THE PURSUIT OF JUSTICE

25 YEARS OF THE DPP IN VICTORIA
The OPP thanks the following people for their contribution:
Adriaan Bendeler, Suzette Dootjes, Bruce Gardner, Michael Hoyle,
Frank Mattea, Catherine Nicols, Ann Strunks, Carol Stuart and
Dr Marg Flatman.

Additional research: Tracey Archer (OPP)

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Writing and editorial services: Jacqueline Flitcroft

Design: X2 Design

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BEFORE
THE DPP

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CONTROVERSY
AND CHANGE
The Director of Public Prosecutions (DPP) commands a unique and crucial position within Victoria’s criminal justice system – and within our democratic tradition. In fact, since 1982, when Victoria pioneered in Australia the creation of an independent prosecution service and transferred prosecutorial decisions from Executive Government to an independent DPP, successive DPPs have provided leadership in the conduct of criminal prosecutions. Victoria’s DPPs have provided this leadership – both nationally and internationally – with independence, integrity and impartiality.

Since that time, of course, there have been major changes in the practice of prosecutions, the criminal law and the operation of the courts; with prosecuting a more complex task than it was a quarter of a century ago. The fundamental principle behind the creation of the DPP, however, remains the same: that decisions to prosecute – and, equally, decisions not to prosecute – should be made free from political interference and considerations. This is why the present Government enshrined the DPP’s position in the Constitution Act 1975.

Going from strength to strength, our public prosecution service continues to enjoy a national and international reputation for excellence. That reputation is built upon the dedication of the Crown Prosecutors and staff of the Office of the DPP and, since 1994, the Solicitor and staff of the Office of Public Prosecutions, as well as members of the Victorian Bar. Without a doubt, Victoria’s justice system has benefited from having prosecuting barristers, solicitors and support staff of the highest calibre – people who have valued and protected the independence of the office, and who have applied the law impartially and in the public interest.

As this anniversary book shows, Victoria’s DPPs have not only served the interests of justice, they have also served and protected the Victorian community. It is an impressive record and important tradition – providing a strong foundation for Victorians to enjoy a fair and independent prosecution service well into the future.

The Honourable Rob Hulls
Deputy Premier and Attorney-General of Victoria
In 1983, Victoria became the first jurisdiction in Australia to establish a Director of Public Prosecutions, following the enactment of the Director of Public Prosecutions Act 1982 by the Victorian Government led by Premier John Cain, who was also Attorney-General. Victoria’s leadership in creating an independent DPP is acknowledged as one of the most important developments in the administration of justice in Australia.

Prior to the creation of the DPP, prosecutions for indictable offences in Victoria were handled by the Criminal Law Branch (CLB) of the Crown Solicitor’s Office. When a person was committed for trial, the branch prepared the case and briefed Crown Prosecutors or private counsel. All prosecutions were instituted in the name of the Attorney-General, who could refuse to give consent to initiate particular prosecutions.

Prosecutorial discretion was based primarily upon whether there was sufficient evidence to justify the trial or to raise a strong or probable presumption of guilt, with no consideration given to the concept of public interest or to the resource implications of decisions to prosecute.

John Buckley (who worked in the CLB prior to becoming Solicitor to the DPP in 1983) recalled that when he started at the branch, it had a staff of around 20, none of whom were legally qualified. “Depositions were recorded in longhand,” he said, “and presentments and further presentments were often dashed out on the morning of the hearing.” There were no women working in the branch. Typing was done by men “as it was considered that the material in many cases was far too unsavoury for a woman’s eyes”.

A small number of Crown Prosecutors conducted the vast majority of prosecutions, with very few cases prosecuted by external counsel. Trials were generally completed quickly and, although the right of appeal against sentence was given to the Crown in 1971, appeals were rare.

In 1983, Victoria’s first Director of Public Prosecutions, John Harber Phillips QC, reported that the Victorian Government led by Premier John Cain had two main objectives in creating the DPP: “firstly, the removal of the process of criminal prosecution from the political arena; and secondly, the creation of a more efficient system for the operation and conduct of prosecutions in the superior courts.”

The Victorian Government stated clearly its intentions when introducing the legislation into Parliament in 1982, noting that “a major aim of the Bill is to remove any suggestion that prosecutions in this state ... can be the subject of political pressure.”
Stephen Carisbrooke (later Deputy Solicitor and Acting Solicitor for Public Prosecutions) was working in the Department of Justice at the time and was instrumental in the development of the Bill. “With the change of government in 1982, one of the first things on the Cain Government’s agenda was the introduction of the DPP legislation to remove criminal prosecutions from the political process,” he said.

“We tried to make the legislation as simple as possible,” said Carisbrooke. “Our instructions were to only include what was necessary to provide the DPP’s powers and achieve the required administrative changes. It was designed as an orderly transfer and that is what it turned out to be.”

The origins of that legislation go back four years to 1978. John Cain was in his first term in the Victorian Parliament, a member of the Shadow Cabinet, and in London. Sir John Rossiter, the Victorian Agent General, arranged for him to see the key people in the Office of the Home Secretary and examine the British DPP model, which had been in existence since the early 1900s.

Cain said that research and discussion showed that the model had worked well in the United Kingdom for some 70 years. The material he brought back helped him convince his party’s Law Reform and Civil Rights Committee and Conference, and it became party policy. As such, the Victorian Act was modelled on this UK research.

Importantly, however, the Victorian Act went further than the UK model by completely removing prosecutions from the political process.

The Act ensured the best people would be attracted to the job and their independence entrenched by providing that the DPP would enjoy the same tenure, salary and benefits as a Supreme Court judge. Moreover, they could not be removed by a whim of government.

The Act received Royal Assent on 21 December 1982. Cain says that being both Premier and Attorney-General helped the rapid passage of the Act by riding through some opposition among Crown Prosecutors.

The Act did not make provision for Crown Prosecutors or a Solicitor for Public Prosecutions. John Buckley remembered the creation of the Solicitor’s position as “something of an afterthought”. It was only after the DPP had been appointed that the need became apparent for somebody qualified to perform the functions of a Solicitor, especially as the DPP himself remained a member of the Bar. From the beginning, therefore, the Solicitor to the DPP was also expected to manage the office of the DPP.

While there have been significant changes to the powers and operations of the DPP since 1982, it is widely recognised that the move to establish an independent prosecuting service was one of the most significant improvements made to Victoria’s – and Australia’s – criminal justice system.

In the 1980s and early 1990s, the Commonwealth and all other states and territories followed the lead set by Victoria in 1982 and established Directors of Public Prosecutions appointed by statute.

Alongside changes to the DPP, the nature of prosecutions in Victoria has also evolved over the last 25 years. Modern prosecutors now need to be familiar with other branches of the law, such as commercial law and family law. New areas of prosecutions have emerged, including computer crime and confiscation of the proceeds of crime. Prosecutors are now more supportive of victims; they need to keep abreast of developments in forensic science; and they must be familiar with the use of technology in acquiring and presenting evidence.

The volume of matters handled by Victoria’s prosecution service has increased dramatically, as has the range and complexity of cases.

While the nature and scale of prosecuting in Victoria has changed, the fundamental principle behind the role of the DPP remains the same as in 1982: that the conduct of prosecutions should be independent of the government of the day.

Twenty-five years after Australia’s first DPP was appointed, this principle remains the cornerstone of a sound system of justice and a free, democratic society. It continues to be essential to maintaining the Victorian community’s trust in the fairness and integrity of a prosecution system that is free from political influence or external interference.
In February 1983, John Harber Phillips QC noted that his appointment as Victoria’s first Director of Public Prosecutions was part of a “mood for change” and an “enthusiasm for reform” that extended across Victoria’s criminal justice system. In the two years following the creation of the DPP, this climate of change would lead to significant legislative, procedural and practice reforms in criminal law proceedings – many of which remain in effect today.
of operation, the DPP’s office was handling around 6,000 matters.

Working conditions were far from ideal. The DPP’s functions were spread across four locations and Phillips commented early in his tenure that he had inherited an office where morale was low due to a combination of poor working conditions, lack of incentive and opportunities for promotion, a sense of neglect and “the lack of someone to speak up for the [office] from a position of real independence”. A new career structure for legal officers, a substantial upgrading of key positions and an increase in fees to prosecuting barristers were features of the DPP’s first year of operations.

The early progress of the Victorian DPP was closely observed by other Australian jurisdictions. The success of the Victorian initiative was reflected in the Commonwealth Government appointing its first DPP in 1984, followed by Queensland in the same year, New South Wales in 1986 and other states and territories shortly after.

One year into his term, Phillips expressed the view that the “main reward” in being DPP “is the opportunity to play a part in providing a better criminal justice system in Victoria”. That has remained the main objective and reward for his five successors, and continues to be the motivating force behind the work of the Office of Public Prosecutions today.

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**THE DPP THEN AND NOW**

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<td>Legal Officers – 45</td>
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<td>Budget – $5.5 million</td>
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<td>Matters handled* – 6,000</td>
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*matters handled refers to briefs prepared and hearings attended.*
John Harber Phillips joined the Victorian Bar in 1959 and the English Bar in 1979. He was appointed Queen’s Counsel in 1975. He served on the Victorian Bar Council for 10 years and was Chairman of the Criminal Bar Association from 1980 to 1984. During the 1970s and 1980s, he appeared for the defence in many of the leading criminal cases in Australia, including the Lindy Chamberlain trial. Following his term as DPP, he was appointed as a judge of the Supreme Court in 1984, until becoming Chairman of the National Crime Authority and a judge of the Federal Court in 1990. In 1992, he returned to the Supreme Court as Chief Justice, remaining in that position until his retirement from the bench in 2003.

From the moment he first heard of the Victorian Government’s intention to create the new role of Director of Public Prosecutions, John Harber Philips was attracted to the position. “When Premier John Cain offered me the appointment just before Christmas in 1982, I said what I always say when offered a job – that I’d have to talk to my wife about it,” he said. “But the more I thought about it, the more attractive it seemed to be. I soon got back to the Premier and said I was pleased to do it. It was as simple as that, really.”

It may have been a simple decision for John Phillips, but the challenges involved in being Australia’s first DPP were far from straightforward. With little in the way of precedent to guide them, Phillips and the newly appointed Solicitor to the DPP, John Buckley, had to develop and implement new procedures and protocols not only for the operation of the office, but for dealing with external agencies, such as the police and the Victorian Bar.

Phillips found the Scottish prosecution service a particularly helpful guide. “Not long after I was appointed, the new Attorney-General, Jim Kennan, said that if I felt overseas studies would assist me in setting up the DPP’s office, then I should go to Scotland, as their prosecution system was a very efficient one that had been in place for nearly two centuries.”

Phillips was especially impressed by the Scottish system’s formal timeframes for various steps in the prosecution process – something he saw as being essential to reducing delays in Victoria’s criminal justice system. “I’m a great believer in momentum. I want to see things keep moving,” Phillips said.

Having been assured by the Premier and the Attorney-General that any proposals for law reform would be viewed favourably by the Government, Phillips wasted little time in proposing amendments to the Crimes Act 1958 to introduce formal timeframes for the filing of presentments and the commencing of trials. “The Scottish prosecutors warned me to choose timeframes that could be achieved, and then hopefully constrict them as we became more and more familiar with their operation,” notes Phillips. “In effect, this is what we did and those timeframes are still in place today.”

Phillips also successfully proposed changes to enable judges to make binding rulings before the empanelment of a jury (reducing the need for a jury to be sent out of the room repeatedly during trials).

Another idea imported from Scotland was the publication in 1983 of the first edition of the legal text Indictable Offences in Victoria by Crown Prosecutors Ian Heath and John Hassett. Phillips points...
Since the creation of the DPP in 1982, there has been a steady increase in the number of appeals brought by the Director against inadequate sentences.

John Buckley, Solicitor to the DPP from 1982 to 1994, remembered that appeals by the Crown against sentence were “very sparse” prior to the creation of the DPP. “Appeals generally weren’t liked by the courts,” he recalled. “Judges didn’t like them and the profession didn’t like them. The view was that the Crown did not contribute or voice any opinion on sentence during the sentencing process, but then chose to appeal against the sentence.”

In the early years of the DPP, appeals against sentence remained relatively rare. John Harber Phillips QC made seven appeals against sentence during his term as Victoria’s first DPP, taking the view that the right to appeal was “a very valuable right and one to be exercised with discretion and care”. However, Phillips acknowledges the importance of having a mechanism to address instances of manifestly inadequate sentences. “Some people don’t realise the enormous damage [these sentences] do to the judiciary,” he said.

In the months immediately after his appointment, Phillips found himself constrained by the working conditions and office arrangements for his staff. While his office was located in Bourke Street, the Crown Prosecutors and legal and administrative staff were spread across four buildings. “We were a little too far removed geographically from each other,” he said. “I was also very worried about accommodation for staff, which I referred to as ‘Dickensian’. But I’m afraid I was never able to achieve any real change in that respect.”

Phillips continues to see the independence of the role of the DPP as its great strength. “While people might be critical of particular decisions, no-one has ever seriously questioned the independence of the people in the DPP’s office,” he said. “Over the years, various DPPs have made statements about matters of public interest and they should be encouraged to continue to do so. Where it’s relevant, the DPP is entitled to express publicly the opinion of a very important officeholder.”

Despite the challenges, Phillips recalled his tenure as DPP as “a very tranquil time”, with the pioneering nature of his role being a significant advantage. “The position was well-received,” he said, pointing out that Attorney-General Jim Kennan devoted considerable time to talking about the DPP’s office and the success it had been in Britain. “This contributed to the very positive way in which the DPP was received by the media and by the public,” says Phillips. “I can’t remember any criticism or hostility being voiced. I know subsequent DPPs had difficult times, but I never experienced anything like that.”
exclaimed ‘Jesus Christ!’ then I’d appeal. Unless I reached that stage, I wouldn’t appeal.”

Since the 1990s, Director’s appeals against sentence have increased significantly. In 2001, Paul Coghlan QC introduced the practice of reviewing every sentence handed down by the Supreme Court and the County Court. “Over the years, DPPs had always said that sentences were reviewed,” said Coghlan, “which basically meant that we trusted staff to draw our attention to sentences where something was manifestly wrong.” Coghlan viewed this process as unsystematic and unsatisfactory.

Victoria’s sixth DPP, Jeremy Rapke QC, has continued the practice of reviewing all sentences. He pointed out that Directors “have no other mechanism for correcting what we think are inadequate sentences. We have no other mechanism for sending a message to the courts that we share their concerns about the level of some sentences for some offences.”

One of the most discussed decisions in relation to a Director’s appeal occurred in the McMaster case in 2007, where the DPP appealed against a sentence of 12 years and six months’ imprisonment imposed on Stuart McMaster for the manslaughter of his partner’s five-year-old son, Cody. The DPP argued that the sentence was manifestly inadequate.

McMaster had assaulted the child on many occasions, resulting in bruising, two skull fractures and internal injuries. He admitted that he had beaten the child with a heavy strap in the weeks leading up to his death, which coincided with the child having a bicycle accident. McMaster initially offered to plead guilty to manslaughter, but that offer was rejected and he was tried for murder before a jury, which could not agree on a verdict. The DPP then accepted McMaster’s renewed offer to plead guilty to manslaughter.

Dismissing the appeal, the Court of Appeal stated that “it was not enough for the DPP to show that the judge could have imposed a higher sentence. It had to be shown that the sentence he imposed was flagrantly, shockingly, inadequate”. The Court’s view was that the sentence imposed on McMaster was “by conventional standards, an extremely heavy sentence for a manslaughter by unlawful and dangerous act to which the offender had pleaded guilty”.

In 2008, responding to public concern about the McMaster case, the Victorian Government announced a new law, known as “Cody’s Law”, which introduced the charge of child homicide.
TURBULENT TIMES

During the late 1980s and early 1990s, the work of the DPP became better known to the Victorian public through the prosecution of a series of notorious crimes, such as the Russell Street bombing and the Hoddle Street massacre, and the high profile debate surrounding the use of police powers. In these turbulent times, the DPP’s office continued to enhance its reputation, playing a leading role in law reform and consolidating its position within the criminal justice system.

Although still in its relative infancy – and still struggling with resourcing and accommodation issues – the DPP’s office found itself centre-stage in some of the biggest criminal trials, political skirmishes and public debates of the 1980s.

A number of major crimes occurred during this period that attracted intense public attention and media scrutiny – all of which were prosecuted by the DPP. These included the Russell Street bombing of 1986, the Turkish Embassy bombing of 1987, the Hoddle Street massacre of 1987 and the Walsh Street murders of 1988.

The 1980s was also the era of the “super trials” – complex and lengthy fraud and corporate crime trials that taxed the DPP’s resources, as well as those of the courts and the police.

It was also a time of often heated public debate about the use of police powers. In 1985, Victoria’s second DPP, John Coldrey QC, was asked by the Attorney-General to convene a committee to review the power of police to interview arrested people.

After extensive research and consultation, the Coldrey Committee proposed allowing consensual interviews without time limits, but with safeguards in place for accused persons, including the tape recording of interviews. The Victorian Government accepted the committee’s recommendations and changed the law accordingly, making Victoria the first Australian state to introduce the electronic recording of police interviews.

The Government also acted on the Coldrey Committee’s recommendations for new laws in relation to fingerprinting and taking body samples. The framework established by the committee for taking body samples continues to underpin forensic sampling procedures in Victoria today. In 2007, the Office of Police Integrity described the work of the Coldrey Committee as demonstrating “that an appropriate balance can be struck between civil rights
and the need for police investigative powers when there is a will to do so”.vi

Coldrey also chaired the Advisory Committee on Committal Proceedings, which recommended the preservation of committal hearings and the introduction of a “reasonable prospect of conviction” test as the standard for committing people to trial – a test subsequently adopted throughout Australia. He succeeded John Phillips as a member of the Shorter Trials Committee, which made recommendations to improve the conduct of trials and the justice process. Throughout the 1980s, the DPP’s office was closely involved in several episodes that generated keen public interest. These included the bungled Australian Secret Intelligence Service (ASIS) training “raid” at Melbourne’s Sheraton Hotel in 1983, the Continental Airlines affair (involving the investigation of a number of police officers for fraudulent activities) and the Nunawading by-election scandal (where leading Labor Party figures were accused of distributing misleading how-to-vote cards). In the first two matters Coldrey advised that charges not be laid, whilst in the third matter, he advised the Chief Electoral Officer that there was sufficient evidence for the Chief Electoral Officer to bring charges. Ultimately no charges were laid.

In 1985, amendments were made to the Director of Public Prosecutions Act 1982 to enable the DPP to request the Attorney-General to exercise the powers of the Director where it was considered desirable in the interests of justice (due to a possible conflict of interest). In 1986, Coldrey made such a request to the Attorney-General in the “Moe case” where, following the DPP’s decision to discontinue a prosecution against a solicitor for fraud, an application was made by the police informant for an investigation by a Grand Jury. Coldrey’s view was that justice would be better served by having any subsequent prosecution undertaken independently of his office. Taking over the prosecution, the Attorney-General reached the same conclusion as Coldrey, directing that no evidence be led on behalf of the Crown in the ensuing court hearing. The “Moe case” remains the last successful summoning of a Grand Jury in Victoria.

For most of Coldrey’s term, the office continued to work with inadequate technology and unsatisfactory working conditions. In his first report as DPP, Coldrey noted that the division of his staff across four locations remained “an impediment to efficiency”. He described the major office at Birkdale House in William Street as “sub-standard accommodation” and praised staff for their “loyalty and devotion” to continue to serve the people of Victoria despite these conditions.vii

Despite Coldrey’s pleas for an urgent resolution of the problem, the DPP’s office was not consolidated into one location (the current premises at 565 Lonsdale Street) until June 1988. Commenting on this in his 1987/88 Annual Report, Coldrey observed: “The predicted increase in productivity has occurred and staff morale has never been higher.” viii

Staff morale was also boosted by the growing public profile of the DPP. While the 1980s are inextricably linked with incidents such as the Hoddle and Walsh Street murders, they also marked the emergence of the DPP as a key player in public and professional debate about criminal law, police powers and the operation of the courts.

The leadership provided by the DPP in the introduction of major law reforms reflected both the uniqueness and independence of the office, as well as its growing stature and presence within the Victorian criminal justice system.
John Coldrey QC
7 NOVEMBER 1984 – 18 FEBRUARY 1991

John Coldrey was appointed Queen’s Counsel in 1984, having joined the Victorian Bar in 1966. He was a member of the inaugural Committee of the Criminal Bar Association of Victoria and served on the Victorian Bar Council in 1984. Prior to being appointed DPP, he worked for over two years in the Northern Territory as Director of Legal Services for the Central Land Council. He was appointed as a judge of the Supreme Court in 1991 and retired in April 2008.

John Harber Phillips’ enthusiasm for the role of the DPP was a key factor in persuading John Coldrey to take up Attorney-General Jim Kennan’s offer of the position in 1984. “I went to see John Phillips with the Attorney’s agreement and he told me what a fantastic job it was,” said Coldrey, who admitted to having some misgivings about accepting the appointment.

“It was a big step for me because I’d been a defence barrister all my life to that point,” he said. “It was also an interesting time following the Costigan inquiry* where there was a lot of clamour for a reduction in the standard of proof and a dilution of the presumption of innocence. I thought that if I took the job, I would be able – or at least have the chance – to prevent the erosion of what I regarded as very important principles.”

Recognising the growing public profile of the office, Coldrey approached his new position determined “to run an effective and efficient prosecutorial organisation, and one that was inherently fair.” This approach was tested at times during his almost seven years as DPP, but he points out that “a terrific team” ensured that the office achieved these goals throughout his tenure.

Coldrey regards the recording of police interviews as one of his major achievements as DPP. “I grew up in an era where a lot of trials were concerned with cross-examining police about alleged fabricated interviews. And no doubt a lot were fabricated – they were typed in those days,” he said. “So I was very keen to bring in the electronic recording of admissions and confessions.”

He recalls two cases – Grimwade and Higgins – as occupying a substantial amount of his time and the office’s resources, as well as highlighting the tension between bringing complex and long prosecutions and the right of an accused to a fair trial. “It became unmanageable,” he said of the Grimwade case, which lasted for more than 290 sitting days, spread across 22 months. Although Grimwade was initially convicted, the Court of Appeal said that the length and complexity of the trial, along with the fragmented and disjointed nature of proceedings made it virtually impossible for the jury to properly assess the evidence and reach a fair verdict. The Higgins case, which involved the successful prosecution of charges against a senior police officer, was another matter that was a “very long and difficult trial for those involved”.

Looking back, Coldrey believes that

* The Royal Commission on the Activities of the Federated Ship Painters and Dockers Union was established by the Australian Government in 1980 to investigate criminal activities associated with the union. The inquiry was headed by Frank Costigan QC.
these trials raised serious questions about the role of prosecutors in complex cases – questions that persist today. “It would be unfortunate if offences couldn’t be prosecuted because of the length of the trial,” he noted. “The DPP has an obligation as a prosecutorial authority to try to break down the complexity and length of these cases. It may be that the DPP picks some representative charges, if possible, or reduces the number of counts on the presentment in some way. But it remains a tricky business and a challenge.”

Coldrey remembers struggling with the same unsatisfactory accommodation arrangements as his predecessor, having his own office in the old Royal Mint Building while his staff were scattered across several locations. “It was totally unacceptable,” he recalled. “The Mint was a rather wonderful building: chandeliers, antiques, velvet curtains – everything you might want, except that you weren’t with the rest of your organisation.”

It took four years to achieve the consolidation of all locations into one building. “We had the support of the Attorney-General,” noted Coldrey, “but of course, Treasury always has something to say in these matters.”

Coldrey felt it was important to attract more members of the private bar to prosecutions work. Towards the end of his tenure, he wrote to all barristers’ clerks, seeking expressions of interest from counsel in undertaking prosecution work for the DPP. “There was a very good response from a large number of counsel,” he said. “I was very pleased with the response and I regarded it as an indication of the office’s good reputation and the esteem in which it was held by the Victorian Bar.”

Coldrey has remained firm in his view that the independence of the DPP is critical to its success and would prefer to see the DPP return to the “total independence” of the office’s early years of operation. “The DPP is still relatively independent, but it doesn’t have that level of independence that it had initially,” he said.

He believes that “it is essential to have an independent prosecutorial authority and there will always be a role for the office. In fact, the office will always be vital in the administration of criminal justice in Victoria”.

Coldrey noted that one of the reasons for the success of the office is that the various Directors have been “sensible, well balanced people with good commonsense. I think that Victoria has been very well-served by the people who have been Directors for Public Prosecutions over the last 25 years.”
a military-style automatic rifle to fire at people driving along the street. Seven people were shot dead and 19 others wounded. Knight was convicted in November 1988 of seven counts of murder and 46 counts of attempted murder. He was sentenced to life imprisonment with a minimum term of 27 years.

These trials were major undertakings for the still relatively new office of the DPP, and Coldrey believes that they demonstrated to the Victorian public that the office “was very professional and capable of handling big cases of that order”.

The 1990s also saw the DPP prosecuting a number of high profile homicides. One of the most notorious involved Paul Denyer (known as “the Frankston serial killer”) who murdered three young women in separate incidents and was sentenced to life imprisonment with no minimum term in 1993. Denyer appealed his sentence to the Supreme Court, arguing that a minimum term should be set – an application opposed by the DPP. The Supreme Court upheld the appeal and fixed a non-parole period of 30 years. In 1995, the DPP applied to the High Court for special leave to appeal the Supreme Court’s decision. This application was refused.

In 2000 and again in 2004 and 2006, the DPP prosecuted another notorious serial killer, Peter Dupas, for the murders of three women in the late 1990s. Dupas, whose violent history spanned three decades and included several convictions for rape, received sentences of life imprisonment without parole for each murder. In the second trial, DPP Paul Coghlan QC directly presented Dupas to the Supreme Court after a Magistrate had refused to commit him for trial. In the third trial, the judge gave permission for a single television camera to record the sentencing of Dupas, only the second time that a sentencing had been televised in Australia.

More recently, the DPP Jeremy Rapke QC appeared in the Supreme Court to prosecute Robert Farquharson, who killed his three sons by driving them into a dam, and John Sharpe, who shot and killed his pregnant wife and 20 month old daughter with a spear gun before discarding their bodies at a local rubbish tip. For the murder of each of his three children, Farquharson was sentenced to life imprisonment with no minimum term. Sharpe was sentenced to life imprisonment with a minimum term of 33 years.

Throughout the years, the Crown Prosecutors have worked closely with the Victoria Police Homicide Squad in prosecuting major homicide cases, which are often conducted in the glare of intense media and public interest. “The officers of the Homicide Squad deal with some of the most distressing, tragic and horrific cases imaginable,” said current Acting Solicitor for Public Prosecutions Stuart Ward. “It’s their hard work, persistence and dedication that provide the basis for a successful prosecution.”
The early 1990s was a challenging and contentious period for the DPP, culminating in substantial changes to the DPP’s powers and operations through the enactment of the Public Prosecutions Act 1994. While these years are remembered for the public debate surrounding the independence of the DPP, they were also a time of significant legislative reform, major improvements to the operations of the DPP’s office and a number of controversial commercial and police prosecutions.

When Victoria’s third DPP, Bernard Bongiorno QC, took up his appointment in early 1991, he could not have foreseen that – just two and a half years into his term – he would find himself embroiled in a political row about the independence of his office. The “DPP affair”, as it came to be known, has continued to reverberate over the years, overshadowing the many achievements of the DPP’s office during this period and the key role it played in implementing changes to the court process and the criminal justice system.

With a new Victorian Government headed by Premier Jeff Kennett taking office in October 1992, one of the main challenges facing the office during Bongiorno’s term as DPP was keeping up with a substantial agenda of legislative reform, including a new sentencing regime and changes to criminal proceedings that were designed to reduce the length of complex trials.

In late 1992, the Pegasus Taskforce report on reducing delays in criminal cases recommended that committal proceedings be undertaken by the DPP. Despite being unsuccessful in securing funding to implement this recommendation, Bongiorno established a Committal Advocacy Section (CAS) within his office. For the first time, prosecutors were involved in the criminal process before the committal hearing, with the aim of reducing case backlogs.

In CAS’s first year of operation, Bongiorno reported that “the number of pleas of guilty being obtained at an early stage has dramatically increased, thereby effecting enormous ‘downstream’ savings for police, the courts and the community generally”. In 1994, the ongoing reduction in case backlogs gave support to Bongiorno’s view that the formation of CAS “had done more to streamline the criminal justice system in this State than any other single initiative in the last five years”.

In 1991, concerned about the morale of Crown
Prosecutors, Bongiorno undertook a study of their work practices and was shocked to discover that they averaged around 50 court appearances for an entire financial year, with one prosecutor managing to attend court on just six occasions. He appointed a briefings coordinator to ensure that prosecutors were as fully employed as possible, achieving major productivity gains and improving the professionalism of Crown Prosecutors’ Chambers.

During the mid-1990s, the issue of fatal shootings by Victoria Police was the subject of considerable attention, with 11 men shot dead by police between 1987 and 1989. Two of these incidents led Bongiorno to recommend charging a number of serving or former police officers with murder, a decision that generated intense public debate and attracted sharp criticism from senior police.

Early in his term, Bongiorno warned media organisations to be more careful in reporting matters before the courts, saying that he was “increasingly disturbed by the conduct of the media, particularly the television media, with respect to the sub judice rule concerning the reporting of pending legal proceedings.”

In August 1993, Victorian Premier Jeff Kennett made public comments on daytime television following the arrest of alleged serial killer, Paul Denyer, telling viewers that he was relieved the murderer had been caught. The statement prompted media interest in whether or not the Premier had breached the sub judice rule, with Bongiorno indicating that the Premier’s comments may have been in contempt of court.*

In late 1993, the Victorian Government drafted the Public Prosecutions Bill 1993, which proposed significant changes to the powers of the DPP, including the appointment of a Deputy Director of Public Prosecutions who would be responsible not to the Director, but to the Attorney-General. The Director would only be able to take certain actions with written consent of the Deputy, including bringing contempt proceedings and having a police prosecution referred to the DPP.

Bongiorno stated that he would resign as DPP if the Bill became law. “I regarded its provisions as a radical and unacceptable departure from the principles of independent prosecution,” he later wrote.†

Senior members of the judiciary, the Victorian Bar Council, the Law Institute of Victoria, the International Commission of Jurists, DPPs from around Australia and law academics condemned the proposed legislation. Writing in the *Australian Law Journal* shortly after these events, Xavier Connor QC (a retired Federal Court Judge) noted: “Not one single legal figure came forward to defend the Bill’s provisions publicly.” ‡

In March 1994, the Victorian Attorney-General issued a new version of the Bill that omitted most of the provisions that the legal profession and others had found objectionable. Under the new Bill, the DPP was required to share his or her powers in certain matters with a Director’s Committee and a Committee for Public Prosecutions. The Bill also provided for the separation of the DPP from the Office of Public Prosecutions, which would be managed by a Solicitor for Public Prosecutions, and created a new office of Chief Crown Prosecutor. The ability to bring contempt of court proceedings was limited to the Attorney-General. §

The revised *Public Prosecutions Act 1994* came into effect on 1 July 1994.

In November 1994, Bongiorno resigned as DPP, bringing to an end an eventful period in the history of the office.

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* No proceedings were ever initiated against the Premier. Denyer was convicted for the murder of three women in 1993.

† No proceedings were ever initiated against the Premier. Denyer was convicted for the murder of three women in 1993.

‡ No proceedings were ever initiated against the Premier. Denyer was convicted for the murder of three women in 1993.

§ No proceedings were ever initiated against the Premier. Denyer was convicted for the murder of three women in 1993.
Bernard Bongiorno joined the Victorian Bar in 1968 and was appointed Queen’s Counsel in 1985. Following his term as DPP, he returned to practice as a barrister, serving as a member of the Victorian Bar Council from 1995 to 1998 and member and Chairman of the Ethics Committee of the Victorian Bar. He was also a council member of the Institute of Judicial Administration and a member of the Victorian executive of the International Commission of Jurists. In 1999, he was made a Commander of the Order of Merit for the Republic of Italy for his many years of service to Melbourne’s Italian community. He was appointed as a judge of the Supreme Court in 2000.

While Bernard Bongiorno QC has consistently refused to comment publicly about his time as DPP, others have praised his actions as maintaining the integrity and independence of the office.

Bongiorno is also remembered by those who worked alongside him as a barrister of outstanding calibre and a hard working, highly principled and compassionate leader.

As well as reviewing and reforming many office practices, Bongiorno encouraged solicitors working for him to undertake their own appearances, recognising that it generated not only financial benefits, but also an improvement in the skills and competence of Victoria’s prosecution service.

John Buckley, who served as Solicitor to the DPP for many years, recalls that Bongiorno “really encouraged advocacy. He regarded the workload of each solicitor as his or her practice and he wanted them to regard it as their practice and conduct it accordingly.”

Bongiorno’s support of women barristers during his time at the Victorian Bar and as DPP is also widely acknowledged. Chief Justice of the Supreme Court, Marilyn Warren, has recalled how in the late 1980s a group of leading QCs, including Bongiorno, actively engaged in a policy of having women as juniors. This small group went on to take silk themselves, with two being appointed to superior courts. However, Justice Warren has observed that few have taken up the efforts of Bongiorno and others to actively support women at the Bar.

Bongiorno was also outspoken about the need for judicial reform during his tenure as DPP, stating that “my experience has led me to the firm view that no part of the [justice] system can afford to ignore completely currents of public opinion unless it does not mind becoming an endangered species”. He urged judges to be open to the benefits of judicial education in the interests of improving public confidence in the criminal justice system, arguing that “education in the area of sociology is no less important for a criminal court judge than a basic knowledge of the ordinary laws of physics would be for a judge who habitually decides cases involving structural engineering.”

Another goal pursued by Bongiorno was reducing the often devastating effect on children of giving evidence in sexual assault cases. He proposed a re-examination of the requirement for children to give oral evidence in court, urging consideration to be given to producing video evidence of the child’s earliest official complaint in all subsequent civil or criminal proceedings.

While Bongiorno was ahead of his time in recognising the potential of
technology in the conduct of criminal cases, the DPP’s office was still struggling with inadequate computing resources. Bongiorno noted in 1993 that “any reasonably sized solicitor’s office would employ computer technology way in advance of anything in this office”. xviii He continued to push for greater technological resources for Victoria’s prosecutors, although it was not until 1995 that all solicitors working in the Office of Public Prosecutions were provided with a computer.

For the first and only time, Bongiorno placed his concerns about the events of 1993 and 1994 on the public record in his final Annual Report, expressing his strong concerns about the impact of the Public Prosecutions Act 1994. He noted that, while the redrafted legislation preserved the DPP’s independent decision making function, it was now constrained by “a bureaucratic process of compulsory consultation ... unknown in any other prosecution system”. He argued that the splitting of functions between the DPP and SPP meant that “it is not unlikely that in the future the actual independence of the Director of Public Prosecutions will be effectively compromised by an inability to direct or control the staff who must ... carry out the day to day work of prosecuting”.xix

Reflecting upon these issues six years later when welcoming Justice Bongiorno to the Supreme Court bench in 2000, Law Institute President Tina Miller commented that his appointment “is recognition of many of the best aspects of a strong and independent judicial system”.xx

His Honour Justice Bongiorno declined to be interviewed for this publication.
involving leading businessman John Elliot and three co-accused who were charged with theft and conspiracy following a National Crime Authority investigation. While one of the three men charged with Elliott pleaded guilty and received a sentence of six months’ imprisonment, Elliot and his other two associates were acquitted when the Supreme Court ruled that much of the NCA’s evidence was inadmissible due to being gathered outside its terms of reference. Elliot accused the DPP – then Bernard Bongiorno QC – of acting improperly in the matter and commenced proceedings in the Federal Court of Australia against the Victorian DPP and the NCA, alleging that they had been conspiring against him in relation to charging him and his co-accused. The court dismissed these proceedings.

As the OPP’s Commercial Crime Section built expertise and experience, the DPP secured convictions in a number of high profile fraud cases. In 1995, the DPP secured one of the longest jail terms for fraud in Victoria when Joseph Talia was sentenced by the County Court to 15 years’ imprisonment in what was known as the “Werribee Market Gardeners case”. Talia and a number of co-offenders had conspired to defraud investors (most of whom owned market gardens around Werribee) of more than $65 million by claiming to be carrying on a bona fide investment scheme while using the funds to finance their personal lifestyles. Talia appealed to the Supreme Court, which reduced his sentence to 12 years’ imprisonment.

In 1997, the DPP successfully prosecuted Brian Quinn (former CEO and Chairman of Coles Myer) and Graham Lanyon (former maintenance manager of Coles Myer) for conspiracy to defraud. The two men had conspired to provide false invoices in order to have major renovations undertaken at Quinn’s family home. The fraudulent activity lasted for more than six years and involved nearly $4.5 million being paid by Coles Myer. Quinn was sentenced to four years’ imprisonment, with a non-parole period of two years and six months.

While a number of procedural changes have been implemented over the years to reduce the length of trials of this type, many commercial crime prosecutions remain highly complex matters. In recent years, the OPP’s Commercial Crime Section has undertaken extensive work in preparing prosecutions for one of Victoria’s largest ever fraud cases, following the Operation Harmonics investigation by Victoria Police into a series of frauds against Victoria University that cost the institution up to $30 million.

Commercial crime does not only involve financial deception. In 2007, the DPP conducted the first successful prosecution in Victoria for art fraud, securing the conviction of a married couple in their 60s for forging and selling paintings supposedly by leading Aboriginal artist Rover Thomas. For many people in the Australian arts industry, the successful prosecution of Pamela and Ivan Liberto by the Victorian DPP was a significant breakthrough, establishing that art fraud is a serious crime that will be prosecuted vigorously.
Stability, balance and growth

The years following the controversy around the passing of the Public Prosecutions Act 1994 marked the start of a new era for the DPP in Victoria. Operating in a quieter environment, the DPP focused on consolidating and strengthening the core legal functions of the office and working with the newly created Office of Public Prosecutions to achieve a balance between prosecutorial independence and financial accountability.

Consciously adopting a low public profile – and aware of the importance of restoring confidence in the independence of his office – Victoria’s fourth DPP, Geoffrey Flatman QC, concentrated his attention on “the execution of an independent and professional prosecutorial system”.

After refraining from comment for several months following his appointment, Flatman defended the independence of the DPP in his first Annual Report and refuted the notion “that prosecutorial independence and financial accountability are somehow incompatible”. Arguing that he had a clear responsibility to conduct prosecutions in an effective, economic and efficient manner, Flatman worked closely with the OPP to ensure that he met this responsibility.

Peter Wood, who became Victoria’s first Solicitor for Public Prosecutions in 1994, recalls that after the tumult of the preceding years there was a sense that the office simply needed to get on with the job. “At the time, things were still very tense politically,” he said, “but we were eagerly looking forward to getting things moving and making the new legislation work.”

Flatman’s view was that the consultation required by the new legislation in relation to certain decisions of the DPP gave “accountability in the form of a safeguard against arbitrary, capricious, and unjust decisions”. He also saw the separation of prosecutorial decision-making from the administration of the resources needed to implement the decision as “appropriate in principle and effective in action”.

Wood notes that these views informed Flatman’s managerial approach as DPP, an approach that he sees as being largely responsible for the “potential difficulties” inherent in the Public Prosecutions Act 1994 never being realised. “[Flatman] had no ambition to manage the OPP,” said Wood. “He could focus on his prosecutorial decisions, legal policy and running cases. He could forget budgets, staffing issues and the rest – he had the Solicitor for Public Prosecutions to do all that.”

During the late 1990s, the OPP’s facilities were progressively improved, including a major upgrade of
IT equipment (with the office being fully networked for the first time) and the introduction of an electronic case management system.

Flatman and Wood continued to push for greater staff resources for the OPP, securing the appointment of an additional four Senior Crown Prosecutors and six Crown Prosecutors in 1995. These appointments led Flatman to reject further the notion that the quality and independence of the DPP had been compromised by the creation of the OPP, stating in 1995 that he was “at present better represented and the public better served in terms of permanent Crown Prosecutors than it has been at any time since the creation of the office of Director of Public Prosecutions”. xxiii

The DPP and the OPP continued to expand into new areas. In 1995, the OPP took over the conduct of all committal proceedings in Victoria (then around 200 matters per year), a development later described by the Chief Justice of the Supreme Court, John Harber Phillips, as “a very significant reform in the criminal justice system”. xxiv

This change required a substantial step-up in the advocacy skills of the OPP’s solicitors, with Flatman observing that “an office which formerly based its case preparation in solicitor skills must now allow for the development of advocacy skills”. xxv In 1996, advocacy training of around 60 OPP staff was provided by the Australian Advocacy Institute – the first time staff involved in prosecutions in Victoria had undertaken such training.

In 1998, following the enactment of the *Confiscation Act* 1997, the OPP created a new Confiscations Section to pursue the confiscation of assets used in the commission of a crime or purchased with the proceeds of crime.

In 1999, the Victorian Government led by Premier Steve Bracks restored some of the original principles of the *Director of Public Prosecutions Act* 1982. Provisions relating to the appointment and conditions of service of the DPP were transferred to the *Constitution Act* 1975 where they may only be repealed or amended by a bill passed by a majority of members in both houses of Parliament. The power of the DPP to bring contempt proceedings was also restored. Introducing the legislation into Parliament, Attorney-General Rob Hulls argued that it “substantially enhances the independence of prosecutorial decision making in Victoria from governmental or political interference”. xxvi

One of the greatest achievements of the DPP and the OPP during this time was taking up the interests and concerns of victims of crime – reflecting Flatman’s strong belief that victims and witnesses should be treated with greater respect during the prosecution process. In September 1995, the OPP established the Witness Assistance Service (WAS) and, in 1997, the Committee for Public Prosecutions issued formal Guidelines on the Treatment of Victims of Crime.

WAS initially consisted of a social worker and two solicitors and was intended primarily to assist prosecution witnesses. However, from its earliest days, WAS became oriented increasingly towards victims of crime – an orientation that has been maintained to the present day.

These developments represented a significant shift in the focus of prosecutions. Previously, there had been little emphasis on victims as part of the prosecutorial process; the creation of WAS signalled the intention of the DPP and the OPP to provide increased support for victims and a greater consideration of their needs as an integral element in prosecuting crime in Victoria.
“Open” and “accessible” are the words most often used to describe Geoffrey Flatman QC’s tenure as Victoria’s fourth Director of Public Prosecutions. While recognised for his advocacy skills and extensive knowledge of the criminal law, Flatman (who passed away in 2002) was also seen as a receptive and respectful DPP, one who was willing to consider the views of a wide range of people – from his own staff and members of the legal profession to the police, victims of crime and community groups.

Flatman was keen to see the OPP become an attractive and enjoyable place to work. To this end, he introduced a number of internal reforms, including making himself more available to the office’s solicitors and Crown Prosecutors for advice and consultation, providing greater training opportunities for staff and offering personal encouragement and support to young solicitors in the office.

He was also highly supportive of attracting more women into prosecutions. Five women were appointed as Crown Prosecutors during his directorship and he took great care to ensure that women counsel were treated equally in the provision of briefs to prosecute.

Flatman’s leading role in ensuring that the prosecution process took greater account of the concerns of victims is widely acknowledged. He argued that the focus of the criminal justice system on the resolution of particular legal issues between the state and the individual meant that “the legitimate interests of the victims have been sometimes overlooked or not give sufficient weight”.

In papers, articles and speeches, Flatman observed that there was no reason why a prosecutor’s duty of fairness should be confined to the accused and should not be extended to victims. While accepting that a victim’s liberty was not at peril from criminal proceedings, he noted that victims “have other recognisable interests which are affected by the criminal process”.

He also met personally with many victims of crime and spoke to community groups assisting victims.

Paul Coghlan QC (who served as Chief Crown Prosecutor from 1995 to 2001) noted that, at a time of controversy about the DPP, Geoff Flatman’s “leadership was very important and a great stabilising force”.

Delivering the eulogy for Justice Flatman at a special sitting of the Supreme Court in 2002, Chief Justice John Harber Phillips noted that “in troubled times, he speedily made it clear to the public that he was completely independent of government and that his office would be conducted accordingly”.

The Chief Justice concluded: “Geoffrey Flatman was not simply a good Director of Public Prosecutions – he was a great one.”
Supporting victims

The support provided to victims and witnesses as part of the prosecution process has improved dramatically since the early days of the DPP.

Stephen Carisbrooke, who started work in the Criminal Law Branch prior to the establishment of the DPP in 1982, says that the culture in prosecutions until the 1990s was to leave victims alone to avoid any suggestion of “coaching” them in relation to giving evidence. “When I started here, we didn’t really acknowledge that we had victims,” he said. “We left dealing with victims to the police informants.”

The creation of the OPP Witness Assistance Service (WAS) in 1995 marked a turning point in the treatment of victims and witnesses within the prosecutorial process. Peter Wood, Solicitor for Public Prosecutions at the time, recalled the concerns of some people that a greater emphasis on victims would distort the “balance” in the justice system. “Irrespective of that philosophical debate, you only had to stand around the Witness Assistance Service to see people who obviously needed support,” he said. “There was a big need for it.”

The DPP’s work in this area was also instrumental in improving support for victims across the criminal justice system more broadly. Kay Robertson, Solicitor for Public Prosecutions (SPP) from 2001 to 2005, said that the DPP and the OPP “seeded many ideas – and greater support for victims is one of them”. In Robertson’s view, “the witness assistance work carried out by the OPP during the 1990s was a very big step forward for the criminal justice system. It also provided the impetus for additional funding for victims, both within the office and in other agencies.”

With support for victims now firmly entrenched within Victoria’s prosecution service, the OPP has found itself also providing assistance to “secondary victims” – family members and friends – in cases involving multiple victims and large numbers of witnesses. In the Towle case in 2007, six children were killed and four seriously injured when a vehicle driven by the accused struck a group of children standing by the side of the road. At the committal hearing in Mildura in March 2007, 42 witnesses were called, including 28 children. With feelings running high in the local community, the trial was moved from Mildura to Melbourne to ensure an impartial jury with no connection to any of the people involved in the case or the local community.
The Witness Assistance Service was called upon to provide support, information and advice to a large number of victims and witnesses, many of whom were young people involved in the criminal justice system for the first time. WAS also provided assistance with transport and accommodation costs for people travelling to Melbourne for the trial. In February 2008, Towle was found guilty of dangerous driving causing death and serious injury and was sentenced to 10 years’ imprisonment, with a non-parole period of seven years. After Towle was sentenced, WAS continued to provide support and information to victims, witnesses and the families involved, helping them to understand the legal reasoning behind the court’s decision.

Victoria’s current DPP, Jeremy Rapke QC, is a strong advocate of support for victims and witnesses being an integral part of a modern prosecution service. While believing that prosecutors “have made enormous strides in how we support victims”, he acknowledges that there is still some way to go. “It’s now a matter of building on what we have,” he said. “We have to recognise the pivotal role that victims have in our system – giving them a place, giving them a voice, giving them recognition at all levels: from the investigative stage right through to the appellate stage.”
In the early years of the new century, the DPP and the OPP introduced new practices and approaches to keep pace with the rapidly changing nature of prosecutions. From specialist prosecution units and an expanded use of technology to greater support for victims and actions to reduce delays in the courts, the new directions taken by the DPP influenced not only the conduct of prosecutions, but also the day-to-day operations of the Victorian criminal justice system.

Victoria’s fifth DPP, Paul Coghlan QC, presided over significant changes to Victoria’s public prosecutions service. While many of these changes were the result of internal initiatives, others were driven by reforms to the criminal law and court processes.

Coghlan’s time as DPP was characterised by closer cooperation between the OPP and other agencies, with the aim of improving the overall efficiency and effectiveness of the criminal justice system. In particular, Coghlan and the OPP worked closely with the courts, Victoria Police, the Department of Justice and others to implement the Victorian Government’s 2004 Justice Statement. Backed by additional resources from the government, the office also sharpened its focus on reducing delays and resolving cases earlier.

Recognising the value of developing expertise in particular areas of prosecutions, the OPP established specialist units to deal with organised crime, police corruption and serious sex offences.

In 2003, the OPP created an Organised Crime Section to deal with prosecutions arising out of the Purana Task Force (which had been set up by Victoria Police as a result of a series of murders associated with the so-called “Melbourne gangland wars”). In 2007, two Crown Prosecutors and three OPP solicitors received Citizen Commendations from the Chief Commissioner of Police for their outstanding work in assisting the Purana Taskforce.

In 2004, the OPP created a Corruption Prosecution Unit to deal with matters relating to police officers accused of corruption. Initially supporting the work of the Ceja Task Force (which investigated criminal activities by some members of the Victoria Police Drug Squad), the unit has continued to prosecute police officers charged with serious offences. In 2008, the unit took over the conduct of committal proceedings involving defendants who are police officers and continues to provide advice, support and a prosecution
service to the Office of Police Integrity (OPI) and Victoria Police’s Ethical Standards Department.

In 2007, following the introduction of the Victorian Government’s Sexual Assault Reform Package, the OPP established a Specialist Sex Offences Unit (SSOU) to prosecute serious sex offences. The unit introduced an innovative specialist approach to prosecuting these offences, bringing together prosecutors and solicitors with expertise in sex offence cases.

Launching the unit, Attorney-General Rob Hulls noted that its formation “makes Victoria a national leader in the prosecution of sexual assault offences”, with no other state or territory having developed such a comprehensive specialist approach. xxxi

Coghlan observed that one of the unit’s main objectives was to provide better support for the victims of these offences: “While we cannot take away the pain of the victims, we can ensure that they get more appropriate support and they are treated with sensitivity and respect. I hope it will make victims more confident to come forward and report sex offences to the police.” xxxii

Alongside the new SSOU, the OPP continued to strengthen its support for victims of crime, including expanding the Witness Assistance Service, implementing the Victims’ Charter (introduced by the Victorian Government in 2006) and publishing the Pathways to Justice guide for victims and witnesses of serious crimes. Coghlan noted in 2007 that “this is an area of growing significance for prosecution services around the world – and Victoria is no exception”xxxiii

Recognising that the DPP was operating in a climate “where much public debate now occurs about the question of sentence and in particular the adequacy of sentence”,xxxiv Coghlan commenced the practice of reviewing every sentence handed down in the County Court and Supreme Court. During his term, appeals by the Director against sentence steadily increased, culminating in a record number of appeals in 2006/07.

Coghlan also worked closely with Solicitors for Public Prosecutions Kay Robertson, Stephen Carisbrooke and Angela Cannon to ensure that the OPP continued to evolve as a modern, high-performing prosecution practice. In 2006, following an extensive review, the OPP commenced a major reorganisation program. A key feature of the reorganisation was the creation of seven new legal directorates within the office, as well as the appointment of senior legal specialists in key areas of law and prosecutions practice.

The program aimed to enhance the OPP’s capacity to respond to the changing needs of the criminal justice system, while ensuring that the special independent role of the DPP was properly supported.

In 2007, the OPP developed its first ever independent Budget submission to the Victorian Government, resulting in a substantial increase in funding for the office.
Paul Coghlan joined the Victorian Bar in 1978 and served on the Committee of the Criminal Bar Association of Victoria from 1992 to 1995. He was appointed Queen’s Counsel in 1995. Prior to becoming DPP, he worked in Crown Prosecutors’ Chambers at state and Commonwealth levels, including serving as Associate Commonwealth DPP from 1990 to 1992 and Chief Crown Prosecutor for Victoria from 1995 to 2001. He was also Mayor of the City of Fitzroy from 1974 to 1975. He was appointed as a judge of the Supreme Court in 2007.

“The ride was fantastic and I enjoyed every minute of it,” said Paul Coghlan QC of his six years as DPP.

Describing himself as “a working barrister” when he took up his appointment, Coghlan was keen to continue appearing in court as part of his role as DPP. “One of the big advantages in having a separate function of Solicitor for Public Prosecutions is to free up the Director to conduct cases,” he said. “From the start, I was very happy to let the Solicitor for Public Prosecutions run his or her own race.” This approach gave him the scope to personally prosecute several high profile cases in the High Court and the Court of Appeal during his term as DPP.

Coghlan also came to the position with a strong interest in the rights of victims of crime and their families. He actively engaged in law reform activities relating to victim assistance and routinely met with victims to explain case outcomes and prosecutorial decisions that affected them. Crediting his predecessor, Geoffrey Flatman QC, as being “absolutely at the heart” of reforms to support victims, Coghlan believes that the Victorian DPP has shown great leadership in this area over the past decade. “While we still have a lot to learn, we have changed the notion that victims and witnesses are an encumbrance in prosecuting,” he said.

Known for his approachability and openness – and for his support of junior staff within the office – Coghlan took a particular interest in the training of young advocates. While DPP, he continued to teach in the Bar Readers’ Course and was a leading participant in the Victorian Bar’s Advocacy Training courses in the South Pacific, instructing in advocacy workshops in Papua New Guinea, Vanuatu and Fiji.

He was also conscious of creating a positive work environment at the OPP. He made particular efforts to develop family-friendly employment practices and ensure that staff had opportunities to achieve a better work-life balance.

Having been appointed a Crown Prosecutor around the time of the commencement of the Public Prosecutions Act 1994, Coghlan believes that the DPP has operated as effectively under the 1994 legislation as under the previous 1982 Act. He acknowledges some tensions and difficulties, but believes that the split between the DPP and the OPP has delivered largely positive outcomes. “Shared decision-making between the DPP and the OPP is a very critical part of an effective prosecution service in Victoria,” he said, “because it’s nigh on impossible for the Director or the Solicitor to be across the whole organisation and to manage cases simultaneously.”

More than the governing legislation, Coghlan sees proper resourcing as the key
to a professional, independent prosecution service. “I don’t think that the legislation has very much to do with it,” he said. “It’s the resources that you can cobble together and the way that you run the organisation – taken together with the staff that you have and retain – that make the difference.”

In an ideal world, Coghlan believes that “a proper, reasonably funded prosecution system would be a constitutional guarantee. We should understand that if we underfund our prosecution service and conduct prosecutions badly, the fabric of democracy is damaged – because it is an absolutely vital part of the democratic process.”

However, he says that it’s difficult to convince people of the value of the role played by the prosecution process. “One of the problems that all DPPs have had over the years is that we hardly ever get to deal with people who really understand what prosecutors do – and prosecutors aren’t very good at explaining what they do,” he said. “I think we struggle to get across the the value and the importance of the work done in prosecutions.”

Coghlan remains adamant that “the most truly independent model” of the DPP exists in Victoria: “The doomsayers who said [in 1994] that it was the end of an independent Director have not been demonstrated to be right.”

ORGANISED CRIME AND THE ‘GANGLAND WARS’

Since its creation in 2004, the OPP’s Organised Crime Section has successfully pursued the prosecution of a number of leading figures in the so-called “Melbourne gangland wars”, working alongside Victoria Police’s Purana Task Force (set up in 2003 to investigate organised crime networks in Victoria).

The “gangland wars” saw more than 20 people killed over a five-year period when a violent struggle broke out between members of organised crime gangs in Melbourne for control of the trade in amphetamines and “party drugs”.

In 2007, the DPP prosecuted one of Melbourne’s most notorious gangland leaders, Carl Williams, who was charged with murdering three members of rival underworld gangs and conspiring to murder another. As the Supreme Court judge who sentenced Williams observed, the murders occurred at a time of an “almost unprecedented level of very public murders of known or suspected criminals”. With a number of Williams’ co-offenders making statements implicating him in the killings, he pleaded guilty to the four charges in an attempt to gain a discounted
sentence. He was sentenced to life imprisonment for each of the offences, to be served concurrently, with a minimum of 35 years in jail before becoming eligible for parole.

Also in 2007, Sean Sonnet – a gunman hired by Carl Williams to kill gangland rival Mario Condello – was convicted of conspiracy to murder and sentenced to 20 years’ imprisonment with a minimum term of 16 years. Police learned of the plot to kill Condello by accident, after bugging the car of a suspected drug trafficker. In 2004 they arrested Sonnet and accomplice Greg Hildebrandt as they waited to ambush Condello in 2004, armed with loaded handguns. On 6 February 2006, Condello was murdered in his home by unknown assailants.

In 2008, Evangelos Goussis was found guilty by a Supreme Court jury of gunning down underworld figure Lewis Moran four years earlier at a club in Brunswick. During the trial, the prosecution’s main witness gave evidence that he was hired to murder Moran, had recruited Goussis to his “hit team” and had driven the getaway car on the night of the murder. The court also heard that Carl Williams and another accused had provided money to finance the hit. The trial ran for eight weeks and was the reason for the DPP successfully seeking a court order prohibiting the broadcasting in Victoria of the Channel Nine television drama series Underbelly on the basis that it may interfere with Goussis’ right to a fair trial.

The DPP was also instrumental in Tony Mokbel being returned to Victoria to face serious charges that include murder and drug trafficking. After Mokel absconded on bail in 2006, the DPP sought a warrant from the Supreme Court for his arrest. In June 2007, Mokbel was located and arrested in Greece. Shortly afterwards, the Commonwealth and Victorian DPPs requested the Commonwealth Attorney-General to apply to the Greek Government for Mokbel’s extradition. The extradition was conducted by the Commonwealth Attorney-General’s Department, with the Victorian DPP and Victoria Police providing background information and affidavits. Mokbel finally arrived back in Australia in May 2008.

The OPP’s Organised Crime Section has prosecuted a number of other underworld figures in cases emanating from the Purana Task Force’s investigations, including prosecutions for murder, conspiracy to murder and drug trafficking. In 2005, another leading crime figure, Mick Gatto, was acquitted of the murder of hitman Andrew ‘Benji’ Veniamin, having admitted to shooting Veniamin but claiming that he had acted in self-defence.

The OPP’s Confiscations Section has also played a key role in the Purana Task Force investigations and prosecutions. In particular, the section has confiscated millions of dollars in real estate, shares and other assets belonging to Tony Mokbel, his associates and family members. The combination of criminal prosecutions and asset confiscations has been vitally important in tackling organised crime in Victoria in recent years. As former Solicitor for Public Prosecutions Angela Cannon points out: “This fairly dormant area of the criminal law is now being used in a very strategic and effective manner through the collaboration of Victoria Police and the Office of Public Prosecutions.”
LOOKING TO THE FUTURE

While continuing to adhere to the principles of independence and fairness in prosecuting, the DPP operates today in a different climate from that of 25 years ago. More varied and complex cases, constantly evolving legal principles and court procedures, new technologies and closer public scrutiny have placed additional demands upon prosecutors. The DPP and the OPP have taken action to ensure that Victoria’s prosecution service has the structure, resources, staff and skills needed to respond to this changing environment, while maintaining a high standard of service to the community.

Jeremy Rapke QC, Victoria’s sixth DPP, is well aware of the many challenges facing prosecutors in the 21st century and sees the DPP’s leadership as vital to building a prosecution practice that is well-equipped to move with the times. “Today, much more is expected of prosecutors than previously,” he said, “and it’s my job – and that of the Solicitor for Public Prosecutions – to make sure that we can meet these expectations.”

Under the leadership of Rapke and SPPs Angela Cannon and Stuart Ward, the OPP has continued the major reorganisation program commenced under Paul Coghlan QC, completing the restructure of the office’s legal practice, implementing a new corporate support structure and introducing new business processes and governance arrangements.

While these changes are designed to take the OPP forward as a modern, specialist legal practice, they also aim to improve the office’s ability to explore new approaches to prosecuting and play a more influential role in the operations of the criminal justice system. “We want to use the experience of our staff, as well as the extensive data about criminal offending that we collect, to make a real difference to the justice system and to the Victorian community,” said Ward.

In late 2007, the OPP established another specialised section, the Early Resolution Advocacy Unit, which adopts a proactive approach to resolving matters at an early stage. Cannon has said that part of the rationale behind setting up the unit was to reduce the stress experienced by victims of crime. “This unit uses its expertise and skilled negotiating to ensure that, where appropriate, victims do not have to go through the trauma of trials and can have closure to cases at the earliest opportunity,” she said. “It also leaves other
OPP staff free to concentrate on cases that proceed to trial and are not appropriate to settle.”

In 2008, the OPP announced that it would establish its first permanent regional office in Geelong, an initiative that Ward called “a very significant development for prosecutions in Victoria and recognition that a significant proportion of the OPP’s work is done in regional areas”.

Following a comprehensive review, the OPP made major changes to its procedures for briefing private barristers to conduct prosecutions. Changes included a new fee structure and service charter, and a new Counsel Advisory Group to match prosecutors with cases that are suitable to their expertise and experience. With expenditure on external counsel fees amounting to around one quarter of the OPP’s budget, Ward says that the changes “will ensure that the OPP obtains optimal value from our engagement with the private Bar, ensure that service levels remain high and that we get consistently good outcomes for victims of serious offences”.

Another key initiative is the development of a career stream for solicitor advocates in prosecutions, a direction to which Rapke is personally committed. “It means that I can reduce my reliance on the private Bar for representation, while making prosecutions work more attractive for young solicitors,” he said. “I’m also hopeful that it will encourage experienced advocates to remain with the OPP, instead of seeking opportunities elsewhere.”

Alongside the reforms to the OPP’s legal practice, the new advocacy stream will give solicitors the option of pursuing careers focused on management, legal specialisation or advocacy – something that Rapke sees as critical to “opening up more exciting and rewarding careers in prosecutions”.

In the first months of his term, Rapke introduced measures to improve the openness of prosecutorial decision-making and enhance community understanding of the role of the DPP. These measures included making publicly available for the first time the Director’s policies that guide the DPP’s and the OPP’s decisions and actions in relation to prosecutions. “I don’t think that we’ve done a good job of educating the public about what we do, who we are and where we fit,” said Rapke. “I think we ought to be prepared to engage the public more.”

With this goal in mind, in 2008 the OPP appointed its first Senior Communications Adviser to liaise with the media and to improve communications with other agencies and the Victorian community.

Rapke has continued Paul Coghlan QC’s practice of reviewing every sentence handed down by the Supreme Court and the County Court. “We’ve had some successes in being able to increase sentences in some areas,” he said. “We can point to things like manslaughter, culpable driving, child homicides and so on as examples of where we have pushed and pushed and, as a result, have got some sentences up to reasonable levels.”

In his first Annual Report as DPP, Rapke expressed the view that “much of the data on sentencing demonstrates that some courts underrate the seriousness of criminal offending by imposing inadequate sentences”. He recorded his disappointment that “many Crown appeals are dismissed, despite the courts being satisfied that the sentences were manifestly inadequate, due to the appellate principle of double jeopardy”. He says this is “an anomaly” that he will work hard to address during his time as Director.

Reflecting on the past 25 years of the DPP in his first report, Rapke noted that Victoria’s prosecutors have served the community with great distinction. He stated: “During my term as DPP, I intend to build on this strong tradition – maintaining the integrity, impartiality and independence of Victoria’s prosecution service as we move into new areas of practice, take on new challenges and go forward as the premier prosecution service in Australia.”
Jeremy Rapke QC became Victoria’s sixth DPP 33 years to the day after he joined the Victorian Bar in 1974. His appointment followed more than 12 years working in prosecutions, during which time he acted as head of the OPP’s Corruption Prosecution Unit and prosecuted some of Australia’s best-known murder and corruption trials.

Rapke has described his career in criminal law as evolving over time. “In my 20-odd years at the Victorian Bar, I did every type of case,” he said, “but I liked the rigorous advocacy that is generally found only in the criminal law. I enjoyed the court work and I enjoyed the jury work. So crime just developed as an interest and then eventually became a passion.”

That passion is now being directed into building greater public confidence in the prosecutorial process, with Rapke determined to improve the transparency of the work and decisions of the DPP and the OPP. “Accountability is very important, but trust is even more important,” he said. “In an open democratic society, prosecutors can only do their job if the community trusts them to do that job properly and with integrity. That trust is engendered through openness, through accountability and through the public understanding our processes and the nature of our work.”

Rapke believes that it is essential to keep the community informed about the DPP’s views on the administration of justice. “I don’t think the DPP should be a ‘media junkie’,” he said, “but a careful and judicious use of the media to inform the public of what you’re doing and what you think, with a view to engaging the public in debate, is important.”

Rapke is well known for his interest in making the best use of technology in the courtroom. “Trials these days are becoming longer and often involve very complex scientific or financial evidence – evidence that can be hard for the average jury to comprehend,” he said. “Juries are also more technologically aware and the reality is that we are empanelling people whose experience at sitting and watching and listening has been moulded by television or the internet or computers. So we have to present the evidence in a way that is going to be both understandable and attractive, and capable of being retained in their memories.”

He also points out that more evidence is being gathered electronically, using devices such as mobile phones, closed circuit television, webcams and listening devices. “Prosecutors now need knowledge about these audio-visual technologies and systems,” he said. “We also need access to people with technical expertise in managing, analysing and presenting electronic evidence. That has been a very
significant change in courtroom processes and prosecutorial practice – and more and more trials now involve the presentation of evidence in electronic form.”

Rapke is a strong supporter of improving advocacy opportunities in prosecutions. “Many young solicitors working in prosecutions don’t want to be barristers, but they are keen to undertake advocacy work,” he said. “I believe that should be encouraged. With the right training, support and experience, these solicitors can provide a very high standard of prosecutions advocacy. That is not only beneficial for me as DPP and for the Victorian prosecution service more broadly – it’s also beneficial for the careers of young solicitors.”

Rapke believes that the time is right for a review of the Public Prosecutions Act 1994. “We’ve learned a great deal in the past 25 years, and we should use that knowledge and experience to examine the legislation and be prepared to make changes to improve the system,” he said.

“There’s no doubt that the DPP and the OPP have been highly successful across many fronts. But there’s always room for improvement – and we need to be confident that the DPP has the powers and independence needed to maintain a quality prosecution service in a very demanding environment.”

Rapke has emphasised his commitment to maintaining the reputation of the Victorian DPP’s office as the best in the country. “When I took over as DPP, this office already had a very fine reputation,” he said. “All the previous Directors did a remarkable job of maintaining a very high standard of prosecution service for this state. I aim to maintain that standard.

“However, if I can make Victoria’s prosecution service more open, accessible and understandable – bringing the public more into our confidence about how and why we do things – then I will feel that I have added just a little more.”

Reflecting on the 25th anniversary of the DPP, Rapke said that Victoria should be very proud of the fact that it was the first jurisdiction in Australia to create an independent DPP. “We led the way in establishing an independent prosecutorial process and we’ve maintained and consolidated that leadership over the years,” he said. “When you look at the features of our service today – from specialist prosecuting units through to much greater support for victims and our emphasis on early resolution – it is evident that we are still pioneers. We are still at the forefront of developments in prosecuting.

“Successive Directors have been open to finding better ways of serving justice and the broader community, while remaining true to the principles of fairness and independence that are at the heart of the DPP’s position in the criminal justice system.

“It is a tremendous achievement and all of us who work in prosecutions today are honoured to be part of such a strong and enduring legacy.”

DPP Jeremy Rapke QC holds clear and uncompromising views about the value and importance of prosecuting corruption cases. “Corruption is a terribly corrosive and damaging influence, both in society and within the Victoria Police, and police forces generally,” he said. “It can be low level or high level corruption, but it is damaging to the integrity, morale and reputation of the force. It has to be fought – and it’s a continual battle.”

For the past 25 years, the DPP has worked with Victoria Police and more recently the Office of Police Integrity (OPI) to combat corruption and send a strong message that corrupt and criminal behaviour in the police force will not be tolerated, and will be vigorously investigated and prosecuted.

Since the 1980s, the DPP has been involved in several high profile corruption prosecutions, including the controversial Higgins case of the late 1980s (one of the longest-running investigations and trials in Victoria’s history, resulting in the conviction of a senior police officer for perverting the course of justice); the 2006 Strawhorn case (involving allegations of police officers associating with organised crime figures and resulting in a senior member of the Victoria Police drug squad being convicted of drug trafficking); and the recent Operation Air investigation by the OPI (which resulted in the conviction for assault of
PROSECUTING CORRUPTION

three former detectives from the now disbanded Armed Offenders Squad).

In 2004, the OPP established a specialist Corruption Prosecution Unit to prosecute matters arising from the Ceja Task Force, set up by Victoria Police in 2002 to investigate allegations of corruption within the Drug Squad. Kay Robertson, Solicitor for Public Prosecutions at the time, said that the unit was seen initially as a response to a particular set of circumstances. “We didn’t really know where those [Ceja Task Force] investigations were going,” she said, “but we could see that they were going to be very sensitive. We needed to ensure that our organisation was leak-proof, that we had the resources to prosecute properly anybody who was charged and that we were highly professional in how we did it.”

The Ceja Task Force ultimately investigated 121 alleged incidents of corruption centred around the Drug Squad’s Chemical Diversion Desk, including conspiracy to traffic, trafficking drugs of dependence, illicit drug use, money laundering, threats to kill, theft and misuse of public office. Five serving or former members of the Drug Squad were charged and prosecuted. In 2001, the Chief Commissioner of Police disbanded the squad.

The Corruption Prosecution Unit prepared and conducted all prosecutions arising from the Ceja investigation — stressful and difficult work that often took place in a highly charged environment. In its final report on Ceja, the OPI commended the Director of Public Prosecutions and the Commander of the Task Force for establishing the Unit and noted that the “skill and commitment [of OPP staff], along with that of the Crown Prosecutors, brought the work of the Ceja Task Force to its successful conclusion”.

Following the Ceja prosecutions, then DPP Paul Coghlan QC decided to retain the unit, recognising the value of adopting a specialised approach to these difficult cases. Having spent three years as head of the Corruption Prosecution Unit, Jeremy Rapke QC knows how hard prosecuting corruption can be. “Corruption cases are terribly difficult to prosecute,” he observed, “because the type of people you are prosecuting know the system, have contacts within the system and they’re always well ahead of the prosecution in terms of access to material, calling in favours and understanding how things work.”

As the unit has gained more experience, prosecutors have developed a number of strategies to try to counter the advantages that people charged with corruption offences can have over the prosecution. “The unit has been instrumental in the terrific success we have had in this area,” said Rapke. “Over the years, we have seen almost a ‘sea change’ in juries being prepared to return guilty verdicts in these cases – the conviction of a police officer for a corruption-type offence was unheard of a decade ago.”
THE WAY AHEAD

In the years ahead, the nature of prosecutions will continue to change and evolve, and new pressures will be placed upon prosecutors. Ongoing leadership from the DPP will be critical to ensuring that Victoria’s prosecution service meets these challenges and continues to operate with the integrity and independence expected by the community.

The future of prosecutions in Victoria promises to be an exciting, demanding and testing one. Over the coming years, many new challenges are likely to confront the Director of Public Prosecutions and the Office of Public Prosecutions.

Prosecutors will be expected to manage a higher volume of cases across both “traditional” and “new” areas of the criminal law. Prosecutors will also face continuing pressure to contribute to reducing case backlogs in the courts and the growing cost of trials. They will also be expected to find ways to manage and expedite increasingly complex trials, and to be adept in understanding, analysing and presenting scientific, financial, technological and electronic evidence.

Victoria’s future prosecutors will be expected to engage more closely with the community and to be more open and accountable in their decisions. They will be expected to extend their support for victims of crime.

Work involving the confiscation of the proceeds of crime and compensation of victims of crime will continue to grow and become more complex. Concerns about national security and international terrorism, and the resulting changes to policing, will also have an impact on prosecutorial practices.

In addition, the operation of the Victims’ Charter and the Charter of Human Rights and Responsibilities will introduce new dimensions to the work of prosecutors.

Director of Public Prosecutions Jeremy Rapke QC points out that “these changes, developments and expectations all have to be built into the matrix of prosecutions. It’s a very substantial challenge,” he says, “and one that will test the capabilities of Victoria’s prosecution service over the coming years.”

Paul Coghlan QC, Victoria’s fifth DPP, believes that the lessons of the past can be applied to the future. “We have learned a great deal over the last 25 years about the conduct of effective and efficient prosecutions,” he said. “For example, we’ve learned that specialised prosecutorial units work very well and have applied that successfully to prosecuting serious crimes in Victoria. There may be further scope for adopting this approach in emerging areas of prosecutions, such as environmental crime.”
Acting SPP Stuart Ward believes that a key lesson from the last 25 years is that collaboration delivers the best results. “As the environment in which we’re working becomes more complex and challenging, our partnerships with the police, the courts, the private Bar and others will become even more important in ensuring that criminal proceedings are heard in a timely and efficient manner,” he said.

Ward also sees a more “businesslike approach” to prosecutions as being increasingly critical to fully supporting the DPP. “The DPP cannot do his job if the OPP is not operating properly,” he said. “The OPP must continue to develop a corporate support structure that is modern, highly accountable and that makes the best use of the latest business practices and office technologies.”

Rapke believes that prosecutors are already being expected to “do more than run a good quality prosecution service. The community wants to have confidence that the DPP – and the prosecution service in general – have a strong commitment to the public interest, to the rule of law and to protecting the community,” he said. “That may mean stepping out of the courtroom and playing a leading role in changing the law and improving criminal justice procedures, or being more active in areas such as improving public safety, reducing re-offending or expanding sentencing options.”

Irrespective of the developments that may take place in the operations of the DPP over the next 25 years, Rapke believes that the “heart of the vision” for the prosecution service in Victoria remains the same. “All prosecutors are ‘ministers of justice’ and must act accordingly,” he said. “Wherever the future takes us, the pursuit of justice by ethical and just means must always be our most important guiding principle.”
**THE PURSUIT OF JUSTICE**

**Victoria’s Prosecuting Solicitors**

**John Buckley**
Solicitor to the DPP from 1983 to November 1994

“I had the privilege of serving three very distinguished DPPs (John Harber Phillips, John Coldrey and Bernard Bongiorno) who were men of the finest character,” said John Buckley. While acknowledging the many changes that have taken place in prosecutions over the years, he believes that “throughout the last fifty years, the integrity of the prosecutorial authority in Victoria has not been sullied”. He sees this as “a tribute to the quality and dedication of the persons involved and to the system under which they have operated”, adding that “another very important aspect of the system has been the strict separation of the prosecutorial and investigative functions”.

**Peter Wood**
Victoria’s first Solicitor for Public Prosecutions from July 1994 to March 2001

Arriving in the office from the Commonwealth DPP, Peter Wood said he “marvelled at the number of trials done by the State DPP, as against the number done by the Commonwealth DPP and as measured against the resources that each office had at its disposal”. On his first day as SPP, Wood recalls wanting to send staff an email to introduce himself. “It wasn’t possible,” he says. “It took three or four days to generate a memo that had to be duplicated a hundred and fifty times and then physically distributed around the office. That highlighted to me the enormous problem we had in communicating with staff.” During his time as SPP, Wood succeeded in upgrading IT equipment and fully networking the office.

**Stephen Carisbrooke**
Acting SPP in 2001 and again in 2005/06

In both periods in which he acted as SPP, Stephen Carisbrooke was deeply impressed by the dedication of the staff of the OPP. “The staff put in much more than they were paid to do,” he said, “and were under a lot of pressure, including dealing with angry judges, the media sitting in open court and public demands for justice. I can’t think of any other type of work where people are subjected to so much public scrutiny.”

**Kay Robertson**
SPP from June 2001 to February 2005

Kay Robertson believes that one of the DPP’s biggest problems has been conveying what the prosecution service does in order to secure additional resources. “We were always struggling with increased workloads while trying to make productivity savings,” she said of her years as SPP. “At the same time, we were contending with a general suspicion and lack of understanding from bureaucrats about the importance of prosecutions and of independence in prosecutions – and even, in some cases, the importance of an independent legal system to a functioning democratic society.” Robertson noted: “There’s been no suggestion of scandal or inappropriate prosecutions over the years, and that is a heritage that Victoria’s DPPs – and the people working in the OPP – should be proud of.”

**Angela Cannon**
SPP from July 2006 to May 2008

“There is no doubt that the DPP and the OPP are crucial components of the criminal justice system. But they also have the potential to be a very dynamic and influential part of that system as well,” said Angela Cannon. “They can have a profound impact on the way the criminal justice system works, contributing and influencing many debates on criminal justice issues. But most importantly, they can have a profound effect on the way that people, especially victims of crime, experience the criminal justice system – reducing the trauma to them.” Cannon sees the major reorganisation of the OPP as being necessary to “increase the office’s productivity and efficiency, enable staff to develop flexible and progressive career paths and give the OPP an opportunity to become one of the most advanced and innovative public prosecution services in the world”.

**Stuart Ward**
Acting SPP from May 2008 to present

For Stuart Ward, the most important factor in the success of the DPP in Victoria has been the high quality and dedication of the staff of the OPP and its predecessor. “All staff who have been part of this service over the past 25 years are entitled to feel proud of their contribution to the development of a fair, professional and independent prosecution service,” he said. “Through their hard work and under the steady leadership of the DPPs, Victorians can have confidence in the criminal justice system – and that, in turn, underpins the good governance of the community.”

As well, Ward believes that the reorganisation of the OPP, combined with the commitment and ability of staff, will “position us to continue to perform to the highest standards in an increasingly challenging environment, and enhance our reputation as a centre of expertise and excellence”.

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48 **THE PURSUIT OF JUSTICE**
The integrity, experience and hard work of Victoria’s Crown Prosecutors has resulted in a number of them being appointed as Supreme Court and County Court judges. The following former Crown Prosecutors have served as judges since the appointment of the first Director of Public Prosecutions in 1983. Each of the six Directors wishes to acknowledge the contribution of these judges to the criminal justice system and to express their gratitude to them.

**Supreme Court**
Elizabeth Curtain
Betty King QC

**County Court**
John Dee
Carolyn Douglas
John Hassett
Graeme Hicks SC
Julian Leckie SC
William Morgan-Payler QC
Susan Pullen SC
Meryl Sexton
Michael Strong

Each Director also wishes to thank the Crown Prosecutors and staff of the Office of Public Prosecutions who have, over the past 25 years, served the Directors and the people of Victoria through their dedication, passion and excellence. Jim Morrissey QC, Gerald FitzGerald QC and Joe Dickson QC are but three names in an illustrious list of former prosecutors whom the Directors wish to acknowledge.
ENDNOTES


vi Office of Police Integrity (OPI), “Past Patterns – Future Directions: Victoria Police and the problem of corruption and serious misconduct”, February 2007, Session 2006-0, P.P. no. 4, p.95


viii Office of Public Prosecutions, Annual Report 1988/89, p.68

ix Office of the Director of Public Prosecutions, Annual Report 1992/93, p.6

x Office of the Director of Public Prosecutions, Annual Report 1993/94, p.18


xii Office of the Director of Public Prosecutions, Annual Report 1993/94, p.3

xiii Connor, Xavier, “Victorian Director of Public Prosecutions” (1994) 68 ALJ 488

xiv In 1999, the current Victorian Government transferred provisions relating to the appointment and conditions of service of the Director of Public Prosecutions to the Constitution Act 1975, where they may only be repealed or amended by a Bill passed by a majority of members in both houses of Parliament. The government also reinstated the power of the DPP to bring contempt proceedings.


xviii Office of the Director of Public Prosecutions, Annual Report 1992/93, p. 6

xix Office of the Director of Public Prosecutions, Annual Report 1993/94, p. 4

xx Miller, Tina, ‘Welcome to Judge Bongiorno’, March 2001, p.20

xxi Office of Public Prosecutions, Annual Report 1994/95, p.15


xxiii Office of Public Prosecutions, Annual Report 1994/95, p.16


xxv Office of Public Prosecutions, Annual Report 1995/96, p.4


xxix Office of Public Prosecutions, Annual Report 2001/02, p.4


xxxiii Office of Public Prosecutions, Annual Report 2001/02, p.19

xxxiv Office of Public Prosecutions, Annual Report 2001/02, p.4


Unless otherwise indicated, all quotes and comments in this publication are taken from interviews conducted by Bruce Gardner of the OPP during June and July 2008 with John Harber Phillips QC, John Coldrey QC, Paul Coghlan QC, Jeremy Rapke QC, John Buckley, Peter Wood, Stephen Carisbrooke and Kay Robertson. Angela Cannon and Stuart Ward provided written comments and observations.
Serving justice, serving the community