

**Office of  
the Director  
of Public  
Prosecutions**

Annual Report for  
the period 5 March  
to 30 June 1984

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4 September 1984

Senator the Hon. Gareth Evans, Q.C.  
Attorney-General  
Parliament House  
Canberra 2600

My dear Attorney,

I have pleasure in submitting my report with respect to the operations of the Office of Director of Public Prosecutions in relation to the period from 5 March to 30 June 1984. The report is furnished pursuant to section 33(1) of the Director of Public Prosecutions Act 1983.

Yours faithfully

A handwritten signature in black ink, reading 'Ian Temby', with a long horizontal flourish extending to the right.

# Office of the Director of Public Prosecutions

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As at 1 July 1984 the work of the Office was carried on by the Directors of Legal Services in all States and Territories save Victoria, on behalf of the D.P.P.

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# Introduction

The Office of Director of Public Prosecutions was established on 5 March 1984 pursuant to section 5(1) of the *Director of Public Prosecutions Act 1983* ("the Act"). The first Director of Public Prosecutions ("D.P.P.") was appointed with effect from that date. The Senior Deputy D.P.P. took up his duties on 7 May. As at 30 June the Office was small, comprising 19 (of whom 6 were lawyers) at Head Office in Canberra and 57 (29 lawyers) in the Melbourne Branch. It is anticipated that during the 1984/85 year branches will be established in Sydney, Canberra and Brisbane, and that by 31 December 1985 the Office of D.P.P. will be conducting prosecutions through its own staff in all parts of Australia save the Northern Territory.

This report relates to a period of slightly less than 4 months. It contains and conveys factual information and views held as at 30 June 1984. During the period in question attention has been concentrated upon the setting up of an appropriate establishment.

It was decided at an early stage that the new initiative which the Office of D.P.P. represents would require a fresh approach to the prosecution functions of the Commonwealth. In order that those actually and prospectively involved in the activities of the Office should know what was sought to be achieved, a Statement of Objectives was issued some two weeks after the Office was created. It will need to be updated from time to time, and the present intention is to include such a Statement of Objectives in each annual report. The first Statement appears immediately after this Introduction.

It was necessary to set up the first Branch in Melbourne because the appointment of Mr. Robert Redlich under the Special Prosecutors Act 1982 expired on 5 June 1984. The Office of D.P.P. inherited the work formerly conducted by Mr. Redlich, as well as the prosecutions work done by the staff of the Deputy Crown Solicitor, Melbourne. In order to facilitate the bringing together of these disparate functions, there was a de facto amalgamation effected from 30 April 1984. That was an expedient resorted to in special circumstances: it worked well but is unlikely to be repeated. A vigorous approach has been adopted in the Melbourne Branch, various changes in procedure introduced, and in consequence performance has been enhanced.

The appointment of Mr. Roger Gyles Q.C. under the Special Prosecutors Act 1982 expires on 22 September 1984. Again the Office of D.P.P. is required to inherit the very considerable work burden which is now shouldered by those working to Mr. Gyles. The present planning is that the Sydney Office — which will be considerably larger than that in Melbourne — will be established in late September, a Canberra Office before the end of 1984 and a Brisbane Office in the first half of 1985. The time schedule, which has largely been set by external constraints rather than internal choice, is a most demanding one. In particular the recruitment demands are considerable. Lawyers and other staff must be attracted from Commonwealth prosecuting agencies, the offices of the two Special Prosecutors mentioned, and the private legal profession.

Broadly speaking the Office of D.P.P. has two functions. One is to prosecute those allegedly guilty of offences against the laws of the Commonwealth. The other is the performance, through the Director and those delegated by him, of important functions previously performed by the Attorney-General. It is of the first importance that the D.P.P. has an independent role secured by legislation. He is a statutory law officer, enjoying security of tenure during the period of

his appointment, and subject to control by the Government of the day only by means of statutory directions or guidelines given or furnished by the Attorney-General, which must be tabled in each House of the Parliament. There have been no such directions or guidelines to date, and it is not envisaged that there will be any in relation to particular cases.

# Statement of Objectives

The *Director of Public Prosecutions Act 1983* came into operation on 5 March 1984. The first D.P.P. was appointed with effect from that date. He is Ian Temby Q.C.

This short statement of objectives is a first attempt to set out what the Office of the Director of Public Prosecutions is to do, and how it is to be done. The statement will be revised from time to time. Experience is a great teacher.

## Why a D.P.P.?

1. There were two main reasons for creation of a new Office, headed by the statutory law officer who is also a departmental head, and who is required to report to and can only be dismissed by the Parliament. One is to ensure that key decisions in relation to enforcement of the criminal law of the Commonwealth are made on an objective and professional basis, without the fact or appearance of political involvement. This is of prime importance. Any directions or guidelines from the Attorney-General to the D.P.P. must be made public, and the Attorney-General has made clear that he does not envisage giving them in relation to particular cases with any frequency. Independence is of prime importance. So is the appearance of independence. Thus the Central Office of the D.P.P. has been established in premises close to but physically separate from the Attorney-General's Department.
2. The second justification put forward is to improve standards of performance in relation to Commonwealth criminal law enforcement. Demands have increased greatly over the past decade or so, and at least some of the work being done by Mr. Gyles Q.C., Special Prosecutor, is of unprecedented difficulty and complexity. This is only an example: others abound.

## What is to be done?

3. The principal functions of the D.P.P. may be summarised thus:
  - (a) to take over most of the functions previously performed by the Attorney-General in the criminal law field;
  - (b) to prosecute practically all offences on indictment;
  - (c) to prosecute such summary offences as are chosen;
  - (d) to recover pecuniary penalties and take civil remedies to the extent stipulated by the Attorney-General; and
  - (e) to deal in appropriate manner with the Australian Federal Police and others who investigate or prosecute Commonwealth offences.
4. It is proposed that branch offices will be set up in at least Victoria, the A.C.T. and N.S.W., probably in that order. In those places no prosecuting work will be done by the Australian Government Solicitor. Although the right to prefer indictments is reserved to some others, most notably the Attorney-General and Special Prosecutors, it not envisaged that right will be exercised with any frequency. In those parts of the Commonwealth where branches are not established, steps will have to be taken to ensure that a due measure of supervision is achieved.
5. As to summary offences, the office of D.P.P. will conduct them except where it is appropriate for lay persons within particular Departments or instrumentalities so to do. That will be permitted in circumstances where there is a right of audience, the offences are entirely common form in nature, entirely



devoid of difficulty (as for example because pleas of guilty are general or averment provisions can be heavily relied upon), and quite unlikely to result in imprisonment.

6. Just what responsibilities will be assumed in relation to recovery of penalties, and civil remedies, remains to be seen. At the appropriate time a decision will be made as to what should be sought, and then the Attorney-General will decide what to grant. It is clear enough that the principal test is that of efficiency: resources are never unlimited, and in some but not all cases it will be best for work in this grey area to be done by the D.P.P.

7. As to the functions to be taken over from the Attorney-General, the most important relate to decisions to sign indictments, not to proceed further with prosecutions, and the grant of indemnities to witnesses. In the second area, the Attorney-General has agreed not to exercise the power which is reserved to him without consultation with the D.P.P. In the last area, only the Attorney-General can grant "transactional" indemnities, but he has agreed to exercise his residual function in this regard only after consultation with, and, except in exceptional circumstances, acting on the advice and recommendation of the D.P.P.

8. As time permits and decisions dictate, directions or guidelines or both will be given to the A.F.P. (e.g. as to execution of search warrants) and others. Of course this will not be done, except in cases of urgency or on request, without prior discussions. We will seek to operate, relative to other agencies and otherwise, in a sensible and diplomatic manner.

### **How is it to be done?**

9. We will seek to achieve a standard of excellence in all that is done.

10. A team approach will be used. All officers — whether or not lawyers — will be encouraged to identify with the office of D.P.P., and serve it with diligent loyalty.

11. To the extent practicable, responsibility will be devolved downwards. The Central Office will be kept relatively small. The temptation to attract the better talent there will be resisted: what the office of D.P.P. is most about is prosecuting, and that will be done through the branches. Branch heads will be encouraged to push responsibility down to section heads, team leaders or however they may be described. All of this will be done to the extent that those given responsibilities discharge them in a satisfactory manner.

12. Those having legal qualifications will be encouraged to work as full lawyers. To the extent that resources permit, and the ability is there, lawyers working for the D.P.P. will be encouraged to function as advocates. Of course a good deal of work will continue to be briefed to the private Bar, but this will not be done to ensure that responsibility can be avoided or criticism can be answered.

13. The D.P.P. will work in co-operation with, but separately from, the Police, other investigators and client departments. We are lawyers, working as prosecutors, and our chief responsibilities are in the prosecuting field. However when the efficient allocation of resources makes this desirable, D.P.P. lawyers may be made available to work with others using the task force approach, and Police and other investigators will be encouraged to seek legal advice from the office of D.P.P. during the course of investigations so as to ensure that time and other resources are not wasted. This will be facilitated by seeking to

identify at an early stage a lawyer at appropriate level who is to have responsibility for seeing the matter through to conclusion.

14. It seems likely that the resources made available will be less than adequate to prosecute all alleged offences against the criminal law of the Commonwealth. And even if that was not so, there is no reason to think that the A.F.P. will be able to do its job perfectly well. That makes it necessary to ensure that in the investigation and prosecution of offences there is a balance struck between the easy and the hard cases, that there is not undue concentration upon cases where a complaint is received, and that the best interests of the Commonwealth are served when it comes to selecting priorities. A policy unit, operating out of the Central Office, will have to be developed. D.P.P. lawyers will be made available to the A.F.P. and other agencies to try to ensure that a structured approach is adopted to the identification of offences, and the prosecution of offenders.

15. We will aim to be a first class, decentralised, specialist law office.

20 March 1984

# Establishment

The Office presently consists of two divisions: Head Office and Melbourne Office.

## Head Office Division

The Head Office Division is located in Canberra and consists of three Branches: Executive Branch, Legal Branch and Administrative Support Branch.

Headed by the Senior Deputy D.P.P., the Executive Branch is responsible for providing high level policy and legal advice to the Director, performing management functions of a high order, controlling and co-ordinating the activities of the Office throughout Australia and providing administrative assistance to the Director.

The Legal Branch maintains oversight of and provides input into the conduct of important prosecutions being handled by the Melbourne Office and the various offices of the Deputy Crown Solicitors in all States and Territories save Victoria. It provides advice on prosecutions, formulates, develops and maintains policies and guidelines on legal matters relating to prosecutions, and advises and assists the Director in relation to no-bill applications, witness indemnities, consents to prosecute and like matters.

The Administrative Support Branch is responsible for the effective and efficient management of the Office, the development, improvement and review of office systems and procedures, the development and maintenance of ADP systems, accommodation, equipment, staffing and financial requirements of the Office. It is also responsible for the establishment of new Divisions in the States and the Australian Capital Territory.

## Melbourne Office Division

The Melbourne Branch Office officially opened on 6 June 1984, and assumed responsibility for the work of Special Prosecutor Robert Redlich and all Commonwealth prosecuting functions previously undertaken by the Deputy Crown Solicitor for Victoria. Amalgamation of the Crown prosecuting function and the Special Prosecutor's work had in fact been accomplished on 30 April 1984. The de facto establishment of the Melbourne Office some five weeks early, with Special Prosecutor Redlich performing the additional functions of Deputy D.P.P. until 6 June, was brought about by a crisis in the Deputy Crown Solicitor's Office resulting from a lack of resources to deal with a great increase in the numbers and complexity of prosecutions at a time when prosecution staff had been depleted by other Commonwealth initiatives. A debt of gratitude is owed to Mr Redlich for undertaking this added burden, particularly while engaged in the arduous task of writing his second and final annual report.

Thus on 30 April the officers engaged in the work of the Prosecutions Unit of the Deputy Crown Solicitor's Office (less those retained to attend to matters involving the recovery of pecuniary penalties, which to this time remains outside the jurisdiction of the D.P.P.) were seconded from the Deputy Crown Solicitor to the D.P.P. and physically relocated in the office of the Special Prosecutor on the 22nd and 23rd floors of A.C.I. House, 200 Queen Street, Melbourne. This accommodation has now become the location for the Melbourne Office of the D.P.P. The officers of the Prosecution Unit brought with them in excess of 1,200 current prosecution files, relating to both summary and indictable

offences. The longer and more gradual transitional period which this early amalgamation of functions allowed was extremely beneficial; the transition was accomplished with minimal disruption.

An audit of all files was conducted in the early days of the amalgamated office by officers of the Attorney-General's Department and the D.P.P. as a joint exercise. In summary, the audit disclosed that the general standard of files received from the Deputy Crown Solicitor's Office was poor, and that substantial backlogs existed both in relation to summary prosecutions and trials on indictment. Action was immediately taken to rectify the deficiencies disclosed, by the temporary reallocation to the general prosecutions area of certain Special Prosecutor's resources, by the design and implementation of better control systems, and by the introduction of a clerical unit to attend to the preparation and setting down of minor common form prosecutions, subject to the guidance and supervision of a senior legal officer.

As a result, there is every expectation that the backlog will be completely eliminated for summary prosecutions by the end of this calendar year, and that the waiting time between committal proceedings and trial in indictable matters will have been reduced by 50% from two years to one year within the same period. This will have been achieved against a background of increasing numbers of prosecutions, in particular in the areas of offences against the Social Security Act, the Income Tax Assessment Act, and trials on indictment.

In relation to trials on indictment, a comparison between the number of committals for the first six months of 1983 and the number of committals for the first six months of 1984 demonstrates an increase by a factor of nearly 2.4.

### **The Work of Special Prosecutor Redlich**

As indicated earlier, the Melbourne Office of the D.P.P. is carrying on the work commenced by Mr Redlich which stemmed from two Royal Commissions, namely, into the Activities of the Federated Ship Painters and Dockers Union, headed by Mr F. X. Costigan, Q.C., and into the Nugan Hand Group (formerly the Royal Commission of Inquiry into Drug Trafficking) headed by the Hon. Mr Justice Stewart. Matters were referred from both Royal Commissions for *investigation* and prosecution, that is, in pre-brief form.

The traditional Crown prosecuting function commences with the receipt of a completed brief of evidence provided by the police or other agencies. The referral of pre-brief material to Mr Redlich meant that the Office of Special Prosecutor was required to create a brief of evidence with the assistance of police investigators before the appropriate prosecution could be launched. Thus when the de facto amalgamation of the Special Prosecutor's Office with the Prosecutions Unit of the Deputy Crown Solicitor's Office occurred, many of the Special Prosecutor's legal staff were engaged in long term investigations, pre-eminently of taxation and financial fraud referred from the Costigan Royal Commission.

As mentioned previously a number of these lawyers were assigned to assist in the more urgent demands of general prosecutions work. However, as Mr Redlich has pointed out in his second annual report, there are substantial dangers inherent in this short term expedient.

The work of the former Special Prosecutor's Office, now incorporated into the Fraud Branch of the D.P.P., is of equal importance to the traditional prosecuting function formerly carried on by the Deputy Crown Solicitor. Mr Redlich has said and it is agreed that "special care needs to be taken to

safeguard the work of the Special Prosecutor's Office because it is difficult, demanding and time consuming". The division of the Melbourne D.P.P. Office into a General Prosecutions Branch and a Fraud Branch will go some way to achieving the desire to continue the work pioneered by the Special Prosecutor. Additional resources will be required so that the legal staff presently transferred to attack the accumulated backlog of general prosecution cases can be transferred back to the Fraud Branch to attend to the work of that Branch and to cope with the anticipated work in the fraud area flowing from the National Crimes Authority and Australian Taxation Office/Australian Federal Police task forces.

# Staffing and Finance

## Staffing

As at 30 June 1984 the establishment and ceiling cover was set at 100 comprising 27 officers in Head Office and 73 in Melbourne. The Office of Special Prosecutor Redlich in Melbourne had comprised 47 persons who were absorbed into the Office of D.P.P. on 6 June, and a further 10 positions were taken over from the then Melbourne Deputy Crown Solicitor's Office.

Establishment and recruitment action is under way to permanently fill all vacant positions, most of which are occupied either by permanent Public Service employees on temporary transfer or secondment, or temporary employees engaged for specific periods. Most temporary employees had formerly been engaged under the provisions of the *Special Prosecutors Act 1982*.

## Finance

Establishment costs of \$145,135 were expended between 5 March 1984 to 30 June 1984 as set out below, in setting up the Head Office to a level where it could commence operations. That expenditure included purchase of items such as desks, chairs, office machinery and office services. There were no costs incurred in D.P.P. administrative appropriations in relation to the Melbourne Office for this financial year.

Salaries and allowances totalled \$45,450 being \$15,459 for Second Division Officers and \$29,991 for the remainder of full time staff. These amounts only relate to Head Office. Salary and allowances payable to Melbourne staff were paid from the appropriations of the Special Prosecutor and the Attorney-General's Department.

|                               | <i>Expenditure</i><br>1983/84<br>\$ |
|-------------------------------|-------------------------------------|
| Travelling and Subsistence    | 17 545                              |
| Office Requisites             | 23 630                              |
| Library                       | 71 451                              |
| Postage                       | 10 824                              |
| Incidental                    | 9 023                               |
| Office Services               | 869                                 |
| Legal Expenses                | —                                   |
| Computer Services & Equipment | 9 995                               |
| Consultants                   | 158                                 |
| Witness Expenses              | 4                                   |
| Furniture and Fittings        | 1 636                               |
|                               | <hr/> 145,135                       |

## Prosecution of Offenders

The main function of the Office of D.P.P. is the conduct of prosecutions for offences against the laws of the Commonwealth. On 5 March 1984, the D.P.P. and the Crown Solicitor signed an arrangement pursuant to section 32 of the Act. This arrangement provided for the Deputy Crown Solicitor in each State and Territory to perform the prosecution functions of the D.P.P., for and on his behalf, until such time as Branch Offices were established. Guidelines were issued on 12 March 1984 to assist in the implementation of the arrangement and supplementary guidelines were issued on 16 May 1984, in each case by the Crown Solicitor. There were no directions or guidelines issued under section 11 of the Act.

A further arrangement pursuant to section 32 of the Act was signed by the D.P.P. and the Secretary of the Attorney-General's Department on 21 June 1984 to take effect from 1 July 1984. This arrangement replaced the previous arrangement and reflected the change in circumstances which had arisen with the establishment of the Melbourne Branch Office and which would arise with the creation of the Australian Government Solicitor acting through Directors of Legal Services in all parts of the Commonwealth.

The Office has continued to operate under the guidelines which formed the Prosecution Policy of the Commonwealth as presented to the Parliament on behalf of the then Attorney-General, Senator Peter Durack Q.C., in December 1982. That Prosecution Policy will be revised as certain imperfections, generally slight, have become apparent. When revised, this document will be made public.

The Act is expressed to extend to the external Territories of Australia and defines "law of the Commonwealth" to include a law of a Territory other than the *Northern Territory (Self Government) Act 1978*, the *Norfolk Island Act 1970* and laws made under or continued in force by those Acts. The responsibility of the Office for prosecutions varies from place to place. In the Australian Capital Territory the D.P.P. is responsible for all prosecutions, while in the States and the Northern Territory the D.P.P. deals only with specific types of criminality. These include areas of great public importance and complexity such as fiscal fraud, medifraud and drug importations, together with more routine prosecutions such as those brought in relation to offences under the Social Security Act.

# **Statutory Powers and Functions**

The powers and functions of the D.P.P. are set out in the Act. The most important of them are now dealt with.

## **Instituting Proceedings**

The D.P.P. is empowered to institute prosecutions on indictment for indictable offences against laws of the Commonwealth, to institute proceedings for the commitment of persons for trial in respect of such offences, and to institute proceedings for the summary conviction of persons in respect of offences against the laws of the Commonwealth.

## **Taking over, carrying on and discontinuing proceedings**

The D.P.P. is empowered to carry on or take over proceedings for the summary conviction of persons in respect of Commonwealth offences, committal proceedings for Commonwealth offences and prosecutions on indictment for Commonwealth offences other than those commenced by the Attorney-General or a Special Prosecutor.

While summary prosecutions in committal proceedings are still commenced by private informants (police officers in the main) the D.P.P. has the power to take over such proceedings. The D.P.P. may then carry on the proceedings or, where appropriate, discontinue them. The D.P.P. recognises the importance of the rights of private individuals to bring prosecutions and, accordingly, such power will be exercised with restraint.

## **No Bill Applications**

Shortly after the commencement of the Act, the Attorney-General agreed that the D.P.P. should determine all no-bill applications that were addressed to the Attorney-General as well as those addressed to the D.P.P.

A decision not to proceed on a charge on which a defendant has been committed for trial is an exceptional course. During the period 5 March to 30 June 1984 the Office received 45 applications from private individuals or their legal representatives requesting that consideration be given to discontinuing a prosecution. Fifteen applications were granted during this period, eight were refused, and decisions in relation to the balance of 22 — most of them having been recently received — remained pending. The procedure followed is that on receipt of an application, Head Office requests a report from the regional office concerned. The Legal Branch processes the application and a decision is then made by the D.P.P. or Senior Deputy D.P.P. Where the matter is one of more than usual importance, is of considerable difficulty, or varying recommendations have been made at regional and Head Office level, the normal course is to prepare written reasons for deciding whether or not to proceed with an indictment.

## **Indemnities**

The DPP is empowered to give undertakings to prospective witnesses that evidence given by them in prosecutions conducted by the Office will not be used against them in proceedings, other than a prosecution for perjury. Where a witness requires a wider indemnity than that which the D.P.P. is empowered to



give, and it is considered appropriate so to do, representations are made by the Office to the Attorney-General.

During the period 5 March to 30 June 1984, 25 indemnities were sought of which 15 were granted, 7 refused and 3 were awaiting the provision of further information as at 30 June.

### **Appeals**

The D.P.P. has all of the rights of appeal as are exercisable by the Attorney-General in respect of prosecutions which he has taken over or is carrying on. This includes all appeals to superior courts, including the power to appeal against sentence. The latter is a right which should be exercised with considerable restraint. There are some cases in which clear mistakes in judicial approach can be discerned, or the manner of disposition clearly involves an improper exercise of the judicial discretion, even if the precise nature of the error is not apparent. In such cases the Office is not loath to appeal. The D.P.P. only has the power to appeal where proceedings have been instituted, taken over or were carried on by the D.P.P. Accordingly there was an initial need to resort to the Attorney-General, although this need is now diminishing.

### **Assisting Coroners in Inquests**

It is a function of the D.P.P. to assist a Coroner in inquests and inquiries conducted under the laws of the Commonwealth. To date, there has been no requirement for this to be done.

### **Directions and Guidelines**

The Director may, by instrument in writing, give directions or furnish guidelines to any person conducting investigations in relation to Commonwealth offences or instituting or carrying on prosecutions for Commonwealth offences together with the Commissioner of the Australian Federal Police and the Crown Solicitor or Deputy Crown Solicitor. There was no occasion for that to be done during the period to 30 June.

### **Authorisations and Delegations**

Authorities have been given by the D.P.P. to various persons under the following enactments:

*Director of Public Prosecutions Act 1983* (Section 9): appointment of various persons in all States, the Australian Capital Territory and the Northern Territory to sign indictments for and on behalf of the D.P.P.

*Director of Public Prosecutions Act 1983* (Section 31): the Director has delegated all of his powers under the Act to the Senior Deputy Director, other than his powers under Section 9(2) and the power of delegation.

*Crimes Act 1914* (Section 21AA): appointment of various persons in all States, the Australian Capital Territory and the Northern Territory to sign documents under that section.

# Civil remedies

In his first Annual Report Special Prosecutor Redlich proposed the establishment of an Office of the Director of Public Prosecutions. He described in Chapters 10 and 12 the civil remedy process which he had used, and recommended that Parliament invest the proposed D.P.P. with similar power. In Chapter 2 of his second Annual Report for the year ending the 5th June 1984 Mr Redlich devoted considerable attention to the necessity for the D.P.P. to have the power to take civil remedies complementary to, or in aid of, the prosecution process. He has set forth in some detail the benefits which he perceived, and which in large measure has demonstrated, flow from the availability of the power to "take, supervise or co-ordinate the taking of" civil remedies. The D.P.P. substantially agrees with Mr Redlich's recommendations in this regard.

Although this matter is of general concern to the future operation of the Office of the D.P.P. as a whole, it is of particular immediate concern to the Melbourne office which, in taking over the functions of the Special Prosecutor inherited in excess of 80 civil remedy matters. In reporting upon the take-over of the Special Prosecutor's work in Melbourne, it is necessary to place on record the fact that the legislative scheme provided in the Act does not allow the D.P.P. to carry on the full work previously undertaken by Mr Redlich under the Special Prosecutors Act 1982.

The power of the D.P.P. to take or supervise the taking of civil remedies to recoup revenue lost to the Commonwealth by illegal activities is, as Mr Redlich points out, contingent first upon the institution of a prosecution and secondly, upon the Attorney-General publishing an instrument in respect of a matter or class of matters. In taking over the work of Mr Redlich the D.P.P. was aided by an instrument published by the Attorney-General empowering him to take or coordinate and supervise the taking of civil remedies in respect to those matters which were previously covered by the Special Prosecutor's terms of appointment, in summary: illegal activities identified by the Costigan Royal Commission and certain persons identified by the Stewart Royal Commission. It was hoped that this instrument would ensure that the civil remedies which were being pursued by Special Prosecutor Redlich could be continued by the Office.

In fact, even though an instrument was received, the powers of the D.P.P. unlike those of a Special Prosecutor are still contingent upon the institution of a prosecution; The Office is not in a position to carry on many of the matters previously pursued by Special Prosecutor Redlich. As Mr Redlich said in his Second Annual Report:

The success of the civil remedy function lies in its exercise before the criminal has an opportunity to dissipate his assets and income so as to deprive the Commonwealth of a fruitful judgment. To achieve this end the remedy must be pursued in conjunction with the criminal investigation and generally *long before the institution of a prosecution.* (see paragraph 2.24)

If there is to be a full pursuit of the civil remedy matters previously the responsibility of the Special Prosecutor, then an amendment to the Act is needed. Furthermore, it is now beyond argument that the D.P.P. needs to be in a similar position in respect of the wider field of investigations as well as prosecutions. The Office has not had the power, to this point in time, to institute civil remedy action in relation to any of the other major matters which

are now its responsibility. To protect the revenue and to ensure that the criminal does not profit by his activities it is essential that the power to do so be conferred.