THE ROLE OF THE DPP IN THE 20TH CENTURY

by

Damian Bugg QC

In this paper I propose to examine the work of the DPP and the initiatives they have undertaken which have impacted upon the criminal justice system in this Country in the last two decades of the 20th Century.

The statutorily independent prosecuting service undertaken by the Office of the Director of Public Prosecutions (DPP) was not established in Australia until the last quarter of this Century. Much has been written and said about the Office since then. I will not repeat what has already been said, some of it by me, within the scope of this paper but for the purpose of opening my consideration of the topic for you it is my view that the move to establish Independent Prosecuting Offices in the various jurisdictions of Australia brought about one of the more significant improvements to the criminal justice system in this Country in the 20th Century.

The structure of prosecuting systems in this Country had changed little until the last two decades of the Century. Situated as they were within the traditional frame-work of the "Law Offices" of Government the prosecution services in Australia were and were seen to be part of Government but were seen by many to be undertaking the work of Government.

Prosecutions invariably followed a charging process undertaken by the investigator (the Police) without reference to or consultation with the prosecuting authority of the jurisdiction concerned. Summary prosecutions and committals were in the main conducted by serving police officers with little or no direction from the prosecuting authority. The committal test, prima facie case, was applied consistently throughout the Country without any qualitative analysis of the evidence or the application of any identifiable or regulated public interest factors. There were no significant economic constraints in the trial process, trials took less time and Legal Aid was not available to the extent it was to become in the 1970's and '80s. Prosecutions therefore usually followed the committal order and any additional legislative guidance for the exercise of any prosecutorial discretion differed little from the committal test e.g. see ***Section 310(4) (Tasmania Criminal Code 1924).***

> ***"Before filing an indictment a Crown Law Officer shall satisfy himself that there is evidence against the defendant sufficient to put him on his trial or raise a strong or probable presumption of his guilt."***

The proximity of the prosecution to Government and the Law Offices which acted for and advised Government was seen as the single most important reason for establishing a separate Independent Statutory Office responsible for the conduct of prosecutions. In 1973 Tasmania became the first State to establish an Independent Prosecuting Office, (Crown Advocate) pursuant to the Crown Advocate Act 1973. At that time all prosecutions in that State were undertaken by professional staff permanently employed in the Solicitor-

General's Department. The Crown Advocate Act provided little direction as to the relationship between the Attorney-General, the Solicitor-General and the Crown Advocate and the Act did not provide the Crown Advocate with a power to publish or issue guidelines and in its original form imposed a statutory duty upon the Crown Advocate to advise and represent Police.

Victoria established the first Director of Public Prosecutions (DPP Act 1982) and was followed by the Commonwealth in 1984. Tasmania changed the name of the Office of Crown Advocate (and the Act) to DPP in 1986. It was on this name change that I was appointed the first Director of Public Prosecutions in Tasmania the position which I held until 1999 when I was appointed the 5th Commonwealth Director of Public Prosecutions.

Independence

At the time the Victorian Bill was introduced in 1982 the second reading speech emphasised the need for the prosecution process to be independent of Government and the Attorney-General. Mention was also made in some of the other jurisdictions of the expectations of improved standards and efficiencies in the prosecution service but the reason given most emphasis was independence of the prosecution service from government.

The prosecution process had, prior to these initiatives, been the subject of well placed criticisms ***"the process of prosecutions in Australia at both State and Federal level is probably the most "secretive, least understood and most poorly documented aspect of the administration***

of criminal justice." [1] In his paper "Prosecutorial Discretion Australia Today" published in 1996 Michael Rozenes QC the then Commonwealth Director of Public Prosecutions referred to that criticism as "a general comment on the prosecution system applying in Australia at that time" which was "perhaps not that wide of the mark".

Tony Krone in his paper "Police and Prosecution" [2] referred to the Attorney-General's 1986 second reading speech in Tasmania when the Crown Advocate Act was amended and the Office of DPP established. The Attorney-General said:

> "***Supervision of the delivery of legal services from three separate offices will enable their provision in a more efficient and specialised way."***

It must be remembered however that that speech related to the amendment of the Crown Advocate Act (Supra) and the proposal to allocate specific functions to the Offices of Solicitor-General, Director of Public Prosecutions and Crown Solicitor. The comment was directed towards that proposal and not highlighting an expectation that the Office of DPP would effect specific changes other than the maintenance of independence established by that legislation in 1973.

---

[1] See Australian Law Reform Commission "Sentencing of federal offenders" Report No. 15 at page 61
[2] The 3rd National Outlook Symposium on crime in Australia Canberra 22-23 March 1999, Australian Institute of Criminology

Interestingly in 1986 the amendment effected in Tasmania removed from the old Crown Advocate Act the obligation to provide advice and representation to Police, the stated purpose to recognise the independence of the DPP from the policing and investigative function. That brief acknowledgment of an independence of function between the prosecutor and the investigator provided the only note of similarity between what was happening in Australia and the rather substantial move in the United Kingdom, at that time, to establish the Crown Prosecuting Service headed by the DPP.

The goals in the UK were much broader. In launching the Crown Prosecution Service on the 1st of October 1986 the DPP in England, Sir Thomas Hetherington, summarised its main objectives as follows:

1. ***To be, and to be seen to be, independent of the Police;***
2. ***To ensure that the general quality of decision making and case preparation is of a high level, and that decisions are not susceptible to improper influence;***
3. ***To provide flexibility to take account of local circumstances;***
4. ***To continue prosecutions while, and only while, they are in the public interest;***

5. ***To conduct cases vigorously and without delay;***
6. ***To undertake prosecution work effectively, efficiently and economically;***
7. ***To seek to improve the performance of the criminal justice system as a whole.*** [3]

In this Country however there was a clear recognition of the objective of independence from the political process, the correction of any other perceived problems in the prosecution services was not emphasised to the same extent although some saw the need for independence from Police as important. In ***Price v Ferris*** **(1994) 74 A Crim R 127 at p130** Kirby P (as he then was) said:

> ***"what is the object of having a Director of Public Prosecutions? Obviously it is to ensure that a high degree of independence in the vital task of making prosecution decisions in exercising prosecution discretions. Its purpose is illustrated in the present case. The court was informed that, in the prosecution of a police officer, it is now normal practise in this State for the prosecution to be "taken over" from a***

[3] **"The case for the Crown" Joshua Rosenburg 1987.**

private prosecutor or informant and conducted by the DPP. The purpose of so acting is to ensure that there is manifest independence in the conduct of the prosecution. It is to avoid the suspicion that important prosecutorial discretions will be exercised otherwise than on mutual grounds. It is to avoid the suspicion, and to answer the occasional allegation, that the prosecution may not be conducted with appropriate vigour. Analyses by law reform and other bodies have demonstrated conclusively how vital are the decisions made by prosecutions: (and His Honour there referred to the quotation relied upon by Michael Rozenes QC supra). Decisions to commence, not to commence or to terminate a prosecution are made independently of the Courts. Yet they can have the greatest consequences for the application of the criminal law. It was to ensure that in certain cases manifest integrity and new tranquillity were brought to bear upon the prosecutorial decisions that the Act was passed by Parliament

affording large and important powers to the DPP who, by the Act, was given a very high measure of independence… the power to "take over" proceedings must be understood against the background of these realities."

The continuation of the involvement of police in summary prosecutions and their conduct of most committals in this Country ensured an ongoing contact and interaction between police and the emerging DPP. That involvement has caused some commentators to conclude that the State D'sPP are not truly independent in the exercise of the prosecution role in their jurisdictions. I will return to that issue later.

The Success of the DPP

If the sole purpose of establishing the Offices of DPP was to ensure independence in the exercise of the prosecutorial discretion, then the exercise was an undoubted success. The prosecutions undertaken by Ian Temby QC, John McKechnie QC (WA) and the political bribery prosecution (Tasmania) and a number of high profile cases in other jurisdictions reassured the community that it was being served by officers who were free from political influence in the conduct of prosecutions. The existence of that independence suited most Governments as well, particularly when faced with mounting criticisms of the criminal justice system not only arising from the outcome of trials but also the refusal by the DPP to continue some prosecutions. In fact the level of independence of the Office became a significant issue in Victoria in

1994 when a Bill to amend the DPP Act in that State surfaced and was the subject of significant criticism from all quarters.[4].

Whilst the early establishment of the independent status of the DPP in each jurisdiction was important the creation of these offices soon led to collegiate activity among the Directors. The first notable national achievement flowing from this contact was the adoption of uniform guidelines for the exercise of the prosecutorial discretion in 1989/90.

Directors as a group acknowledged for the first time that resource implications were a relevant factor in determining whether or not some prosecutions should proceed and that the mere laying of a charge did not ensure the continuation of the prosecution. The guidelines, when published, commenced with a quotation from Sir Hartley Shawcross QC's statement to the House of Commons in January 1951 as Attorney-General when he said:

> ***"It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should … prosecute whenever it appears that the offence or the circumstances of its***

[4] See "Victorian Director of Public Prosecutions" Xavier Connor (1994) 68 ALJ 488

commission is or are of such a nature that a prosecution in respect thereof is required in the public interest. That is still the dominant consideration."

The guidelines followed that quotation with an acknowledgment that "this Statement is equally applicable to the position in Australia. The resources available for prosecution action are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue with some vigour those cases worthy of prosecution". The Guidelines directed all prosecuting agencies through a three-stage process in determining whether or not a prosecution should proceed.

Firstly, was there a prima facie case or other primary test applicable in that jurisdiction.

Secondly, having decided whether a prima facie case existed, a further and more demanding test was applied in the following way:

"In deciding whether the evidence is sufficient to justify the institution or continuation of a prosecution the existence of a bare prima facie case is not enough. A prima facie case is a necessary but not sufficient condition for launching a

prosecution. Given the existence of a prima facie case it must be understood that a prosecution should not proceed if there is no reasonable prospect of a conviction being secured before a hypothetical reasonable jury properly instructed (ie an impartial jury) or magistrate in the case of summary offences. This decision requires an evaluation of how strong the case is likely to be when presented in court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence which are plainly open to, or have been indicated by, the alleged offender and any other factors which, in the view of the prosecutor, could affect the likelihood or otherwise of a conviction. This assessment may be a difficult one to make, and of course there can never be an assurance that a prosecution will succeed. Indeed, it is inevitable that some will fail.

However, application of this test dispassionately, after due deliberation by a person experienced in weighing the available evidence, is the best way of seeking to avoid the risk of prosecuting an innocent person and the useless expenditure of public funds."

The test, expressed in that negative form took the pre-prosecution assessment of the evidentiary strength of the case against the accused to a much higher level than that previously applied and incorporated a qualitative analysis of the evidence.

Thirdly, having satisfied himself or herself "that the evidence is sufficient to justify the institution or continuation of a prosecution, the Prosecutor must then consider whether, in the light of the proven facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences brought to the attention of the authorities must be prosecuted."

The public interest test, so imported into the guidelines, acknowledged that public interest factors would vary from case to case and that whilst many such factors would militate against a decision to proceed with the prosecution there are public interest factors which operate in favour of proceeding e.g. the seriousness of the offence and the need for deterrence.

The guidelines then listed factors which may arise for consideration in determining whether the public interest requires a prosecution.

For completeness I will set out each of the public interest factors published in the guidelines.

(a) the seriousness or, conversely, the triviality of the alleged offence or that it is of a "*technical*" nature only;
(b) any mitigating or aggravating circumstances;
(c) the youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender, a witness or victim;
(d) the alleged offender's antecedents and background;
(e) the staleness of the alleged offence;
(f) the degree of culpability of the alleged offender in connection with the offence;
(g) the obsolescence or obscurity of the law;
(h) whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;
(i) the availability and efficacy of any alternatives to prosecution;
(j) the prevalence of the alleged offence and the need for deterrence, both personal and general;
(k) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
(l) whether the alleged offence is of considerable public concern;

(m) any entitlement of the victim or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;

(n) the attitude of the victim of the alleged offence to a prosecution;

(o) the likely length and expense of a trial;

(p) whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;

(r) whether the alleged offence is triable only on indictment.

Although one State was slow to publish the guidelines and now two States have slightly modified their guidelines away from the settled model the public adoption of them by D'sPP was probably the most significant national contribution by prosecutors to the prosecution and trial process this Century.

The guidelines acknowledged, without criticism, in a climate strongly critical of the criminal justice system and the escalating costs of trials that there were factors which would otherwise justify the discontinuance of a prosecution. Victims and their lobby groups could better understand the factors regarded by prosecutors as important in the deliberative process and defence and legal aid lawyers had a better understanding of that deliberative process for the purpose of making nolle or no bill submissions and advising their clients. The stricter test required an independent review of the evidence, post committal. It was seen to be so effective in weeding out "non prosecutable" matters that one State (NSW) applied the reasonable prospects of conviction test to committing Magistrates.

I have spent some time considering the publication of uniform guidelines as it is worthy of note that not all States, at that time, had established an Office of Public Prosecutions and a decade had not elapsed since the appointment of the first DPP in Victoria. Whilst the role of the prosecutor and the duties thereof during the trial process were sufficiently clear, the establishment of uniformity, the publication of the guidelines and the process of deliberation provided the community at large and legal and special interest groups and politicians alike with the reassurance that the DPP would endeavour to achieve uniformity in this important part of the criminal justice system by a process which was both transparent and consistent with the attainment of quality in the "decision making and case preparation" and that the decisions of prosecutors were not "susceptible to improper influence" (that other significant goal of the Crown Prosecuting Service in the UK). The guidelines concluded, not insignificantly, with the following:

> ***"A decision whether or not to prosecute must clearly not be influenced by:***
>
> ***(a) the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;***

(b) personal feelings concerning the offender or the victim;

(c) possible political advantage or disadvantage to the Government or any other political group or party;

(d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision"

While clearly maintaining the object of independence the D'sPP had quickly and without direction taken a significant national step in addressing other criticisms of the prosecutorial process.

Victims and the prosecution of sexual offences

At about the time D'sPP signed off on the prosecution guidelines they were being confronted with difficulties in dealing with the increasing and sometimes unrealistic demands of victims lobby groups and an inconsistent approach by governments throughout Australia to the Charter of Victims Rights e.g. in one State the charter and the process of tendering victim impact statements were given statutory recognition whilst in other jurisdictions the acknowledgment of the Charter, while not imposing any statutory duty on the prosecution and

others involved in the criminal justice system created a need for victims issues to be more appropriately addressed. These matters and other relevant issues were considered by the Directors and public comment made by some as they developed policies for the more understanding treatment of victims, consistent with the principles of the Charter, and the earlier involvement of prosecution services in the investigation and prosecution of sexual offences against young people.[5]

The acknowledgment of the unique place of the victim in the criminal trial process and acceptance of the needs of special or vulnerable witnesses was long overdue and more readily achieved, in my view, because of the existence of the Office of DPP. The need for victim communication and protection required an understanding and flexible approach from the agency best positioned to put in place procedures and protocols which took account of those interests and understand the need to preserve the integrity of the trial and sentencing processes. At the same time unrealistic claims for separate representation of and role for the victim in the trial process needed to be commented upon free of the complications of general government policy and confined to the requirements of the justice system and trial process.

I am not suggesting that the results have been perfect but that the DPP has addressed and advanced these issues. There will be concerns as to the continuing proximity of the DPP to the victim and the potential for conflict and

[5] Bugg Q.C "The Implications for the Administration of Justice of the Victim Impact Statement Movement" February 1996 Volume 5 Journal of Judicial Administration page 155.

the need for separate advice as opposed to representation.[6] The continuing evolution of the relationship will have to be monitored carefully.

Police issues, committal proceedings and the trial process

The task of conducting prosecutions, taking account of some local differences, had by the late 1980s become complicated by issues of funding, delays in the trial process with the consequent risk of a stay of proceedings in New South Wales in particular and an attack upon the investigative process. [7]

Whilst lacking the stated goals accompanying the establishment of the Crown Prosecuting Service in the UK the debate in Australia had shifted to efficiencies in the process with the need for public confidence in the quality, efficiency and openness of that process.

Dependent upon the police as we are in a justice system where the trial, with few exceptions, commences with the investigation and charging process the increasing focus of that trial process upon attacks upon the investigation[8] gave rise to moves, many initiated by the DPP, to improve the integrity of that process and shift the focus of the trial away from the police and what was or was not said in the police station to the guilt or innocence of the accused.[9]

---

[6] "Prosecution Systems and Policies", paper by Mr Chris Corns, AIJA 12th Annual Conference, October 1993

[7] See for example Watson v The Attorney General for NSW (1987) 28 ACRIMR 332

[8] see *Carr v.The Queen 1988 165 CLR 314,Duke v. The Queen (1989) 63 ALJR* and *McKinney v The Queen (1990) 171 CLR 468.*

[9] Coldrey Committee Report on Police Powers (1986) and Tas DPPs Report on the Pilot Project for Electronic Recording of Police Confessional Material (1988). Figures produced by the Office of the Tasmania Director of Public Prosecutions in the late 80s demonstrated that the universal use of electronic devices (video cameras to conduct Police interviews with suspects gave rise to a 10% increase in the rate of pleas of guilty. The earlier report is the Coldrey Committee Report on Custody and Investigation (Section 460 of the Victorian Crimes Act (1986))

Three to four decades of attack upon the integrity of the police investigative process had left the general community, legal profession and judiciary highly sceptical. Lack of confidence in the product of Police investigations and our dependence upon it to conduct prosecutions impacted upon pre-trial matters as well.

In Australia there has been no entitlement at common Law to discovery in criminal cases[10]. Mistrust of the investigative process meant that defence lawyers used the committal process as a means of obtaining not only an indication of the sufficiency of the evidence but also disclosure of all Police investigative material. Some jurisdictions, frustrated by the way in which the committal process had been treated as a "fishing" expedition legislated to either simplify or restrict the rights of the accused in the committal process.[11] Defence Counsel had by the early 90s resorted to the use of freedom of information legislation as well to obtain an additional avenue of discovery of the Police file and brief. [12]

In 1994 the DPPs resolved to draft guidelines for prosecution disclosure in the hope that we could obtain uniform pre-trial and trial disclosure guidelines and bring to an end the alternatively approaches being used by the defence to obtain disclosure. Regrettably there were delays in the production of this document, (a sore point with me upon which I will not dwell) but ultimately in 1996 I produced for the D'sPP my own draft guidelines for disclosure and now

[10] Maddison v Goldrick (1976) 1NSWLR 651 and Saleam v R. 39 A Crim R. 496
[11] Amendments to the NSW Justices Act following similar amendments in South Australia and Victoria.

all D'sPP operate under disclosure guidelines which recognise an obligation on the prosecution to provide early and complete disclosure to the defence. It is our expectation that in due course the defence will accept prosecution disclosure and the committal process will be used, more appropriately, to test certain prosecution witnesses (of clear benefit to both prosecution and defence) and there will be some retention of the process in all jurisdictions.

There will always be a difficulty in reassuring the defence of the quality of the disclosure process if there is a lack of confidence in the integrity of the people undertaking the investigation. In some jurisdictions the DPP has required the officer in charge of the investigation to certify the completeness of disclosure to the prosecution and this is seen by some as a satisfactory process of achieving confidence in the disclosure process. The cultural change necessary to overcome these problems will not take place overnight but the issue further illustrates the difficulty in this Country of the ill-defined relationship between the investigator and the prosecutor.

A further blurring of the relationship between the DPP and police has occurred with the differing approaches by the D'sPP in State jurisdictions to the conduct of committals. In some States all committals are now undertaken through the office of the DPP whereas elsewhere committals are still conducted by the police or some by the police and others by the DPP. I would suggest that lack of resourcing rather than any reluctance on the part of the DPP has slowed the DPP initiative to take-over the conduct of all committals in Australia.

---

[12] **See Sobh v R (1993) 65 Acrim R 466.**

Clearly the establishment of the Office of DPP has demonstrated the need for better definition of the roles of the Prosecution towards investigative agencies. I suspect that it is impossible for prosecution services to be completely independent from the police but it is important that their respective roles be further considered and defined.

The Commonwealth DPP and the DPP in the Territories undertake all prosecutions both summary and on indictment with the exception of some simple regulatory prosecutions. With the increase in jurisdiction of the Magistrates Courts in this country and the recognition of the benefits of an independent specialist prosecution service there is a need for the DPP, in my view, to take over all summary prosecutions both State and federal in the same way that the Crown Prosecuting Service did so in the UK in 1986 with the stated aim of making the prosecution service independent from the police.

There has been a pilot project in NSW where the DPP undertook all summary prosecutions and the results of that project were, on my understanding, encouraging and confirmed the appropriateness of the function being undertaken by the DPP in preference to sworn police officers who could hardly be seen to be independent of investigations undertaken by their fellow officers. Not only has the development of the office of the DPP given rise to the need for a re-examination of this question but commentators and commissions of

inquiry have also raised the issue, no doubt as a result of the particular issues under consideration.[13]

The moves have been resisted by all State police forces with claims varying from the need for broader career opportunities to arguments of cost and service efficiency. It is important that these tensions between police forces and independent prosecutors be avoided if possible but the time has come to consider nationally the conduct of criminal prosecutions by sworn police officers when all governments are now committed to the maintenance of an independent DPP.

At last year's Colloquium Chief Justice Gleeson drew attention to the attraction to government of increasing the jurisdiction of courts of summary justice administered by magistrates or equivalent judicial officers and the fact that a greater proportion of criminal offences will be dealt with summarily as a consequence. I am concerned that prosecutions in this increased jurisdiction will not be the responsibility of qualified practitioners who are independent of the Police.

Legal Aid and the Best Practice Model

The 1990s also saw a need for better criminal case management, presentation and trial management with an increasing emphasis upon court driven case management.

[13] Fitzgerald Commission Report, 1989, The ICAC 1994 Investigation into the Relationship between Police and Criminals, 2nd Report and the Wood Royal Commission into the NSW Police Service Report, 1997

In April 1997 the DPP met with the Directors of Legal Aid and discussed issues of mutual interest including the restrictions on funding and better use of the prosecution and legal aid dollar.

Both groups recognised and identified the need for better pre-trial management of their work with particular emphasis on front end resourcing, disclosure and earlier identification of pleas and issues for the trial court. As a consequence a working committee of the Directors produced a draft best practice model which was subsequently adopted by the Directors in August 1998 and has since given impetus to reform activities undertaken by the AIJA and the Law Council of Australia. The document has also recently provided focus for a working party established by the Standing Committee of Attorneys-General and the report of that Committee will be considered by SCAG at its meeting next week.

The role of the DPP in Australia as a prosecutor independent of government has, without definition or direction, moved comfortably to the model envisaged by the Attorney-General in the UK in 1986 (supra).

The Accountability of the DPP

There have been calls for the imposition of restraints and additional reporting obligations (outside those already contained in the Acts appointing DPPs). These calls may be due to concerns that there is a lack of control and that the

stated independence from government places too much power in the hands of the DPP. I do not accept that these concerns are valid.

There is significant scrutiny of the work which is undertaken by the DPP. The increased interest of the media in criminal justice issues and its greater focus on the trial and sentencing process has brought the Office into prominence but also made it subject to much more public scrutiny. This process has enabled the DPP to explain issues and outcomes in a way which, in my view, has made the office more accountable to the public for work which it does.

Publication of prosecution policies, disclosure guidelines and the interaction between the office and victims of crime makes the office accountable in a very well defined way. In addition there are parliamentary or ministerial reporting conditions imposed upon all Directors coupled with Judicial oversight, albeit limiting in some ways[14] but also protective of the accused person.[15] Much of our work is exposed to scrutiny in the trial and appeal processes.

Obviously there is some work of the DPP which is so sensitive that it must be restricted in its exposure to public scrutiny or institutional oversight. It may not, for example, be appropriate in all cases to publish reasons for not continuing with a prosecution particular where the lack of creditability of a witness may have given rise to that decision.

[14] ***Maxwell v. R*** **(1996) 135 ALR 1 at pages 9 and 26**
[15] **See for example** ***R v. Kneebone*** **(1990) NSW CCA 21 September 1990**

Conclusion

In trying to focus on the achievements of the DPP in the last 15 years I have ignored the increased responsibilities and greater expectation of competence placed upon "all officers of the Court" by the demands of the increased complexities, through appellate court definition, of the trial process. I have not addressed the need for more intensive pre-trial effort brought about by the demands of case management nor have I covered the resource and independence implications of the earlier involvement of prosecutions in the investigation of organised and complex corporate crime and revenue and electronic fraud. I did not see my brief as necessarily extending this far, after all, the 20th Century ends in 7 weeks.

The evolution of the Office of Director of Public Prosecutions and its role in enhancing and developing the criminal justice system is, I believe, well demonstrated. Having achieved so much in just 15 years I suggest that the absence of specific goals has enabled the Directors to develop their own reform agenda in an evolutionary way and work within and with existing structures. There is clearly a need to examine the interface between the DPP and Police and some specialist investigative agencies. I suspect that as confidence in the prosecution disclosure process grows pre-trial procedures will be enhanced and a more seamless path from charge to conclusion will be obtained.

I cannot conclude this paper without a plea for greater funding. It is to be hoped that reforms in the area of pre-trial case management are undertaken uniformly and take account of the need to properly resource the Prosecution and Legal Aid services of this Country. The reduction in court time through earlier pleas and identification of issues will only be achieved with greater resourcing at the “front end” of the process. The maintenance of professional confidence and public trust in the DPP will be put at risk if resourcing issues confront the ability of these officers to continue as they have so successfully begun.