SUPREME COURT
OF QUEENSLAND

Naida Haxton Lecture

University of Queensland Law Society

Tuesday, 17 May 2022

"**A brief history of the Office of the Director of Public Prosecutions**"

Chief Justice Helen Bowskill

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1. Good evening, Professor Deborah Terry AO, Vice-Chancellor and President, UQ, Professor Rick Bigwood, Dean of Law and Head of School, TC Beirne School of Law, members of the University of Queensland Law Society, distinguished guests, ladies and gentlemen. I acknowledge all who are here and thank you for attending. I also acknowledge the traditional owners of this land and pay my respects to their Elders, those who have spoken for this land in the past and who do so today.

2. My thanks to the University of Queensland Law Society for inviting me to deliver the 5th annual Naida Haxton Law Lecture. I am in esteemed company amongst those who have given the earlier lectures, with the inaugural lecture given in May 2017 by Justice Sue Brown, and subsequent lectures by Justice David Boddice, Justice Michael Kirby and Chief Justice Catherine Holmes. The Lecture is an opportunity to explore and discuss legal advocacy and legal history, which I understand are two of the great loves of Naida Haxton, in whose honour the Lecture is named.

3. Tonight I will be exploring, albeit briefly, the history of the Office of the Director of Public Prosecutions in Queensland, with some excursions down other paths that have presented themselves in the course of that exploration. It was a topic suggested to me, having been one considered but unable to be brought to fruition because of the disruption of Covid in 2020. I was very pleased to adopt it because it piqued my own personal interest – and therefore I thought it might pique yours as well. The Lecture is necessarily entitled "A *brief* history of the Office of the Director of Public Prosecutions" because, as I discovered in writing it, you really could spend a very long time indeed exploring this topic and its various tendrils into Queensland's legal history.[1]

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[1] My grateful thanks for the assistance provided to me by the honourable Ken Mackenzie, Judge Deborah Richards, Judge Leanne Clare SC, Judge Michael Byrne QC, and to Mr Todd Fuller QC, Deputy Director of Public Prosecutions. I also acknowledge the research assistance provided by Mr

In the time permitted, both for preparation and presentation, the best I can do is endeavour to chart the path taken by the ODPP over its, almost, 40 year history, from the perspective of an outside observer, rather than a participant, as I have never worked in the Office. I hope I have done this impressive organisation some justice; although am only too conscious that I have left many gaps, in terms of people and events.

4. The Office of the Director of Prosecutions, as it was first known, was established in December 1984 by the *Director of Prosecutions Act 1984* (Qld). Section 5 of that Act provided for a barrister or solicitor, of not less than 10 years' standing, to be appointed the Director of Prosecutions, whose functions included, by s 10, to prepare, institute and conduct on behalf of and in the name of Her Majesty, criminal proceedings, defined to mean, essentially, proceedings on indictment. By section 6 of that Act, the Director was to take over from the Crown Solicitor the conduct of all such criminal proceedings which were then on foot.

5. Prior to this, all criminal proceedings had been handled by the Prosecutions Branch within the Crown Law office.

6. A list of the people who worked within the Prosecutions Branch in 1980,[2] shortly before the establishment of the Office is a veritable "who's who" of the Queensland legal profession, including:

   (a) The Chief Crown Prosecutor, R N Miller QC. Interestingly, Mr Royce Miller was appointed as a Judge of the District Court in October 1980, and resigned from this position just a few months short of 10 years later, in May 1990. He then became the second Director of Prosecutions, commencing in that role on 26 May 1990. That is something that is unlikely to happen now, given the restrictions imposed on retired judges, at least in the early period of their retirement, in terms of appearing before the Court of which they were a member. According to Mr Lakshman, who I'll mention shortly, prior to his appointment to the Court, as a Crown Prosecutor, Miller was feared by defence counsel, and known as "Killer Miller" at the Bar.[3]

   (b) Mr Miller's clerk at the time was one "R A Perry", now Richard Perry QC, a commercial barrister, who commenced practise at the Bar just three years later, in 1983.

   (c) The Assistant Senior Crown Prosecutors were:

      (i) T M (Tom) Wakefield – who later went to the Office of the Director of Prosecutions when it was established, served as the Acting Director of Prosecutions in 1985, prior to the appointment of Des Sturgess QC and

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Bruce Godfrey, the Court of Appeal Research Officer; Ms Lauren Dhu, my associate; and Mr Luke Krause, my executive secretary.

2 Obtained from the Honourable Ken Mackenzie, via Todd Fuller QC.

3 Lakshman, "Flight from Paradise", 2021, at p 148.

then again in 1990, prior to the appointment of Royce Miller QC. He went on to prosecute for the Northern Territory Director of Public Prosecutions before returning to practice at the Bar in Brisbane.

(ii) A V (Vishal) Lakshman – who arrived in Australia from Fiji, aged 20, in 1956; completed articles of clerkship under the supervision of Owen Fletcher of Morris Fletcher & Cross (now Minter Ellison), before being admitted as a barrister, working for the Public Trustees Office, and later the Solicitor General's office (within Crown Law) and the Office of the Director of Prosecutions. In his words, he gave away his working life in 1992 and "for the next forty years, … travelled the globe and did not read any law books", which sounds pretty good.[4]

(iii) P G (Philip) Nase – who went to the Office of the Director of Prosecutions when it was established and subsequently practised at the private Bar from 1989 to 1993 before being appointed as a Judge of the District Court in 1993.

(iv) F J (Frank) Clair – who later, in 1995, was appointed the Chairperson of the Criminal Justice Commission (the fore-runner to the Crime and Corruption Commission).

(d) Crown Prosecutors and Legal Officers, one of whom was K J O'Brien – who would later be appointed a Judge of the District Court in 1989, the Judge Administrator of that Court in 2008 and ultimately the Chief Judge in 2014.

(e) Other legal officers referred to in this list included: S G (Stuart) Durward, later Judge Durward SC, resident judge in Townsville from 2006 to 2018; M J (Milton) Griffin, later Judge Griffin SC, from 2004 to 2014; and B J (Brendan) Butler, who would go on to serve as the Deputy Director of Prosecutions for many years from 1989 and served as a Judge of the District Court from 2008 to 2018, the first three years as Chief Magistrate.

(f) The Northern Crown Prosecutor – K G W (Ken) Mackenzie, who would go on to become the Solicitor General for Queensland (1985-1989), before being appointed a judge of the Supreme Court of Queensland in 1989, where he served until 2008. His Clerk in those days was T J (Tom) Braes – who was appointed a Magistrate in 2004, based at Mareeba.

(g) The Central Crown Prosecutor was one "M P (Marshall) Irwin", who would later be appointed a judge of the District Court, and Chief Magistrate of the Magistrates Court, in 2003, continuing to serve as a judge of the District Court until 2014.

(h) And many others.

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4 Lakshman, "Flight from Paradise", 2021, at p 362.

7. The list from 1980 includes reference to four women employed in the Prosecutions Office in 1980, one as a legal officer and the other three as clerks. I know that, because whilst everyone else is referred to by their initials and surname, the women were referred to as, for example, Miss E A (Elizabeth) Hall.

8. According to *In my opinion: The History of Crown Law Queensland* (at p 309):

> "In 1980 Elizabeth [Hall] was given a commission to prosecute in the District Court, being the first woman to do so. On one occasion, she was appearing in the Supreme Court instructed by a female clerk against Margaret McMurdo, then of the Public Defender's Office and now President of the Court of Appeal, who was also instructed by a female clerk. The presiding judge commented that he was bemused to see so many women at the Bar table."

9. Elizabeth Hall was appointed a Magistrate in 1993, and went on to serve in that role for 17 years, until her retirement in 2020.

10. Another of the women working in the Prosecutions Branch of Crown Law in 1980 was Miss D R Wright, who would become known as Deborah Richards after her marriage. Deborah Richards went to the new Office of the Director of Prosecutions when it was established, and was one of the four first female prosecutors in that Office (the others including Leanne Clare, Sue Johnson and Annette Hennessy (now Magistrate Hennessy)). She went to the Bar in 1989 and was appointed to the District Court in 1998. Her Honour was appointed President of the Childrens Court of Queensland in January 2019. Judge Richards is currently the longest serving superior court judge in Queensland.

11. Just as an aside, that pattern, of referring to the women as "Miss", was reflected also in reported cases if you go back a little way. For example, in the report of *Freehold Land Investments Limited v Queensland Estates Pty Ltd* (1970) 123 CLR 418, which I believe may by the first case in which Naida Haxton appeared in the High Court, as junior to A S Gillespie-Jones, she is referred to as "Miss N J Haxton". Ms Haxton felt strongly that she wanted to be known simply as a "barrister", and not as a "female barrister" or "woman barrister", something that I and many of my contemporaries can relate to. Eventually, the pattern of identifying barristers who happened to be women in this way in law reports came to an end; although I'm not sure when this was.

12. Incidentally, their opponents in that case were K A Aickin QC, who would later be appointed as a Justice of the High Court of Australia in 1976; and his junior, C E K Hampson, later Cedric Hampson QC, a legendary Queensland barrister,[5] who moved Ms Haxton's admission.

13. Before landing upon the topic I ultimately chose for this Lecture, I happened to look to see what happened to that case of *Freehold Land Investments Limited v Queensland Estates Pty Ltd,* in terms of subsequent reference to it, in case that might be an

[5] https://www.abc.net.au/news/2014-08-25/legendary-barrister-cedric-hampson-dies-age-81/5693604

interesting topic. As you can tell, I didn't think it was. But it was very satisfying to discover citation of it in *Sultana Investments Pty Ltd v Cellcom Pty Ltd (No 1)* (2009) 1 Qd R 589, a decision of the Court of Appeal constituted by Justice Margaret McMurdo, then President of the Court of Appeal, and the first woman to be appointed a judge of the District Court, in 1991; Justice Catherine Holmes, then Judge of Appeal, later Chief Justice of Queensland, the first woman to be appointed Chief Justice in Queensland; and Justice Margaret White, then an Acting Judge of Appeal, and the first woman to be appointed to the Supreme Court of Queensland, in 1992 – all three of whom are aptly described as trail blazers in the legal profession, just as Ms Haxton was.

14. But I digress. Back to the Director of Public Prosecutions.

15. In the speech made by the then Attorney-General, the Honourable Neville Harper, upon the second reading of the *Director of Prosecutions Bill* on 27 November 1984, the Bill was described as "a very major step" in the restructuring process aimed at bringing about improved efficiency in dispensing justice to the people of Queensland. The Attorney-General also said:

> "I am sure all honourable members will agree with me that there should be little or no delay in placing criminal cases before the court. In order to achieve a speedy and competent prosecution service, the Government has agreed to my recommendation that the prosecutions function of the Crown law office should be separated from other legal functions undertaken on behalf of the Government."[6]

16. This was described as the first dramatic change to Crown Law since its creation 125 years prior.[7]

17. As recorded in "*In my opinion: the History of Crown Law Queensland 1959-2009*", staff from Crown Law's Prosecutions Branch were given the choice of staying with the rebadged "Appeals and Advocacy Branch" or moving to the new Office of the Director of Prosecutions. A number of senior prosecutors elected to stay with Crown Law, one of whom was Conrad Lohe, who would later become the Crown Solicitor.

18. Another was Ken Mackenzie, who was then the Solicitor-General, the last to be appointed from the ranks of Crown Law (all subsequent Solicitors-General were appointed from the Bar). Ken started his working life early, working as a clerk in the Supreme Court registry, before joining Crown Law as a clerk in 1960. He completed his law degree studying part-time, at night, whilst working as a clerk. In 1966, at the age of 28, he became the youngest Crown Prosecutor at the time in Queensland.[8]

19. The author of *In my opinion: the History of Crown Law Queensland*, records that:

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6 Hansard, 27 November 1984, p 3010.
7 "*In my opinion: the History of Crown Law Queensland 1959-2009*", p 226.
8 "*In my opinion: the History of Crown Law Queensland 1959-2009*", p 219.

> "The move of prosecutions was not universally popular among Crown Law staff. The former Prosecutions Branch was seen as an ideal training ground for prosecutors, learning their court craft with the often difficult-to-prove statutory prosecutions in the Magistrates Court, paving the way for sentences in the District Court, then trials and Supreme Court work. But, the baton was passed on."

20. Following the establishment of the Office, Tom Wakefield acted as the Director of Prosecutions for some months before Mr Des Sturgess QC, a prominent criminal law barrister from the private Bar, was appointed as the first Director of Prosecutions on 14 January 1985.[9]

21. Amongst the first prosecutors to work in the newly established Office of the Director of Prosecutions were Philip Nase, Kerry O'Brien, Deborah Richards, Leanne Clare and Annette Hennessy, as already mentioned, as well as Brad Farr, now Judge Farr SC, appointed to the District Court in 2011, Michael R Byrne, now Judge Byrne QC, appointed in 2020 and a different Michael Byrne, later QC, and now the President of the Parole Board.

22. The first Annual Report prepared by the Director of Prosecutions, for the year ended 31 December 1985, includes reference to correspondence from the Attorney-General which was said, in effect, to be a charter for setting up the Office. This "charter" included the following:

> "It is intended that the bulk of the criminal work in the Superior Courts will continue to be done by Crown Prosecutors.
>
> Full career opportunities are to be provided and the fact that they are Crown Prosecutors will not inhibit appointment to judicial office.
>
> With one or two exceptions each prosecutor will be expected to appear regularly in the Courts. So far as is possible Crown Prosecutors should be freed of administrative tasks.
>
> ….
>
> I shall request the Public Defender and the Crown Solicitor, in suitable cases, to offer briefs to Crown Prosecutors and, with your consent, each Crown Prosecutor shall be given leave of absence from Prosecution duties to accept them. His salary shall continue in lieu of fees.
>
> I want the Office of the Director of Prosecutions to be developed so that it will be recognised as an elite section of the legal profession. To attain this I require the very highest standards to be observed."

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9 "*In my opinion: the History of Crown Law Queensland 1959-2009*", p 226.

23. We can see, even from the brief reference to "who's who" from the 1980 list, that many who practised as prosecutors went on to judicial office. There are of course many others who did so. The second last paragraph is interesting – reflecting perhaps, in some respects, the "cab rank rule", one of the foundations of the objectivity and independence of the Bar, which requires a barrister to accept a brief to appear before a court in a field in which the barrister practises if: the brief is within their capacity, skill and experience; they are available; and the fee is acceptable. However, from what I understand, this part of the "charter" was never given effect to.

24. Another interesting matter which is mentioned in the first Annual Report concerns the Mental Health Tribunal, established in 1985, under s 28B of the *Mental Health Act 1974*.[10] This is the fore-runner to the Mental Health Court of today. Section 28D of that Act provided that "[w]here there is reasonable cause to believe that a person alleged to have committed an indictable offence is mentally ill or was mentally ill at the time the alleged offence was committed the matter of the person's mental condition may be referred to the Mental Health Tribunal for its consideration and determination. Prior to this Tribunal being established, such a finding could only have been made by a jury. In the First Annual report, Sturgess QC reports that in the first two months of proceedings before the Tribunal (October to December 1985), 17 references were dealt with. He appeared on each of them as he was "anxious to gain first-hand knowledge of the way in which this new tribunal worked" and was "pleased to report it has introduced much expedition and compassion into what often had been protracted and sad proceedings". He gave an example of a case involving a person known as Milimor Petrovic. An extract from the Police Museum online describes the incident which occurred on 26 July 1985,[11] a chilling reminder that the domestic and family violence epidemic that presently plagues our community is not a recent thing. The Annual Report records that his matter was referred to the Mental Health Tribunal and he was found to be suffering from unsoundness of mind at the time of the alleged offences, in proceedings that took no more than 15 minutes. Previously, it was said, this would have taken at least two days in the Magistrates Court and two to three days in the Supreme Court. The Mental Health Court, established in 2000,[12] continues to be an efficient and effective forum for the resolution of issues of this kind where they arise in criminal proceedings.

25. One of the first tasks undertaken by Des Sturgess QC, following his appointment as Director, was an inquiry "into sexual offences involving children and related matters". The inquiry commenced in December 1984, and his report was presented in November 1985. The inquiry was prompted following media publicity of a "male prostitution racket" and "child pornography ring" existing in Brisbane, after three men were charged with sexual offences against boys. Read through the lens of 2022, the "Sturgess Report" is a somewhat confronting, uncomfortable document to read. On reflection, I think that is because it includes – as do many reports of inquiries – anecdotal reports

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10 That provision was enacted, by the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984 (Qld)*, another significant legislative restructure at the time.

11 https://mypolice.qld.gov.au/museum/2014/02/25/vault-eagle-farm-siege/

12 *Mental Health Act 2000* (Qld), s 381.

about matters which had been uncovered in the course of the inquiry. Because that is the activities of paedophiles, and the sexual abuse of children, it is particularly hard to read.

26. The Sturgess Report was controversial at the time. It received significant criticism, including from lawyers, doctors and psychologists – both for its social policy commentary as well as some of the proposed criminal law reforms.

27. In relation to the latter, Sturgess QC was concerned to identify how the procedures of the courts could be adapted or improved, to better deal with sexual offences committed against children. Although a number of his recommendations were criticised – and ultimately ignored – some of the key features of contemporary criminal practice and procedure in so far as offences against children are concerned owe their genesis to Des Sturgess' work.

28. For example, in 1989, by *The Criminal Code, Evidence Act and Other Acts Amendment Act 1989*, the following amendments were made, each of which reflected a recommendation in the Sturgess Report:

    (a) Section 229B of the *Criminal Code* – the offence of "maintaining a sexual relationship with a child" – was introduced into the Code. This resulted from a recommendation in the Sturgess Report, to address the problem which his inquiry had revealed, where an offender had committed multiple sexual offences against a child over a period of time, but the requirement to particularise a specific offence (by date, place etc) might mean they were prosecuted for only a small number of offences, with that reflected in a lower penalty if convicted. Whilst the introduction of this offence represented a significant reform, there is now a call for further change. As you would probably be aware, in recent times Grace Tame has advocated to "correct the narrative", by replacing the description of this offence, which is said to carry with it a connotation of consent (by the use of the words "sexual relationship"), with "persistent sexual abuse of a child".

    (b) Section 9 of the *Evidence Act 1977* (Qld) (as it then provided) was amended to remove the statutory requirement – which had been found in s 9(2) – where evidence on a trial was given by a child, for a trial judge to warn the jury of "the danger of acting on such evidence unless they find that it is corroborated in some material particular by other evidence implicating that person".

    (c) Section 21A of the *Evidence Act 1977* (Qld) was enacted, which permitted certain witnesses[13] to be declared a "special witness", with the result that special procedures could be adopted, including enabling the person to give their evidence remotely, from another room, without having to see the accused; without members of the public in the court room; to have a support person sitting

[13] A child under 12; or a person who, in the court's opinion: would, as a result of intellectual impairment or cultural differences, be likely to be disadvantaged as a witness; or would be likely to suffer severe emotional trauma; or would be likely to be so intimidated as to be disadvantaged as a witness, if required to give evidence in accordance with the usual rules and practice of the Court.

with the; and for their evidence to be recorded, with that recording admissible in the trial.

(d) Section 93A of the *Evidence Act 1977* (Qld) was also enacted, to permit a statement made by a child, contained in a document (which may include an audio, or audio-visual recording), to be tendered in evidence, provided the child was available for cross-examination. In practical terms, this provision has enabled the police interview with the child, conducted shortly after they have made a complaint for the first time, to be tendered as the child's evidence in chief at the trial.

These amendments to the *Evidence Act* also reflected recommendations made in the Sturgess Report, about the need for changes to criminal practice and procedure to give the courts power to have a child's evidence taken in less difficult circumstances; and to remove the mandatory requirement for a direction relating to corroboration.

29. The Second Annual Report, for the year ended 31 December 1986, records an interesting development. Mr Sturgess QC recorded a rise, in those first two years of the new organisation, with respect to persons committed for sentence, from 54 to 80. Mr Sturgess QC expresses the view that the increase seems likely to be due to a decision of, as he was then called, Mr Justice de Jersey, in the case of Reg v Pickett, in which his Honour recognised that an early plea of guilty was an important mitigating factor when fixing penalty. That view was confirmed in the Third Annual Report, for the year ended December 1987.

30. *R v Pickett* is reported in [1986] 2 Qd R 441. Incidentally, since we are exploring history tonight, the name P (Paul) de Jersey appears on an even earlier "list", of those employed within the Solicitor General's office, as at April 1970.

31. Paul de Jersey did not remain there for long, as he was called to the Bar in 1971, took silk in 1981 and was appointed a Judge of the Supreme Court of Queensland in 1985. His Honour was appointed Chief Justice of Queensland in February 1998, serving in that role for more than 16 years until July 2014, before being appointed Governor of Queensland. So at the time of *Pickett*, Mr Justice de Jersey (as Judges were then referred to) had been a judge for only about a year.

32. Returning to *R v Pickett*, Mr Sturgess QC appeared for the Crown; and Mr Des Draydon appeared for the defendant, who pleaded guilty to "nine serious offences involving dishonest dealing with motor vehicles". In relation to the pleas of guilty, de Jersey J said this:

> "I have been told, and I accept, that by your pleading guilty here upon the ex officio presentation of an indictment you have saved the State a very considerable amount of money and effort which would otherwise necessarily have been expended in the preparation of a case for committal and in the committal proceedings themselves. That, and your

co-operation with the police in uncovering the frauds, do amount to sincere and substantial atonement on your part for these offences.

The statistics which I have been given as to the extent of guilty pleas in the court, and the enormous expense of running the criminal courts, indicate the general desirability of having guilty people enter that plea at the earliest possible stage. In my view, those circumstances of themselves warrant overall moderation in the sentence I impose in this case.

The due administration of justice is generally served by encouraging guilty persons to enter an honest plea of guilty at an early stage of the proceedings. There is ample warrant for that proposition, and for adopting a moderate approach in recognition of a plea of guilty which has consequences like those flowing here. I refer to *The Queen v Shannon* (1979) 21 SASR 442; *The Queen v Slater* (1984) 36 SASR 524; *McKenzie and Nicholson* (1984) 13 A Cr R 330; and *Kay* (1983) 11 A Cr R 100. The decision of the Queensland Court of Criminal Appeal in *R v Perry* [1968] QWN 17, also acknowledges the relevance as a mitigating factor of a prisoner's co-operation with the investigating police and the overall system, as it were. With regard to *R v Cox* [1972] QWN 54, I would presume that the only potential relevance in that case of the plea of guilty was as an arguable sign of remorse. I do not read that decision as excluding, to use a broad term, co-operation in the administration of justice, as a relevant mitigating factor in an appropriate case. For my part, I consider it important, with the increasing length, complexity and cost to the public of criminal trials, that guilty persons when charged with offences be encouraged to enter honest pleas of guilty at the earliest possible time.

In this case I am not prepared to accept that your pleas of guilty primarily indicate genuine remorse, although I do not doubt that you are remorseful, and that remains a relevant consideration. The better explanation is that the pleas of guilty, and your co-operating in the course which these proceedings have taken, have primarily been the result of your wish to minimise your sentence — although, as I have said, I don't doubt that you are now remorseful. You initially denied the charges for some three days until it became apparent to you that the police were already armed with incriminating material. It is true that you co-operated substantially with the police thereafter, and that is, of course, very relevant now, as is the way you have co-operated in these proceedings without requiring a committal hearing.

The Director of Prosecutions has urged me, speaking generally, to adopt a moderate approach in determining the sentence I should impose, in light of the consequences of your pleas of guilty generally with regard to the administration of justice."

33. According to the Fifth Annual Report (for the year ended December 1989), the increase in defendants committed for sentence increased even more significantly in 1988 (256) and 1989 (338).

34. A few years later, in 1992, the *Penalties and Sentences Act 1992* was passed, which collected into one Act the general powers of courts in relation to sentencing offenders, and included guiding principles. One of those, in s 13, is the requirement for the guilty plea to be taken into account, and the discretion to reduce the sentence that would otherwise be imposed.

35. Notwithstanding the observable increase in the number of guilty pleas, in the Third (year ended December 1987) and Fourth (year ended December 1988) Annual Reports, Mr Sturgess QC wrote about the main "problem that so bedevils the criminal justice system and wastes large amounts of public money", being the large number of defendants committed for trial by jury, following a committal proceeding in the Magistrates Court, very few of whom have the intention of actually having a trial by jury (in the Third Annual Report, the figure given was that approximately 70% of the defendants who are committed for trial eventually plead guilty).

36. One of the reforms brought about at this time was effected by the *District Courts Acts and Other Acts Amendment Act 1989*, by which a new s 59 of the *District Courts Act 1967-1968* was enacted, to confer greater criminal jurisdiction on the District Court. Prior to the amendment, the District Court's jurisdiction was limited, in the sense that it could not deal with indictable offences in respect of which the maximum penalty exceeded 14 years. By the amendment, jurisdiction was conferred on the District Court to deal with a range of offences, which previously would have been dealt with in the Supreme Court, despite the maximum penalty for the offence being greater than 14 years. As described in the Fifth Annual Report (for the year ended December 1989), this was in response to the "difficulties the Supreme Court had got into with its criminal list". It was predicted that, in time, the District Court would have to do the same thing; and a recommendation was also made that the time had come to increase the power of Magistrates to sentence for indictable offences upon a plea of guilty. The call for changes to the jurisdiction of the courts was repeated by later Directors, but did not happen until 2010.

37. Mr Sturgess QC's five year term as Director came to an end in December 1989.

38. Although it is beyond the scope of this Lecture to delve into this in any detail, it is important to record that during the last two years of Des Sturgess QC's tenure as Director, what has been described as the "biggest political, legal and news event towards the end of the '80s" had been ongoing in Queensland: the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, conducted by Mr Tony Fitzgerald QC (the Fitzgerald Inquiry). The Fitzgerald Inquiry Report was

tabled in Parliament in July 1989.[14] Staff from the Office of the Director of Prosecutions were seconded to the Fitzgerald Inquiry during these years. The intersection with the work undertaken by Des Sturgess in his inquiry, at the start of his tenure as Director, is explained in the following extract from the introduction to the Fitzgerald Report:

> "… on 11 May 1987, the Australian Broadcasting Corporation's "Four Corners" programme telecast the "Moonlight State", a television documentary compiled by another investigative journalist, Mr Christopher Masters. Events which had been filmed raised the possibility that the Police Force was lying or incompetent or both.
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> Masters interviewed former and serving police, two of whom appeared on the "Four Corners'' programme. They and Masters suggested that something was badly amiss with the policing of gambling, organized prostitution and drug trafficking in Brisbane, particularly in Fortitude Valley. The "Moonlight State" suggested the Police Force had been ignoring and perhaps condoning significant criminal activity for a long time. This was in stark contrast to the official position of the Queensland Police Department, which denied that significant vice existed or that brothel ownership was concentrated in a few hands.
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> One of the most telling aspects of both Dickie's and Masters' work was that they had simply and quickly obtained evidence of the ownership of Brisbane's brothels, largely by searching public records. This was evidence which would have been obtainable in the course of routine police work.
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> The same point had been brought to light by the Director of Prosecutions, Mr. Desmond Gordon Sturgess QC, who said in the 1985 report on his Inquiry into Sexual Offences Involving Children and Related Matters:
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> > 'It took my clerk only a couple of hours to obtain the addresses of 14 massage parlours carrying on business, in Brisbane, and they were not the only ones, and search at the Titles Office and discover who the registered proprietors were ..... No owner of any one of those premises who had seen it in recent times could be unaware of the purposes for which it was being used; the business of nearly all of them is prominently announced on the premises themselves.'
>
> Sturgess' report came to many of the same conclusions about brothel ownership as were arrived at by Dickie and Masters, and were later corroborated by evidence at this Inquiry. However, like the findings of an earlier Inquiry presided over by the Honourable Mr Justice Geoffrey

[14] https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/The-Fitzgerald-Inquiry-Report-1989.pdf

> Arthur George Lucas (of which Sturgess had been a member), Sturgess' report was largely ignored.
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> On the day following the "Moonlight State" telecast, the Acting Premier, Gunn, announced that there would be an inquiry."

39. The next Director of Prosecutions, Mr Royce Miller QC, commenced duty in May 1990. Crown Prosecutors working in the Office in 1990 included the now Justice Jim Henry and Justice Peter Callaghan, of the Supreme Court, and Judge Craig Chowdhury and Judge Dennis Lynch QC, of the District Court. Also working in the Office at that time were Mrs L J (Leanne) Clare and Ms L (Lucy) McCallum.

40. Lucy McCallum went to the Bar the following year, in 1991, was ultimately appointed a judge of the Supreme Court of New South Wales and has recently been sworn in as the Chief Justice of the Supreme Court of the ACT. I will return to Leanne Clare shortly.

41. In 1994, the name of the Office was changed to the Director of *Public* Prosecutions,[15] the DPP of today.

42. Royce Miller QC completed two terms as Director of Public Prosecutions, ten years in all. In the Annual Report for the year ended 30 June 1999, which would be his last as Director, Mr Miller QC commenced his overview by referring to the misery and significant harm – physical, emotional and financial – caused to victims of crime. He observed that "[l]ife is, indeed, harsh for many and the figures in this report do not reflect all the harm done to our citizens. We live in difficult times and they will become even more hazardous unless appropriate and effective remedial action is undertaken to address the causes of crime and thereby lessen the impact of criminal offending in our society".

43. Mr Miller QC also noted that, "[i]n this last decade, efforts had been made to improve the quality of our criminal justice system and its processes and to increase the community's acceptance of its outcomes". He mentioned four matters in particular:

    (a) the introduction of a scheme requiring the electronic recording of interviews between police and suspects, which provided safeguards to suspects, but also protection to police against allegations of verballing and unfair conduct being engaged in to produce confessions;

    (b) the provision of support for victims of crime, which resulted in increased confidence in the criminal justice system and, in the case of sexual offences, increased reporting not only of current offending, but historical offending as well;

    (c) DNA profiling, described as "one of the most important advances in the weaponry of forensic science since the development of fingerprinting at the end of the last century; and

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15 *Statute Law (Miscellaneous Provisions) Act (No 2) 1994,* schedule 1.

(d) the "committals project", which was a project commenced some years before, as a trial, to involve staff from the ODPP in committals – which had previously been conducted by police prosecutors. The project was considered a success, with more defendants choosing to be committed for sentence rather than trial – addressing, among others, the problem Des Sturgess QC had highlighted year after year during his tenure, of the high number of defendants being committed for trial, who never had any intention of going to trial. But apart from the impact on court lists, as Mr Miller QC observed, speedier justice is in the interests of victims, witnesses (including police), defendants *and* the more economical use of resources.

44. Mr Miller's successor as Director was Mrs Leanne Clare, the first woman to be appointed a Director of Public Prosecutions in Australia, whose tenure commenced in late 2000. Mrs Clare had served as an acting judge of the District Court in 1999; was then appointed the Director of Public Prosecutions in 2000; was appointed Senior Counsel in 2006; before being appointed a Judge of the District Court, in 2008.

45. In the Annual Report for the year ended June 2001, two significant matters requiring reform were addressed. The first concerned the evidence of children. It was observed that, despite the amendments made (in 1989) to enable the tender at trial of out of court statements of children, they were still required to be available for cross-examination at trial, which was a traumatising experience for children, and did not advance either truth or justice. As the Director said "[a] fair trial for the accused should not preclude justice for victims". It was recommended that Western Australia's approach be closely considered – which allowed for the whole evidence of a child to be pre-recorded, such that the child did not need to attend the trial at all.

46. The recommended reform was ultimately implemented, by the enactment of the *Evidence (Protection of Children) Act 2003* which, among other things, introduced s 9E, stating principles for dealing with child witnesses, with child being defined as person under 16 years. These principles include the requirement for measures to be taken to limit, to the greatest practical extent, the distress or trauma suffered by a child when giving evidence and that "the child should not be intimidated in cross-examination". The amendments also introduced division 4A (ss 21AA to 21AZC) into the *Evidence Act*, dealing with evidence of affected children. These new provisions provided a procedure by which the whole of a child's (being a person under 16) evidence could be pre-recorded in the presence of a judicial officer, but in advance of the proceeding itself.

47. The second area of urgent reform called for concerned the jurisdictional limits of the Courts – echoing the call made by Des Sturgess QC many years earlier. That was still many years in the waiting.

48. It is apparent from reading the Annual Reports for the ODPP, over the years from its first establishment, that they are important historical records of the functioning of the Office from time to time, as well as significant vehicles for reform of the criminal justice system. They were also vehicles for educating and informing the public about the

criminal justice system. An example of this is to be found in the Report for the year ended June 2002, in which the then Director, Mrs Clare, set out in her Overview a careful explanation of the role of the ODPP and the nature of the prosecutorial responsibility and decision-making, recognising the central importance of the independence of the Office.

49. As Mrs Clare said, in her Director's Overview the following year:

> "Whatever the outcome of a prosecution, people's lives will be affected by it. Whether it is a decision to prosecute or not prosecute, or a jury's verdict of guilty or not guilty, there will be people who are disappointed, distressed or even devastated by the result.
>
> Prosecutor's know this – but the decisions we have to make are based upon the evidence and the law, not emotion.
>
> That does not mean that we do not feel for the people caught up in the process. We see the very worst of life – unspeakable wickedness, depravity and callous indifference. Every day we see people who are the victims of this: children whose innocence has been taken from them, families shattered by immeasurable loss; good and decent people whose lives have been ripped apart.
>
> Sadly, no prosecution can fix those tragedies.
>
> Our role is to seek justice 'according to law'. This is justice within the legal framework that exists with its presumption of innocence and the need for sufficient evidence to prove guilt beyond reasonable doubt.
>
> All of our prosecutors bear a heavy responsibility and are under enormous pressure. They have to work long and hard and often achieve tremendous results. It is unfortunate that the achievements and personal sacrifices of prosecution staff rarely, if ever, feature in the public debate."

50. The commitment of every person in the organisation to build a prosecution service of excellence, once which is "effective, efficient and fair" was reiterated, but so too was the challenge, again echoing the voice of Des Sturgess QC from many years before, of doing so in the context of limited resources.

51. A change to the organisational structure of the DPP commenced in 2004, with the establishment of Chamber groups within the Office. This began with a pilot chamber group, named in honour of Tom Wakefield – the Wakefield Chambers. The idea, as explained by Mrs Clare in the 2004-2005 Annual Report, was that:

> "… prosecutions should be prepared by small multilayered teams of prosecutors, legal officers, victim liaison officers and paralegal staff working closely together on each case. This model of preparation permits the early involvement of prosecutors in matters and parallel

mentoring of junior staff. It also enables active case management with a focus on the timely and quality resolution of matters".

52. That pilot having been a success, by February 2005 the remainder of the Brisbane office was divided into Chambers, named in honour of significant figures within the legal profession, including:

    (a) Wakefield;

    (b) Sturgess, named in honour of Des Sturgess QC;

    (c) Given, named in honour of Alan Stuart (*Stuie*) Given, who was a judge of the District Court from 1975 to 1989;

    (d) Sheehy, named in honour of Joseph Sheehy, who was a judge of the Supreme Court from 1947 until 1970;

    (e) Haxton, named in honour of Naida Haxton, the first woman to practise at the private Bar in Brisbane; and

    (f) Griffith, named in honour of Sir Samuel Griffith, the third Chief Justice of Queensland, then Chief Justice of the High Court of Australia, and author of the Criminal Code.

53. Mrs Clare SC's tenure as Director came to an end in mid-2008, when she was appointed a Judge of the District Court, where she continues to serve with distinction.

54. Her Honour's successor was Mr Tony Moynihan SC, appointed as the Director in June 2008. He served in that role for seven years, before also being appointed a Judge of the District Court in June 2015.

55. 2010 marked the 25th anniversary of the Office of the Director of Public Prosecutions. It was in that year that the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010* was passed, which redefined the jurisdiction of Queensland courts. Relevantly, amendments were made to s 61 of the *District Courts Act 1967,* expanding the criminal jurisdiction of the District Court so that the Court now had jurisdiction to deal with indictable offences in respect of which the maximum penalty is 20 years (previously, it had been 14 years, subject to some exceptions). Amendments were also made to the *Criminal Code*, to expand the jurisdiction of the Magistrates Court to deal with certain indictable offences (for example, where the maximum penalty was not more than three, or five, years; or where the defendant has pleaded guilty).

56. Following this, Mr Michael Byrne QC became the fifth Director of Public Prosecutions, coincident with the 30th anniversary of the Office. In the Annual Report for the 2015/2016 year, in recording the efforts of the hard working and dedicated staff of the ODPP he reflected back on part of a letter written by the Attorney General of the day to Des Sturgess QC, on the creation of the Office in 1985, in which the Attorney said:

> "I want the Office of the Director of Prosecutions to be developed so that it will be recognised as an elite section of the legal profession. To attain this I require the very highest of standards to be observed"

and observed that "that remains the objective as much today as it was in 1985".

57. Following the pattern of his predecessors, Mr Byrne QC was appointed a Judge of the District Court in January 2020. He was succeeded by the sixth, and current, Director, Mr Carl Heaton QC, which brings us to today.

58. In the Director's Overview provided by Mr Heaton QC, in the Annual Report for 2019-2020, he referred to the observations, made over many years by previous Directors, about the workload of the ODPP. He noted that:

> "Staff continue to work long hours under immense pressure in their endeavours to ensure matters are prosecuted fairly to all parties as well as in support of victims of crime and their families. The nature of the work can be difficult and, at times, distressing. The health and wellbeing of staff, and the risk of vicarious trauma remain priorities."

59. The very real nature of that risk posed to prosecutors is demonstrated in the decision of the High Court, delivered in April 2022, in *Kozarov v Victoria* [2022] HCA 12, involving a claim for damages for negligence, brought by a prosecutor against the Victorian Office of Public Prosecutions, as a result of a psychiatric injury resulting from vicarious trauma, due to the exposure to child sexual offences over an extended period of time.[16]

60. So, returning to the beginning. The purpose of establishing the Office of the Director of Prosecutions was described as being to ensure professionalism and independence in the preparation, institution and conduct of criminal proceedings in respect of indictable offences in the State.[17] It is fair to say that purpose has been met. The high regard in which many of the lawyers who have worked within the ODPP over many years are held is reflected in the numbers who have been appointed Senior (and now Queen's) Counsel and to the judiciary.[18] And it is a highly sought after place to work for aspiring lawyers, for very good reasons.

Helen Bowskill
17 May 2022

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16 Last year, I addressed the conference of Crown Prosecutors in 2021, on the topic of acknowledging and dealing with the cumulative trauma and stress of their roles as prosecutors: https://archive.sclqld.org.au/judgepub/2021/bowskill20210629.pdf.

17 Introduction to the Annual Report for the Office of the Director of Prosecutions for the year ended 31 December 1990 (Royce Miller QC).

18 To those who have already been mentioned can be added Judge Lynham, Judge Cash QC, Judge Loury QC and Judge Clarke, and many Queensland magistrates.