



ACT Government Executive Speaker Series

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Challenges ahead for a new Director

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Acknowledgement to country

I want to acknowledge the Ngunnawal people, the traditional custodians of this land we are meeting on today, who coincidentally have been doing exactly what we are doing at this place today, coming from different walks and yarning, sharing different experiences, for more than 40 thousand years before the pyramids were built. The Ngunnawal people have had an uninterrupted succession of generations occupying this land for tens of thousands of years, and I acknowledge the past, present and emerging generations of the Ngunnawal elders and the other indigenous people here today.

Body

You will forgive me for having notes. I have of course publicly addressed people from a bar table for just on 20 years, however I seem to get anxiety induced expressive aphasia if my audience number greater than 12 (the size of a jury) as I get worried that there are too many of you to persuade, increasing the chances of a hung jury and causing me to repeat the whole thing.

When I was invited to talk to the Executives that run the Territory, my mind flooded with potential topics.

Around the time of my appointment I did a lot of media, and the overwhelming topic of interest seemed to be how a 15-year-old school dropout from Mt Druitt (of the SBS Struggle Street notoriety) ended up one of Australia's nine Directors of Public Prosecutions.

This line of enquiry is not without interest, because it is a question that has puzzled me also, and I will perhaps wait until the end of this chat to outline why I think it is me who ended up standing in front of you as the Director.

So, what do I talk about?

Do I talk about my budgetary challenges and how I have addressed them without impacting service delivery? But I considered the size of some of your business units and thought that this was like a weekend jogger explaining their running achievements to Robert De Castilla.

Do I talk about criminal sentencing and the importance of using it to improve the quality of life in the ACT, and not being seduced by our desire to quench anger at a particular crime or pander to the shock jock syndrome? But I feel the Territory has already nailed that one.

Instead I have chosen to limit my talk to two issues;

1. The very particular dynamic of heading an office full of hungry over achievers, who I have virtually nothing in common with, except for the fact that most want my job.
2. If I have time - I will talk of what I hope to achieve during my time as the Director of Public Prosecutions.

I should set the stage of why I am so different to them. After a difficult childhood turned impossible - dropping out of school at 15 and living rough for a period, I started my working life doing odd labouring jobs, before I realised in my mid 20s that I was not as dumb as social constructs had led me to believe.

I finally obtained stable employment delivering telegrams for the newly formed Australian Postal Institute (formally PMG), and eventually secured stable accommodation. After a brief pause due to unexpected early parenthood, over the next 10 years, I steadily worked my way through an economics degree then a law degree and started in the law with the Aboriginal Legal Service in 1999. I then joined the Office of the DPP on 11 April 2002 and have worked in numerous roles from Junior Prosecutor through to Director.

My appointment followed an apprenticeship in both the law and humanity that taught me much about the opportunities found in both diversity and adversity.

However, the strength and diversity of our particular workforce presents both the greatest opportunities and the greatest challenges

Firstly, the term “our office” does not refer to the bricks, glass and fake marble - that is “our accommodation.” Our office consists of the people, and our office can only be described as the personification of excellence in effort and achievement, in all facets of life.

At a recent RED training session, attendees were asked to introduce themselves by adding a personal achievement that made them proud.

A healthy mix of University Medals, Academic Fellowships, Alumni Awards, national championships in academics and sports soon turned to the number of Olympic Games staff had competed at, with one of our staff numbering four Olympic Games, whilst another only had three Olympic Games but could boast an Olympic Gold Medal.

For some reason, my Office attracts highly competitive people in virtually every aspect of life. This is a two-edged sword, as like a quality racehorse, if the energy is not harnessed and targeted it can result in serious self-inflicted injury.

Our office of 90 people can be broken into three categories:

- 10 Administrative staff
- 20 Qualified paralegal staff (many with law degrees)
- 60 Lawyers

The latter can be broken into two further categories of Junior lawyers in the first five years of practice, and experienced lawyers, some with over two decades of hard, frontline criminal trial experience

Each respective category requires a different management strategy, but for this talk I will focus on the lawyers.

Lawyers

Unlike other staff, our lawyers require no motivational initiatives at all.

They are generally fed to us from largely private schools where they achieved some of the highest ATARs in the State, and have spent their life centre stage at prize ceremonies watched by doting parents, generally being told they are the special students, and indeed they were.

I recently revisited some of my old school reports and found entries like – *“Shane has some potential but sometimes get a bit big for his boots”*. As it turns out I did have potential, but the boots may have just been a bit small.

Most staff came to us through major universities where they completed multiple degrees, the majority winning distinguished awards along the way. Most staff were leaders in student politics in some way, either through student unions or student law societies.

All have committed political opinions, and few will keep them to themselves. The DPP lunchroom is mostly like an episode of Q and A and occasionally like an episode of Jerry Springer.

I will sometimes get in excess of 100 applicants for a single entry-level lawyer role, indeed many in our paralegal strand are well advanced in their legal studies, so all staff have survived a highly competitive recruitment process.

Once appointed, they thereafter spill into a pool of Grade 1 Prosecutors consisting of 30 odd lawyers, all of whom are just like them. Thereafter they compete ferociously for advancement through the ranks by demonstrating the highest level of excellence of work at each respective level of complexity and difficulty.

Within this group, there are two types of people that I identify as parallels with my own children at the beach when they were small. Whilst their swimming ability was identical;

- One took to the water with debilitating caution, running back to the shore every time a wave broke - requiring my encouragement that they were competent and ready to swim through the waves.
- The other required holding back, or else in the blink of an eye they would be over the breakers making their way out to New Zealand.

I need to vigilantly and objectively assess not just the lawyers academic ability to advance through each respective stage, but also their emotional ability to sustain the pressure that the next level of work will bring.

The work

The job requires a complex balance of intellect and old-fashioned grit. It requires the ability to quickly grasp and develop a firm and thorough understanding of complex multi-faceted legislation, case law and master the facts of a particular case, then apply the law.

It requires the ability to articulate submissions in an often extremely hostile environment, engaging with people accused of serious crime, the victims of serious crime, defence lawyers highly skilled in destroying the most intact arguments often by undermining the confidence of the advocate, and a judiciary that ensures the prosecutorial burden weighs appropriately heavily. In colloquial parlance, the first five years of practice usually helps me sort the wheat from the chaff.

Jigsaw puzzle

Lawyers are a very diverse group and range from those that comfortably fly by the seat of their pants yet dance across the deeper issues, to those that operate like deep still ponds where every answer gives rise to another series of questions. There are those that need constant affirmation to repair the emotional damage of a tough matter, through to those that consider such comfort as offensive condescension.

Fitting the right person to the right role, is like doing a jigsaw puzzle. Not every person fits in every spot, but the picture is not complete without all of the pieces. I dedicate a great deal of time and energy working out who to advance and who to hold back, who to give the burglary to, who to give the serious sex trial to, who to give the complex tendency appeal in the court of appeal to, who to give the leave submissions to the High Court to, and who to send to represent the office at the Law Society Criminal Law Committee. Whilst not everyone is suited to every role, every role must have the person best suited.

Equity theory of motivation

Although I do not need conventional motivational theory, I need to remove motivational barriers. My prosecutor's expectations of themselves are only exceeded by their expectations of myself and my senior staff. They expect senior staff to be the best, fastest and hardest working lawyers in the office. If we do not deliver, they will adjust their commitment and effort accordingly.

Turnover

Due to the high workload, my lawyers quickly become highly experienced criminal advocates. This places them in a position of high demand in a market with relatively high salaries, often much higher than our office can afford. There are two things I can offer staff, the first is opportunity to gain experience quickly, which in itself usually only leads to a higher paying job outside of the office, and we seem to feed the private bar and other higher paying DPPs, a steady flow of quality, well trained staff. The other is stability and

desirable working conditions - Superannuation and general work structure that provides an attraction that is often missing from the dog-eat-dog world of the private bar where you spend 40% of your time lawyering, and 60% dealing with accounts and balance sheets.

Unit of measurement of commitment = hours worked

One of the toxic by-products of such a highly competitive culture is that the perceived unit of measurement of commitment is often number of hours worked. How late you stayed up last night, or how early you got in this morning. This leads to toxic water cooler chatter about how X has such a big trial, they were in the office all weekend, or they finished work at 10.00pm last night. This, in turn, creates a toxic expectation that in order to demonstrate the requisite commitment for professional advancement you must exclude work life balance.

This requires senior lawyers such as myself to not only publicly advocate for work life balance, but to demonstrate this. If I do not keep civilised and sustainable working hours, it is not only difficult to encourage others to do so, it actively discourages them from doing so, which leads to burnout and turnover.

Workplace subject matter trauma

Workplace trauma is a huge factor in our workplace. Few people will have met the parents or children of a murder victim, or a rape victim, or stared down and cross-examined a killer or rapist across a courtroom. Few will have seen the photos of a murder scene with the body still in place, seen the remnants of the most unimaginable horrors, or become personally acquainted with the people most affected. Few will know the pressure of knowing the quality of your preparation, and the skill in presentation of the case will often be the sole determinant of whether the victims get justice or whether their crime goes unpunished.

For a prosecutor, this is your workday, day after day, week after week, year after year. When you go on holidays, you can leave the office and computer behind but the memories of your cases are inside your head, so they are your travel buddy, and often appear most vivid in the quiet moments in life when you are trying to rest from them. When you lay on the beach or sit on a deck chair. Such things need acknowledgment and careful management.

Ambition induced burnout

Without due diligence, and a well thought out and structured workforce management strategy, this will lead to a completely dysfunctional work environment. In other jurisdictions this had led to alarming suicide rates within the profession, or the best-case scenario, high levels of staff burnout and turnover. This itself leads to pressure as turnover is expensive and time consuming. It leads to the loss of valuable resources, the expense and

time to recruit and train new staff, and an increased demand on existing staff whilst new staff become functional.

Post-trial counselling, and mindfulness training

Several years ago, we introduced post trial period counselling, where we brought in a psychologist to conduct one-hour wellness checks on all staff involved in serious trials. This was supplemented by gratis grants of TOIL leave where relevant staff would be given between 3-5 days post trial to recover and collect their thoughts, or just mow their grass and wash their clothes.

I found, however, that having the wellness checks conducted in the DPP offices created two barriers to its effectiveness.

- Firstly, being in the workplace creates distractions that drown out the open discussion required to sort your thoughts.
- Secondly, in such a highly competitive workplace, many lawyers feel visible attendance at such counselling may be interpreted as a sign of weakness.

Further to these two points, counselling alone is really just an attempt to repair damage that has already been done.

So, on my appointment I made three significant changes. Firstly, I introduced preventative therapy, in the form of mindfulness training. I had trained in it myself for several years and had found it extremely useful. Secondly, we have just introduced trauma counselling to better equip staff to deal with highly traumatised people and identify the risk of taking on that trauma, resulting in vicarious trauma. Finally, I moved the counselling sessions off-site to the counsellor's office, to reduce any stigma or distraction-based barriers to quality engagement.

I have resigned myself that I cannot change the competitive professionally hungry culture of the people that are drawn to front-line criminal prosecutions, but I can identify it as our Asbestos and provide safety equipment to work around it.

So that is my workforce - what do I hope to achieve?

What I hope to achieve in my time as Director

History has shown in Australia and around the world that the accumulated weight of years of the type of unpopular decisions a DPP must regularly make, means that most Directors are generally on a journey from the person of the moment to political road-kill. The only variable is how fast you travel. When my time comes, what achievements am I hoping to comfort myself with to be able to say, at least I made a difference?

I am an unapologetic dissenter because all change begins with dissent, and we need change. I need to do this whilst remaining positive. Cynics do not build stuff, they demolish stuff, and I need to be in the building industry not the demolition industry. My personal hope is that I manage to balance my dissent with a healthy constructive optimism to try and create the Copernicus of Australian criminal justice systems in the ACT.

In the ACT, we desperately need this change. Population statistics are expressed as a number per 100,000 population.

In 2007, the ACT imprisonment rate was 90.2, just over half the national average of 171.1. Since then, the imprisonment rate has risen in both the ACT and nationally. In the ACT, it has risen steadily to 141.2 whilst the national rate in 2017 was 215.9. The wash-up is that in 2007 the ACT imprisonment rate was 52.7% of the National average, and in 2017 it was 65.4% of the National average. Consistently the lowest in the country, albeit with an increase of 12.7% against the National average over the last 10 years.

Yet our prison is bursting at the seams, so we need a fresh look at why, and how we reverse this trend. To do this, we need to interrogate the data.

In 2007 the Australian average percentage of prisoners known to have a prior imprisonment Australia wide was 56.5% whereas the ACT was only 55.9%. Ten years on in 2017, the Australian average has remained at 56.5% whereas the ACT has grown from 55.9% to 75.1%, the worst figures in the country. So, three out of four prisoners in the AMC have been there before their current term and that did not deter them from returning.

Then there is the enormous elephant in the room. In 2007, indigenous prisoners as a percentage of total prisoners Australia wide was 24.3% whereas the ACT was only 9.7%. 10 years on in 2017 the same figures show the Australian average has only grown 3.1% to 27.4%, but the ACT has more than doubled from 9.7% to 21.2%. That all means that over 20% of the AMC population comes from a group consisting of less than 2% of the broader population. If you walk through the Canberra community, for every 100 people you see, 2 will be indigenous. If you walk through the AMC, for every 100 people you see, 20 will be indigenous.

Here is the silver lining. If we were to reduce the indigenous imprisonment rate to just double the non-indigenous, we would empty the prison of 20% of its population and would be facing the problem of what to do with the excess capacity. We would have one in five of the AMC's prison cells sitting empty. That is one whole cell block sitting dormant.

The current way of doing things has never been more in need of change than right now. We in the legal community need to re-imagine the business we are in. We place a lot of stock in the ACT's Human Rights Act, but birds do not fly because they have an inalienable right to fly, they fly because fortune gave them wings and opportunity allowed them to learn to use them. We need to convert theoretical rights into actual change to the most affected.

We view the commission of crime as a function of choice. Maybe we need to accept that it may be a function of environment. This is a vitally important distinction as it shifts our focus

from changing offender's choices through punishment, to changing the offender's environment through social reform.

As an example, the current narrative is that drug and alcohol abuse in indigenous communities is a problem. I say drugs and alcohol is not a problem in the indigenous community. I say, drug and alcohol abuse are a symptom for indigenous communities and we need to track backwards to find the problem, starting with the environment it exists in. If you can't change the decision to drink, why not change the environment that creates the decision to drink.

If we want to change the behaviour, we need to deconstruct all environmental factors that led to the behaviour and maybe ease up on the big stick, and work to address these environmental factors.

To do this, we need data.

- What percentage of prisoners are inter-generational prisoners?
- How many have been victims of crime?
- How many have been removed from their family in care proceedings?
- When was their first use of alcohol or drugs?
- What factors led to this?
- What is their stated motivation for the commission of the crime?
- What do **they** think would prevent them from committing further crime?

Fortunately, I have been delivered to my role at a time when the questions that have bounced around my head for decades, are not only shared by the decision makers but are a firm part of the government agenda.

I applaud all arms of politics for having the courage to not be reactionary, but to be logical. For not pandering to the usual emotive popular narrative of the day, but to become a slave to our desire for improved humanity by improving the quality of all of its constituent parts. The quality of any society can only ever be as high as the sum of its parts allows. I think this shared view is why the government passed over the many outstanding applicants for my role and settled on a former 15-year-old school dropout from the place known as Struggle Street, as Director of Public Prosecutions.

Whatever led me to where I am today, I intend seizing this rare opportunity with both hands to shake our system of justice at its very foundation. Because maybe we can create the change we so desperately need. Having spoken with members of the Legislative Assembly of all persuasions, as well as the Judiciary and defence, I can categorically state that there has never been a greater shared appetite for change than now.

I share this appetite.