

Hales v Commissioner of the NT Police [2007] NTSC 67

PARTIES: HALES, PETER WILLIAM

v

COMMISSIONER OF THE
NORTHERN TERRITORY POLICE

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: 22 of 2006 (20606363)

DELIVERED: 20 November 2007

HEARING DATES: 26 March and 25 July 2007

JUDGMENT OF: SOUTHWOOD J

CATCHWORDS:

JUDICIAL REVIEW – Judicial Review of an administrative decision – transfer of position within the Northern Territory Police Force under s 14B Police Administration Act – whether policy on Management Initiated Transfers applicable – whether procedural fairness was denied – whether decision to transfer made on disciplinary grounds not operational grounds – Application dismissed

Police Administration Act 1978

REPRESENTATION:

Counsel:

Plaintiff:	T Berkley
Defendant:	P Barr QC

Solicitors:

Plaintiff:	Maleys
Defendant:	Solicitor for the Northern Territory

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Hales v Commissioner of the NT Police [2007] NTSC 67
No 22 of 2006 (20606363)

BETWEEN:

HALES, PETER WILLIAM
Plaintiff

AND:

**COMMISSIONER OF THE
NORTHERN TERRITORY POLICE**
Defendant

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 20 November 2007)

Introduction

- [1] This is an application for judicial review of an administrative decision to transfer Sergeant of Police, Peter Williams Hales (Sgt Hales) from the Summary Prosecutions Unit of the Northern Territory Police Force to another section of the Police Force.
- [2] On 30 January 2006 Sgt Hales received a notice of transfer dated 1 January 2006. The notice of transfer was issued under s 14B of the Police Administration Act by Assistant Commissioner of Police, Mark McAdie. He is a delegate of the Commissioner of the Northern Territory Police (the Commissioner of Police).

[3] The notice of transfer stated as follows:

“In pursuance of s 14B of the Police Administration Act the Commissioner may, as the Commissioner thinks fit, transfer a member from the position held by the member to another position upon giving written notice to the member.

Now I, Mark McAdie, Assistant Commissioner of Police formally notify you that I have transferred you from the position of Sergeant, Summary Prosecutions Unit, Darwin, to the position of Sergeant, NTPFES Training College, Berrimah.

This transfer is to take effect from 31 December 2005 or 14 days from the date of this notice, whichever is the latter.”

[4] Sgt Hales seeks a declaration that the decision to transfer him from the position of Sergeant, Summary Prosecutions Unit, to the position of Sergeant, Northern Territory Police Fire and Emergency Services Training College, is void.

Grounds of the application

[5] The grounds of the application are as follows:

- (a) There has been a denial of natural justice. The decision to transfer Sgt Hales was made without due consideration of his response to the proposal to transfer him out of the Summary Prosecutions Unit. Sgt Hales’ response is contained in a memorandum dated 28 February 2005. Police Management decided to transfer Sgt Hales regardless of any response that he made to the notice of intention to transfer him.
- (b) The decision to transfer Sgt Hales was made on disciplinary grounds not operational grounds. Disciplinary grounds are not valid grounds

for a transfer under s 14B of the Police Administration Act.

Sgt Hales was not accorded the procedural fairness that he would have been accorded if disciplinary proceedings had been instituted.

- (c) Neither Deputy Commissioner Wernham nor Assistant Commissioner McAdie followed the “Northern Territory Police Policy on Management Initiated Transfers” (the Policy on Management Initiated Transfers) when they made the decision to transfer Sgt Hales from the Summary Prosecutions Unit. The policy was made and gazetted by the Commissioner of Police after the enactment of s 14B Police Administration Act. The policy is binding on the Commissioner of Police and applies to all transfers of members of the Police Force that are made under s14B of the Police Administration Act.
- (d) Alternatively, Sgt Hales had a reasonable expectation that the Policy on Management Initiated Transfers would be applied to any decision to transfer him and he should have been given an opportunity to be heard about whether the requirements of the policy should have been applied to the decision to transfer him.

[6] Sgt Hales argued that a police officer may remain in his or her gazetted position unless transferred to another gazetted position. A police officer may only be transferred following an application by the police officer for transfer, with the consent of the police officer, upon an exercise of the

disciplinary power granted under s 80 of the Police Administration Act, or as a result of a management initiated transfer under s 14B of the Police Administration Act.

- [7] The decision to transfer Sgt Hales did not comply with the Policy on Management Initiated Transfers. The Commissioner of Police did not transfer Sgt Hales to fill an advertised vacancy which no member had applied for, or for which no suitable applications had been received, or in respect of which it was inappropriate for the Commissioner to promote another police officer to fill the vacancy. No steps were taken to constitute a Management Initiated Transfer Panel. No steps were taken to select a list of potential transferees to the position of Sergeant Northern Territory Police Fire and Emergency Services Training College at Berrimah. The Senior Sergeant responsible for convening the transfer panel did not notify Sgt Hales that he was under consideration for the transfer to the position of Sergeant Northern Territory Police Fire and Emergency Services Training College at Berrimah.
- [8] Sgt Hales did not argue that he was deprived of an opportunity to be heard because the various delegates of the Commissioner of Police took into account matters that they did not disclose to him.

The issues

- [9] The following principal issues arise for consideration by the court. First, was Sgt Hales transferred for disciplinary reasons? Secondly, did the Policy

on Management Initiated Transfers apply to the transfer of Sgt Hales?

Thirdly, was Sgt Hales denied procedural fairness because proper consideration was not given to his written response to the notice of intention to transfer him?

[10] In my opinion Sgt Hales' application for a declaration should be dismissed.

Sgt Hales was not transferred for disciplinary reasons; the Policy on Management Initiated Transfer did not apply to his transfer; and proper consideration was given to his response to the letter from Acting Deputy Commissioner, Mark Payne dated 24 January 2005.

The facts

[11] I make the following findings of fact. Sgt Hales enlisted in the Northern Territory Police Force on 29 September 1980. From 29 September 1980 to 6 March 1981 he was employed in the recruit training section of the Northern Territory Police Force. From 6 March 1981 to 10 July 1981 he was employed doing general duties at Darwin. From 10 July 1981 to 14 July 1984 he was employed doing general duties at Oenpelli. From July 1984 to August 1986 he was employed doing general duties at Darwin. From August 1986 to December 1987 he was employed in the Summary Prosecutions Unit at Darwin. From December 1987 to October 1990 he was employed as a Sergeant Instructor at the Northern Territory Police College. From October 1990 to July 1994 he was employed as the Officer in Charge of Traffic at Palmerston. From July 1994 to June 1996 he was employed as the

Supervisor of Communications at Berrimah. From June 1996 to 15 January 2006 he was employed in the Summary Prosecutions Unit in Darwin.

[12] On 17 September 1996 the Police Administration Amendment Act (No 2) being Act number 40 of 1996 was given assent by the Administrator. The Amendment Act enacted Section 14B of the Police Administration Act which provides as follows:

14B Commissioner may transfer members

The Commissioner may, as the Commissioner thinks fit, after giving a member written notice, transfer the member –

- (a) from the position held by the member in the Police Force to another position in the Police Force; and/or
- (b) from the locality in the Territory where the member is stationed to another locality in the Territory.

[13] After the enactment of s 14B of the Police Administration Act the Police Association of the Northern Territory and Police Management negotiated the Policy on Management Initiated Transfers. On 13 January 1997 the Commissioner of Police published the policy in Northern Territory Police Gazette 1 of 1997.

[14] The Policy on Management Initiated Transfers states as follows:

NORTHERN TERRITORY POLICE

POLICY ON MANAGEMENT INITIATED TRANSFERS

This policy is published in Northern Territory Police Gazette 1 of 1997 on 13 January 1997

AUTHORITY

The Commissioner exercises general control and management of the Police Force under Section 14 of the Police Administration Act.

Section 14B of the Act states:

“The Commissioner may, as the Commissioner thinks fit, after giving a member written notice, transfer the member –

from the position held by the member in the Police Force to another position in the Police Force; and/or

from the locality in the Territory where the Member is stationed to another locality in the Territory.”

POLICY

It is the policy of the Northern Territory Police Force to fill vacant positions by means of Management Initiated Transfers where such vacancies cannot be satisfactorily filled by advertising for applicants or promotional processes.

A Management Initiated Transfer may be directed where the best interests of the efficiency and effectiveness of the organisation, or of a member, are served by any such transfer.

This policy does not apply to transfers effected as part of the legislated disciplinary process or as an interim measure pursuant to section 80 of the Police Administration Act.

PURPOSE

The purpose of this policy is to ensure that the staffing needs of the organisation are met by the most appropriate personnel, having regard to both the circumstances of the member and the organisation.

MANAGEMENT INITIATED TRANSFER PANEL

When, in the general course of attempting to fill advertised vacancies:

no member has applied for the vacancy; or

no suitable applications have been received; or

it is inappropriate in the opinion of the Commissioner to promote to fill the vacancy;

a decision may be made to constitute a “Management Initiated Transfer Panel”.

The Management Initiated Transfer Panel for Non Commissioned Officers will comprise: a member of the Executive of the Northern Territory Police Association, two Commissioned Officers and the Senior Sergeant Recruitment (convenor) (or another Senior Sergeant, where required).

Where the Management Initiated Transfer involves a Commissioned Officer, the composition of the panel will be as determined by the Commissioner of Police.

The Commissioner will select a member, in the case of both Non Commissioned and Commissioned Officers, to be the Chairperson.

MATTERS TO BE CONSIDERED BY THE PANEL

In selecting a list of potential transferees, initial considerations will include:

whether a member has served outside of Darwin or Alice Springs in the past 10 years;

whether the member has had a transfer involving geographical relocation in the past 3 years;

whether the member has previously served at the location in the same rank/position as the vacancy under consideration; and

whether the member has previously been the subject of a management initiated transfer.

In making a determination on a management initiated transfer, the panel will give due consideration to the following criteria:

In relation to the member

Whether, in relation to the job profile, the member has adequate experience and the requisite knowledge, skills and abilities (competencies) to carry out the duties associated with the position.

The frequency of past transfers and time served at respective locations.

The period of service at the relevant rank.

The period of service remaining prior to retirement.

Any developmental needs that would be met by the transfer.

The panel will consider, at the request of the member, factors relating to the member's spouse/partner and/or dependants.

In relation to the Organisation

The benefit to be gained by the relocation of a particular member in relation to the effectiveness and good management of the organisation.

ADMINISTRATION

The Senior Sergeant is responsible for convening the panel as required by the Commissioner.

The panel, as a first step, will prepare a list of potential transferees.

Members identified by the panel will be advised they are under consideration for management initiated transfer to a particular position and will be invited to present to the panel any matters which they feel are relevant and valid to their selection/non-selection for the position.

The panel will recommend, with justification for the decision, to the Commissioner the candidate considered most suited for transfer to the position.

The Commissioner, after considering the recommendation, will advise the panel of his decision.

The Chairperson shall advise the candidate selected for transfer as soon as practicable and provide the following information: reasons for his or her selection; and that the transfer is for a period of two years unless the member wishes to remain longer and a written request for an extension is approved by the Commissioner.

The Senior Sergeant will be responsible for notifying, in a timely manner, non selected Non Commissioned Officers who were under consideration for the particular transfer.

In the case of Commissioned Officers, the Chairperson of the panel will inform all members of the results and provide comprehensive feedback where required.

- [15] According to its terms the Policy on Management Initiated Transfers does not cover the whole field of transfers that may be made under s 14B of the Police Administration Act. The purpose of the policy is to ensure that a process exists under which unpopular vacancies (whether by reason of remoteness or otherwise), which cannot be satisfactorily filled by advertising for applicants or promotional processes, can be filled with the most appropriate personnel, having regard to both the circumstances of the potential transferees and the management needs of the Police Force. The policy provides that where such vacant positions cannot be filled by advertising for applicants or promotional processes, a Management Initiated Transfer Panel may be convened to determine who should be selected for transfer.

- [16] In order to avoid hardship or unfairness and meet the requirements of good management of the Northern Territory Police Force the Policy on Management Initiated Transfers provides that the panel will include a member of the executive of the Northern Territory Police Association and shall have regard to the following matters: whether a police officer has served outside of Darwin or Alice Springs in the past 10 years; whether the police officer has had a transfer involving geographical relocation in the past 3 years; whether the police officer has previously served at the location in the same rank/position as the vacancy under consideration; whether the police officer has previously been the subject of a management initiated transfer; and the frequency of past transfers and time served at respective locations.
- [17] During 2001 Sgt Hales was employed as an Administration Sergeant in the Summary Prosecutions Unit. His duties in this position included checking files, determining and laying charges, providing advice on substandard files, briefing out files, processing account payments and undertaking relief prosecution duties before the Darwin Court of Summary Jurisdiction.
- [18] In November 2001 Senior Sergeant Lorraine Carlon was appointed Officer in Charge of the Summary Prosecutions Unit. She assumed those duties after Senior Sergeant Peter Thomas became incapacitated for work as a result of suffering a heart attack. Her management style was different to that of Senior Sergeant Thomas and she implemented a number of changes to the management and operation of the Summary Prosecutions Unit.

[19] In a memorandum that Senior Sergeant Carlon sent to Superintendent Lane Crews on 2 November 2004 she describes her approach to management of the Summary Prosecutions Unit in 2001 as follows:

“Upon assuming the role [in November 2001], whilst possessing some experience in the field and not the legal background of the previous incumbents, I began implementing a number of initiatives aimed at improving the productivity of the unit, its relationship with the operational areas and the accountability of staff. (...).

The initiatives included:

- The redeployment of staff within the unit to address the obvious rift forming between operational members and the SPU and to provide multi-skilling of both sworn and non-sworn staff in an effort to minimise outsourcing of files to private solicitors.
- Implementing rosters, training days for both operational and SPU staff to improve the level of understanding of both parties regarding each others roles and the constraints each operate under.
- Introduction of statistical reports by all staff involved in all endeavours within the SPU to provide accurate data to develop a strategic approach to the section’s management.
- The identification and recruitment of staff with an interest in the section and the removal of those members within the section who were there due to medical inability or other problems which precluded them from full operations duties.

[20] Shortly after assuming the role of Officer in Charge of the Summary Prosecutions Unit Senior Sergeant Carlon required Sgt Hales to undertake duties other than that of Administration Sergeant because complaints had been received from police officers who were performing operational duties about Sgt Hales’ criticism of their standard of file preparation for Summary

Prosecutions. She made a complaint to Superintendent Gordon about Sgt Hales' lack of accountability and she asked that Sgt Hales be transferred from the Summary Prosecutions Unit.

[21] On 26 November 2001 Senior Sergeant Carlon sent a memorandum to Superintendent Gordon. In the memorandum she stated:

Summary Prosecutions implemented a roster for the section commencing 22 November. The roster was posted on the "N" drive on the 6th November and hard copies distributed to all members of the unit.

As the incoming OIC I took the time prior to publishing the roster to discuss duties, responsibilities and reasons for some changes as they impacted on the unit and individual members.

Sergeant Hales' attitude and performance is of concern and maybe subject to disciplinary procedures.

Thursday 22nd November

- Rostered to perform Bail/Arrest Duties in company with Sgt Helen Rowbottam 0630 – 1430.
- Departed the office at 1200hrs and returned at 1510hrs under the influence of alcohol. (extended lunch with solicitor Tom Berkeley)
- No notification of whereabouts was given during this absence.

Friday 23rd November

- rostered to perform Bail/Arrest Duties in company with Sgt Helen Rowbottam 0630 – 1430.
- Sgt Rowbottam was present in court from 0850hrs – 1630hrs without assistance or knowledge of Sgt Hales' whereabouts.

Wednesday 28 November

- approached A/Sgt Peach to assist in Bail/Arrest Court on the 28th and 29th November by “doing court 1 in the afternoon” as member wanted to go fishing.

On Thursday morning I spoke with Sgt Hales re the above concerns to see if there was an underlying reason which may be affecting your duties attitude. There was no reason given.

Friday 30th November

- commenced duty at 0700 and ceased duty prior to 1500hrs – not notifying anyone in the office of whereabouts.
- Directed in the morning to personally take a sentence at 2pm and failed to do so leaving the new prosecutor to undertake the duties.
- Left a new prosecutor on observation to attend Bail/Arrest Court in the afternoon and to take the sentence Sgt Hales was allocated.

Whilst undertaking the handover duties from the previous OIC I am now only too aware of the complaints that Sgt Hales is attracting amongst operational members and OIC of sections. The latest e-mail is from OIC CIB voices the concerns of the OIC CDEU (one member seeking legal advice for civil action against Sgt Hales) and Cas LPO members in the past month.

“Once again today an Arrest file has been returned as ‘defective’.... The reasons given by Prosecutor Sgt Hales are indicative of the manner in which he has become renowned for attending his duties. Generally speaking because of the continual insulting and pedantic messages from the Sgt he is ignored by me and I encouraged the members targeted to do the same which is often easier said than done when he questions their integrity. When will it ever end and get back to a mutually beneficial and cooperative working relationship.”

Sgt Hales has been gazetted to SPU for four years I recommend that the member be transferred to Operational duties due to his poor interpersonal skills essential to this section. The member’s current attitude and performance is not acceptable in a small and specialist

unit where members are required to perform duties with minimum supervision.

Due to recent staff movements, Sgt Gokel an experienced prosecutor who has recently transferred from the section may be a viable alternative to replace Sgt Hales.

- [22] On 10 December 2001 Sgt Hales was counselled about the matters raised in Senior Sergeant Carlon's memorandum. The police officer who counselled Sgt Hales sent the following report to Senior Sergeant Carlon:

I have discussed the contents of the report with Sgt Hales. Whilst he acknowledged there may be some difficulties, he re-affirmed his support for you and your position. He stated he would endeavour to report any deviations from his accepted role with the section prior to them occurring and requested any matters of contention be raised with him as soon as possible to ensure swift resolution.

- [23] Disagreements between Senior Sergeant Carlon and Sgt Hales continued during 2002. In a briefing note that he prepared for the relevant Commander of Police, Superintendent Gordon stated:

Sergeant Hales has been a vocal opponent to the change, having been moved from the administration position he has occupied for a number of years. The position entailed the checking of files and his rejection of files along with his often cutting and occasional offensive comments were probably most of the cause for the rift between operational members and SPU. As you are aware Sergeant Hales was identified for transfer prior to Senior Sergeant Thomas becoming incapacitated preventing his removal due to lack of experienced staff within the section.

- [24] About 18 months after the end of November 2001, Senior Sergeant Thomas resumed his role as the Officer in Charge of Summary Prosecutions. He remained in that position until 15 January 2004 when he went on long service leave. While Senior Sergeant Thomas was on long service leave it

was decided that he would cease to be Officer in Charge of the Summary Prosecutions Unit. From 15 January until 11 March 2004 Sergeant Sue Kendrick was appointed Acting Officer in Charge of the Summary Prosecutions Unit. Her appointment was the subject of a grievance proceeding lodged by Sgt Hales.

[25] In February 2004 the Summary Prosecutions Unit became part of the Northern Territory Police Force Crime Command. The Summary Prosecutions Unit had previously been part of Operations Command within the Northern Territory Police Force. In or about February 2004 the Commander of Crime Command was Commander George Owen. He reported to Assistant Commissioner of Police, Grahame Kelly. Superintendent Crews was the superintendent of the Operational Support Division within Crime Command.

[26] On 11 March 2004 Senior Sergeant Carlon was again appointed to the position of Officer in Charge of the Summary Prosecutions Unit. In her memorandum to Superintendent Crews dated 2 November 2004, Senior Sergeant Carlon stated that on her return to the role of Officer in Charge of the Summary Prosecutions Unit in 2004 she found that, “both the unit and Sergeant Hales had regressed to the 2001 status”. Whether this was in fact so is not for this court to decide. However, Senior Sergeant Carlon’s opinion is relevant because it forms part of the factual matrix in which she came to again request that Sgt Hales be transferred from the Summary Prosecutions Unit.

[27] In Appendix B to her memorandum to Superintendent Crews dated

2 November 2004 Senior Sergeant Carlon stated:

The OIC Prosecutions, Senior Sergeant Peter Thomas commenced Long Service Leave 15 January – 3 May 2004. A replacement created a dilemma in respect of the existing MOU (qualifications) and NT Police (rank and management ability). Two separate grievance disputes, which were lodged by members from the unit, Sergeant Hales and Sergeant Kendrick, were dealt with during January by Acting Commander Don Fry. Sergeant Kendrick as the only qualified member to the rank of Senior Sergeant was given the “Acting” until 11 March when a member (substantive Senior Sergeant) from outside the unit was nominated for the duties.

The period has involved a structural change within the NT Police implemented 18 February.

Changes resulting:

- Implementation of the Intel-Based Policing Concept – Tasking and Co-ordination Group (TCG) – Involves a representative from Prosecutions to be involved in the Regional meetings at Darwin LPO every Thursday at 1000 hrs.
- Summary Prosecutions falls within the responsibility of Crime Command, Assistant Commissioner Grahame Kelly and Superintendent Lane Crews (Crime Support Services).
- Implementation of an Executive Leadership Group brief to be submitted each Monday.
- Review and submission of job profiles as part of the continuous Improvement Program (CIP).
- Review of Staffing (O’Sullivan Review)

The O’Sullivan recommendation in respect of Summary Prosecutions was to reduce police members from both Alice Springs and Darwin (and School Based constables) to implement a six member Tactical Response Group in Alice Springs.

There is an indication the CEO does not support this recommendation and is supportive of the mix of civilian personnel and police members (increase by 9 Constables).

- *Expressions of Interest to be circulated to replace Sue Kendrick (commenced Maternity leave) and Helen Rowbottam (LSL June).*
- Review of Decision Making – Summary Prosecutions within the NT commencing 29 March – consultant Richard Kauffman. (Report to be completed next week and whilst staffing was not an agenda item he is recommending some rotations).

Issues affecting SPD

- Accountable management practices

(Rosters, Work Load Analysis and Reporting, Financial, Outsourcing, Staff-HR issues and development) – ad hoc or non-existent

- Lack of Rapport between the Unit and Operational Police

Members through tenure have disassociated themselves from enhanced service delivery to operational police, training and changes within the Police structure, including their own basic qualifications (glock, first aid and courses).

Two members (Peach and Moore) now on the upcoming Emerging Leaders Program and time Management 1 day Course and actively pursuing promotion.

Changes:

- Trial of the Duty Prosecutor commencing 8 April for 3 months to combat the “them v us” and assist with the inexperience of operational police (due to the freeze in recruitments during the 1990’s)
- Changes to requirements for files - basic file and correct preparation circulated, IJIS changes to AP-making the cover sheet obsolete – should be finalised June/July

- Rotation of an operational supervisor through the unit commencing 1 April (extra resource). Shane Arnison rostered for 3 months.
- Training of bush circuit members from Bail and Arrest matters – Sergeant Lyn Balchin (Alyangula).
- Hearing results – feedback to members each Friday initiated.
- Implementation of set costs and rotation to firms – outsourcing – to counteract bias/complaints of preference.
- Rostering of training – courses, qualifications.

The majority (9) of staff have accepted the changes however it appears 2-3 members have taken issue with aspects which have resulted in correspondence from the Police Association to the COP. Ascom Kelly has briefed the Deputy COP (HQDOC2004/02727 29 March) and has articulated the Change Management and addressed the specific issues raised.

ODPP has a meeting with the Ascom 7 April and an appointment with the Deputy 8 April.

[28] Soon after Senior Sergeant Carlon was reappointed to the position of Officer in Charge of the Summary Prosecutions Unit differences of opinion again arose between her and Sgt Hales. At an early briefing of the staff of the Summary Prosecutions Unit by Senior Sergeant Carlon, Sgt Hales was openly critical of her decision to establish Duty Prosecutors because he felt that it would make it even more difficult for the Summary Prosecutions Unit to adequately service the Darwin Court of Summary Jurisdiction. There was a disagreement between them about the changes that Senior Sergeant Carlon made to the duty roster which inconvenienced Sgt Hales. As a result Sgt Hales went over Senior Sergeant Carlon's head about this matter. He

sent an email to Superintendent Crews about his concerns about the roster. Sgt Hales also had a disagreement with Senior Sergeant Carlon about him being rostered as a Juvenile Prosecutor.

[29] At 11:36 am on 19 April 2004, following an exchange of emails about the change in Sgt Hales' roster, Senior Sergeant Carlon sent him the following email:

Peter

The roster is in place to accommodate the needs of the section. As you are aware Expressions of Interest were sought last week for extra persons in light of the vacancies caused by maternity leave and LSL (and upcoming courses and Advanced Prosecutors Course). One member is also training which necessitates an experienced member in Bail and Arrest.

Permission has been granted to have members obtain the 20 per cent allowance while shiftwork is rostered for the Duty Prosecutor Role. This is a fair response by the Department particularly as shift work does not entail nightshifts and caters for rostering of one weekend every 4 to 6 weeks.

With current staffing the option as I see it is:

- To forgo university on Tuesday and work dayshift Bail and Arrest or
- Attend university and work evening shift prosecutor

As previously discussed on several occasions, the study leave will be accommodated when staffing allows.

[30] In April 2004 Walter and Turnbull published their report entitled, "Review of Prosecution Decision Making". The report was published after an independent review of prosecution decision making processes applied within

the Northern Territory Police Force. The report stated that there were shortcomings in the way that decisions to prosecute criminals were made in the Northern Territory. The report recognised that there were two key issues that had led to problems. First, there was a basic difference in the objectives of the Northern Territory Police and the Office of the Director of Public Prosecutions. The Northern Territory Police made a decision to prosecute if there was a prima facie case whereas the Office of the Director of Public Prosecutions would not make a decision to prosecute unless there were reasonable prospects of securing a conviction. Secondly, there was a lack of adequate liaison between the two organisations about matters of a strategic or policy nature. The authors of the report also noted that problems arose because operational police lacked sufficient skills and a sufficient understanding of the expectations of the Office of the Director of Public Prosecutions in relation to criminal prosecutions; police prosecutors in the Summary Prosecutions Unit found it difficult to adequately manage the need for dual accountability to the Northern Territory Police Force and to the Office of the Director of Public Prosecutions; and the Northern Territory Police Force and the Office of the Director of Public Prosecutions used different computer case management systems which were not integrated. This made the recording and accessing of information difficult.

[31] Three of the recommendations made by the authors of the Walter and Turnbull report were that: Consideration should be given to the implementation of refresher and remedial training courses that may be

offered to improve the level of skills of operational police in the preparation of briefs of evidence and in the supervision and quality assessment that may be applied to briefs of evidence – operational police should have an adequate level of understanding of the requirements surrounding the decision to prosecute; police prosecutors in the Summary Prosecutions Unit should be rotated to ensure that contact is not lost with the objectives of the Northern Territory Police – where possible, a maximum tour of duty in the Summary Prosecutions Unit of two years should be implemented; and advice of the outcome of all briefs of evidence should be given to arresting officers or the officers initiating the prosecution.

[32] On 12 May 2004 Mr Ian Rowbottam, a solicitor who had been appearing on behalf of a defendant in a summary prosecution matter, sent an email to Senior Sergeant Carlon. In it he made two complaints against Sgt Hales. First, he complained that Sgt Hales had been rude to him and had unreasonably refused to provide him with a copy of the précis and the charge sheet for a client for whom he was acting. Secondly, he complained that Sgt Hales had wrongly and unreasonably refused to accept an offer of a charge negotiation and a plea which he made on behalf of another client. The precise terms of Mr Rowbottam's email were as follows:

I refer to our conversation this afternoon regarding this situation which appears to have arisen and is now seriously affecting my dealings with your Office. I have kept silent as I have attempted to resolve the situation. I am sorry if I sounded a little testy however I simply cannot remain silent any further and will not tolerate the lack of cooperation.

Simply put, in the last 18 months, if not longer, I have not been able to arrange any resolution of any matters with Sgt Hales. Despite this, I have remained polite. I have not received the same treatment. I have not responded despite the rudeness which is directed my way in response to even the simplest queries.

An example is that I recently attended Court in relation to a client who was, at first mention, represented by the NTLAC duty solicitor. He was granted an adjournment and subsequently applied for Legal Aid. Aid was refused. NTLAC kept the Précis and charges. He then briefed me. I asked for a copy of the paperwork. I was told to get them from Legal Aid. Is it too much to ask for a little cooperation when it would assist the Court to settle or at least expedite matters?

In my experience, this is an example of the unhelpful suggestions and rudeness that permeates Sgt Hales' dealing with practitioners at Court 1. I am not alone in my view.

Another matter, I have a young soldier (Matten – 20319014) charged with BOTH dangerous Act AND assault for the same act. I've offered a plea in relation to one charge. I was informed this afternoon that these charges are NOT in the alternative. A simple telephone call to DPP confirmed my view that the Prosecution will be forced to elect – one charge or the other. You can't be penalized twice for the same act. Basic law being ignored to the point of stubbornness.

I can indicate that on every occasion that I have offered resolution to matters to your section (which have been refused), I have won every subsequent hearing for the last 2½ years. I have not lost. Ever. I have gotten costs. The public loses.

I would ask that you contact me if you wish to discuss the matter further. In essence though, I can advise you that I will no longer make any offers of compromise to Sgt Hales. I simply will not waste my time any further.

[33] At or about the time that he sent the email referred to above, Mr Rowbottam also told Senior Sergeant Carlon that Mr Cavenagh SM, a magistrate, had complained to him about Sgt Hales and had said to him, "I have known Peter Hales for many years and he has an attitude problem. He is argumentative

and facetious. He was removed once before because of his attitude. Who let him back in? I was surprised to see him back. As I said, he is argumentative to the bench. He does not reflect well for the organisation and is an embarrassment for Police”. This particular allegation of Mr Rowbottam’s was never verified. No written statement was obtained from Mr Rowbottam about what he said Mr Cavenagh told him. Nor was a comment sought from Mr Cavenagh SM.

[34] The following matters are noteworthy about Mr Rowbottam’s email. First, the email makes no specific reference to any alleged criticism of Sgt Hales by Mr Cavenagh SM. Secondly, only two matters of complaint are particularised. The remainder of the email is mere assertion. Thirdly, Mr Rowbottam does not state that he contacted the Northern Territory Legal Aid Office to try and obtain a copy of the précis and the charge sheet. Nor does he state that any attempt to obtain a copy of the précis and the charge sheet from the Northern Territory Legal Aid Commission was unsuccessful. When he first saw his client at his office Mr Rowbottam or his administrative assistant should have contacted the Northern Territory Legal Aid Office and requested that a copy of the précis and the charge sheet be faxed to Mr Rowbottam. If he did not do so, Mr Rowbottam’s difficulty was potentially of his own making. Fourthly, police prosecutors are not under an obligation to immediately fix such problems which may be encountered by a solicitor for the defence. Police prosecutors can be extremely busy at court. They may be handling up to 70 files and usually there is one police

prosecutor who will have to deal with several NAALAS lawyers, one or two lawyers from the Northern Territory Legal Aid Commission and up to five or six private lawyers. Time is often at a premium. Given the pressures that police prosecutors face at court, professional courtesy obliges defence lawyers to give police prosecutors reasonable notice of their requests and a reasonable time in which to provide assistance. Fifthly, a defence lawyer cannot, of the lawyer's own motion, decide that the lawyer will no longer make offers of a charge negotiation on behalf of his clients to Sgt Hales or to any other police officer. A defence lawyer is required to act in the best interests of his client and in accordance with the client's instructions. If it is in the client's best interest to negotiate an appropriate charge and the defence lawyer is so instructed then that is what the lawyer is required to do in order to fulfil defence lawyer's professional obligations to the client. Finally, if indeed Mr Rowbottam was having difficulties negotiating appropriate resolutions of matters with Sgt Hales, he should not have waited for 18 months before raising his concerns with the Officer in Charge of the Summary Prosecutions Unit. Such delay can make it very difficult for the person who is the subject of the complaint to adequately respond to the complaint.

[35] On 13 May 2004 Senior Sergeant Carlon emailed Mr Rowbottam's complaint about Sgt Hales to Superintendent Crews. Senior Sergeant Carlon and Superintendent Crews then met with Assistant Commissioner Kelly.

During the meeting Assistant Commissioner Kelly made the following comments:

My advice here is that the matter should be brought to the attention of [Mr Wild QC] as should the comments of the Magistrate. It should also be brought to the attention of Peter Hales. I suggest that Lorraine and yourself talk to [Mr Wild QC] on the basis that you want to discuss the approach to take. The idea would be to seek [Mr Wild QC's] advice concerning the "professional lawyer" issues, while we look at the "police conduct issues". I would suggest that out of that meeting you could decide a course of action. It is my prediction that [Mr Wild QC] will want to deal with the matter himself. It is my view that it should be a joint approach with Lorraine/or you being present so Peter recognises there is a united front and that he has to curb his approach, and that [Mr Wild QC] sees that we are fairdinkum and wish to work within the MOU arrangements. I suggest that a response is also provided to Ian Rowbottam to say that the matter is being dealt with and roughly how and that we would be pleased to discuss any future complaints with him in an effort to rebuild working relationships. It might be worthwhile seeking out opportunities to rub shoulders with other Crim Law firms around town and suss out what the "feel" is.

[36] On 21 June 2004 there was a meeting between Senior Sergeant Carlon and Mr Wild QC. At that meeting Mr Wild QC said that a copy of Mr Rowbottam's email should be provided to Sgt Hales and that he would meet with Sgt Hales on 5 July 2007 to discuss the matter. There was also discussion at this meeting about Mr Rowbottam's allegations about what Mr Cavenagh SM had said to him about Sgt Hales.

[37] On 5 July 2004 Sgt Hales met with Mr Wild QC to discuss the complaints made by Mr Rowbottam. The complaints were resolved in Sgt Hales' favour. In his report to Senior Sergeant Carlon, Mr Wild QC stated:

As agreed, I have discussed this matter with Sgt Hales.

His explanation, which I accept, is that although both matters, as reported, are correct on the face of it, they nevertheless do not properly represent the flavour of the situation. The request to Peter at court for paperwork was at a very busy time in Court 1. Peter had a great number of briefs in front of him and did not have a spare copy of the document involved. The offer made was a genuine one, that is to provide a copy later in the day, but it could not be provided at that instant. The matter relating to Matten is recalled by Peter. It was his view at the time that there were two separate sets of facts involved and he wanted time to consider the matter. Counsel for the defence can hardly complain if an offer is made at the door of the court or at the bar table and the prosecutor is not immediately in a position to accept it.

In this last connection, you might bear in mind that there is an obligation on prosecutors before withdrawing charges to ensure that the proper protocol is observed.

Peter doubts whether the self-serving statement made in the penultimate paragraph is borne out by the facts. He suggests there may be cases where the matter has been resolved by a plea at a later date. Be that as it may it is not to the point. But Peter assures me that where he regards the case as a loser he does in fact arrange withdrawal of it (or, alternatively, accepts a plea to a lesser charge).

Peter does, however, acknowledge that he can be brusque and somewhat prickly. He makes the same claim in respect of Mr Rowbottam. It is not one that I would contradict. He assures me that he will do whatever he can to uphold the good name and reputation of Summary Prosecutions and the ODPP in all his court dealings. This will apply not only to Mr Rowbottam but to other counsel and, naturally enough the Bench.

I am happy to accept the assurance that Peter has given me in this regard.

[38] During his meeting with Mr Wild QC, Sgt Hales complained to Mr Wild QC about the fact that he had been given duties as the Juvenile Prosecutor and about being given insufficient study leave. This caused Mr Wild QC to state in his report to Senior Sergeant Carlon that:

There were two separate issues that Peter raised with me during our meeting.

1. He has been given duties as the Juvenile Prosecutor. He makes the point that his experience in prosecuting makes him a logical choice as the Bail and Arrest Sergeant. In that position he is best able to provide training in court to those not so experienced. The Juvenile Prosecutor is a one off operator who does not have the opportunity to work with another prosecutor, as it were.
2. Peter tells me that he had some difficulty with his studies in first semester. As you know he is studying law at the University which, I assume, is regarded as of mutual advantage to him and the Department. He has sought leave in second semester 2004 from 9.00 am to 12.30 pm (or thereabouts) on Mondays and on Tuesday from 12.30 pm

[39] On 8 July 2004 Mr Wild QC's Executive Assistant emailed Mr Wild QC's report of his meeting with Sgt Hales to Senior Sergeant Carlon.

[40] On 8 July Senior Sergeant Carlon sent an email to Assistant Commissioner Kelly. A copy of Mr Wild QC's report was included in the email. Senior Sergeant Carlon also advised Assistant Commissioner Kelly that Sgt Hales would be lodging a grievance about not being given the role of Acting Office in Charge of the Summary Prosecutions Unit in preference to Sergeant Stuart Davis and she complained that in the week that her email was sent, Sgt Hales had refused to do hearings in the Juvenile Court other than Traffic matters. A copy of the email was sent to Commander Owen and Superintendent Crews.

[41] On 12 July 2004 Assistant Commissioner Kelly sent Superintendent Crews the following email which was copied to Commander Owen and Senior Sergeant Carlon:

Since when does a Sergeant refuse a direction from a Senior Sergeant? I expect the appropriate documentation and a recommendation concerning necessary disciplinary action will be landing on your desk for attention.

I expect that given this issue there are suitable grounds to refuse the member any opportunity for acting OIC in the foreseeable future.

I also note the advice of the Director concerning previous complaints – Thank you.

I imagine he (Rex) will ultimately reach the point where the defensive position is no longer tenable. I have found (to my immense disappointment) on a number of occasions in the past when defending my staff, sometimes it is simply necessary to accept that the behaviour is not appropriate (regardless of the explanation or justification) and the required directions then need to be given or appropriate disciplinary action taken. To do otherwise allows the behaviour to continue with some form of consent.

In respect to leave for study – if there are no other alternative periods when the relevant subjects are offered by the CDU outside of the members work hours, then I suggest that the study leave might be granted. If we get to the completely desperate stage and he can't be released "on the day" then that matter can be addressed at the time. I would try (as far as is possible) to encourage the member to pursue these studies, and allow him the opportunity to do so.

I imagine there is a file of documents being kept in respect to some of the issues being dealt with at the prosecutions unit. I require all e-mails to be retained for future reference for this purpose.

[42] On 12 July 2004 there was also an exchange of emails between Acting Assistant Commissioner Mark Coffey and Superintendent Crews in which

Superintendent Crews asked if Sgt Hales could be traded out of the Summary Prosecutions Unit in return for Gavin Kennedy.

[43] On 14 July 2004, in response to a request from the Crime Tasking Co-ordination Group, Senior Sergeant Carlon sent a memorandum to Commander Owen. In the memorandum Senior Sergeant Carlon provided Commander Owen with a copy of Mr Rowbottam's email dated 12 May 2005 and a copy of Assistant Commissioner Kelly's advice about Mr Rowbottam's email, she reported on the meeting she had with Mr Wild QC on 21 June 2004 and she listed the following complaints about Sgt Hales' performance in the Summary Prosecutions Unit:

- Administration duties/Costs – non-co-operation with civilian prosecutors which has lead to complaints to the ODPP, preferential outsourcing (firms of which he may wish to pursue for “articles” on completion of law degree), lack of team work within the office: refuses to update statistics and complete cost for payments.
- Bail & Arrest – when rostered for Court 1 duties with a second member will leave inexperienced members alone to carry workload (historical and recent complaints).
- Juveniles – refuses to undertake hearings (which other rostered Prosecutors will undertake).
- Contest Mentions and Drug courts – Complaints from lawyers and Magistrates re inability to negotiate/resolve issues within this forum – creates backlog/reflects on service.
- Study leave commitments of 2 half days per week – (Can accommodate one half day due to workload/staffing issues).
- Lack of team work, poor interpersonal skills which impacts on duties within the section.

- Nil undertaking of management courses/non-operational for 8 years. (Not aware of current objectives Purpose and Direction Strategies/TCG's). Correspondence level is at "Supervisory" standard.

[44] The statistics that were required to be updated were statistics about the number of cases that had been handled by the Summary Prosecutions Unit; the nature of the cases that were handled; the outcome of each case – guilty, acquitted, costs awarded, guilty plea, adjourned, etc; the time spent on each case; and the cost of engaging external counsel, if any. These statistics were used by operational police as part of their intelligence about criminals and by management as performance indicators. "Costs for payment" refers to the cost of engaging legal practitioners in private practice to act as a police prosecutor. Senior Sergeant Carlon instituted a system of recording the fees paid to legal practitioners in private practice. This system allowed her to operate a system of quality control and to determine whether it was more cost effective to employ in-house civilian prosecutors.

[45] The Purpose and Direction Strategy was a new Northern Territory Police management initiative. The Strategy is set out in the Northern Territory Police Business Plan 2004 – 5. It was the duty of middle managers, including the Officer in Charge of Summary Prosecutions, to implement performance management objectives in accordance with the strategy. This involved the Officer in Charge of Summary Prosecutions agreeing objectives and performance indicators with senior management and police prosecutors

and ensuring that police prosecutors collected and recorded the necessary performance data and met the agreed objectives.

[46] “TCG’s” are Tasking Co-ordination Group meetings. The meetings were introduced in 2003 – 4 as part of the Crime Prevention Strategy and the move towards Intelligence-Led Policing. Tasking Co-ordination Group meetings were held either daily or weekly. The purpose of the meetings was to identify crime hot spots, manage crime prevention and crime reduction strategies, exchange information and intelligence, communicate management objectives and decide on priorities and tasking of individual members. Police Prosecutors were expected to attend at least the main weekly Tasking Co-ordination Group meeting held by the Darwin Investigators Unit. These meetings allowed mutual feedback from police prosecutors, detectives and other members on matters such as the activities of recidivist offenders, suspects who had been granted bail, domestic violence orders and other alerts. They were also an opportunity for police prosecutors and operational police to better understand each others roles and to co-operatively improve policing outcomes.

[47] The assertion made by Senior Sergeant Carlon in the memorandum dated 14 July 2004, that Sgt Hales is guilty of preferential outsourcing to firms with whom he may wish to pursue articles on the completion of his law degree is not supported by any documentation or any particulars of any specific allegation of preferential outsourcing. The comments appear to have been made without any basis. If the comments were made without

foundation then plainly such a serious allegation should not have been made. They are arguably malicious and defamatory. Such comments do not assist in the resolution of such matters as this case involves. Where there is competition for outsourced work, any claims of preferential outsourcing made by those seeking prosecutions work should also be very carefully scrutinised.

[48] It is likely that the Crime Tasking Co-ordination Group requested the information from Senior Sergeant Carlon because Sgt Hales had asked for particulars as to why he was not given the role of Acting Officer in Charge of the Summary Prosecutions Unit. Sgt Hales also asked to meet with Senior Sergeant Carlon and Superintendent Crews to discuss the reasons why it had been decided that he would not be acting in the role of Officer in Charge of the Summary Prosecutions Unit.

[49] On 15 July 2004 Senior Sergeant Carlon sent an email to Superintendent Crews about a meeting which was to be held with Sgt Hales on 16 July 2004. The email stated as follows:

Performance in Summary Prosecutions

- [Senior Sergeant Carlon repeated the matters set out in par [43] above.]

Specific:

Has not been supportive of changes and remains negative to rosters/Duty prosecutor role

Undertook Duty Prosecutor role without having access to NEPI [National Exchange of Police Information System] despite 3 members rostered prior and 3 weeks notice to organise. Returned from leave and within 3 days had not updated access again for Duty prosecutor role. Reluctantly used another member's sign on.

Duty prosecutor: delays in attending LPO [Local Police Office] (often in SPD until 1600hrs).

Complaints from several Watch Commanders (Setter/Read) when directed to bail a prisoner – has stated he will check the file but not bail. Directions recirculated 15 July as a result.

Has aligned himself after 8 years in SPD with DPP and is believed to disseminate biased information direct to the Director and Police Association re changes.

Is not computer literate and will be the last to come on board with accessing systems (Mainframe/ELG [Executive Leadership Group]).

Locates himself in the Contest Mention Room – even when rostered Juveniles for handover.

Will not or has a reluctance to work overtime (often leaving the second person in Bail & Arrest/Admin to work extended hours to complete Admin tasks) – believed to be due to running a personal business.

Often has to be directed repeatedly to undertake a task (eg ensuring info is added to the L drive [a computer drive used for storing the Summary Prosecutions Unit's records, correspondence and general information]).

Will not discuss issues or concerns direct with OIC – sends e-mails or reports (even after being advised “open door”).

Is not a team player sharing the workload which impacts on morale.

Does not have support of unit or Crime members to perform OIC duties.

[50] The Duty Prosecutor scheme was introduced in 2004 following the recommendations of the O'Sullivan Review. It was intended that Duty

Prosecutors would assist in the provision of higher standard prosecution briefs by operational police. The duty prosecutor was intended to be an experienced police prosecutor who was familiar with the demands of operational policing. The duty prosecutor was rostered on evening shifts to answer questions from less experienced operational members of police to assist them with completing their prosecution files before they went off shift for the night. The aim was to assist operational police while the evidence was still fresh and available. The Duty Prosecutor needed to access the police computer information systems: Integrated Justice Information System (IJIS), Police Real Time Online Management Information System (PROMIS) and National Exchange of Police Information System (NEPI). This meant that duty prosecutors were required to perform their duties at their local police office.

[51] The National Exchange of Police Information system is an online exchange of police information and intelligence. The system is a secure computer system that requires all individuals using the system to be approved and security cleared. Users may only view and enter data through police computer terminals and after keying in their own password. Passwords expire either weekly or monthly and need to be renewed. It is an individual user's responsibility to maintain his or her password and competency and to obtain training if required. It is a supervisor's duty to assist and ensure that his or her staff maintain access, use and input data on the NEPI system.

[52] On 16 July 2004 Sgt Hales met with Senior Sergeant Carlon and Superintendent Crews to discuss the reasons why he had not been given duties as the Acting Officer in Charge of the Summary Prosecutions Unit. During the meeting the issues referred to in par [43] above were raised by Superintendent Crews and Sgt Hales was told that he would not be considered suitable for the duties of Acting Officer in Charge of the Summary Prosecutions Unit until he showed a more positive attitude and it was considered that his knowledge of corporate directions was up to date. Sgt Hales disagreed with the allegations that were made against him. Time prevented all of the matters referred to in par [43] above from being fully discussed and Sgt Hales requested a further meeting. A further meeting was agreed to with the aim of formulating a plan for the future development of Sgt Hales so that he may be considered for the position of Acting Officer in Charge of the Summary Prosecution Unit.

[53] A further meeting between Sgt Hales and Superintendent Crews was held on 22 July 2005. According to a note of the meeting that was made by Superintendent Crews, the following matters were discussed at the meeting. Sgt Hales was told how others perceived him. He stated that inexperienced prosecutors were being sent to Court One in the Magistrates Court. These prosecutors were not making the submissions that they should be making. Sgt Hales agreed to work as a Juvenile Prosecutor for four months and to try and provide more assistance to others.

[54] For a week in October 2004 Sgt Hales performed the role of Acting Officer in Charge of the Summary Prosecution Unit. He did so while Senior Sergeant Carlon was away. While Sgt Hales was in that role he sent the following facsimile to Mr Glen Dooley who was the senior criminal lawyer at the North Australian Aboriginal Legal Aid Service:

Every time that a matter is set for hearing one of your solicitors sends one of the attached standard letters. Previously the OIC here has advised your office that the internal memorandum referred to in the letter has been rescinded, revoked, disowned and otherwise not considered kosher anymore.

In addition the fact that this letter is sent is a waste of your person's time and the time of my staff in receiving and then ignoring it. Apparently as well as faxing the letters you also post them to all and sundry adding to the cost if not the usefulness.

At the time the letter is sent we do not have the items that your people demand. Even if we were prepared to supply the multiplicity of items in the letter we could not. The list exceeds normal disclosure guidelines.

Please direct your staff to stop sending these letters out. They waste time and paper and achieve nothing. Disclosure will be made at the appropriate time as and when we can. I have confirmed the instructions to the staff here that the letters are not to be actioned at all.

[55] The facsimile was also copied to various other police officers and police prosecutors.

[56] While working as Acting Officer in Charge of Summary Prosecutions Sgt Hales also altered the staff rosters for the period from 18 November 2004 to 15 December 2004. The staff rosters had been prepared by Senior Sergeant Carlon prior to her departure on leave. On 30 October 2004

Sgt Hales sent the following email to Senior Sergeant Carlon,

Superintendent Crews and another:

Paul and I have looked at the roster. His 6 weeks from gazettal comes up in it and there has been negotiated variation over the Malogorski/Reinke swap.

The roster looks a bit queer. I have assumed that Sue Kendrick will get her part time work approved.

There are still a few issues that you may wish to consider. Dave Moore is doing a good job with Contests and Drugs and Glen Dooley rang to comment on that.

You may wish to ask me to dispense with the cert iv training this time around. You may even ask me to vary my leave. I will get you to consider that.

Also – both Stuart and myself have done Duty Prosecutor as OIC. It would help the staffing if you would do some shifts too.

Please ask Paul to brief you on the office affairs this week.

See you Tuesday arvo.

Additionally I have examinations Monday the 8th, Tuesday the 9th and Thursday the 11th of November. In each case I can be back in the office about noon. How would you prefer that to be treated? Obviously I would prefer as study leave.

[57] Senior Sergeant Carlon changed the staff rosters back when she returned from leave. In her opinion Sgt Hales had spent a considerable time redoing a draft roster for his benefit and commitments, rather than for the benefit of the unit.

[58] On 2 November 2004 Mr Dooley sent a memorandum to Ms Blokland SM.

The email stated as follows:

Last Friday morning I had a meeting with the [Chief Stipendiary Magistrate] and we touched on a few matters, one being your review of the contest mentions system.

Having been fully back in [Court of Summary Jurisdiction] World in recent months I have formed the view that if both sides devoted some time/effort/thinking to the contest mentions system it would be worth keeping. Last week Dave Moore of Summary Prosecutions turned up to the mention having looked at the files, taken on board our written “offers”, thought about it and had things to say! Two matters were resolved on the spot (or within a day or two). I was impressed and thought that if this could be kept up this system would be worthwhile.

I realise we need to be better prepared for the contest mentions – I don’t attempt to sheet home blame for the lack of resolutions solely to the prosecution.

If NAALAS, Summary Prosecutions and NTLAC each had a contest mentions “specialist” – that is someone taking responsibility within each organisation to be across the matters listed and be prepared (and empowered) to make arrangements it would work.

The stumbling block in sorting matters out can be the prosecutor when he or she has taken a view on a matter then has no power to put that view into effect. The prosecutor begs off a resolution under a cloud of having to “run it past” the OIC, the head summary honcho, etc, etc. Momentum is lost. What impressed me about Dave’s approach last week is that he appeared to be empowered to make the “deals” and that gave the various discussions real impetus.

So, if this system is to work, the prosecutor should front up at least with the power to do a “deal” (if it is a case capable of resolution from the prosecution perspective) to a certain point. Of course if our requirements go beyond this pre-set prosecution position, more “running it past” such and such is inevitable.

We here at NAALAS would have to kick start the process by sending off an initial letter, a day or two after the contest mention, putting forward a position to give the Prosecution a starting point. If our position is that there is no compromise and we simply want the statements that is what we shall say. If however there is a possibility of a plea to reduced charges we should put our position with appropriate detail. I also take on board what the [Chief Stipendiary Magistrate] has said – that is, the prosecution should get across to us

the statements of importance and not hold up the process of disclosure on the basis that the whole file is not yet complete.

(At this juncture I note that, to my ears, the police prosecutor with the least enthusiasm for the current system is definitely old school. He seems to hanker for the old days when defence were lucky to get a charge sheet. I suspect there is a view that if contest mentions can be done away with the time the defence have with the statements can be minimised)

I note there is a meeting of the Rex Wild – run Criminal Justice Forum (attended by, amongst others, the OIC of Summary Prosecutions) next Tuesday (9/11!!) in the *Moonta Room* at 8.30 am. I will raise the issue of the future of contest mentions and see if the level of Dave Moore preparedness is to be ongoing. If it is, we might be able to salvage the current system or put into place a variation that works. I am keen to stop the unnecessary listing of hearings and these last second deals that could have been stuck weeks/months in advance.

If you are prepared to wait for any outcomes from the Criminal Justice Forum I can report to you on the discussion this issue attracts at the meeting.

[59] In a letter, which is wrongly dated 8 February 2004 (the letter should have been dated 8 February 2005), Mr Dooley acknowledged that the statement in his email dated 2 November 2004 that, “the police prosecutor with the least enthusiasm for the current system is definitely old school” was a reference to Sgt Hales. He stated that, “My reference to Peter was not meant to imply that he is unapproachable or not willing to discuss the proper resolution of matters, more to highlight that this newish system does rely on a fuller disclosure of the prosecutorial hand than in years past.”

[60] As to the facsimile referred to in paragraph [54] above Mr Dooley stated:

Peter’s fax was typically to the point but it really did act as a wake up call. I assumed the leadership of the Criminal section here at

NAALAS in mid-August 2004. I had not worked at NAALAS since mid-1997. The letter that Peter identified as not helpful was one that had been in use for two or more years and was one that I had identified as of questionable use before Peter's fax. In essence he galvanised my thoughts on the matter of the utility of this particular letter and I requested my lawyers not to send it anymore. I in fact drafted a new series of letters that were designed to be of more use and not be the source of wasted effort in both offices. I did not find Peter's fax offensive. I would have probably been a little less confrontational but that's me. No harm done.

[61] On 2 November 2004 Senior Sergeant Carlon sent a memorandum to Superintendent Crews. In the memorandum she stated that she was submitting the memorandum due to the constant complaints being received from both internal and external stake holders about Sgt Hales' attitude and performance. In the memorandum she asked that Sgt Hales be transferred from the Summary Prosecutions Unit. Senior Sergeant Carlon stated, "A consideration of a change of duties for the organisation's benefit is requested – the member is simply not going to change his interpersonal skills."

[62] The full text of the memorandum of 2 November 2004 is as follows:

This memorandum is submitted due to the constant complaints being received from both internal and external stakeholders regarding Sergeant Peter Hales attitude and performance in Summary Prosecutions. The member has been officially counselled by Superintendent's in 2002 and 2004.

Two recent incidents reported today are repetitive of complaints from 2002 and early 2004:

- NAALAS Senior Criminal Lawyer Glen Dooley (recently transferred from ODPP) emailed his complaint direct to the Chief Magistrate Hugh Bradley, SM Jenny Blokland, Director DPP and OIC Summary Prosecutions. (The complaint

duplicated that of Defence Lawyer Ian Rowbottam's complaint being the member's inability to negotiate matters to a plea in Contest Mention court).

- Superintendent Ian Lea (Juvenile Division) expressed dissatisfaction with delays in juvenile matters referred back to Summary prosecutions if received by Sgt Hales. Protocols were established to address correspondence direct to the OIC or Juvenile Prosecutor Sergeant.

It is clear from the repetitive nature of complaints that the member is not going to change his behaviour and he is aware that the department will not transfer him whilst the section is undergoing staffing changes due to his "experience".

Much has been document as below *including a departmental decision in 2001 to transfer him*. However, Senior Sergeant Thomas became incapacitated preventing his removal due to lack of experienced staff within the section.

A consideration of a change of duties for the organisation's benefit is requested – the member is simply not going to change his interpersonal skills.

The position could then be advertised for suitable substantive Sergeants of which there are many interested. Past and present positions are usually advertised for Constables who then receive Higher Duties as A/Sergeants.

ELG documents have been submitted earlier this year regarding staff issues (including rotations back to Operations Command) to avoid the culture that develops after several years in the unit – that is aligning themselves to the DPP – lawyer/solicitor status.

Sergeant Hales has recreation leave 6-31st December.

Background

In November, 2001 I assumed the role of Officer in Charge of the Summary Prosecutions Unit, Darwin. I was selected for the position after the incumbent, Senior Sergeant Peter Thomas, was unable to resume full time duties after a debilitating heart attack.

Upon assuming the role, whilst possessing some experience in the field and not the legal background of the previous incumbents, began implementing a number of initiatives aimed at improving the productivity of the unit, its relationship with the operational areas and the accountability of staff. (...).

The initiatives included:

- The redevelopment of staff within the unit to address the obvious rift forming between operational members and the SPU and to provide multi-skilling of both sworn and non-sworn staff in an effort to minimise the outsourcing of files to private solicitors.
- Implementing rosters, training days for both operational and SPU staff to improve the level of understanding of both parties regarding each others roles and the constraints each operate under.
- Introduction of statistical reports by all staff involved in all endeavours within the SPU to provide accurate data to develop a strategic approach to the sections management.
- The identification and recruitment of staff with an interest in the section and the removal of those members within the section who were there due to medical inability or other problems which precluded them from full operational duties.

The implemented changes received the full support of both the then A/Superintendent Gordon, Commander McAdie and the Director of Public Prosecutions, Mr Wild.

2002 Situation

Whilst most of the changes received support from the majority of staff, there were misgivings amongst some of the staff, most notably Sergeant Peter Hales who appeared to have some difficulty in accepting the changes.

A/Supt Gordon documented in a briefing note to the Commander:

Sergeant Hales has been a vocal opponent to the change, having been moved from the administration position, he has occupied for a number of years. The position entailed the checking of files and his

rejection of files along with his often cutting and occasional offensive comments were probably the most of the cause for the rift between operational members and SPU. As you would be aware Sergeant Hales was identified for transfer prior to Senior Sergeant Thomas becoming incapacitate preventing his removal due to lack of experienced staff within the section.

Senior Sergeant Carlon has committed to paper her recommendations regarding Hales, which do not differ from previous recommendations and have not been acted upon due to similar staff issues. Carlon and myself have spoken to the member in relation to these issues and whilst he is still less than 100% co-operative, he has been made aware of his tenuous position and is publicly supportive.

2004 Background

The OIC Prosecutions, Senior Sergeant Peter Thomas commenced Long Service Leave 15 January – 3 May 2004. A replacement created a dilemma in respect of the exiting MOU (qualifications) and NT Police (rank and management ability). Two separate grievance disputes were lodged by members from the unit, Sergeant Hales and Sergeant Kendrick were dealt with during January by Acting Commander Don Fry. Sergeant Kendrick as the only qualified member to the rank of Senior Sergeant was given the “Acting” until 11th March when I as a substantive Senior Sergeant from outside the unit was nominated for the duties.

2004 Situation

On return as OIC, both the unit and Sergeant Hales had regressed to the 2001 status. (...).

Sergeant Hales

Several complaints were received which involved briefing the Director of Public Prosecutions and the Assistant Commissioner of Crime, resulting in Sergeant Hales being formally counselled on his return from recreation leave in July.

Issues discussed on 21st June with the Director:

- Complaints from Magistrate Mr Cavenagh re Sergeant Hales attitude in court (as raised by Ian Rowbottam).

Performance in Summary prosecutions:

- [Senior Sergeant Carlon repeated the matters set out in par [43] above.]

The member recently was given a chance to perform Higher Duties for a week in October as a means of self development however, he did not grasp the requirements of Management Reports which were inadequate for TCG/ELG briefings, nor management of the unit. He spent considerable time redoing a draft roster for his benefit and commitments, rather than that of unit commitments. He created more work to rectify what he had or had not done. Overall the same complaints are on going due to his inability to change or recognise he is obstructionist.

[63] Senior Sergeant Carlon's email dated 2 November 2004 contains a number of incorrect statements. Sgt Hales was not officially counselled by Superintendents in 2002 and 2004. Sgt Hales was counselled on 10 December 2001. He was not counselled in 2004. On 16 July 2004 he met with Senior Sergeant Carlon and Superintendent Crews to discuss the reasons why he had not been given duties as the Acting Officer in Charge of Summary Prosecutions Unit. On 22 July 2004 Sgt Hales had a further meeting to discuss why he had not been given the duties of Acting Officer in Charge of the Summary Prosecutions Unit. Mr Dooley's email was not a complaint but his expression of what he thought was required in order to make the new system of contest mentions work. The complaint made by Mr Rowbottam was resolved in Sgt Hales' favour. Mr Cavenagh SM did not make a complaint about Sgt Hales. Mr Rowbottam's oral statements about what he says Mr Cavenagh SM told him about Sgt Hales were never put in writing or verified. Further, there is repetition of the unsupported assertion that Sgt Hales may have been engaging in the preferential outsourcing of

prosecution work in order to obtain articles with the preferred law firms upon the completion of his law degree.

[64] Sgt Hales disagrees with much of what is stated in Senior Sergeant Carlon's memorandum dated 2 November 2004. His response to the matters raised in the memorandum is contained in his memorandum dated 28 February 2005. However, it is not for this court to determine whether Senior Sergeant Carlon's version of events is correct or whether Sgt Hales' version of events is correct.

[65] On 10 November 2004 Superintendent Crews sent a memorandum to Commander Owen in which the Superintendent recommended that Sgt Hales be immediately transferred from the Summary Prosecutions Unit. The memorandum stated as follows:

This report is to highlight the inappropriate attitude of Sgt Peter Hales, and to provide sufficient evidence to support a transfer of Sgt Hales.

To quote the Coroner, Mr Cavenagh, who stated, "I have known Peter Hales for many years and he has an attitude problem. He is argumentative and facetious. He was removed once before because of his attitude, who let him back in, I was surprised to see him back. As I said, he is argumentative to the bench, he does not reflect well for the organisation and is an embarrassment for Police".

The OIC SPU, Senior Sergeant Carlon has implemented several changes that have brought positive outcomes for the organisation. However, Sgt Hales continues to undermine her authority. On the 16th July I had cause to meet with Sgt Hales and Senior Sergeant Carlon with specific intent of discussing the reason why I had chosen not to allow Sgt Hales to act in the position of OIC during Senior Sgt Carlon's absence. Although I initially generalised the reasons, Sgt

Hales requested to know the exact issues, in which case I brought to his attention the following:

That SPU had received complaints from civilian prosecutors about his attitude.

Sgt Hales' obvious preferential treatment of out sourcing to certain law firms, instead of being fair across all law firms.

Complaint received from a subordinate at having been left by themselves during a case presentation for bail and arrest (Sgt Hales was to be supervising and training the member at the time).

Refusal to take on Juvenile hearings (this is after eight years of experience in SPU).

Two day per week study leave, although other members have managed to make their study time so it did not interfere with normal work in SPU.

That Sgt Hales was considered to have poor interpersonal skills and was not aware or interested in the current objectives or had any knowledge of the Purpose and Direction Strategies.

That Sgt Hales had a negative attitude to all the things that had been recently implemented, such as "the Duty Prosecutor", failing to sign onto NEPI as requested, not appearing supportive in addressing training needs for improving file compilation, etc.,

The providing of false information and innuendos to other staff and the Director ODPP in what appeared to be attempts to undermine the OIC's authority.

His previous poor performance as the OIC of SPU.

The fact that he had not undertaken any developmental courses to assist in acting in a higher duty position for the past eight years.

Sgt Hales' continued use of the organisation's study leave provisions without having achieved any substantial results over the period.

Appears not to have good computer skills and was last to come on board with mainframe for ELG statistical requirements.

Having to be repeatedly directed to undertake certain tasks (eg ensuring information is added to the L Drive).

Having not directly discussed any issues with the OIC SPU, and any communication is done through e-mails only.

Did not appear to be a team player.

Although Sgt Hales did agree with some of these issues he asked that we meet to discuss the others. During our second meeting (22 July) Sgt Hales was unable to convince me to change my belief in relation to any of the 15 points that I had originally brought to his attention.

According to comments made about Sgt Hales, by his peers and subordinates, he is “lazy, unpleasant to deal with and felt that his presence at Summary Prosecutions was a major contributor to any low morale that exists within the section”.

The most recent information that comes to light as a result of Sgt Hales’ behaviour is in relation to the present OIC of Summary Prosecutions, Senior Sergeant Carlon. I have been made aware of the following comments; I quote – “If there is any backlash to the recent changes of your leadership it is clearly being led by Sgt Hales., In social environments his comments went further than the usual throw-away lines you expect to hear about superiors and openly questioned/undermined your ability to lead the section”. These comments were made at a recent ODPP executive meeting of approximately 20 people. Senior Sergeant Carlon was not present.

Also in the same report “I attended the weekly Summary Prosecutions meeting which included approximately 15-20 SPD staff and was chaired by the Director. During this meeting Sgt HALES again commented on your impending return to work, which he accompanied with great sighs, rolling of the eyes and a string of inappropriate comments further designed to undermine your authority. Mr Wild diplomatically disengaged with Sgt HALES and kept the meeting rolling. I can’t comment in respect to the other attendees, however I can say that I was embarrassed by Sgt HALES display and felt that it exposed our department in an unprofessional light to the Director of Public Prosecutions.

I am not aware of how many years that Sgt Hales had worked in SPU prior to being removed in the first instance as suggested by the Coroner Mr Cavenagh. However Sgt Hales has now been back in SPU for eight years. During this time he with others in the SPU

appear to have built up this attitude that they are ‘untouchable’ that they work for the ODPP instead of for the Police, and that they are not responsible for supporting members, training members or even providing positive advice.

Although Sgt Hales appeared to have made some attempts to improve and accept changes, the recent complaints strongly suggest that Sgt Hales is continuing with his negative attitudes and has a lack of support for the OIC SPU to a degree that he continues to undermine any authority in SPU.

There have been numerous complaints over the years in relation to Sgt Hales’ attitude and demeanour towards people. Attached to this report are several recent complaints and reports directed at Sgt Hales. As a result Sgt Hales was removed from Contest Mentions and now specific procedures are in place in relation to Juvenile Diversion files. Sgt Hales is simply causing extra burdens for all SPU staff to have to carry.

I suggest that the OIC, SPU will not be able to continue to operate under such conditions of being undermined and ridiculed and therefore an urgent decision is required.

I recommend that Sgt Hales be immediately transferred from SPU.

[66] The following is to be noted about the above memorandum. Superintendent Crews purports to directly quote what Mr Cavenagh SM has stated. The Superintendent does so in circumstances where no complaint was received from Mr Cavenagh SM about Sgt Hales and Mr Rowbottam’s allegations about what Mr Cavenagh told him about Sgt Hales are not in writing and are not verified. Based on what Mr Rowbottam attributed to Mr Cavenagh SM it is asserted by Superintendent Crews that Sgt Hales had previously been removed from the Summary Prosecutions Unit because of his behaviour. The assertion is made on the basis of an unverified hearsay comment. Superintendent Crews did not check if Sgt Hales had ever been removed

from the Summary Prosecutions Unit because of his behaviour. There is no evidence before the court of Sgt Hales being previously removed from Summary Prosecutions because of his behaviour. Indeed the facts seem to be that the only time Sgt Hales previously left the Summary Prosecutions Unit was in December 1987 when he left the Summary Prosecutions because he was promoted to the position of a Sergeant Instructor at the Northern Territory Police College.

[67] On 11 November 2004 Commander Owen sent a memorandum to the Assistant Commissioner of Crime and Support Command. In the memorandum he stated:

I refer to the attached correspondence concerning the ongoing complaints regarding Sergeant Peter Hales and his subversive behaviour towards OIC Summary Prosecutions, Senior Sergeant Lorraine Carlon.

There is no doubt in my mind that Senior Sergeant Carlon inherited a dysfunctional unit in Summary Prosecutions when she was transferred there in March 2004. There is also no doubt in my mind that Carlon had done a sterling job in turning the unit around, making it relevant to the work of operational police both in Operation Command and Crime command. The implementation of duty prosecutors is but one example of how Summary Prosecutions supports and value adds to the work in the field.

Superintendent Crews has made me aware of complaints from lawyers, Magistrates and fellow Sergeants in Summary Prosecutions concerning Sergeant Hales' ongoing unpleasant and unprofessional behaviour both in and out of the Courts and his subversive behaviour towards the OIC. This is despite counselling by Superintendent Crews in July 2004.

Summary Prosecutions carries out an important and very public role. The members in it need to demonstrate the very highest standards of

behaviour when interacting with defendants, Lawyers and Magistrates. It is clear to me that Sergeant Hales is not.

In relation to Sergeant Hales' subversive behaviour towards Senior Sergeant Carlon, there is only one outcome so far as I am concerned. We must support her.

Superintendent Crews has recommended that Sergeant Hales be transferred from Summary Prosecutions. I strongly support that recommendation and in addition recommend that he be transferred to operational duties in Operations Command.

[68] Like a number of the other memoranda, Commander Owen's memorandum contains a number of inaccuracies. There is no evidence before the court of any magistrate complaining about Sgt Hales' behaviour and Sgt Hales was not counselled by Superintendent Crews in 2004.

[69] After Commander Owen's memorandum was received by the Assistant Commissioner of Crime and Support Command, advice was obtained from the Director Human Resource Management of the Northern Territory Police Fire and Emergency Services, Ms Vicki Anderson, about the procedure to be followed if Sgt Hales was to be transferred from the Summary Prosecutions Unit to another section of the Police Force. Before Christmas 2004 Sgt Hales was unofficially informed that he was to be given a notice of intention to transfer him from the Summary Prosecutions Unit.

[70] On 27 January 2005 Sgt Hales received a letter dated 24 January 2005 from Acting Deputy Commissioner of Police, Mark Payne. The letter stated as follows:

I am writing to advise you that, on the basis of the information that has been provided to me, it is my intention to transfer you from the Summary Prosecutions Unit (SPU) pursuant to section 14B of the Police Administration Act.

I have formed the opinion that a transfer is necessary on the basis of the following:

1. On 16 July 2004, a meeting was held between yourself, Superintendent Lane Crews and Senior Sergeant Lorraine Carlon. The purpose of this meeting was to discuss with you the reasons you were not selected to perform relieving duties as the OIC SPU. The issues raised during those discussions reflected on your performance as a member of the SPU, and included:
 - Complaints received by civilian prosecutors in relation to your uncooperative attitude;
 - Preferential allocation of out-sourced matters to particular law firms;
 - A complaint from a sub-ordinate in relation to the absence of any supervision from yourself during a case presentation;
 - Your refusal to undertake juvenile hearings;
 - A demonstration of your poor interpersonal skills or lack of awareness and interest in current objectives including the 'Purpose and Direction Strategy';
 - A negative attitude to the recent implementation of initiatives including 'the Duty Prosecutor', failing to sign on to NEPI as instructed and, being unsupportive in addressing training needs for improving file compilation;
 - The provision of misleading information to staff, and the Office of the Director of Public Prosecutions (ODPP), with apparent intention to undermine the authority of the OIC SPU;
 - Previous poor performance when relieving in the OIC SPU position;

- Continued use of study leave provisions without evidence of having achieved any substantial results over the period of leave;
- Lack of computer skills having been the last member of the SPU to utilise mainframe for ELG statistical requirements;
- Repeatedly having to be directed to undertake certain tasks. An example being directed to add information to the L-Drive;
- Your failure to communicate issues directly with the OIC SPU with any communication undertaken through e-mail only; and
- Your failure to work as part of a team in the SPU, which has impacted on the morale of the unit.

As a result of these discussions, you were advised that you needed to show a more positive attitude with regard to your duties and responsibilities, and update your knowledge in relation to corporate directions.

2. Although you agreed with some of the issues raised at the meeting of 16 July 2004, you requested another meeting with Superintendent Crews for further discussion. At a meeting convened on 22 July 2004, Superintendent Crews was not convinced that the issues raised on the 16th July were unfounded.
3. Since the meetings of 16 and 22 July 2004, further concerns have been raised in relation to your performance and attitude as a member of the SPU. The issues of concern include;
 - On 27 October 2004, while relieving as the OIC SPU, you sent a facsimile to the Senior Criminal Lawyer of NAALAS in response to 'standard letters' received by the SPU. Furthermore, you distributed a copy of your letter via email to other prosecutors titled "Stupid letters from NAALAS". The language and tenor of your correspondence was inappropriate and lacked professionalism (refer attachment 1);

- On 2 November 2004, the OIC SPD, Senior Sergeant Lorraine Carlon, forwarded an internal memorandum to the Superintendent, Operations Support Division (refer attachment 2) in response to concerns about your performance and, in particular:
- On 2 November 2004, senior NAALAS criminal lawyer Mr Glen Dooley sent an email to the Chief Magistrate Mr Hugh Bradley, Stipendiary Magistrate Ms Jenny Blokland, the Director of Public Prosecutions and the OIC SPU raising concerns based on your inability or unwillingness to negotiate Contest Mention Court pleas (refer attachment 3); and
- On that same day, Superintendent Ian Lea of the Juvenile Diversion Unit raised concerns directly with the OIC SPU about delays being caused by you to juvenile matters referred back to the SPU. To resolve this issue, a new protocol was established with the Juvenile Diversion Unit to remove you from any involvement in juvenile prosecution matters;
- On 10 November 2004, correspondence was received from a Sergeant who had been relieving in the SPU whilst Senior Sergeant Carlon was absent on recreation leave during July/August 2004 (refer folio 4). The correspondence refers to your lack of work ethic and poor attitude being the main contributing factor for any low morale that existed within the SPU. In addition, the correspondence advises that you frequently made inappropriate comments about the ability of Senior Sergeant Carlon to lead the SPU, at both formal and informal forums. In particular, it is alleged that at a weekly SPU meeting chaired by the Director of Public Prosecutions and attended by 15 to 20 SPU staff, you raised the matter of Senior Sergeant Carlon's impending return from leave, during which [your remarks] were accompanied by inappropriate facial expressions and comments. The behaviour you demonstrated has been reported as being embarrassing and a poor reflection on the professionalism of the NT Police Force;
- On 13 October 2004, you failed to obey the instructions of Senior Sergeant Carlon (OIC SPU) regarding prosecution files in the name of Jeremiah Burns (Case

20423152) and Shane Thomas (Case 20423151). It is alleged that Senior Sergeant Carlon instructed you to give her carriage of the files, however, you failed to do so and proceeded to deal directly with the ODPP;

- On 12 November 2004, you refused to lay charges in relation to the murder of Colin Arthur Jarman by Peter John Smith (Case 20425795) stating that the elements of proof had not been established despite knowing that such a file would ultimately be reviewed by the Director of Public Prosecutions. Your actions demonstrated a serious error of judgement and failed to recognise the seriousness of the case, public interest issues, the ramifications of your decision and potential impact upon the reputation of the Police Force. Your actions resulted in an undue delay in processing the prosecution case that required the direct intervention of the Commander, Specialist Support Region, to be resolved;
- On 30 June 2004, you were advised that your application for study leave was approved for the period 8.30am to 12.30pm each Monday. It has been established however that you have taken unauthorised leave from the workplace on Tuesdays between 8.30am and 12.30pm to attend University classes. Your actions were in direct contravention of your approved study leave and resulted in the Bail and Arrest prosecutor being left unsupervised during the period of your absence from duty.

In light of the further matters received since the meetings of 16 and 22 July 2004, it appears that you have not made any significant attempts or effort to improve your attitude, manner and performance. It is my view that these new matters require me to consider your future placement.

I invite you to provide a formal written response within 14 days of the date of this notice in relation to the issues raised, and reasons why a transfer from the SPU should not be effected. Upon receipt of any response from you, further consideration will be given to this matter and you will be formally advised of my decision.

[71] On 3 February 2005 Sgt Hales requested further and better particulars of the matters raised in the letter to him from Acting Deputy Commissioner, Mark Payne.

[72] On 4 February 2005 Mr Wild QC provided his written response to some of the matter raised by Acting Deputy Commissioner, Mark Payne, in his letter dated 24 January 2005. Mr Wild QC stated:

I have been asked by Sergeant Hales to provide a response to a number of matters. These are allegations contained in a letter to Sergeant Hales dated 24 January 2005 from Acting Deputy Commissioner Payne which is in the form of a show cause why he should not be transferred from Summary Prosecutions Darwin.

Sergeant Hales has provided me with a copy of that letter and of proposed responses set out in numbered paragraphs. In this document I will use the same numbering as provided by him and set out, in short form at least, the specific allegations.

2. Complaints received by civilian prosecutors in relation to uncooperative attitude.

I am personally not aware of general or specific complaints received from *civilian prosecutors* in relation to Sergeant Hales. My own observation would be to the contrary. The civilian prosecutors, if it be a reference to those employed by me who serve within SPD, seem to get on with Peter.

I am aware of a complaint received from Ian Rowbottam. Generally speaking he is a defence lawyer who occasionally he is instructed on behalf of the ODPP and who was formally an employee of this Office. That particular complaint was referred to me by Senior Sergeant Carlon. I called for a report from Sergeant Hales and discussed the matter with him. I was satisfied with that explanation and did not accept the criticism of him, in that case, by Mr Rowbottam.

10. The provision of misleading information to staff, and the Office of the Director of Public Prosecutions (ODPP), with apparent intention to undermine the authority of the OIC of SPU

I am just not aware of any such instance and would need specific particulars before I could respond. That is, what has Mr Hales told me which was incorrect? It is fair to say that I have been aware of disquiet at the change of leadership in SPD. I have shared that and expressed it to Senior Police Officers. On my part, the concern was that there was no finalisation of the leadership question with the OIC changing from week to week at one point.

31. Memorandum from Sergeant Grant in relation to meeting chaired by Director

I have a recollection of a particular meeting as referred to by Sergeant Grant. These meetings in fact take place on a fortnightly basis and are intended to be an opportunity for members of SPD to raise concerns they have. These might be in relation to professional and operational matters or, for that matter, management. I have an overall responsibility under the Memorandum of Understanding for the organisation. With this in mind, I do need to be informed. I can recall a spontaneous reaction from Sergeant Hales to some suggestion that Senior Sergeant Carlon was returning to the Office. It was a momentary thing and did not prevent the rest of the meeting proceeding smoothly. It was not, I should say, an isolated expression of an opinion which was clearly shared by a number of other members of the unit. It would be unfair to single out Sergeant Hales in this regard to suggest he was the leader.

Incidentally, I note that there is an allegation of *lack of work ethics and poor attitude* and *laziness* in respect of Sergeant Hales. I have never noticed that. He appears to be a hard working and conscientious member of SPD.

33. Charges in respect of Peter John Smith

I remember this quite clearly. Sergeant Hales came to see me before 8.00 am on that morning. He told me that he had looked at the file and confirmed, in his view, that it did not justify the laying of charges. I accepted and agreed, at that time, with his opinion. Shortly thereafter I received a call from Commander Owen. He provided me with some additional information. He apologised that this was missing from the original brief. With that I consulted Sergeant Hales once again and instructed him to lay a charge of manslaughter. He readily acceded to my

instruction and the matter proceeded accordingly. I would think all of that took about 15 minutes.

As a matter of record I should say that I often see Sergeant Hales before 8.00 am. Whenever there is a homicide or other difficult cases alleged he consults with me before laying the charge. This was just another such example of this protocol which, however, had the added element of further material being provided direct to me by the Commander. There was nothing improper or inappropriate in my view about the way in which Sergeant Hales dealt with the matter within the Office.

These are the only matters in respect of which my views were sought by Sergeant Hales. I have been happy to work with him over a number of years. I appreciate that he has *fallen out* with some members of the force. He is not slow to criticise when files are not up to standard and this has caused that ill feeling. For his part, I understand that he believes that he is doing the best he can to ensure that prosecutions that proceed have the best possible chance of success and are properly prepared and presented. I understand that he has taken to expressing himself less forcefully in recent time.

It is fair to say that Sergeant Hales does not *suffer fools gladly*. On the other hand, I believe that he is loyal to both his police force and, to the extent that he can be, to the prosecution unit and this Office. It is not easy when it is suggested that an officer has divided loyalties. In the case of SPD and the police force there is the obvious difficulty that the responsibility for the Office is presently accepted by the Director of Public Prosecutions. Perhaps it is time to revisit that arrangement.

[73] By letter dated 10 February 2005 Deputy Commissioner of Police, Bruce Wernham, provided Sgt Hales with his response to the request for further and better particulars. In the letter he stated the following:

I acknowledge receipt of your internal memorandum dated 3 February 2005 in response to the Acting Deputy Commissioner's letter of 24 December. Your memorandum seeks further information and an extension of time in which to respond.

I note your concerns as to potential ramifications arising from this action. I therefore take this opportunity to clarify the situation and

provide you with a better explanation of the process and intended purpose of the notice served upon you:

- I have been asked to consider your transfer in the best interests of both yourself (individually) and the Police Force (organisation).
- I am advised that the transfer is necessary to achieve a number of management initiatives in relation to Summary Prosecutions Unit. It is suggested that your transfer would be beneficial to both the operational management of the Police Force and your continuing police career. This is the issue that I am required to determine.
- The notice served upon you on 27 January 2005 was to notify you of an intention to transfer you from the Summary Prosecutions Unit pursuant to Section 14B of the Police Administration Act.
- The notice invited you to provide a written response in answer to the issues raised and to provide me with any other information or reasons that you believe I should consider in this process. I have not made any determination in relation to this transfer and await your response before doing so.
- The dot-point issues mentioned in the notice (at paragraph number 1) were provided as background only. I note that these issues were discussed directly with you at the meetings of 16 and 22 July 2004. I do not intend to enter into further dialogue about these issues other than to note their occurrence.
- The notice invited you to address each of the dot-point issues raised (at paragraph number 3).
- The notice also invited you to provide me with advice concerning any other information or reasons that you believe I should take into account when determining this matter.

I note each of your requests and provide the following information to assist you in preparing your response:

- Points 1-8: These issues were raised directly with you at the meetings of 16 and 22 July 2005 respectively.

- Point 9: I have enclosed a copy of notebook entries provided by Superintendent Crews (refer Attachment “A”).
- Point 10: A copy of the email from Mr Ian Rowbottom is enclosed (refer Attachment ‘B’). I am advised that this email and its contents was personally discussed with you by Mr Wild QC, Director of Public Prosecutions, during July 2004 (refer Attachment ‘C’). The reference to a complaint from Magistrate Cavanagh is contained in documents already provided to you (refer to prior Attachment ‘2’). I am advised that this complaint was made verbally. Notwithstanding, I have enclosed copies of other documents that refer to this complaint (Attachment ‘D’).
- Point 11: This issue was raised directly with you at the meetings of 16 and 22 July 2005 respectively.
- Point 12: I have provided all information pertaining to the issues under consideration.
- Point 13: I have enclosed email advice from Senior Sergeant Lorraine Carlon (refer Attachment ‘E’).
- Point 14: I am unable to provide further information on this matter.
- Point 15: I am unable to provide you with the names of the ‘peers and subordinates’ that Sergeant Grant refers to.
- Point 16: I have enclosed a copy of further information provided by Sergeant Matthew Grant (refer Attachment ‘F’).
- Point 16: I have enclosed a copy of further information provided by Sergeant Matthew Grant (refer Attachment ‘F’).
- Point 17: I have enclosed a copy of further information provided by Sergeant Matthew Grant (refer Attachment ‘F’).

- Point 18: I note your concerns.
- Point 19: I note your denial.

You would acknowledge that the control and management of the Police Force is a matter for the Commissioner of Police. Notwithstanding, the decision to transfer a member pursuant to Section 14B of the Police Administration Act is one that is never taken lightly. Indeed, this is the purpose of providing you with notice of my intention to consider your transfer.

When determining this matter, I am required to balance the needs of the organisation against those of the member. This is a difficult process and one that requires careful consideration. Indeed, it is a decision that is taken at the highest levels and includes consideration of any issues that you may provide as being relevant. Your views and any opposition to the transfer will be taken into account before any decision is made on this matter.

It is therefore essential that you provide me with a written response detailing any other information or reasons that you wish me to consider when deciding if I should exercise my power to transfer you pursuant to Section 14B of the Police Administration Act.

Finally, I acknowledge your request for an extension of time to allow you to provide a considered response to the issues raised. In light of your request, the extra information being provided to you, and your impending period of recreation leave (10-16 Feb 2005), I have decided to extend the timeframe for your response to be received to close of business on 2 March 2005.

[74] On 28 February 2005 Sgt Hales sent a memorandum to Deputy

Commissioner of Police Wernham. The memorandum is 32 pages long. It contains Sgt Hales detailed response to Acting Deputy Commissioner Payne's letter to him dated 24 January 2005. The memorandum is an extremely persuasive document. If Sgt Hales' response is accepted, his response refutes a great deal of the criticism that is made about him by his senior officers and referred to above. However, it is not for this court to

determine the proceeding according to the merits of the decision to transfer Sgt Hales from the Summary Prosecutions Unit.

[75] On or about 10 May 2005 Deputy Commissioner of Police Wernham wrote to Sgt Hales advising him that a decision had been made to transfer him from the Summary Prosecutions Unit. The letters stated as follows:

I am writing to inform you of my decision to transfer you from your positions within the Summary Prosecutions Unit pursuant to s 14B of the Police Administration Act.

I have given careful consideration to the matters that you and your legal counsel have raised in response to my prior notice of this transfer. Having done so, I am still of the view that the interests of the organisation will best be served by transferring you from your present position.

I therefore invite you to meet with Acting Assistant Commissioner George Owen, Crime and Support Command, at the earliest opportunity to discuss your preferences for alternate positions you would be interested in undertaking. ...

I await the outcome of this meeting before deciding the position that you are to be transferred to. A further notice will be served on you in due course.

[76] On 23 May 2005 Ms Lyn McDade, a barrister who was acting on behalf of Sgt Hales, sent a letter to Deputy Commissioner of Police Wernham, requesting full and detailed reasons for his decision to proceed with the transfer of Sgt Hales. Ms McDade also informed Deputy Commissioner of Police Wernham that Sgt Hales was on sick leave.

[77] On 15 June 2005 Sgt Hales met with Assistant Commissioner Kelly for the purpose of discussing Sgt Hales' position and the position to which he

would prefer to be transferred. The meeting was unsuccessful. Nothing was resolved. Sgt Hales maintained that s 14B of the Police Administration Act had not application to the circumstances of his transfer.

[78] On 15 July 2005 the Director of Human Resources in the Human Resources Command, Ms Vicki Anderson, sent a letter to Sgt Hales. In the letter she stated the following:

I refer to the Deputy Commissioner's decision to transfer you from the Summary Prosecutions Unit.

We note your obvious concerns about the transfer, and I am writing to assure you that the organisation does not wish to impose an appointment on you without discussion with you. I can assure that, while there is an urgent need for Sergeants and experienced supervisors in regional areas and remote communities, it is not the intention to post you out of Darwin, nor directly back into general duties (although this would ultimately be an option open to the Commissioner).

Therefore, we would prefer to meet with you in person, so you can participate in discussing the direction of your future career with the NT Police. This would include your career preferences and consideration of any training that you might require, to update your policing skills and knowledge. I consider this discussion needs to take place in order to reach an amicable solution that involves your input. I urge you to contact either myself, or if you prefer Assistant Commissioner McAdie, directly or to arrange it as soon as you are able.

I would like you to appreciate the point that the decision on your transfer is driven by management reasons. It is not a response to issues relating to your professional competency or integrity, although your conduct and representations have been taken into account in weighing up the transfer decision.

As you know NT Police has in the past two years conducted two major external reviews which identify problems within Summary Prosecutions Unit. The O'Sullivan review recommended:

Progressive civilianisation of Summary Prosecutions: Sergeant positions to return to GDs.

The O'Sullivan review was approved by the NT Cabinet and its recommendations are the basis of current staffing arrangements of the Police Force.

The Walter Turnbull Review of Police Summary Prosecutions, (to which you specifically contributed) made a further recommendation:

Positions should be rotated through NT Police – no one to stay in the unit longer than 2 years.

These recommendations underlie NT Police management and staffing decisions for this unit.

You have now served for over nine years as Sergeant in Prosecutions Unit. This is a long time for anyone to remain in one position, and particularly for a police officer. What you appear to be asking is for the Deputy Commissioner to ignore these recommendations and make an exception for you, sanctioning you to remain, indefinitely, in your current position. This would be contrary to two independent management reviews and to current good management practice.

Regardless of your experience and competency in your current role, or any other consideration, there are strong management reasons for you to be transferred. In addition to the question of your personal development, your continuation in that position also has an impact on other members of the unit and the unit as a whole.

To justify a change to the transfer decision you would have needed to have put forward very compelling reasons to contradict the weight of two independent external reviews of the NT Police Force. Your reasons would have needed to address not only your own career aspirations, but also development of the Summary Prosecutions Unit and the NT Police. Your response to the proposed transfer did not achieve this.

The issues listed in the Deputy Commissioner's letters to you of 2 February and 10 May 2005 added to the urgency of responding to existing organisational needs for you to be transferred. You were provided with this information to illustrate how your conduct had contributed to this situation and to assist you in understanding the point of view of management in making this decision.

For your future career with NT Police, it is our view that you need to re-integrate with the Police Force; pass on your knowledge and experience to other members of the Force; diversify your experience and expertise; and embrace your future development outside the Summary Prosecutions Unit. I am sure that you would agree that adversarial conflict about the transfer decision is not conducive to a productive outcome for you or the organisation. Again, I invite you to make an appointment with me or with Assistant Commissioner McAdie, so we can gain your input as to where you will be transferred.

...

[79] On 25 July 2005 Sgt Hales responded to Ms Anderson's letter by email. In his email he stated:

Thank you for your letter of the 15th inst. There are a number of issues to be dealt with prior to my being able to return to duty. Both my doctor and Dr Giese have told me that it would not be appropriate for me to return until those issues have been dealt with. You may or may not be aware of the specifics to which I refer although I understand that Mr McAdie is aware of them.

[80] On 5 August 2005 Assistant Commissioner McAdie sent the following letter to Sgt Hales:

I refer to your meeting with Assistant Commissioner Graham Kelly and your lawyer on 15 June 2005 and would like to confirm for the record that I wish to resolve this matter so that you, as a valued member of the Northern Territory Police Force, may return to work in an area where your knowledge and experience will be relevant and can be passed onto others.

I also confirm the advice of Assistant Commissioner Kelly that although your conduct, as detailed in Assistant Commissioner mark Payne's letter of 21 January 2005, did give rise to management concerns, there are no criminal issues and no proposals for disciplinary or inability proceedings – nor have there been. I reiterate that your transfer was for organisational management reasons as stated in the Deputy Commissioner letter of 10 February 2005 and further detailed in Ms Anderson's letter of 15 July 2005.

As the Deputy Commissioner and Assistant Commissioner Kelly have already advised, we need to discuss with you exactly where your next posting is to be. Whilst a transfer to a regional station would be highly desirable from an operational point of view, I acknowledge that you are settled in Darwin and I can assure you that this posting will not be out of the Darwin area and will not be to general Duties.

The positions I have in mind for you are:

- in an in-service training position in the PFES College – running the prosecutors course; or
- as a JESC Supervisor in Communications Section, where there is an urgent requirement for experienced supervisors and suitable training would be given to you to update your skills for this role; or
- if you were interested in working in the area of intelligence, I could arrange for training and a trail period of operation in this area.

Your experience and knowledge are more critically needed in these areas than in Summary Prosecutions Unit.

I would like to see your policing career continue to develop and confirm that your promotion prospects will not be impaired by the matters at issue here, although you will, of course need to meet the selection criteria for the rank of Senior Sergeant and compete with other applicants on the basis of merit. Similarly, I would not rule out a future return to the Summary Prosecutions Unit, but again, future transfers will be based on merit.

Your transfer will not affect your capacity to sit for qualification courses and assessments and you will be provided with the same opportunities as others in this regard and I would encourage you to continue your law studies within the terms of the study assistance scheme. Career guidance and other counselling would be available to assist you with this process.

...

[81] On 14 August 2005 Sgt Hales sent a memorandum to the Assistant Commissioner, HR Services Command, Mark McAdie. In the memorandum Sgt Hales stated as follows:

I acknowledge receipt of your letter of the 5th August and thank you for the information that a transfer out of Darwin is not being considered.

As you are aware the letter from A/Deputy Commissioner M Payne dated the 24th of January this year contained a long list of allegations which, if true, could lead to disciplinary or criminal proceedings being commenced against me. That same letter made no mention of any reason other than the allegations for the proposed transfer, and I quote:

“I am writing to advise you that, on the basis of the information that has been provided to me, it is my intention to transfer you from the Summary Prosecutions Unit (SPU) pursuant to section 14B of the *Police Administration Act*.

I have formed the opinion that the transfer is necessary on the basis of the following:”

and there followed a list of the allegations made against me.

As I have said, if true, the allegations could give rise to disciplinary or charges under section 77 of the *Criminal Code Act*. It is my submission that my response dated the 28th of February 2005 effectively negated each and every one of the allegations. I have provided statements or emails from people both inside and outside Summary Prosecutions to refute all of the allegations.

That being the case it is my further submission that since the allegations were the only matters relied upon by the Acting Deputy Commissioner and since they have been negated then there is no other cogent reason for the proposed transfer.

Further, if, as you say, there has never been the intention to take proceedings against me then I cannot understand the reason for them to have been included as the only materials relied upon to cause the decision to transfer me to be made.

At least twice I or my legal representative have asked whether any finding has been made in relation to the allegations and there has been no response. Similarly we have questioned whether section 14B can be used in this fashion and that in our opinion it constitutes a misuse of the power. We have received no response in relation to that either.

Since the allegations were the only grounds relied upon at the commencement of this proceeding a finding in relation to each of them based upon evidence is crucial to the completion of it.

Sir, the matters that have weighed upon me are fourfold, they are the damage to my reputation both inside and outside the Police Force, the chance of my being prosecuted (which has still not been ruled out emphatically), the eagerness of members to tell outright lies about my conduct and the apparent willingness of senior management, many who have known me for years, to accept that there is truth in the allegations. In addition to the above, the confusion and uncertainty in relation to my future has been and still is causing emotional difficulties to my wife and myself as well as to my sons and their partners.

I submit that there can be no progress on this issue until the matters raised in the allegations are dealt with. If a finding has been made against me then I wish to defend that finding by the calling of evidence. On the other hand, if a finding in my favour is made then what action is proposed to be taken in relation to members deliberately spreading lies about my conduct in order to justify the actions that are in progress regarding my future?

The most serious allegation is that I was showing favouritism in briefing work outside the office to a selected firm on the basis of a future benefit (employment). Such action is contrary to s 77 and 82 of the *Criminal Code Act*. I have repeatedly demanded either an apology or the production of evidence in this matter and have been ignored each time. The suggestion that I have committed such an act, unsupported is a defamation of the worst kind and may well constitute an offence against s 204 of the same legislation. Both Senior Sergeant Carlon and Superintendent Crews have put this allegation in writing and by including it in their correspondence either directly or by way of an attachment both Commander Owen and A/Deputy Commissioner Payne have given it credence and authority.

In later correspondence from senior management less and less emphasis is placed on the existence of these allegations. More and more emphasis is placed upon the needs and benefit of the organisation in an apparent move back to the use of section 14B that I and my advisors favour.

You, yourself, say that the allegations gave rise to management concerns which indicates that you give some or all of them credibility. Ms Anderson refers to them in a similar fashion and then says that my response of 28 February failed to address the organisational and managerial issues that had not at that stage been raised. This change of emphasis causes me to wonder if this is now a 'move Hales at any cost' attitude within senior management.

Reference has been made to the O'Sullivan Report and the later report on the Prosecutions Decision Making Process. Am aware that at 9.2.19 of the final of O'Sullivan recommends the replacement of four supernumerary Constable positions with lawyers and that any new positions be filled in the same way. If there is another section of the report where the replacements of the sergeants is mentioned then could you please point it out to me. In the later report there is anticipation of long serving prosecutors with some short rotations to other areas of the Force. The action being proposed is not supported by either report as far as I am aware.

In summary, Sir, I maintain that a determination in relation to the allegations is essential prior to any transfer (Dr Giese said that it was essential prior to my return to work). I maintain that the allegations contain lies, half-truths and inaccurate summaries of actual events. I maintain that after a careful reading and, if necessary, the calling of evidence, that any poor conduct that senior management find committed by me will not create any demand for a transfer.

I request a copy of Dr Giese's report and any further documentation relating to the issues about my health.

I note with thanks your remarks about continuing career and that a future return to Summary Prosecutions is not ruled out. I understand that A/Superintendent Setter used terms to describe myself and Senior Sergeant Thomas as "gone, never to return" at a meeting in Summary Prosecutions last Friday, however, clearly your words will carry more weight.

[82] On 23 December 2005 Assistant Commissioner McAdie sent a memorandum to the Deputy Commissioner of Police. In it he stated:

Attached to this memorandum is a notice of transfer for Sergeant Hales.

As you are aware this matter has been going on for sometime and needs to be brought to conclusion.

We have informed Sergeant Hales of our intention of transferring him in writing and received from him a detailed response. There have been communications between him and Senior Management and between his lawyer and the Director of Legal Services.

The reasons for moving him have coalesced into a broad management view that his continued presence in Summary Prosecutions Division will be counterproductive to the changes that need to be brought about in that area, especially as he seems resistant to change. There are a number of detailed reasons that were given in the beginning of the process some of which continue to stand, although Sergeant Hales either denies them or refuses to acknowledge their importance. There are others matters which we have had to acknowledge either do not have substance or cannot be proven. The fact that they cannot be proven is, however, irrelevant as the issue here is not a disciplinary or criminal one. The issue is a managerial one.

Section 14B of the Police Administration Act allows us to make a managerial decision as to the disposition of members.

Notwithstanding that Sergeant Hales, his lawyer and the NTPA take the view that this needs to be based on some form of supportable proven evidence; I am of the view that this is not the case. It is only necessary for us to make this decision based on the factors and information that is known to us. So long as the bulk of that information is credible, then our decision to move him must stand.

I am of the view that although some of the matters raised against him in the beginning of this process can no longer be relied upon, other matters remain which substantiate what is, after all a small thing. He is to be transferred from one Sergeant's job to another; he will remain on the same conditions of service and be paid the same salary. He will be working closer to home and undertaking duties which we know to be within his capacity. In other words he is being done no economic harm. He will, of course argue that he is being

humiliated and treated in an unfair way. This is, in my view entirely specious, it is not humiliating to ask a member of the Police Force to undertake duties that were within his capacity, nor is it unfair to ask him to do precisely what he has sworn to do, obey lawful command.

Should you agree to my memorandum below, I will arrange for personal service of the Notice and the letter I am sending him to accompany the notice (attached).

Recommendation

That you sign the attached notice of transfer.

[83] On 31 December 2005 Assistant Commissioner McAdie signed a letter addressed to Sgt Hales. The letter was received by Sgt Hales on 30 January 2006. The letter stated as follows:

With reference to your memorandum of 26 August 2005, I note that you have not indicated a preference for any of the positions identified in my letter of 5 August 2005 as potentially available to you. I have given you more than adequate time to consider these options – and I am still waiting to discuss them with you. However, apart from my comments below, I do not consider there is any benefit to the organisation or to you in continuing written correspondence or protracting this matter any longer.

You acknowledge yourself that the uncertainty is an issue for you. Accordingly I enclose notice of your transfer to Sergeant NTPFES College, Berrimah, under the command of Commander Manison, with immediate effect.

I note you wish for a resolution of the issues listed in AC Payne's letter of 24 January 2005. These performance issues are not and have never been intended to be disciplinary charges. They were enumerated to illustrate management's concerns; to ensure you were fully aware of management's view of your performance; and to assist you to improve your performance. They also illustrated why a special case should not be made to allow you to remain in your current position.

With regard to the more serious issues raised with you, I can comment as follows:

- I accept that you did not preferentially allocate prosecutions to private legal practitioners. However, I am concerned that you see this issue purely in terms of a possible criminal offence, rather than the broader corporate issues of (albeit inadvertently) creating a misconception and lack of awareness of the need to comply with Procurement Guidelines in this area.
- I note that certain professional, prosecutorial decisions were addressed in a meeting between you and the DPP and that other matters remain unresolved. You will be aware that had the Commissioner intended laying disciplinary charges, he would have done so. Again, I am concerned that you need to see the broader, corporate perspective.
- I also acknowledge the improvements in performance and communication since 2001, and in your academic studies last year.

However, I remain concerned that there are recurring performance issues, particularly in your ability to work as part of a team, your willingness to accept management decisions and to deal with organisational change, to share your expertise and to develop beyond your personal 'comfort zone'.

Your communications 28 February and 26 August only emphasise these concerns. For instance your email canvassing of civilian and junior staff of the SPU to support your case and undermine management was highly inappropriate, and your threat of criminal defamation against colleagues and superiors who commented on your performance. I am concerned that resolution can only be achieved if you recognise these as performance issues and acknowledge how detrimental that kind of conduct is to the unit, your colleagues, the organisation and ultimately, yourself.

I ask you to take 'time out' to consider and embrace your future career with NT Police. I have requested that Commander Manison provides you with appropriate background material to prepare for your new position.

I will address the matter of medical clearance for a return to duty separately, pending the outcome of your examination by the Approved Medical Practitioner.

[84] Also enclosed with the letter dated 31 December 2005 was a document headed “Summary and Comments on Management concerns expressed to Sgt Hales on 24 January 2005 and Sgt Hales’ response of 28 February 2005”. The document was initially drafted by Ms Alison Worsnop, a solicitor employed with the police, but it was completed by Assistant Commissioner McAdie. The document contains Assistant Commissioner McAdie’s comments in relation to each of the matters raised by Sgt Hales in his memorandum dated 28 February 2005.

[85] It is apparent from the letter dated 31 December 2005 and the contents of the document headed, “Summary and Comments on Management concerns expressed to Sgt Hales on 24 January 2005 and Sgt Hales’ response of 28 February 2005”, which was enclosed in the letter, that due consideration was given to each of the matters in Sgt Hales’ memorandum dated 28 February 2005. Indeed a number of the matters raised by Sgt Hales were resolved in his favour. Importantly it was accepted by Assistant Commissioner McAdie that:

1. Sgt Hales did not engage in preferential briefing for his own benefit.
2. Sgt Hales did not refuse to lay charges against Peter John Smith.
3. Sgt Hales had not been counselled while he was in the Summary Prosecutions Unit.
4. Sgt Hales’ academic performance had improved.

5. Sgt Hales did not have a lack of awareness of the Purpose and Direction Strategy.
6. Sgt Hales did not have a lack of computer skills.
7. Sgt Hales' failure from time to time to use the computer L drive and to process costs were minor matters.
8. Since 2001, Sgt Hales had improved his performance in the Summary Prosecutions Unit and the standard of his communication.

Was Sgt Hales transferred for disciplinary reasons?

[86] Having reviewed the whole of the evidence it is my opinion that Sgt Hales was not transferred for disciplinary reasons. In her letter dated 15 July 2005(see par [78] above) Ms Vicki Anderson stated that the decision to transfer Sgt Hales was driven by management reasons and that he was not being transferred in response to issues relating to his professional competency or integrity. The management reasons included the recommendation of the Walter Turnbull Review of Police Summary Prosecutions that no member of the Police Force should stay in the Summary Prosecutions Unit longer than two years. In his letter to Sgt Hales dated 5 August 2005 (see par [80] above), Assistant Commissioner McAdie stated that there were no criminal issues and no proposals for disciplinary or inability proceedings against Sgt Hales. Assistant Commissioner McAdie also stated that Sgt Hales' promotion prospects would not be impaired by the matters at issue and that he would not rule out a future return to the Summary Prosecutions Unit. I accept those statements and I have relied

upon them in forming my opinion that Sgt Hales was not transferred for disciplinary reasons.

[87] In his affidavit affirmed on 21 July 2006 assistant Commissioner McAdie gave the following reasons for the transfer of Sgt Hales from the Summary Prosecutions Unit. There were a number of instances of behaviour of Sgt Hales which led to the management of his area coming to the view that Sgt Hales was not comfortable with the process of change that was being undertaken within the Summary Prosecutions Unit. There were occasions of friction between Sgt Hales and the Officer in Charge, there were instances of Sgt Hales' apparent refusal to obey directions, and he failed to keep the Officer in Charge fully informed of his work activities. The reasons for transferring him were organisational and managerial in nature and were not related to any issues of alleged discipline or wrongdoing. There were signs that he was unhappy with the managerial changes that were going on in the Summary Prosecutions Unit. He had served in the unit for a very long time and while experience is clearly valued there are other considerations besides experience in judging the need to transfer members. In the case of Sgt Hales the judgment was that Sgt Hales had become comfortable with what he saw as the status quo and he appeared to be prepared to resist change within the Summary Prosecutions Unit in gross and subtle ways. A decision was taken that a transfer was the best way to relieve the tension that had built up in the Summary Prosecutions Unit. In addition, a review of the Summary Prosecutions Unit had recommended that positions held by police officers in

the Summary Prosecutions Unit should be rotated on a two-year basis.

Sgt Hales had been in the Summary Prosecutions Unit for considerably longer than two years.

[88] I accept that the reasons for transfer deposed to by Assistant Commissioner McAdie in his affidavit are the bona fide reasons for the decision to transfer Sgt Hales and that they relate to the decision that is contained in the notice of transfer dated 1 January 2006 (see par [3] above). While the reasons given by Assistant Commissioner McAdie are in some respects markedly different to the reasons for transfer given in the letter of Acting Deputy Commissioner of Police Mark Payne dated 24 January 2005, the reasons deposed to are consistent with the letter of Ms Anderson dated 15 July 2005 and with the document headed, “Summary and Comments on Management concerns expressed to Sgt Hales on 24 January 2005 and Sgt Hales’ response of 28 February 2005”. The difference between the reasons to transfer given by Assistant Commissioner McAdie and the reasons to transfer given by Acting Deputy Commissioner of Police Payne reflects the detailed consideration that was given to the matter including the obtaining of further advice and the consideration of the detailed response of Sgt Hales.

[89] On the whole of the evidence it is apparent that in 2004 and following, changes were made to the way in which the Summary Prosecutions Unit was managed. The changes were introduced in circumstances where there were tensions within the Summary Prosecutions Unit between the style of management adopted by Senior Sergeant Thomas and the style of

management adopted by Senior Sergeant Carlon, between summary prosecutors and operational police officers, between the obligations that summary prosecutors felt that they owed under the memorandum of understanding and the requirements of the Police Force, including that of duty prosecutor, and between the contest mention system and the traditional style of conducting prosecutions in the Court of Summary Jurisdiction.

There was tension between Senior Sergeant Carlon, who had the responsibility to introduce the new system, and Sgt Hales. Sgt Hales was disgruntled about the rosters that he was given, the fact that he was moved from the position of administration sergeant, the fact that he was required to perform different roles including the role of juvenile prosecutor and the fact that he believed that he was not given enough study leave. Sgt Hales resisted the changes and there was clearly a personality clash between him and Senior Sergeant Carlon. There was sufficient information before Assistant Commissioner McAdie for him to reach the conclusions expressed in his affidavit as to why Sgt Hales should be transferred and the information was capable of being accepted by Assistant Commissioner McAdie. The reality is that Sgt Hales' immediate superiors considered that his values and attitude were incompatible with the way in which the Summary Prosecutions Unit was to be managed under Senior Sergeant Carlon. It was believed that his continued presence in the Summary Prosecutions Unit would hinder the smooth implementation and running of the new system.

Did the Policy on Management Initiated Transfers apply to Sgt Hales' transfer?

[90] In my opinion the Policy on Management Initiated Transfers did not apply to Sgt Hales' transfer from the Summary Prosecutions Unit to the position of Sergeant, Northern Territory Fire and Emergency Services Training College. Under s 14 of the Police Administration Act the Commissioner of Police is charged and invested with the general control and management of the Police Force. Under s 14B of the Police Administration Act the Commissioner of Police is given very wide powers of transfer. He may transfer a member of the Police Force as he thinks fit. According to the obligations that the Commissioner of Police has under s 14 of the Police Administration Act and the express terms of s 14B of the Act, the Commissioner of Police's powers of transfer are wide enough to cover all of the operational matters referred to in paragraph 11 of the affidavit of Assistant Commissioner McAdie sworn on 21 July 2006 and they are wide enough to cover the transfer of Sgt Hales. The main constraints on the exercise of the power of transfer are that the transferee must be given reasonable notice of any proposed transfer and an opportunity to be heard in relation to the proposed transfer and the power must be exercised bona fide for the control and management of the Police Force.

[91] In contrast, as I have said in par [15] and par [16] above, according to its terms the Policy on Management Initiated Transfers does not cover the whole field of transfers that may be made under s 14B of the Police Administration Act. Among other things the policy states, "It is the policy

of the Northern territory Police Force to fill vacant positions by means of Management Initiated Transfers where such vacancies cannot be satisfactorily filled by advertising for applicants or promotional processes.” A Management Initiated Transfer Panel is only to be set up where no member has applied for the vacancy or no suitable applications have been received. The purpose of the policy is to ensure that a fair and proper procedure is in place whereby unpopular vacancies can be filled in such a way as to fulfil the management needs of the Police Force without causing undue hardship. The transfer of Sgt Hales was not such a transfer.

[92] In the circumstances it was not reasonable for Sgt Hales to have expected that he would be given an opportunity to say why the Policy on Management Initiated Transfers should apply to his transfer. The policy was simply not of relevant application to the transfer of Sgt Hales.

Was Sgt Hales denied procedural fairness because proper consideration was not given to Sgt Hales’ response to the notice of intention to transfer him?

[93] In the circumstances of this case it is my opinion that Sgt Hales was accorded adequate procedural fairness. He was given an extensive opportunity to address the concerns of his superiors and to try and persuade them that he should not be transferred. He was also given an extensive opportunity to make submissions as to where he should be transferred, which he declined to avail himself of because he believed that the Policy on

Management Initiated Transfers applied to his transfer from the Summary Prosecutions Unit.

[94] It is apparent from the letter of Ms Vicki Anderson dated 15 July 2005, the letter from Assistant Commissioner McAdie dated 5 August 2005, the document headed, "Summary and Comments on Management concerns expressed to Sgt Hales on 24 January 2005 and Sgt Hales' response of 28 February 2005" and the reasons contained in the affidavit of Assistant Commissioner McAdie sworn on 21 July 2006, that detailed consideration was given to Sgt Hales' written response to the notice of intention to transfer him. In a significant number of areas Assistant Commissioner McAdie accepted the submissions that were made by Sgt Hales.

[95] Sgt Hales was simply unsuccessful in persuading Assistant Commissioner McAdie that he should not be transferred. Police Management remained unconvinced that Sgt Hales would work in a fully co-operative manner with his immediate superior officer. I infer that Police Management were of the view that Sgt Hales' continued presence in the Summary Prosecutions Unit would have a tendency to undermine Senior Sergeant Carlon and the new management system which they were endeavouring to establish in the unit.

[96] Provided genuine consideration is given to any response of a proposed transferee to a proposed transfer, Police Management are entitled to form a view that a member of the police force should be transferred before they given the proposed transferee a notice of intention to transfer.

Order

[97] The application for a declaration is dismissed. I will hear the parties further about costs.
