Submission No 6

INQUIRY INTO IDENTITY PROTECTIONS FOR PROCEEDINGS INVOLVING CHILDREN

Name: Her Honour Judge Penelope Wass SC

Date Received: 28 November 2025

Partially Confidential

Inquiry into identity protections of any accused appearing before the Children's Court or in any proceedings conducted pursuant to the *Children (Criminal Proceedings) Act 1987* and any reporting and sanction mechanisms

Submission by Her Honour Judge Wass SC DCJ.

28 November 2025

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Terms of Reference

That Portfolio Committee No. 5 – Justice and Communities inquire into:

(a) Existing identity protections of any accused appearing before the Children's Court or in any proceedings conducted pursuant to the *Children (Criminal Proceedings) Act 1987*

(b) Reporting mechanisms and sanctions for breaches of identity protections

(c) Any examples in the previous two years where proceedings conducted pursuant to the *Children (Criminal Proceedings) Act 1987* have been made public, and

(d) The adequacy of existing reporting mechanisms and sanctions on these occasions; and

(e) Any other relevant matters.

Summary

This submission addresses the Terms of Reference through a detailed case study of the disclosure of identifying information concerning DR, an Indigenous child with significant vulnerabilities sentenced under the *Children (Criminal Proceedings) Act* 1987 (the Act) in the District Court at Taree on 11 October 2024.

(a) Existing identity protections

The circumstances surrounding the disclosure of information about DR, including his name and other identifying details, illustrate the limitations of current statutory protections (including s 15A of the Act), particularly where those protections are undermined by conduct within prosecuting authorities and/or where there are practical and legal barriers to investigation and enforcement.

(b) Reporting mechanisms and sanctions

In the case concerning DR, the disclosure was reported to the Honourable Attorney-General Michael Daley, DipLaw MP (Attorney General), the Shadow Attorney-General Alister Henskens SC MP, the Chief Judge of the District Court Justice Sarah Huggett (Chief Judge), Detective Superintendent Matthew Craft of the NSW Police Force (NSWPF), the New South Wales Office of the Director of Public Prosecutions (ODPP) and the investigators engaged by the ODPP (Norton Rose Fulbright). Queries were raised by me, to little or no effect as to the circumstances in which the disclosure occurred. Attempts were made by Government to enquire through the Budget Estimates Committee into what occurred, again with little progress. This, combined with the fact that this Inquiry has now become necessary, demonstrates the deficiencies in current reporting and sanctioning pathways when a child's statutory identity protections are compromised and his proceedings are misreported.

It also demonstrates the ineffectiveness in enforcing those protections in reliance upon institutional self-reporting, and the limited range and opacity of reporting mechanisms and sanctions that follow.

(c) Recent examples

DR's case is a clear example within the relevant two-year period of where proceedings conducted in accordance with the Act have been made public in a manner inconsistent with the intent of identity protections for children and exposes the limited circumstances in which the protection is afforded.

(d) Adequacy of existing mechanisms and sanctions

The failed NSWPF investigation, the limitations on obtaining warrants, the decision of the ODPP to investigate itself under legal professional privilege, and the minimal reporting and sanctions described by the ODPP at the Budget Estimates Committee hearing both individually and together demonstrate that current mechanisms and sanctions are not adequate to deter, investigate or respond to breaches of identity protections in cases of this kind.

(e) Other relevant matters

The broader effects of the disclosure on DR, on public confidence in the administration of justice (particularly in relation to Indigenous sentencing initiatives), and on the judiciary and court staff raise systemic issues that the Committee may consider when assessing whether the current framework properly protects the identity of children who appear before criminal courts and properly supports public confidence in those matters.

The Committee may also consider whether the Senior Officers of the ODPP, involved in the disclosure to 2GB and in the subsequent handling of the investigation and reporting to Government, remain best placed to manage the serious and significant obligations placed upon them to serve the community by preserving the independence and integrity of the ODPP, considering its critical role in delivering justice in New South Wales.

The Committee may also consider whether it is appropriate to refer the Senior Officers to the Governor, under Schedule 1, s 4(3) of the *Director of Public Prosecutions Act 1986* (the DPP Act) for removal from office for incompetence or misbehaviour.

Relevant Facts Regarding the Breach of Identity Protections of DR, a person appearing in proceedings on 11 October 2024 in the Taree District Court conducted pursuant to the *Children (Criminal Proceedings) Act 1987*

Introduction

1. On 25 October 2024, an Indigenous child (DR) and I were the subject of comment by Ben Fordham and Ray Hadley in their respective broadcasts on radio 2GB (the 2GB story). The 2GB story was substantively republished by the *Daily Mail* newspaper and rebroadcast on Sky News. It has also been republished on numerous social media platforms.

2. The 2GB story criticised my decision on 11 October 2024 to allow DR to present his Welcome to Country statement (the Welcome) during sentence proceedings conducted by me under the *Children (Criminal Proceedings) Act 1987* (the Act) in the District Court, sitting at Taree (the Proceedings).

3. Although DR was not named in any media publication, the 2GB story included information that could lead to the identification of DR, particularly in the small rural community of Taree. That information is set out at paragraph [17] below. Paragraph [17] should be kept confidential so as not to re-identify DR.

4. Mr Fordham and Mr Hadley broadcast the 2GB story, armed with information on DR and the case, provided by the ODPP, including, but not limited to, information contained in an internal ODPP document stating DR's name. It was not an accidental disclosure. The information was provided deliberately, reckless as to the identification of DR, and in breach of ODPP guidelines on dealing with the media.

5. The information was provided by the ODPP to 2GB for no discernible proper purpose. The case bore no significant public interest. Prior to the disclosure by the ODPP, no member of the media had taken an interest in the case, and no member of the media was present in Court during the Proceedings. There had been no departure from any normal procedure. The Welcome took place as part of DR's evidence with prior notice to, and the consent of, both parties. DR had committed a serious crimes and received the maximum sentence available under the Act. Neither the decision to proceed under the Act, nor the sentence itself, was appealed by either party.

The Proceedings

6. Evidence was presented in the Proceedings that DR had been performing the Welcome whilst in a Youth Justice Centre, where he had been detained for more than a year. The recitation by DR of the Welcome was given as part of his evidence. The evidence was given without objection by either the ODPP Crown Prosecutor Charisse Hodgman or DR's representative, Gus Farland.

7. A copy of the **transcript of the Proceedings is Appendix 1**. DR's name has been redacted. Any information that tends to identify DR is to be kept confidential. As can be observed from the transcript, I took care when making my sentencing remarks not to repeat the details of DR's subjective case, conscious that I was sentencing a child and to ensure that the remarks did not identify him. For added precaution, the sentencing remarks were not published online. Every care has been taken in this Submission not to identify DR. I would be grateful care could be taken to keep confidential any information that is likely to identify DR.

8. In accordance with s 10(1) of the Act, the public was excluded from the proceedings. While s10(2) of the Act permits journalists to remain in Court, as a practical measure, journalists identify themselves to the Court so that they are not accidentally excluded as the public. No journalist identified themselves and I did not identify any person other than the legal representatives, interested parties and their families, and Court staff in Court.

9. The evidence of the Welcome was given with prior notice to both parties that I wished to hear it. Prior to DR giving his evidence, I called both legal representatives into my chambers, and asked them if they had any difficulties with the Court hearing the Welcome as part of DR's evidence. To provide procedural fairness, I gave the parties time to take instructions and to permit any necessary enquiries to be made so as not to offend the Indigenous community in Taree by requesting the performance of the Welcome inappropriately. Neither party demurred. None of that information was included in the 2GB story, although it was known to the ODPP at the time they disclosed information to 2GB. It is not known whether the ODPP informed 2GB about the true circumstances in which the Welcome was given or that DR received the maximum penalty available under the Act.

10. By the time of the Proceedings on 11 October 2024, DR had served more than his non-parole period and was immediately released to parole.

11. Although the ODPP had stated publicly that they were considering the matter, the sentence was not appealed. No one from within the ODPP expressed any concern to me, or so far as I am aware to the Chief Judge, about what had occurred in the Proceedings; either as to the sentence, the taking of the evidence, the giving of the Welcome or indeed my subsequent statements to DR about the Welcome at the conclusion of the Proceedings. Instead, the ODPP moved to disclose information to 2GB and a "trial by media" ensued.

False and Misleading Statements Made by 2GB, Reliant on the Disclosure, That Are Capable of Identifying DR

12. The 2GB story, published to a large audience, included a description of my actions as a "local scandal". Remarks were made that something was "not right there" [with me], and it was said that I had had "a shocker", for which I was to be "called out". According to the 2GB story, 2GB had sought comments from unnamed "senior legal figures" in NSW who purportedly agreed with 2GB's comments.

13. Mr Fordham stated that DR had been "given the floor and handed the privilege of performing a Welcome to Country in the middle of a courtroom". The Shadow Attorney-General, Alister Henskens SC MP was asked to respond on air, which he did.

14. A copy of **the transcript of the 2GB story is Appendix 2**. It was provided to me by the Court's media officer. I have not verified the accuracy of the transcript against the broadcast. Indeed, some statements attributed to Mr Henskens may have been made by Mr Fordham.

Disclosure of DR's Name and other Information Capable of Identifying Him

15. Later, on 25 October 2024, Mr Henskens advised me that someone within the ODPP had disclosed confidential information to 2GB about the matter orally and in a document that disclosed some details of the case, including DR's name. It is now known that this included a screenshot of the ODPP MATTERS database taken from an ODPP computer screen (the screenshot).

16. Although I do not know what other information was disclosed by the ODPP, I do not suggest that the screenshot was the only information given to 2GB by the ODPP, only that a copy of the screenshot was provided to 2GB, which it provided to Mr Henskens. Accordingly, DR's name was first published by the ODPP to a media organisation and then second, was published by a media organisation, albeit not in a public broadcast. Any dissemination of the screenshot or DR's name beyond that is not known.

17. Upon comparing the content of the 2GB story and the content of the screenshot, it is likely that further information was given by the ODPP to 2GB, including information capable of identifying DR (some of which 2GB broadcast). That information (which was broadcast by a media organisation publicly) includes as follows:

18. Consistent with other information being provided by the ODPP, Mr Fordham said that the 2GB story was "an exclusive" based on "rock solid information" from "very reliable sources" who it is now known included someone from within the ODPP.

Breaches of the ODPP Policies

19. The ODPP is governed by guiding principles on providing information to the media, set out in Section 16.2 of the ODPP Prosecution Guidelines (the Guidelines). Those guiding principles relevantly include:

    1. To support the administration of justice and the integrity of the criminal justice system
    2. To recognise the public interest in receiving accurate information about criminal proceedings
    3. To endeavour to assist the media by confirming factual information already made public through the criminal justice system.

    [emphasis added]

20. Section 16.3 of the Guidelines relevantly provides, that when communicating with the media:

    1. The ODPP has a Media and Communications Liaison Officer (MCLO) who should be the primary point of contact for media enquiries.
    2. Uncontroversial requests for information already in the public domain, such as the sentence or other outcome of the proceedings, may be provided to the media without referring the enquirer to the MCLO.
    3. Any requests for "any other evidence" should be directed to the MCLO. The approval of the Director or a Deputy Director is required to respond to media enquiries other than those of an uncontroversial nature concerning matters in the public domain.
    4. Compliance with professional codes of conduct is expected and all communications with the media should be considered 'on the record'. (In that respect, the ODPP can have no reasonable expectation that communications between any officer of the ODPP and 2GB would or should remain confidential).
    5. ODPP staff and Crown Prosecutors are not to publicly discuss with or disclose to the media any information the disclosure of which is prohibited by law.
    6. Prosecutors should be aware that the law requires the closing of a court in cases including where the accused is a child.
    7. Prosecutors should be aware of the legislative restrictions on publication that automatically prohibit the publication of material that tends to identify certain persons, for example children involved in criminal proceedings.
    8. A breach of any of the above provisions constitutes a criminal offence.
    9. The MCLO should be contacted immediately if material is published in breach of a statutory provision.

10. Inaccurate media reports about the conduct of a prosecution or any other matter concerning the ODPP must be reported to the MCLO for remedial action.

[emphasis added]

21. The ODPP has admitted breaching its Guidelines. The disclosure did not arise in response to a media request. It was not a "media enquiry". It was the ODPP, and not 2GB, that initiated the disclosure of DR's name in the information provided to 2GB regarding the Proceedings. The Proceedings involved a child. The information was not factual or accurate regarding the Welcome (the sole subject of the 2GB story). It is likely that at no time, in the three weeks between the 2GB story being broadcast and the NSWPF investigation commencing, was the matter referred for "remedial action". If the Chief Judge's account (referred to below) is correct, the Director of Public Prosecutions, Ms Sally Dowling SC, was at that time denying that the disclosure had occurred at all. To date, no remedial action has been taken to correct the inaccurate aspects of the 2GB story. The disclosure undermined the administration of justice and the integrity of the criminal justice system, for reasons set out below.

Information about the 2GB Story and the Proceedings was Provided to the Attorney-General and the Chief Judge

22. The matter was disclosed to the Attorney-General and the Chief Judge almost immediately after the 2GB story was broadcast, in the following circumstances.

23. On the same day, 25 October 2024, the Attorney-General requested a copy of the transcript of the Proceedings. I believe that it was provided to him that afternoon, upon my instruction, through either the Court's then Executive Officer, Lisa Freeman or the Senior Manager of Reporting Services, Gary Head.

24. At about the same time, I also sent a copy of the transcript to the Chief Judge.

Inadequacy of Reporting Mechanism and Sanctions - Failed NSWPF Investigation into the Disclosure

25. Concerned that in some circumstances the disclosure may have involved a breach of s 15A of the Act (or perhaps some other crime involving the breach of privacy or data protection laws by a government agency), and mindful to ensure that I was not in possession of evidence of a crime without reporting it, I contacted Detective Superintendent Matthew Craft, the head of the NSWPF Cybercrime Squad.

26. On 6 November 2024, I provided my statement to Det Supt Craft. A copy of **my NSWPF statement dated 6 November 2024 is Appendix 3**. He arranged for the matter to be investigated by Detective Sergeant Julian Thornton under Strike Force Bracknell.

27. On 26 November 2024, the NSWPF informed me that the "ODPP Professional Standards Manager"[1] had identified that somebody within the ODPP Media Unit had provided the screenshot to 2GB in breach of their internal policies. The NSWPF were trying to arrange interviews with the people within the Media Unit. The NSWPF took the view that this removed the need for a Journalism Information Warrant (the Warrant).

28. At that time, the NSWPF told me that the ODPP were fully cooperating with the investigation.

29. On 29 November 2024, Det Supt Craft confirmed that the NSWPF had spoken with the ODPP (who were still cooperating) and that the ODPP were gathering relevant records that the NSWPF had requested. He reported that the legal issue in relation to the Warrant had been resolved given the cooperation of the ODPP at that time. The NSWPF confirmed that the screenshot provided to Mr Henskens by 2GB had been obtained from the ODPP MATTERS system and given to 2GB by an officer of the ODPP.

30. By 7 January 2025, the NSWPF had completed such investigations as they could carry out and referred the brief of evidence to the NSWPF Police Prosecutions and Licensing Enforcement Command.

31. On 8 January 2025, the NSWPF told me that the "person responsible" was not a barrister or solicitor or a person acting on instruction from a barrister or solicitor. This information provided by the ODPP to the NSWPF requires further scrutiny. The only ODPP officers involved in the Proceedings were either solicitors or barristers.

32. On 10 January 2025, I met with Det Supt Craft. He informed me that:

    1. Other than the junior media officer (who he said took the screenshot and provided it to "a superior"), the ODPP officers were no longer cooperating with the investigation. The NSWPF described the junior media officer as "the brave young woman".

    2. A Warrant was not possible.

    3. Accordingly, there was very little the NSWPF could now do to progress the matter.

    Given the inherent implausibility of the suggestion that a junior media officer would of their own volition initiate disclosure of the Proceedings to 2GB in clear breach of the Guidelines, we discussed my concerns about the inadequacy of the investigation and I asked questions regarding who else might have been involved in the disclosure.

[1] I am unaware of this position within the ODPP. I understand it to be a reference to Craig Hyland, who was tasked to liaise with the NSWPF on this issue. Mr Hyland is the "Managing Lawyer and Assistant Solicitor of Public Prosecutions (Operations)".

33. On 18 January 2025, I sent an email to Det Supt Craft and DS Thornton, setting out the matters discussed and asking the NSWPF a series of questions, particularly in respect of who may have authorised the disclosure within the ODPP, as I did not believe that it involved the actions of just one junior media officer. I noted that it was difficult to comprehend that she acted as alleged, without being told that the Proceedings had been conducted and the nature of it, and where she did no more than pass the screenshot on to a more senior, but unnamed, person within the ODPP. I also noted that it was unlikely that she would have had any interest in making the disclosure without authority and in breach of the Guidelines. The questions raised were not answered.

34. On 21 March 2025, Assistant Commissioner Fitzgerald of the NSWPF sent me an email informing me that the criminal investigation had been completed. Relevantly, the letter included the following information:

    1. As part of the investigation, some key witnesses were approached, and requests were made to provide official statements.

    2. Those witnesses did provide some relevant information to investigators. However, they declined to provide formal statements suitable for court.

    3. Consideration was given by the NSWPF as to how information may have been transmitted to the Ben Fordham radio show with a view to executing a Warrant to obtain electronic devices. However, the NSWPF had been thwarted by the fact that the criminal offences under investigation were not "searchable offences" in relation to obtaining warrants under the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) or in relation to obtaining telecommunications data.

    4. The available brief of evidence had been referred to the NSWPF Operational Legal Advice Unit to obtain independent legal advice. The legal advice indicated there were no reasonable prospects of a conviction for offences identified under the Act, the *Privacy & Personal Information Protection Act 1998*, or Part 6 of the *Crimes Act 1900*. No other offences were identified for consideration.

    5. As part of the investigation process, the NSWPF contacted the ODPP Solicitor for Public Prosecutions, Mr Craig Hyland, who the NSWPF understood manages allegations of misconduct made against employees of the ODPP.

    6. The ODPP requested a copy of the information held by the NSWPF, to allow for a non-criminal departmental investigation to be conducted by the ODPP. (It was duly provided to Mr Hyland).

    7. As part of a broader NSW Government Cybercrime legislation review, the issue of offences under the Act not being searchable would be put forward by NSWPF for review. The

NSWPF Cybercrime Squad will make a submission to seek legislative change, to include additional offences under LEPRA as searchable offences in line with the operational impediments. (I do not know whether this has occurred.)

Inadequacy of Reporting Mechanisms and Sanctions – I was Unable to Find out What Had Occurred Through Appropriate Protocols via the Chief Judge

35. Shortly after the broadcast in October 2024, I spoke to the Chief Judge, anxious to know who had provided the information about DR to 2GB.

36. The Chief Judge undertook, at my request, to ask Ms Dowling if the ODPP had made the disclosure.

37. Shortly afterwards, the Chief Judge informed me that Ms Dowling had told her that to her knowledge the ODPP had not made the disclosure, a statement now known to be inaccurate.

38. On 7 April 2025, so as to provide accurate information to the ODPP's investigators, I asked the Chief Judge to provide the details of the conversation she had had with Ms Dowling and noted that my recollection had been that Ms Dowling had told her that to her knowledge there was "no leak" from the ODPP. The Chief Judge responded that "[t]o avoid any hearsay problems, I think it is preferable that the third party speak to me directly about this issue should they wish to do so". I do not know if this occurred.

39. In June 2025, according to the Chief Judge, her Honour attempted to organise a meeting with Ms Dowling and myself, again at my request, to try to find out what had occurred and to bring the matter to an acceptable conclusion. According to the Chief Judge, on about 1 July 2025, Ms Dowling "in the circumstances" politely declined. I did not then, and do not now, know what "circumstances" Ms Dowling was referring to.

40. In preparing this submission, on 30 October 2025, I again asked the Chief Judge for confirmation that Ms Dowling had said that "to her knowledge there was no leak" as I regarded this as a relevant matter to include in this Submission.

41. The Chief Judge responded on 27 November 2025 relevantly in the following terms, "I will assist those conducting the inquiry if requested. Should that occur, I will consider whether I am able to add any relevant information."

Inadequacy of Reporting Mechanism and Sanctions - the ODPP Investigated Itself Under Privilege – Little Information Could be Obtained About What Had Occurred

42. On 28 March 2025, once the NSWPF investigation had ceased, and the NSWPF had provided a copy of the Brief of Evidence to Mr Hyland, I wrote to Mr Hyland, seeking to make a submission in respect of the ODPP's "non-criminal departmental investigation" into the matter (as notified to me by the NSWPF).

43. On 4 April 2025, Mr Hyland acknowledged the impact that this matter had had on myself and my staff. He announced that in accordance with the *Government Sector Employment Act 2013* (the GSE Act)[2] a "fact finding investigation" would be conducted by investigators to determine if there had been any misconduct by ODPP employees. He said that the ODPP had engaged "an independent external third party" to conduct the investigation. Mr Hyland offered me the opportunity to speak to "the external investigators". On 7 April 2025, I informed Mr Hyland that I wished to do so.

44. By 15 April 2025, I had not heard back from Mr Hyland as to the identity of the independent external third-party investigators and I wrote again to Mr Hyland, requesting that information.

45. On 16 April 2025, Mr Hyland advised that the ODPP had engaged "external and independent investigators", Alexandra Shields and Sarah Gonski from Norton Rose Fulbright (NRF) to undertake the investigation.

46. On 16 April 2025, Ms Shields (and employment lawyer and Partner at NRF) informed me that the so-called "independent" investigation was rather an "internal fact-finding" investigation appointed by the ODPP[3], for the dominant purpose of NRF providing the ODPP with legal advice and that the investigation was legally privileged.

47. I responded to Ms Shields, asking nine preliminary questions including whether I would be made aware of the outcome of the investigation. A copy of **my email to Ms Shields dated 16 April 2025 is Appendix 4.**

48. On 17 April 2025, Ms Shields responded, but did not answer any of those questions, other than to give me an overview of the GSE Act and observe that she trusted this answered my queries. It did not.

49. On 6 May 2025, I wrote to Ms Shields, expressing my concern that the investigation was no longer "independent and external" as characterised by Mr Hyland, but rather that NRF was

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[2] Such an investigation does not include investigation of Senior Officers of the ODPP and so would not include Ms Dowling or Mr Hyland: see Schedule 1, Section 7 of the DPP Act.

[3] Given that there is no separate entity of the ODPP to give instructions, I inferred that this was a reference to the Director, Ms Dowling SC, or someone with her delegated authority.

providing advice to the ODPP, on instructions from the ODPP, in the interests of the ODPP. I pressed Ms Shields for an answer to the questions I posed on 16 April 2025.

50. On 7 May 2025, Ms Shields responded that, "unfortunately, we are unable to provide further answers to your questions beyond those already provided to you on 17 April 2025".

51. On 2 June 2025, I provided my statement to NRF. A copy of **my statement to NRF dated 2 June 2025 is Appendix 5.**

Inadequacy of Reporting Mechanism and Sanctions – Information is Received from Tom Malone (2GB)

52. On 5 May 2025, I received a phone call from my solicitor John Laxon (the Principal of Laxon Lex Lawyers). He told me that he had received a telephone call from Tom Malone (the Managing Director of Nine Radio, the owner of 2GB). Mr Malone was looking for legal representation (likely for the NRF inquiry) for his "friend", the media officer at the ODPP. He told Mr Laxon that the ODPP media officer had disclosed the material to 2GB on instructions from Ms Dowling. A copy of **Mr Laxon's file note dated 5 May 2025 is Appendix 6.**

Inadequacy of Reporting Mechanism and Sanctions – The ODPP's Responses Given During the Budget Estimates Hearing on 28 August 2025

53. On 28 August 2025, Mr Hyland answered questions asked of him by the Honourable Susan Carter MLC in an Upper House Budget Estimates Committee hearing.

54. Relevantly, he gave the following answers as to the NSWPF investigation:

    1. He did not know who the NSWPF asked to be interviewed. From the information I obtained from the NSWPF, the accurate answer to that question was that the NSWPF had forwarded to him the brief of evidence and such information as they had so he could manage the internal investigation. That likely included at least a statement from me and a statement from the ODPP junior media officer setting out her involvement in the disclosure and information about her "superior".

    2. Mr Hyland was asked if all staff cooperated in the NSWPF investigation. He responded that staff had "participated in the process". From the information I obtained from the NSWPF, the accurate answer to that question should have been "staff were initially instructed to cooperate, but later their cooperation was withdrawn".

    3. Mr Hyland also said he did not know whether relevant staff did not participate in the process when asked.

55. As to the NRF investigation, Mr Hyland said:

    1. He did not know who NRF investigated, who they spoke to or what was in its report. (He did not mention that he had been tasked to liaise with NRF in that regard).

    2. The NRF report made recommendations, but he did not know what they were.

    3. Helen Wilson SC, who was at the time a Deputy Director of Public Prosecutions (and is now an acting District Court Judge), made the decision in relation to the recommendations made by NRF. He did not know what decision had been made.

    4. The position he would be taking was that the ODPP would not comment on internal misconduct matters.

    5. He said however, that "one would expect hypothetically, the employee" was counselled.

    6. He said that "the 'ODPP or the staff member' did not publish anything on 2GB, the allegation was that certain material was provided to 2GB and that whatever was provided was not published." As to the final assertion, there is no reasonable basis to conclude that, other than DR's name, 2GB did not republish the information given to it by the ODPP. All other identifying features that were published by 2GB, were provided by the ODPP. Given the information that was published by 2GB and the non-attendance of any media during the Proceedings, the most plausible inference is that the entire 2GB story was based on information provided by the ODPP.

56. As to the disclosure's impact on me, Mr Hyland answered that he did not know what the impact upon me was, only that he had passed my contact details to NRF. I believe that, at that time, he had been provided with the statement I made to the NSWPF. The impact on me was set out in detail in my statement to NRF. Mr Hyland knew that this was the purpose of me making such a statement to NRF. Further, he had already acknowledged the disclosure's impact on me in an email dated 4 April 2025.

57. Mr Hyland undertook to the Committee to provide the findings "to a limited extent", to say what the outcome was and "leave it at that". He said they were not going to name names and that he was unaware of the findings. When pressed, he undertook to inform the Committee of the levels of those who were responsible for the disclosure.

58. In answers to questions on notice, the ODPP informed the Committee that only one employee was involved and that it was "the staff member (who held the role of "Prosecution Officer (Administrative) Level 7)". It was stated that they "received a formal caution" and "targeted training and counselling to clarify their role, expectations and compliance with the ODPP Code of Conduct and the Prosecution Guidelines". Otherwise, the ODPP asserted legal professional privilege and declined to answer.

59. However, I was told by the NSWPF that there were at least two people involved, including the junior media officer, but also at least the person to whom she gave the screenshot. If Mr Malone's information to Mr Laxon is correct, it was done on the instructions of, and so also "involved", Ms Dowling, although I accept that Ms Dowling is not "an employee" covered under the GSE Act and therefore not subject to scrutiny under that process.

60. In answers to supplementary questions posed by the Committee, the ODPP stated:

    1. "(195) The ODPP understands that the media reported on what occurred in the course of the proceedings. Those proceedings were conducted in open court. There were no suppression or non-publication orders in place and no statutory non-publication orders. The media was entitled to report on the proceedings, consistent with principles of open justice."

    2. However, there was no media in Court reporting on the Proceedings, which were conducted with only Court staff and those associated with the parties present in Court as required by s 10 of the Act. 2GB did not report on the outcome of the Proceedings. Rather, it broadcast, some two weeks after the Proceedings had concluded, a highly misleading account as to what had occurred based on "rock solid" information from "very reliable sources" (the ODPP), in a way that undermined child protection and safeguarding principles and was inconsistent with its own Guiding Principles, which includes a warning to prosecutors against disclosing any information to the media "that tends to identify" a child (see paragraph [20.7] above).

    3. The ODPP asserted that "s 15A of [the Act] relevantly provides that the prohibition on the publication of the name of a person who was a child when the offence to which the proceedings related was committed, or other material that identifies the person or is likely to lead to the identification of the person, applies only to the publication of the person's name to the public, or a section of the public by publication in a newspaper periodical publication, by radio or television broadcast or other electronic broadcast, by the Internet, or by any other means of dissemination. No material was published that could not lawfully be published. (196) 2GB was provided information that identified the young person. No information capable of identifying the young person was published." It is not correct that no information capable of identifying DR was published, particularly in a small community like Taree. Such has been the investigation of the matter, that there is no information as to what was disclosed by the ODPP to 2GB at all. However, so far as the commission of an offence under s 15A of the Act is concerned, on the scant information currently known, the ODPP is correct to contend that no breach of that provision has occurred.

    4. In my respectful submission, s15A of the Act has been shown in this case to be inadequate in protecting the identity of children. It is limited to the prohibition of disclosing the child's name (and does not extend to other identifying features of the child). Further, it provides no sanction against those who seek to undermine the protections afforded to

children appearing in court so long as it does not lead to a media organisation publishing the child's name. In clear breach of the ODPP Guidelines, the ODPP was entirely responsible for the publication of DR's name to 2GB and the information tending to identify him. The ODPP's conduct allowed 2GB to republish the screenshot and DR's name to at least Mr Henskens. Both the ODPP and 2GB deliberately released that confidential information, with no care and with no control over any further dissemination of the information. All of that can occur without sanction under the current wording of s 15A of the Act.

5. Further, the ODPP responded "(198) It is a matter for media outlets to determine what they publish." While this is correct, the ODPP (an important public institution in the criminal justice system and one of its most significant stakeholders) deliberately approached 2GB with information and recklessly released DR's name and other identifying information to 2GB, not knowing what would be broadcast to the public. The ODPP was the initiating agent and a crucial player in the misreporting of the Proceedings to the detriment not only of DR, but also to the administration of justice for reasons that to date have not been explained, despite the best efforts of the Honourable Susan Carter MLC in the Budget Estimates hearings and despite my enquiries. It is appropriate that this conduct be admonished and that appropriate legislation be introduced to uphold the protections.

61. On 15 September 2025, I wrote to Mr Hyland asking him if he could let me know the outcome of the NRF investigation. I made clear that I was wanting to understand that "all those involved have been appropriately held accountable".

62. Mr Hyland did not respond to my email.

63. On 22 September 2025, I wrote to Mr Hyland again in the same terms.

64. On 23 September 2025, Mr Hyland informed me that the investigation concerned "a staff member" and that as a result "a staff member received a formal caution as well as training and counselling". He said that the ODPP considered the matter closed.

65. That afternoon I asked to discuss the matter with the Chief Judge as I regarded Mr Hyland's response as "inadequate and [gave] no substantive response at all".

66. On 26 September 2025, the Chief Judge responded by email saying that ultimately it was a matter for the ODPP and was "not something for which the Court or I have any standing to intervene".

67. Accordingly, to date, other than information I received by chance on 5 May 2025 implicating Ms Dowling and the references made by the NSWPF to a "junior media officer" and her "superior", I have no knowledge as to why or how the disclosure was made, or who was

involved, despite having asked the NSWPF, the ODPP, NRF, the Chief Judge, and through her Ms Dowling personally, for those answers. This has occurred despite me having been unfairly vilified in the 2GB story (and subsequent republications) based on false information instigated by the improper disclosure by the ODPP.

Inadequacy of Reporting Mechanism and Sanctions – Summary

68. The reporting mechanisms relating to the breach of protections for DR and any sanctions were, in my respectful opinion, wholly inadequate.

69. The NSWPF was unable to properly investigate, without the Warrant, even where they were investigating the ODPP, the chief prosecutorial agency in the State, and an organisation sworn to uphold the criminal justice system. I support the NSWPF's desire to amend the legislation to allow for warrants to issue in these cases.

70. Further, having committed the breach, the ODPP was allowed to confidentially investigate itself by engaging NRF and asserting legal professional privilege. The way in which the ODPP chose to undertake the investigation and its subsequent adoption of its approach to the Budget Estimates hearing has resulted in almost nothing being disclosed about what occurred, why it occurred and who was involved. In particular, the investigation conducted by NRF under legal professional privilege and only in respect of employees, has meant that the ODPP was under no obligation to investigate all potentially involved, and was under no obligation to provide information regarding the breach, to the Court, to Government, to DR or to me, despite the ODPP being an accountable public office, that prosecutes, at taxpayers' expense, in the public interest, and despite the Chief Judge contacting Ms Dowling on the issue on my behalf and despite me having asked Mr Hyland directly for an explanation.

71. In short, in my view, having regard to all the circumstances, a serious and deliberate disclosure of confidential information, in breach of ODPP Guidelines occurred. It served no public or justiciable purpose. It was designed to embarrass and defame me and to undermine the independence of a District Court Judge with whom the ODPP has had issue (dealt with below). It did so by misusing the situation of a vulnerable Indigenous child. It occurred, not in the interests of open justice or in the public interest, but for a wholly improper purpose, without any proper recourse or accountability.

Effects of the Disclosure – Introduction

72. In **Appendix 5**, I set out in a statement, (as invited by Mr Hylands and given to NRF), the impact of the disclosure. Without repeating it in terms, I invite the Committee to incorporate it into this Submission.

73. I have summarised below the key points.

Effects of the Disclosure – Undermining Confidence in the Administration of Justice

74. Confidence in the administration of justice relies upon confidence in the sentencing procedure, the lawyers appearing, and the judicial officers who oversee it. The 2GB story, fuelled by the ODPP's disclosure, led to unfair and inaccurate criticism of DR, the sentencing process and me as the presiding judicial officer. It eroded the public's confidence in the administration of justice.

75. The 2GB story provoked public calls for violence against prisoners as part of punishment, for very long sentences to be handed down including for disadvantaged and compromised children, and a lack of belief that rehabilitation can be achieved for any offender.

76. The disclosure fuelled a public rejection of "two-tiered justice", where Indigenous offenders are seen, not as a marginalised and disadvantaged group within society, but as wrongly receiving special and preferential treatment within the criminal justice system, from "woke leftist judges" who do not know what they are doing and who are out of touch with "community values".

77. These reactions are difficult to reconcile with sentencing principles applicable to Indigenous offenders enshrined in The Walama List[4] Sentencing Procedure District Court Practice Note (PN 26) and in the Circle Sentencing model. Those principles are relevant in all sentencing exercises regarding Indigenous offenders. They are aimed at reducing reoffending and Indigenous people's overrepresentation in the criminal justice system, by increasing Indigenous participation and confidence in the criminal justice system (as I sought to do).

[4] The ODPP is a relevant and important stakeholder in the Walama List.

78. Empirical findings from the Bureau of Crime Statistics and Research (2020) supported the efficacy of these approaches, with statistically significant reductions in imprisonment and recidivism rates among participants.

79. Given the hostile public response to the 2GB story, it would be unsurprising if members of Indigenous communities now felt reluctant to participate in any court processes, including the Walama List.

80. The ODPP's disclosure and the ensuing media coverage has compromised public confidence in these initiatives, despite their demonstrated success.

Threatening, Defamatory and Untrue Statements Made as a Result of the Disclosure

81. I received derogatory public statements and threats from consumers of the 2GB story almost immediately after it was aired. I was called "woke" and "out of touch" and called on to be "disbarred". The public called for my sacking and accused me of being drug affected.

82. The 2GB story was republished by the Daily Mail, Sky News and other media outlets.

83. A copy of **some quotes published online by the Daily Mail are set out in Appendix 7.**

84. Comments on social media were also inflammatory. As an example of the level of hate speech that ensued at the time, in a post on Reddit that included a photograph of me, I was called upon to be imprisoned and in one instance to hang myself.

The Effects of the Threats and Vitriolic Statements upon My Staff

85. The statements were harmful to my Associate, Ms Khoury, who was also exposed to them. She received the statements directed towards me, sent to her email address. She was detrimentally affected by the statements, but also by her perceived need to protect me.

86. Associates are most often (and Ms Khoury was) newly graduated lawyers who are learning about the fundamentals of the criminal justice system. They are government employees to whom it is owed a duty of care to provide a safe workplace. They are deserving of our support, encouragement and protection from vicarious trauma, particularly where such trauma is avoidable.

Effects of the Disclosure Upon Me Personally

87. I am extremely disappointed and saddened by what has occurred, particularly knowing that the information came from within the ODPP and that the NSWPF, the Court and I were unable to adequately respond.

88. I was particularly affected in the context of the matters set out in **the chronology set out in Appendix 8** and believing this to be the third time that I have been singled out by the ODPP for unfair and improper negative attention (the first two being from Ms Dowling herself) in an otherwise long and dedicated legal and judicial career. In isolation, the disclosure may be seen as a single error of judgment. In the context of the matters set out in Appendix 8, I believe it to have been a deliberate and targeted approach.

89. I was particularly concerned to hear of the information provided by Mr Malone to Mr Laxon that Ms Dowling had instructed the media officer to make the disclosure.

90. I have been compelled to explain myself to the Chief Judge, the Attorney-General, the Shadow Attorney-General, my fellow judges, the District Court's media officer, my Associate, senior members of the legal profession, non-lawyers in my personal life and my family. It has been apparent that relying on the 2GB story and without knowing what unfolded during the Proceedings, their opinion of my personal and professional standing was diminished.

91. It has been galling that despite the broadside attack on my professional reputation, as a Judge I was in no position to defend myself or explain publicly what had occurred. Mr Fordham's call to me in the 2GB story to come on air afterwards and explain myself, left unanswered, left those untrue statements unchallenged. That made it more likely to be accepted by anyone who did not know that judges largely remain publicly silent in the face of even the most strident criticism. Indeed, internet comments on my failure to respond directly to the media (which I did not think appropriate) or through the Court (which I sought to have occur without success) were taken as evidence that the 2GB story was true. To my knowledge, no one from the ODPP has come forward to dispel any miscommunication that may have occurred, in further breach of the ODPP Guidelines.

92. It has always been my intention to participate in the criminal justice system as a Judge without fear, favour, affection, or ill will, but with a level of compassion that the law permits, in this case towards DR, a child who undoubtedly comes from very disadvantaged circumstances: see for further principles *Bugmy v The Queen* (2013) 249 CLR 571.

93. That intention drove my desire to hear DR's Welcome; to test the evidence and to give him an increased sense of identity and self-esteem, something that had been so lacking in his life thus far, in the hope that he could be proud of himself and not reoffend. At the conclusion of the Proceedings, in addition to sentencing DR to the maximum statutory penalty, my remarks carried with them a warning to DR that if he was in trouble with police in the future,

he would not be invited to perform the honour of a Welcome to Country. I tailored my remarks to the case at hand, mindful that I was sentencing an Indigenous young person in the presence of the parties and his family. The circumstances called for an appropriate degree of informality, to encourage comprehension, once the Proceedings had been completed, and one that was directed to DR's rehabilitation.

94. It has been distressing to know that those responsible for the disclosure were willing to risk the wellbeing of a vulnerable Indigenous child for no proper or justifiable reason, certainly none that has been explained.

95. The disclosure was not made in pursuit of any public interest or in pursuit of open justice (as suggested by the ODPP's answers to the Questions on Notice to the Budget Estimates hearing). Given the way that it was disclosed, there was no attempt in the media to have an informed debate about Indigenous sentencing, youth sentencing, sentencing disadvantaged persons, or how to meaningfully involve young offenders in their sentencing process. The disclosure to 2GB, well known for its populist reporting, all but guaranteed that the matter would be sensationalised and used in the way that it was. In my view, the only plausible explanation for the disclosure (not drawing the more heinous inference that it was designed to attack DR personally or children like him), is that it forms part of a deliberate strategy by some of those within the ODPP, including Ms Dowling, to personally attack me, and/or perhaps more concerningly, to influence my judicial conduct in the future.

96. It followed almost inevitably from the 2GB story, that it would be picked up by the Daily Mail and Sky News in its pursuit of so-called journalism and allowing the public to speak out publicly on its web pages. The vitriolic statements made by Mr Fordham were unfair and untrue, but hardly surprising given the source of the information he had.

97. It is alarming that those at the ODPP involved in the disclosure, whilst responsible for upholding integrity of the criminal justice system, would act so inconsistently with that responsibility such that they would compromise the welfare of a vulnerable Indigenous child (including by naming him to 2GB), in breach of their Guidelines, and avoiding any open avenue of appeal, simply to criticise a sitting District Court Judge. That has affected me considerably.

98. The disclosure has had, in my view, a significant negative effect on the administration of justice and has had a significant detrimental effect on me personally, upon my family, and upon my staff.

Conclusion and implications for the Terms of Reference

99. In relation to Term of Reference (a), my experience indicates that while the Act and other statutes contain formal identity protections for children, those protections are vulnerable where:

    1. senior officials within prosecuting authorities provide information to the media contrary to internal policies and the spirit of the legislation;

    2. there are limited means to compel cooperation with investigations into such conduct; and

    3. there is no independent mechanism to ensure that breaches are disclosed and addressed.

100. In relation to Term of Reference (b), the pathways I pursued through the NSWPF, the Chief Judge, the ODPP and its external advisers reveal the absence of a clear, transparent reporting mechanism for judicial officers, or child defendants and their representatives when identity protections may have been breached, particularly where the suspected breach originates within an independent statutory office such as the ODPP.

101. In relation to Term of Reference (c), the disclosure about DR in October 2024 is a clear and concrete example within the reference period of proceedings under the Act being made public in circumstances that were inconsistent with the evident purpose of s 15A, even if ultimately no prosecution was brought.

102. In relation to Term of Reference (d), the outcome described at Budget Estimates – namely a single formal caution and internal training for one employee, following an investigation conducted by an interested party under legal professional privilege and the cessation of cooperation by the ODPP with the NSWPF – demonstrates that existing sanctions are opaque, limited and unlikely to provide either meaningful accountability or general deterrence for breaches of children's identity protections.

103. In relation to Term of Reference (e), the material provided, illustrates that breaches of identity protections for children have consequences far beyond the immediate publication. They affect the child, their community, the perceived legitimacy of Indigenous-focused sentencing initiatives, and the capacity of judicial officers and court staff to perform their functions without improper external pressure or vilification.

104. I respectfully ask that Committee also consider:

1. whether legislative provisions and the ODPP Guidelines should be strengthened in relation to the sharing of information with the media about proceedings involving children, including by providing clearer consequences for institutional non-compliance;

2. whether offences relating to the unlawful identification of children should be "searchable offences" for the purposes of LEPRA and related warrant regimes;

3. whether there should be mandatory independent investigation and reporting requirements where a prosecuting authority is implicated in an alleged breach of identity protections of a child;

4. whether there was a valid claim by the ODPP of legal professional privilege in declining to provide answers to the Parliament;

5. whether the Senior Officers of the ODPP, involved in the disclosure to 2GB or the subsequent handling of the matter, remain best placed to manage the serious and significant obligations placed upon them to serve the community by preserving the independence and integrity of the ODPP, considering its critical role in delivering justice in New South Wales; and

6. whether it is appropriate to refer the Senior Officers involved in the disclosure and in the subsequent handling of the matter to the Governor, under Schedule 1, s 4(3) of the *Director of Public Prosecutions Act 1986* for consideration for removal from office for incompetence or misbehaviour.

105. I offer this submission in the hope that the Committee's work will lead to strengthened protections for children who appear before the criminal courts and to clearer, more effective mechanisms for responding when those protections are compromised.

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Judge Penelope Wass SC

28 November 2025

OMITTED BY RESOLUTION OF COMMITTEE ON 3/12/2025

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Appendix 2 – Copy of a Transcript of the 2GB Story Broadcast on 25 October 2024

BEN FORDHAM AND SHADOW ATTORNEY-GENERAL TRANSCRIPT

BEN FORDHAM: The local scandal involves a judge by the name of Penelope Wass. We have revealed exclusively this morning that Penelope Wass was hearing a case last month in Taree involving a juvenile offender, Will, a 17 year old who could have been tried as either an adult or a child. She decided to try him as a child or sentence him as a child. But the main part of this story that's got people up in arms is the fact that while he was fronting court for sentencing over a terrible attack on a 92 year old woman and an 88 when he broke into their homes, the judge invited this bloke to perform a welcome to country in the middle of the court before sentencing him. And I've got a note here from Damian saying, can you ask if that criminal was respectful enough to perform a welcome to country? As he broke into those defenceless old ladies homes and performed his horrible crimes, the shadow Attorney-General, Alister Henskens is on the line. Alastair, good morning to you.

ALISTER HENSKENS: Look, Ben, when there are large ceremonies such as the swearing in of a judge and the like, there are welcome to countries given, um. But I think you're correct to identify that justice should not only be done, but should be seen to be done. And so the idea that, uh, a prisoner in the dock would be elevated to a de facto officer of the court and perform a ceremony on behalf of the court, um, is not something that I've ever heard of and seems to me to be entirely inappropriate.

It's a privilege to perform something like that. It should not be offered to someone who is a criminal who's pleaded guilty and about to be sentenced. And then to top it all off, at the end, the judge says, look, if you'd like to come back and do it again in the future, have a conversation with your lawyer and we'll line it up

Ben, I don't know anything about this individual case, and your report certainly means that we need to get more information about it, but it seems to me to be quite inappropriate for the relationship between a judge who is about to be imposing a ceremony to be, um, changed in a manner where the prisoner is actually elevated to some, um, special status beyond any other ordinary citizen who may or may not be indigenous.

BEN FORDHAM: Alright, let's see whether Judge Penelope Wass responds today. Thanks for jumping on the line. Thanks, Ben. Alister Henskens, the shadow Attorney-General. There's something not right there. I mean, fancy having someone before you you're about to sentence, and then you offer them to perform a welcome to Country and then invite them back to do it all again. Very, very strange. And the judge, Penelope Wass, if there's any element of my reporting today which is out of line with what you view as reality of what occurred in your courtroom last month, please get in contact with us. And I'm more than happy to correct it, but I'm relying on very reliable sources, and I believe the information we've got is rock solid.

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RAY HADLEY TRANSCRIPT

Um, now, a story about the Welcome to Country. Uh, I wonder if he did a welcome to country for the old lady when he broke into a house in Taree and scared the tripe out of her. It's a strange old world.

Now, the story we're referring to was one that was told by Ben Fordham this morning on his program in Sydney, and Ben has passed me all the details that were leaked to him.

A criminal has conducted a welcome to country in the middle of a courtroom before he was sentenced at the invitation of the presiding district court judge.

Penelope Wass was presiding over a recent matter at the Taree District Court involving a 17 year old who had carried out multiple break and enters. Obviously indigenous, he broke into the home of a 92 year old woman robbed her, leaving the old lady traumatised. On another occasion, he robbed the home of an 88 year old woman and sexually touched her while permitting committing the robbery. The teenager charged and opted to plead guilty. That meant, of course, no trial. It moved straight to sentencing.

So enter her honour Penelope Wass. So at the proceedings commencing last month, the teenager welcomed the country and that was at the invitation of the judge. This violent offender was facing some extremely serious charges about to learn his fate but before getting down to business and sentencing, via his legal team, sought permission and given permission and invited to give a welcome to country.

She told the court this judge, she was happy for him to give a welcome to country in any court she presided over. This is the bloke about to be sentenced for a violent crimes. He pleaded guilty to terrorising older women in their own homes. He was given the floor and the privilege of the Welcome to Country. I just can't believe it.

Her honour thought it was appropriate to have the offender welcome her to her own court and she invited him to do it again the next time he's in court. Well, she must be certain he's going to be in court again if she invited him. And I'd say, based on his history so far, he will be back in court. Hopefully not before her.

The 17 year old was behind bars at the time of sentencing. It was left up to the judge to decide if the teenager was going to be sentenced as an adult or a child. She decided to sentence him as a child. That meant the maximum he could spend behind bars was two years. Tried as an adult, he could have received a lot longer, but she opted then to release him on parole. She decided that because time had served, he'd be able to walk free. We're talking about an offender who terrorises women, as Ben told you this morning. Two older women. One 88. One 92. It's just unbelievable. It is absolutely unbelievable.

And I was mentioning to our listeners in Sydney and other areas earlier why I knew about her. Well, she was one of the judges - I've just got a story here from the Sydney Criminal Law uh, website - New South Wales District Court Judge Penelope was made a formal complaint to the Legal Services Commission against the state's chief prosecutor, the DPP Sally Dowling SC, after

Ms Dowling allegedly raised secret grievances about Judge Wass, to court's chief judge, Sarah Huggett, in the middle of a sexual assault trial being presided over by Judge Wass.

She made the complaint amid controversy that had been brewing for some time, with a number of judges, criminal defence lawyers and indeed prosecution lawyers expressing frustration regarding the office of the DPP practice of taking sexual assault allegations to trial, rather than perhaps looking at a lack of credible evidence to support the action they were taking.

Now, apparently, Judge Wass disclosed the complaint against her while residing in Taree, where she was with this kid. On Tuesday, the 2nd of July this year, advising the parties she was doing so in order to allow them the chance to consider whether to make an application for her to recuse herself from any matters before her. In other words, step aside. Well, whether she gets recused or not, I would think that someone needs to perhaps get Sarah Huggett and have a yarn with her about welcome to country and the insult that was driven home there to the 92 and 88 year old victims. He's afforded every courtesy while being sentenced for a horrible attack on these poor ladies.

Statement of Penelope Wass dated 6 November 2024.

This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false, or do not believe to be true.

1. I am a Judge of the District Court of New South Wales. I was appointed in 2016.

2. On 11 October 2024, I sentenced a young person in the Taree District Court, under the *Children (Criminal Proceedings) Act 1987* ("the Act"). The name of that young person was suppressed. He was referred to only as DR.

3. I am aware that s15A of the Act prohibits identification of the young person. Any breach of the provision under s15A(7) is an offence, which carries a penalty or a fine of 500 penalty units or 12 months imprisonment or both.

4. On 25 October 2024, Ben Fordham broadcast on radio 2GB that it had been "revealed exclusively" to him that morning, the following information:

5. As to who provided Mr Fordham with the information, Mr Fordham stated during the broadcast, "I'm relying on very reliable sources, and I believe the information we've got is rock solid". It was also stated in the broadcast, "there are some senior legal figures in New South Wales who never want to see it again. As one source told us, I've never seen anything like it." He also referred to "some senior legal figures in Sydney" shaking their heads.

6/11/24

Penelope Wass Witness

6. As far as I am aware, the information about the case disclosed by Mr Fordham was known only to:
   a. Officers of the DPP; the Solicitor Advocate Charisse Hodgeman, her instructing solicitor Brittany Palmer and the lawyer who assisted throughout the sittings, Thomas Dwyer.
   b. Perhaps the OIC, whose name I do not have but am able to obtain if necessary.
   c. Gus Farland, the offender's solicitor.
   d. Members of the offender's family.
   e. My associate Heather Khoury.
   f. Court officers Sharon Moore and Jeanette Maher.
   g. Perhaps a Sheriff's Officer whose name I could obtain if necessary.
   h. Perhaps Taree registry staff, but unlikely on my recollection and enquiry.

7. During the broadcast, Mr Fordham invited the shadow Attorney-General, Alister Henskens to comment on air, which he did.

8. A number of statements made by Mr Fordham were either untrue or misleading by omission. The statements would have been known by those in court and involved in the case to have been untrue or misleading.

9. As a result (and also because I had been requested to do so by the Attorney-General, Michael Daley), on the afternoon of the 25 October 2024, I provided the transcript of the proceedings and an explanation of the errors in the broadcast to Mr Daley.

10. Also on 25 October 2024, given that Mr Henskens had been asked to comment publicly on what I believed to be false or misleading information, and because I had informed the Attorney of that fact, I also contacted Mr Henskens by telephone and told him the context in which the welcome to country had been delivered and explained the false information and omissions.

11. Mr Henskens called me on 31 October 2024 and 1 November 2024, and provided me with further information about what he had been told about the matter before going on air.

.... 6/11/24

Penelope Wass Witness

12. Relevantly, Mr Henskens told me that:
    a. Just prior to the matter being broadcast, he had obtained a copy of a document by either Mr Fordham himself or someone within 2GB (he may have said who but I am now not sure which).
    b. He still had the document, which he explained to me by describing it and reading through it.
    c. The document as described has the following characteristics:
        i. It was a photo of a computer, or a screen shot of a computer screen.
        ii. The photo or screen shot included an icon with a DPP identifier on it.
        iii. The photo or screen shot contains an image of a further document, which has all the appearance of a formal court results sheet (and included a "gavel" symbol), but is not, to my knowledge, consistent with one used by the Court or produced by JusticeLink either in form or substance.
        iv. The information included matters relating to the case, and in particular the fact that the young person had performed a welcome to country and most importantly, the child's true name, in a clear breach of s15A(7). It did not include other important matters (such as charge numbers) that are usually in such a document.

13. I have been told by the Chief Judge of the District Court, Justice Sarah Huggett, that after the broadcast, she spoke to the Director of Public Prosecutions, Ms Sally Dowling SC, who denied disclosing the identity of the young person to 2GB or providing any information about the case to the radio station.

14. I believe that both Mr Henskens and Mr Fordham (or personnel within 2GB) have a copy of the document, providing clear evidence of the commission of an offence under s15A, both by the "reliable source" who gave it to someone within 2GB, and by that person in passing it on to Mr Henskens. I believe that Mr Henskens knows who that person is as the document was given directly to him.

15. Mr Henskens did not to my knowledge breach s15A of the Act.

16. Mr Henskens does, however, hold clear evidence that an offence has been committed by the person within 2GB who provided him with the document.

17. Someone within 2GB, and most likely Mr Fordham, also holds clear evidence that an offence has been committed by his "reliable source".

.... 6/11/24

Penelope Wass Witness

18. I have made enquiries within the Taree Registry of the District Court and I do not believe that any officer, sheriff or registry staff have been involved in the commission of an offence.

19. I do not believe that Mr Farland or the young persons' family have been involved in the commission of an offence, given their interest in protecting the safety and security of the young person.

20. I am aware that s15A(7) of the Act is not a serious indictable offence. However, if this information provides evidence of a serious indictable offence, I am concerned not to breach s316 *Crimes Act 1900*. I am also concerned to uphold my ethical obligations concerning the protection of young people underpinning section 15A(7) of the Act, and make this statement accordingly.

21. On 6 November 2024, I signed this statement and gave it to Detective Superintendent Matthew Craft, Commander Cybercrime Squad, NSW Police Force.

.....

Penelope Wass

Witness

6/11/24

Appendix 4 – Questions put to Norton Rose Fulbright dated 16 April 2025

From: Judge Wass
Sent: Wednesday, 16 April 2025 4:56 PM
To: Alexandra Shields
Cc: Sarah Gonski
Subject: RE: Confidential Matter - Investigation into alleged disclosure (ODPP) [NRF-APAC.1066091.4079727.FID3581247]

Dear Ms Shields,

Thank you for your swift response. Unfortunately by 28 April 2025 I will be in Taree on Circuit, so any meeting will have to be by Teams. Any number of those dates and times will work, subject to court commitments.

Please excuse my ignorance in these matters, but I have not been involved in such an investigation (other than something similar in another life as a barrister a very long time ago).

I would be grateful to know the following very basic information about the internal investigation before I commit to providing such information as I now have, including, but not limited to information I have already provided to the police.

1. Is there a document that sets out the general policies and procedures that you follow with respect to such an investigation that I could see?
2. What are your terms of reference? Do they include investigating the motives in making the disclosure?
3. In general terms how is the investigation carried out and what is the likely timeframe for reporting to the decision maker?
4. Are employees required to cooperate with the investigation? Does that include where they may implicate themselves in a criminal offence, and where they have already refused to cooperate with police?
5. Are officers with independent commissions, but not government employees, expected to provide any relevant information they have?
6. I note that you are instructed by the "ODPP". I am not quite sure what that means, can you clarify?
7. Who is the "decision maker" and are they limited to making decisions against government employees?
8. Is there any circumstance, speaking generally, in which you would be required to refer the matter to ICAC or to some other body for determination?
9. Will I be made aware of the outcome of the investigation?

I look forward to hearing from you.

Kind regards

Her Honour Judge P.M. Wass SC | District Court of New South Wales
Email:
John-Maddison Tower, 86-90 Goulburn St, SYDNEY 2000

Statement of Penelope Wass dated 2 June 2025

Introduction

1. I make this statement, believing the matters contained in it to be true and accurate to the best of my knowledge and belief.

2. I provide this statement to Norton Rose Fulbright ("NRF"), who are instructed by the Office of the Director of Public Prosecutions ("ODPP"). I understand that NRF are presently investigating the ODPP's disclosure to 2GB of information that led to a story that was broadcast on radio on 25 October 2024 ("the 2GB story").

3. This statement is made in addition to my statement to police signed on 6 November 2024. I believe that NRF should have access to the statement. I believe it was provided by the NSW Police to the ODPP on or about 21 March 2025, after the NSW Police completed its criminal investigation. A copy can be provided if necessary.

4. The contents of this statement should be read in tandem with the chronology appended to it and marked "A".

The 2GB Story

5. On 25 October 2024, an Indigenous young person and I were criticised by Ben Fordham and Ray Hadley in the 2GB story. The 2GB story was substantively republished by the Daily Mail and rebroadcast on Sky News and elsewhere.

6. The 2GB story criticised my decision to allow the young person to present his Welcome to Country statement in Court. The young person said he had been performing it whilst in a Youth Justice Centre, where he had been detained for more than a year. He did so as part of his evidence before me on sentence and with no objection by either party.

7. The Crown Prosecutor who appeared in the sentence proceeding was on notice that the young person would perform the Welcome to Country and did not demur. Prior to the young person performing the Welcome to Country, I called the parties' representatives into my chambers, to ask them if they had any difficulties with my proposed course of action. Time was given to take instructions, so that procedural fairness could be afforded to both parties and so as not to offend the Indigenous community in Taree, by requesting the performance of such a Welcome inappropriately. None of that information, although known to the ODPP, was included in the 2GB story.

8. I sentenced the young person pursuant to the *Children's (Criminal Proceedings) Act 1987* ("the Act"). By the time I passed sentence on 11 October 2024, he had served more than his non-parole period and was immediately released.

9. The sentence was not appealed. No one from within the ODPP raised any concerns with me, or to my knowledge with the Chief Judge, about any aspect of the case – the Welcome to Country, the sentence imposed, the taking of the evidence, or my subsequent statements to the young person.

10. I was advised on about 25 October 2025 by Alister Henskens SC MP, that a person within the ODPP had disclosed confidential information to 2GB about the matter orally and in a document that disclosed some details of the case, including the young person's name. Mr Henskens told me that he had been provided with a copy of an ODPP document which he had in his possession.

11. Consistent with that information as to the source of the disclosure, the 2GB story included that it was "an exclusive" based on "rock solid" information from "very reliable sources".

Statements Made by 2GB, Reliant on the Disclosure

12. In the 2GB story, published to a large audience, Mr Fordham described my actions as a "local scandal". Remarks were made that something was "not right there" [with me], and it was said that I had had "a shocker", for which I was to be "called out". According to the 2GB story, 2GB had sought comments from unnamed "senior legal figures" in NSW who purportedly agreed with the comments.

13. Mr Fordham stated that the young person had been "given the floor and handed the privilege of performing a Welcome to Country in the middle of a courtroom", as opposed to him simply giving his evidence. Mr Fordham said that it was inappropriate that I had allowed the young person to welcome me to my own court. He also criticised me, saying that I had invited the young person to return to court in the future.

14. I received derogatory public statements and threats from consumers of the 2GB story almost immediately after it was aired. I was called "woke" and "out of touch", and called on to be "disbarred". Members of the public called for my sacking and accused me of being drug affected. I have attached a list of some quotes from the internet (marked "B") mostly published by the Daily Mail.

The Effects of the Threats and Vitriolic Statements on my Associate

15. Some threats and complaints came directly to my Associate's email address. She worried about showing them to me knowing that I would be affected by them, and did not do so for several days.

16. Somewhat ironically, it affected me greatly knowing that she had been, and may likely to be in the future, exposed to such an attack in the workplace and would be called upon to worry about me in that way. Ms Khoury is, and Associates often are, a newly graduated lawyer who is learning about the criminal justice system. Associates are, in my view, particularly deserving of our support, encouragement and protection from vicarious trauma, particularly where such trauma is avoidable (as it was here).

Effects of the Disclosure Upon Me Personally

17. From the time of the disclosure, I have been extremely disappointed and saddened by what occurred. This has been particularly so upon it being confirmed by the NSW Police investigators that the information had come from within the ODPP and where the police were unable to appropriately respond (such was the lack of cooperation within the ODPP according to police).

18. I was particularly affected in the context of the matters set out in the attached chronology and believing this to be the third time that I had been unfairly singled out by the ODPP for negative attention (the first two being directly from the Director) in an otherwise long and uncontroversial legal and judicial career.

19. As a direct result of the disclosure, I have been compelled to disclose the details of the matter to the Chief Judge of the District Court Justice Huggett, the Attorney-General Michael Daley, the Shadow Attorney-General Alister Henskens, some of my fellow judges, the District Court's media officer, my Associate, and to any number of other people, ranging from very senior members of the legal profession to non-lawyers in my personal life, who became aware of the broadcast. It has been apparent from many of those discussions that without factually accurate information about what unfolded during the young person's sentencing hearing, their opinion of my personal and professional standing was diminished.

20. It is continually concerning to think about the effect that it has had on my professional reputation, particularly where, as a Judge, I am in no position to appear on 2GB or anywhere else to publicly defend my position, despite Mr Fordham calling on me to do so. This has left his statements unchallenged by me and therefore more likely to be accepted by those who do not understand protocols that judges largely remain publicly silent in the face of even the most strident and unfounded criticism. To my knowledge no one from the ODPP has come forward to dispel any miscommunication that may have occurred. I am yet to receive an apology, despite it being known for some time now that the disclosure originated from within the ODPP.

21. Such was the Chief Judge's concern for me that the Court has provided me with professional support for which I am extremely grateful. I continue to utilise that support more than seven months after the broadcast, as its repercussions have persisted.

22. Such has been the effect on me in dealing with the 2GB story that it, and other matters, caused me to change my vacation plans in early 2025. It was important that I exercise, rest and recuperate, to properly perform my judicial functions upon my return to work.

23. It has always been my intention to participate in the criminal justice system as a Judge without fear, favour, affection, or ill will, but with a level of compassion that the law permits and to do so in line with legal principles including, where relevant, the principles enunciated in *Bugmy v The Queen* [2013] HCA37. That intention has not changed.

24. That intention drove my desire to hear the young person's Welcome to Country; to test

the evidence and to give him an increased sense of identity and self-esteem, something that the evidence showed had been so lacking in his life thus far, in the hope that he could be proud of himself and not reoffend. At the conclusion of the matter, my statements carried with them a warning that if he was in trouble with police in the future, he would not be invited to perform that honour. I tailored my remarks to the case at hand. I was mindful that I was sentencing an Indigenous young person in the presence of the parties and his family. I did so in circumstances that I considered called for an appropriate degree of informality once the proceedings had been completed.

25. I continue to find it distressing that those responsible for the disclosure were willing to risk the wellbeing of a vulnerable Indigenous young person for reasons that are yet to be explained.

26. The sentence proceedings unfolded where it was highly unlikely that the media would know that the Welcome to Country had occurred, much less take any interest in it, but for the disclosure by the ODPP.

27. It is not clear to me how the disclosure could have been carried out in pursuit of any public interest or for some useful educative purpose. I have not been able to reconcile it with ODPP guidelines regarding media contact. Given the way that it was disclosed, there was no attempt in the media to have an informed debate about Indigenous sentencing or involving young people meaningfully in the process. That caused me further distress given the difficulties those people already face in the criminal justice system.

28. I have dedicated the last decade of my career to being an upstanding Judge of the District Court of NSW and to strengthening, to the best of my ability, the administration of justice. My appointment was the result of decades of hard work and dedication to justice and the law. The damage to the public perception of the administration of justice has sought to undermine the values that are at the core of my professional life, which I hold dear, and which I have sworn to uphold. It has, as a result, impacted me greatly. The statements for example that, according to the readers of the Daily Mail, I was "clearly demonstrating a bias in [the offender's] favour" and "had ignored blind justice" were galling. Nothing could have been further from the truth. Notions of testing an account and doing what one can to rehabilitate a young offender – in line with legal principle - were not debated.

29. Given the stated source of the information on which 2GB acted, I can in this instance understand the 2GB story and the republication via the Daily Mail, Sky News and elsewhere in the pursuit of so-called journalism and in allowing the public to speak out publicly on its web pages. I cannot, however, comprehend how a person could involve themselves in the disclosure, whilst being involved in the prosecution of breaches of the criminal law. I cannot understand how they would act in a manner so inconsistent with their obligations by disclosing the young person's name, and in a manner that facilitated the public criticism that occurred. The idea that they would compromise the young person (including by naming them in breach of the criminal law) to criticise a sitting District Court Judge is anathema and it has affected me considerably.

Other Effects

30. I preside over the Taree District Court List regularly and have done so for some time. The lawyers who live in Taree or who come to Taree for circuit are for the most part very collegiate. This is necessary given the large number of matters in the list in any one sitting and the cooperation that is needed to list short matters around ongoing trials. But it is also simply the way that it is there. There is also, for the most part, goodwill between practitioners and the Court.

31. I have come to understand the community to some extent, and I regard it as important to hold faith with all members of that community whilst administering justice.

32. Confidence in the administration of justice relies upon confidence in the sentencing procedure, the lawyers appearing, and the judicial officers who oversee it, particularly in a tight-knit community where such administration is under scrutiny. The public dissemination of confidential information pertaining to a young person's sentencing proceedings led to unfair and inaccurate criticism of that person, the sentencing process and myself as the presiding judicial officer. The disclosure by a person from within the ODPP, a key stakeholder in the criminal justice system, tends to erode the public's confidence in the administration of justice.

33. The disclosure led to public calls for violence against prisoners as part of punishment (the "prison welcome"), for very long sentences to be handed down including for disadvantaged and compromised children, and a lack of belief that rehabilitation can be

achieved for any offender (contrary to well established sentencing principles).

34. The disclosure also fuelled a public rejection of what was referred to as "two-tiered justice", where Indigenous offenders are seen, not as a marginalised and disadvantaged group within society, but as wrongly receiving special and preferential treatment within the criminal justice system, from "woke leftist judges", apparently including myself, who do not know what they are doing and who are out of touch with "community values".

35. These reactions are difficult to reconcile with existing sentencing principles applicable to Indigenous offenders. Those principles are enshrined in The Walama List Sentencing Procedure District Court Practice Note ("PN 26") and are relevant in all sentencing exercises regarding Aboriginal and Torres Strait Islander offenders. The aims of the procedure enshrined in PN 26 include:

    1. reducing the risk factors related to re-offending by Aboriginal and Torres Strait Islander offenders;
    2. reducing the rate of breaches of court orders by Aboriginal and Torres Strait Islander offenders;
    3. increasing compliance with court orders by Aboriginal and Torres Strait Islander offenders;
    4. reducing the overrepresentation of Aboriginal and Torres Strait Islander persons in custody in NSW;
    5. increasing Aboriginal and Torres Strait Islander community participation and confidence in the criminal justice system; and
    6. facilitating a better understanding of any underlying issues which may increase the likelihood of re-offending.

36. Aboriginal and Torres Strait Islander community participation in the court process and embedding Aboriginal and Torres Strait Islander narratives in the sentencing process has been fundamental to the success of the Walama Court. Given the hostile public response to the 2GB story, it would be tragic but unsurprising if members of Indigenous communities now felt reluctant to participate in court processes.

37. The Circle Sentencing model, established over two decades ago and praised by the previous Chief Justice, the Hon Derek Price AM, for its community engagement, exemplifies a broader judicial effort to include Indigenous perspectives in sentencing.

38. Empirical findings from BOCSAR (2020) supported the efficacy of these approaches, with statistically significant reductions in imprisonment and recidivism rates among participants.

39. It follows logically that the disclosure and the ensuing media treatment may undermine public confidence in these initiatives, despite their demonstrated success.

Conclusion

40. Who directed such a disclosure and who was involved in the execution of it, is obviously not a matter for me to comment upon in this statement. What I can say is that it carried with it the risk of a significant negative impact on the administration of justice. It has also had significant detrimental effect on me personally and upon my Associate.

41. Notwithstanding the personal impact of the matters set out above, I remain wholly committed to the proper and impartial discharge of my judicial duties. I continue to approach each case before me with fairness to all parties – prosecution and defence alike - guided by the evidence, the law and the principles of justice. While the events surrounding the disclosure have undoubtedly affected me on a personal level, they have not compromised - and will not compromise – my ability to discharge my role with the independence, fairness and objectivity that the proper administration of justice demands.

.....

Penelope Wass

□

Attachment A – Chronology

DATE	ACTION
26 March 2022	I delivered judgment in *R v DS* [2022] NSWDC 441, finding that it was unreasonable for the Crown to have commenced the proceedings. It included statements that were critical of the ODPP. The judgment was not appealed. No complaint was made to the Judicial Commission.
2024	Once Acting Judge Conlon gave an interview to *The Australian* in 2024 on the issue of unmeritorious cases coming before the District Court (the third Judge at that time to do so), *R v DS* received widespread media attention. The reporting was critical of the ODPP. Whitford SC DCJ in *R v Smith (a pseudonym)* [2024] NSWDC 41 and Newlinds SC DCJ in *R v Martinez* [2023] NSWDC 552 delivered Judgments that were highly critical of the ODPP. Those two judgments were the subject of complaint by the Director to the Judicial Commission.
2024	The Director was asked questions about *R v The DS* in Senate Estimates. She said that she did not agree with my decision.

The Complaint by the Director Against Judge Whitford SC

DATE	ACTION
8 April 2024	In the complaint to the Judicial Commission against Judge Whitford SC, the Director made unfounded and untrue allegations against me by reason of my past private relationship with Judge Whitford, in respect of his Honours delivery of *R v Smith (a pseudonym)* [2024] NSWDC 41, in which he too criticised the ODPP (the fifth Judge by then to do so). The personal allegations were unequivocally denied by Judge Whitford on 30 April 2024. In dealing with those allegations, the Judicial Commission found that: "Lest there be any doubt, we consider that the reference to those matters in the Complaint was unfortunate and we make no finding as to (nor have we placed any weight on) those assertions by the Director (which in essence amount to speculation as to the source of the reference to "reported public and private comment" in [73] of the judgment in Smith)." …. "We consider that the references in the Complaint to the Judicial Officer's private life, in particular, were provocative and unnecessary". At no time between 30 April 2024 (when it was clear that the allegation was untrue) and 5 November 2024, when the Judicial Commission handed down its findings, did the Director withdraw her unfounded allegations against me. She did not do so despite my complaint to the Bar Association on 11 November 2024 about it (once the Judicial Commission's report had been made public) and has not yet done so. In that complaint I asked the Bar Association to consider whether in respect of that matter (and the complaint to Justice Huggett (see below)), the Director's conduct. 1. Fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer, such that a finding of unsatisfactory professional conduct is made or, alternatively; 2. That would, if established, justify a finding that the Director is not a fit and proper person to engage in legal practice. I asserted: 1. The statements were false. 2. The reference to my personal situation as his ex partner was inexcusable and vicious. 3. The statements made carried and continue to carry serious negative

	imputations against me, other judges, and three journalists, where, as to the latter, they were reporting on matters of significant public interest. 4. The speculation was in respect of a very serious matter; alleging interference by me in the independent judicial functions of Judge Whitford. 5. They were expected by the Director to carry weight given her position 6. The statements were deliberately made in a statutory declaration with careful consideration of the contents and thus, I believed the matter was very serious. 7. The statements were made in the context of a serious complaint against Judge Whitford, knowing that they would be read by the Heads of all Jurisdictions in the first instance, including Justice Huggett, Chief Judge of the District Court; 8. The statements were always entirely without foundation and were not put forward other than on a speculative basis. The statements were known by the Director to be always made without foundation, and particularly from 30 April 2024. 9. The Director did not check the veracity of the statements made. 10. The statements continue to be maintained by the Director, despite the findings of the Judicial Commission. 11. No withdrawal or apology has been made despite the statements being entirely without foundation, provocative and unnecessary. 12. The statement was made maliciously against three sitting District Court Judges, the then Senior Public Defender and now a Supreme Court Justice, and three journalists reporting on the topic, perceived by the Director not to be in her favour. I believe that my complaint to would have been provided to the Director by the Bar Association shortly after the complaint was made. On 9 May 2025, the Bar Association declined to act on that complaint. At the time of the ODPP disclosure to 2GB, the complaint had not been determined.

The Complaint by the Director about me to the Chief Judge of the District Court

DATE	**ACTION**
22 May 2024	The Director contacted the Chief Judge of the District Court, Justice Sarah Huggett, critical of decisions that I had made in three unrelated cases, two of which were still part heard. No representations were made at the time that the decisions were not open to me and no appeals were filed. The Director warned me through Justice Huggett not to make similar decisions in the future, or action would be taken. I am unaware as to whether there have been similar warnings to any other Judge or Magistrate. The Director did not inform me or the other parties of the representations made to Justice Huggett.
June 2024	I complained to the Bar Association and asked it to investigate whether the Director in her representations to Justice Huggett (and in her later statements made in the media) had engaged in unsatisfactory professional conduct or professional misconduct, and in breach of the Legal Profession Uniform Conduct (Barristers) Rules ("the Rules"). I alleged that the Director had made allegations that: 1. were factually inaccurate. 2. were not supported by any legal authority and the decisions were not appealed at any time. One case had been

	determined 3 years before. 3. In some respects, the decisions were made with the consent of the particular Crown. I complained that the transcript provided by the Director to Justice Huggett provided little or no support for the allegations against me and risked the administration of justice, given the action's potential to undermine my independence. I complained that I regarded the warning in particular as an extremely serious breach, particularly as it was delivered during my consideration of two of the three cases at hand, in which the Crown was a party, and where it sought to have me take the Director's criticisms into account in my determination of future cases. A copy of my complaint was provided to the Director for her consideration. Given that two matters were part heard, the above matters resulted in the need for me to immediately disclose the complaint to the parties (including to her own Crown Prosecutors who had not been told of the Director's representations). That led to it being publicly exposed. There was further media reporting critical of the Director.
7 June 2024	In response, *The Australian* newspaper published remarks from "an ODPP spokesperson" that the conversation with Justice Huggett was "confidential", notwithstanding that it conveyed a warning to me about future conduct (which presumably needed to be conveyed to me), and the need to disclose the representation to the parties in the two matters where I was part heard, a further matter about which I complained to the Bar Association. I also complained that the Director may have mislead the public by describing the issue a being "entirely appropriate" and a matter of "mutual concern" where it had been made to the Chief Judge unsolicited. I asserted that it was defamatory of me in the sense that it created a false impression that the Director's criticism was warranted. I asserted numerous breaches of and complete disregard for the Bar Rules. I asked the Bar Association to investigate whether the Director had engaged in unsatisfactory professional conduct or professional misconduct under the *Legal Profession Uniform Law Act* (NSW). On 21 February 2025, the Bar Association declined to do so on the basis that it had no jurisdiction, as the Director was purportedly acting not as a barrister but in her position as the Director. At the time of the disclosure to 2GB that complaint had not been determined.

Other Relevant Facts

11 October 2024	I sentenced the young person in the Taree District Court. That afternoon officers of the DPP involved in the case asked for transcript. It had not been provided by 25 October 2024. It had been requested from the Taree Registry and not directly from me, delaying its production

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Attachment B – Media Quotes Arising from the Disclosure

It was "an insult to everyone", "fraudulent" and "utter nonsense"

“Don't these woke judges have any rules to follow? They appear to be making it up as they go along. The BAIL rules need to be looked at. So the jails are full???? Double them up, instead of 1 person per room, add another. Jails are too comfortable.”

“The judicial system is meant to reflect the public and community sentiment. The majority of this country democratically voted NO.”

Every time a Judge or Magistrate lets a criminal go (especially youth) and that criminal reoffends, they should be sent the bill for any trauma and damages incurred by that of the re-offending criminal.

We have always known that the Courts are out of touch with reality.

This only goes to prove that point, the judge should be removed or should be involved in Mandatory Counseling [sic].

The Courts are not a place for theatre as it would appear that this Judge has done with her WTC!

They are performative theater [sic] *to make white lefties feel good about themselves.*

Now I've heard everything! What a sheltered life this woman has lived. If she only knew what's happening out in the 'real world.

'some'? who just don't live in the 'real world' as do most of us!

Undermines our justice system. He

Maybe he could do it when he gets to Grafton....the lads will just love it.

Judges in this country are weak and in most cases the law restricts them with comparative sentencing. Was it ALS that represented this person! Taxpayers expense. Then paid by the taxpayer for his service. Australia needs to rid ourselves of communists creating racial division. Defund NIAA.

I had to read this three times, but it doesn't get any better. What is the point of judges and courts in this country. Have to be the most lefty woke bunch i have ever seen. They just have no clue about day to day life and crimes on the street.

Teach him right from wrong first . Surely that’s more important than Acknowledgement of Country nonsense.

Fgs, get a grip lady.

I guess she doesn't realise that her one job is to keep the community safe, not to virtue signal.

just out of touch elitists. they live in gated communities protected by massive security and have no idea what the masses have to put up with. no respect

Judge should of said yeah welcome to a lengthy prison sentence. (Someone corrected the grammar but otherwise agreed.)

Prime example of why our justice system is down the ess bend right there.

This judge Penelope Wass has just added more pain to the victim of his sexual "touching" and the families of the victims who are now going to live the rest of their lives knowing that they mean nothing to the Australian courts. It is surely time for a revolution here.

Can’t believe what I just read! Judge should be removed from her position.

Disgusting, no sense of dignity or respect for the court she presides over, turning the courtroom into a circus with a clown performance.

Lord the justice system is failing badly

I think the Judge must have had her own smoking ceremony before work.

Then just gets to go home. It must have been a good welcome performance. Appalling sentence

She wouldn't have been so "LENIENT" If the Victims were her Mother or Grandmother!!!

It's the Lefties Way!!!

Criminals are seen as seen as the Victims and the real Victims are just Fodder!!!

Our legal system is broken bigtime

Time for these judges to be turfed out! They are not protecting a dtralians [sic]*! They are encouraging the thugs!*

As long as she gives an appropriate welcome to prison...

Seriously? Just do your job! Oh you're not good at that either..

About time, judges are voted in and out by the people not appointed for life by a pollie. The left activist judges are hijacking our judicial system to push their own agenda.

Appalling and 'unbelievable"

Judge not fit for purpose, fire her!!

How can you have faith in the Justice System when you have idiots like that prediding [sic] *in court cases*

OMG!!!! ....all Australians should now realise that the quality of judges we have on the bench is the equivalent of some despots south equatorial paradise where the judge sits under a palm tree sipping mai tai's and flirting with the jurists...

The Jury in the Pub Test has decided the following . . . . . Kick her out and Lock him up. Simples!

Nice way to boil my blood early on a Friday morning. What a pathetic submission in a court of law for the amusement of an out of touch woke lefty judge. Time to sack and replace her.

Once again, a judge out of step with community expectations and standards. Disgraceful.

Thats [sic] *disgraceful. How can er have any respect for these So called Judges! She should resign shes* [sic] *an embarrassment*

Time for her to go clearly unfit for the job

This Judge needs to be dismissed immediately

This woman is not fit for purpose and should be sacked ... this is just appalling ... he is a sex offender and thief ... and gets to just walk ...

Shes [sic] a disgrace and should stand down.

Impartial courts eh? This is what we're up against.

That Judge is past her use-by-date.

Face palm…

Typical woke lefty out of touch elite Judges and all this class who would jump 100 feet in the air if someone said BOO to them and they again fail to protect the most vulnerable in our society ....disgusting

Embarrassing

Summonsing the elders past and present so they can see what a disgrace he is.

Judges are so far out of touch with reality as it is. Just one more instance where the victims are unheard and of less importance than the perpetrator.

Politicians wonder why we don't have faith in the legal system (it's not a 'justice' system) and hearing a Judge allow this in 'her court' is pathetic.

And Aboriginals wonder why we are 'all' fed up with this 'acknowledgement to country' because.... its become a sick joke driven by division, and to create 'more high paying jobs' for the lefts 'Aboriginal corporation business'.. tell me in wrong?

Woke overload. Just disgusting.

And there you have the problem. The fool sitting up high.

This is the rot which has set in.....public servants taking their politics & preferences into the work place and foisting tbeir [sic] *beliefs on all taxpayers. It is poisonous & not in keeping with their public servant, taxpayer funded roles.*

When someone has committed disgusting crimes, they should not be afforded any respect. That respect belongs to the victims.

This judge should be sacked

I need the judge to pay reparations to his next victim. If you don't do this I will do a haka and stick out my tongue

She has made a mockery of the justice system.

Sounds like a kangaroo tail court.

Judge needs booting out, kid needs a very long custodial sentence !!!

should be a welcome to prison ...

Who appoints these harpies- and why are we expected to pay her salary?

She should resign.

Woke politicians give us weak laws.

Woke Judges give us impotent application of weak laws.

Well just the good old slap me on the wrist from Judge Wass welcome to our country so he can do it again and again and again

He should be acknowledging his criminal behaviour and getting locked up

Does she honestly think this will make turn around his life? Her wig is on too tight me thinks

Get rid of these woke judges.

A pity that intelligence and common sense seldom appear in the same room!

What have i missed here - why did she get him to do this - what was the purpose - was he Aborigine or just normal white person.

Out of touch Woman

is there a wonder why there's so much crime and sheer disdain!?

another pathetic woke judge.....

Courts are a joke

time for her to move on me thinks

Morons..

Australia is broken!

Clown show !!

Who claimed some judges are particularly daft?

*Maybr [*sic] *she meant "welcome to prison"*

5/5/2025

Spk. Tom Malone

A friend of his is working in media for the DPP. About 6 months ago she leaked some information to the media on the instructions of Sally Dowling

JL → Does this relate to Judge Wass?

Tom Malone: — Yes —

JL - I act for Judge Wass, so I can't act for your friend, I have a conflict.

What sort of lawyer does she need? Criminal or employment?

Employment - Refer her to David Moss.

Appendix 7 - *Daily Mail* Posts Arising from Disclosure

It was "an insult to everyone", "fraudulent" and "utter nonsense"

"Don't these woke judges have any rules to follow? They appear to be making it up as they go along. The BAIL rules need to be looked at. So the jails are full???? Double them up, instead of 1 person per room, add another. Jails are too comfortable."

"The judicial system is meant to reflect the public and community sentiment. The majority of this country democratically voted NO."

Every time a Judge or Magistrate lets a criminal go (especially youth) and that criminal reoffends, they should be sent the bill for any trauma and damages incurred by that of the re-offending criminal.

We have always known that the Courts are out of touch with reality.

This only goes to prove that point, the judge should be removed or should be involved in Mandatory Counseling [sic].

The Courts are not a place for theatre as it would appear that this Judge has done with her WTC!

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Appalling and 'unbelievable"

Judge not fit for purpose, fire her!!

How can you have faith in the Justice System when you have idiots like that prediding [sic] *in court cases*

OMG!!!! ....all Australians should now realise that the quality of judges we have on the bench is the equivalent of some despots south equatorial paradise where the judge sits under a palm tree sipping mai tai's and flirting with the jurists...

The Jury in the Pub Test has decided the following . . . . . Kick her out and Lock him up. Simples!

Nice way to boil my blood early on a Friday morning. What a pathetic submission in a court of law for the amusement of an out of touch woke lefty judge. Time to sack and replace her.

Once again, a judge out of step with community expectations and standards. Disgraceful.

Thats [sic] *disgraceful. How can er have any respect for these So called Judges! She should resign shes* [sic] *an embarrassment*

Time for her to go clearly unfit for the job

This Judge needs to be dismissed immediately

This woman is not fit for purpose and should be sacked ... this is just appalling ... he is a sex offender and thief ... and gets to just walk ...

Shes [sic] a disgrace and should stand down.

Impartial courts eh? This is what we're up against.

That Judge is past her use-by-date.

Face palm…

Typical woke lefty out of touch elite Judges and all this class who would jump 100 feet in the air if someone said BOO to them and they again fail to protect the most vulnerable in our society ….disgusting

Embarrassing

Summonsing the elders past and present so they can see what a disgrace he is.

Judges are so far out of touch with reality as it is. Just one more instance where the victims are unheard and of less importance than the perpetrator.

Politicians wonder why we don't have faith in the legal system (it's not a 'justice' system) and hearing a Judge allow this in 'her court' is pathetic.

And Aboriginals wonder why we are 'all' fed up with this 'acknowledgement to country' because.... its become a sick joke driven by division, and to create 'more high paying jobs' for the lefts 'Aboriginal corporation business'.. tell me in wrong?

Woke overload. Just disgusting.

And there you have the problem. The fool sitting up high.

This is the rot which has set in.....public servants taking their politics & preferences into the work place and foisting tbeir [sic] *beliefs on all taxpayers. It is poisonous & not in keeping with their public servant, taxpayer funded roles.*

When someone has committed disgusting crimes, they should not be afforded any respect. That respect belongs to the victims.

This judge should be sacked

I need the judge to pay reparations to his next victim. If you don't do this I will do a haka and stick out my tongue

She has made a mockery of the justice system.

Sounds like a kangaroo tail court.

Judge needs booting out, kid needs a very long custodial sentence !!!

should be a welcome to prison ...

Who appoints these harpies- and why are we expected to pay her salary?

She should resign.

Woke politicians give us weak laws.

Woke Judges give us impotent application of weak laws.

Well just the good old slap me on the wrist from Judge Wass welcome to our country so he can do it again and again and again

He should be acknowledging his criminal behaviour and getting locked up

Does she honestly think this will make turn around his life? Her wig is on too tight me thinks

Get rid of these woke judges.

A pity that intelligence and common sense seldom appear in the same room!

What have i missed here - why did she get him to do this - what was the purpose - was he Aborigine or just normal white person.

Out of touch Woman

is there a wonder why there's so much crime and sheer disdain!?

another pathetic woke judge.....

Courts are a joke

time for her to move on me thinks

Morons..

Australia is broken!

Clown show !!

Who claimed some judges are particularly daft?

*Maybr [*sic*] she meant "welcome to prison"*

Inquiry into identity protections of any accused appearing before the Children's Court or in any proceedings conducted pursuant to the *Children (Criminal Proceedings) Act* 1987 and any reporting and sanction mechanisms

Appendix 8 - Background Chronology

R v DS [2022] NSWDC 441

DATE	**ACTION**
26 March 2022	I delivered judgment in *R v DS* [2022] NSWDC 441, finding that it was unreasonable for the Crown to have commenced the proceedings. It included statements that were critical of the ODPP. The judgment was not appealed. No complaint was made to the Judicial Commission.
2024	Once Acting Judge Conlon gave an interview to *The Australian* in 2024 on the issue of unmeritorious cases coming before the District Court (the third Judge at that time to do so), *R v DS* received widespread media attention. The reporting was critical of the ODPP. Whitford SC DCJ and Newlinds SC DCJ also made statements in Judgments that were highly critical of the ODPP. Those two judgments were the subject of successful complaint by the Director to the Judicial Commission.
2024	The Director was asked questions about R v The DS in Senate Estimates. She said that she did not agree with my decision.

The Complaint by the Director Against Judge Whitford SC

DATE	**ACTION**
8 April 2024	In the complaint to the Judicial Commission against Judge Whitford SC, the Director made unfounded and untrue allegations against me by reason of my past private relationship with Judge Whitford, in respect of his Honours delivery of *R v Smith (a pseudonym)* [202] NSWDC 41, in which he too criticised the ODPP (the fifth Judge by then to do so). The personal allegations were unequivocally denied by Judge Whitford on 30 April 2024. In dealing with those allegations, the Judicial Commission found that: "Lest there be any doubt, we consider that the reference to those matters in the Complaint was unfortunate and we make no finding as to (nor have we placed any weight on) those assertions by the Director (which in essence amount to speculation as to the source of the reference to "reported public and private comment" in [73] of the judgment in Smith)." …. "We consider that the references in the Complaint to the Judicial Officer's private life, in particular, were provocative and unnecessary". At no time between 30 April 2024 (when it was clear that the allegation was untrue) and 5 November 2024, when the Judicial Commission handed down its findings, did the Director withdraw her unfounded allegations against me. She did not do so despite my complaint to the Bar Association on 11 November 2024 about it (once the Judicial Commission's report had been made public) and has not as yet done so. In that complaint I asked the Bar Association to consider whether in respect of that matter (and the complaint to Justice Huggett (see below)), the Director's conduct. 1. Fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer, such that a finding of unsatisfactory professional conduct is made or, alternatively; 2. That would, if established, justify a finding that the Director is not a fit and proper person to engage in legal practice.

I asserted:

1. The statements were false.
2. The reference to my personal situation as his ex partner was inexcusable and vicious.
3. The statements made carried and continue to carry serious negative imputations against me, other judges, and three journalists, where, as to the latter, they were reporting on matters of significant public interest.
4. The speculation was in respect of a very serious matter; alleging interference by me in the independent judicial functions of Judge Whitford.
5. They were expected by the Director to carry weight given her position
6. The statements were deliberately made in a statutory declaration with careful consideration of the contents and thus, I believed the matter was very serious.
7. The statements were made in the context of a serious complaint against Judge Whitford, knowing that they would be read by the Heads of all Jurisdictions in the first instance, including Justice Huggett, Chief Judge of the District Court;
8. The statements were always entirely without foundation and were not put forward other than on a speculative basis. The statements were known by the Director to be always made without foundation, and particularly from 30 April 2024.
9. The Director did not check the veracity of the statements made.
10. The statements continue to be maintained by the Director, despite the findings of the Judicial Commission.
11. No withdrawal or apology has been made despite the statements being entirely without foundation, provocative and unnecessary.
12. The statement was made maliciously against three sitting District Court Judges, the then Senior Public Defender and now a Supreme Court Justice, and three journalists reporting on the topic, perceived by the Director not to be in her favour.

	I believe that my complaint to would have been provided to Ms Dowling by the Bar Association shortly after the complaint was made. On 9 May 2025, the Bar Association declined to act on that complaint. However, at the time of the Taree matter, it was still being considered by the Bar Association.

The Complaint by the Director about me to the Chief Judge of the District Court

DATE	**ACTION**
22 May 2024	The Director contacted the Chief Judge of the District Court, Justice Sarah Huggett, critical of decisions that I had made in three unrelated cases, two of which were still part heard. No representations were made at the time that the decisions made were not open to me and no appeals were filed. The Director warned me through Justice Huggett not to make similar decisions in the future, or action would be taken. I am unaware as to whether there have been similar warnings to any other Judge or Magistrate. The Director did not inform me or the other parties of the representations made to Justice Huggett.
June 2024	I complained to the Bar Association and asked it to investigate whether the Director in her representations to Justice Huggett (and in her later statements made in the media) had engaged in unsatisfactory professional conduct or professional misconduct, and in breach of the Legal Profession Uniform Conduct (Barristers) Rules ("the Rules"). I alleged that the Director had made allegations that: a. were factually inaccurate. b. were not supported by any legal authority and the decisions were not appealed at any time. One case had been determined 3 years before. c. In some respects, the decisions were made with the consent of the particular Crown. I complained that the transcript provided by the Director to Justice Huggett provided little or no support for the allegations against me and risked the administration of justice, given the action's potential to undermine my independence.

	I complained that I regarded the warning in particular as an extremely serious breach, particularly as it was delivered during my consideration of two of the three cases at hand, in which the Crown was a party, and where it sought to have me take the Director's criticisms into account in my determination of future cases. A copy of my complaint was provided to the Director for her consideration. Given that two matters were part heard, the above matters resulted in the need for me to immediately disclose the complaint to the parties (including to her own Crown Prosecutors who had not been told of the Director's representations). That led to it being publicly exposed. There was further media reporting critical of the Director.
7 June 2024	In response, *The Australian* newspaper published remarks from "an ODPP spokesperson" that the conversation with Justice Huggett was "confidential", notwithstanding that it conveyed a warning to me about future conduct (which presumably needed to be conveyed to me), and the need to disclose the representation to the parties in the two matters where I was part heard, a further matter about which I complained to the Bar Association. I also complained that the Director may have mislead the public by describing the issue a being "entirely appropriate" and a matter of "mutual concern" where it had been made to the Chief Judge unsolicited. I asserted that it was defamatory of me in the sense that it created a false impression that the Director's criticism was warranted. I asserted numerous breaches of and complete disregard for the Bar Rules. I asked the Bar Association to investigate whether the Director had engaged in unsatisfactory professional conduct or professional misconduct under the *Legal Profession Uniform Law Act* (NSW).

	On 21 February 2025, the Bar Association declined to do so on the basis that it had no jurisdiction, as the Director was purportedly acting not as a barrister but in her position as DPP. However, at the time of the disclosure to 2GB that complaint had not been determined.

Disclosure by the ODPP to 2GB

11 October 2024	I sentenced DR in the Taree District Court. That afternoon officers of the ODPP involved in the case asked for transcript. It had not been provided by 25 October 2024, as it had been requested from the Taree Registry and not directly from me, delaying its production
25 October 2024	Officer(s) from the ODPP disclosed the information to 2GB.
25 November 2024	I provided my statement to police.
March 2025	Police concluded their investigation. Members of the ODPP did not cooperate and NSWPF were unable to serve warrants.
16 April 2025	Norton Rose Fulbright commenced an internal, legal privileged inquiry into ODPP "employees" on instruction from the "ODPP"
5 May 2025	Tom Malone (2GB) informed John Laxon (Laxon Lex) that a DPP Media officer disclosed the material to 2GB on instructions from Ms Dowling.
28 August 2025	Craig Hyland answered questions in Senate Estimates.
Sometime after 28 August 2025	ODPP provided answers to questions on notice to Senate Estimates.