



Director – WJ Karczewski QC

Our Ref:
Your Ref:

23 October 2015

The Editor
NT News
GPO Box 1300
DARWIN NT 0801

Dear Sir

RE: DPP DECISION ON FOUNDATION 51

I refer to the inaccurate reporting that has surrounded my decision to exercise my prosecutorial discretion not to prosecute in this matter.

It is not the case and never has been the case that there must be a prosecution whenever there is evidence to support a charge.

In 1951 Sir Hartley Shawcross QC, then Attorney-General, stated to the House of Commons:

*It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute whenever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required in the public interest. That is still the dominant consideration.*¹

¹ (HC Debates, Vo1.483, co1.681, 29 January 1951).

The statement of Sir Hartley Shawcross QC used to be reproduced in the DPP Annual Report at the commencement of DPP Guideline 2 dealing with the decision to prosecute together with the following text:

This statement is equally applicable to the position in Australia and the Northern Territory. The resources available for prosecution action are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue with some vigour those cases worthy of prosecution.

Although these statements no longer appear in Guideline 2, they remain relevant and applicable. Guideline 2.1 provides that the prosecution process should be initiated whenever it appears that there is a reasonable prospect of conviction *and it is in the public interest*.

Paragraph 2.5 of the DPP Guidelines lists a large number of factors that can be taken into account in determining whether or not to prosecute. The list is not exhaustive. The matters that can be taken into account will vary from case to case. One of the matters which informed the question of what constitutes the public interest in the present case is the approach of the Northern Territory Electoral Commission (NTEC) to the administration of the *Electoral Act* funding and disclosure provisions as stated in the NTEC Disclosure Handbook for Associated Entities, namely, *"to work with the community, candidates, political parties and others in order to achieve a successful electoral outcome and to facilitate compliance with the disclosure and other requirements"*. The emphasis is on compliance rather than prosecution.

In the present case, the brief of evidence delivered by police to the DPP contained material which disclosed that the NTEC engaged with Foundation 51 in August 2014 with a view to ascertaining whether Foundation 51 was an associated entity of the Country Liberals registered political party and seeking compliance with the statutory obligation of an associated entity to lodge an annual return. That engagement ultimately resulted in Foundation 51 through its solicitors lodging with the NTEC various documents including three associated entity annual returns, one of which was lodged within time and two of which were lodged out of time. The net result is that Foundation 51 complied with all the requests made of it by the NTEC. There were no outstanding associated entity annual returns by the time the brief was delivered to the DPP in July 2015.

The brief of evidence delivered by police to the DPP was in relation to the alleged failure of Foundation 51 to file two outstanding associated entity annual returns and the associated question of whether Foundation 51 was an associated entity of the Country Liberals pursuant to the *Electoral Act (NT)*. It is relevant to note that although there were two associated entity annual returns outstanding at the commencement of the police investigation, those returns had been lodged with the NTEC by the time the brief of evidence was delivered to the DPP.

As Foundation 51 had complied with all of the requests made of by the NTEC, it was determined that it was not in the public interest to pursue the matter to prosecution.

The annual returns lodged by Foundation 51 can be viewed on the NTEC website.

It should also be noted that the DPP was not briefed to advise on any other issue.

A handwritten signature in black ink, appearing to read 'WJ Karczewski'.

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WJ KARCZEWSKI QC
Director of Public Prosecutions

I would appreciate you publishing this letter in full so that your readers have a better understanding of the legal process and to avoid any further errors or misunderstandings.