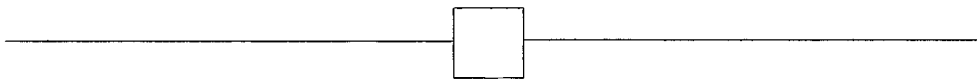


Commonwealth Director of Public Prosecutions Annual Report 1990-91

Australian Government Publishing Service
Canberra



Director's overview



*Mark Weinberg QC,
Commonwealth Director of Public Prosecutions*

This is the eighth annual report of the Office of the Director of Public Prosecutions. It is the third such report under my hand. It is also my last report.

When I was offered the position of Director, it was suggested to me that a term of five years might be appropriate. I declined that offer. I suggested instead that three years would probably be long enough. In hindsight, I would say that I was mistaken. The new Director needs some time (and patience) before he or she can properly deal with the range of intricate problems which arrive on an almost hourly basis. Perhaps a four year term would be ideal. I am convinced, however, that five years is too long. The position of Commonwealth Director is necessarily a highly stressful one. The hours can be very long, particularly when the Director engages in a considerable amount of court appearance work, as I have done. The time spent away from home can place a good deal of strain

upon the incumbent, and his or her family. I would describe the position of Director as one which produces 'burn out' far more quickly than private practice. Certainly this had been my experience, and the experience of my State counterparts as well.

The last three years have been very challenging ones for both myself and my Office. The DPP has undergone a number of significant changes. Among the highlights of my term of office have been the assumption of the prosecution function in relation to corporate crime (a task of monumental proportions), the development of a new statement of the *Prosecution Policy of the Commonwealth*, the adoption of that statement by the States to ensure uniform policies throughout this country, the opening of our Adelaide Office, and most recently the inauguration of what I hope will become a regular event, an international heads of prosecution agencies conference. Among comparatively few disappointments, there has been the loss of our prosecution function in the ACT, and the delay in bringing to fruition war crimes prosecutions.

One area which I single out for special mention is that of taxation fraud. It has been a source of concern to me that there appears to be a difference in philosophy between the Australian Taxation Office and the DPP regarding how best to deal with fraud upon the revenue. ATO, understandably from its point of view, sees itself as primarily concerned with the protection of the revenue. It seeks to recover taxes not paid as a result of fraud. Prosecution of offenders is given much lower priority. Accordingly the ATO is inclined, wherever possible, to utilise measures which lead to the recovery of unpaid taxes, and in some cases to impose administrative penalties. It is reluctant to invoke the prosecution process. The DPP takes the view that those who set out to defraud the Commonwealth of large amounts of tax ought, when apprehended, be prosecuted. Tax cheats should, in appropriate circumstances, face the possibility of imprisonment as well as having to disgorge benefits derived from fraudulent activity. The differences between our two positions are narrowing, but they come to the fore from time to time. This is a debate which I am happy to bequeath to my successor.

Chief among other matters which have caused me concern is the delay in bringing criminal prosecutions to court, and the length of some of these matters when they are finally dealt with. A Director's overview is not an appropriate vehicle for musing about the causes of delay and protracted hearings. One factor which is plainly at play here is the availability of interlocutory applications under the *Administrative Decisions (Judicial Review) Act 1977*, the *Judiciary Act 1903* and the inherent jurisdiction of the higher courts to grant declaratory and prerogative relief. It is all too frequent an occurrence to find a committal hearing, or a trial, being interrupted by forays into the superior



Left to right: Paul Coghlan, Associate Director; Mark Weinberg QC.

courts seeking interlocutory relief on a range of matters including the decision to prosecute, the form of the charges, rulings on evidence during the course of the hearing, and the decision to commit. Fortunately the High Court has indicated in strong terms that such interlocutory applications should not be entertained save in the most exceptional circumstances. While the jurisdiction exists, however, those who are accused of offences will be tempted to invoke it. Delay always works in favour of an accused. It is the prosecutor's worst enemy.

Something must be done to shorten complex criminal cases. I strongly favour the retention of our system of trial by jury. That system will be jeopardised if complex trials routinely run for many months. It is asking too much of ordinary citizens to give up so much of their time to sit in judgment upon their peers

under conditions which are often less than satisfactory. Judges must become more interventionist in these cases, putting pressure upon prosecutors to avoid charging broad-ranging conspiracies or overloading indictments. Judges must also do more to ensure that the real issues in the case are identified at an early stage, and that proper concessions are made by the defence. There is nothing more disheartening than to see a procession of formal witnesses brought to court, often at great expense, and then not be cross-examined at all, or only perfunctorily so. Regrettably, Commonwealth crime tends to be complex. Prosecutions are often hard-fought. Even so, there must be something wrong with a system which permits a single committal hearing to run for a number of years, as has happened on more than one occasion. Such delay simply cannot be tolerated.

I have been told that it is inappropriate in a Director's overview to single out named individuals for special mention and for personal expressions of gratitude. Having always been somewhat rebellious, I propose to disregard that advice. I will mention firstly a number of individuals from outside my Office with whom I have had regular and always pleasant dealings. First, the Attorney-General, the Honourable Michael Duffy, who has taken over a difficult portfolio. In his relations with the DPP he has always been conscious of the need to support its independence. The Solicitor-General, Dr Gavan Griffith, was responsible for my being offered this position. I thank him for his faith in me, and for the lively interchange we have enjoyed when appearing together in constitutional matters in the High Court. Alan Rose, the Secretary of the Attorney-General's Department, has been helpful, and thoroughly professional, in all our dealings.

I thank all members of heads of Commonwealth law enforcement agencies, the HOCOLEA Group (Commonwealth acronyms are wonderful, nothing can match the LEPR Committee). In particular, I mention Peter McAulay, the Commissioner of the Australian Federal Police, who has never left me in doubt as to where he stands on any matter. He has ensured that relations between the DPP and the AFP have never been better. His Honour Justice Phillips, the Chairman of the National Crime Authority has taken on a difficult job, and has displayed a willingness to ensure that the NCA becomes a cooperative and facilitative agency, rather than one which is insular and secretive. Tony Hartnell, Chairman of the Australian Securities Commission, has ensured that what could have been a difficult teething period in the development of relations between the DPP and the ASC has gone smoothly, and with a minimum of fuss. I also thank my State counterparts, the State Directors of Public Prosecutions and Crown Prosecutors for their support and cooperation. Among prosecution agencies in Australia, there is, and always has been, remarkable goodwill and harmony. There are others too numerous to mention



*Back row left to right:
Paul Evans, Deputy Director Brisbane; Grant Niemann, Deputy Director Adelaide; Grahame Delany, Deputy Director Sydney; Terry Gardner, Director of Legal Services Darwin; Bill Nairn, Deputy Director Perth; Tony Davis, Director of Legal Services Hobart; Peter Wood, Deputy Director Melbourne.*

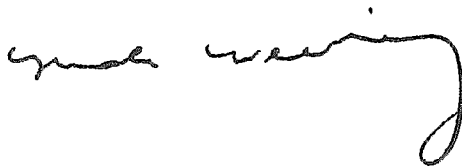
*Front row left to right;
Paul Coghlan, Associate Director; Mark Weinberg ; Peter Walshe, First Deputy Director.*

but they will know that I refer to them when I thank all who have worked harmoniously with my Office over the past three years.

From within the DPP, I must acknowledge the invaluable assistance of my Associate Director, Paul Coghlan. He, and his predecessor John Dee, have both supported me with the utmost loyalty. Each had the ability to bring me back to earth whenever it became appropriate to do so. Peter Walshe, my First Deputy Director, has shouldered the management responsibilities of a large and diffuse organisation. In his own quiet way, he has demonstrated qualities of

judgement and common sense which have permitted us to ride out many storms. I must mention specifically each of my Deputy Directors in charge of State regional offices. Grahame Delaney, Peter Wood, Paul Evans, Bill Nairn, Grant Niemann, and, until we lost our ACT Office, Ian Bermingham have all provided me with sound advice and have run their regional offices in a thoroughly professional and competent manner. At a personal level my Media Liaison Officer, Leonie Kennedy, has taught me the value of having someone to protect me from the worst depredations of the media. My former Personal Assistant, Robyn Oliver, gave me three years of committed and loyal service.

If there is one thing which gives me greatest pride about my association with the DPP, it is the fact that my staff have shown themselves to be not only competent and dedicated prosecutors, but above all lawyers imbued with a strong sense of fairness. The measure of any liberal democratic society must surely lie in the way in which it deals with those accused of having broken its laws. It is not difficult for people who have been working assiduously upon a case to become zealously committed to it. Such an approach must be put to one side when it comes to the prosecution process. The prosecutor must strive to be objective, and dispassionate. That does not mean that prosecutors are expected to be humourless automatons. The many delightful and interesting people that I have encountered within the DPP are living testimony to that fact. I shall miss them all.

A handwritten signature in black ink, appearing to read 'Mark Weinberg', with a long, sweeping flourish extending to the right.

Mark Weinberg QC

Commonwealth Director of Public Prosecutions