

DPP Solicitors' Conference  
Wesley Centre, Sydney  
21 December

Good morning.

I feel like I'm among old friends this morning. I have spent much of my working life working as a prosecutor – first as an instructing solicitor and later moving to the bar table as a crown prosecutor.

I found I could always rely on the excellent people who instructed – including when I was deputy director - and it was a genuine pleasure to work with you and your predecessors over the years.

The work you do is vital to the justice system in this state. The community expects serious crime will be prosecuted fearlessly - and punished accordingly.

As you would well know, that work has also grown in scope over the years. When I started in with the Crown in 1987, we DPP solicitors mainly instructed counsel. In the early 90s, the office took over the conduct of committal proceedings from police so the number of staff grew – with many taking on advocacy work, particularly at the committal stage.

You also have a strong work association with police - and get their briefs into shape for trial. And the WAS officers and the solicitors have largely taken over from

police in looking after victims – before during and after trial.

Yet I suspect 95 per cent of your work is done out of the public gaze – in dealing with matters by way of plea.

There can be controversy – some will suggest you should not have accepted this or that plea – but in most cases, good outcomes result. It means cases don't have to go trial – and victims don't have to relive the trauma of the crime.

So an invitation from you to speak about the direction of the government on law and order is most welcome.

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Along with many other governments around the world, we are moving away from the thinking that says success is measured by how many people you lock up.

Our state plan does not demand a certain number of arrests or prisoners, but says we want to reduce the rate of recidivism in this state to under the national average within 10 years.

I should give you an idea of the enormity of that task. In NSW, 43 per cent of all prisoners reoffend within two years of their release. In Victoria the figure is 34 per cent. With around 9500 people in our jails that difference of 9 per cent means about 670 more people committing crime than if the rate was on par with Victoria.

A good number of these people have merely lifted the pause button off a life of crime.

This is a by-product of what the former DPP Director Nick Cowdery called the “law and order auction”. It also meant that in the rush to appease a fearful public, laws were amended in a way that has confused practitioners and judges and would baffle the original drafters.

Take the Bail Act. It has been amended 17 times since it was introduced 33 years ago. Every time Labor tried to “clarify” the law they only created more confusion. One change to section 22A in 2007, which allowed only one bail application unless there was a “change in circumstances”, had a dramatic effect on juveniles. In 2006, there were about 3600 minors admitted to remand, but in 2008 this figure jumped to almost 5100.

Another change in 2009 made it slightly easier to make another bail application but contained no special provision for juveniles.

At any one time, about half of the 380 or so juvenile detainees are on remand. And only 20 per cent of those on remand end up with a sentence of detention. All this does is introduce people to what I call the “university of crime”.

The “spirit and intent of the original legislation - to ensure attendance at a hearing or trial, to stop defendants from committing further offences and to prevent interference with witnesses – had been

abandoned in this auction – which was more like a race to the bottom.

The former Supreme Court Justice Hal Sperling, along with the Law Reform Commission headed by another former Supreme Court judge in James Wood, is now working on its final report and I expect to have it early in the New Year.

Another inquiry, this time with James Wood at the helm, is addressing the at-times ridiculous complexity of our sentencing laws. When I was a solicitor in the office of the commonwealth DPP, remarks on sentence might go for 3-4 pages. In a similar case now, they go for 20 pages.

This is because there are a lot more matters that judges have to take into account - or say they have taken into account. While I appreciate the need for transparency, there is also far more room for error.

Take the aggravated circumstances provision in Section 21A of the Crime Act. I have asked the Commission to review the *Crimes (Sentencing Procedure) Act 1999* and, in particular, to look at simplifying the law and providing a consistent and transparent framework for sentencing decisions.

They have been asked to report by the end of October 2012 I expect judges and juries – and the practitioners involved – would all welcome some more clarity. And I'm sure those acting for the defence!

The Young Offenders Act and Children's (Criminal Proceedings) Act is also being examined. The issues raised include whether there should be any changes to laws governing the issuing of warnings and cautions and whether the Children's Court should be responsible for hearing all traffic matters involving juvenile.

I make no apology for these reviews. It is part of this government's determination to proceed only when all the evidence is available and after adequate consultation.

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If you speak about keeping people out of jail, it does not mean you are "soft on crime".

We will always have prisons and we will always spend money on prisons. But there is no point in building prisons just to house the people who keep reoffending. If we can turn them away from crime, the average citizen is likely to be safer in their home, safer in their car and safer when they are out and about.

I am not talking about those who are a danger to society - the dangerous child molesters, murderers, and people who are involved in heartless crimes. I have seen these types of people first hand and, frankly, many of them should never be allowed out. At the very least, they should be locked up for a long time.

But there are the people who have an addiction of some sort, who have committed a crime to feed that addiction. They are the ones you look at keeping out of jail, while working to break the vicious cycle of their addiction.

On this front, diversionary programs such as those run by the drug court have been very effective. And work and development orders – which this government has extended and made permanent - have proven very effective. They give the homeless, mentally ill and other vulnerable people the chance to clear their fine debts by engaging in unpaid work or educational and therapeutic programs.

For these people, these are much better options than sending them to jail where they might be given methadone to manage their addiction –rather than treatment to break it.

We hope that will change with the opening in February of the state's first dedicated drug treatment facility inside a jail – at the John Morony complex.

Eventually there will be 300 beds for the treatment of drug-addicted prisoners - and I am told there will be no shortage of customers.

Corrective services data indicates that on any given day, more than 4500 inmates need some intervention to address alcohol and other drug-related needs. Of these more than 1000 have severe problems which require

intensive intervention.

Of the 15,000 people received into custody in 2007-08 in NSW, almost 60 per cent were under the influence of drugs or alcohol when they committed their most serious offence; 71 per cent had committed drug-related crimes (including alcohol); 54 per cent had a history of injecting drug use; and 36 per cent were injecting drugs around the time of their offence.

There can be no doubt that prisoners are less likely to reoffend if they leave prison free of drug dependency. Clearly, we will have to ensure stronger back up for them on release to help them sustain their rehabilitation.

Another program which we inherited from the previous government is the rollout of intensive corrections order, or ICOs. They are an order of imprisonment for up to two years, but the term is served in the community under the strict supervision of Corrective Services NSW.

I have figures which show that many people cannot meet the onerous conditions – the 30-plus hours of community service seems to attract frequent complaints – and end up in full-time custody in a correctional centre.

ICOs replace periodic detention, which many people – including Court of Criminal Appeal judges - considered to be very lenient.

I can see why. Periodic detention sentences – even for the maximum term of three years - would usually finish after only six months of two days week custody. And

putting them in jail for two days on the weekend – when they did very little – didn't really serve much purpose for the community.

If they are doing community service under an ICO, they might be cleaning up graffiti, mowing a lawn or helping out our hospitals. Along the way, they might learn some new, useful skills gain some pride in what they can do and the contribution they can make to the community.

If ICOs are properly resourced, they will be a very important tool. But I still think probation and parole should have a stronger role.

Doing community service might help, but it's better if you have a case officer who is actually helping you deal with your drug problems or your other health problems and helping you find accommodation, helping keep you away from crime.

My thinking now is very different from my early days as a prosecutor. I would be quite sceptical of the submissions that were put forward by the defence on sentencing - how disadvantaged their client was, all the hard luck stories of their upbringing. If I saw the same name in a brief a few years later I would mutter "they never learn".

But as time went on, I realised that most people who do commit crime do it because of their background; because of their lack of opportunity.

In a perfect world you would say: well let's give everyone an equal opportunity. For example, we have free education but it's not all equal because it depends a lot on your family situation - and we can't just wave a magic wand to change those situations.

## **CONCLUSION**

In the four years before this government was elected, I suspect many of you felt the DPP office was under attack. You had a Director who was independent and spoke – and an attorney who did not take kindly to the criticism – and it was a combustible mix. Their confrontations appeared to affect the allocation of resources; there were constant cutbacks, positions were not filled and many staff were only employed on a temporary basis.

I can assure you that Lloyd Babb is no less independent; take the DPP submission which opposed any reform of the Bail Act. However, but I suspect his quieter style will be more effective.

You also have an Attorney General who has spent much of his career as a prosecutor, who understand the stresses and strains you have in your working life.

We won't always agree but hopefully we can resolve our difference without fighting it out in the media.