



**ATTORNEY-GENERAL
HON ROBERT McCLELLAND MP**

REMARKS AT THE

**COMMONWEALTH DIRECTOR OF PUBLIC
PROSECUTIONS**

25th ANNIVERSARY DINNER

OLD PARLIAMENT HOUSE, CANBERRA

THURSDAY 5 MARCH 2009

First, may I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.

- The Honourable Justice Robert French, Chief Justice of the High Court of Australia;
- The Honourable Justice Virginia Bell, Justice of the High Court of Australia;
- Mr Chris Craigie SC, Commonwealth Director of Public Prosecutions;
- Members of the judiciary;
- Parliamentary colleagues; and
- Distinguished guests all.

It's a great pleasure to be here this evening to join the CDPP as it celebrates and reflects on a quarter of a century of service to the nation.

If measured simply as a number, 25 years may not be an inordinately long period.

It seems to me that the true weight of an anniversary occasion such as this one may be more usefully gauged in other ways.

And primarily, through the principles and values that guide and underpin the organisation, sustain its reputation and frame its achievements.

The CDPP has worked through a challenging period of Australian history.

The focus of national security, for example, has in large part shifted from the threat posed by Nation States, to the threat posed to the safety and security of Australians from base criminal activity including terrorism and organised crime.

Equally the threat posed to our economic security from white collar crime has also become apparent.

You have worked through, and continue to work through, these challenges with a firm commitment to the ideals of service that year after year is a character of your organisation.

Successive directors and their staffs merit our admiration and gratitude:

- Ian Temby QC AO
- Mark Weinberg QC,
- Michael Rozenes QC,
- Brian Martin QC,
- Damian Bugg AM QC, and
- Chris Craigie SC.

Those directors and, of course, officers and staff have:

- conducted lengthy, complex prosecutions (some subject to considerable media scrutiny and comment);
- worked solidly to prepare cases for hearing;
- assisted investigators, assessed evidence, and drafted charges; and
- provided intelligent, astute legal advice on matters such as tax, social security and corporate frauds, money laundering, terrorism, people trafficking and online child sexual exploitation offences.

I would suggest that in our turbulent world there has never been a time when that degree of expert, measured analysis, breadth of scholarship and the impartial application of intellect have ever been needed more.

I think we would do well to point to the word, ‘public’, in the CDPP’s title. That word reveals one of its fundamental principles – that is the CDPP is first and foremost a public institution that serves the Australian people. The public fund the CDPP and, in turn, the CDPP protects their interests.

And it does so to particular standards.

The official Prosecution Policy of the Commonwealth quotes in part from a 1981 report of the British Royal Commission on Criminal Procedures.

In its simple phrase are found the essential objectives that guide the CDPP:

*“a prosecution system (that) should be judged by standards of fairness, openness, accountability and efficiency.”*¹

The first three words – fairness, openness and accountability - are easily understood and, I think, generally supported.

I would argue that the fourth word – efficiency – should be equally emphasised and supported. Efficiency necessarily means effectiveness. An effective and successful CDPP is absolutely essential to the rule of law. It is the enforcer of the law in a determined and effective way.

Too often people speak of rights in respect to the administration of justice in terms of the rights of the accused. Certainly the right to a fair trial is at the heart of our criminal justice system. But rights are not simply those of the accused.

The community also has rights. Crucial to maintaining rights is effective and efficient enforcement of our criminal laws, including enforcement of appropriate punishment.

For 25 years the CDPP has and continues to meet the highest benchmark on these standards.

And it has withstood the test of operational demands, which are considerably different now to those envisaged by former Directors and Attorneys-General during the Office's formative years.

The Role of the CDPP in the Criminal Justice System

Twenty-five years ago, the then Attorney-General, Senator Gareth Evans said in Parliament:

'The Attorney-General, as First Law Officer, has always borne the ultimate responsibility for prosecution decision'. 2

This is true in the sense of the principle of ministerial responsibility - but, fortunately for Australians, not operationally.

As Attorney-General I am accountable to the Parliament for decisions made in the prosecution process, but operational decisions are, and must continue to be, made by the CDPP – independently from the political process.

Independence is the key.

The establishing of the CDPP formalised the independence of the prosecutorial process.

And it is this independence that overcomes any concerns about the politicisation of criminal prosecution. That is not the case in many countries, but it is fundamental to our system of justice. A point too commonly overlooked in the political argy-bargy of Question Time and sometimes in the popular media.

The structural separation between my role and that of the CDPP has ensured that key decisions on the enforcement of Commonwealth criminal law are made on an objective, professional basis, without the fact or appearance of political involvement, and, literally, without fear of retribution or without hope of favour.

This has allowed for a fair and accountable prosecution policy based on - again - the 'public interest'.

It ensures that the investigative and prosecution functions of the Commonwealth remain impartial.

Maintaining independence is, I know, an ongoing challenge. Other law enforcement agencies are entitled to rely on the CDPP for their expert advice. But equally the CDPP need to maintain appropriate distance from an investigation and not to be used as an agent of other law enforcement agencies.

I think the Report of Mr Clarke QC in respect to the matters of Dr Mohammed Haneef provided a useful guide for meeting this obligation and challenge.

Key Successes of the CDPP

Twenty-five years ago when the CDPP was established, I had just completed my Associateship with Justice Phil Evatt of the Federal Court of Australia, and was embarking on a legal career in the private sector.

Those of you who are old enough to remember 1984 – and that’s probably most of us here – will recall that it too was a busy and important period:

- Medicare came into effect;
- Australian banks were deregulated; and
- the federal budget and the federal election debate were televised for the first time.

Fortunately, George Orwell’s predictions hadn’t come to fruition. But the coincidence of dates again underlines why the CDPP must be and function as an agency independent of the Executive of the day.

Things have changed. In 1984, the CDPP’s operating budget was, by today’s standards, ridiculously modest – \$145,000 to operate two offices with 80 staff. The principal office in Melbourne handled just over 1200 prosecution files.

The expansion over the next quarter of a century would be dramatic – reflecting the growth of the Commonwealth criminal law and the CDPP’s role in criminal proceedings across the nation.

Last year nearly \$106 million was appropriated for CDPP operations across its ten offices located in all State and Territory capitals as well as in Cairns and Townsville. These offices are staffed by 600 lawyers and support personnel. In 2007-08, the service prosecuted 6000 defendants across Australia, in a range of issues referred from over 40 investigative agencies.

In particular I would refer to high profile matters dealing with ‘terrorism’ – complicated litigation by any standard, involving complex issues regarding the admissibility of sensitive material and the respective roles of our intelligence and policing agencies.

Since the events of September 2001, more than 30 people have been charged with or convicted of Commonwealth terrorism offences. Recent successes are a testament to the professionalism of your service.

Implementation of the Recommendations of the Clarke Inquiry and Street Review

Coordination between the CDPP and the intelligence and law enforcement agencies is critical to the investigation and prosecution of terrorism offences.

That particular capacity was examined in the Street Review and, more recently, in the Clarke Inquiry.

In response to the Street Review, the CDPP, in conjunction with the AFP and ASIO, developed Counter-Terrorism Prosecution Guidelines.

Among other things, the Guidelines clarify the roles and responsibilities of those organisations during terrorism investigations and prosecutions.

Furthermore, a regular Chief Executive Interoperability Forum has been established to provide the heads of ASIO, the AFP and CDPP with an opportunity to regularly review strategic priorities and interoperability issues.

These initiatives have already assisted in improving coordination between the CDPP and other agencies on counter-terrorism matters – initiatives that are imperative to Australia’s effective counter terrorism functionality.

The solid relationships that have been developed between our intelligence, law enforcement and prosecution agencies is a testament to the balance and good sense of officers and staff from all three services.

Approval of the Revised Prosecution Policy

While this is not an occasion for policy discussion, I do want to refer again to the Prosecution Policy of the Commonwealth – a policy which embodies the public interest principles that have been followed by successive Directors in carrying out their responsibilities.

The Policy also provides guidance for ensuring a consistent approach to the exercise of the very important discretion to commence a prosecution.

In light of the significant changes to the Commonwealth criminal law, I have approved a revision of the Policy to ensure its principles remain both clear and relevant.

The revised Policy will shortly be tabled in Parliament.

The key changes reflect the broader considerations relevant to modern prosecutions. For example, they allow prosecutors to take into account the views of victims of crime within the existing ‘public interest’ framework in commencing a prosecution.

The updated Policy emphasises the importance of prosecution disclosure in ensuring that due process is followed in all prosecutions.

Significant amendments have also been made, where appropriate, to permit prosecutors to initiate negotiations on the charges to be prosecuted in the interests of reaching a just result.

These changes will ensure that the CDPP can continue to maintain its flexibility and adapt to meet the ever changing criminal law.

Conclusion

The CDPP has been and will continue to be a very significant part of how we maintain justice and the rule of law in Australia – both in theory and practice.

As an open, democratic society the work of the CDPP across the country does contribute significantly to achieving a just and secure nation.

I also want to say that a prosecution service of the magnitude of the CDPP demands sound leadership.

And so, as Attorney-General, I commend the Director and his staff, and all those in the past who helped establish the service and have laid down its foundations for the future.

Due process, independence and integrity are relatively simple to understand, as concepts.

However, today, the complexity and breadth of the issues to which the CDPP applies these principles are anything but simple.

I am confident that, whatever new challenges the next twenty-five years bring, the CDPP is well placed to meet them – just as it has done so admirably in the past.

I thank all of you involved in the service for consistently aspiring to and upholding the highest principles and an impartial approach to prosecutions.

Congratulations to Chris and his team for their efforts to make this evening's anniversary celebrations enjoyable and memorable.

In closing, I would like to make a toast. If you could all raise your glasses – as we toast to 25 years of the Commonwealth DPP and to the future.

May you have success and satisfaction in all you do in the years ahead.

Thank you.

¹ Prosecution Policy of the Commonwealth, par 1.4, p5.

² Senator Gareth Evans, Second Reading Speech, *Director of Public Prosecutions Bill 1983*, 10 November 1983.