



**DIRECTOR OF PUBLIC  
PROSECUTIONS**

**NORTHERN TERRITORY  
OF  
AUSTRALIA**

**A N N U A L**

**R E P O R T**

**2012-2013**

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**DIRECTOR OF PUBLIC PROSECUTIONS  
NORTHERN TERRITORY**

**TWENTY-THIRD ANNUAL REPORT**

**FOR YEAR ENDED 30 JUNE 2013**

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**Director of Public Prosecutions  
Northern Territory**

WJ Karczewski QC

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Australia

30 September 2013

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

Dear Attorney-General

**ANNUAL REPORT 2012-2013**

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 2012 to 30 June 2013.

Yours sincerely

A handwritten signature in black ink, appearing to read 'WJ Karczewski'.

WJ KARCZEWSKI QC





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## OFFICE LOCATIONS

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

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

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

### 2. **SOUTHERN REGIONAL OFFICE ALICE SPRINGS**

1st Floor  
Centrepont Building  
Cnr Hartley St & Gregory Tce  
ALICE SPRINGS NT 0870  
PO Box 2185  
ALICE SPRINGS NT 0871

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

### 3. **KATHERINE OFFICE**

Level 1  
Ground Floor (Rear)  
Randazzo Building  
Katherine Tce  
KATHERINE NT 0850  
PO Box 1295  
KATHERINE NT 0851

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



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## MISSION STATEMENT

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

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



## MISSION STATEMENT (IN KRIOL)

### Wed bla DPP-mob

DPP-mob bin pudimdan dijlal wed la dijan peipa dumaji olabat wandi dalim eberibodi bla no, hau detmob wandi duwim det wek bla olabat brabli raitwei.

Det wek bla olabat, jei gada album yu bla dijkain trabul:

maiti ib pilijimen im rekin samwan bin meigim brabli nogudwan trabul, laiga ib jei merdrem o kilimbat yu; ib jei stilimbat o demijim enijing blanganta yu.

Maiti det pilijimen rekin det ting im lilbit nogudwan, wal olabat pilijimenmob teigim la kot. O maiti det pilijimen rekin det trabul im rili rongwei, wal det DPP-mob gada teigim la kot det nogudwan sambodi.

Det DPP-mob olabat teigim yu pleis la kot, seimwei laig det Liguleid teigim pleis la det sabodi weya olabat rekin imin duwim rongwan ting.

Det DPP-mob gan weistimbat taim en mani en olabat gan libim dijan hiya rul bla olabat wek:

- Ola weka onli gada woriyabat faindimbat raitwan wed bla wot bin hepin - nomo laigim yu o heitim yu o yu femli o enibodi.  
Jei gan toktok la enibodi bla yu bijnij, onli la jeya weka wen jei albumbat yu.
- Det DPP-mob wandim stap gudwan binji seimwei la yu en la det sambodi weya olabat rekin imin duwim det nogudwan ting.  
Jei wandi album yu gidim det samwan hu bin duwim det samting rong en faindat la kot raitwei bla banijim bla wot imin du.
- Olabat DPP-mob wandi meigim bla yu en en det sambodi en ola widnijmob go la kot gudwei, nomo hambag en nomo bla meigim yu fil sheim. DPP-mob duwim dijkain wek bla album eberibodi la Northern Territory jidan seifwan en gudbinjigeja.

DPP-mob bin pudim dan dislat wed la dijan peipa dumaji olabat wandim dalim eberibodi bla no, hau detmob wandi duwim det wek bla olabat brabli raitwei.





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## DIRECTOR'S OVERVIEW

This is the twenty third Annual Report of the Office of the Director of Public Prosecutions and it is my first annual report as Director. I was appointed on 1 February 2013 upon the retirement from office of my predecessor, Richard Coates, on 31 January 2013. When Richard took up the position of Director in February 2006 he appointed me as Deputy Director, a position I held until Richard's retirement. I had professional dealings with Richard also when he was the Chief Executive Officer of the Department of Justice from 2001 to 2006 and prior to that when he was the Director of the Legal Aid Commission. Richard began his legal career in the Northern Territory as a lawyer with the Central Australian Aboriginal Legal Aid Service in 1986 following which he was appointed as a magistrate, a position he relinquished to take up the appointment as the inaugural Director of the Northern Territory Legal Aid Commission in 1990.

It is always a sad occasion when a person of such experience and possessed of so much corporate knowledge leaves. There may also be apprehension that the departure might create a knowledge vacuum within the organisation. Such was not the case as Richard involved me in the various administrative and organisational issues which impacted upon the operations of the office with the result that I was able to take up the appointment relatively smoothly. I wish Richard all the very best in his well-earned retirement.

I made no attempt to appoint a new Deputy Director in the current financial year due to budgetary constraints.

The Office of the Director of Public Prosecutions lost its status as a separate department or agency on 21 December 2001. The Office was on that date subsumed into the Department of Justice. That remains the situation. The Office is now a division of the Department of the Attorney-General and Justice (the AGD) which department was established by the newly formed government following the Territory elections in August 2012. The division heads within the AGD of which I am one form a group known as the Executive Leadership Group (the ELG) and meet once a month with the Chief Executive. The purpose of the ELG meetings is to enable issues of concern to the department as a whole to be considered with appropriate input from all internal stakeholders. Business services within the department common to all divisions

such as human resources, finance, infrastructure, corporate communications, information services and strategic planning and governance are provided to this Office by a central group known as the Business Partner Team.

The most important resource in any prosecution office is the human resource. No prosecution service will be able to meet its commitments and properly discharge its obligations to the court and to the community it represents unless it is staffed with a sufficient number of suitably qualified and experienced prosecutors. The first six months of this calendar year saw the departure from the Office of an unusually large number of prosecutors due to temporary promotional transfers or resignations. The Assistant Director of the Alice Springs office, Dr Nanette Rogers SC, resigned at the end of last year to take up a Crown prosecutor's position with the Victorian Office of Public Prosecutions. Dr Rogers SC was a tireless worker who prosecuted some of the most difficult cases the Territory has to offer. I thank Dr Rogers SC for her significant contribution to the Office and to the part she played in the development of Northern Territory jurisprudence. Dr Rogers SC will be sorely missed. I made no attempt to replace Dr Rogers SC due to budgetary constraints.

Another Alice Springs based Crown prosecutor resigned in May 2013.

The ranks of the Summary Prosecution division in Alice Springs were depleted with the resignation of two summary prosecutors, one in March and one in May 2013. A third summary prosecutor went on extended leave in January 2013 and had not returned to work as at 30 June 2013. The departure of two prosecutors in quick succession and the absence of a third were significant given that the establishment level for the summary prosecutions division in Alice Springs is three prosecutors.

The sole summary prosecutor in the Katherine Office resigned in October 2012. That position was filled in December 2012.

In Darwin, in January 2013, a Crown prosecutor won a temporary promotion to work in the Legal Policy division of the department and is not expected back in the office until January 2014. Two Crown prosecutors resigned in March and April 2013. In February 2013, the managing prosecutor of Summary Prosecutions was seconded to the Attorney-General's office to work on a special project for a period of six weeks and, before her return to this Office, won a temporary promotion to work with the Department of Correctional Services. That member is not expected to return to the office until January 2014.

Recruitment procedures are such that it can take up to three months to fill a vacancy from the time the position becomes vacant. In order to deal with the unallocated workload in Alice Springs and Katherine, it was necessary to send prosecutors, both Crown and summary, from Darwin to these places for a week or two at a time to fill the gaps. The thinning of the ranks and the increased workload placed an enormous strain on all prosecutors and stretched

resources to the limit. In addition, all new prosecutors had to undergo a familiarisation process to acquaint themselves with Territory law, practice and procedure before appearing solo. I am pleased to report that all prosecutors were extremely professional, shouldered the additional burdens and got the job done. I thank them sincerely for their understanding loyalty and support. By 30 June 2013 most vacant positions had been filled and the strain had been eased somewhat.

In last year's Annual Report, my predecessor lamented the continuing failure of respective Commissioners of Police to sign a new Service Level Agreement (SLA) with this Office and called upon the Commissioner to sign the most recent version of the SLA without delay. The SLA regulates the respective responsibilities and commitments of the police and this Office in the conduct of Summary Prosecutions. The original agreement which dealt with these issues (called a Memorandum of Understanding) was signed on 11 February 1998 and its terms were reproduced in the 1998-1999 Annual Report at pages 87-91. I did not pursue this issue following my appointment because of strong indications given to me by police senior management and by the Chief Executive of the AGD that what was being proposed was a new system whereby police prosecutors would be replaced by civilian prosecutors. Such a change would render otiose the proposed SLA to which my predecessor referred. On 26 June of this year my Office was advised that Cabinet had approved the civilianisation of police prosecutions and that the process was to start as soon as possible. As at 30 June no formal direction had been received by me from the Attorney-General to commence work on this project.

In 2004 the Legislative Assembly passed an amendment to the **Evidence Act** the stated purpose of which was to reduce the trauma experienced by child witnesses and other vulnerable witnesses in criminal proceedings for sexual offences. The amendment permitted the prosecutor to adduce pre-recorded evidence of the witness instead of the vulnerable witness giving oral evidence at the trial. The prosecutor was given the option of presenting the whole of the witnesses' evidence including cross examination recorded at a special pre-trial hearing of the court. This allowed the witnesses' evidences' to be captured at an early stage in proceedings and helped to prevent trauma to the witness as a result of last minute rescheduling of trials. In his second reading speech made on 18 August 2004, the then Attorney-General, Dr Toyne, noted that the Supreme Court already had facilities necessary for the recording of a witness' evidence at a special hearing.

In 2007 the Legislative Assembly passed a further amendment to the **Evidence Act** to address a number of problems which had resulted in children being required to give, on multiple occasions, evidence as to the nature of the sexual offences perpetrated upon them. In his second reading speech made on 18 April 2007 the then Attorney-General, Mr Stirling, emphasised that the amendments then being made were to ensure that the number of times a child was required to give evidence was minimised.

It gives me no joy to report that on several occasions in the last year children have been required to give evidence on more than one occasion not because of any defect in the legislation but because of technical difficulties associated with the recording of evidence. The **Evidence Act** requires that the statement of the vulnerable witness be recorded on video-tape or by other *audiovisual* means. Most recently, in May of this year after a child had her evidence pre-recorded at a special hearing in the Alice Springs Supreme Court, it was discovered that due to “equipment failure” the audio had been recorded but not the visual. The child had to return to court several weeks later to pre-record her evidence.

A similar incident occurred in Darwin in April of this year. The case involved the failed audio-visual recording of the evidence of two nine year old girls. To make matters worse, prior to the sittings commencing, the recording equipment at the Supreme Court was tested and was found to be working. Fortunately, both girls agreed to return to court the following week and gave their evidence “live” before the jury.

It is unclear whether the failures referred to above were due to faulty equipment, operator error or both. Whatever the reason for these failures, what is clear is that the system designed to reduce the trauma of vulnerable witnesses has failed to do so on two occasions. This is not acceptable. Steps need to be taken to ensure that such embarrassing failures do not occur in the future.

The **Sentencing Amendment (Mandatory Minimum Sentences) Act 2013** (“the Act”) commenced on 1 May 2013. The Act introduced a new regime of mandatory sentencing for violent offences. The Act also repealed a former scheme of mandatory sentencing for certain violent offences. As expected, defence lawyers scoured the legislation to exploit any ambiguity which, in accordance with the rules of statutory interpretation of penal statutes, would be resolved in their client’s favour. The focus of attention became new s.78EA which stated that the new regime did not apply in relation to an offence committed before 1 May 2013.

One of the issues which was raised in the courts was whether the former (repealed) scheme of mandatory imprisonment continued to have application to offences committed before 1 May in cases where those offences had not been dealt with by the courts prior to 1 May 2013.

One of the criteria that invoked the new regime under the Act was the stipulation that “the offender has previously been convicted of a violent offence.” On this issue the argument was put that according to the rules of statutory interpretation it was not permissible to rely on convictions recorded prior to the commencement of the Act on 1 May 2103.

Both issues were argued in the Court of Summary Jurisdiction and both issues were resolved by the courts in favour of the defence.



As a consequence of these adverse rulings, on 21 June 2013 the Legislative Assembly passed the **Sentencing Amendment Act 2013** (“the Amendment Act”) the purpose of which was to make it clear that the phrase “previously convicted of a violent offence” meant a previous conviction for a violent offence whenever that offence occurred. The Amendment Act had not commenced as at 30 June 2013.

The challenges which were made to the new mandatory sentencing regime are somewhat reminiscent of the challenges which took place when mandatory minimum sentencing in respect of property offences was introduced into the Sentencing Act in May 1997. In the 1997-1998 Annual Report the then Director, Rex Wild QC, observed that those amendments had a considerable impact on the operations and workload of prosecutors in the months immediately following their coming into operation. The impact on prosecutors made by the 2013 amendments was considerably less for two reasons. Firstly, one of the major challenges to the regime in 1998 concerned the constitutionally validity of the legislation. In 1998 the High Court resolved that issue in favour of its validity. As a result that issue did not present itself for consideration on this occasion. Secondly, on this occasion there was an early acknowledgement of possible ambiguity and the view was taken that such ambiguity ought to be cured by legislative amendment rather than by the appeal process. It remains to be seen whether the amendments introduced by the Amendment Act will withstand further scrutiny and challenge. It also remains to be seen whether, once the various challenges have been exhausted, defendants charged with violent offences will elect to have these charges determined by a Supreme Court jury rather than having the charges dealt with summarily in the Magistrates’ Court.

The **Evidence (National Uniform Legislation) Act 2011** (“the UEA”) commenced on 1 January 2013. The UEA substantially reforms the law of evidence. The UEA is, in most respects, uniform with the **Evidence Act 1995** (Cwlth), the **Evidence Act 1995** (NSW) and the **Evidence Act 2008** (Vic). Prosecutors were well equipped to work with the UEA as in the 12 months prior to its commencement numerous training sessions were delivered to prosecutors by interstate prosecutors who had practical experience in working with the legislation and by practitioners who had been involved in the development of the UEA. As at 30 June 2013 no appeals to the Court of Criminal Appeal had been instituted on grounds involving the interpretation or application of the UEA.

## **Directions**

Pursuant to the **Director of Public Prosecutions Act** there is provision for the Attorney-General to issue to the Director directions as to the general policy to be followed in the performance of a function of the Director. Every such direction must be in writing and must be included in the Director’s Annual Report. A direction may not be issued in respect of a particular case.

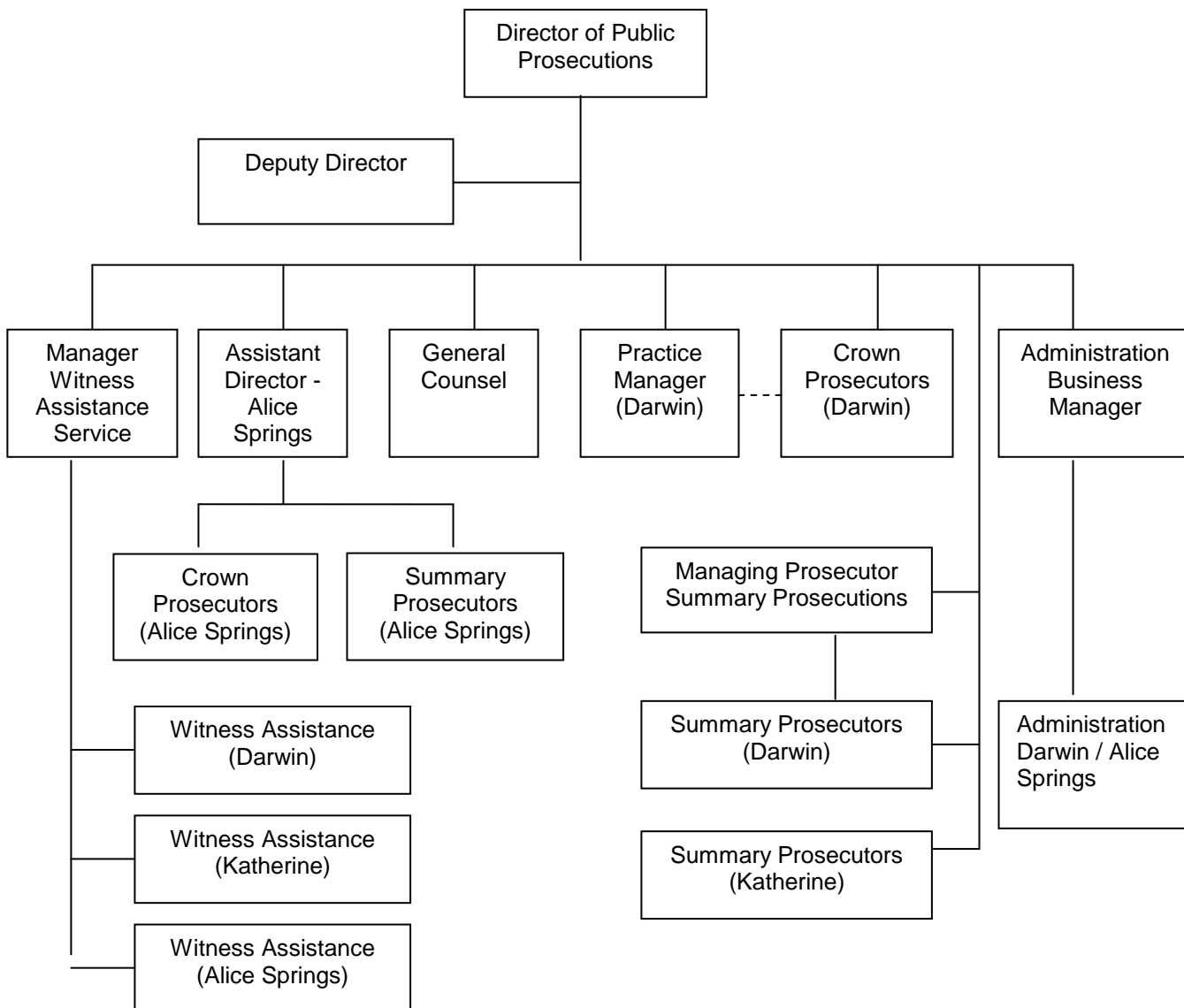
I formally note that no directions were issued by the Attorney-General during the year under review to either myself or my predecessor Richard Coates. Also, I formally note that the Attorney-General has not sought to interfere in the conduct of the Director's functions. As a result I and my predecessor have been able to enjoy appropriate professional independence in exercising the powers conferred by the ***Director of Public Prosecutions Act***.

A handwritten signature in black ink, appearing to read 'WJ Karczewski'.

WJ KARCZEWSKI QC  
Director of Public Prosecutions  
20 September 2013



# ODPP ORGANISATION CHART







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## FUNCTIONS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The major responsibilities of the Director of Public Prosecutions (hereinafter referred to as the Director) may be identified as follows:

- (a) the preparation and conduct of all prosecutions in indictable offences
- (b) the preparation and conduct of committal proceedings
- (c) to bring and conduct proceedings for summary offences
- (d) the assumption where desirable of control of summary prosecutions
- (e) to institute and conduct prosecutions not on indictment for indictable offences including the summary trial of indictable offences
- (f) the power to institute and conduct or take over any appeal relating to a prosecution or to conduct a reference under s414 of the **Criminal Code**
- (g) the right to appeal against sentences imposed at all levels of the court hierarchy
- (h) the power to grant immunity from prosecution
- (i) the power to secure extradition to the Northern Territory of appropriate persons
- (j) the power to participate in proceedings under the **Coroner's Act** and with the concurrence of the Coroner, to assist the Coroner if the Director considers such participation or assistance is relevant to the performance of some other function of the Director and is justified by the circumstances of the case
- (k) the power to conduct proceedings under the **Criminal Property Forfeiture Act** and if as a result of the proceedings a person becomes liable to pay an amount to the Territory or property is forfeit to the Territory

under a court order, it is a function of the Director to take any further proceedings that may be required to recover the amount or enforce the forfeiture or order

- (l) to provide assistance in the Territory to other State or Commonwealth Directors of Public Prosecutions
- (m) to institute, intervene in and conduct proceedings that are concerned with or arise out of any function of the Director or to otherwise do anything that is incidental or conducive to the performance of the function of the Director
- (n) the power to furnish guidelines to Crown prosecutors and members of the police force related to the prosecution of offences
- (o) to require information or to give directions limiting the power of other officials.

### **General Powers**

*The Director has power to do all things that are necessary or convenient to be done for the purpose of performing the functions of the Director and may exercise a power, authority or direction relating to the investigation and prosecution of offences that is vested in the Attorney-General.*



## HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT

As at 30 June 2013 the total number of staff was 62.7. The reduction in the number of Full Time Equivalent (FTE) from previous years was a result of incomplete recruitment action for seven vacancies as at 30 June 2013.

Level	Total	Female	Male
Director	1		1
ECO3	1		1
ECO2	1		1
ECO1	4		4
SP2	3	1	2
SP1	5	3	2
P3	5.4	1.8	3.6
P2	9.91	3	6.91
P1	0	0	0
<b>Total Legal Staff</b>	<b>30.31</b>	<b>8.8</b>	<b>21.51</b>
SAO2	1	1	
P3	1	1	
P2	2	2	
AO5	4.4	3.4	1
AO3	1.21		1.21
<b>Total WAS Staff</b>	<b>9.61</b>	<b>7.4</b>	<b>2.21</b>
SAO1	2.07	1.8	0.27
AO5	5	5	
AO4	3	3	
AO3	12.71	12.71	
<b>Total Support Staff</b>	<b>22.78</b>	<b>22.51</b>	<b>0.27</b>
<b>GRAND TOTAL</b>	<b>62.70</b>	<b>38.71</b>	<b>23.99</b>







## OUTPUT PERFORMANCE MEASURES

Performance Measures		2012-13 Estimate	2012-13 Actual	2011-12 Actual	2010-11 Actual
<b>Quantity</b>	New Matters	1400	<b>1906</b>	2021	1482
	Finalisations				
	-Supreme Court pleas	220	<b>341</b>	397	235
	-Supreme Court trials	50	<b>53</b>	49	66
	-Supreme Court withdrawn	50	<b>45</b>	43	49
	-not committed to the Supreme Court	20	<b>0</b>	1	2
	-Summary hearings/pleas	815	<b>972</b>	959	794
	-Summary withdrawn	245	<b>249</b>	234	212
	-Appeals at all levels	75	<b>62</b>	68	64
	WAS Clients	1300	<b>1822</b>	1493	1536
	Duty lawyer days	1000	<b>886</b>	1097	932
	CPF File hours provided by SFNT <sup>1</sup>	N/A	<b>N/A</b>	3370	2574
<b>Quality</b>	Matters committed to the Supreme Court	N/A	<b>N/A</b>	100%	99%
	Findings of guilt (including guilty pleas) in Supreme Court	90%	<b>94%</b>	95%	93%
	Findings of guilt (including guilty pleas) in Summary	90%	<b>89%</b>	91%	90%
	Convictions after trial or hearing	80%	<b>90%</b>	91%	90%
	Files where CPF <sup>2</sup> order obtained	N/A	<b>N/A</b>	75%	90%

<sup>1</sup> Performance measures removed in 2012-13 and are no longer applicable

<sup>2</sup> Performance measures removed in 2012-13 and are no longer applicable

<b>Timeliness</b>	Filing of indictments within 28 days of committal	65%	<b>57%</b>	75%	70%
	Supreme Court matters withdrawn less than 28 days before a trial was to commence	65%	<b>69%</b>	63%	60%
	CPF <sup>3</sup> matters finalised in Local Court within 12 months	N/A	<b>N/A</b>	50%	80%
	CPF <sup>4</sup> matters finalised in Supreme Court within 24 months	N/A	<b>N/A</b>	83%	80%

<sup>3</sup> Performance measures removed in 2012-13 and are no longer applicable

<sup>4</sup> Performance measures removed in 2012-13 and are no longer applicable



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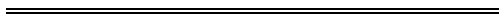
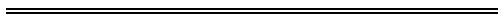
## **PROFESSIONAL STAFF**

During the 2012–2013 financial year a total of 11 prosecutors resigned or were promoted to other agencies.

Of the 11 vacancies, only five vacancies were filled as at 30 June 2013. They were:

Two x SP1 Crown prosecutor – Darwin Office;  
Two x P2 Summary prosecutor – Alice Springs Office and  
One x P3 Summary prosecutor – Katherine Office.

It is anticipated that most of the remaining positions will either be finalised in July or shortly after.





## PROFESSIONAL ACTIVITIES

### General Workload

<b>WORKLOAD OVERVIEW</b>	<b>2012/13</b>	<b>2011/12</b>	<b>2010/11</b>
New Matters	1906	2021	1482
New Phases	2121	2268	1556
Court Appearances <sup>5</sup>	9025	9548	7971
Duty Lawyer days	886	1097	932
<b>MATTERS COMPLETED IN SUMMARY &amp; YOUTH JURISDICTIONS</b>			
Guilty (including guilty pleas)	972	959	795
Committed	334	282	296
Not Guilty/Not Committed	87	108	93
Withdrawn	249	234	212
Total CSJ & Youth Matters	1642	1493	1396
<b>MATTERS COMPLETED IN SUPREME COURT</b>			
S/C Pleas <sup>6</sup>	341	401	235
S/C Trial guilty	25	28	33
S/C Trial not guilty	21	16	23
S/C Trial Mistrial	7	5	10
Nolle Prosequi	35	38	42
S297 (no true bill)	11	5	7
Total S/C (not incl 297A)	429	488	343

<sup>5</sup> Preliminary Examination Mentions (PEM) was introduced in April 2011.

<sup>6</sup> Increased number of Supreme Court Pleas in 2011/12 relates to increase numbers of new matters received by Crown Prosecutions.

<b>SUPREME COURT PLEAS COMPLETED BY WAY OF EX OFFICIO INDICTMENT</b>			
	<b>2012/13</b>	<b>2011/12</b>	<b>2010/11</b>
Commenced	62	58	57
Completed	59	57	54

<b>APPEALS</b>	<b>2012/13</b>	<b>2011/12</b>	<b>2010/11</b>
<b>JUSTICE APPEALS</b>			
Commenced	53	72	65
Completed	45	52	45
<b>COA &amp; CCA</b>			
Commenced	39	18	25
Completed	16	17	19
<b>HIGH COURT OF AUSTRALIA</b>			
Commenced	4	0	2
Completed	2	2	0

## Appeals

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

- (i) institute and conduct, or to conduct as respondent, any appeal or further appeal relating to prosecutions upon indictment in the Supreme Court;
- (ii) request and conduct a reference to the Court of Criminal Appeal under s. 414(2) of the **Criminal Code** and
- (iii) institute and conduct, or to conduct as respondent, any appeal or further appeal relating to prosecutions not on indictment, for indictable offences, including the summary trial of indictable offences.

An explanation of the appeal process together with a summary of decisions of the Court of Criminal Appeal, Court of Appeal and Full Court for the reporting year can be found on the ODPP website.

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

NB: The figures in brackets in each of the tables below are for the period 1 July 2011 to 30 June 2012.

**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**

**2012/2013**

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

- \* Three applicants applied to have their applications re-heard and determined by the Court of Criminal Appeal constituted by three judges. All applications were heard and determined following full oral argument before the Court. Two applications were allowed. These applications are not included in Table B even though the applications were argued as if they were appeals. The remaining two applications had not been determined in the reporting year.

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**

**2012/2013**

	Conviction		Sentence		Other	
Allowed	1	(3)	3	(0)	1	(0)
Dismissed	1	(1)	1	(4)	0	(0)
Discontinued	0	(1)	0	(1)	0	(0)
Total	2	(5)	4	(5)	1	(0)

**Outcome of prosecution appeals and  
references from the Supreme Court to the  
Court of Criminal Appeal/Court of  
Appeal/Full Court  
2012/2013**

	Sentence		Other	
Allowed	3	(3)	0	(0)
Dismissed	2	(1)	0	(0)
Total	5	(4)	0	(0)

**Outcome of referral of question of law to Full  
Court pursuant to section 21  
of the Supreme Court Act  
2012/2013**

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

**TABLE C**

**Outcome of defence appeals from the Court of Summary Jurisdiction to  
the Supreme Court at Darwin  
2012/2013**

	Conviction		Sentence		Other	
Allowed	5	(2)	14	(9)	0	(0)
Dismissed	8	(7)	10	(13)	0	(0)
Discontinued	2	(2)	2	(6)	0	(0)
Total	16	(11)	25	(28)	0	(0)

**Outcome of prosecution appeals from the Court of Summary Jurisdiction  
to the Supreme Court at Darwin  
2012/2013**

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



**TABLE C**

**Outcome of defence appeals from the Court of Summary Jurisdiction to the Supreme Court at Alice Springs  
2012/2013**

	Conviction		Sentence		Other	
Allowed	1	(2)	7	(7)	0	(0)
Dismissed	1	(1)	6	(7)	0	(1)
Discontinued	1	(2)	1	(0)	0	(0)
<b>Total</b>	<b>3</b>	<b>(5)</b>	<b>14</b>	<b>(14)</b>	<b>0</b>	<b>(1)</b>

**Outcome of prosecution appeals from the Court of Summary Jurisdiction to the Supreme Court at Alice Springs  
2012/2013**

	Dismissal of Charge		Sentence		Other	
Allowed	0	(0)	0	(0)	0	(0)
Dismissed	0	(0)	0	(0)	0	(0)
Discontinued	1	(0)	0	(0)	0	(0)
<b>Total</b>	<b>1</b>	<b>(0)</b>	<b>0</b>	<b>(0)</b>	<b>0</b>	<b>(0)</b>

## **HIGH COURT**

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

### **Woods v R**

Following a 15 day trial, an Alice Springs Supreme Court jury found the applicant not guilty of murder but guilty of the alternative and lesser offence of manslaughter. The applicant killed the deceased by stabbing him. At trial the accused raised the issue of self-defence. Self-defence is defined in s 43BD of the **Criminal Code** relevantly as follows:

- “(2) A person carries out conduct in self-defence only if:*
- (a) the person believes that the conduct is necessary:*
    - (i) to defend himself or another person; ... and*
  - (b) the conduct is a reasonable response in the circumstances as the person reasonably perceives them.”*

The trial judge correctly directed the jury that (i) the onus of proof was on the Crown to negative (disprove) self-defence beyond reasonable doubt, and (ii) if the Crown failed to negative self-defence then they must find the applicant not guilty of murder and not guilty of manslaughter. The verdict of the jury meant that the jury were satisfied that the Crown had negated self-defence beyond reasonable doubt.

During the sentencing proceedings applicant's counsel submitted that the jury's rejection of self-defence as a ground for acquittal did not necessarily mean they rejected the applicant's claim that he was motivated by self defence or defence of another. It was argued that in the circumstances of the case it was far more likely that the jury accepted that the applicant was trying to prevent himself and his family members from being hurt [s.43BD(2)(a)(i) **Criminal Code**], but that the defence failed because the action he took in arming himself and then engaging in a confrontation with the deceased fell short of being reasonable [s.43BD(2)(b) **Criminal Code**]. It was thus submitted that the sentencing judge should find that the accused was acting in self-defence, both to defend himself and his family members.

The sentencing judge rejected this submission holding that the jury's rejection of the defence of self-defence meant that the applicant could not now rely upon any circumstances going to self-defence or the defence of others to ameliorate the culpability of his crime of manslaughter.

The applicant was sentenced to imprisonment for a period of 9 years and 6 months with a non-parole period of 4 years and 9 months.

On 30 August 2011 the applicant was granted leave to appeal against severity of sentence on the ground that:

- The sentencing judge erred in law in giving no, little or insufficient weight to self defence (albeit arguably excessive self-defence).

In the Court of Criminal Appeal the applicant's counsel conceded that the applicant's conduct was not reasonable [s.43BD(2)(b) **Criminal Code**] but submitted that the case was a "classic case of excessive self-defence". The applicant submitted that excessive self-defence was not inconsistent with the jury's verdict and that the sentencing judge fell into error when he constrained himself from considering any circumstances going to self-defence or defence of others as part of his consideration of the culpability of the applicant.

The Court upheld this ground of appeal holding that it was necessary for the Crown to satisfy the jury beyond reasonable doubt *either* that the applicant did not believe that his conduct in self-defence was necessary to defend himself or another or others, *or* that his conduct in self-defence was not a reasonable response in the circumstances as he perceived them. The fact that the jury rejected self-defence, implicit in the guilty verdict, did not mean that the Crown had satisfied the jury beyond reasonable doubt as to both matters. The jury may have been satisfied beyond reasonable doubt as to one, or the other, or both. Consistent with the verdict of guilty, and the implicit rejection of self-defence, the jury might not have been satisfied beyond reasonable doubt that the applicant did not believe that his conduct was necessary to defend himself or others (indeed, might have even decided that the applicant believed that his conduct was

necessary to defend himself or others), but were nonetheless satisfied beyond reasonable doubt that the applicant's conduct was not a reasonable response in the circumstances as he perceived them.

The Court was of the view that as the sentencing judge had wrongly concluded that all issues relating to self-defence for the purposes of sentencing had been necessarily determined by the jury's verdict, he had erred in the sentencing of the applicant by not considering the evidence and determining for himself the facts relating to the case put by the applicant's counsel that the applicant was acting in self-defence, albeit excessive self-defence.

At the invitation of senior counsel for the applicant, the Court considered the evidence relating to the applicant's case as to excessive self-defence, rather than remitting the matter back to the sentencing judge. Importantly, senior counsel for the applicant also acknowledged that, given the jury's verdict, the applicant would have the burden of satisfying the Court of Criminal Appeal, on the balance of probabilities, that the applicant believed that his conduct in self-defence was necessary to defend himself or another or others (although excessive in the sense that such conduct was not a reasonable response in the circumstances as the applicant perceived them). Counsel's acknowledgement accorded with the decision of the High Court in *The Queen v Olbrich* (1999) 199 CLR 270.

The Court examined the evidence relevant to the applicant's belief at the time of the fatal confrontation (contained in the applicant's interview with police) and concluded that although some of the applicant's statements supported the case that he was acting in self-defence, the Court was not satisfied on the balance of probabilities that the applicant believed that his conduct in suggested self-defence was necessary to defend himself or another or others. As the Court was unable to make findings on the balance of probabilities which would enable it to accept the applicant's contention as to excessive self-defence, the position thus remained that the culpability of the applicant was not mitigated by defensive conduct, albeit not for the reasons stated by the sentencing judge.

After reviewing the remaining unchallenged findings made by the sentencing judge, the Court was of the opinion that notwithstanding the identified error on the part of the sentencing judge, no other, less severe, sentence to that imposed by the sentencing judge was warranted in law or should have been passed. Accordingly, the appeal was dismissed. See *Woods v R* [2012] NTCCA 8.

The applicant then 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 holding that the appellant had the burden of satisfying the Court of Criminal Appeal, on the balance of probabilities, that the appellant believed that his conduct was necessary to defend himself or another or other. The question of law said to justify the grant of special leave was:

- When an issue of fact arises in sentencing proceedings with respect to the circumstances of the offence committed by the offender, does the burden of proof ever rest on the offender?

The High Court refused to grant special leave holding that:

- (i) Given the finding made by the Court of Criminal Appeal as to the applicant's belief, that Court was entitled to refuse to disturb the sentence upon the basis that the requisite belief did not provide a mitigating factor.
- (ii) As was said in **R v Olbrich** (1999) 199 CLR 270 at paragraph [24] a sentencing court is not obliged to take a matter into account in an offender's favour unless the prosecution proves to the contrary.

**Stamp v The Queen**

**13 March 2013  
Kiefel & Gageler JJ  
[2013] HCASL 21**

On 28 May 2010, following a jury trial in the Darwin Supreme Court, the applicant was convicted of eight offences. On 10 June 2010, he was sentenced to imprisonment for a total of 11 years with a non-parole period of seven years.

The applicant sought extensions of time to appeal against both his conviction and sentence. The Court of Criminal Appeal considered each of the applicant's proposed grounds of appeal in detail and held that none could be sustained. It refused the applications for extensions of time on 19 September 2012. See **Stamp v R** [2012] NTCCA 15 a summary of which can be found on the DPP website under the heading Decisions Delivered 1 July 2011 – 2012.

The applicant applied to the High Court for special leave to appeal against the part of the judgment of the Court of Criminal Appeal refusing his application for an extension of time within which to appeal against his conviction. The applicant required an extension of time within which to file his application.

The applicant's proposed grounds of appeal were that certain evidence should not have been admitted; that his counsel's alleged failure to pursue points "in a much more vigorous manner" occasioned a miscarriage of justice; and that certain inconsistencies in the evidence at trial "were placed before the jury, but not in the manner instructed".

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

In refusing the extension of time, the Court noted that in substance, each of the proposed grounds had been considered and rejected by the Court of Criminal Appeal. Further, the interests of justice did not require the grant of special leave.



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## 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 or her 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 matters are contested hearings and plea matters that are of a complex or sensitive nature.

Across the jurisdictions 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.

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

### **DARWIN**

Summary Prosecutions Darwin (SPD) is staffed by eight (8) prosecutors including a managing prosecutor who, in addition to his or 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 month;  
Daly River one or more days each month;  
Galiwinku one day each third month;  
Gapuwiyak when required;  
Jabiru one or more days each month;  
Maningrida two or more days each 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; and  
Raminingining one day, when required.

SPD receives administrative support from three dedicated professional assistants (2 FTE, 1 casual).

As indicated in the overview, in the first quarter of 2013 the SPD manager was seconded to the Attorney General's Department, and immediately upon completion of that project she was then temporarily promoted and seconded to NT Correctional Services. This important position was filled by temporarily appointing SPD prosecutors into the role on a rotational basis while efforts were made to recruit a temporary manager. However, due to the length of time the recruitment process takes a temporary manager could not be appointed in this financial year.

Late in the financial year the Director was instructed to anticipate taking over all prosecution functions in the Darwin CSJ that remain with Police. This is known also as 'civilianising Police Prosecutions'. This would include my Office taking over all appearances in the Darwin CSJ and Youth Justice from the time of the first mention of a matter to its conclusion. Currently, police prosecute and appear in all first appearances and initial bail applications, most pleas of guilty and associated sentence matters and all contest mentions hearings. Police Prosecutions also performs associated functions of drafting and laying charges and preparing police documents for court.

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, and has only limited administrative support. The SPK prosecutor supports the resident magistrate in Katherine by prosecuting contested matters before him or her. Preliminary examinations are prosecuted by a DPP Crown prosecutor before an additional magistrate, both of whom travel from Darwin for that purpose for one week in four.

On 25 June 2013 the former Chief Magistrate Ms Hannan S.M. advised that due to delays in listing hearings in Katherine that the additional magistrate will now also sit to hear summary hearings. The Chief Magistrate noted that in Darwin and Alice Springs most hearings are listed within 8 weeks but that in Katherine this period is 12 weeks. As the required additional prosecutor for these additional summary hearings cannot be provided from existing resources, it will be necessary to brief this work out to private practitioners. The unexpected additional expenditure will have a negative impact on operational costs.

The SPK prosecutor's activities are complemented by a Police Prosecutions establishment responsible for charging offences, bail and all other court matters prior to the hearing of a matter. This establishment consists of four police officers and an administrative officer. As there is only a single prosecutor in Katherine, the SPK prosecutor has an extremely demanding practice and there is justification for adding a second prosecutor to SPK.

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

Barunga;  
Lajamanu  
Kalkarindji  
Ngukkurr;  
Timber Creek; and  
Yarralin.

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

## **ALICE SPRINGS**

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

Ali Kurung  
Papunya  
Tennant Creek  
Ti Tree  
Yuendumu  
Yulara

SPAS is located on 1st Floor, Centrepoint Building, Cnr Hartley St & George Tce, Alice Springs.







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## **WITNESS ASSISTANCE SERVICE**

### **DARWIN**

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

The WAS team consists of nine witness assistance officers. Five WAS members in Darwin, 3 in Alice Springs and 1 in Katherine.

WAS in Darwin also had wonderful administrative support from Yvonn Carr and in Katherine from Joannah Withers. Joannah took parental leave in November 2012 and was unable to be replaced in the financial year.

During this year the operational manual has been updated and ongoing improvement of service delivery continued. This included input from all staff during a two day training opportunity which included the practice improvement process, assessment tools and case management program. The manual and case management program have been reviewed and improved and this remains an ongoing process designed to improve Witness Assistance practice and services.

### **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 an open or closed court.

## **Information**

WAS notifies victims of crime about the service and invites them to make contact. Witnesses are provided with several publications at the appropriate time. These include the Northern Territory Charter for Victims of Crime, the WAS pamphlet and the Victim Impact Statement booklet. WAS also gives information about the time, date and place of court appearances, the stage that the matter is up to and whether attendance by the witness is required.

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

## **Explanation**

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

## **Liaison**

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

## **Victim Impact Statements**

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

## **Executive Committee**

The WAS Manager attends weekly meetings with the Director and staff representatives unless they are unavailable.

## **Professional Staff Meetings**

WAS staff attends these meetings.

## **Training and Community Education**

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

## **Parole Board**

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

## **New Staff**

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

## **Publications**

WAS is responsible for publications, a booklet, *Victim Impact Statements* and a pamphlet, *Witness Assistance Service* and a DVD in English and Kriol. This year a new DVD was filmed to bring the content up to date with current legislation. In addition WAS have collaborated with iSee iLearn to develop a Court Story that can be read and also heard in English and Arrrente. Plans remain to expand the languages in which the story may be heard. Plans are also underway to revise the current publications to ensure they meet the varied needs of our clients.

## **Bush Courts**

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

## **WAS Statistics**

The workload of WAS again increased in 2012-2013 as measured by the statistics for files and clients. Approximately 1800 clients were provided with services. WAS staff continue to be busier than ever.

## FILES – CLIENTS – VICTIM IMPACT STATEMENTS

