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IN the late 1970s and early 80s it became increasingly apparent that the Commonwealth prosecution process was fraught with delay and inefficiencies.

Matters came to a head with widespread debate concerning some of the revelations in the findings of Royal Commissioner Mr Costigan QC in his fourth interim report on the Royal Commission on the Activities of the Federated Ships Painters and Dockers Union.

In that report, Mr Costigan outlined the 'lamentable history of non-prosecution' which occurred in the Perth office of the Deputy Crown Solicitor in relation to a 'bottom-of-the-harbour' tax prosecution which came to the attention of the Australian Taxation Office years earlier.

And in more general terms, we have seen an explosion of federal criminality over the past decade. What was formerly a quiet backwater has assumed the appearance of a whirlpool.

The two main areas of increased activity, drug importations and fiscal fraud, are sometimes related to each other. Many instances can be found in which the proceeds of traditional crime, for example drug dealing, have been 'laundered' in such a way as constitutes a fraud on the Commonwealth revenue.

Apart from that, something like ten years ago there was in some parts of the Commonwealth a decline — some would say a collapse — in commercial morality.

A number of factors, some of which I have referred to, meant that the traditional responses to the prosecution of offences against the Commonwealth were rendered inadequate.

In response to the sometimes justified criticism that Commonwealth prosecuting authorities were ineffectual, and to the spiralling incidence of fiscal fraud, in particular, the Office of the Director of Public Prosecutions (D.P.P.) was created on 5 March 1984 under section 5(1) of the Director of Public Prosecutions Act 1982, and the first Director of Public Prosecutions appointed from that date.

Offices have been established in Canberra (head office), Melbourne, Sydney, Brisbane and a separate branch office in Canberra. It is anticipated that further offices will be opened in Perth late in 1985 and in Adelaide in 1986.

THE D.P.P.- SPREADING THE NET

An Office of the Director of Public Prosecutions has existed in the United Kingdom since 1879. The Australian Office was established in March 1984. Already its impact on federal criminality has become an important and historic development in Australian law enforcement.

In those parts of Australia where there is no D.P.P. presence, the Australian Government Solicitor acts on behalf of the D.P.P. In the States where the Australian Government Solicitor conducts prosecutions on behalf of the D.P.P., formal arrangements have been set down on how cases should be conducted. This ensures consistency of approach. Prosecutions in Townsville are subject to separate arrangements.

The Office enjoys complete statutory independence which is a vital aspect and distinguishes it from the previous arrangements by which Commonwealth prosecutions were conducted. Such independence is crucial.

Administratively, the Office comes under the portfolio of the Attorney-General and reports annually to Parliament.

The Office of the D.P.P. is purely concerned with the prosecution of offences and has no investigative role. This aspect is perhaps one of the major misconceptions as to where the D.P.P. fits into the scheme of Commonwealth criminal law enforcement.

Apart from those people carrying on the work of Special Prosecutor Gyles, matters referred to the D.P.P. should be in such a form that they can proceed to prosecution. If that is not the case, then the Australian Federal Police may be asked to conduct further investigations and gather further evidence.

POWERS AND FUNCTIONS

The Office of the D.P.P. has two functions — to prosecute those allegedly guilty of offences against the laws of the Commonwealth, and the performance, through the Director and those delegated by him, of important functions previously performed by the Attorney-General. These functions include the granting of witness indemnities, the termination of prosecutions, consenting to bringing witnesses from overseas, the lodgement of appeals and the provision of advice to government departments on matters relating to the criminal law of the Commonwealth.

The D.P.P. can institute prosecutions for any offence against any law of the Commonwealth.

It also is empowered to take over and terminate proceedings for the summary conviction of people where Commonwealth offences are involved and committal proceedings for Commonwealth offences and prosecutions on indictment.

Shortly after the commencement of the Act, the then Attorney-General agreed that the D.P.P. should determine all no bill applications that were addressed to the Attorney-General as well as those addressed to the D.P.P.

A decision not to proceed on a charge on which a defendant has been committed for trial is an exceptional course, but it is followed from time to time.

The D.P.P. can give undertakings to prospective witnesses that evidence given by them in prosecutions conducted by the Office will not be used against them in proceedings, other than a prosecution for perjury. Where a witness requires a wider indemnity than that which D.P.P. is empowered to give, and it is considered appropriate so to do, representations are made by the Office to the Attorney-General.

The D.P.P. has all of the rights of appeal exercisable by the Attorney-General in prosecutions which he has taken over or is carrying on. This includes all appeals to superior courts, including appeals against sentence. The latter is a right which should be exercised with considerable restraint.

The Director has the power, by instrument in writing, to give directions or furnish guidelines to anyone investigating Commonwealth offences or instituting or carrying on prosecutions for Commonwealth offences, together with the Commissioner of the Australian Federal Police and the Australian Government Solicitor. No such guidelines have been issued. The Attorney-General can issue guidelines to the Director. These must be published in the Gazette. None has been issued.

The issuing of guidelines is an important potential power.

CIVIL REMEDIES

The D.P.P.'s civil remedies power involves a multitude of avenues open to recover debts owed to the Commonwealth. Relief is most commonly sought by way of Mareva injunction to freeze assets, the entering of a judgment debt, and the sale of assets by writs of execution.

During criminal investigations it may emerge that the proceeds of the alleged crime have not been declared as income, and hence a civil taxation liability accrues. The recourse to civil remedies can therefore be an important adjunct to combatting criminal activity.

Special Prosecutor Roger Gyles Q.C. observed in his annual report for the year ended June 1984 that one of the objects most requiring attention in the reform of law enforcement was ensuring that crime did not either pay or be seen to pay.

Until the recent amendments to the D.P.P. Act, the powers of the Director were more limited than those of Special Prosecutors in that a prosecution had to be commenced before the function could be utilised. At that stage the criminal had been forewarned and in many cases the assets had been dissipated.

In both his 1982-83 and 1983-84 reports, Special Prosecutor Redlich strongly urged that the efficacy of civil remedies lay primarily in their being pursued as early as possible.

The D.P.P.'s power to pursue civil remedies is no different from that available to other Commonwealth agencies, such as the Commissioner of Taxation. All that has transpired is that responsibilities have been more widely spread than previously: there has been an extension of functions. The contention by some that the D.P.P. had acquired new wide-reaching and draconian powers simply is untrue.

However, what can be said about the new arrangements is that they are likely to represent a more effective and efficient

method of recovering the proceeds of criminal activity while at the same time not jeopardising the success of any prosecution.

Under the recent amendments, which came into force on 1 July 1985, the D.P.P. can now pursue civil remedies on behalf of the Commonwealth and its authorities at the stage when he is considering or proposing to prosecute, and in matters connected with or arising out of prosecutions (actual, proposed, or under consideration) by the D.P.P. Provision is made to include cases where the Director could exercise his powers to take over or to carry on prosecutions. The D.P.P. no longer needs to be authorised by instrument from the Attorney-General before pursuing civil remedies for the recovery of any tax, duty, charge or levy.

The implementation of these amendments will involve staff increases and resources for the D.P.P. Office, the Australian Taxation Office and the Australian Government Solicitor. Estimates are that a further 37 staff will be required for the Australian Government Solicitor, 214 staff for the Australian Taxation Office and 41 officers for the D.P.P. Office over the next financial year.

The D.P.P. Office has taken action to recruit 10 principal legal officers, 10 senior legal officers, eight legal officers and 13 clerical support staff, to be located around Australia.

The Australian Government solicitor has received approval for filling the positions it needs. However, in the Australian Taxation Office, no new positions have been given for this work.

This state of affairs could cause difficulties as the D.P.P. and Australian Government Solicitor officers will be generating considerable work for the existing Taxation officers. This could cause delay, and experience has shown that time is of the essence. It is a matter of regret that this shortfall of staff in the Taxation Office might minimise the effectiveness of these exciting innovations.

I am confident that the costs of these increased resources will be more than offset by judgments obtained. There can be long lead times in civil litigation; it will take more time for moneys actually to be recovered. However, the threat of timely and vigorous civil proceedings should discourage those tempted to engage in criminal misconduct.

It is estimated that over the next two fiscal years it will cost about \$18 million to administer this area. However, if results are achieved in line with those obtained by Special Prosecutor Redlich, it will be a wise investment with guaranteed return.

In his last Annual Report the Special Prosecutor reported that in the previous 21 months, taxation liabilities totalling \$30 million had been assessed as owing by people associated with criminal activities considered by his office. Of that amount, approximately \$11.2 million had actually been recovered or assets to that value had been frozen by Court order as a result of the action initiated by his office. As the Special Prosecutor himself observed: "The value of the civil remedy initiative is self-evident".

The D.P.P. is required to report after two years of operation of the civil remedy function for review of the new powers by the Government. This report will be awaited with considerable interest not only in this country but also abroad where similar action is contemplated.

In the United Kingdom, for example, last year a committee chaired by Sir Derek Hodgson in its report entitled "The Profits of Crime and Their Recovery", recommended the exercise of similar powers in relation to assets acquired by criminal activity.

We can therefore be seen as being at the forefront in this area and it is perhaps just a question of coming to grips with the novelty of the area. This should not be overly difficult.