lawyer days	1000	**932**[4]	1283	N/A
	CPF File hours provided by SFNT	3385	**2574**	2524	N/A
Quality	Matters committed to the Supreme Court	90%	**99%**	99%	N/A
	Findings of guilt (including guilty pleas) in Supreme Court	90%	**93%**	89%	91%
	Findings of guilt (including guilty pleas) in Summary	90%	**90%**	90%	98%
	Convictions after trial or hearing	80%	**90%**	71%	90%
	Files where CPF order obtained	80%	**90%**	72%	N/A

[4] Figure reflects not having a Prosecutor permanently located in Katherine for the full year.

Timeliness	Filing of indictments within 28 days of committal	65%	**70%**	62%	67%
	Supreme Court matters withdrawn less than 28 days before a trial was to commence	65%	**60%**	58%	N/A
	CPF matters finalised in Local Court within 12 months	90%	**80%**	69%	N/A
	CPF matters finalised in Supreme Court within 24 months	90%	**80%**	50%	N/A

PROFESSIONAL STAFF

MARTY AUST **PROSECUTOR**

Marty Aust began his tertiary studies in 2001 at Flinders University in South Australia studying Banking and International Finance and Law. During 2002 Marty deferred his studies and undertook an Operations Management traineeship with Linfox Australia and worked within the logistics industry until relocating from South Australia to Darwin during 2006.

In 2007 Marty returned to his Bachelor of Laws degree, graduating with Honours from Charles Darwin University in 2010. His Honours thesis was entitled "The Relevance, Practicality and Applicability of the Anunga Rules in the Modern Northern Territory Criminal Justice System." Whilst studying at CDU Marty worked as a Sheriff's Officer at the NT Supreme Court before taking up a 3 month appointment as Associate to Acting Justice Trevor Olsson in October 2009. Marty was then employed as Associate to Justice Jenny Blokland in the NT Supreme Court throughout 2010 during which time he completed the Graduate Diploma of Legal Practice at Australian National University. Marty won the NT Young Lawyers' Golden Gavel competition in 2010 and later that year competed in the National Golden Gavel final held at the National Press Club, Canberra. Marty was admitted to the Supreme Court in December of 2010 and began employment with the NT ODPP in January of 2011.

SARAH FINNIN **PROSECUTOR**

Sarah graduated from the University of Melbourne in 2006 with a Bachelor of Arts/Bachelor of Laws (Hons). She also holds a Graduate Diploma in Legal Practice from the College of Law.

Between 2004 and 2007, Sarah spent a total of 12 months working as a research assistant to the US military-appointed defence lawyer to David Hicks (Major Michael 'Dan' Mori) in Washington DC. In this position she researched issues of international criminal law and international humanitarian law associated with the trial before a US military commission in Guantanamo Bay, Cuba. Sarah spent 18 months as the first Associate to Justice Lex Lasry of the Victorian Supreme Court after his appointment in October 2007. She also worked as a research assistant at the Asia Pacific Centre for Military Law between 2003 and 2011.

Prior to commencing her position in Summary Prosecutions in Alice Springs in April 2011, Sarah completed her PhD on the topic of complicity under the Rome Statute of the International Criminal Court at the University of Melbourne.

TOM WALLACE-PARNELL **SUMMARY PROSECUTOR**

Tom holds a Bachelor of Laws from the University of Tasmania and graduated 2007. He completed his Graduate Diploma in Legal Practice in 2008 and was admitted in November 2008

After taking a year off in 2009, Tom moved to Darwin in January 2010 to commence work as Associate to his Honour Justice Stephen Southwood in the Northern Territory Supreme Court. He commenced employment with the Northern Territory ODPP as a summary prosecutor in January 2011.

SAM BOURKE **PROSECUTOR**

Sam holds a Bachelor of Laws and Graduate Diploma in Legal Practice from Charles Darwin University.

During his studies Sam worked as the senior information and privacy policy officer with the Business Information and Reporting Branch of the Northern Territory Police.

In his final year of study Sam was offered a position with Clayton Utz. There Sam worked as a corporate and major litigation lawyer whose clients included local, national and international companies until starting with ODPP in January 2011.

COLLETTE DIXON **CROWN PROSECUTOR**

Collette Dixon graduated from the Northern Territory University in 1999 with a Bachelor of Laws. She served as an Associate with the Northern Territory Supreme Court for 12 months and completed her articles at a private firm.

Collette spent 2 years working for a corporate litigation firm. She then worked for almost 9 years with the Commonwealth Director of Public Prosecutions before taking up her position as a Crown prosecutor.

CLAIRE HENDERSON **PROSECUTOR**

Claire graduated from a combined degree in Bachelor of Arts (Media & Communications)/Bachelor of Law (Hons), with a Diploma of Modern Languages, at the University of Melbourne in 2007. She was admitted to the Supreme Court of Victoria in 2009.

Before starting at the NT DPP in January 2011, Claire worked for an intellectual property law firm in Milan, for the International Criminal Tribunal for Rwanda in Tanzania as an intern, for the Melbourne office of Minter Ellison Lawyers in litigation, and most recently for the Civil Section of the North Australian Aboriginal Justice Agency.

ANNA SWINDLEY **SUMMARY PROSECUTOR**

Anna commenced working with the Office of Director of Public Prosecutions as a Summary Prosecutor in February 2011.

Anna obtained a Bachelor of Arts (majoring in English and Politics/Feminist Theory) from Monash University in 1999 whilst working as a paralegal in commercial litigation at Mallesons Stephen Jaques in Melbourne. After 7 years running a successful textile import business from New Delhi in India, she moved to Darwin. She completed her Bachelor of Laws at CDU in 2009, going on to complete the Graduate Diploma in Legal Practice with ANU in 2010. She has worked in various roles with several top and mid-tier firms including a research position with a Melbourne barrister for the duration of a 9 month Federal Court hearing. Prior to undertaking a graduate clerkship with NT Department of Justice last year, she worked with Native Title Services Victoria, assisting in the negotiation of a Native Title settlement agreement for the GunaiKurnai people of Gippsland.

BRONWYN HAACK **SUMMARY PROSECUTOR**

Bronwyn graduated with Bachelor of Commerce/Bachelor of Laws in 2002. After completing articles of clerkship in a specialist property/small business firm Bronwyn was admitted as a barrister and solicitor of the Supreme Court in Victoria in May 2003. She was then employed by Lucas & Marshman in Horsham and engaged in a court based practice of criminal law, family law/child protection law and general litigation. In 2005 she was accredited by Victorian Legal Aid to act as a private practitioner for duty lawyer services. Bronwyn was then recruited by the Western circuit section of the Victorian Office of Public Prosecutions.

In July 2007 Bronwyn was employed as a solicitor for the private Melbourne Firm Maddocks to work as a prosecutor and advisor for state government and statutory authorities. She conducted significant prosecutions/enforcement applications in the Magistrates' Court and would appear as Counsel Assisting the Board for contested inquiries into the conduct of registered practitioners in the building industry. During this period Bronwyn appeared in a pro bono basis as an advocate before the Mental Health Review Board in contested hearings.

In May 2010 Bronwyn relocated to the Northern Territory for a 12 month contract to work as the managing lawyer in the Katherine office of Northern Territory Legal Aid Commission. In May 2011 Bronwyn commenced employment with the NT DPP as a hearings prosecutor based in Katherine.

PROFESSIONAL ACTIVITIES

General Workload

WORKLOAD OVERVIEW	2010/11	2009/10	2008/09
New Matters	1482	1603	973
New Phases	1556	1634	1589
Court Appearances	7971	7233	7704
Duty Lawyer days	932[5]	1283	n/a
MATTERS COMPLETED IN SUMMARY & YOUTH JURISDICTIONS[6]			
Guilty (including guilty pleas)	795	654	266
Committed	296	320	307
Not Guilty/Not Committed	93	81	8
Withdrawn	212	229	67
Total CSJ & Youth Matters	1396	1284	648
MATTERS COMPLETED IN SUPREME COURT			
S/C Pleas	235	268	254
S/C Trial guilty	33	29	31
S/C Trial not guilty	23	24	20
S/C Trial Mistrial	10	10	9
Nolle Prosequi	42	34	40
S297 (no true bill)	7	12	13
Total S/C (not incl 297A)	343	365	354

[5] The lower figure reflects not having a permanent Prosecutor in Katherine for the full period

6 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.

SUPREME COURT PLEAS COMPLETED BY WAY OF EX OFFICIO INDICTMENT			
Commenced	57	59	76
Completed	54	53	70

APPEALS	2010/11	2009/10	2008/09
JUSTICE APPEALS			
Commenced	65	51	52
Completed	45	34	38
COA & CCA			
Commenced	25	31	21
Completed	19	20	19
HIGH COURT OF AUSTRALIA			
Commenced	2	3	2
Completed	0	3	1

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 2009 to 30 June 2010

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

2010/2011

	Sentence		Conviction	
Granted	9	(5)	2	(5)
Refused	6*	(7)	0	(4)
Total	15	(12)	2	(9)

* Four applicants applied to have their applications re-heard and determined by the Court of Criminal Appeal constituted by three judges. One of those applications was subsequently discontinued in the reporting year. The remaining two applications were heard and determined following full oral argument before the Court. One application was allowed and one application was refused. These applications are not included in Table B even though the applications were argued as if they were appeals.

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

2010/2011

	Conviction		Sentence		Other	
Allowed	1	(5)	4	(2)	0	(0)
Dismissed	4	(3)	6	(8)	0	(0)
Total	5	(8)	10	(10)	0	(0)

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

2010/2011

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

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

2010/2011

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

TABLE C

Outcome of defence appeals from the Court of Summary Jurisdiction to the Supreme Court at Darwin
2010/2011

	Conviction		Sentence		Other	
Allowed	8	(6)	4	(8)	0	(1)
Dismissed	3	(5)	10	(7)	2	(2)
Discontinued	4	(4)	5	(6)	0	(0)
Total	15	(15)	19	(21)	2	(3)

Outcome of prosecution appeals from the Court of Summary Jurisdiction to the Supreme Court at Darwin
2010/2011

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

TABLE C

Outcome of defence appeals from the Court of Summary Jurisdiction to the Supreme Court at Alice Springs 2010/2011

	Conviction	Sentence	Other
Allowed	1	11	0
Dismissed	1	5	0
Discontinued	1	5	0
Total	3	21	0

Outcome of prosecution appeals from the Court of Summary Jurisdiction to the Supreme Court at Alice Springs 2010/2011

	Dismissal of Charge	Sentence	Other
Allowed	0	0	0
Dismissed	0	1	0
Discontinued	0	0	0
Total	0	1	0

HIGH COURT

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

Lo Castro v R

A Darwin jury found the applicant, an adult male, guilty of having committed eight offences against victim A, an adult female. The offences were five counts of assault with circumstances of aggravation and three counts of having sexual intercourse without consent (rape). Five of the offences (two assaults and three rapes) were committed on 2 November 2008. The applicant was sentenced to a total of 12 years imprisonment in respect of the offending against victim A.

Following the findings of guilt in respect of victim A, the applicant pleaded guilty to having committed five offences against another adult female, victim B. The offences were four counts of assault with circumstances of aggravation and one count of attempting to have sexual intercourse without consent. The applicant was sentenced to a total of four years and six months imprisonment in respect of the offending against

victim B. It was ordered that one year of the sentence be served cumulatively with the sentence imposed in respect of the offending against victim A.

The total effective sentence imposed was 13 years imprisonment. A non-parole period of eight years was fixed.

On the hearing of the appeal against severity of sentence in the Court of Criminal Appeal, the applicant sought to adduce fresh evidence which, it was argued, demonstrated that the relationship between the applicant and victim A did not cease for any significant period after the offending which occurred on 2 November 2008. This material was not put before the sentencing judge. It was submitted that the fact the relationship continued was evidence that the trauma victim A in fact suffered was less severe than that described by victim A in her victim impact statement; accordingly, a material factor to the sentencing exercise was not brought to the attention of the sentencing Judge.

The Court of Criminal Appeal refused to admit the evidence holding that it was impossible to conceive that the fresh evidence, had it been put before the sentencing judge, would have had any significance at all on his sentencing considerations. The appeal was dismissed. See ***Lo Castro v The Queen*** [2011] NTCCA 1, a summary of which can be found on the ODPP website under the heading Decisions Delivered 1 July 2010 – 30 June 2011.

The applicant applied to the High Court for special leave to appeal from the decision of the Court of Criminal Appeal on the ground that the Court of Criminal Appeal erred in refusing to admit the applicant's fresh evidence. The grant of special leave was opposed by the Crown. As at 30 June 2011, the application had not been determined by the High Court nor had the application been listed for hearing.

SUMMARY PROSECUTIONS

The Summary Prosecutions section of the Office of the Director of Public Prosecutions is responsible for the conduct, in the Court of Summary Jurisdiction (CSJ), of matters referred to it by the Superintendent in Charge of Police Prosecutions or his delegate. The matters that may be referred to Summary Prosecutions include contested matters and any matter that the Police believe should be dealt with by a summary prosecutor.

The majority of the matters referred are contested hearings and pleas of guilty that are of a complex or sensitive nature.

Summary Prosecutors are based in Darwin, Katherine and Alice Springs.

In each region served, summary prosecutors deal with a wide range of offences including; traffic, drugs and kava, fraud, domestic violence, firearms, youth crime and marine and fisheries matters. Summary prosecutors also appear on instructions from NT Correctional Services with respect to breaches of suspended sentences, home detention orders and good behaviour bonds.

DARWIN

Summary Prosecutions Darwin (SPD) is staffed by eight (8) prosecutors including a managing prosecutor who, in addition to her own case load, is responsible for the supervision and allocation of work within the section. SPD prosecutors appear in the CSJ in Darwin and in the following remote communities.

Alyangula four days each month
Borroloola* four days or more each second month
Daly River one or more days each month
Galiwinku one day each third month
Gapuwiyak*
Jabiru one or more days each month
Maningrida two or more days each month
Milikapiti one day each third month
Nguiu one or more days each month
Nhulunbuy three or more days each month
Numbulwar one day each third month
Oenpelli one or more days each month
Pirlingimpi one day each month

Ramingining*one day when required

(* circuit courts not previously serviced by SPD)

SPD receives administrative support from two dedicated professional assistants.

SPD is located on the fourth floor of Old Admiralty Tower, 68 The Esplanade, Darwin.

KATHERINE

Summary Prosecutions Katherine (SPK) is staffed by one summary prosecutor located within the Katherine Police Prosecutions Unit. For most of 2010/ 2011 a Darwin based summary prosecutor would travel from Darwin to conduct hearings in Katherine. In May 2011 the DPP recommenced the previous practice of employing a dedicated civilian hearings prosecutor based in Katherine for hearings in the Katherine Region. That person is Bronwyn Haack.

The SPK prosecutor appears in the CSJ in Katherine and in the following remote communities between 3 and 5 days per month:

Barunga
Kakaringi
Lajamanu
Ngukkur
Timber Creek

While serviced by the one Court many of these communities have very distinct indigenous cultural and language groups.

There is limited administrative support provided to SPK through the Police Prosecutions Unit.

Over the last financial year the volume of court cases including hearings has increased significantly with the result that an additional Magistrate now attends Katherine for one week per month to preside over preliminary examinations (committal hearings) and to pick up any overflow of summary matters. The committal hearings are prosecuted by a Crown Prosecutor who travels from Darwin for that purpose.

At various times of the year seasonal conditions dramatically increase the file load at bush courts. Flooding of roads or unfavourable flight conditions may prevent defendants and witnesses attending court. On a number of occasions this has resulted in a significant increase in the size of the bush court list such that it is impossible for the court to deal with all of the matters on the list in the allocated time. For example, in June of 2011, 23 contested hearings were listed by the CSJ over two consecutive days at Lajamanu and Kalkaringi before a single Magistrate and single hearing prosecutor. Fifteen of the 23 matters could not be dealt with and were adjourned.

SPK is located in the Randazzo Building, Katherine Terrace, Katherine.

ALICE SPRINGS

Summary Prosecutions Alice Springs (SPA) is staffed by three prosecutors. The SPA prosecutors appear in the CSJ in Alice Springs and the following communities:

Tennant Creek – twice monthly including Elliott during the sittings 3 times a year
Yuendumu and Papunya for a 3 day period every 2 months
Ali Curung and TiTree over 2 day period every 2 months
Kintore and Mutijulu over a 2 day period every 2 months

The SPA staff also take carriage, on occasion, of committal matters, Justice Appeals, and assist in instructing in trials as required. This flexibility provides exposure to indictable matters by the SPA staff. It also shores up the resources on the DPP side when the Crown prosecutors are elsewhere engaged.

Administrative support is supplied by the Crown and Police Prosecutions as required.

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).

Victims of crime are defined as a person who has suffered harm arising from an offence or, where there is a death as a result of the commission of the offence, a person who was a relative of, or was psychologically or financially dependant on the deceased person (*Sentencing Act* 106A(a)).

The WAS team consists of nine witness assistance officers.

In Darwin: Louise Ogden, WAS Manager (who replaced Nannette Hunter on her retirement in July 2010); Colleen Burns, Aboriginal Support Co-ordinator; Jenny Davie, Kenny Hewitt, (who replaced Ken James); Dane Meyers (who replaced Kenny Hewitt) Ken James (who is on a transfer to the Aboriginal Interpreter Service); Marion Blackburn who was confirmed in her position during the year; and Georgina Horton who was on a temporary contract to cover recreation leave and vacancies.

In Alice Springs: Susan Cooper, WAS Co-ordinator (South), Ronda Ross and Debbie Ledbetter.

In Katherine: Michael Devery, WAS Co-ordinator.

WAS in Darwin also had wonderful administrative support from Rose Cigobia and Krystal Ronayne and in Katherine from Kylie Northey.

The incoming Manager has made some changes to the way WAS functions, including the introduction of regular staff meetings, Coordinator meetings and training. Plans are underway to develop an operational procedures manual and to undertake a fresh Bush Promotions project.

The WAS Unit was fortunate to receive a newly refurbished area at the Darwin Magistrates Court and is now able to offer a much improved service in that space. Rooms at the Darwin Supreme Court have also been updated and the Katherine Magistrates Court space is being considered for an upgrade.

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 while the witness is giving evidence.

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.

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. In the past year the expansion of Anglicare Resolve in the NT has resulted in increased referrals to that service with anecdotal evidence that there is a corresponding improvement in outcomes for those victims referred.

Explanation

The explanation of legal processes, legal language and rules of evidence is vital. The aim is to explain technical legal language and issues 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 has 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 to submit a VIS to the Court. Since the beginning of this scheme WAS has assisted over 3500 victims to prepare a VIS.

Executive Committee

The WAS Manager attends weekly meetings with the Director and Senior Management of the ODPP.

Professional Staff Meetings

WAS members attend monthly meetings of all professional staff of the ODDP.

Training and Community Education

Members of WAS regularly give presentations to groups of people who come into contact with witnesses in their workplace. In the past 12 months this has included attendance at NT Police Command Training Days, along with regular sessions provided to Police recruits.

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 other new staff members, whether recruited to SPD or ODPP, an orientation presentation about the role of WAS.

Publications

WAS publishes a booklet, *Victim Impact Statements* and a pamphlet, *Witness Assistance Service* and a DVD in English and Kriol. This year the DVD was edited to bring some of the content up to date with current legislation. Plans are underway to further review and film further stories for the DVD. In addition WAS have collaborated with iSee iLearn to develop a Court Story that can be read and also heard in English and Arrente. Plans are underway to expand the languages in which the story may be heard.

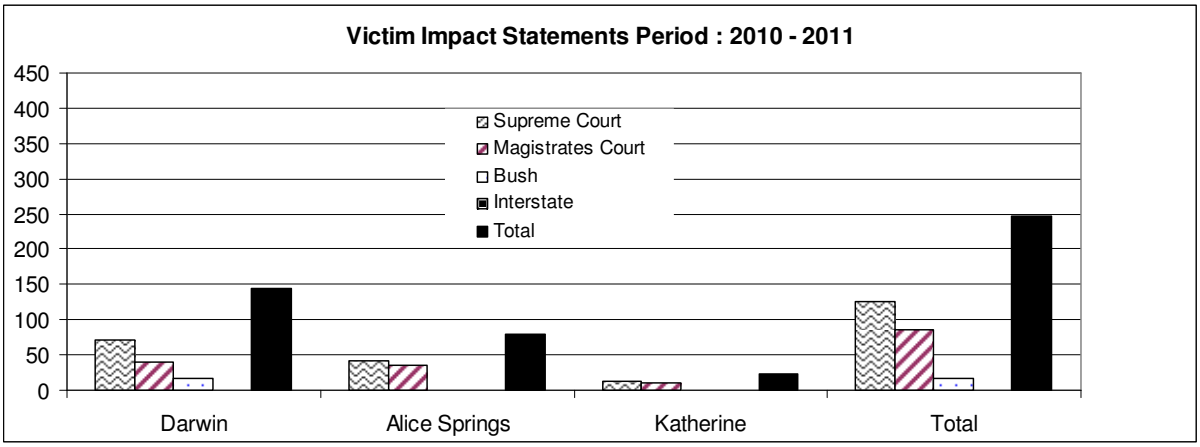
Bush Courts

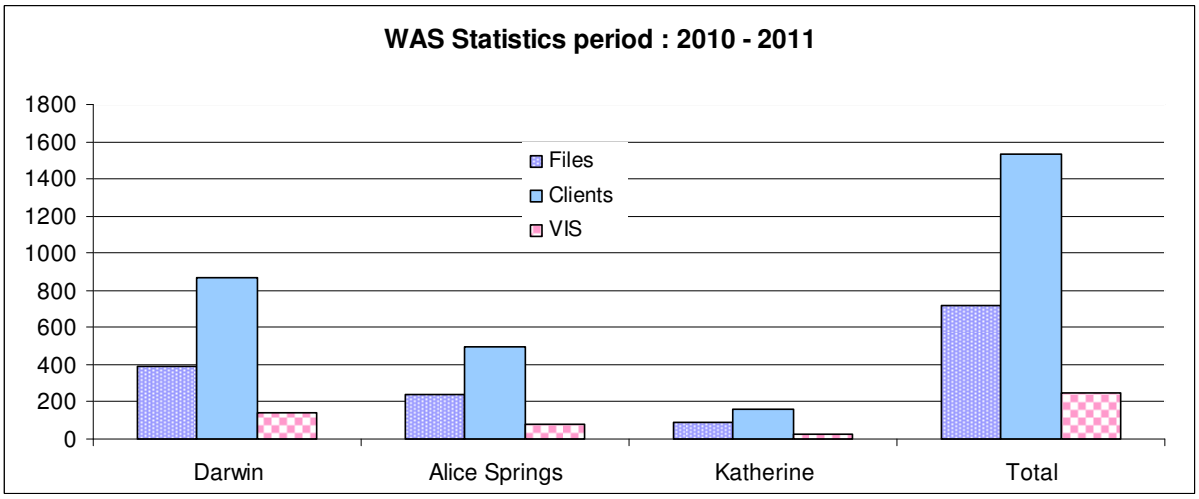
WAS officers have continued to provide services to remote communities. Each member of the WAS team has worked at a number of communities to support witnesses appearing in Bush Courts. In Darwin one of the changes made by the new manager was to allocate circuits to specific officers. This allows the officers to build strong relationships in communities and provide an improved service to our clients. This is a demanding and time consuming aspect of their work.

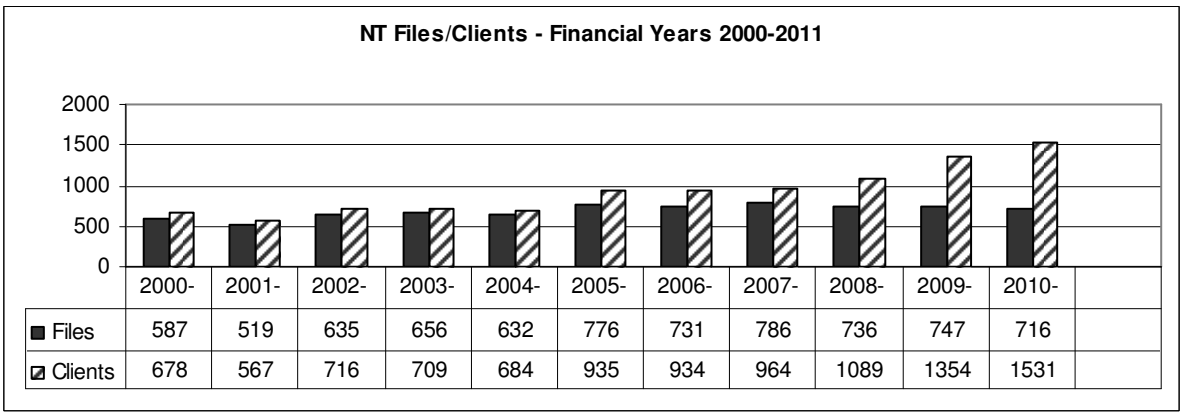
WAS Statistics

The workload of WAS again increased in 2010-2011 as measured by the statistics for files and clients. A new landmark of approximately 1500 clients was achieved. WAS staff are busier than ever.

FILES – CLIENTS – VICTIM IMPACT STATEMENTS







	2000-	2001-	2002-	2003-	2004-	2005-	2006-	2007-	2008-	2009-	2010-
Files	587	519	635	656	632	776	731	786	736	747	716
Clients	678	567	716	709	684	935	934	964	1089	1354	1531

GUIDELINES OF THE DIRECTOR OF PUBLIC PROSECUTIONS

1. ROLES AND DUTIES OF THE PROSECUTOR

1.1 The Office of the Director of Public Prosecutions (ODPP) is independent and represents the community and not any private or sectional interest.

1.2 The prosecutor owes a duty of fairness to the court and the community. The community's interest is two-fold: that those who are guilty be brought to justice and that those who are innocent not be wrongly convicted. The prosecutor's role is to assist the court and do justice between the community and the offender according to law and the dictates of fairness. Importantly, a prosecutor:

(1) has the duty to act fairly and impartially;
(2) has the duty of ensuring that the Crown case is presented properly and with fairness to the offender;
(3) is entitled to firmly and vigorously urge the Crown view about a particular issue and to test the case advanced on behalf of the offender by all proper means provided by the criminal trial process which is an accusatorial and adversarial procedure;
(4) must never seek to persuade a jury to a point of view by introducing prejudice;
(5) must not advance any argument that does not carry weight in his or her own mind or try to shut out any evidence that would be important to the interests of the offender;
(6) must inform the court of authorities or trial directions appropriate to the case, even where unfavourable to the prosecution;
(7) must offer all evidence relevant to the Crown case;
(8) should take care to ensure that nothing is said in the opening address which may subsequently lead to the discharge of the jury. Such matters might include:
    (a) contentious evidence that has not yet been the subject of a ruling;
    (b) evidence that may reasonably be expected to be the subject of objection;
    (c) detailed aspects of a witness's evidence which may not be recalled in the witness box;
(9) has a continuing obligation of disclosure;
(10) must take care to conduct cross-examination of an offender fairly;

(11) shall comply with the Rules of Professional Conduct and Practice of the Law Society of the Northern Territory (Appendix A), the Barristers' Conduct Rules of the Bar Association of the Northern Territory (Appendix B) and the International Association of Prosecutors Rules for Prosecutors (Appendix C).

1.3 The prosecution is entitled to procedural fairness. It must maintain that right in the interests of justice. This may mean, for example, that an adjournment must be sought when insufficient notice is given of: alibi evidence, expert evidence from the defence, regarding Aboriginal community views on an offender or an offence, a plea and a victim impact statement or report may be required, or, any other listing where insufficient time has been provided to the Crown to properly prepare and fairly present material relevant to the matter before the court.

2. THE DECISION TO PROSECUTE

2.1 The prosecution process should be initiated or continued whenever it appears that there is a reasonable prospect of conviction and it is in the public interest. There is a continuing obligation to review the decision to prosecute in light of relevant material and information as it becomes available.

2.2 The question whether or not the public interest requires that a matter be prosecuted is resolved by determining whether:

(1) the admissible evidence is capable of establishing each element of the offence;
(2) it can be said that there is no reasonable prospect of conviction by a reasonable jury (or other tribunal of fact) properly instructed as to the law; and
(3) discretionary factors dictate that the matter should or should not proceed.

2.3 The first matter requires no elaboration: it is the *prima facie* case test.

2.4 The second matter requires an exercise of dispassionate judgment which will depend in part upon an evaluation of the admissibility and weight of the available evidence and the persuasive strength of the Crown case. The resolution of disputed questions of fact is for the court and not the prosecutor. The assessment of prospects of conviction is not to be understood as usurping the role of the court but rather as an exercise of discretion in the public interest. It is a test appropriate for both indictable and summary charges.

2.5 The third matter requires consideration of many factors. The factors that can be properly taken into account will vary from case to case and may include the following:

(1) the seriousness or, conversely, the triviality of the alleged offence; or that it is of a "technical" nature only;
(2) whether or not the alleged offence is of considerable public concern;
(3) the obsolescence or obscurity of the law;
(4) whether or not the prosecution would be perceived as counterproductive for example, by bringing the law into disrepute;

(5) special circumstances that would prevent a fair trial from being conducted;
(6) the necessity to maintain public confidence in such basic institutions as the Parliament and the courts;
(7) the staleness of the alleged offence;
(8) the prevalence of the alleged offence and any need for deterrence, both personal and general;
(9) the availability and efficacy of any alternatives to prosecution;
(10) whether or not the alleged offence is triable only on indictment;
(11) the likely length and expense of a trial;
(12) whether or not any resulting conviction would necessarily be regarded as unsafe and unsatisfactory;
(13) the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court;
(14) whether or not the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive;
(15) the degree of culpability of the offender in connection with the offence;
(16) any mitigating or aggravating circumstances;
(17) the youth, age, maturity, intelligence, physical health, mental health or special disability or infirmity of the offender, a witness or a victim;
(18) the offender's antecedents and background;
(19) the circumstances in which the alleged offence was committed;
(20) whether or not the offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the offender has done so;
(21) the attitude of a victim or in some cases a material witness to a prosecution;
(22) any entitlement or liability of a victim or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken; and/or
(23) whether or not the Director's consent is required to prosecute.

2.6 The applicability of and weight to be given to these and other factors will vary widely and depend on the particular circumstances of each case.

2.7 A decision whether or not to proceed must not be influenced by:

(1) the race, religion, sex, national origin or political associations, activities or beliefs of the offender or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account objectively);
(2) the personal feelings of the prosecutor concerning the offence, the offender or a victim;
(3) the possible political advantage or disadvantage to the government or any political party, group or individual;
(4) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution or otherwise involved in its conduct; or
(5) any possible media or community reaction to the decision.

2.8 It is recognised that the resources available for prosecuting are finite and should not be expended pursuing inappropriate cases.

3. TIMELINESS

3.1 A fundamental obligation of the prosecution is to assist in the timely and efficient administration of justice. To this end:

(1) cases should be prepared for hearing as quickly as possible;
(2) indictments should be filed within 21 days from committal;
(3) an indictment should be communicated to the defence as soon as possible;
(4) any amendment to an indictment should be made known to the defence as soon as possible;
(5) as far as practicable, the adjournment of any trial or other listing should be avoided by prompt attention to the form of the indictment, the availability of witnesses and any other matter which may cause delay. Adjournments will not be sought by or acceded to by a prosecutor unless there are substantial reasons in favour of the adjournment; and
(6) as far as practicable, time limits as prescribed in section 3A *Sexual Offences (Evidence and Procedure) Act* are to be complied with.

4. INDICTMENTS

4.1 A decision made by a magistrate as to whether to commit an offender for trial does not absolve a prosecutor from independently reviewing the available evidence and deciding whether to indict and for what charge.

4.2. Indictments can only be signed by Crown prosecutors who have the necessary delegation.

4.3 Charges must adequately and appropriately reflect the criminality that can be reasonably proven. In cases where there have been numerous offences committed, the prosecutor should strive to charge counts that sufficiently reflect the gravity of the incidents and the course of conduct.

4.4 An indictment should be settled and presented within 21 days of committal or on or before the first arraignment day (whichever is earlier).

4.5 In all cases prosecutors must guard against the risk of an unduly lengthy or complex trial (however, there will be cases where complexity and length are unavoidable).

4.6 Substantive charges are to be preferred to conspiracy where possible. However conspiracy may be the only appropriate charge in view of the facts and the need to reflect the overall criminality of the conduct alleged. Where conspiracy is alleged the indictment shall only be signed by the Director or Deputy Director.

4.7 Pursuant to section 131A *Criminal Code* indictments for an offence of maintain an unlawful sexual relationship with child can only be signed by the Director.

4.8 Prosecutors must supply particulars if requested: section 313 *Criminal Code.*

4.9 A prosecutor may prepare an indictment charging an offence which is different to that for which the person was committed for trial provided there is evidence of such at the committal: section 299 *Criminal Code*. Where the charge is substantially different from the charges at committal then the Guidelines for ex officio indictments apply - Guideline 5 (Ex Officio Indictments).

4.10 Whenever an indictment is prepared and there are outstanding charges, consideration should be given to determine whether it is appropriate for such charges to be included on the indictment or on a Form 6 schedule pursuant to section 107 *Sentencing Act* - Guideline 16 (Sentence).

5. EX OFFICIO INDICTMENTS

5.1 An ex officio indictment is a bill of indictment found for an offence in respect of which there has been no committal for trial.

5.2 Prosecutors are encouraged to use ex officio indictments for pleas of guilty where it is intended to fast-track uncontested matters. Any request by defence to proceed by way of ex-officio indictment should be in writing to the Director.

5.3 Where there have been committal proceedings, a decision whether or not to proceed by way of ex officio indictment should be made by the Director in respect of any offence which is substantially different in nature from the offence or offences committed for trial or additional to those offences.

5.4 A proceeding such as a coronial inquest or inquiry may be regarded as a sufficient substitute for committal proceedings. In those circumstances it may be appropriate to deal with the matter by way of ex officio indictment rather than by committal proceedings.

5.5 Where appropriate the offender should be given the opportunity of making representations when consideration is being given to an ex officio indictment or count against him or her.

5.6 A decision to file an ex officio indictment in the absence of or in spite of committal proceedings will only be justified if the offender will nevertheless be afforded a fair trial.

5.7 Only the Director may sign ex officio indictments.

5.8 Where practicable Guideline 4: Indictments applies to ex officio indictments.

6. CHARGE NEGOTIATION

6.1 Negotiations between the parties are encouraged and may occur at any stage of the progress of a matter through the courts. Charge negotiations must be based on principle and reason, not on expedience or convenience alone.

6.2 In any case of complexity or sensitivity, the defence should be asked to put in writing a negotiated charge offer including their arguments in support of such an offer. Such offers will always be considered on a without prejudice basis. In some cases it may be appropriate to inform the defence that the prosecution will not consider an offer unless its terms are clearly set out in writing.

6.3 A negotiated plea of guilty may be considered if the public interest is satisfied, taking into account the following matters:

(1) whether the alternative charge adequately reflects the essential criminality of the conduct and the plea provides adequate scope for sentencing;
(2) whether the evidence available to support the prosecution case is weak in any material respect;
(3) whether the saving of cost and time weighed against the likely outcome of the matter if it proceeded to trial is substantial; and/or
(4) whether it will save a witness, particularly a victim or other vulnerable witness, from the stress of testifying in a trial.

6.4 A negotiated charge will normally not be appropriate where:

(1) its acceptance would produce a distortion of the facts and create an artificial basis for sentencing;
(2) its acceptance would render inadmissible facts essential to establishing the criminality of the conduct;
(3) the offender intimates that he or she is not guilty of the offence; or
(4) an offender will avoid a mandatory term.

6.5 In all cases, the views of the victim and the police officer-in-charge concerning the acceptance of a plea of guilty or the contents of a statement of agreed facts must be sought and will be taken into account before final decisions are made. Those views must be recorded on the file and made available to the Director's Chambers (see Appendix D for definition of Director's Chambers.) Those views are not determinative. It is the public, not any private individual or sectional, interest that must be served.

6.6 The acceptance of a negotiated charge will only occur after all of the material has been reviewed by at least one Chambers' prosecutor. Where there are differing opinions, the matter is to be referred to the Director's Chambers for review. This process is designed to protect against capricious or other ill-considered judgments. The determination of the reviewer(s) must be recorded on file.

6.7 Where the appropriate review has occurred, been documented on the file and the plea is approved, a prosecutor may agree to a negotiated charge.

6.8 Records must be made as events occur for transparency and probity. A prosecutor is required to reduce to writing any agreement that is reached. If possible the agreement should be signed by each party. A prosecutor should be familiar with *GAS v R; SJK v R* (2004) 217 CLR 198. Any offer by the defence must be recorded clearly, including any offer that is rejected.

6.9 If a version of the facts is negotiated and agreed:

(1) the prosecutor must prepare or obtain a statement of agreed facts. A copy must be kept on file;
(2) where evidence is to be omitted from a statement of facts, the views of the police officer-in-charge and the victim must be sought and noted before agreed facts are adopted;
(3) where the prosecution agrees not to rely on an aggravating factor no inconsistent material should be placed before the sentencing judge: *R v De Simoni* (1981) 147 CLR 383.

6.10 Where an earlier offer has been rejected by a prosecutor any subsequent proposal to reverse the decision (where circumstances are otherwise unchanged) should be referred to the Director's Chambers.

6.11. In cases which are serious or potentially contentious, or involving the death of any person, no acceptance of any plea offer to lesser or fewer charges shall occur without the consent of the Director.

6.12 Some charges may be suitable for inclusion on a Form 6 (Disposal of Other Pending Charges) under section 107 *Sentencing Act* where the offender admits having committed certain listed offences - Guideline 16 (Sentence).

6.13 If plea negotiations relate to an offender, who is also an informer, apply Guideline 19 (Informers).

7. DISCONTINUING PROSECUTIONS

Discontinuing Court of Summary Jurisdiction Prosecutions

7.1 The prosecutor with carriage of a matter must advise the police officer-in-charge and the victim whenever the ODPP is considering whether or not to discontinue a charge in the Court of Summary Jurisdiction or to consent to an appeal in the Supreme Court. The police officer-in-charge should be consulted on any relevant matters, including perceived deficiencies in the evidence and any matters raised by the offender. One purpose of this consultation is to provide an opportunity for the police officer-in-charge and the victim to furnish additional information which may affect the decision.

7.2 Discontinuance reports must include:

(1) the charges laid by the informant and/or the charges on which the offender has been committed for trial;
(2) a summary of the facts of the case sufficient to permit a proper consideration of the application or request;
(3) the views of the police officer-in-charge and the victim and/or a note as to attempts made to obtain those views; and
(4) the prosecutor's recommendation supported by reasons.

7.3 When it is sought by Summary Prosecutions to discontinue in the Court of Summary Jurisdiction, a report and recommendation must be referred to the officer-in-charge of Summary Prosecutions or the Director's Chambers. Discontinuation of matters involving domestic violence must only occur with the consent of the Director's Chambers.

7.4 After a decision has been made, the prosecutor with carriage of the matter must notify the police officer-in-charge, the victim, the offender and the court of the decision as soon as practicable.

7.5 In the Court of Summary Jurisdiction where a decision has been made to discontinue then the matter should be withdrawn. Matters may be re-commenced if circumstances or evidence has changed and statutory limitation periods have not expired.

7.6 Occasionally magistrates may refuse to accept a withdrawal of a complaint. If a prosecutor is forced to offer no evidence then the charge will be dismissed. This precludes the complaint from being re-laid. Normally a prosecutor is entitled to withdraw an information. If a prosecutor is forced to offer no evidence, there may still be an opportunity to re-lay the information. Accordingly, prosecutors should be aware of the legislative provisions regarding jurisdiction for certain offences (for example section 121A *Justices Act,* section 22 *Misuse of Drugs Act).*

7.7 In the Court of Summary Jurisdiction costs may be ordered where a matter is withdrawn, no evidence is offered, or the offender is found not guilty (section 77 *Justices Act* and reg 14 *Justices Regulations*). A determination should be made as quickly as possibly if proceedings are to be discontinued to avoid or minimise costs.

Discontinuing Justice Appeals

7.8 Where a prosecutor is of the view that a Justice Appeal should be conceded (or discontinued where the Crown has brought the appeal) then approval must first be obtained from the Director's Chambers.

Discontinuing Trials

7.9 Offenders, their representatives or prosecutors may make application that a charge or charges be discontinued or varied or that a no true bill pursuant to section 297A of the Criminal *Code* be filed. If, after reviewing a case fully, the prosecutor considers that the proceedings should not continue and approval to discontinue is obtained from the Directors Chambers, then the case should be discontinued at the earliest possible opportunity.

7.10 In considering such applications regard is to be had principally to the three tests set out in Guideline 2: Decision to Prosecute, bearing in mind any additional considerations of fact or argument put forward by the defence.

7.11 In trials (and infrequently, pleas) it is the responsibility of the prosecutor, to prepare a report to the Director's Chambers. Discontinuance reports must include:

(1) the charges laid by the informant and/or the charges on which the offender has been committed for trial;
(2) a copy of the defence application or request;
(3) a summary of the facts of the case sufficient to permit a proper consideration of the application or request;
(4) the views of the police officer-in-charge and the victim and/or a note as to attempts made to obtain those views; and
(5) the prosecutor's recommendation supported by reasons.

7.12 It is the responsibility of the prosecutor to ensure that consultations with the police officer-in-charge and victim have occurred. However, if the police officer-in-charge or victim is not able to be consulted within a reasonable time, the attempts made to contact him or her must be documented.

7.13 After a decision has been made, the prosecutor must notify the police officer-in-charge, the victim, the offender and the court of the decision as soon as practicable. Where appropriate, the police officer-in-charge and victim should also be reminded that bail conditions no longer apply.

7.14 Unless there are special circumstances, a submission to discontinue because of the triviality of the offence should be refused if the offender has elected trial on indictment for a charge that could have been dealt with in the Court of Summary Jurisdiction.

Generally

7.15 Where a direction has been given in a matter to proceed or to take no further proceedings, that direction will not be reversed unless:

(1) significant new facts warrant it;
(2) the direction was obtained by fraud or impropriety; or
(3) the direction was obtained or made on an erroneous basis, and the interests of justice require a reversal.

7.16 The procedure for discontinuing proceedings before an indictment is filed is by way of a no true bill: section 297A *Criminal Code*. The procedure for discontinuing proceedings after an indictment has been filed is by way of a nolle prosequi: section 302 *Criminal Code.*

7.17 In serious or potentially contentious cases, or cases involving the death of any person, no withdrawal shall occur without the consent of the Director.

7.18 Reasons for discontinuance will normally not be given. The Director's consent is required before reasons are disclosed.

8. DISCLOSURE

General Statement

8.1 The Crown has a continuing obligation to make full disclosure in a timely manner of the prosecution case to the offender. This includes disclosure of all material which on sensible appraisal:

(1) is relevant or possibly relevant to an issue in the case and being either inculpatory or exculpatory material;
(2) raises or possibly raises a new issue whose existence is not apparent from the evidence the prosecution proposes to use; and/or
(3) holds out a real as opposed to a fanciful prospect of providing a lead to evidence which goes to either of the previous two situations.

8.2 Inappropriate disclosure of confidential information may affect the safety or privacy of individuals, compromise ongoing investigations or undermine confidence in the Office. There will be circumstances when disclosure should be conditional, delayed or withheld. Where a prosecutor considers one or more of these options to be appropriate then the police officer-in-charge should be consulted.

8.3 Sensitive material must be carefully secured. It must not be left unattended in court, in cars or in any place where it could be accessed by unauthorised people.

Specific matters of which there should be disclosure

8.4 In all cases, disclosure should include (but is not limited to) the following:

(1) particulars of the offender's prior convictions;
(2) copies of all written statements of all witnesses to be called (addresses and telephone numbers may be deleted), audio and/or electronic taped records of interview, and electronically recorded interviews. If the electronically recorded interviews are made by children in accordance with the *Justices Act* or ss.21A or 21B of the *Evidence Act* then see Guideline 8.17;
(3) a copy of any prior inconsistent or additional statement of a witness (including any statement made in conference, recorded or otherwise and the Victim Impact Statement);
(4) a copy of any written or electronically recorded statement obtained from the offender by a person in authority;
(5) copies of any photographs, plans, documents or other representations which will be tendered by the prosecution at trial;
(6) an opportunity to examine exhibits which will be tendered;
(7) copies of statements and reports of any expert witnesses to be called and, by appointment through the prosecution, an opportunity for a defence expert from the same or similar discipline to speak with that expert pre-trial;
(8) a copy of any warrant or details of any other statutory authority used in the gathering of evidence to be adduced at trial. However, an affidavit in

support of any such warrant by a police officer should not normally be disclosed;

(9) an opportunity to inspect bank records, books of account or other records or documents relevant to the prosecution case-in-chief even though they may not be introduced into evidence or relied upon;

(10) where a decision has been made not to call a witness, contact details for the witness;

(11) any information in the possession of the Crown which reflects materially upon the credibility of prosecution witnesses including:

(a) a previous conviction, for example for perjury and offences involving dishonesty;

(b) an adverse finding in other criminal proceedings or in non-criminal proceedings (such as disciplinary proceedings, civil proceedings or a Royal Commission);

(c) evidence before a Royal Commission which reflects adversely on a prosecution witness;

(d) any physical or mental condition which may substantially affect reliability;

(e) any concession which has been granted to a witness in order to secure that person's testimony for the prosecution, including the details of any grant of immunity or indemnity from prosecution and discount on sentence if applicable; and

(12) If the defence requests the prior convictions of any of the witnesses then these should be supplied.

Discretion to withhold or delay disclosure on Public Interest Grounds

8.5 A prosecutor may withhold or delay disclosure of specific material where the prosecutor is of opinion that, in the public interest, the material should be immune from disclosure.

8.6 Where the prosecutor declines to disclose material, or alternatively delays disclosure of material, the prosecutor should advise the defence that material has been withheld and claim an immunity against disclosure in respect of that material.

8.7 In determining whether to claim public interest immunity, some of the factors to be considered are whether:

(1) the material is clearly irrelevant;

(2) withholding is necessary to preserve the identity of an informant;

(3) withholding is necessary to protect the safety or security, including protection from harassment, of persons who have supplied information to the police;

(4) the material is protected by legal professional privilege;

(5) the material, if it became known, might facilitate the commission of other offences or alert a person to police investigations;

(6) the material discloses some unusual form of surveillance or method of detecting crime;

(7) the material is supplied to the police only on condition that the contents will not be disclosed;
(8) the material contains details of private delicacy to the maker;
(9) the material relates to the internal workings of the police force; and/or
(10) the material relates to national or state security.

8.8 The extent to which any of these factors will affect the decision whether or not to disclose particular material will vary. Application of these factors will always be subject to the over-riding duty to ensure that the Crown case is presented with fairness. The matter should be referred to the Director's Chambers for consideration as to whether it is appropriate to delay or withhold disclosure.

8.9 In cases where a claim of immunity is pursued then the question of disclosure will be determined by the outcome of that claim.

8.10 In cases where a claim for immunity is upheld and the Director is of the view that non-disclosure could prejudice the defence at trial, the Director will determine whether the charge or charges to which the material is relevant should be withdrawn. The Director will determine whether the offender should be charged with an alternative or lesser offence, the prosecution of which will not necessitate the production of the withheld material.

8.11 In the event that a claim for immunity is unsuccessful the Director will consider, following consultation with police officer-in-charge, whether the overall interests of justice require that the material be disclosed or, alternatively, that the prosecution be abandoned.

8.12 Police should provide the ODPP with a separate schedule listing any potentially disclosable material which the police consider may be immune from disclosure to the defence on public interest grounds, together with the reasons why it is considered that the particular material is subject to public interest immunity. Examples of such material are:

(1) material relating to the identity or activities of informants, undercover police officers or other persons supplying information to law enforcement authorities;
(2) material revealing the location of any premises or other place used for surveillance, or the identity of any person allowing a law enforcement officer to use any premises or other place for surveillance;
(3) material revealing, either directly or indirectly, investigative techniques and methods relied upon by law enforcement agencies in the course of a criminal investigation (for example, covert surveillance techniques) or other methods of detecting crime;
(4) material the disclosure of which might facilitate the commission of other offences or hinder the prevention or detection of crime;
(5) material relating to national security;
(6) material received from an intelligence or security agency; and/or
(7) material given in confidence.

This list is not intended to be exhaustive.

Confidential Communications

8.13 In criminal proceedings for sexual offences communications with a counsellor are privileged to the extent provided by Part VIA E*vidence Act*. Prosecutors are to be familiar with and apply the provisions of that Part when applicable. Confidential communications are privileged and are not to be disclosed unless there is a court order for disclosure or as the provisions of the Part otherwise allow.

Legal Professional Privilege

8.14 Legal professional privilege will be claimed by a prosecutor against the production of any document in the nature of an internal ODPP communication (for example, a submission or opinion and advice to the Director, submissions between lawyers and Crown Prosecutors). Only the Director or Deputy Director may approve the waiver of the privilege.

Conditional Disclosure

8.15 Wherever material contains an image of a person which is obscene or indecent or would otherwise violate the person's privacy: including child abuse material, police photographs of naked complainants, video tapes or photographs of sexual offences being committed, then such material:

(1) must not be copied, other than for a legitimate purpose connected with a proceeding;
(2) must not be provided to the defence but must be made available for viewing by the defence upon a request if the evidence is relevant to either the prosecution or defence case; and
(3) may be made available for analysis by an appropriately qualified expert (for the prosecution or defence) upon such conditions as thought appropriate.

8.16 In appropriate cases a prosecutor may seek an undertaking from defence that material will not be disclosed to parties other than the offender's legal advisers and the offender.

8.17 When the prosecution intends to rely on the recorded statement of a child in accordance with Part V of the Justices Act or ss.21A or 21B of the Evidence Act and defence counsel 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.

Disclosure Certificate

8.18 The duty on the prosecution to disclose material to the offender imposes a concomitant obligation on the police to notify the prosecution of the existence and location of all such material. If required police shall, in addition to providing the brief of evidence, certify that the prosecution has been notified of the existence of all such material.

8.19 Should any documentation, material or information additional to the Crown case be either sensitive or of a nature which requires protection or limited disclosure, the police officer-in-charge of the investigation should identify that information at the time it is made available to the ODPP.

9. INDEMNITIES AND UNDERTAKINGS

9.1 There are two types of immunities under section 21 *Director of Public Prosecutions Act*. There is an indemnity from prosecution whether on indictment or otherwise (section 21(2)(b)) and there is an undertaking that an answer, statement or disclosure made by a person will not be used in evidence against the maker (section 21(2)(c)).

9.2 In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who participate in alleged offences in order to secure their evidence in the prosecution of others. A decision whether to call an accomplice to give evidence for the prosecution frequently presents conflicting considerations calling for the exercise of careful judgment in the light of all the available evidence. Invariably, however, there will be instances where there is a weakness in the prosecution evidence that makes it desirable, or even imperative, for the prosecution to call an accomplice.

9.3 An indemnity or undertaking will only be given as a last resort. Generally an accomplice should be prosecuted (subject to these Guidelines) whether or not he or she is to be called as a witness. An accomplice who pleads and agrees to co-operate in the prosecution of another is entitled to receive a consequential reduction in the sentence that would otherwise have been appropriate. The prosecutor should obtain a signed statement from the accomplice and that statement should set out what evidence the accomplice will provide**.** The prosecutor should also disclose to the court that such a statement has been provided and indicate the level of assistance provided by the accomplice to either the prosecutor or the police.

There may be rare cases, however, where that course cannot be taken; for example, time may not permit charges against the accomplice to proceed to

conviction before the trial of the principal offender, or there may be insufficient admissible evidence to support charges against the accomplice – Guideline 19: Informers.

9.4 Where an accomplice receives any concession or inducement from the prosecution in order to secure his or her evidence, whether as to choice of charge, or the grant of an indemnity or undertaking, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the defence and the court – Guideline 19: Informers.

9.5 Only the Director may grant an indemnity or undertaking.

9.6 The accomplice's statement must be in existence in some form before a request for an indemnity or undertaking is made.

9.7 Any request to the Director for an indemnity or undertaking pursuant to section 21 *Director of Public Prosecutions Act* must be made in a timely manner and the prosecutor must address the following matters:

(1) the accomplice's attitude to testifying without an indemnity or undertaking;
(2) the existing prosecution case against the offender, both with and without the evidence of the accomplice;
(3) the evidence which the accomplice is capable of giving (including the significance of that evidence for the prosecution case, an assessment of its reliability and whether or not there is evidence capable of corroborating the accomplices' evidence);
(4) an assessment of the weakness in the prosecution case being strengthened other than by relying on the evidence of the accomplice;
(5) the level of involvement and culpability of the accomplice in the offence;
(6) the general character of the accomplice together with a copy of his or her prior criminal record;
(7) the views of any other relevant Territory, State or Commonwealth investigatory or prosecuting authority; and
(8) public interest issues, including the comparative seriousness of the offending as between the offender and the accomplice, and whether or not the accomplice could and should be prosecuted (including the quality of the evidence against the accomplice, and the likely sentence).

9.8 In most cases an undertaking is to be preferred to an indemnity.

9.9 A grant of an indemnity or undertaking will only be made by the Director after consideration of a number of factors, the most significant being:

(1) whether or not the evidence that the accomplice can give is reasonably necessary to secure the conviction of the offender;
(2) whether or not that evidence is available from other sources; and
(3) the relative degrees of culpability as between the accomplice and the offender.

910 In all cases it must be able to be demonstrated that the interests of justice require that the immunity be given.

9.11 In the course of an investigation the police may identify a participant in the criminal activity under investigation as a person who is likely to be of more value as a prosecution witness than an offender. Thereafter the investigation may be directed at constructing a case against the remaining participants based on the evidence it is expected this person will give. It is prudent for the police to consult the Director as to the appropriateness of such a course.

10. YOUNG OFFENDERS

10.1 For offences to which Part II of the *Criminal Code* applies, a child less than 14 years of age is not criminally responsible unless at the time of offending, he or she had the capacity to know that he or she ought not to do the act or omission. Without proof of capacity, the prosecution must fail: section 38 *Criminal Code*.

10.2 For offences to which Part IIAA of the *Criminal Code* applies, a child aged 10 or more but under 14 can only be criminally responsible for an offence if he or she knows that his or her conduct is wrong: section 43AQ *Criminal Code*.

10.3 A young offender is a person under the age of 18 years.

10.4 Special considerations apply to the prosecution of young offenders and children. A prosecution of a young offender should always be regarded as a severe step, and generally speaking a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the offence or the circumstances of the young offender concerned dictate otherwise. Ordinarily the public interest will not require the prosecution of a young offender who is a first offender in circumstances where the offence is not serious.

10.5 Different considerations may apply in relation to traffic offences where infringements may endanger the lives of members of the community and the young driver.

10.6 In deciding whether or not the public interest warrants the prosecution of a young offender, regard should be had to such of the factors set out in Guideline 2: The Decision to Prosecute and particularly :

(1) the seriousness of the offence;
(2) the age and apparent maturity and mental capacity of the young offender;
(3) the available alternatives to prosecution, such as a caution, and their efficacy;
(4) the sentencing options available to the Youth Justice Court if the matter were to be prosecuted;
(5) the young offender's family circumstances, particularly whether the parents of the young offender appear able and prepared to exercise effective discipline and control over the young offender;
(6) the young offender's antecedents, including the circumstances of any previous caution the young offender may have been given, and whether

they are such as to indicate that a less formal disposal of the present matter would be inappropriate;

(7) whether a prosecution would be likely to be harmful to the young offender or be inappropriate, having regard to such matters as the personality of the young offender and his or her family circumstances; and

(8) the welfare and rehabilitation of the young offender.

10.7 Serious or potentially contentious cases, or cases involving the death of any person, require the consent of the Director before any sentencing regime is accepted.

11. WITNESS ASSISTANCE SERVICE

General Statement

11.1 The Witness Assistance Service (WAS) is a unit within the ODPP and its role is to provide support to witnesses, victims and their families in the criminal justice process. A prosecutor is expected to work with and consult with the assigned WAS officer in every case until completion.

11.2 WAS allocates its resources according to need. Priority is given to *special needs witnesses,* which include the following categories:

(1) vulnerable witnesses as defined by section 21A *Evidence Act*, namely a witness who:
   (a) is a child (under 18 years of age),
   (b) suffers from an intellectual disability,
   (c) is the alleged victim of a sexual offence, or
   (d) is under a special disability (including for example a witness who suffers a physical, sensory or psychiatric disability);

(2) Aboriginal witnesses or witnesses from non-English speaking backgrounds;

(3) victims of domestic violence;

(4) families of deceased victims; and

(5) elderly witnesses.

11.3 Prosecutors are required to notify WAS at the earliest opportunity whenever they identify a special needs witness in a matter in which they are involved.

Functions of Witness Assistance Service

11.4 WAS provides the following services to its clients:

(1) assisting clients to understand the court and legal process;

(2) showing clients the court and facilities for witnesses before they are required to give evidence;

(3) supporting clients in court or while waiting to give evidence;

(4) informing prosecutors, police or court staff of any special needs of the client;

(5) referring clients to appropriate welfare, health, counselling and other legal services;
(6) providing victims with information about financial assistance available under the *Crimes (Victims Assistance) Rules*;
(7) booking interpreters; and
(8) assisting victims with the preparation of victim impact statements or reports.

11.5 Special needs witnesses should appropriately and at an early stage have explained to them the prosecution process and their role in it. Prosecutors are required to make contact with special needs witnesses and provide ongoing information about the progress of the case. This may be done directly by the prosecutor or with the requested assistance of an allocated WAS officer.

Information to Victims

11.6 Victims of crime should be informed in a timely manner of:

(1) charges laid against any offender for the crime and any changes to these charges;
(2) reasons for not laying charges or for not proceeding with charges;
(3) where and when the matter is to come before court;
(4) the trial process and the rights and responsibilities of witnesses;
(5) whether or not bail has been granted and any bail conditions relating to protecting witnesses from the offender;
(6) reasons for accepting a plea of guilty to a lesser charge, and
(7) the outcome of criminal proceedings (including any appeal) and the sentence (if imposed).

Consultation

11.7 Where the offence is sexual in nature or results in bodily harm (including mental illness) to the victim, prosecutors should consider, in conjunction with the WAS officer, whether to consult the victim before any decision is made to charge, change a charge, discontinue a charge, or accept a plea to a lesser charge (unless the victim has indicated a wish not to be consulted or the whereabouts of the victim cannot be ascertained after reasonable inquiry).

11.8 WAS should be informed of any such consultation so that appropriate support to the victim can be provided. Where a recommendation is made by a prosecutor, either verbally or in writing, the recommendation will include details of contact with the victim and the victim's expressed wishes (if available).

11.9 In all cases involving indictable offences, where there is an identifiable victim it will be appropriate to seek and take into account the views of victims when making decisions about prosecutions (in particular before recommending or accepting any plea to a lesser charge or when settling a matter on negotiated facts); but those views will not alone be determinative. It is the public, not any private individual or sectional interest that must be served. Any views expressed should be recorded on the file.

11.10 Careful consideration should be given to any request by a victim that proceedings be discontinued. However, the expressed wishes of victims may not coincide with the public interest and in such cases, particularly where there is other evidence implicating the offender or where the gravity of the alleged offence requires it, the public interest must prevail – Guideline 7 (Discontinuing Prosecutions).

11.11 In domestic violence offences, any request by the victim that proceedings be discontinued should also be considered in accordance with Guideline 21 (Domestic Violence).

11.12 Prosecutors should be aware of legislative restrictions upon the publication of the identity of a child or adult victim of an alleged sexual assault: sections 6-11 *Sexual Offences (Evidence and Procedure) Act.*

11.13 Prosecutors should be familiar with the provisions available under Part II *Evidence Act* in respect of vulnerable witnesses, and the effect of those provisions should be explained to witnesses when they apply.

Victim Impact Statements/Reports

11.14 Sections 106A and 106B *Sentencing Act* impose obligations on the prosecutor to present victim impact statements or reports. Prosecutors should consult with the victim about how the victim impact statement is to be presented (orally or by tender). WAS will assist victims to prepare their victim impact statements or reports. If a plea is entered prior to the preparation of a victim impact statement an adjournment of proceedings should be sought in order to ascertain whether the victim wishes to provide such a statement. In any event, the victim is to be advised of the date for plea and/or sentence.

12. MENTAL HEALTH ISSUES

General Statement

12.1 Mentally disturbed people should not be prosecuted for trivial offences which pose no threat to the community. However a prosecution may be warranted where there is a risk of re-offending by a repeat offender, where there is no viable alternative to prosecution, and/or a further practical penalty or aspect of supervision is available following a successful prosecution.

12.2 In determining whether or not to proceed against a mentally disturbed person regard must be had to the:

(1) details of previous and present offences;
(2) nature of the offender's condition; and
(3) likelihood of re-offending.

12.3 In deciding whether to prosecute, the attitudes of the victim and the police officer-in-charge will be taken into account but will not be determinative.

Court of Summary Jurisdiction

12.4 Where an offender is charged with a summary offence and the proceedings are before the Court of Summary Jurisdiction, prosecutors should be aware of section 77 *Mental Health and Related Services Act* which allows the magistrate to dispose of the charge without a hearing if it appears that the offender is suffering from a mental illness or is mentally disturbed. Options available to the magistrate include dismissing the charge or making an admission for a treatment order under that Act.

Supreme Court

12.5 From time to time people suffering from a mental illness, intellectual impairment, brain damage or some other cognitive/psychological problem are charged with criminal offences and come before the courts.

12.6 Where a person is charged on information then mental impairment and/or fitness to stand trial may be raised pursuant to Part IIA *Criminal Code.* Prosecutors should be familiar with the relevant legislative provisions. Where possible matters should be brought to the Supreme Court by way of an ex officio indictment.

12.7 Questions of fitness to stand trial or a defence of mental impairment should be raised at the earliest opportunity and ideally before the person is arraigned at trial. Where appropriate, and following consultation with the Director's Chambers, the issue may be raised by the Crown.

12.8 Where the prosecutor becomes aware of the possibility of:
(1) fitness to stand trial; and/or
(2) mental impairment being raised as an issue or issues

an application should be made to the Supreme Court for a psychiatric report on the offender.

12.9 Where a psychiatric report is either ordered by the court or requested by the Crown, a prosecutor will supply a full copy of the brief regarding the case to the court for provision to the appointed psychiatrist.

12.10 The fitness inquiry is a non-adversarial inquiry. The object of the inquiry is for the parties to place all relevant evidence before the court concerning the question of the person's fitness to be tried for the offence.

12.11 An offender can be found unfit to stand trial by agreement. Approval is to be obtained from the Director's Chambers before agreement is given.

12.12 A plea of not guilty by reason of mental impairment can be accepted. Approval to accept such a plea must first be obtained from the Director's Chambers.

12.13 Where the court has ordered a psychiatric report on the offender and the prosecutor wishes to accept the findings contained in that report, such acceptance should only occur after consultation with the Director's Chambers.

12.14 However, the Crown is not obliged to accept the findings of a Court-appointed psychiatrist; and a (further) psychiatric report may be commissioned. If a prosecutor determines to obtain a psychiatric report from a consultant psychiatrist then approval should first be obtained from the Director's Chambers.

13. JURY SELECTION

13.1 Selection of a jury is within the general discretion of the prosecutor. However, selection should never be exercised so as to attempt to select a jury that is not representative of the community including as to age, sex, ethnic origin, and economic, cultural or social background.

13.2 As part of the prosecutor's duty to ensure that the Crown case is presented with fairness to both the community and to the offender:

(1) where the prosecutor is aware of a particular circumstance of a selected juror which might appear to impact on the ability of that juror to act impartially (for example police officer's spouse, defence counsel's spouse) then the prosecutor may request that the selected juror stand aside pursuant to section 43 *Juries Act*; and

(2) where the prosecutor has information regarding a selected juror which leads the prosecutor to believe the juror would not act impartially, he or she may challenge that juror pursuant to section 44 *Juries Act*.

14. WITNESSES

14.1 In deciding whether or not to call a witness the prosecutor must be fair to the offender.

14.2 The prosecutor alone bears the responsibility of deciding whether a person will be called as a witness for the Crown.

14.3 The trial judge may but is not obliged to question the prosecutor in order to discover the reasons which lead the prosecutor to decline to call a particular person. The judge is not called on to adjudicate on the sufficiency of those reasons.

14.4 The prosecution should call all apparently credible witnesses whose evidence is admissible and essential to the complete unfolding of the prosecution case or is otherwise material to the proceedings. (Mere inconsistency of the testimony of a witness with the prosecution case is not, of itself, ground for refusing to call the witness). Unchallenged evidence that is merely repetitious should not be called unless that witness is requested by the offender.

14.5 Where there are identifiable circumstances clearly establishing that a witness is unreliable, a prosecutor may decide not to call that witness.

14.6 The prosecution must confer with the witness before making a decision not to call the witness – R *v Apostilides* (1984) 154 CLR 563*; Kneebone* [1999] NSW CCA 279*.*

14.7 The defence must be advised of a decision not to call a witness. If the defence requests that the witness be made available, then the prosecutor will assist by issuing a summons/subpoena for that witness, and by advising the defence of contact details for the witness.

14.8 Whenever a decision is made not to call a witness, the general basis for the decision will be disclosed (for example the witness cannot be located, evidence is repetitious, or the witness not accepted as a witness of truth). However, the unavailability of a witness to testify is not ordinarily required to be disclosed unless the matter proceeds to a contested hearing. In some circumstances, the public interest may require that no reasons be given.

14.9 In dealing with witnesses, a prosecutor must bear in mind the provisions regarding vulnerable witnesses pursuant to section 21A *Evidence Act*. Guideline 11 (Witness Assistance Service) is to be applied where appropriate.

14.10 There are legislative provisions applicable to the calling of evidence from children, particularly in Part II *Evidence Act* and Part III *Justices Act.* Prosecutors are to be familiar with and apply these provisions which are designed to assist children to give their evidence without delay and in a manner which minimises trauma and distress to the child.

14.11 In trials for sexual offences, certain vulnerable witnesses are entitled to pre-record either their evidence-in-chief or the entirety of their evidence (including cross-examination and re-examination). Particularly where there is potential for delay in having a matter determined by a court, prosecutors should elect to apply these provisions: section 21B *Evidence Act.*

15. INTERPRETERS

15.1 Care must be taken to ensure that every prosecution witness who needs an interpreter to testify has an appropriate interpreter.

15.2 Assistance may be offered to locate an appropriate interpreter for the defence.

15.3 When dealing with Aboriginal witnesses in the court system, prosecutors and the Witness Assistance Service must:

(1) prior to hearing, assess whether a prosecution witness, requires the assistance of an interpreter. It is to be noted that although most Aboriginal witnesses speak some English, they may not be competent in court. Interpreters should be used when English is not the first language of the

witness. When required, interpreters should be used for pre-trial consultations as well as court proceedings;

(2) when engaging an interpreter, inform the interpreter of the following:
   (a) the name of the prosecution witness(es) to be assisted;
   (b) the name of offender; and
   (c) the type of crime.

This information will enable the interpreter to advise of any possible cultural conflicts that could arise. Likewise, prosecution witnesses should be advised prior to the hearing of the name of the interpreter to be used. Where there is a conflict, another interpreter should be used.

15.4 Upon engagement of an interpreter his or her services must be used, unless there is a justifiable reason for not doing so.

16. SENTENCE

16.1 The prosecution has an active role to play in the sentencing process.

16.2 It is the duty of the prosecutor to:

(1) inform the court of all relevant circumstances of the case. This will always include a careful presentation of Crown facts. Often it will also be appropriate to tender various materials including for example, the post-mortem report, medical reports, photographs, victim's (or other witnesses') statements, physical exhibits, and/or transcript of record of interview;
(2) inform the court of any relevant authority or legislation relevant to the appropriate sentence;
(3) provide an appropriate level of assistance on the sentencing range, including whether or not a custodial sentence is called for. It is not appropriate for a prosecutor to suggest or recommend a specific sentence;
(4) assist the court to avoid appellable error on the issue of sentence. If it appears there is a real possibility that the court may make a sentencing order that would be inappropriate and not within a proper exercise of the sentencing discretion, then the prosecutor must make submissions on that issue – particularly where a custodial sentence is appropriate and the court is contemplating a non-custodial penalty; and
(5) fairly test the opposing case.

16.3 The prosecution has a duty to do all that reasonably can be done to ensure that the court acts only on truthful and accurate information. Vigilance is required not just in the presentation of the Crown case but also in the approach taken to the defence case. Where facts are asserted on behalf of a convicted person which are contrary to the prosecutor's instructions or understanding, the prosecutor should press for a trial of the disputed issues (if the resolution of such disputed facts is in the interests of justice or is material to sentence). Opinions, their underlying assumptions and factual bases should be scrutinised for reliability

and relevance. If the prosecutor has been given insufficient notice of defence material and cannot properly consider the Crown's position, an adjournment should be sought in order to obtain instructions or to request that police investigate the material.

16.4 A prosecutor is entitled to request from the defence that the maker of a statement be called. Where the defence refuses to call the maker, the Crown may oppose the tender of the statement.

16.5 Sections 106A and 106B *Sentencing Act* and sections 77 and 78 of the *Youth Justice Act* impose obligations on the prosecutor to present victim impact statements/reports. Prosecutors should be familiar with the legislation and the application of Guideline 11 (Witness Assistance Service).

16.6 The prosecutor must ensure that any criminal history tendered is current as at the date of sentence. A prosecutor must be aware of the legislative provisions of sections 32, 33 and 33A *Evidence Act*, in the event the history is disputed.

16.7 The prosecutor must be familiar with s.136 *Youth Justice Act* concerning offending prior to an offender's fifteenth birthday.

16.8 The Criminal History and Warrant Unit will not forward an interstate history unless it is expressly ordered. Judgement about whether an out of state search should be conducted will depend upon the nature of the present offences and any information or suspicion that the offender had been interstate. For example:

a trivial or minor property offence would not normally justify an interstate search; however
an offence of personal violence by a mature aged person who has lived interstate would suggest a full search should be made.

16.9 A prosecutor should not in any way fetter the discretion of the Director to appeal against the inadequacy of a sentence (including informing the court or the defence whether or not the Director would, or would be likely to, appeal, or whether or not a sentence imposed is regarded as appropriate and adequate). The Director's instructions may be sought in advance in exceptional cases.

16.10 Prosecutors must be familiar with all aspects of the *Sentencing Act.*

16.11 Co-operation by convicted persons with law enforcement agencies should be appropriately acknowledged and, if necessary, tested at the time of sentencing - Guideline 19 (Informers).

16.12 Prosecutors should be aware that an informer's identity may be kept confidential: section 24 *Misuse of Drugs Act* and Guideline 19 (Informers).

16.13 Prosecutors should be aware of the legislative provision of section 107 *Sentencing Act* concerning offences that may be taken into account on a Form 6 schedule (Disposal of Other Pending Charges). The decision to place offences on a Form 6 should be based on principle and reason, not administrative

expedience alone. A balance is to be struck between the number of counts on the indictment and the schedule. Excessive counts on the indictment can make sentence proceedings unduly lengthy and complex. On the other hand, there is a public interest in ensuring that certain offences are recorded as convictions. These include:

(1) any charges where penalties increase for second or subsequent offences such as breach of domestic violence orders (section 121 *Domestic and Family Violence Act*), drug matters (section 37 *Misuse of Drugs Act*), violent offences (section 78BA *Sentencing Act*) and sexual offences (section 78BB *Sentencing Act*);
(2) any charges where prescribed penalties apply such as traffic matters and driving offences which carry disqualification periods; and
(3) any charges relevant to the possible declaration of the offender as a drug trafficker pursuant to section 36A *Misuse of Drugs Act*.

16.14 Generally speaking, the maximum penalty for offences placed on a Form 6 schedule should be less than the maximum penalty available for the principal offence. The views of the police officer-in-charge must be sought and recorded on file before any decision is made about placing offences on a Form 6 schedule. Prosecutors should be familiar with The *Queen v Charlesworth* [1999] NTCCA 26.

16.15 Prosecutors should be aware that the Supreme Court does not have jurisdiction to try a simple offence so non-indictable offences cannot currently be taken into account on a Form 6. However an amendment to s.107 of the *Sentencing Act*, to allow the inclusion of non-indictable matters in a schedule has been foreshadowed.

16.16 A prosecutor must be alert on sentence matters in appropriate cases to making an application for an indefinite sentence pursuant to section 65 *Sentencing Act*. Such applications must have the approval of the Director.

17. CROWN APPEALS AGAINST SENTENCE

17.1 The prosecutor must assess any sentence imposed. If (and only if) it is considered to be appellable or it is a matter likely to attract significant public interest, a report should be provided promptly to the Director's Chambers for determination as to whether or not an appeal will be instituted.

17.2 The report should include the transcript and sentencing remarks (if available), any medical or pre-sentence reports, the criminal history, victim impact statement and a copy of any decisions relied upon.

17.3 The Director may appeal against the inadequacy of a sentence which has been imposed. There are no time limits but, in practice, the Office commences appeals expeditiously, preferably within 28 days of sentence.

17.4 In determining whether or not to appeal against a sentence imposed by a judge or magistrate, the Director will have regard to the following matters:

(1) whether or not the sentencer made a material error of law or fact, misunderstood or misapplied proper sentencing principles, or wrongly assessed or omitted to consider some salient feature of the evidence, apparent from the remarks on sentence;

(2) manifest inadequacy of the sentence which may imply an error of principle by the sentencer;
(3) the range of sentences (having regard to comparable cases) legitimately open to the sentencer on the facts. Mere disagreement with the sentence imposed is insufficient;
(4) the conduct of the proceedings at first instance, including the prosecutor's opportunity to be heard and the conduct of its case;
(5) the appeal court's residual discretion not to intervene, even if the sentence is considered too lenient; and
(6) whether the appeal is considered likely to succeed.

17.5 Prosecutors should be aware that:

(1) prosecution/Crown appeals are rare. They should be brought to enable the courts to establish and maintain adequate standards of punishment for crime, to enable idiosyncratic decisions to be corrected and to correct sentences that are so disproportionate to the seriousness of the crime as to lead to a loss of confidence in the administration of criminal justice;
(2) the appellate court will take into account the advantages enjoyed by the sentencer which are denied to it;
(3) the appellate court will not be concerned whether or not it would have found the facts differently, but will consider whether or not it was open to the sentencer to find the facts as he or she did;
(4) apparent leniency or inadequacy alone may not be enough to justify appellate correction; and
(5) scope must remain for the exercise of mercy by the primary sentencers.

18. UNREPRESENTED OFFENDER

18.1 A prosecutor must take particular care when dealing with an unrepresented offender. The basic requirement, while complying in all other respects with these Guidelines, is to ensure that the offender is properly informed of the prosecution case so as to be equipped to respond to it. However, the prosecutor must maintain an appropriate level of detachment from the offender’s interests.

18.2 Any face to face contact with the offender by a prosecutor should occur in the communicate with an unrepresented offender through the court.

18.3 Full notes should be promptly made in respect of:

(1) oral communication;
(2) all information and materials provided to an offender; and
(3) any information or material provided by the offender.

18.4 Any admissions made to ODPP staff or any communication of concern should be recorded and mentioned in open court as soon as possible.

18.5 The prosecutor should not advise the offender about legal issues, evidence or the conduct of the defence. However, he or she should be alert to the magistrate's or judge's duty to do what is necessary to ensure that the unrepresented offender has a fair trial. This will include advising the offender of his or her right to a voir dire to challenge the admissibility of a confession – *McPherson v R* (1981) 147 CLR 512.

18.6 In relation to child and adult complainants of sexual assault and indecent assaults, regard must be had to section 5 *Sexual Offences (Evidence & Procedure) Act*.

18.7 Where a convicted offender is unrepresented, the prosecutor should, as far as practicable, assist the court by putting all known relevant matters before the court, including such matters as may amount to mitigation.

19. INFORMERS

19.1 An informer is a person (not being a victim in the matter) who:

(1) has given assistance to police or investigators as a consequence of knowledge that has come into his or her possession through direct personal contact with an offender; and
(2) is a co-offender, prisoner, civilian undercover operative, or a person bargaining such knowledge for the advantage of himself or herself or another person.

19.2 In every case when an informer is potentially a witness a decision must first be made whether or not an informer should be called at all:

(1) if it is contemplated that an informer be called as a witness, written approval should be first sought from the Director's Chambers; and
(2) in the case of a prison informer (a prisoner or former prisoner who provides evidence of an admission made by a fellow prisoner), the approval of the Director or Deputy Director must be obtained.

19.3 As far as is possible, care must be taken by a prosecutor to ensure that the tribunal of fact is aware of all matters that would assist the proper evaluation of the evidence of an informer. Independent evidence that supports the account given by the informer or other independent evidence proving guilt should be identified (and some independent evidence of the making of an admission will generally be required in the case of a prison informer).

19.4 The defence should be informed in advance of the trial of:

(1) the informer's criminal record;

(2) whether or not the Police or Corrective Services Department has any information which might assist in evaluating the informer's credibility, particularly as to:
    (a) motivation,
    (b) previous animosity against offender,
    (c) favourable/different treatment by Corrective Services,
    (d) mental health/reliability,
    (e) the extent to which public officers have given evidence or written reports on behalf of the informer (for example to Parole Board);
(3) whether any monetary or other benefit has been claimed, offered or provided;
(4) whether the informer was in custody at the time of giving assistance;
(5) whether an immunity has been granted or requested;
(6) whether any discount on sentence has been given for assistance in the matter; and
(7) other current or former criminal proceedings in which the informer has given evidence or is proposed to give evidence.

19.5 Public interest immunity may prevent the disclosure of the identity of an informer or may prevent disclosure of some or more of the matters outlined in the above paragraph - Guideline 8 (Disclosure). Accordingly, before material is disclosed concerning an informer, the police officer-in-charge must first be consulted. Where immunity is claimed, the outcome of the claim will determine what is disclosed.

Where there is a dispute between the officer-in-charge and the prosecutor concerning disclosure, the matter is to be referred to the Director's Chambers.

19.6 Where an informer is an offender and is subject to proceedings for plea, sentence or appeal on sentence any significant assistance provided to law enforcement agencies is to be brought to the attention of the court. It is preferable that, where an informer has been charged and indicated an intention to plead guilty, he/she be sentenced prior to giving evidence against the offender. An informer who pleads and agrees to co-operate in the prosecution of another is entitled to receive a consequential reduction in the sentence that would otherwise have been appropriate. The prosecutor should obtain a signed statement from the informer and that statement should set out what evidence the informer will provide. The prosecutor should disclose to the court that such a statement has been provided and indicate the level of assistance provided by the informer to either the prosecutor or the police. Prosecutors should be aware of the provisions of sections 24 and 25 *Misuse of Drugs Act*.

19.7 Where the assistance is provided in respect of matters unrelated to the informer's proceedings, a letter outlining the assistance may be provided by the police officer-in-charge. The letter is not to be organised by the prosecutor. If the defendant wants his/her lawyer to see the letter then police must be made aware of that fact. The prosecutor must be aware of the contents of the letter. The defendant must have been shown the letter by police and consent to it going before the sentencing judge. An appointment should be made for the prosecutor and defence counsel to see the sentencing judge in chambers. A prosecutor

should suggest to the court that the letter be kept in a sealed envelope on the court file and returned to the police officer-in-charge after the expiration of the 28 day appeal period. No copy should be made or retained on the office file. There should be a clear file note indicating that the letter was tendered, noting the date and signatories on the letter. A Senior Crown Prosecutor should be consulted if a prosecutor has conduct of a case involving a letter of comfort.

20. ABORIGINAL CUSTOMARY LAW

20.1 The Guidelines regarding Aboriginal customary law must be understood within a broader context which takes into account the following three factors:

(1) Aboriginal customary law is an everyday part of the lives of Aboriginal people in the Northern Territory;
(2) violence by Aboriginal males against their Aboriginal female partners or ex-partners is very prevalent in the Northern Territory and is not condoned; and
(3) Aboriginal women's individual human rights to live free of violence must prevail over the minority rights of Aboriginal people to retain and enjoy their culture.

20.2 Aboriginal people account for 30% of the total Northern Territory population yet 80% of the Territory's prison population are Aboriginal. Aboriginal people reside in both urban areas and remote communities. From time to time, Aboriginal customary law issues arise in cases involving Aboriginal offenders and Aboriginal victims.

20.3 Aboriginal customary law is an important source of obligations and rights and is the outcome of many historical, social and cultural influences. It is not a code and may vary from one community to another. Additionally, there may be disagreement within communities or groups on aspects of customary law and their application to particular circumstances. Aboriginal men and women may also interpret customary laws differently; they may have competing views regarding what should prevail in those particular circumstances.

20.4 Section 91 of the *Northern Territory Emergency Response Act* 2007 (C'th) prevents 'customary law or cultural practice' from being taken into account as a reason for offending but it can still arise on other issues – for example, a particular sentencing disposition.

20.5 A prosecutor must ensure as far as possible that Aboriginal customary law is not used to curtail an Aboriginal woman's or child's right to individual safety and freedom from violence. Aboriginal women and children are Australian citizens and, as such, are entitled to the protection of the law.

20.6 Aboriginal offenders are not to be treated differently from other offenders in the wider community. This means that such offenders will not necessarily receive lighter sentences because they come from deprived communities or impoverished circumstances. Offences of violence call for condign punishment. There is a need for the courts in the Northern Territory to protect the weaker

members of the community, particularly Aboriginal women and children, from excessive violence - *R v Wurramara* (1999) 105 A Crim R 512.

20.7 Violence is often perpetuated in the guise of payback which an accused person will often argue is a traditional way in which wrongs are redressed. Prosecutors should be aware that the courts will not condone unlawful violence and therefore should oppose bail where the purpose of which is to allow the person charged to undergo customary punishment. See *Steven Barnes* (1997) 96 A Crim R 595 and *Re Anthony* (2004) 14 NTLR 6.

20.8 There is a lengthy history in the Northern Territory of Aboriginal customary law being taken into account by the courts on sentencing issues. However, s.91 of the *Northern Territory Emergency Response Act* prevents it from being taken into account as a reason for offending.

20.9 In sentencing proceedings in the Court of Summary Jurisdiction or the Supreme Court, prosecutors should be aware of the restrictions imposed by s.91 of the *Northern Territory Emergency Response Act* that a court must not take into account customary law or cultural practice as a reason for

- excusing the criminal behaviour;
- justifying the criminal behaviour;
- authorising the criminal behaviour;
- requiring the criminal behaviour;
- lessening the seriousness of the criminal behaviour; or
- aggravating the seriousness of the criminal behaviour.

See *R v Wunungmurra* (2009)196 A Crim R 166 at [20].

Prosecutors should also be aware that 'a court cannot take into account customary law or cultural practice when determining the gravity or objective seriousness of a crime committed by an offender.' – see *Wunungmurra* at [23]. Also 's.91 of the Northern Territory Emergency Response Act precludes a sentencing court from taking into account customary law or cultural practice as a basis for finding that an offender who acted in accordance with traditional Aboriginal law is less morally culpable because of that fact.' – see *Wunungmurra* at [24]. Also 'The effect of s.91 [of the C'th] Act is that when sentencing courts are determining the objective seriousness of an offence in cases which the section is applicable, proportionally greater weight will be given to the physical elements of the offence and the extent of the invasion of the rights of the victim of the offence. Less weight will be given to the reasons or motive for committing the offence.' – see Wunungmurra at [27].

20.10 Where a person found guilty of an offence has undergone extra-curial punishment including payback/customary punishment, then the court can take that into account on sentence. See *Jadurin v the Queen* (1982-3) 44 ALR 424, *Fernando v Balchin* [2011] NTSC 10. The weight to be given to that extra-curial punishment is a matter for the sentencer.

20.11 Where prospective extra-curial punishment is advanced as a mitigating factor in submissions on sentence the nature of the injury intended will need to be

examined closely for the reasons discussed by Mildren J in *Minor* (1990) 2 NTLR 183 at 195-6.

It is not permissible for a court to structure orders with a view to facilitating the unlawful infliction of traditional punishment – *Re Anthony* (2004) 14 NTLR 6 at [22]-[23] per (BR) Martin CJ.

20.12 In sentencing proceedings in the Court of Summary Jurisdiction or the Supreme Court prosecutors should also be aware of s.104A of the *Sentencing Act* which, in general terms, deals with the court receiving information regarding Aboriginal customary law and community views. To the extent that there is any conflict between s.91 of the *Northern Territory Emergency Response Act* and s.104A of the *Sentencing Act*, the former prevails. If any information is to be provided to the court pursuant to s.104A, then appropriate notice must be given to the prosecution as required under the section.

20.13 A prosecutor must make diligent inquiries from appropriate sources when notice is received from the defence that they are relying on Aboriginal customary law in such plea matters. Such sources will be Aboriginal people, anthropologists or people who have lived closely with Aboriginal people, where that witness has the appropriate knowledge of the particular community (for example customs, language) in which the offence occurred. Sources should include Aboriginal women as well as men, bearing in mind that women's views are often overlooked and may vary from men's views.

20.14 It might be decided by a prosecutor, after consultation with appropriate sources, that the defence witnesses are required for cross-examination and/or it might be decided that evidence should be called by the Crown. It is important that accurate information is presented to the Court. If undue expense is to be involved (eg costly travel, an expert anthropologist's fees) then the Director's approval must first be obtained.

20.15 Evidence sought to be led by the prosecution or the defence should be put before the courts in a proper manner. Submissions from the bar table concerning customary law and cultural practices are not appropriate – *Munungnurr* (1994) 4 NTLR 63.

20.16 In a trial upon indictment if Aboriginal customary law is raised by the defence as to a matter going to the guilt or innocence of the accused and the defence propose adducing expert evidence to this issue, the Crown is entitled to adequate notice from the defence – s.331A *Criminal Code*.

21. DOMESTIC VIOLENCE

21.1 This guideline applies to all criminal proceedings where the offender is or was in an intimate relationship (de facto, married, boyfriend/girlfriend) with the victim of the offence, or the victim's close relative (eg child). It applies to all offences including sexual assault, assault and property offences.

21.2 Prosecutions that involve offences committed in the context of domestic violence require special attention. This is because:

(1) victims are vulnerable to pressure from both the offender and the broader community not to give evidence in court;
(2) many victims have been subjected to ongoing violent behaviour from the offender prior to reporting an incidence of violence to police;
(3) offences of this type often include the aggravating factor of a breach of trust; and
(4) offences of this type are often defended on the basis that the victim is unlikely to appear or will be reluctant to give evidence (for example because of fear, a desire to resume the relationship, family pressures).

21.3 Because offending behaviour is often on-going, victim safety is the paramount objective. Offenders should be held accountable and should be successfully prosecuted. To this end, suitable prosecutions may proceed without the evidence of an unwilling victim. When examining a brief, a prosecutor should determine whether there is a circumstantial case based on witnesses (other than the victim) who can prove any or some of the offences charged.

21.4 The prosecutor must ensure that delays are minimised bearing in mind that delays in the prosecution of defended cases will invariably advantage an offender and disadvantage a victim.

21.5 The prosecutor or WAS should advise the victim of the various rights and protections available under the legislation - Guideline 11 (WAS). Vulnerable witness applications pursuant to section 21A *Evidence Act* should be pursued where applicable. If a court does not have adequate facilities for a victim to give evidence without feeling intimidated, an application should be made for the matter to be transferred to a court where appropriate facilities are provided.

21.6 Support from WAS from the commencement of the prosecution is a practical and effective strategy to improve outcomes and to support a (reluctant) victim. WAS must be notified of all such cases - Guideline 11 (WAS).

21.7 Interpreters should be used where English is not the first language of the victim to conference the victim - Guideline 15: Interpreters.

Discontinuance

21.8 The general rules in relation to public interest and prospect of conviction apply to these prosecutions. Generally where there is a reasonable prospect of conviction, it is in the public interest to continue with a domestic violence related prosecution. The victim's view or attitude to giving evidence is also a relevant consideration.

21.9 Where a victim indicates that she does not wish to give evidence the following should occur:

(1) the prosecutor or WAS should advise the victim of the various rights and protections available under the legislation - Guideline 11 (WAS);
(2) the prosecutor must assess the on-going risk to the victim taking into account factors such as;
    (a) the offender's prior history of violence against this victim or violence against other victims;
    (b) whether or not the victim is in a continuing intimate relationship with the offender;
    (c) whether there is other adverse information about the offender for example previous complaints that did not proceed to prosecution (ascertained through consultation with the officer-in-charge);
    (d) the objective seriousness of the offending behaviour;
    (e) whether there are other safeguards in place for the victim (for example restraining order, or if the victim is a child – supervised visits by offender);
    (f) the strength or otherwise of the prosecution case, in particular whether there is corroboration or independent evidence of the commission of the offence;
    (g) the views of the police officer-in-charge.
(3) the victim should be advised of the availability of orders under the *Domestic and Family Violence Act*; and
(4) the victim must be advised about his/her right to use a victim impact statement or victim impact report to communicate his/her attitude on sentence (section 106B(5A) *Sentencing Act*) and offered assistance with the making of the statement or report if he/she wishes to provide one.

21.10 Any decision to compel a victim to give evidence against his/her will require serious consideration and will be used infrequently.

21.11 Any decision to discontinue must be approved in accordance with the requirements set out in Guideline 7 (Discontinuing Prosecutions). That is all discontinuations are to be approved by the Director's Chambers or; if the matter is listed in the Court of Summary Jurisdiction and the officer with carriage is a summary prosecutor, the officer-in-charge of Summary Prosecutions.

21.12 When a decision is made to discontinue a prosecution, then
(1) a statement should be obtained from the victim by a police officer indicating that he/she does not wish to proceed and that she has no continuing fears for his/her safety (preferred option); or
(2) a statement to this effect should be obtained by the prosecutor directly from the victim.

21.13 Where a victim refuses to supply a statement, detailed notes of conversations with the victim must be retained on the file.

22. RETRIALS

22.1 Where a trial has ended without verdict (ie hung or aborted) consideration should be given to whether or not a retrial is required. Factors to be considered include:

(1) whether or not the jury was unable to agree (or the trial ended for other reasons);
(2) whether or not another jury would be in any better or worse position to reach a verdict;
(3) the cost of a retrial to the community and to the offender;
(4) the attitude of the victim; and
(5) the seriousness of the offence.

22.2 Where two juries have been unable to agree upon a verdict, a third or additional trial will only be directed in exceptional circumstances. Any such direction must be given by the Director.

22.3 Where a conviction at trial has been overturned and a retrial ordered, consideration should be given as to whether or not a retrial is required. Factors to be considered include:

(1) availability of witnesses;
(2) the cost of a retrial to the community and the offender;
(3) whether the sentencing disposition has been served;
(4) whether the offender contributed to the miscarriage of trial *(Paterson v R* (2004) 28 WAR 223)*;*
(5) whether or not a conviction is inevitable;
(6) the attitude of the victim; and
(7) the attitude of the police officer-in-charge.

22.4 In all cases the matter must be referred to the Director for consideration as to whether there is to be a retrial.

23. EXTRADITION

23.1 The extradition of offenders required to answer any charge of an offence or to serve a sentence imposed in the Northern Territory will always involve additional expense to the Territory.

23.2 However, that expense will generally be appropriate where there are reasonable prospects of conviction, in order to maintain confidence in the administration of the law, and to prevent offenders fleeing from justice.

23.3 When application is made to take steps to secure extradition, in addition to the assessment of the prosecution case in accordance with these Guidelines, the following factors will be relevant:

(1) any delay after discovery of the offender;
(2) the likely disposition following conviction (and where the offender is already serving a sentence in another jurisdiction this factor will have greater weight);
(3) the country or state from which the offender is to be extradited;
(4) the nationality of the offender;
(5) whether the offender is to be charged with an offence or, having been charged, has absconded;

(6) the nature and gravity of the offence or offences alleged against the offender;
(7) the existence of reasonable prospects of conviction;
(8) where an offender is in custody, whether the provisions of the *Prisoners (Interstate Transfer) Act* should be utilised;
(9) the likely cost of extradition;
(10) the existence of assets held by the offender which could satisfy an order in relation to breach of bail or a confiscation order and where such assets are to be found;
(11) whether and to what extent the offender might reasonably constitute a risk to the public, either at large or for the purposes of transportation to the Northern Territory.
(12) whether the offender should be extradited on bail or in custody. If in custody, advice should include information on the number of officers required to effect extradition and the cost of economy airfare for the offender and officer(s); and
(13) any compensation or restitution which might be ordered following conviction.

23.4 Approval for extradition may be sought by police or other relevant government agency.

23.5 Before determining a request for extradition, the Director or Deputy Director may consult with and require information from a relevant agency.

23.6 Applications for approvals for extradition should be in writing, presenting reasons for the extradition of an offender.

23.7 In urgent cases, approval may be sought and given orally. An oral approval must be followed by a report of the circumstances from the requesting agency as soon as possible.

23.8 Approval for extradition may be given by the Director or the Deputy Director.

24. PROVISION OF DOCUMENTATION IN RELATION TO CRIMES (VICTIMS ASSISTANCE) RULES APPLICATIONS

24.1 Requests may be made to the ODPP for information and access to documents concerning claims for financial assistance pursuant to the *Crimes (Victims Assistance) Rules.*

24.2 Before documentation or information may be released the ODPP must first receive a request that:

(1) is in writing; and
(2) includes an “authority to release information” form signed by the applicant for compensation (if access to the applicant’s statements including victim impact statements and/or medical reports concerning the applicant are sought).

24.3 Prior to completion of the prosecution (including any appeal period) and upon receipt of a written request the ODPP may provide the following material:

(1) applicant's statement(s) to police;
(2) details of charges or counts on the indictment; and
(3) the next date listed for a court hearing.

24.4 After completion of a matter before the courts and upon receipt of a written request the ODPP may provide the following:

(1) applicant's statement(s) to police;
(2) copy of SAIK (Sexual Assault Information Kit);
(3) copy of any non-contentious statement where an authority to release is provided by the maker of the statement (to be obtained, where appropriate, by the applicant's legal representative);
(4) copies of medical reports or statements concerning injuries to and treatment received by the applicant;
(5) photographs (where available) showing injuries to the applicant;
(6) after a plea of guilty, a copy of the precis or Crown facts; and
(7) details of the final result.

24.5 Copies of medical and/or psychiatric reports regarding the offender will not be provided without a signed release from the maker of the report.

24.6 No transcript of proceedings will be provided – *Copyright Act.* If requested the applicant should be referred to Merrill Legal Solutions CRS-Wordwave Pty Ltd.

25. CONFIDENTIALITY

25.1 The ODPP has obligations in respect of confidentiality and privacy pursuant to the Northern Territory Principles and Code of Conduct and the *Information Act*.

25.2 Information about a case other than what is on the public record should not be released without authority from either the Director or Deputy Director subject to the following exceptions:

(1) the release of information to victims to meet *Crimes (Victims Assistance) Rules* obligations - Guideline 24: *Crimes (Victims Assistance) Rules* Applications;
(2) the duty of full and early disclosure of the prosecution case to the defence - Guideline 8 (Disclosure) and;
(3) the release of information to the media - Guideline 26 (Media).

25.3 A prosecutor may release information to police as required for investigative, prosecution and consultative processes. However internal memoranda (including opinions) should not be released without first obtaining the approval of the Director or the Deputy Director.

25.4 Any request from individuals, other agencies or the media for information (including internal office documents) which is not a matter of public record or governed by these Guidelines should be referred to the Director.

26. MEDIA

26.1 In keeping with a policy of openness and accountability information may be given to the media by the prosecuting counsel appearing in a particular matter or by the Director or Deputy Director but by no other member of staff, pursuant to the following:

(1) before trial or plea information may only be given concerning:
   (a) the trial or plea date, likely length of hearing and venue; and
   (b) the charges on the indictment that have been read in open court.
(2) following a plea of guilty the following details may be given:
   (a) the charges on the indictment;
   (b) the court, judge and counsel names;
   (c) the sentence or other order; and
   (d) a copy of the Crown facts as given in court.

26.2 Matters which should not be discussed with the media include:

(1) contact details for any victim or lay witness. (If the media wish to contact a witness a prosecutor may advise the witness of the request);
(2) details of any person who is an informer or who is giving evidence at some personal risk are to be kept confidential;
(3) any matters the subject of a court suppression order or legislative order - for example, in sections 6 and 7 *Sexual Offences (Evidence and Procedure) Act,* section 24 *Misuse of Drugs Act* and section 50 *Youth Justice Act*;
(4) copies of or access to videotapes or audio tapes of any recorded interviews, re-enactments, demonstrations or identifications or digital photographs or recordings;
(5) the likely or actual outcome of proceedings;
(6) the intended approach of the prosecution (for example, appellate proceedings being instituted, a matter being discontinued or an ex officio indictment being filed);
(7) the correctness or otherwise of any judicial decision;
(8) any part of a trial conducted in the absence of the jury (other than to remind the media that such material should not be reported during the trial); and
(9) any comments about investigations or operational matters (if appropriate a request for such information should be referred to the Director or, in his absence, the Deputy Director).

26.3 No comment is ever to be made out of court to the media concerning a verdict or sentence or the fact that the case might or will be the subject of appeal.

26.4 In the case of Crown appeals the practice is not to release details to the media until the appeal has been filed and served on the respondent.

26.5 Where a prosecutor is requested to comment on policy, such requests should be referred to the Director or, in his absence, the Deputy Director.

26.6 Where a prosecutor is requested to comment on decisions to terminate prosecutions such requests should be referred to the Director or, in his absence, the Deputy Director.

26.7 If it is considered that something should be done proactively with the media on behalf of the ODPP (for example the issue of a statement of some kind), the matter should be referred to the Director's Chambers.

26.8 Television stations have a legitimate interest in obtaining film of prosecutors for use in reports of cases. Prosecutors may pose for cameras in the office or elsewhere to provide television stations with file footage.

27. OPINIONS

27.1 A matter may be referred to the ODPP by Northern Territory Police or another agency for an opinion. A full brief of evidence must accompany each referral.

27.2 Advice on the outcome of the opinion will be communicated by letter or memorandum to the relevant person or agency seeking the opinion. The final determination will be disclosed such as no proceedings are recommended or charges are to be discontinued. A brief statement of reasons may be provided if for example no reasonable prospect of a conviction or insufficient evidence to commence/continue proceedings.

27.3 The opinion is subject to legal professional privilege. Neither the opinion nor detailed reasons for the opinion will be disclosed to persons outside the ODPP without the prior consent of the Director.

27.4 All opinions are to be referred to the Deputy Director or General Counsel in Darwin or the Crown Prosecutor in Charge or the Senior Crown Prosecutor in Alice Springs. Prosecutors are expected to complete their opinions within one month of receipt of the brief of evidence.

27.5 All cases involving the death of any person, must be referred to the Director.

APPENDIX A

RULES OF PROFESSIONAL CONDUCT AND PRACTICE OF THE LAW SOCIETY OF THE NORTHERN TERRITORY (EXCERPTS)

Prosecutor's duties

17.46 A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

17.47 A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.

17.48 A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.

17.49 A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.

17.50 A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:

(a) such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and
(b) the prosecutor believes on reasonable grounds that such a threat could not be avoided by confining such disclosure, or full disclosure, to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.

17.51 A prosecutor who has decided not to disclose material to the opponent under Rule 17.50 must consider whether:

(a) the defence of the accused could suffer by reason of such nondisclosure;
(b) the charge against the accused to which such material is relevant should be withdrawn; and
(c) the accused should be faced only with a lesser charge to which such material would not be so relevant.

17.52 A prosecutor must call as part of the prosecution's case all witnesses:

(a) whose testimony is admissible and necessary for the presentation of the whole picture;
(b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
(c) whose testimony or statements were used in the course of any committal proceedings; and
(d) from whom statements have been obtained in the preparation or conduct of the prosecution's case; unless:
(e) the opponent consents to the prosecutor not calling a particular witness;
(f) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused; or
(g) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses;provided that:
(h) the prosecutor is not obliged to call evidence from a particular witness, who would otherwise fall within (a)-(d), if the prosecutor believes on reasonable grounds that the

testimony of that witness is plainly unreliable by reason of the witness being in the camp of the accused;

(i) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (f), (g) and (h), together with the grounds on which the prosecutor has reached that decision; and

17.53 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully or improperly obtained must promptly:

(a) inform the opponent if the prosecutor intends to use the material;
(b) make available to the opponent a copy of the material if it is in documentary form; and
(c) inform the opponent of the grounds for believing that such material was unlawfully or improperly obtained.

17.54 A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.

17.55 A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.

17.56 A prosecutor who has informed the court of matters within Rule 17.55, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.

17.57 A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:

(a) must correct any error made by the opponent in address on sentence;
(b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence;
(c) must assist the court to avoid appealable error on the issue of sentence;
(d) may submit that a custodial or non-custodial sentence is appropriate; and
(e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.

17.58 A practitioner who appears as counsel assisting an inquisitorial body such as the National Crime Authority, the Australian Securities and Investments Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 17.46, 17.48 and 17.49 as if the body were the court referred to in those Rules and any person whose conduct is in question before the body were the accused referred to in Rule 17.48.

APPENDIX B

BARRISTERS' CONDUCT RULES OF THE NORTHERN TERRITORY BAR ASSOCIATION (EXCERPTS)

Prosecutor's duties

1. A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

2. A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.

3. A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.

4. A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.

5. A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connexion with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:

   (a) Such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and

   (b) the prosecutor believes on reasonable grounds that such a threat could not be avoided by confining such disclosure, or full disclosure, to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.

5B. A prosecutor who has decided not to disclose material to the opponent under Rule 66 must consider whether:

   (a) the defence of the accused could suffer by reason of such non-disclosure;

   (b) the charge against the accused to which such material is relevant should be withdrawn; and

   (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.

5C. A prosecutor must call as part of the prosecution's case all witnesses:

   (a) whose testimony is admissible and necessary for the presentation of all of the relevant circumstances;

   (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;

   (c) whose testimony or statements were used in the courts of any committal proceedings; and

   (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case; unless the opponent consents to the prosecutor not calling a particular witness;

   and except where:

   (e) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused; or

   (f) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses; or

(g) the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable by reason of the witness being in the camp of the accused;

provided that;

(h) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (e), (f) and (g), together with the grounds on which the prosecutor has reached that decision.

6. A prosecutor who has reasonable ground to believe that certain material available to the prosecution may have been unlawfully obtained must promptly:

(a) inform the opponent if the prosecutor intends to use the material; and

(b) make available to the opponent a copy of the material if it is in documentary form.

7. A prosecutor must not confer with or interview any accused except in the presence of the accused's representative.

8. A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.

9. A prosecutor who has informed the court of matters within Rule 69, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when the case is before the court.

10. A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:

(a) must correct any error made by the opponent in address on sentence;

(b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence;

(c) must assist the court to avoid appealable error on the issue of sentence;

(d) may submit that a custodial or non-custodial sentence is appropriate and;

(e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.

11. A barrister who appears as counsel assisting an inquisitorial body such as the Criminal Justice Commission, the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 62, 64 and 65 as if the body were the court referred to in those Rules and any person whose conduct is in question before the body were the accused referred to in Rule 64.

APPENDIX C

INTERNATIONAL ASSOCIATION OF PROSECUTORS RULES

1. PROFESSIONAL CONDUCT

Prosecutors shall:

a) at all times maintain the honour and dignity of their profession;

b) always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;

c) at all times exercise the highest standards of integrity and care;

d) keep themselves well-informed and abreast of relevant legal developments;

e) strive to be, and to be seen to be, consistent, independent and impartial;

f) always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;

g) always serve and protect the public interest;

h) respect, protect and uphold the universal concept of human dignity and human rights.

2. **INDEPENDENCE**

2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:

- transparent;
- consistent with lawful authority;
- subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence;

2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

3. IMPARTIALITY

Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

a) carry out their functions impartially;

b) remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;

c) act with objectivity;

d) have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

e) in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed; whether that points towards the guilt or the innocence of the suspect;

f) always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.

4. ROLE IN CRIMINAL PROCEEDINGS

4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.

4.2 Prosecutors shall perform an active role in criminal proceedings as follows:

a) Where authorized by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;

b) When supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights;

c) When giving advice, they will take care to remain impartial and objective;

d) In the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence;

e) Throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence;

f) When, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

4.3 Prosecutors shall, furthermore,

a) preserve professional confidentiality;

b) in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible;

c) safeguard the rights of the accused in co-operation with the court and other relevant agencies;

d) disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial;

e) examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;

f) refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment;

g) seek to ensure that appropriate action is taken against those responsible for using such methods;

h) in accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young offenders, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate.

5. CO-OPERATION

In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall:

a) co-operate with police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally; and
b) render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

6. EMPOWERMENT

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

a) to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;
b) together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;
c) to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished;
d) to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;

e) to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;
f) to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;
g) to objective evaluation and decisions in disciplinary hearings;

h) to form and join professional association sort her organisations to represent their interests, to promote their professional training and to protect their status; and
i) to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.

APPENDIX D

Definition

The Director's Chambers include the Director, Deputy Director, General Counsel, the Assistant Director and the Practice Manager.