

Media Statement

1 March 2024

Statement from the ODPP

Sexual assault prosecutions and *R v Smith (a pseudonym)* [2024] NSWDC 41

The following comments can be attributed to an ODPP spokesperson:

On 27 February 2024, judgment was delivered by Judge Whitford in the matter of *R v Smith (a pseudonym)*. In the judgment, the judge made several extraordinary claims about the prosecution of sexual assault matters by the ODPP.

The judge's comments are unfounded and inflammatory, and are unequivocally rejected.

There is no basis for the judge's suggestion that there has been an increase in the number of sexual assault cases proceeding to trial on insufficient evidence. Conviction rates for sexual assault matters in NSW have remained consistent over the past five years, and Australian Bureau of Statistics data show that NSW consistently records a conviction rate equivalent to the national average in sexual assault matters.

Sexual assault prosecutions constitute a large percentage of matters that proceed to trial in the NSW District Court. This is for a range of reasons, including that the alleged offending often occurs in private and so the complainant's evidence is of central importance to the Crown case. In many cases the complainant's account is the only evidence that supports the charge. The law in NSW recognises this and no longer requires that a complainant's evidence be corroborated by other evidence. Where it is assessed that there are reasonable prospects of conviction, it is appropriate that the case proceeds to trial, where the evidence can be tested by the accused and the outcome determined by a jury drawn from the community.

The remarkable assertion by Judge Whitford that there are “opaque, even secret policies” applicable to sexual assault prosecutions, and which operate inconsistently with the published Prosecution Guidelines, is completely baseless and is rejected.

The Prosecution Guidelines, which reflect the common law and were developed in consultation with all criminal justice stakeholders including the NSW judiciary, constitute the only policy that ODPP lawyers consider when making decisions about prosecutions. Under the Prosecution Guidelines prosecutors must consider two issues in every case: whether there are reasonable prospects of conviction on the admissible evidence – which includes an assessment of issues of the credibility and reliability of prosecution witnesses – and whether the prosecution is in the public interest.

These questions, which operate throughout the prosecution process, have long been the guiding principles by which this Office has made prosecution decisions, and are consistent with the guidelines set down by other prosecution agencies in all Australian jurisdictions.

The prosecution obligation to ensure that an accused person receives a fair trial is a central pillar of our criminal justice system and is one that is integral to all decision making at the ODPP.

The ODPP also has obligations to complainants and victims of crime, whose statutory rights under the Charter of Victims Rights are embedded in the Prosecution Guidelines.

The staff of the ODPP are committed to serving the people of New South Wales with fairness and integrity and will continue to do so.