

Criminal Law In-House Practice 2010-11

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In-house legal practitioners and support staff play a vital role in delivering representation services to those who qualify for a grant of legal aid. The criminal law in-house practice provides eligibility tested representation, free duty solicitor services in the Magistrates and Youth Courts in Adelaide, metropolitan and some country locations including the APY Lands, a free after hours custody advice service, a free prison advisory service, and an eligibility tested Youth Legal Service.



Paul Muscat SC, Manager, Criminal Law Practice Division

The in-house practice provides expert advice on criminal matters to the Policy, Access Services and Assignments Sections, and is a major contributor to the Commission's publications and Community Legal Education program.

Representation

The in-house criminal practice, at its Adelaide and regional offices, represents people who have received a grant of legal aid. They appear before the State's criminal courts, at all levels, from the Magistrates and Youth Courts through to the District and Supreme Courts and also before the Court of Criminal Appeal and the High Court of Australia. The service extends from representation at police interview (including through the after hours custody advice service), to advice and representation through the courts, committal hearings, trial, sentence and appeal, and appearances before the Parole Board.



(L) Chief Counsel, Greg Mead SC with (R) Manager Criminal Law Practice Division, Paul Muscat SC.

Duty Solicitor Service

In-house duty solicitors provide free legal advice and minor initial representation (for remand, bail and simple guilty pleas) to people on their first appearance in court on criminal charges. The Commission's Adelaide and regional offices provide this service in the Magistrates Court and the Youth Court.

Demand on the duty solicitor services throughout metropolitan Adelaide and country SA has increased 9% on the year prior. Over the past twelve months the Commission's duty solicitors have provided advice or representation to 16 443 people. *Appendix 6* contains further details.

Prison Advisory Service

Free advice services are provided to prisoners in metropolitan and country prisons by in-house criminal law solicitors from the Adelaide and Port Augusta/Whyalla offices.

After Hours Custody Advice Service

The After Hours Custody Advice Service has been in operation for nineteen years and is still going strong. The Criminal Law Section co-ordinates and operates the voluntary after hours service, providing legal advice by telephone to persons who are in police custody and charged with serious offences. In such cases arresting police officers telephone the after hours service and arrange for the person in their custody to speak with one of the Commission's solicitors who provides them with legal advice over the telephone. If the matter is serious enough, such as in cases of a murder, or if the person doesn't fully comprehend what is being said to them over the telephone (for example because they are suffering from an intellectual disability or psychiatric condition), then the solicitor will usually attend at the police station to provide the necessary advice. This service operates between 5.00pm and 9.00am each week night and from 5.00pm Friday until 9.00am Monday. This is an important part of the Commission's criminal law service as it provides access to legal advice to persons



Greg Mead SC, Chief Counsel

who find themselves in vulnerable situations in police custody and who would generally not have access to the services of a private lawyer.

Youth Legal Service

This service provides representation to children appearing before the Youth Court charged with criminal offences or involved in Care and Protection Applications brought by Families SA. The Commission is the major provider of representation in these areas in the State, using its own specialist counsel in Care and Protection Applications.

Drug Court

The Drug Court is a post-plea, pre-sentence rehabilitation program for recidivist offenders, where drug dependence and the accompanying lifestyle are key causes of their offending. The main program gives these defendants a one year period to "prove themselves" through a strict

regime of rehabilitative practices, supervised by the court. Strict home detention bail, frequent drug testing and participation in extensive therapeutic programs are all monitored and reported back to the supervising magistrate before whom the defendants appear every two to four weeks throughout their participation. Successful completion of the rigorous program guarantees defendants the suspension of the inevitable jail sentence they will receive for their offences. Approximately forty percent of clients receive a suspended sentence.

The Commission provides the services of two specialist in-house lawyers for Drug Court clients under a special funding arrangement with the Attorney-General's Department. These lawyers represent the majority of participants on the program.

During 2010-11 the Legal Services Commission continued to play a major role in the operations of the Drug Court. The Commission's in-house lawyers made approximately 900 separate appearances on behalf of legally aided clients, spread over almost one hundred sitting days. Formally representing around forty clients at any one time between them, the Commission's lawyers were pleased to report that by year's end they had appeared in over twenty "graduation" ceremonies.

Hidden in these statistics is the fact that the Commission's lawyers, through their regular presence at court, are also often the first port of call for other participants when trouble strikes and are often called upon to give advice to other lawyers, their clients and the court. They also represent the Commission at both the Steering Committee and User Group meetings held throughout the year. Generally playing a monitoring role at these meetings, the Commission's lawyers have advocated to ensure that new practices and procedures introduced into the Drug Court Program are as fair and equitable as possible.

Just in terms of cost of imprisonment, the monetary savings are large. When to this is added the reduced rates and seriousness of reoffending, and the health and social/familial benefits of the rehabilitative process, it becomes clear that the Drug Court is a worthwhile program for the Commission to continue to support.

Diversion Court

The Criminal Law Practice Division has two solicitors who specialise in the Magistrates Court Diversion Program. This program aims to provide offenders with an intellectual disability or suffering from a mental illness, with an alternative means of resolving their criminal charges. Participation in the program is directed towards assessment and

treatment of their illness or disability, rather than having criminal sanctions imposed. Where clients successfully participate and complete an intervention program, the Court can exercise its powers under section 19C of the *Criminal Law (Sentencing) Act 1988* to release the defendant without conviction or penalty. The Commission receives numerous referrals from Disability Services SA and is on call to them after hours in the event that any of their clients are arrested or need advice about whether or not to participate in an interview with police. The Commission also regularly presents seminars to staff of Disability Services SA, keeping them updated with developments in the criminal law and to stress the importance of obtaining legal advice for their clients before allowing them to proceed to an interview with the police. Studies have shown that intellectually disabled individuals do not understand the right to remain silent and will often agree with propositions put to them by police officers and are therefore at a clear disadvantage when being interviewed.

Aboriginal Issues

Demand for representation from Aboriginal clients has risen again in this financial year and the Commission continues to receive referrals from the Aboriginal Legal Rights Movement.

Criminal Justice Ministerial Taskforce Update

The Criminal Justice Ministerial Taskforce met again in December 2010. A new Attorney-General has resulted in a close consideration of the Taskforce's recommendations, many of which are now being acted upon with legislative changes looming so as to ensure greater efficiency in finalising matters before the District Court. It has been determined that as much legislative work is being undertaken by Government, it is only necessary to meet to consider Bills as they are drafted to ensure that proper effect is being given to the recommendations.

Meetings with the Chief Magistrate

The Director and the Manager of the Criminal Law Practice continued to meet regularly with Chief Magistrate, Elizabeth Bolton, to discuss common matters affecting the operations of the Court and the Commission and ways to improve the efficiency of cases moving through the Court.

Video Conferencing to Correctional Institutions

Improvements continue to be made in the ability of Commission lawyers to utilize video conferencing facilities to the prisons, thereby making it easier and quicker to access clients. Currently the Commission is the only organisation outside of the court system that has and

operates video conferencing facilities. In this regard the Commission has access to video suites at Adelaide, Elizabeth, Noarlunga, Port Augusta, the APY Lands and Whyalla. We are also able to access our clients by use of video technology at Yatala, Mobilong, Mount Gambier and Port Augusta prisons.

The facilities are not only an excellent way to keep in contact with clients or to finalise instructions, but save an enormous amount of travelling time between office and the prisons.

Senior Counsel Appointments

In October 2010 the Chief Justice made the appointments of Senior Counsel to two members of the Criminal Law Practice Division— Chief Counsel, Greg Mead SC, and the Criminal Law Practice Division, Manager, Paul Muscat SC.

Magistrates Court Process Redesign Project

The Chief Magistrate has commissioned the Magistrates Court Process Redesign Project to identify and implement improvements in court processes. The project aims to maximise the use of available resources to enhance the quality and efficiency of the court processes. Luke Davis and Paul Muscat SC have been representing the Commission at these meetings, and attended a three day workshop

in May 2011 to analyse the processes, develop improvements and create an implementation plan. All key stakeholders are involved including the police, victims of crime and the DPP.

Committal Process Review

The Attorney-General has commissioned an evaluation of committal processes in South Australia. The Office of Crime Statistics and Research has been tasked to evaluate committal hearings. The broad questions relating to the evaluation include, whether the committal process is operating in accordance with the legislation, whether there is a continued need for committals and if so what changes, either legislative or administrative, are required to ensure an effective committal process.

In March 2011, Andrew English and Paul Muscat SC, Manager, Criminal Law Practice Division, met with Jane Marshall, Evaluation Manager at OCSAR, and expressed their views about committal processes in South Australia. The Commission considers that they are a critical and essential part of the criminal justice system and whilst improvements can always be made, committal hearings should never be abolished.

APY Lands Court Circuit

In May 2011, Tim Weiss, the Commission's Northern Regional Manager, and Paul Muscat SC, Manager, Criminal Law Practice Division, travelled

to the APY Lands court circuit.

The remote aboriginal communities see the Magistrates Court visit, on average, once per month. Magistrate Ms McInness SM conducts the circuit adopting a strong restorative justice approach similar to how the "Nunga Court" operates in metropolitan Adelaide.

This means that the views of the victim, who either appears personally or through the NPY Womens Council representatives, the views of the community as expressed through an aboriginal elder and those of the defendant and his or her family, are all taken into account in arriving at a sentencing outcome that is both just and fair for all concerned. Certainly the co-operative approach has particular benefits of inclusion in these small aboriginal communities where all the parties are known to each other.

Ms McInness SM has a very deep and thorough understanding of the familial and community issues that exist on the APY Lands, through her extensive consultations with members of the communities, the APY Lands police officers and other interested stakeholders such as Family and Youth Services, Correctional Services and the Womens Council representatives. She conducts the court in a very inclusive manner and feedback from the Courts Circuit is extremely positive with all participants very satisfied with the process.

Continuing Professional Development

This year the Commission's criminal lawyers have been engaged in a number of Continuing Legal Education programs either provided internally or through external providers such as *The Law Society* or *Advocacy Institute of Australia*. Staff professional development of this nature is of particular importance to the practice of our lawyers. It ensures that their skill base and knowledge of the law, particularly at a time where there continues to be significant changes in the criminal law, is continually being updated.

The in-house training sessions are fully attended by the section lawyers, including video links to the Commission's Port Augusta and Whyalla criminal lawyers.

The Criminal Law Practice division held its annual training day on 28 October 2010. A number of presentations, relevant to the daily practices of our lawyers, were given by experienced in-house counsel.

Topics covered included parole issues in sentencing, arrest rights and early advice, and an overview of the amended drug laws in SA. Training of this nature is not only vitally important to improve the skill base of in-house lawyers but also provides an excellent opportunity for the section to gather as a whole to meet with colleagues from across the Commission's range of central, regional

and country offices. It is good for morale and demonstrates the strong collegiate spirit and camaraderie which exists within the section.

The Commission's criminal lawyers also continue to be involved in further education by assisting the Law Society when requested. In-house practice lawyers are involved in teaching PLT and GDLP students, presenting evening CLE's to the profession on behalf of the Law Society and attending as advocacy instructors at the Law Society's GDLP Advocacy Workshops held at the Sir Samuel Way Building.

This is recognition that the Commission's in-house practice lawyers are highly experienced and respected members of the legal profession and their skills are often sought after by the Law Society. This involvement with the Law Society, particularly with teaching the law students, provides the Commission with invaluable standing within the profession while fostering legal aid as a career environment of choice for graduating legal professionals.

In addition, Lana Chester, the Commission's senior solicitor at the Youth Legal Service has been involved in presenting seminars to young people on behalf of the Legal Services Commission on the Youth Court including the Court's jurisdiction and procedure, the rights of young people, arrest and custody, police interviews and the role of support persons, mobile phones, social media and their associated legal risks.

A number of the section have attended external professional training seminars including:-

- ANZAAPL seminar on suicide presented by the Deputy State Coroner.
- Law Society seminar on DNA profiling evidence in criminal trials.
- Law Society seminar—Defences in Drug Cases.
- How to negotiate with the DPP by senior prosecutor John Wells.
- Cross examination in Criminal Trials by Judge Millsteed and Marie Shaw QC and chaired by Justice David.
- Weekend Advocacy Workshop facilitated by the Australian Institute of Advocacy.
- ANZAAPL weekend conference on cybercrime, mental health issues and the internet.

In May 2011 the Criminal Law Section Mandatory CPD program commenced.

The sessions are held immediately following the section's monthly meeting, with a different criminal law topic being delivered to section lawyers either by one of the in-house criminal lawyers or an external guest speaker. The current criminal law program runs until December and will provide an opportunity for the Commission's in-house lawyers to accrue seven points towards the total necessary for the re-issue of their practising certificates.