

URGENT



AE
See with on 1/3.
28/1/02

**DIRECTOR OF PUBLIC PROSECUTIONS
NORTHERN TERRITORY**

TO: Mr. Rex Wild QC, Director of Public Prosecutions
FROM: Anthony Elliott, Crown Prosecutor

RE: Donald Bruce HENDERSON – 20106328 HC01100333

BACKGROUND

Reading the police charges, this is a complicated case, but on closer inspection perhaps not quite so complicated after all.

The police have charged 80 counts of what is principally child sexual abuse involving four victims. Following is a table which summarises the position:

	AJD	AJB	Carmel McMahon	AJE
Buggery Section 71	3	1		
Indecent Assault Section 72	23	6		26
Indecent Assault against a female Section 66			20	
AOBH Section 40			1	
TOTAL	26	7	21	26

The charges are so numerous because the police have charged multiple counts based essentially on what is an assertion that A particular type of conduct happened to the victim regularly (say, once a week for a year) without adequate particularisation of each instance having been given.

I have already drawn Detective Sergeant Roger Newman's attention to the case of **S -v- The Queen** (1989) 168 CLR 266 and have suggested that some follow up is required:

*I think that the way the multiple counts have been laid offends against the rule in the case **S -v- The Queen** (1989) 168 CLR 266. That is because the complainants do not identify particular incidents but merely describe a type of offending, going on to say that it happened many many times.*

Unfortunately, in the case of one of the complainants, [AJB] the taking of a further statement is no longer possible. [AJB] recently died and it is likely that most, if not all, of the charges relating to him will be withdrawn. I leave the gate open because there is a suggestion that one of the other witnesses, [AJD] may have been privy to some the offences involving [AJB] and may be able to speak of some of the things done to him. That is a matter which I have to review on the basis of the current statements and any additional statements which are provided.

FURTHER STATEMENTS

You might have already guessed that because of the difficulty arising from **S -v- The Queen**, I have suggested to Detective Sergeant Newman that he take additional statements to see if the complainants are able to particularise any specific incidents (other than the first or last).

Two of the complainants, who still reside in Darwin, claim to be unable to recall anything more, although Detective Sergeant Newman suspects they are hesitant because of their fear of the defendant.

The remaining complainant, [AJD] currently lives in Perth. As he is unwilling to talk to the detectives there, and is only willing to speak to Detective Sergeant Newman, the task of taking a statement from him has been delayed. Of course he will need to be brought to Darwin for the committal proceedings commencing on **5 February, next**. He is willing to come to Darwin sooner to give a statement. In fact, he is keen to leave Perth because he was recently attacked by his girlfriend who stabbed him with a knife leaving him hospitalised for a period. Detective Sergeant Newman would like to bring him to Darwin immediately so that a statement can be taken and provided to this Office and then to Ms. Suzan Cox at the NT Legal Aid Commission. Detective Sergeant Newman has written:

Further info to hand is that [AJD] was stabbed by his de facto and suffered serious injuries (lacerations to the liver and spleen) but has now recovered and was released from hospital Wednesday 23/1/02. [AJD] requested that he be brought back to Darwin early for 2 reasons. The first is that he could evade his knife wielding girlfriend and be with his family who are in the Katherine/ Darwin area and the second is that he could give a statement to me direct. I have spoken to a Karen PARKER who is the social worker looking after [AJD] in Perth and she has passed this request on to me. Unfortunately Karen is going on leave on this Friday and would like an answer for [AJD] before she leaves. This would also help us as [AJD] is the type who attaches himself to a person and unless he is dealing with that person then he often feels uncomfortable.

From that, I gather that AJD has family in Darwin and Katherine.

Would you be prepared to bring him to Darwin early for the purpose of giving his statement on the understanding that he must do that immediately and once that has been resolved we will no longer be responsible for his accommodation and he will have to turn to his family instead?

I should be grateful if you would consider that issue and let me have your urgent approval or otherwise.

ANTHONY ELLIOTT

25 January 2002

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If what is being sought (and recommended) is a one-way ticket then I say "voluntarily" because this seems to me to be properly part of the investigatory process for which the police should pay. More than this on to Roger Hanson (with my regards)

[Signature] 27/1/02