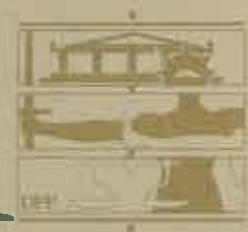
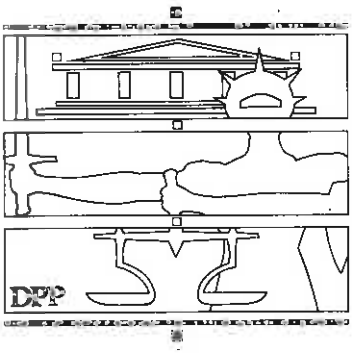
Commonwealth Director of Public Prosecutions



Annual Report 1989–90



Commonwealth Director of Public Prosecutions

Annual Report 1989–90

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Canberra

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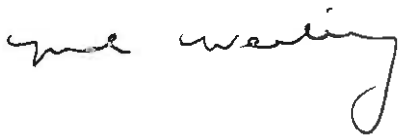
The Hon. Michael Duffy MP
Attorney-General
Parliament House
CANBERRA ACT 2600

My dear Attorney,

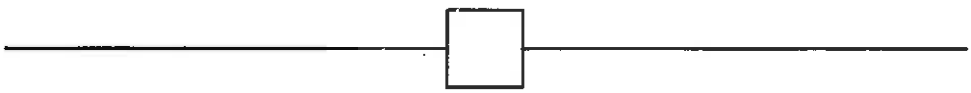
I have the honour to submit my report on the operations of the Office of the Director of Public Prosecutions for the year ending 30 June 1990, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully,



Mark Weinberg QC
Director

27 November 1990



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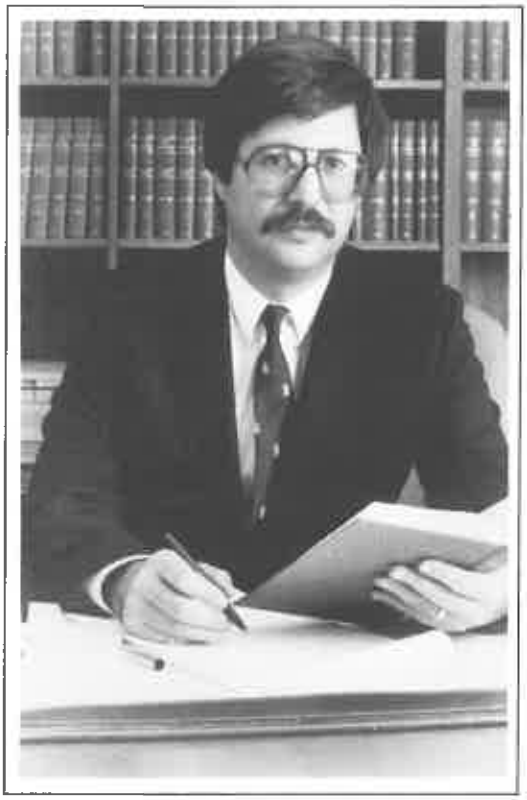
Contents

Director's overview



Mark Weinberg QC,
Commonwealth Director of Public Prosecutions

This is the seventh annual report of the Office of the Director of Public Prosecutions, and the second such report under my hand. My first report was written not long after I had assumed the position of Director. A year having passed, while I can scarcely claim to have acquired the status of a veteran, I am at least more comfortable performing the tasks expected of me.

The position of Commonwealth Director of Public Prosecutions is, in many ways, an intriguing one. The Director is required to take responsibility for the management of what is, on any view, a large law office, comprising over 400 staff, approximately half of whom are lawyers. The office is, of course, a national one with its management centred in Canberra. However, the operational work is undertaken principally in the larger capital cities. A Melbourne based Director must travel interstate a great deal. Even so, it

Mark Weinberg QC with First Deputy Director Peter Walshe

came as something of a surprise to me to discover that I had spent over 50 days interstate visiting one or other of my regional offices, or Head Office in Canberra, in the year ending 30 June 1990.

The year has been an extremely busy one. My Office has dealt with over 4 000 matters summarily, and almost 500 matters on indictment. The overwhelming majority of these prosecutions have been handled in-house by DPP staff. Cases of exceptional difficulty or importance, and those tried on indictment in New South Wales and Victoria, have generally been briefed out to the private Bar. I have myself appeared in court on a fairly regular basis. My diary records that I spent a total of 61 days during the past year either in court, or directly involved in the preparation of cases for court.

The role of Director is not, however, confined to management of the office and court appearance work. There are numerous decisions of an operational nature which need to be taken or approved by the Director personally. There are also written advices to be prepared, papers to be written for publication in various journals, and for presentation at conferences, seminars or symposiums.

My reason for remarking upon the diverse range of functions performed by the Director is not to present a public whinge. It is rather to provide the basis for a proper

Associate Director Paul Coghlan.

acknowledgement of the enormous assistance which I have received from all my staff. Without their tireless contributions my position would very swiftly become an intolerable one.

There is very little more that I need to say. The major operational matters dealt with by my Office during the past year are set out in detail in the chapters which follow. Among those which have received most attention are the first War Crimes prosecution brought in this country, and the Winchester Inquest. There were also a number of important drug and fraud trials which are singled out for attention.

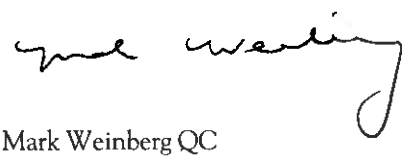
The work of each of our Criminal Assets branches is worthy of particular note. Restraining orders have been obtained over property totalling $46.7 million. I am confident that there will be a number of significant forfeitures and pecuniary penalties in the months ahead.

Potentially the most important new development so far as our work is concerned is the creation of the Australian Securities Commission. This involves the transfer of company fraud prosecutions from the States to the Commonwealth. Corporate regulation in Australia is, of course, a matter of national concern. It requires a concerted national effort. The prosecution of those who, as directors, commit serious fraud is of paramount importance. This has been recognised in the United States where, in recent years, significant progress has been made in exposing major wrongdoing through successful prosecutions. I am confident that, given adequate resources, my Office will be able to achieve similar success.

I conclude this overview by noting the retirement of the previous Attorney-General, the Honourable Lionel Bowen. He and I had established a sound and cordial working relationship. A similar relationship has already developed between his successor, the Honourable Michael Duffy, and myself.

I am pleased to report that, as would be expected, I was permitted to and did perform all my statutory functions in an entirely independent manner. There was no hint of interference from any source within Government.

I acknowledge my cordial working relations with the Federal Attorney-General's Department, my various State counterparts, and also the heads of the major law enforcement agencies with whom I deal on a regular basis.



Mark Weinberg QC

Commonwealth Director of Public Prosecutions

Chapter 1
Office of the Director of Public Prosecutions

Establishment

The Office of the Director of Public Prosecutions (DPP) was established under the *DPP Act 1983*, primarily to take over the prosecuting function of the then Crown Solicitor's Division of the Attorney-General's Department. The Director has also taken over the functions of the Attorney-General in prosecuting offences against Commonwealth law.

While the DPP is within the Attorney-General's portfolio, for all practical purposes it operates independently of the Attorney-General.

The Director is appointed for a period of up to seven years. The current Director, Mark Weinberg QC, was appointed for a period of three years expiring on 7 November 1991.

The main function of the DPP is to prosecute offences against Commonwealth law, both summarily and on indictment. It also has important functions in the taking of civil remedies and the recovery of pecuniary penalties as well as under the *Proceeds of Crime Act 1987*.

The DPP does not investigate. Unless a Commonwealth agency has an investigative capacity, an alleged offence must be referred by the agency to the Australian Federal Police (AFP) for investigation before the matter can be dealt with by the DPP.

Corporate plan

The DPP's corporate plan was issued in November 1989, and is the first consolidated planning strategy for the DPP. Its preparation presented the opportunity for the Office to review the direction of its operations, priorities, policies and guidelines.

The plan incorporates the views of staff and is consistent with the DPP's adoption of participative work practices. The advent of program budgeting also highlighted the need to identify the DPP's objectives, to develop strategic plans and to implement performance evaluation mechanisms.

The corporate plan sets out the DPP's objectives and how they will be achieved. Each of these strategies has been incorporated in more detailed action plans which address operational aspects.

The DPP annual report will continue to be the main method of reporting on performance.

The corporate plan will be reviewed as new functions or challenges emerge, ensuring that the objectives and strategies remain relevant to the DPP's charter.

Objectives

Under the corporate plan the objectives of the DPP are :

- to prosecute alleged offences against the criminal law of the Commonwealth, in appropriate matters, in a manner which is fair and just;
- to ensure that offenders are deprived of the proceeds and benefits of criminal activity and to ensure the pursuit of civil remedies;
- to assist and cooperate with other agencies to ensure that law enforcement activities are effective;
- to contribute to the improvement of the Commonwealth criminal law and the criminal justice system generally;
- to preserve and enhance public confidence in the prosecution process and criminal justice system; and
- to manage resources efficiently and provide an effective service to the Commonwealth.

Statutory functions and powers

Functions

The main functions of the DPP under the DPP Act are to conduct prosecutions for summary and indictable offences against the laws of the Commonwealth, and in appropriate cases to recover the proceeds of criminal activity. For the purposes of the DPP

Act, a 'law of the Commonwealth' includes the laws of the external Territories except Norfolk Island and (until 1 July 1990) also included the laws of the ACT. With respect to the latter, on 1 July 1990 regulation 4 of the ACT Self-Government (Consequential Provisions) Regulations (Amendment) came into operation. This regulation amended the DPP Act by omitting ACT laws from the definition of 'law of the Commonwealth' for the purposes of the DPP Act. The new arrangements for the conduct of prosecutions for offences under ACT laws are set out later in this chapter.

Other functions of the Office under the DPP Act and regulations include:

- to prosecute on indictment offences against State law where, with the consent of the Attorney-General, the Director and DPP lawyers have been appointed to do so by the authorities of that State;
- to carry on committal proceedings and summary prosecutions for offences against State law where the informant is a Commonwealth officer or employee;
- to carry on committal proceedings and summary prosecutions in respect of offences against provisions of State laws which apply in Commonwealth places under the *Commonwealth Places (Application of Laws) Act 1970* where the prosecution has been instituted by a Commonwealth officer or employee;
- to assist coroners in inquests and inquiries conducted under Commonwealth law;
- to appear in extradition proceedings;
- to represent a Chief of Staff of the Defence Force in appeals to the Defence Force Discipline Appeal Tribunal; and
- to consent to prosecutions where the Director holds authority to do so.

Criminal assets

Under section 6(1)(fa) of the DPP Act, it is a function of the Director to take, or coordinate or supervise the taking of, civil remedies for the recovery of taxes, duties, charges or levies due to the Commonwealth in matters connected with an actual or proposed prosecution or a matter being considered with a view to prosecution. Under section 6(1)(h) the Director has similar powers in respect of any other matter specified by the Attorney-General in an instrument in writing published in the Government Notices Gazette. Again, the power may only be exercised in matters connected with an actual or proposed prosecution or a matter being considered with a view to prosecution.

Under section 6(1)(g) of the DPP Act it is a function of the Director to institute or carry on proceedings, or supervise or coordinate action by others, to recover pecuniary penalties under Commonwealth law in respect of any matter specified in an instrument signed by the Attorney-General and published in the Government Notices Gazette.

A number of instruments have been signed for the purpose of section 6(1)(g). The only instrument of general application was signed on 3 July 1985. It empowers the DPP to recover pecuniary penalties in three types of matter:

(a) matters connected with an actual or proposed prosecution;

(b) proceedings to recover pecuniary penalties under any taxation law; and

(c) proceedings to recover a pecuniary penalty under Division 3 of Part XIII of the *Customs Act 1901*.

The instrument reflects a division of functions between the DPP and the Attorney-General's Department under which the DPP has responsibility for pecuniary penalty matters most closely connected with the enforcement of criminal law, including all taxation prosecutions, and the Australian Government Solicitor (AGS) has retained responsibility for the remainder.

The most significant part of the DPP's pecuniary penalty practice is the taking of proceedings under Division 3 of Part XIII of the Customs Act. The pecuniary penalty that is imposed represents the assessed value of benefits derived by a person by reason of that person engaging in a particular prescribed narcotics dealing or in prescribed narcotics dealings during a particular period.

Apart from its criminal assets functions under the DPP Act the DPP has been given functions under the *Proceeds of Crime Act 1987* in relation to the tracing, freezing and confiscation of the proceeds of indictable offences against Commonwealth law.

Powers

The powers of the Director, set out in section 9 of the DPP Act and the sections immediately following it, include power to:

- prosecute by indictment in the Director's official name indictable offences against the laws of the Commonwealth;
- authorise others to sign indictments for and on behalf of the Director;
- decline to proceed further in the prosecution of a person under commitment or who has been indicted;
- take over summary and committal proceedings instituted by another person and either carry the proceedings on with the Director as informant or decline to carry them on further;
- give undertakings to witnesses appearing in Commonwealth, State or Territory proceedings that their evidence, or any information obtained as a direct or indirect consequence of their evidence, will not be used against them;
- give undertakings to a person that he or she will not be prosecuted for a specified offence against Commonwealth law;

- exercise in respect of prosecutions any rights of appeal available to the Commonwealth Attorney-General as well as any other rights of appeal otherwise available to the Director; and
- issue directions and guidelines to the Commissioner of the AFP and other persons who conduct investigations or prosecutions for offences against Commonwealth law.

Pursuant to section 31(1) of the DPP Act the Director has delegated all of his powers under the Act to the Associate Director other than the power to authorise the signing of indictments, the powers under section 6(2D) and 9(6D) and the power of delegation. In addition, the Director has delegated to one other senior DPP lawyer the same powers that have been delegated to the Associate Director, subject to the condition that they may only be exercised where it is not practicable for the Associate Director to do so.

Pursuant to section 9(2)(b) of the DPP Act the Director has also authorised senior officers in all States and the internal Territories to sign indictments for and on his behalf. In addition, the Director has given a limited delegation to senior DPP officers of the power under section 9(4) of the Act to decline to proceed further in the prosecution of a person who has been committed for trial. Pursuant to the arrangement under section 32 of the Act, senior officers of the Director of Legal Services in Hobart and Darwin may also exercise the power under section 9(4) on the same limited basis.

Other authorities have been given by the Director to various persons under the Acts specified in Appendix 1.

The Director has been granted the power to consent to certain prosecutions under the Commonwealth and ACT legislation specified in Appendix 1.

Section 8 of the DPP Act

— guidelines or directions by the Attorney-General

For all practical purposes the Director bears independent responsibility for conducting Commonwealth prosecutions and performing his other functions. The only qualification is that the Attorney-General has power, under section 8 of the DPP Act, to issue directions or guidelines to the Director. These may be general in nature or may relate to particular cases but can only be issued after consultation between the Attorney-General and the Director. Any direction or guideline must be by an instrument in writing which must be published in the Government Notices Gazette and laid before each House of the Parliament within 15 sitting days. No section 8 directions or guidelines were issued in the past year.

Organisation

As at 30 June 1989 the Office comprised seven Divisions, being a Head Office (located in Canberra) and regional offices in Sydney, Melbourne, Brisbane, Perth, Canberra and

Back Row L to R : Paul Evans, Deputy Director Brisbane; Bill Nairn, Deputy Director Perth; Peter Wood, Deputy Director Melbourne; Grant Niemann, Deputy Director Adelaide; Ian Bermingham, Deputy Director Canberra; Terry Gardner, Director of Legal Services Darwin; Tony Davis, Director of Legal Services Hobart.

Front Seated L to R : Peter Walshe, First Deputy Director; Mark Weinberg QC, Commonwealth DPP; Grahame Delaney, Deputy Director Sydney.

Adelaide. During the financial year Commonwealth prosecutions in Tasmania and the Northern Territory were conducted for and on behalf of the DPP by the Directors of Legal Services (DLS), who are officers of the Attorney-General's Department, pursuant to an arrangement under section 32 of the DPP Act.

Set out below is the organisational structure which applied in Head Office and the various regional offices during the financial year.

Head Office

The Head Office is responsible for providing policy and legal advice to the Director in matters warranting consideration at the highest level, controlling and coordinating the activities of the Office throughout Australia, and providing administrative and other assistance to the Director. The Office consists of four branches: Legal, Criminal Assets, Policy and Administrative Support.

The Legal Branch maintains oversight of, and provides input into, the more important prosecutions conducted by regional offices. It also provides advice on questions which have general application and assists the Director in the discharge of his statutory powers.

The primary responsibility of the Policy Branch is to provide assistance to the Director in the development and maintenance of policies and guidelines relating to the performance

by the Office throughout Australia of the Director's statutory functions relating to prosecutions. The Branch is also responsible for making recommendations to other Commonwealth departments and agencies, but principally to the Attorney-General's Department, in relation to the criminal laws and proposed criminal laws of the Commonwealth and the ACT other than in respect of the recovery of criminal assets.

The Criminal Assets Branch maintains oversight of, and provides input into, the more important recovery proceedings conducted by regional offices, as well as assisting the Director in the development of policies and guidelines relative to the recovery of criminal assets. The Branch is also responsible for making recommendations with respect to the laws or proposed laws relative to the recovery of criminal assets.

The Administrative Support Branch is responsible for the provision and coordination nationally of automatic data processing, library support and administers national budgetary and personnel policy.

Sydney, Melbourne, Brisbane, Perth and Adelaide Offices

Each of these Offices has the core branches of General Prosecutions, Criminal Assets and Administrative Support, although in the case of both the Sydney and Melbourne Offices there are two General Prosecutions branches because of the volume of prosecutions conducted by those Offices. The Sydney and Adelaide Offices also have a separate Fraud Branch. These Fraud Branches are responsible for the prosecution of revenue fraud matters which, in the case of the Fraud Branch of the Sydney Office, include the remaining bottom-of-the-harbour cases. In the other three Offices revenue fraud prosecutions are conducted by the General Prosecutions branches.

A small War Crimes Unit was established to conduct a prosecution under the *War Crimes Act 1945*.

The Criminal Assets branches have responsibility for:

(i) pursuing, and coordinating the recovery of, civil remedies in those matters where the DPP has authority to act;

(ii) the exercise of the DPP's functions under the *Proceeds of Crime Act 1987*; and

(iii) the taking of proceedings under Division 3 of Part XIII of the *Customs Act 1901*.

The Administrative Support branches are responsible for managing their respective offices.

Canberra Office

Unlike the other regional offices the prosecutions conducted by the Canberra Office involve offences throughout the criminal calendar and not just those offences arising under Commonwealth Acts. Prosecutions for Commonwealth offences represent only

part of the work undertaken by the Canberra Office. The division of the Office accordingly reflects its unique practice within the DPP.

The Canberra Office has five branches: General Prosecutions, Superior Courts, Fraud, Criminal Assets and Administrative Support.

During the financial year the former Municipal Prosecutions and Magistrates Court Branches were amalgamated as the General Prosecutions Branch. This Branch is now responsible for all prosecutions instituted in the ACT Magistrates Court and the Childrens Court for offences under ACT and Commonwealth law. The Branch is also responsible for providing assistance in coronial inquests. The Superior Courts Branch is responsible for trials on indictment and sentencing matters in the Supreme Court of the ACT as well as appeals and proceedings in the nature of an appeal to the superior courts. The Criminal Assets Branch has the same functions as its counterparts elsewhere. The Fraud Branch deals with fraud matters, both revenue-related and general fraud.

For reasons of convenience the Canberra Office conducts some prosecutions and appeals in respect of offences against Commonwealth law in NSW courts in areas close to Canberra.

New prosecution arrangements in the ACT

As noted earlier in this chapter, on 1 July 1990 regulation 4 of the ACT Self-Government (Consequential Provisions) Regulations (Amendment) came into operation.

This Regulation amended the DPP Act by omitting ACT laws from the definition of 'law of the Commonwealth' for the purposes of the DPP Act. This amendment reflects the passing of responsibility for administration of criminal justice to the ACT Government on 1 July 1990.

A working party comprising both ACT and Commonwealth officials was formed to consider the options available to the ACT Government with respect to the performance of the prosecution function in the ACT from 1 July 1990. The DPP participated in that working party. On the basis of the working party's report, it has been agreed that the DPP will perform the prosecution function in the ACT on an agency basis. This will be for an initial period of 12 months, although it may be extended.

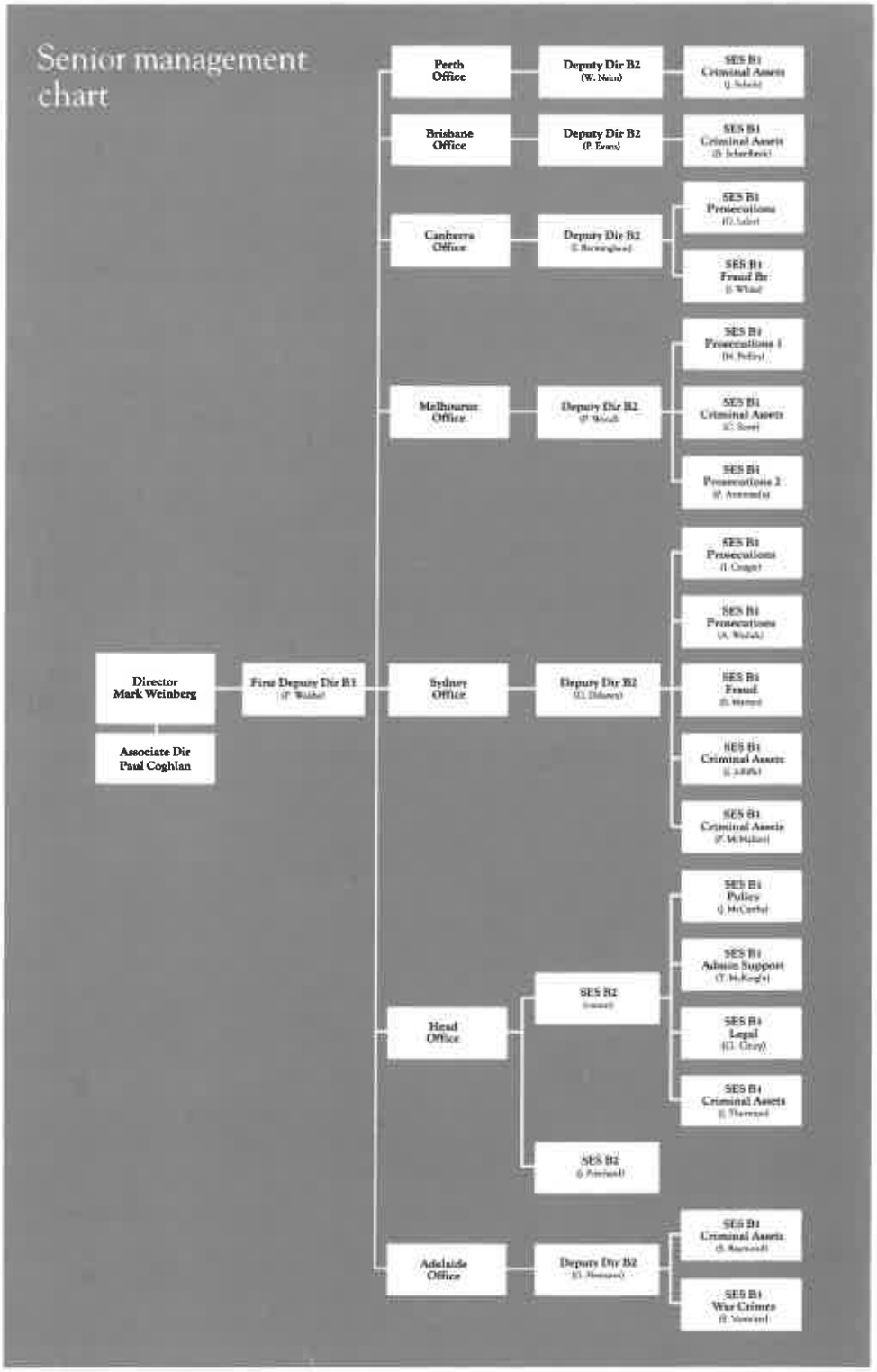
In June 1990 the ACT Assembly passed the *Director of Public Prosecutions Act 1990* (ACT) which generally mirrors the Commonwealth DPP Act. Although that legislation provides for the appointment of the Commonwealth Director of Public Prosecutions as the ACT Director of Public Prosecutions, there is no present intention for the Commonwealth Director to be so appointed and, generally speaking, only those provisions of the ACT legislation concerned with the powers and functions of the ACT Director have been proclaimed to come into operation. Regulations have also been made

under the Commonwealth DPP Act which enable the Commonwealth Director to perform the functions of the ACT Director during any period when no person holds office, or is acting, as Director of Public Prosecutions under the ACT legislation.

Directors of Legal Services

Prosecutions and criminal assets work in Tasmania and the Northern Territory on behalf of the DPP continue to be conducted as part of the general work of the DLS offices in Hobart and Darwin. Accordingly, each of the lawyers in these offices has a prosecution workload as well as the carriage of a wide range of civil and commercial work. In these two places the prosecution work comprises mainly summary prosecutions.

Senior management chart



Chapter 2
Exercise of statutory functions and powers

The Director has a wide range of powers under the DPP Act and other legislation. This chapter deals with the exercise of the statutory powers which the Director has not delegated beyond the Head Office of the DPP.

No Bill applications

The Director has power under section 9(4) of the DPP Act to decline to proceed further in the prosecution of a person who has been committed for trial for an offence against Commonwealth law or in respect of whom an indictment has been signed.

The Director has authorised senior officers in all DPP regional offices, and senior officers in the DLS offices in Hobart and Darwin, to reject No Bill applications made at the court door which, in the officer's opinion, lack merit. Those officers also have power to discontinue a prosecution on a Commonwealth charge if the defendant has been dealt with on State counts which cover the same factual situation. In all other cases, however, any No Bill application is considered personally by the Director, the Associate Director, or occasionally the First Deputy Director.

In the course of the year, there were 18 No Bill applications received from or on behalf of defendants. Of these 10 were granted and eight refused. A further 21 prosecutions were

discontinued on the basis of a recommendation from a regional office without prior representations from the defendant. A breakdown of these statistics appears in table 1.

Of the 31 matters that were discontinued, the quality of the available evidence was a relevant factor in 24 cases. However, it was rarely the only reason why the matter did not proceed. There were usually other relevant factors such as the age of the offences, the nature of the offences and the personal circumstances of the defendant. In four matters, for example, the committal proceedings were conducted by State police prosecutors without reference to the DPP in cases which clearly should have proceeded, if at all, on summary charges. There were only nine cases in which a lack of admissible evidence was the sole reason why the matter was discontinued. In about half of those cases, the deficiency only became apparent after the committal proceedings.

Of the seven matters in which the available evidence was not a relevant factor in the decision not to proceed:

- in two cases, the defendant's mental condition was the main reason for the decision;
- one defendant had been dealt with on State charges covering the same subject matter;
- one defendant had been committed for sentence in the erroneous belief that he had consented to that course;
- one defendant had been committed for trial on perjury charges in circumstances in which, in the Director's view, such charges should not have been laid;
- one defendant was ordered to be retried following a successful appeal against conviction in circumstances where the matters still before the court, standing alone, did not provide a sufficient basis for a retrial; and
- the final defendant was ordered to be retried following a successful appeal against a directed acquittal in circumstances where the public interest did not warrant a retrial.

Table 1 — No-Bill Matters

	Applications by defendants			
State	*Granted*	*Refused*	*Total*	*Raised by DPP*
NSW	2	5	7	10
Vic.	3	0	3	2
Qld	2	0	2	4
WA	0	3	3	–
SA	–	–	–	1
Tas.	–	–	–	1
NT	–	–	–	1
ACT	3	0	3	2
Total	10	8	18	21

Appeals

Section 9(7) of the DPP Act gives the Director the same rights of appeal in matters being conducted by the DPP as are exercisable by the Attorney-General.

In some jurisdictions a notice of appeal, or equivalent document, need not be signed personally by the Director or his delegate. During the year the Director issued an office instruction requiring that approval be sought before appeal proceedings are instituted in any matter, other than an appeal against a decision to grant bail or any other case where time is of the essence. In such cases, the appropriate Deputy Director has authority to institute appeal proceedings, but is expected to seek approval for the appeal to proceed as soon as practicable.

Statistics on the number of appeals lodged by the DPP during the year appear at the end of this report. Details of some of the cases in which appeals were lodged appear below.

Novella

This defendant was convicted in the NSW District Court on two counts of conspiring to import heroin. She was sentenced to six years imprisonment with a minimum term of three years.

The case was somewhat unusual in that no heroin was actually imported. However, there was evidence that the parties intended to import between one and three kilograms of heroin. Novella was a principal in the scheme and had recruited couriers to import the heroin. Another principal was sentenced to 13 years imprisonment with a minimum term of six and a half years. There were some mitigating factors in that the defendant was 65 years of age, had no prior convictions and had given assistance to the AFP. Nonetheless, the DPP considered the sentence was manifestly inadequate.

The Court of Criminal Appeal upheld the appeal. They increased the sentence to six years and six months imprisonment with a minimum term of three years and three months. The increase was more significant than it appears because of the introduction of new sentencing provisions in NSW in between the original sentence and the hearing of the appeal.

Lamond

In this case the defendant was charged with one count of importing butterflies without a permit contrary to section 22 of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*. Two butterflies were found under a layer of cotton wool in a box of butterflies brought by the defendant from Japan. There were 13 other butterflies in the box, none of which were under cotton wool. None of those butterflies required a permit to be imported into Australia.

A magistrate dismissed the charge against the defendant on the basis that there was no evidence that he knew the species name of the relevant butterflies, which was *Troides*

Prattorum, or that he knew that the importation of butterflies of that species was prohibited without a permit.

The ruling raised important issues concerning the mental state required to prove an offence against section 22, and indeed against any provision involving the importation of prohibited goods. The DPP stated a case to the NSW Supreme Court under section 101 of the *Justices Act 1902* (NSW).

At the time of writing this matter remains unresolved.

Andriske and Biggs

These defendants pleaded guilty to charges under the *Export Control Act 1982* of applying a false trade description to goods intended for export. The goods in question were Redglobe grapes which the defendants labelled for export as either Red Emperor grapes or Emperor grapes.

The magistrate found the offences proved but discharged both defendants without proceeding to conviction pursuant to section 19B of the *Crimes Act 1914*. The maximum penalty available was 12 months imprisonment and/or a fine of $5 000.

An appeal was lodged on the basis that the magistrate had given insufficient weight to a number of matters, particularly the potential effect of conduct of the relevant kind upon Australia's export industries and the consequences that could have for the Australian economy.

This matter is also unresolved at the time of writing.

Medina

The defendant in this matter obtained over $45 000 in unemployment benefits over a five year period by submitting claims while he was working under a false name. He pleaded guilty to one count under section 29A of the *Crimes Act 1914* of obtaining money by false pretences with intent to defraud.

On 14 December 1989, the defendant was released on a 'Griffiths bond' to appear for sentence in the District Court on 21 September 1990. He was given bail on condition that he make regular repayments to the Department of Social Security. There is a clear implication in an order of this kind that if the offender complies with the repayment order, and has discharged the debt by the time the matter comes back before the court, he or she can expect to be dealt with leniently.

On appeal by the DPP, the Court of Criminal Appeal found that the orders were manifestly erroneous as any penalty less than imprisonment would fail to reflect a proper element of general deterrence. The court imposed a term of imprisonment of two years, comprising a minimum term of 18 months and an additional term of six months.

Pickford

Pickford was convicted on three counts under section 8P of the *Taxation Administration Act 1953* of knowingly making false statements to a taxation officer. The magistrate imposed a fine on the defendant but declined to impose an additional penalty under section 8W of the Taxation Administration Act. This was despite the fact that the Commissioner of Taxation had imposed a penalty by way of administrative action which, in accordance with the legislative scheme, was refunded when charges were laid. The DPP appealed against the decision to the Supreme Court of South Australia.

The Supreme Court upheld the appeal. It found that where a court is satisfied that a decision by the Commissioner to proceed to prosecution rather than to impose an administrative penalty is proper and reasonable, in the absence of exceptional circumstances it is illogical and probably contrary to the intention of Parliament to impose a total penalty which is less than that which would have been imposed by way of administrative penalties. The court imposed an additional penalty in the sum of $7 885. The case is now reported at 20 ATR 1382.

Details of some of the other matters in which appeals were lodged by the DPP, and some of the matters in which the DPP responded to appeals, appear in the case reports in chapter 3.

Indemnities and undertakings not to prosecute

Section 9(6) of the DPP Act empowers the Director to give an undertaking to a person that any evidence given by the person in specified Commonwealth proceedings, and anything derived from that evidence, will not be used in subsequent civil or criminal proceedings other than a prosecution for perjury. Section 9(6B) is to similar effect, although it enables the Director to give an undertaking to a person who is about to give evidence in State or Territory proceedings.

Section 9(6D) empowers the Director to give a person an undertaking that he or she will not be prosecuted under Commonwealth law in respect of a specified offence or specified conduct.

During the year the Director or Associate Director signed 55 undertakings under section 9(6), four under section 9(6B) and 12 under section 9(6D). However, some witnesses were given undertakings under more than one section and in some matters more than one witness was given an undertaking. The 71 undertakings were given to 55 witnesses in 23 matters. A breakdown of these statistics appears in table 1(a).

As in past years, the majority of undertakings were given to witnesses appearing against alleged drug offenders. However, in six matters undertakings were given in connection with the prosecution of people who allegedly organised marriages of convenience to enable others to enter or remain in Australia in breach of the *Migration Act 1958*. Those

matters accounted for 19 undertakings. Details of the types of matter in which undertakings were given appear in table 1(b).

There were two cases during the year in which the Director signed an undertaking under section 30(5) of the *National Crime Authority Act 1984* in respect of a person about to be questioned before the Authority. Both people were subsequently called as witnesses in related committal proceedings and were given undertakings under section 9(6) of the DPP Act for that purpose.

The DPP recognises the need for caution in these matters. There are obvious risks inherent in indemnifying a confessed criminal to give evidence against his or her co-offenders. Accordingly, the number of cases in which witnesses are indemnified is likely to remain small. However, cases arise from time to time in which the prosecution cannot prove its case against serious offenders without calling evidence from lesser participants in the criminal scheme. As a general rule, it is desirable that the lesser offenders be prosecuted before they are called as witnesses. However that is not always possible. Sometimes the only way of achieving the ends of justice is to indemnify the lesser offenders.

While there have been exceptions, witnesses indemnified by the DPP have generally given cogent and credible evidence that has been accepted by the jury. This reflects the degree of care that is always taken in these matters.

Table 1(a): Undertakings Under DPP Act — Number

	Section				
State	9(6)	9(6B)	9(6D)	*No. of witnesses*	*No. of matters*
NSW	18	4	4	16	8
Vic.	23	–	–	23	9
Qld	11	–	–	7	3
WA	1	–	1	1	1
SA	1	–	7	7	1
Tas.	–	–	–	–	–
NT	–	–	–	–	–
ACT	1	–	–	1	1
Total	55	4	12	55	23

Table 1(b): Undertakings Under DPP Act — Type of Case

	Number of undertakings (and number of matters)					
State	*Drugs*	*Mig. Act*	*Fraud*	*Soc. Sec.*	*Forgery*	*Other*
NSW	21(7)	–	5(1)	–	–	–
Vic.	4(3)	19(6)	–	–	–	–
Qld	1(1)	–	–	8(1)	2(1)	–
WA	2(1)	–	–	–	–	–
SA	–	–	8(1)	–	–	–
Tas.	–	–	–	–	–	–
NT	–	–	–	–	–	–
ACT	–	–	–	–	–	1(1)*
Total	28(12)	19(6)	13(2)	8(1)	2(1)	1(1)

* One undertaking under section 9(6) was given to a witness appearing in coronial proceedings.

Taking matters over

The Director has power under section 9(5) to take over a prosecution for a Commonwealth offence that was instituted by another person and either carry it on or bring it to an end. The power was not exercised during 1989–90.

Ex-officio indictments

Under section 6(2D) of the DPP Act the Director has power to file an indictment against a person for charges in respect of which he or she has not been examined or committed for trial. The power cannot be delegated.

Committal proceedings are an important element in the criminal justice system and the Director will only sign an ex-officio indictment in exceptional cases. In the year under review the Director signed ex-officio indictments in only two matters, although he also agreed in principle to sign an ex-officio indictment in a third.

In the first matter, the defendant was charged with a State offence of supplying cannabis resin and a Commonwealth charge of possession cannabis resin reasonably suspected of having been imported contrary to the *Customs Act 1901*. The defendant was committed for trial on the State count but discharged on the Commonwealth count because of a lack of evidence concerning the source of the cannabis resin.

Scientific evidence was available to show that the drug was manufactured outside Australia. Due to inadvertence, this had not been called at the committal. The Director decided that in the circumstances the interests of justice would be served by the matter proceeding to trial on both the State and Commonwealth counts.

In the second matter, the defendant was discharged at committal on serious drug charges against State and Commonwealth law on the basis that there was no evidence to

corroborate the testimony of an indemnified co-offender. The Director was satisfied that the magistrate had erred in failing to find corroborative evidence and that, on the test the magistrate set for himself, he should have made a committal order.

The Director signed an ex-officio indictment containing four counts against Commonwealth law. However, a fresh indictment was subsequently filed alleging offences against State law and the matter will proceed to trial on those charges.

The Director also agreed to sign an ex-officio indictment at the appropriate time to enable a person resident in Victoria to stand trial in NSW together with alleged co-offenders who have been committed for trial in NSW. The defendant originally pleaded guilty to the charges in Victoria and was committed for sentence in that State. However, he subsequently withdrew his plea and could not be dealt with in Victoria. By that stage it was too late to hold committal proceedings in NSW if the defendant was to stand trial with his co-defendants.

Chapter 3
General prosecutions

The day-to-day work of the DPP is carried out in the regional offices. The DPP is a decentralised organisation and the majority of decisions are made in the regions without formal reference to the Director or Head Office. It is usually only when matters are sensitive, raise policy issues, or involve the exercise of statutory powers that have not been delegated to the regions that Head Office has any direct involvement in the conduct of individual prosecutions.

The case reports in this chapter, and the tables and graphs at the end of this report, give an indication of the range and nature of the work of the prosecution branches of all regional offices other than Canberra, whose work is dealt with in chapter 4. The criminal assets work of the regional offices is dealt with in chapter 5.

The majority of prosecutions are conducted in-house by DPP lawyers. In all places other than Sydney and Melbourne, DPP officers have full rights of appearance as counsel. Private barristers are usually only briefed in complex matters or those requiring special expertise not available within the regional office.

In the past year Sydney and Melbourne Offices have employed members of the private Bar on contract as in-house counsel. The scheme has worked well, with counsel performing a valuable training function as well as achieving considerable cost savings. It

is proposed to expand the scheme as circumstances allow to increase the opportunity for DPP lawyers to gain advocacy experience in the higher courts.

Advocacy, although important, is not the only aspect of work in the regional offices. A great deal of time and effort goes into preparing cases for prosecution, especially in large commercial fraud cases or major drug prosecutions.

Significant time is also spent on providing legal and strategic advice to criminal investigators. That function is becoming increasingly important as more and more agencies set up investigation units. The investigators working in those units often require greater guidance and legal assistance than officers of the AFP.

The DPP also participates in the training of criminal investigators. The Sydney Office conducts regular training courses for investigators. In other places DPP officers address courses and seminars organised by others on a regular basis.

Senior lawyers within the regional offices also have considerable administrative responsibilities. The administrative reforms that have taken place over the last few years in the Australian Public Service have seen a devolution of administrative responsibility to the places where the work is performed. That has seen an increase in the duties and responsibilities of all DPP managers including our senior lawyers.

The other development worth noting in 1989–90 is that the Queensland Government has finally entered into an arrangement with the Commonwealth under section 3B of the *Crimes Act 1914*. The courts of that State are able, at long last, to make community-based orders when sentencing Commonwealth offenders. Community-based orders are still not available in respect of Commonwealth offences in NSW.

The DPP expects a significant increase in its prosecution workload when the administrative and legal problems surrounding the *Corporations Act 1990* have been resolved. Whatever arrangements are put in place, there will clearly be a new range of Commonwealth offences dealing with corporate fraud. The resulting prosecutions are likely to be among the most complex, and resource intensive, ever dealt with by the DPP.

Sydney Office

Doney

In July 1989, Doney was tried and convicted in the Supreme Court on a charge of being knowingly concerned in the importation of cannabis resin between November 1983 and March 1984. Doney was sentenced to 16 years imprisonment with a minimum term of nine years. The amount of the drug was 20 kilograms which was concealed in a container which also contained cartons of cotton cloth.

This was Doney's second trial. In September 1987 he was tried and convicted on the same charge but a new trial was ordered by the Court of Criminal Appeal (*R v. Doney* 37 Aust Crim R 288).

The Crown case was that Doney arranged the importation with the assistance of another man, Freeman, who had previously pleaded guilty to a similar charge. Freeman gave evidence for the Crown and his testimony was the only direct evidence against Doney. However, some time after the relevant container was unloaded a taxi driver was given a note in Doney's handwriting relating to boxes which formed part of the goods in the container. The trial judge directed the jury that it was open to them to regard the note as capable of corroborating Freeman's evidence.

Doney again appealed to the Court of Criminal Appeal. However, the court agreed that the note was capable of corroborating Freeman. This was consistent with the views expressed by the court in Doney's earlier appeal. Doney also argued in the Court of Criminal Appeal that the trial judge should have directed an acquittal on the basis that any verdict founded on the evidence was unsafe and unsatisfactory. This argument was also rejected.

Doney has applied for special leave to appeal to the High Court.

Courtney-Smith

In 1986 Courtney-Smith and a co-offender, Hamill, were convicted on charges arising from the importation of 750 kilograms of cannabis resin in the walls of a shipping container. The convictions were overturned on appeal and a new trial ordered.

The allegation against Courtney-Smith was that he had participated in a subterfuge designed to throw a veil of apparent legitimacy over the importation of the container and its contents. The group importing the drugs had set up a false company and invented a principal behind that company, a person they called Brian Walker. Although the defence claimed that there was a real Brian Walker, they never produced evidence of his existence. Courtney-Smith also put up money to assist in the importation of the container.

Before the second trial commenced Hamill pleaded guilty, leaving Courtney-Smith to be tried alone.

Courtney-Smith had spent many years on the board of a clinic which specialises in treating alcohol and drug dependant patients. His main defence at trial was that he was a person of good character, vehemently opposed to drug trafficking, and that he had been an unwitting dupe in the schemes of others. In August 1989 Courtney-Smith was convicted and sentenced to eight years imprisonment with a minimum term of four and a half years. In June 1990 the court of Criminal Appeal rejected an appeal by Courtney-Smith against his conviction.

Courtney-Smith has now applied for special leave to appeal to the High Court.

Wallace

The defendant was a former AFP officer who had held the position of Deputy Drug Registrar for the AFP's Eastern Region. On the basis of information provided by a person

arrested in possession of drugs, NSW Police executed search warrants on the defendant's house and the houses of members of his family.

They found eight and a half kilograms of heroin, two kilograms of cocaine, a block of cannabis resin weighing 463 grams and seven kilograms of cannabis resin oil. They also found $237 000 in cash and drug paraphernalia, including official seals and two metal presses that were used to compress heroin and cocaine into block form. The total street value of the drugs found was about $20 million. The defendant admitted that the drugs, money and equipment were all his. He also admitted that the money was from the sale of drugs.

The matter was referred to the DPP because of the Commonwealth connection.

The defendant was charged with possessing a commercial quantity of heroin, a traffickable quantity of cocaine and a traffickable quantity of cannabis resin. It was alleged that he took the drugs from his place of work, either after they had been audited for destruction and entrusted to him for that purpose or before they had been audited for destruction. In the latter case he would cut the drugs and repack them with substitute material so that no one would be the wiser if the drugs were needed for subsequent court proceedings.

Wallace pleaded guilty to the charges against him. On 3 July 1990 he was sentenced to 12 years imprisonment with an additional term of four years. The sentencing Judge described the offences as the worst kind of case imaginable.

The DPP has filed an appeal against the sentence on the grounds that it is manifestly inadequate.

Operation Moon

In September 1989 two defendants, Maldonado and Psomadellis, were convicted after a three week trial of conspiring to import a traffickable quantity of cocaine. Subsequent appeals against conviction and sentence were dismissed.

The Crown case was that in 1987 the defendants sent a courier to Buenos Aires to obtain a quantity of cocaine and bring it back to Australia concealed in a guitar. The plan came unstuck when the courier was arrested by Argentinian officials in Buenos Aires while boarding a flight for New Zealand.

The police were forewarned of the plan and put the defendants under surveillance. Evidence was led at the trial of police observations of various meetings between the defendants, the courier and a female friend of the courier. After the courier's arrest, his friend was interviewed by the AFP and she agreed to meet with Maldonado while equipped with a listening device. During this meeting Maldonado made statements indicating that there had been prior importations and that he intended to arrange future importations, although they would be carried out in a different manner.

One of the many grounds of appeal related to the Crown's inability to show precisely how much cocaine the defendants intended to import. It was argued that they may have intended to import less than a traffickable quantity which, on the evidence, is about two teaspoonsful of cocaine with a street value of $400.

The trial Judge pointed out to the jury that the case concerned an alleged agreement to send a courier to South America, engage in some travel in South America and then return to Australia with sufficient drugs to finance further trafficking. The Court of Criminal Appeal agreed that in these circumstances it was open to the jury to infer that the defendants intended to import more than two teaspoonsful of cocaine.

Maldonado, being a principal in the conspiracy, was sentenced to 12 years imprisonment with a minimum term of eight years. Psomadellis, who played a lesser role, was sentenced to seven years imprisonment with a minimum term of five years.

Mak

On 5 June 1989, Customs officers found approximately five kilograms of heroin in the suitcase of a West German national at Brisbane Airport. The West German agreed to assist police. The AFP arranged for the bulk of the heroin to be substituted and placed a listening device in the hotel room of the West German.

On 9 June 1989 Mak and another person flew to Brisbane and visited the West German at his hotel room. After some negotiations, they paid the West German $32 000 and were given the substituted material. Mak and the other person were then kept under surveillance by the AFP as they drove from Brisbane to Sydney. Mak was arrested in Sydney on 11 June 1989.

Mak pleaded guilty to charges of possessing a traffickable quantity of heroin and supplying a commercial quantity of heroin. On 15 June 1990 he was sentenced to a minimum term of imprisonment of five years with an additional term of 20 months.

Hash

Hash was the ninth of 11 defendants to plead guilty in relation to an attempt to bring three tonnes of cannabis to Australia on the ketch *Jalina*.

In December 1987 the *Jalina* sailed from Sydney to the Bay of Thailand where it took on board the three tonnes of cannabis. The ketch then returned to Australia sailing to a point north of Sydney where it was met by two rented pleasure cruisers. The cannabis was transhipped to the cruisers and was being ferried to shore when the AFP, Customs officers and NSW police boarded both vessels.

The police were given an early tip off about the importation and placed various people under surveillance, including Hash who lived at Port Douglas in far north Queensland. As a result of this surveillance, telephone intercepts and a subsequent search of Hash's premises, police were able to show that Hash was the radio link between the ketch and those in Sydney awaiting the arrival of the cannabis.

Hash was sentenced to imprisonment for a minimum term slightly in excess of three years, on the basis that his role was equivalent to others who had been previously sentenced to head sentences of eight years with minimum terms of five years. The reason for the lesser sentence for Hash was that the other defendants had their sentences reduced by remissions. The sentencing Judge took the view that Hash should not be prejudiced simply because he pleaded guilty later in time.

Rueda, Sze, Chen and To

These men were convicted in late 1989 for their roles in the importation of 31.5 kilograms of heroin in 1987.

The Crown alleged that Rueda, a Guatemalan diplomat, was recruited to collect the suitcase containing the heroin in Thailand and clear it through Customs in Sydney, supervised by Sze and Chen. The National Crime Authority became aware of the plan and monitored the movements of the three from Thailand to Sydney airport and from there to the Regent Hotel where they maintained video and audio surveillance overnight. The next day Sze supervised a hand-over of the suitcase containing the heroin by Chen to To in the lift area of the lobby, after which the four men were arrested.

After a Supreme Court trial, Sze and Rueda were found guilty of conspiracy to import the heroin, Sze and Chen were found guilty of taking part in the supply of the heroin and To was found guilty of possessing heroin. All four have appealed.

United Telecasters (Sydney) Ltd

On 15 February 1990 the High Court unanimously upheld an appeal by the DPP against an order of the NSW Court of Criminal Appeal which had set aside the conviction of United Telecasters, the licensee of Channel Ten, for a contravention of the *Broadcasting and Television Act 1942*. The company had originally been convicted of the offence on 16 September 1987 and fined $2 000.

The allegation was that in 1984 Channel Ten televised an advertisement for Winfield cigarettes during the telecast of the Sydney Rugby League grand final. The Crown asserted that a portion of the telecast, which was called the Winfield Spectacular and which preceded the football match, was an advertisement for cigarettes.

The Court of Criminal Appeal held that the Crown should not have been permitted to lead evidence that the name Winfield was used as a brand name for cigarettes or to produce material, including a specimen pack of cigarettes, to show that Winfield cigarettes were packaged in red and white. The Court held that the jury had to decide the issues before it without the aid of extrinsic material.

The High Court found that it was permissible for the Crown to call evidence to show that the television sequence was an advertisement. It also found that material can be an advertisement even if it contains no express reference to the product being advertised. An advertisement may, the Court said, be of a subliminal character.

There remains some uncertainty about the application of the High Court's decision to future cases. The Act provides that it is not an offence to broadcast an advertisement for cigarettes if the advertisement is an accidental or incidental accompaniment to the televising of other matter. In the present case, the Winfield Spectacular was a discrete segment. Different issues will arise in cases which involve background glimpses of advertising material.

Trice

In March 1990 Trice pleaded guilty to two counts of defrauding the Commonwealth.

Trice, a recipient of unemployment benefits, approached an officer of the Gosford office of the Department of Social Security (DSS) and suggested that she process claims for sickness benefits in two fictitious names. The officer complied and, after the necessary computer entries had been made to initiate payment of the benefits, she destroyed the documents. Over the ensuing months the officer continued to process and then destroy documentation necessary for the benefits to continue. Both sets of benefits were paid into bank accounts opened by Trice in fictitious names.

The DSS officer who had been assisting Trice ceased employment with the DSS but agreed to ask her sister, who was also employed by DSS, to continue assisting him. The sister agreed and continued submitting the relevant documentation in fictitious names.

The scheme continued for about 12 months until a discrepancy in DSS records alerted staff to the fraud and the AFP were notified.

The total amount defrauded was $15 272. Trice, who had a lengthy criminal record, was sentenced to four years imprisonment with a minimum term of three years on each count. The two former DSS officers, neither of whom received any financial benefit from the fraud, were charged with being knowingly concerned in defrauding the Commonwealth. They both pleaded guilty and were released on good behaviour bonds.

Corbett

On 27 February 1990 Dr Paul Corbett was sentenced in the NSW District Court to an effective term of imprisonment of eight years with a minimum term of six years for Medifraud offences committed between September 1985 and October 1986.

Corbett was the proprietor of a medical centre in Sydney's outer western suburbs. He took over the practice in August 1985. By the time he was arrested by the AFP 13 months later, he had submitted over 49 000 false Medicare assignment forms to the Health Insurance Commission. As a result he received over $500 000 from the HIC to which he was not entitled.

The Crown case fell roughly into four groups of charges. The first 10 charges related to false claims lodged by Corbett in the names of junior receptionists. Corbett procured the receptionists' signatures on the assignment forms, telling them that it was how he was going to obtain their wages.

The second group of charges involved false claims made in other doctors' names. In some of the cases doctors by that name were employed by Corbett and, at Corbett's request, signed blank claim forms. Most claims, however, were forgeries made in the names of doctors who worked for Corbett for short periods, and in two cases did not work for Corbett at all.

The third group of claims related to false claims made in Corbett's own name. These involved complicated and expensive procedures which the patients involved denied had ever been performed.

The final two charges were in a group of their own. There were two false receipts for services written out by Corbett two weeks after his arrest by the AFP. He told a junior receptionist that she should take the false receipts to the Medicare office in order to obtain her wages.

In sentencing Corbett, the Judge said that a breach of trust of this type by a medical practitioner must result in a substantial custodial sentence. The earliest date that Corbett can be released on parole is 26 February 1996. Corbett has appealed against the severity of the sentence.

Melbourne Office

Perrier and Richardson

This case involved the importation of one and a half kilograms of heroin from Bangkok in a false-bottomed suitcase carried by Richardson.

Richardson, who consistently denied knowing that the suitcase contained heroin, agreed to cooperate with the authorities in arranging a controlled delivery of the suitcase. Perrier and a third person were subsequently arrested. All three were charged with offences under the Customs Act.

Richardson maintained that he thought he was carrying forged traveller's cheques, although he conceded that he knew there was a likelihood that drugs might be involved. Perrier claimed that he was expecting to receive a consignment of rubies.

The defendants stood trial in July 1989. Perrier was convicted but the jury could not reach a verdict in relation to Richardson. The third person was acquitted. Richardson was subsequently retried and convicted.

Perrier, who had overseas convictions for drug and other offences, was sentenced to life imprisonment with a minimum term of 22 years. Richardson was sentenced to five years with a minimum term of three years.

Perrier appealed unsuccessfully against his conviction and sentence. The Court of Criminal Appeal considered that the sentencing Judge was correct in treating Perrier's offence as falling within the most serious category of cases given that he acted as a

principal in a commercial operation within five years of being released from prison on drug charges in Singapore.

The DPP appealed against the sentence imposed on Richardson on the basis that it was manifestly inadequate. The Court of Criminal Appeal increased the sentence to seven years with a minimum of five. The judgment contains an analysis of the appropriate discount for an offender who has cooperated with the authorities. The majority stated that, but for his cooperation, the appropriate head sentence for Richardson would have been 15 years imprisonment and that he may have received an even greater reduction in penalty if he had pleaded guilty.

Perrier has applied for special leave to appeal to the High Court.

Quality Publications Pty Ltd

This company and two of its officers were charged with offences under sections 53 and 64(2A) of the *Trade Practices Act 1974* in respect of the sale of advertising space in publications which the company produced on behalf of various clubs and associations.

The company's modus operandi was to contract with a club or association to produce a publication for its members on the basis that it would receive the revenue derived from advertising. The company then sent salespeople, acting on commission, to businesses to sell advertising space. It was alleged that salespeople regularly misrepresented the nature of the relevant publication. For example, it was alleged that those selling advertising space in a publication produced for the Victorian and Tasmanian Branch of the International Police Association (membership 400) represented that they were associated with the Victoria Police and that the publication would be sent to all 10 000 members of the Victorian Police Association.

Other organisations for which the company produced publications were the Police Insignia Collectors Association, with a membership of approximately 180 worldwide, and the Australian Branch of the Police History Society, with about 100 members.

It was also alleged that the company invoiced some businesses for advertising they had refused to order or for advertising space about which they had not been contacted at all.

Charges were laid on 21 April 1989. The DPP also commenced civil proceedings on the instructions of the Trade Practices Commission seeking injunctions to prevent the company from continuing to engage in the relevant conduct. Those proceedings were adjourned when the Federal Court set an early trial date.

The trial commenced on 21 June 1989 but was adjourned after seven days when the trial judge became unavailable. The DPP then resumed the application for injunctive relief, relying on section 79(4) of the Trade Practices Act. The application for an injunction was unsuccessful.

The trial resumed on 23 October 1989 and ran for 13 days. The company was convicted on five counts of misrepresentation under section 53(c) of the Trade Practices Act and five counts of asserting a right to payment for unsolicited services under section 64(2A). It was fined a total of $49 000.

Moore, a leading salesman at the company, was also convicted on five counts under section 64(2A). He was fined a total of $2 550.

The third defendant was acquitted.

The company and Moore both appealed to the Full Federal Court against conviction and sentence. The appeals were dismissed when the appellants failed to prosecute the appeals in accordance with the Court's directions.

Wong

It was alleged that Wong and his co-defendants provided forged visas for entry into Australia to three Chinese people who were in Australia on student or temporary visas.

The visas were in a form that is normally issued to refugees who do not have any other form of travel documentation. The visas are issued to prove the identity of the holder in lieu of a passport and to enable that person to travel to Australia. The visa includes a photograph of the person sealed with a Commonwealth stamp. On arrival in Australia the visas are stamped with an entry permit, being the only form of authority for a non-citizen to enter or remain in Australia.

The three visas in the present matter bore the names of actual refugees who had been legitimately granted entry to Australia. The photographs, however, were of the people who purchased the false visas. When interviewed, each stated that they were introduced to Wong after discussions with other people about how to remain permanently in Australia. Wong said that he could arrange papers for them. They were asked to pay $7 000, $12 000 and $10 000 respectively and to provide photographs of themselves in black and white, having been told to look like refugees. Wong received $2 000 from each transaction with the remainder being passed on to his co-conspirators.

Wong pleaded guilty at the Melbourne Magistrates' Court to charges of conspiring to defeat the operation of the *Migration Act 1958*. His plea was heard at the County Court on 26 June 1990. He was convicted and sentenced to 12 months imprisonment suspended upon him entering into a bond under section 20 of the *Crimes Act 1914*. As a condition of that bond he was also ordered to pay $5 000 to the Commonwealth. Wong's co-defendants are presently awaiting trial.

Keller

Keller pleaded guilty in the County Court at Melbourne to 18 counts of defrauding the Commonwealth contrary to section 29D of the *Crimes Act 1914*. Over an 18 month period, Keller submitted false sales tax returns on behalf of his company, Southern

Trailers Pty Ltd, a manufacturer and wholesaler of car trailers. The amount of tax evaded over this period was $169 000. Over a separate six month period, Keller failed to furnish sales tax returns altogether resulting in a further evasion of $88 664. This failure was reflected in five charges taken into account at sentence pursuant to section 21AA of the Crimes Act.

The court imposed a total effective sentence of two years imprisonment with a minimum non parole period of 15 months. He also ordered Keller to pay reparation in the sum of $257 664. In passing sentence his Honour stated that the length of time over which the fraud had been committed and the amount of sales tax defrauded called for a custodial sentence to act as a deterrent to others.

Serplini

This defendant was charged with one count of bigamy under section 94(1) of the *Marriage Act 1961* and one count of being knowingly concerned in the uttering of a forged document under section 67(b) of the *Crimes Act 1914*. It was the first bigamy case dealt with summarily in Victoria following the 1987 amendments to the Crimes Act. Prior to those amendments bigamy could only be dealt with on indictment.

In 1984 the defendant, who is a Turkish national, married an Australian women while in Australia on a tourist visa. He subsequently applied for permanent resident status, which was granted in 1987. It was alleged that at the time of the marriage he was still married to a women he had wed in Turkey in 1979.

The uttering charge related to a document described as a 'Family Status Certificate' which Serplini provided to the Department of Immigration in support of his application for permanent residency. The document contained details of Serplini and his family and purported to record that Serplini divorced his first wife nine days before marrying his second.

It was alleged that the entry was forged. According to official Turkish documents, Serplini did not divorce his first wife until December 1987.

Serplini pleaded not guilty and made few admissions. Accordingly it was necessary to prove the case formally. That involved producing certified extracts from official Turkish records, calling a Turkish lawyer who had practiced in family law in that country to give evidence about the pre-conditions for a valid marriage in Turkey and the ways that Turkish marriages can be brought to an end, and calling evidence from an officer of the Turkish Consulate in Melbourne about the normal format of official Turkish documents.

Serplini was convicted on both counts. He was sentenced to six months imprisonment on the bigamy count and nine months on the uttering count, to be served concurrently. The magistrate was especially critical of Serplini's conduct in relation to the uttering count, noting that it related to the forging of an official document issued by one government and intended to be relied upon and acted on by another government.

Meat Exports (Sydney) Pty Ltd

This company owns a boning room and freezer facility known as Scoresby Cold Stores. It is involved in the processing of carcases, mostly bovine, into cartons and it is a registered export establishment. Much of the product processed by the company is exported to the United States and other export markets.

On 15 and 16 June 1989 the company produced 109 cartons of meat labelled as bull meat which was intended for export to the United States. On 5 July 1989 officers from the Department of Primary Industries and Energy seized the cartons. On 28 August 1989 the Department took samples from the cartons and three control samples for DNA sex testing. It is believed that this was the first time the DNA sex testing procedure has been used in Australia for the sex testing of meat products. The testing revealed that out of the 109 cartons labelled as bull meat 58 cartons contained female meat.

The company was charged with 58 counts of applying a false trade description to prescribed goods intended for export, contrary to section 15(1)(a)(i) of the *Export Control Act 1982*. It pleaded guilty to all charges at the Melbourne Magistrates' Court on 22 March 1990 and was placed on a bond under section 19B of the *Crimes Act 1914* to be of good behaviour for two years. In addition the company was ordered to pay $12 417 costs for the DNA sex testing and to pay $10 000 to the Court Fund.

Inall

Inall was convicted in the Melbourne Magistrates' Court on 13 charges under section 8Y of the *Taxation Administration Act 1984*. He was the director of a company which had failed to pay sales tax. This was the first contested matter prosecuted under section 8Y.

In the course of making his findings the magistrate noted that there was no direct evidence that Inall was involved in the company's failure to pay sales tax. Nevertheless, he was satisfied that Inall understood the sales tax regime and had access to records which would have shown that the sales tax debt was accruing. As a director of the company at all relevant times he had negligently stood aside while the sales tax debt had accrued and this was a sufficient basis on which to find the charges proved.

Inall was released pursuant to section 20 of the *Crimes Act 1914* on his own recognisance in the sum of $2 000 to be of good behaviour for a three year period. He was also fined $2 000. The Magistrate declined to make a reparation order as Inall, who was an engineer by occupation and in receipt of $47 000 annual salary, was a bankrupt at the date of sentencing.

Marriages of convenience

During the year seven matters were referred by the AFP and one by the Victoria Police involving the arrangement of marriages of convenience between Australian citizens and non-residents to enable the latter to enter or remain in Australia.

As a result, 18 defendants were charged with various offences against the *Crimes Act 1914*, the *Migration Act 1958* and the *Marriage Act 1961*. The charge most frequently laid was conspiracy to defeat the enforcement of the Migration Act. This reflects the fact that the organisers of sham marriages often do not commit specific criminal offences. The criminality of their conduct is found in the agreement between them and the parties that the parties will provide false information concerning their intentions to the Department of Immigration and Ethnic Affairs. The Department will normally not grant permanent resident status to a person who has married an Australian citizen unless it is satisfied that the parties intend to live together as man and wife.

In almost all cases it is alleged that the non-resident parties to the marriages paid the organiser for his or her services. These amounts paid ranged between $2 000 and $15 000. The Australian parties were paid between $2 000 and $5 000 for their services.

Of the matters completed to date:

Dawson and Mohammed : Each defendant was convicted of one count of conspiring to impose upon the Commonwealth. Dawson was sentenced to nine months imprisonment, six months of which were suspended pursuant to section 20 of the Crimes Act. Mohammed was sentenced to eight months imprisonment, six months of which were suspended pursuant to section 20.

Devi and Naidu : Devi was convicted of one count of conspiring to defeat the enforcement of the Migration Act and was sentenced to a one month suspended sentence. The charges against Naidu were withdrawn when he left Australia upon the expiration of his student visa.

Sen : Sen was convicted of one count of conspiring to defeat the enforcement of the Migration Act. He was released on a bond to be of good behaviour for 12 months and ordered to pay a pecuniary penalty of $2 000.

In matters still in progress, 10 defendants face the following charges:

Eight defendants face one or more charges of conspiring to defeat the enforcement of the Migration Act;

One defendant faces six conspiracy charges, one count of bigamy and one count of interfering with a witness; and

One defendant faces nine charges of conspiracy and three counts of interfering with a witness.

As noted in chapter 2, 19 people were given undertakings under section 9(6) of the DPP Act in these matters during the year. The need for indemnities reflects the fact that in many cases the only people in a position to give evidence about who arranged the relevant marriage and the intention of the parties to it are the parties themselves. As a general rule, the parties to a marriage of convenience can properly be regarded as lesser offenders than the person who organised the marriage.

Brisbane Office

Chan and Tai

On 20 January 1989 officers of the Australian Customs Services were carrying out surveillance duty of the Singapore vessel *Alam Tabah* at Mackay Sugar Wharf. They observed Chan and Tai walking towards the vessel. They were met by another Asian male on the wharf and after a short conversation the three men went aboard. Shortly before 7am, Chan and Tai were observed leaving the vessel and the officers noticed that each was carrying a bag. Chan and Tai were apprehended and were found to be in possession of a large quantity of heroin. Both were wearing especially designed undergarments containing packages of heroin.

The total weight of pure heroin was 10.3 kilograms or 6.8 times the commercial quantity. The estimated value was between $40 million and $90 million. This was the largest quantity of heroin ever detected being imported into Queensland.

In September 1989 Chan pleaded guilty to possessing a commercial quantity of heroin. Tai was convicted of the same offence after a trial lasting six days. Tai's defence was that he believed that he was carrying 'Chinese medicine' into Australia to avoid customs duty.

Initially, Chan was sentenced to 13 years imprisonment and Tai to 15 years imprisonment. The Crown appealed against sentence and the Court of Criminal Appeal increased the sentences to 18 years in respect of Chan and 20 years in respect of Tai. Chan has now lodged an application for special leave to appeal to the High Court.

Werenbeck-Ueding

On 7 June 1989 this defendant was arrested at Brisbane airport by Customs officers in possession of 3.6 kilograms of heroin. The drugs were in a suitcase with a false bottom. Werenbeck-Ueding was charged with importing a commercial quantity of heroin.

In March 1990 Werenbeck-Ueding pleaded not guilty in the Supreme Court at Brisbane. After a trial lasting one week, he was convicted and was subsequently sentenced to 13 years and four months imprisonment. The sentencing judge took into account that Werebeck-Ueding had assisted the authorities in relation to another matter and had already spent some time in custody.

Werenbeck-Ueding elected not to give evidence at his trial. He relied upon self-serving statements to the police to the effect that he was an unwitting participant in the importation. He claimed to have been given the suitcase containing the heroin by a transvestite at a hotel in Bangkok and denied knowing that there was heroin in the suitcase. Clearly the jury did not accept these claims.

Operation Concept

This matter involved allegations that a Brisbane firm of private investigators tapped telephones at the homes of three people in Melbourne. The prosecution of the principal

offenders was finalised this year. All three principals — private investigators Nelson and Collis and Melbourne businessman Roberts — pleaded guilty in the Brisbane District Court to charges under section 86 of the *Crimes Act 1914* of conspiring to place the interception devices on the telephones.

The person who actually placed the devices on the telephone lines, Neal, pleaded guilty in the Brisbane District Court earlier in the year to three counts under section 7(1)(c) of the *Telecommunications (Interception) Act 1979*.

It was alleged that in November 1987 Roberts engaged Nelson's firm to undertake surveillance and make other inquiries in respect of three people he suspected were involved in his dismissal from the board of directors of a fishing company. Nelson and Roberts agreed that telephone intercept devices should be placed on the telephones of the three people. Collis, who was an associate of Nelson, recruited Neal and Neal travelled to Melbourne with two private inquiry agents to place the devices.

Neal and Collis were both fined $2 000 for their part in the scheme. Nelson was fined $5 000 and Roberts was fined $10 000.

Wynne and Knudson

In August 1989 Wynne and Knudson pleaded guilty to 20 and 22 counts respectively of defrauding the Commonwealth.

The charges arose out of an investigation by the AFP into activities at the Southport office of the Department of Social Security. The police were called in following an internal file audit. It was alleged that Knudson, who worked for the Department as a determining officer, set up a number of false claims in bogus identities. She was aided and abetted by Wynne who set up bank accounts into which benefits were paid. The fraud involved an amount in excess of $160 000 and covered a period of three and a half years.

Both Wynne and Knudson were sentenced to four years imprisonment with a minimum term of two and a half years. In addition, a pecuniary penalty of $40 000 was ordered against each defendant pursuant to section 49(1) of the *Proceeds of Crime Act 1987*.

The case was significant as it involved the largest social security fraud ever uncovered in Queensland and also marked the first occasion upon which pecuniary penalties were imposed in Queensland under the Proceeds of Crime Act.

Bailey

This was the first prosecution under the *Taxation Administration Act 1953* relating to the unauthorised recording and use of tax file numbers.

Bailey was charged with two offences of using another person's tax file number and three offences of maintaining a record of another person's tax file number. He was also charged with 20 offences of imposition under section29B of the Crimes Act, which related to unemployment benefits that he received while employed at five different jobs.

While employed at the Australian Taxation Office (ATO), Bailey recorded the tax file number of three other taxpayers who had the same name as himself. On two occasions he used one of those tax file numbers in ATO employment declarations which he submitted to his employers.

Bailey pleaded guilty to the charges at the District Court at Brisbane on 27April 1990 and was sentenced to an effective term of nine months imprisonment.

Scuffy

On 6 January 1990 the 33.68 metre tug *Scuffy* left Yamba in NSW with a crew of six ostensibly bound for Papua New Guinea. In fact the tug went to Vanuatu, collected a barge as cargo and another crew member, and then commenced to travel to Singapore.

Scuffy was an Australian registered ship but had never been surveyed by the Department of Transport and Communications. The ship held a loadline certificate from Lloyd's Register of Shipping for a delivery voyage from Tasmania, where it had been purchased, to Singapore, where it was expected to change flags. That voyage was never undertaken and the certificate did not cover the voyage to PNG. In addition the master of the tug was not properly licensed to engage in international voyages.

Things went wrong when the engineer injured his leg on the voyage to Port Vila and developed septicaemia. The master decided to put in at Cairns but instead of landing at the Port of Cairns, and proceeding through customs, quarantine and immigration procedures as he should have done, he took the ship to Fitzroy Island, 15 kilometres east of the port limits. The ship flew no quarantine flag and all crew members were allowed to leave the ship to go to Fitzroy Island and Cairns for recreation. During social activities, 1 600 litres of fuel aboard the barge was given to a local small craft operator without payment of customs duty.

Marine surveyors and a district radio inspector inspected the ship in Cairns. They found that it was not adequately supplied with medical supplies in accordance with Marine Orders, there was no radio log book in the prescribed form, there was no radiotelephony certificate, there were deficiencies with lifesaving equipment, firefighting equipment, radio installations and radio navigational aids, there was no licence in respect of the transmitter, and there was no evidence that the compass had been swung since 1985.

The owner of the vessel was charged with six offences against the *Navigation Act 1912* and the master with eight offences against the Navigation Act and one against the *Radiocommunications Act 1983*. Proceedings were also brought under the *Customs Act 1901* and the *Quarantine Act 1908* against the owner, the master, and all crew members except the engineer.

Five crew members were fined a total of $2 700 after pleading guilty. The hearing of charges against the master and the owner took five days in the Cairns Magistrates Court at the end of which convictions were recorded on a total of 22 charges.

The prosecution failed in respect of charges brought relating to the ship's compass, as the offence provision relates only to ships that have neglected compasses after survey not to ships that have never been surveyed. The charges under the Customs Act against the owner also failed, as did the charge in respect of medical supplies. It could not be shown what state the supplies were in when the ship took to sea, although they were clearly inadequate when the ship was inspected one month later.

The owner was fined a total of $8 700 and the master was fined $2 040.

Ger, Barry and Friday

These matters all involved the misappropriation of funds by Australia Post agents in remote locations. In each case the defendant was the postal agent at an Aboriginal community and was in control of the finances at the agency for a short period of time. Each had good antecedents with no previous convictions.

Ger pleaded guilty in the District Court at Cairns to fraudulently misappropriating $25 900. The offences occurred between September 1988 and April 1989 and were discovered by an audit of the agency. Ger, a 29-year-old Aboriginal woman, was the postal agent at Bamaga, a remote community on the tip of Cape York. She had used the proceeds for some personal extravagances but had also been under pressure from her extended family to help the family's difficult financial circumstances. The method of fraud was relatively unsophisticated and no restitution was possible. Ger was sentenced to imprisonment for two years to be released after serving eight months upon entering into a good behaviour bond for the balance of the term.

Barry was a 23-year-old Aboriginal man who was postal agent at Palm Island from May 1989 to July 1989. He was tried on one count of fraudulently misappropriating $5 800 and seven counts of fraudulently omitting to make an entry in official records. The latter counts related to deficiencies in daily reports. He was found guilty after a three day trial and was placed on a good behaviour bond for five years.

Friday was a 28-year-old Aboriginal woman who succeeded Barry as the postal agent at Palm Island. She was charged with misappropriating $5 700 in the period from July 1989 to 21 September 1989. The offence was detected after she failed to make regular returns to the Townsville Post Office. An audit revealed that the accounting records were grossly deficient. Friday pleaded guilty at the Townsville District Court and was placed on a good behaviour bond for three years.

Another postal agent is presently awaiting committal proceedings for similar alleged offences at Doomadgee Aboriginal Community, in the Gulf of Carpentaria.

These cases highlight the difficulties faced by Australia Post in providing an adequate postal service to remote communities while maintaining proper financial controls. It is often difficult to maintain close financial controls over remote agencies given their isolation.

Green Island

This matter highlighted the difficulties in interpreting subordinate legislation under the *Great Barrier Reef Marine Park Act 1975*. The defendant, a public company, was prosecuted in the Cairns Magistrates Court for entering the Marine National Park 'B' Zone at Green Island near Cairns for a purpose for which a permit was required, while there was no permit in force.

At that time, it was an offence under the regulations to enter or use the zone for a purpose for which a permit was required under the relevant zoning plan, without holding such a permit. The plan provided that the zone could be used for the navigation and operation of vessels, but that a permit was required to provide tourist facilities or to establish a tourist program. Green Island is a popular recreation spot for tourists. The defendant set up a commercial enterprise based in Cairns which ran daily services to take visitors to and from the Island by boat.

The Great Barrier Reef Marine Park Authority had decided to limit the environmental impact of tourism upon Green Island by granting only two permits to tour operators to enter the area. The defendant was not one of these operators.

At the conclusion of a summary hearing, the magistrate found that the actions of the defendant did not come within the meaning of the terms 'provision of tourist facility' or 'establishment of tourist program'. He found that the activities fell within the term 'navigation and operation of vessels' and therefore that no permit was required.

This decision has far reaching consequences as similar operations along the whole of the Marine Park have so far been controlled by permit restrictions. An appeal has been lodged against the magistrate's decision and the regulations have been amended.

Perth Office

Gray

In October 1990 Gray became the eleventh person to be sentenced by an Australian court in respect of the importation of one tonne of cannabis resin into Australia in November 1985. Gray was arrested in the Netherlands on an extradition warrant in June 1988. After he unsuccessfully appealed against an extradition order he was extradited to Australia in May 1989. Gray subsequently pleaded guilty to charges relating to the importation.

The facts revealed that Gray was the trusted lieutenant of a Dutch drug trafficking ring who was sent to Australia to organise and supervise the importation, transportation and distribution of the cannabis resin. Reference is made in the 1986–87 Annual Report to the conviction of Munn, Epiha and Oxbey, others involved in this importation.

Gray's extradition from the Netherlands was the first under the new extradition treaty between Australia and the Netherlands. At sentence, after taking into account time

spent in custody, Gray's plea of guilty and some cooperation with the authorities, the Supreme Court sentenced Gray to nine years imprisonment without a minumum term.

This case reveals that highly placed international drug traffickers are not always beyond the reach of the law. With diligence and cooperation Australian law enforcement authorities can have worthwhile successes in combating drug trafficking, although as is commonly the case in these matters, apprehending and convicting the principals and financiers remains difficult.

Harriman

The 1987–88 Annual Report noted that Harriman, with others, had been convicted of serious heroin importation offences and sentenced to a lengthy term of imprisonment. An appeal by Harriman against conviction was subsequently dismissed by the WA Court of Criminal Appeal. Harriman then appealed to the High Court, arguing that evidence that he had been involved with a Crown witness in selling heroin prior to the commission of the importation offences, had been wrongly admitted.

In November 1989 the High Court dismissed Harriman's appeal. The High Court held that the relevant evidence was admissible because it was highly probative of the criminal character of Harriman's association with the Crown witness at the time when it was alleged that they acquired the heroin. The evidence helped rebut a suggestion that Harriman had travelled to Thailand for legitimate business purposes. The High Court's analysis of the admissibility of the evidence provides useful guidance on when evidence that a defendant has had prior involvement in the drug trade is admissible in the prosecution of narcotics offences.

O Dae Yang

On 27 September 1989, the Korean fishing vessel O *Dae Yang* was discovered by HMAS *Launceston* fishing within the Australian Fishing Zone surrounding the Cocos (Keeling) Islands. When it was called upon to allow a boarding party aboard the vessel cut its fishing lines and took flight. The vessel was apprehended after a hot pursuit extending over 70 nautical miles.

The Captain was charged under the *Fisheries Act 1952* and appeared before the Broome Court of Petty Sessions. He pleaded guilty and was placed on recognisances to be of good behaviour. The magistrate also ordered forfeiture of the vessel, the fishing equipment and the catch on board.

The owner of the vessel appealed to the WA Supreme Court against the forfeiture order. The appeal was dismissed in respect of the vessel and equipment but was allowed as regards the catch. The Court found that the magistrate erred by referring to a 'net' when the vessel had, in fact, been long-line fishing. Accordingly, the forfeiture order could not stand in respect of the catch. That aspect was remitted back to the magistrate for a fresh decision.

When the charges were laid, the boat, equipment and catch were released into the custody of the owner on the security of a bank guarantee of $1.3 million, which included provision for costs. Under the terms of the guarantee, the $1.3 million became payable to the Commonwealth if a forfeiture order was made but the owner failed to return the vessel.

Indonesian fishing vessels

During the last 12 months, 206 Indonesian fishermen from 21 vessels were prosecuted in the Broome Court of Petty Sessions for breaches of the *Continental Shelf (Living Natural Resources) Act 1968*, the *Fisheries Act 1952*, the *Quarantine Act 1908* or WA fisheries legislation. The offenders were predominantly fishing for trochus, a mollusc found on reefs and in shallow coastal waters.

A number of fishermen arrested in the last year had been caught and charged on previous occasions. At least one magistrate has expressed his frustration at the lack of imprisonment as a sentencing option in these matters when dealing with repeat offenders.

Lee, Tan and Ong

In December 1988 Customs officers at the Perth Mail Exchange intercepted a parcel which was found to contain a wooden clock, which in turn contained 2 035 grams of heroin of 78 per cent purity. The bulk of the heroin was removed by the AFP and replaced with glucodin. The clock was then repackaged for the purposes of a controlled delivery. Three people were each subsequently charged with being knowingly concerned in the importation of a commercial quantity of heroin, attempting to possess a commercial quantity of heroin, and possessing a traffickable quantity of heroin (being the small amount left in the clock after substitution).

At a trial in the WA Supreme Court in September 1989, the judge ruled that there was no evidence to show that the accused were aware how much heroin was originally in the clock, and that it could not therefore be shown that they intended to obtain possession of a commercial quantity. He directed the jury to acquit each defendant on the second count against them.

The jury returned verdicts of guilty with respect to Ong on the remaining two counts and with respect to Lee and Tan on the third counts against them. They were unable to agree on a verdict in relation to the first counts against Lee and Tan.

In Western Australia it is possible to appeal against an acquittal by direction. On 7 March 1990 the WA Court of Criminal Appeal allowed a Crown appeal and ordered a retrial. The Court found that an intent to possess a prohibited import can be inferred in a case like the present. The Court also confirmed that a charge of attempting to possess a prohibited import could lie notwithstanding that it was impossible for the defendants to complete the crime due to the actions of the authorities in arranging a substitution for the drugs.

The Director decided not to proceed with a retrial of Ong, who had already been convicted of a charge involving a commercial quantity of heroin. However, Lee and Tan were retried in the Supreme Court in April 1990. They were both found guilty of the attempt charge and the charge of being knowingly concerned in the importation.

Luders

This case excited considerable interest in the media owing to the fact that a journalist relied on his code of ethics to refuse to answer questions when called as a witness.

Luders, a clerk in the Australian Taxation Office, was convicted in the District Court of an offence against section 70(1) of the *Crimes Act 1914*. He was fined $6 000.

The prosecution case was that Luders made available to Barrass, a journalist with the *Sunday Times* newspaper, ATO printouts concerning the taxation affairs of two people, together with the key to the codes used in the printouts.

Barrass refused to disclose to police the identity of the person who had provided him with the printouts, claiming privilege under the code of ethics applicable to journalists. He maintained this claim of journalistic privilege at the committal hearing against Luders. Having ruled that the question had been properly asked, and that Barrass was a competent and compellable witness, the magistrate imprisoned Barrass for seven days in the face of his continued refusal to answer the question.

At Luders' trial Barrass again declined to answer a question directed at establishing the identity of the offender, despite a direction from the trial judge that he do so. Again Barrass claimed journalistic privilege and a conflict between what he viewed as his ethical restraints and the law.

Given that identity was the only live issue at the trial, the evidence of Barrass, if accepted, would have established the guilt or innocence of Luders. The other evidence against Luders was circumstantial, and indeed Barrass was the only person in a position to give direct evidence as to the identity of the offender. Despite Barrass' refusal to answer the crucial question, Luders was convicted.

Following Luders' conviction, Barrass was dealt with by Kennedy J for contempt in respect of his refusal to answer the question. It was argued on Barrass' behalf that, although journalistic privilege was not recognised by law in Australia, his refusal had not been contemptuous as the answer to the subject question had been neither relevant nor necessary to the trial process. This argument was not accepted.

Barrass was fined $10 000 for his contempt.

Adelaide Office

Simeone

This appears to have been the first prosecution in Australia under the *Insurance (Agents and Brokers) Act 1984*. The essence of the charge was that an insurance broker wilfully

and with intent to deceive wrote on an insurance proposal form matter which was false in a material particular.

The court convicted Simeone after it found that he had forged the signature of a client on a proposal form and then submitted the form to an insurance company. The defendant's motive appears to have been to save face with the client when an earlier proposal form, completed and signed by the client, could not be placed with another insurance company. The court fined Simeone $300. Simeone appealed to the Supreme Court, which upheld the conviction and fine.

Tax fraud

The following cases, which are still in progress, illustrate the type of work being undertaken in relation to alleged tax fraud.

The first matter arose out of a joint task force investigation by the National Crime Authority and the Australian Taxation Office into the unexplained increase in wealth of an Adelaide family.

Following the investigation, ATO issued amended assessments against three brothers and their spouses on the basis that the assets position of the family was inconsistent with the respective declared incomes. The amended assessments were calculated on an asset betterment basis.

Charges have been laid alleging that the members of the family conspired together, and with their accountant, to defraud the Commissioner of Taxation of approximately $2.33 million.

The second matter also involves an alleged multi-million dollar taxation fraud.

On 14 February 1990 the AFP, assisted by officers of the ATO, executed search warrants pursuant to section 10 of the *Crimes Act 1914* and section 71 of the *Proceeds of Crime Act 1987* on a number of premises in South Australia and elsewhere. The suspects instituted proceedings in the Federal Court arguing that the search warrants were invalid. They obtained an interlocutory injunction preventing the AFP and ATO from examining the documents which had been seized. The court upheld the validity of the warrant under the Crimes Act but ruled that the warrants under the Proceeds of Crime Act were invalid.

The suspects have lodged an appeal against the judgment and the DPP has cross-appealed. In the interim, the AFP are not permitted access to any of the documents seized during the raids and as a result have not been able to commence their investigation.

Case report

In this matter the defendant was charged with 12 counts of imposition on the Commonwealth under section 29B of the *Crimes Act 1914*. At the relevant time she was employed as a hospital assistant by the Department of Veterans' Affairs. In 1987 and

1988 she took considerable amounts of paid leave, including sick, study and special leave. The first 11 charges alleged that she falsely represented that she was unable to perform paid work when applying for leave. It was alleged that she had in fact worked as an interpreter during periods of leave.

The twelfth count alleged that the defendant had made a false representation on a workers' compensation review form when she stated that she had only been employed by one interpreting service during a period while she was in receipt of compensation. In fact she had worked for four interpreting agencies. The twelfth count was severed before the charges went to the jury and the Director decided not to continue a separate prosecution on that count.

There was no evidence that the defendant had expressly stated, either orally or in writing, that she was unable to work when she applied for leave. The Crown relied upon inferences to be drawn from the leave application forms, the defendant's conduct and department procedures.

A no-case submission was successful on nine of the 11 counts. The two remaining counts went to the jury but the defendant was acquitted. The case highlights the difficulties inherent in trying to prove an offence against section 29B beyond reasonable doubt in the absence of direct evidence of a false statement by the defendant.

Mullins, Venn and Maidment

This case concerns a scheme which involved the purported gifting of redeemable preference shares to a charity and the subsequent claiming of taxation deductions. It was alleged that the gifts were a sham. Charges were laid against four people, being the taxpayer, an accountant, an official of the charity and the solicitor who devised the scheme.

The matter was originally listed for trial on 5 September 1988. However it did not proceed as an application was brought the week before the trial to stay the prosecution as an abuse of process. Argument ensued for 12 weeks. The application was refused on 31 January 1989.

Before the ruling was delivered, the taxpayer pleaded guilty to two counts of imposition under section 29B of the *Crimes Act 1914* and the accountant pleaded guilty to two counts of aiding and abetting the imposition. Both were fined. A *nolle prosequi* was entered against the official of the charity.

The trial of the remaining defendant was adjourned on several occasions on the basis that the defendant was unfit to instruct his legal advisers. The trial was eventually listed to commence on 18 June 1990. Shortly before the hearing a further stay application was brought. That application was refused on 11 July 1990. On 26 July the defendant pleaded guilty to two charges against section 5 and section 29B of the Crimes Act and was fined.

DLS Hobart

Pawsey

This case was reported in the 1988–89 Annual Report. At that stage the Tasmanian Court of the Criminal Appeal had upheld an appeal against a directed acquittal and had ordered that Dr Pawsey be retried. No decision had been made on whether there should be a retrial. In the course of the year the Director decided that there should not be a retrial.

The case involved an allegation that Dr Pawsey claimed assigned Medicare benefits in respect of post mortem examinations of former clients. In order to obtain the benefits, Dr Pawsey filled in assignment forms in which he claimed that he had rendered attendances on the former patients. He signed the assignment forms on their behalf, on the basis that they were unable to do so.

The trial judge directed the jury to acquit the defendant on the basis that nothing in the Health Insurance Act or regulations provides that an attendance can only be rendered on a living patient. The Court of Criminal Appeal did not agree and overruled the trial judge's decision.

Powell

In this matter a husband and wife were both charged under section 269(a) of the *Bankruptcy Act 1966* of obtaining credit in excess of $500 without disclosing their respective bankruptcies.

The matters were tried together at Launceston and the trial lasted for three weeks. Mr Powell was convicted on three counts under section 269(a) and was released on a suspended sentence. Mrs Powell was convicted on one count and released on a good behaviour bond.

DLS Darwin

Pay and Ralston

The defendants in this matter were charged under section 61(2A) of the *Trade Practices Act 1974* with promoting a pyramid selling scheme known as the 'Orient Express'. Pay was the chief promoter of the scheme and Ralston his assistant.

Under the scheme people were invited to a 'party' at which they were invited to become passengers on an imaginary train. The train was, in fact, a pyramid with eight passengers, four stewards, two conductors and an engineer at the apex. People could join the train for $125. They were then expected to encourage others to join. When the train was complete the engineer would collect $1 000 and leave. The pyramid would split in two and everyone would move up a level.

Pay was charged with four counts under section 61(2A). He left his home in Brisbane after being served with the summons and has not been seen since. On 19 February 1990

he was convicted in his absence in the Federal Court and fined $2 000 on each charge.

Ralston pleaded guilty to three counts of promoting the scheme. His role was less than that of Pay's and he was fined $100 in respect of each offence.

Indonesian fishing vessels

Mention was made last year of the invasion of the Australian Fishing Zone by deep water, long–line, Indonesian fishing boats. During the year a further 10 vessels were brought into Darwin.

In each case the master of the vessel was prosecuted under the *Fisheries Act 1952*. Each defendant was convicted and released on a good behaviour bond. In each case the vessel, its gear and catch were forfeited to the Commonwealth.

The vessels apprehended off the Northern Territory coast fish for shark, specifically the fins which attract up to $US95 per dry kilogram on the Asian market. They are different from the vessels being apprehended off Western Australia, which collect trochus shell. It is believed that Indonesian shark fishermen are entering Australian waters because of overfishing of their own waters by Taiwanese operators using gill net and pair trawl techniques.

Sanders and Naray

In 1988 Sanders, Naray and a female campanion sailed the vessel *Heti Senang* from Thailand to Australia. Instead of sailing to Darwin, which was the closest port of entry, they stopped at Cape Hotham, about 100 kilometres northeast of Darwin, where Sanders and Naray went ashore. While they were ashore, the vessel dragged its anchor and drifted to Melville Island, where it beached itself. Fortunately, the defendants' companion was able to raise the alarm and Sanders and Naray were rescued by a Customs launch.

Sanders and Naray were charged with offences under the *Quarantine Act 1908* of allowing a vessel to enter a place other than a declared port and leaving a vessel that was subject to quarantine.

On 8 September 1988 AFP and Customs officers searched the houses of both defendants under warrant in relation to other matters. The material seized included copies of the defendants' statements in the present matter and of an advice from counsel. The defendants sought a stay of prosecution on the basis that there had been an abuse of the process of the court.

The application failed before the magistrate. The defendants then sought review before the Federal Court. Those proceedings were also unsuccessful.

On 28 November 1989 the defendants pleaded guilty to the charges under the Quarantine Act. Sanders was fined a total of $4 000 and ordered to pay $5 800 reparation to the Commonwealth to cover the cost of salvaging the *Hati Senang*. Naray was fined a total of $300.

Bottom-of-the-harbour prosecutions

At the time of the last report, 11 defendants were still before the courts charged in respect of two separate matters, one in Sydney and one in Melbourne.

During the course of the year, the Melbourne matter, involving six defendants, was finalised. The Sydney matter is still in progress, although it has been decided not to proceed against one of the defendants. The trial of the remaining four defendants should take place in 1991.

The outcome of proceedings in the matter in Melbourne was as follows:

Neil Forsyth : This defendant was given a separate trial by order of the Supreme Court. He was acquitted by direction of the trial judge on 19 February 1990 at the close of the Crown case.

John Brown, Stephen Connell, Leslie Lithgow and Ian Swansson : The trial of these defendants commenced in April 1990. On 15 June 1990, the jury returned verdicts of not guilty on the charges against them.

Geoffrey Manners : This defendant left Australia before charges were laid. Extradition proceedings were commenced against him in the United Kingdom. They were discontinued on 25 June 1990.

War Crimes prosecution

Charges have been laid in South Australia against one person for alleged offences against the *War Crimes Act 1945*, as amended in 1988.

On 25 January 1990 Ivan Polyukhovich was charged with nine counts of murder under section 9 of the Act. The offences are alleged to have been committed in the Ukraine between 1941 and 1943.

Committal proceedings were listed to commence in the Adelaide Magistrate's Court on 30 July 1990 but were delayed because the defendant was shot and seriously injured on 29 July 1990. At one stage it was proposed that the evidence of some witnesses would be taken on commission in the Ukraine, Israel and the USA. However, that will not now occur.

The defendant has commenced proceedings in the High Court challenging the constitutional validity of the 1988 amendments.

International extradition and mutual assistance in criminal matters

Section 6(k) of the DPP Act gives the Director the function of appearing in proceedings under the *Extradition Act 1988* and the *Mutual Assistance in Criminal Matters Act 1987*.

In extradition and mutual assistance matters the DPP appears on behalf of the overseas country essentially on the instructions of the Attorney-General's Department. The DPP and the Attorney-General's Department continue to have a close working relationship with regular liason meetings and an annual conference.

In the last year the DPP handled 13 extradition proceedings and nine mutual assistance requests which proceeded to finality. Following are some of the significant cases handled by the Office during the year.

Extradition

Zoeller

This matter was reported last year. At that stage an appeal by the defendant to the Federal Court was pending.

On 21 September 1989 the Federal Court disallowed Zoeller's appeal. Zoeller immediately appealed to the Full Federal Court. Those proceedings were heard in November 1989. On 22 December 1989 the Court dismissed the appeal.

Zoeller then commenced proceedings in the High Court. He also made an application for bail which was refused. Zoeller subsequently discontinued the High Court proceedings and was ultimately surrendered to the Federal Republic of Germany in March 1990.

The two extradition proceedings in this matter took two years and nine months to complete and Zoeller spent over 400 days in custody.

Winkler

Winkler was apprehended in Sydney at the request of the USA in respect of 30 alleged offences of fraud by use of interstate telegraphic fund transfer. Winkler was released on bail shortly after his arrest and he remained on bail until June 1990.

The extradition proceedings were delayed when the magistrate ruled that the US arrest warrant did not comply with the requirements of the treaty between the USA and Australia. The treaty requires that warrants be signed by a judge or judicial officer, whereas the warrant in this matter had been signed by a clerk of the issuing court.

A second warrant was issued in proper form but outside the time limit for the provision of materials under the treaty.

On 10 February 1989 the magistrate found that Winkler was subject to extradition on all charges. Winkler appealed to the Federal Court. On 16 June 1989 the court found that, notwithstanding the fact that the second warrant was issued outside the time provided in the treaty, the magistrate had jurisdiction to conduct the extradition proceedings. However, the court also found that the evidence produced in support of all but one of the charges was deficient.

Winkler then appealed to the Full Federal Court and the USA cross-appealed. Those proceedings were heard in February and March 1990. On 18 June 1990 the Full Court confirmed the magistrate's orders in respect of all charges but two.

As a result of the Full Court's decision Winkler was again remanded in custody. Winkler initiated proceedings in the High Court seeking special leave to appeal. On 6 August 1990 the High Court refused special leave. At the time of writing Winkler is still in custody awaiting the issue of a surrender warrant by the Attorney-General.

The proceedings in this matter have taken almost three years.

Haddad

Haddad was apprehended in Sydney in September 1988 at the request of the Federal Republic of Germany.

In April 1983 Haddad was convicted and sentenced by a court in Germany in respect of offences committed in that country. He was sentenced to imprisonment for one year and six months but the sentence was suspended and he was placed on probation for a period of two years. The probation order was revoked in May 1986 by a German court on the basis that Haddad had left the country without the consent of his probation officer. As a consequence, Haddad remained liable to serve a period of one year and 79 days in prison.

On 11 May 1989 a magistrate ordered that Haddad be committed to prison to await surrender. Haddad then appealed to the Federal Court. On 16 August 1988 the court found that Haddad was not eligible for surrender by virtue of section 7(e) of the Extradition Act as he had undergone the punishment provided by German law for the offences.

The court also held that the documents containing an English translation of the German documents forwarded in support of the request were inadmissible as they did not comply with section 19(7) of the Extradition Act. As the magistrate had had no other material before her to enable her to understand the German documents, the court held that she had not been in a position to make any findings in the matter.

As a result of that decision Haddad was released from custody. The Federal Republic of Germany appealed against the decision. On 12 February 1990 the Full Federal Court dismissed the appeal on the basis that the documents sought to be tendered in support of the extradition application did not comply with the requirements of the Extradition Act. The court did not make any findings as to the meaning of section 7(e) of the Act.

Unkel

Unkel was arrested in Mooloolaba in August 1989 at the request of the USA. Unkel, who is an Australian citizen, is alleged to have been involved in the importation of over 5 000 kilograms of marijuana into the United States. It is alleged that Unkel and several other people sailed a vessel from the Philippines to California with the marijuana on

board. The vessel was intercepted by the United States Coast Guard and the crew abandoned ship. Unkel then travelled to Mexico and on to Australia.

In December 1989 a magistrate ruled that Unkel was eligible for surrender to the USA in respect of all the charges against him.

Unkel subsequently appealed to the Federal Court. On 9 April 1990, the court confirmed the magistrate's order.

Unkel has now appealed to the Full Federal Court.

Case Report

A person was arrested by Italian authorities at the request of the Attorney-General's Department on 10 June 1990. It is alleged that he left Australia with his two children in contravention of a Family Court order restraining him from removing the children from the care of his former wife. It was alleged that this conduct constituted an offence against section 70A of the *Family Law Act 1974*.

After the defendant was arrested, the children were returned to their mother in Australia. The Italian authorities then released the defendant. They advised that, as the children had been returned, they did not regard the alleged offence as extraditable. In any event, they considered that they should exercise their discretion against extraditing the defendant.

Hong Kong request

In May 1989 the Sydney Office requested the extradition of three people residing in Hong Kong in respect offences arising from the alleged importation of 50 kilograms of heroin into Australia earlier that year.

Two of the people involved consented to their surrender. The third person has challenged the extradition proceedings in the Privy Council.

In May 1990 the two people extradited from Hong Kong were committed for trial in NSW. They will stand trial in Sydney together with six other defendants who were committed for trial in October 1989.

Mutual assistance

Sydney

In the course of the year the Sydney Office dealt with three requests by overseas countries to take evidence from witnesses in Australia.

There were also three requests by the DPP for mutual assistance from foreign countries in respect of proceedings being conducted in Sydney. The relevant matters were :

- A request to the USA to make available a person in prison in that country to give evidence in committal proceedings in Australia. This person was brought to Australia

in October 1989 and gave evidence in committal proceedings relating to the alleged importation into Australia of a large quantity of heroin;

- A request to Vanuatu to make available a person in prison in that country to give evidence in committal proceedings in Australia relating to the importation of another large quantity of heroin. Again this person was brought to Australia and gave evidence at the committal; and
- A request to Canada for search and seizure of material in that country that was relevant to committal proceedings in Australia in respect of another drug importation. The evidence was brought to Australia by the Canadian authorities and was tendered in committal proceedings in April 1990.

War crimes

In the course of the year, the Melbourne Office provided assistance to the Federal Republic of Germany in relation to a war crimes trial in that country. The German authorities requested that evidence be taken in relation to the trial of Ernst Koenig, who was charged with murdering eight people and assisting in the killing of an unspecified number of others by escorting them to the gas chamber at the Auschwitz-Birkenau Concentration Camp. At his trial Koenig raised an alibi, namely that at the time the offences were alleged to have been committed he was not at the Auschwitz-Birkenau Camp but rather at another camp.

In January 1990 a witness living in Melbourne gave evidence before a magistrate in relation to the matter. The hearing was attended by the German judges hearing the charges, legal representatives of the defendant and an officer of the German Public Prosecutor.

Cheese exports

The Melbourne and Canberra Offices provided assistance to the Netherlands in a matter which concerned the export of cheese from Australia.

The cheese was imported into the Netherlands and subsequently exported to the USA, as cheese from the European Economic Community. The cheese was allegedly deducted from the EEC quota on the basis of forged invoices.

Evidence was taken in Australia from an employee of an Australian manufacturer as to the type, name and country of origin of cheese which left Australia, the destination of the cheese and the price of the cheese. Evidence was also taken on the question of whether the Australian manufacturer possessed an exemption to sell cheese at prices lower than they should be according to the General Agreement on Tariffs and Trade.

Chapter 4
Prosecutions in the ACT

The work of the Canberra Office has continued to increase in both volume and complexity. The advent of self-government in the ACT has seen an increase in prosecutions for regulatory offences, and indeed the number of matters dealt with in the Magistrates Court has increased significantly. This increase, together with the appointment of two more magistrates, has had a consequential effect on staff resources.

During the year the report of the working party for the implementation of the second-tier wage agreement was accepted by all parties after some amendment had been made. This has resulted in the reclassification of various positions and the establishment of separate units to conduct the preparation and presentation of criminal matters. While this process is not complete, and it is too early to gauge its ramifications and success entirely, it is expected to result in a greater degree of responsibility and work satisfaction for the non-legal staff.

Set out at the end of this chapter are seven tables which provide statistical information on those matters that were dealt with summarily in the ACT, excluding pleas by post and parking prosecutions.

Committals

There was a total of 93 committal orders made during the year under review, comprising 53 committals for trial and 40 committals for sentence. This compares with a total of 129 committal orders made in the previous year. This downturn in committals would appear to be the result of a greater preparedness on the part of defendants to elect to have certain indictable matters dealt with summarily.

Prosecutions on indictment

In the Supreme Court there were 35 trials (45 in 1988–89) involving 33 defendants (55 in 1988–89). Of this number 11 were acquitted (14 in 1988–89) on all counts in the indictment with 22 being convicted (40 in 1988–89) on all or some of the counts in the indictment. There were hung juries in three matters. There were two joint trials and two retrials. The figures represent a conviction rate of approximately 67 per cent in defended trials which, as observed in last year's annual report, is comparable with State DPPs which have an indictable practice similar to that of the Canberra Office.

Notwithstanding the downturn in the number of trials during the year under review the number of days occupied by the trial of indictable offences actually increased from 103 days during 1988–89 to 135 in this financial year.

Fifty-four people were dealt with by way of a plea of guilty during the year under review.

The principal counts on indictments presented in the Supreme Court in trial matters were in the the following categories of offences:

Sexual intercourse without consent	4
Act of indecency without consent	1
Act of indecency upon a young person	1
Incest	2
Sexual intercourse with young person	2
Murder	2
Shooting with intent to murder	1
Malicious wounding with intent to do grievous bodily harm	2
Maliciously inflict grievous bodily harm with intent	1
Suffocate with intent to murder	1
Assault occasioning actual bodily harm	2
Armed robbery	1
Knowingly concerned with armed robbery	1
Aid and abet robbery	1

Receiving Commonwealth property	1
Larceny	1
Conspiracy to defraud	1
Dishonestly use computer	1
Arson	1
Conspiracy to supply heroin	3
Possess heroin for supply	2
Kidnapping	1
Hinder police	1
Conspiracy to defraud Commonwealth	1

Of these matters only two were briefed to counsel from the private Bar. All other trials were conducted by DPP lawyers.

Federal Court appeals

During the past year 14 matters were heard in the Federal Court involving appeals following conviction in the Supreme Court of the ACT. All appeals were brought against conviction or sentence or both. No appeals against sentence were instituted by the Office.

Of the six appeals instituted against conviction, only one was allowed and in that case the Court ordered a new trial. The Crown had consented to this appeal being allowed when it became known that inadmissible material had inadvertently been handed to the jury during the course of the trial. The accused was convicted on a retrial and has since instituted an appeal against that conviction.

The remaining eight appeals were against the severity of sentences and all were dismissed.

In the last annual report mention was made that the Director had instituted appeals against inadequacy of sentences imposed upon Neil, Trevor and Ian Kelly. The Federal Court subsequently allowed those appeals and increased the penalties as follows:

Neil Kelly — from five years imprisonment, with a non-parole period of three years to seven years imprisonment with a non-parole period of four years;

Trevor Kelly — from three years imprisonment, with a non-parole period of 20 months to five years imprisonment with a non-parole period of four years.

Ian Kelly — from twelve months imprisonment, with a non-parole period of nine months, to two years imprisonment with a non-parole period of 12 months.

Supreme Court appeals

In the past year 50 appeals from decisions or sentences of the Magistrates Court were determined by the Supreme Court. Of these 26 were against conviction only, with 14 being against both conviction and sentence and 10 against sentence only.

Seven appeals against conviction were upheld as were four of those against severity. Two further matters were dismissed for want of prosecution. The remainder were dismissed.

This Office instituted an order to review against a decision of a magistrate to dismiss a charge of unlawful possession. This application was successful and the matter was remitted to the Magistrates Court for rehearing before another magistrate. The defendant was convicted.

NSW District Court

As has been mentioned in previous reports, by arrangement with the Sydney Office the Canberra Office conducts certain matters in both the NSW Local and District Courts. During the past year the Canberra Office had the carriage of responding to 13 appeals against sentence and one appeal against both conviction and sentence. Of these, three of the appeals against sentence were upheld with the appeal against conviction being dismissed.

Magistrates Court practice

The Magistrates Court practice of the Office continued to increase in both volume and complexity in 1989–90. Since 30 April 1990, when two further full-time magistrates were appointed, there has been a considerable increase in the number of court sitting days, rising from an average of 36 sitting days per month to an average of 62.

A total of 63 195 charges were preferred in the Magistrates Court (including the Childrens Court) during the year, compared with 54 386 for last year. This represents a 16 per cent increase on the 1988–89 figure and nearly a 60 per cent increase on the 1987–88 figure. Of that number parking prosecutions accounted for 25 144 charges, a decrease on the figure for the 1988–89 year of 27 802. Parking prosecutions yielded $937 096 in fines and $386 700 in costs (compared with figures of $1 140 418 and $424 100 respectively for the 1988–89 year). The figure includes 7 448 pleas by post in respect of traffic matters.

Excluding parking prosecutions and pleas by post 9 571 defendants were dealt with for 12 526 offences, excluding back up charges. Not guilty pleas were entered in respect of 3 107 of those charges, an increase of 15 per cent on the 1988–89 figure.

There were 86 inquests during the year in which officers from the Canberra Office appeared to assist the coroner. This figure includes inquiries into 38 suicides and 39 deaths from motor vehicle collisions.

Social security

Some 127 social security prosecutions were completed by the Canberra Office this year. This represented 851 charges under the *Social Security Act 1947* and 285 charges under the *Crimes Act 1914*. Pleas of guilty were entered in respect of 843 of the charges under the Social Security Act and 279 of the charges under the Crimes Act. All defendants

who pleaded not guilty to charges under the Social Security Act were convicted. There were two acquittals in respect of the six pleas of not guilty to charges under the *Crimes Act 1914*. The charges laid involved a total of $729 038 defrauded from the Commonwealth. These figures represent a slight increase over the 1988–89 year.

As at 30 June 1990 there were 54 social security matters where prosecutions were outstanding. A further 29 matters were awaiting consideration whether proceedings should be instituted.

The Office prosecutes social security matters both in the ACT and the south eastern region of NSW. As indicated in last year's report, sentencing in respect of NSW matters continues to be quite varied, especially as there is still no agreement with NSW which would permit community service orders to be imposed.

Two social security matters are worthy of mention. The first concerns the prosecution of a defendant named Daly who was charged with five offences of imposition contrary to section 29B of the Crimes Act in respect of overpayments totalling $32 007. She had failed to declare income from employment as well as receiving a defence force pension while on a widows' pension. She was convicted following a plea of not guilty and given a suspended sentence. She was further ordered to perform 208 hours of community service within 12 months and fined $500.

The second matter concerned a defendant named Morris who was charged with 142 offences of imposition. Most of the charges related to Morris' receipt of an invalidity pension in another name while he was receiving unemployment benefits in the name of Morris, his failure to declare income from employment in applications for unemployment benefits, and his receipt of unemployment benefits in another false name. In the latter case the offences were committed over a three and a half year period. He was also charged in respect of his failure to declare certain income in connection with applications for a rebate of rent. He pleaded guilty and was sentenced to a total of five years imprisonment with a non-parole period of 42 months. However, this was reduced on appeal to an effective term of four years imprisonment with a non-parole period of two years.

Municipal prosecutions

The advent of self-government in the ACT has seen the creation of investigation units within the ACT Administration. This has resulted in a continuous flow of matters to the Canberra Office dealing with the whole spectrum of municipal offences, including prosecutions under the Liquor Act in respect of underage drinking and prosecutions under the Dog Control Act.

It is expected that prosecutions for municipal offences will increase as investigative units become more proficient in gathering evidence and compiling briefs. The Canberra Office has assisted these units with advice on evidence, the preparation of summonses and the preparation of cases for prosecution generally.

Commonwealth statutory authorities such as Telecom and the Australian Postal Corporation continue to provide the Canberra Office with a large volume of work, much of it in the surrounding areas of NSW. As has been noted in previous reports, prosecutions conducted by the Canberra Office in south eastern NSW rely to a considerable extent on the assistance provided by New South Wales Police prosecutors who appear on the DPP's behalf at the mention of certain matters and conduct some pleas on behalf of the DPP.

Fraud Branch

The Fraud Branch deals with major fraud matters and other complex prosecutions within the Canberra region. The increase in this type of prosecution work in the Canberra region is largely due to the implementation of fraud control initiatives within the Australian Public Service. This has seen the creation of a number of fraud investigation units within various departments including the Department of Defence and the Department of Administrative Services.

An important part of the work of the branch is to maintain close liaison with departments which have fraud investigation units as well as with the AFP National Criminal Investigation Bureau and the ACT Fraud Squad.

A number of major matters are currently being dealt with within the branch. One major matter has already been seen through committal. This involves alleged frauds on the Department of Administrative Services arising from contracts to sell ex-RAAF Hercules aircraft and ex-RAN Grumman Tracker aircraft, and an alleged fraud on the Australian International Development Assistance Bureau arising out of a contract to refurbish an ex-RAAF Hercules aircraft for famine relief work in Ethiopia.

Winchester Inquest

In the evening of 10 January 1989, Assistant Commissioner Colin Winchester of the AFP was shot and killed in the driveway of his home at Deakin in Canberra. At the time of his death, Mr Winchester was the officer in charge of the ACT Region of the AFP.

On 15 May 1990, the Chief Magistrate of the ACT Magistrates Court formally opened an inquest into the manner and cause of the death of Mr Winchester under section 11 of the *Coroners Act 1956*. No person has as yet been charged or arrested in connection with the killing of Mr Winchester.

When the inquest opened, the then First Deputy Director, John Dee QC, and Ian Bermingham from Head Office were granted leave to appear as counsel to assist the Coroner. Paul Coghlan from the Melbourne Bar was also granted leave to appear to assist the Coroner by the time the Coroner commenced to take evidence on 21 August 1989. With the appointment of John Dee to the Victorian County Court in June 1990, John Winneke QC from the Melbourne Bar was briefed to appear as senior counsel assisting the Coroner.

A number of persons and organisations have obtained leave to appear and be represented at the inquest, including Mrs Winchester and family, the Commissioners of the AFP and the NSW Police, the NCA, individual former and currently serving AFP and NSW Police officers and Mr David Eastman, a person who has been put forward as a suspect for the killing of Mr Winchester.

The inquest has sat for 90 days and taken evidence from 180 persons. A large amount of documentary evidence has also been received.

In accordance with section 33 of the Coroners Act, at the conclusion of the inquest the Coroner is obliged to record his findings as to :

(a) the identity of the deceased person;

(b) when and where the deceased person came to his death; and

(c) the manner and cause of the death of the deceased person.

While evidence has been led as to the identity of the deceased, as to where and when he was killed and in general as to the manner and cause of his death, the most difficult issue facing the Coroner is the determination of the identity of the person or persons responsible for the death of Mr Winchester. A complete finding as to the manner and cause of death can only be made when this has been established. A large part of the evidence led to date has been directed at assisting the Coroner to determine whether particular person or persons may have had a motive to kill Mr Winchester.

Case reports

Set out below are descriptions of some of the more significant or otherwise interesting cases dealt with by the Canberra Office during the year.

McDermott

McDermott was a clerk in the Australian Fisheries Service (AFS). While he was so employed he became a 'consultant' to a large fishing company without the knowledge of the AFS. The Crown case was that the managing director of that company and the defendant entered into a relationship pursuant to which the defendant provided confidential information and advice based on inside information. In return he received payments totalling approximately $20 000 and a promise of future employment. The high-water mark of the corruption came when the defendant dishonestly transferred 158 boat units with a commercial value approaching $500 000 into the name of the managing director. Boat units are an administrative device used to control the quantity of fish that may be taken in a particular area. They are transferable and have a commercial value.

McDermott was convicted on charges of corruption, accepting secret commissions and making a false entry in a record constituted by a computer database. He was sentenced to four years imprisonment with a non-parole period of 18 months.

The defendant appealed against conviction and sentence. Although the appeal against conviction was dismissed, the appeal against sentence was upheld in part. The sentence was reduced to three years imprisonment with a non-parole period of 12 months to reflect the fact that McDermott had been ordered to pay a pecuniary penalty under the *Proceeds of Crime Act 1987*. The Federal Court considered that that was a matter that should have been taken into account at sentence.

Case report

Last year's report gave details of proceedings against Carruthers, who was convicted on three counts of accepting a bribe as a Commonwealth officer. During the course of the year charges against Carruthers' alleged co-offender were finalised.

The defendant in this matter was a concrete works contractor with the Commonwealth who was charged with conspiring with Carruthers to defraud the Commonwealth. Carruthers was the government officer who allocated and supervised work under the contract and prepared and approved payment claim forms. It was alleged that there was a discrepancy between the amount of concrete for which the contractor was paid and the amount actually used. It was alleged that the defendant improperly received approximately $550 000 over a 13 month period. The defendant claimed that he had had no knowledge that the claim forms were incorrect because he had not checked them. He said he had relied on Carruthers to prepare them correctly.

The jury acquitted the defendant.

Davidovic, Tebbutt, Diamond, Cox and Radecic

These five people were arrested in February and March 1988 as a result of the police investigation of a heroin dealing operation in Canberra. The operation was run from the home of Tebbutt and Diamond, who were husband and wife.

The police installed a listening device in the house pursuant to a warrant and conducted surveillance. It emerged that Tebbutt and Diamond were supplying heroin to a large number of addicts. Tebbutt and Diamond were also users of heroin themselves.

Davidovic had been the supplier to Tebbutt and Diamond. When supplies were running low, Tebbutt or Diamond would contact Davidovic and he would supply heroin to them.

At one stage Tebbutt admitted himself to a detoxification unit to try to reduce his heroin use. While he was in the unit, Radecic stayed at the house and had taken part in the distribution of heroin.

Following Davidovic's arrest in possession of heroin while en route to make a delivery to Diamond, Cox became the supplier of heroin to Tebbutt and Diamond. After continued surveillance and monitoring of the listening device, Tebbutt, Diamond, Cox and Radecic were arrested and charged with conspiring to supply heroin.

Tebbutt and Diamond both pleaded guilty, with Tebbutt being sentenced to seven years imprisonment, with a non-parole period of four years. Diamond was sentenced to four

years imprisonment, but ordered to be released upon entering into a recognisance after serving one year. Radecic also pleaded guilty to 20 counts of supplying heroin and was sentenced to four years imprisonment with a non-parole period of two years.

Both Cox and Davidovic were convicted by a jury. Cox was sentenced to five years imprisonment with a non-parole period of two years. Davidovic was sentenced to nine years imprisonment with a non-parole period of five years. Davidovic successfully appealed to the Federal Court against his conviction, but he was convicted at his retrial and sentenced to seven years imprisonment with a non-parole period of five years. Davidovic has since lodged another appeal which is still outstanding.

Case report

The defendant in this matter was a competitive pistol shooter who had been using the facilities at the Australian Institute of Sport. On 26 July 1988 she went to the rooms of a sports psychologist at the Institute and, following an argument over the results of a psychological profile, produced a .22 calibre pistol and aimed it at the psychologist. She then fired a number of shots through the window, as well as one shot into the chair on which the psychologist was sitting. She kept the psychologist captive for four hours, during which time she constantly aimed the pistol at him, and threatened to shoot him. On one occasion, a doctor who worked at the Institute came to the door of the room, and the defendant fired a shot at him.

Following the arrival of the police at the scene the defendant eventually agreed to talk to a police negotiator. She agreed to release the psychologist and she was taken into police custody. She was charged with a number of offences and was subsequently indicted for attempted murder, malicious discharge of a firearm with intent to cause grievous bodily harm, kidnapping and assault.

At her trial a number of psychiatrists gave evidence about the defendant's mental state at the time of the offences, although the issue of insanity was not raised by either the defence or the trial judge. Following a four day trial the defendant was acquitted on all counts.

Case report

This matter was the subject of a note in last year's report. At that stage the prosecution had appealed against a ruling by the magistrate that there was no *prima facie* case against the defendant. The appeal had not been heard at the time of writing.

The appeal was heard in the ACT Supreme Court in late 1989, with the court delivering judgment in the matter on 30 March 1990. It held that the magistrate had erred in not finding that there was a case to answer and in dismissing the informations on the basis that the prosecution had not proved the charges beyond reasonable doubt. However, in the exercise of its discretion the Court declined to remit the matter to the Magistrates Court for further hearing.

Katelaris

The defendant is a medical practitioner who allegedly failed to keep a register of drugs of addiction, as required under the *Poisons and Narcotic Drugs Act 1978*, and allegedly administered morphine and cocaine to himself.

On 4 May 1987 Katelaris appeared unrepresented and purported to enter a plea of guilty to all charges. Acting on that plea the magistrate convicted Katelaris.

In August 1987 Katelaris sought a writ of *certiorari* to quash the convictions and sentences on the basis that they had been imposed without jurisdiction. On 15 January 1988 the Supreme Court delivered judgment (reported at 79 ACTR 1) in Katelaris' favour. The Court held that the magistrate had failed to obtain an unequivocal plea of guilty and an unequivocal consent to the exercise of summary jurisdiction, and accordingly he had acted in excess of his jurisdiction in dealing with the case.

On 18 August 1988 a further 15 charges were laid against Katelaris in the same terms as the charges which had been before the magistrate on the first occasion. These charges came on for hearing on 23 June 1989. Counsel for Katelaris made an application that the informations be permanently stayed on the ground they represented an abuse of process on the basis of double jeopardy. That application was dismissed by the magistrate on 26 June 1989.

Subsequently Katelaris sought an order in the Supreme Court prohibiting the magistrate from hearing the charges. On 27 April 1990 the Supreme Court dismissed the application.

On 11 July 1990 Katelaris entered an unequivocal plea of guilty and consented to the magistrate exercising summary jurisdiction in respect of each of the 15 informations laid on the second occasion. On the charge of failing to keep a register of drugs of addiction, the magistrate made an order under section 556A(1)(b) of the *Crimes Act 1900* releasing Katelaris without conviction upon his entering into a bond to be of good behaviour for two years on condition that he pay $1 000 to charity. The magistrate made an order under section 556A(1)(b) dismissing the remaining informations.

Kanplong

On 17 January 1989 a ten-year-old girl stayed the night with a friend who lived across the road. The two girls slept in a bedroom with the friend's cousin, a Thai national who was on holiday in Australia and was then aged 22. The following day the girl complained that during the night the cousin sexually assaulted her. A medical examination tended to confirm her complaint. The cousin was arrested and charged with engaging in sexual intercourse with a young person and with committing an act of indecency with a young person.

At the trial the defence sought to have the film 'Aliens II' played as part of its case. There was evidence that the defendant had been watching the film on the night of the incident

and that the girl had stood by and watched parts of it. The defence argued that it was possible that the girl had dreamt or fantasised the sexual assault as a result of watching the film which, it was argued, was replete with sexual symbolism. The defence indicated that it would call expert evidence as to the possible effect of the film on a ten-year-old child.

The film was viewed on a *voir dire* and admitted as evidence in the trial. The defence sought to explain the medical evidence corroborating the complaint on the basis that the girl may have indulged in strenuous masturbation. On 19 April 1990, ten days after the commencement of the trial, the jury found the accused guilty of both counts in the indictment. He was sentenced to imprisonment for 18 months with a non-parole period of six months.

Case report

On 26 April 1989 police and ambulances were called to attend the scene of a stabbing at Barton. The victim had suffered numerous stab wounds to the neck, chest and stomach. He was found partly disembowelled and had suffered severe loss of blood. While he survived several hours of surgery, he ultimately died.

The victim and the defendant had been residents of the same block of flats. The defendant was playing cards with another tenant when the victim had come to their flat and an argument had developed. At trial, the defendant gave evidence that the victim had come at him with a pair of scissors and that he, acting in self-defence, had taken a knife from the card table and had stabbed him. The defendant's injuries were a scratch to the chest, a cut to the little finger and some bruising. The only witness to the incident was an old man with whom the defendant had been playing cards. He was blind in one eye and at the time of the incident could not see out of the other as the lens in his glasses was broken.

Self defence was left to the jury in the terms set out by the recent High Court decision in *R v Zecevic* (1987) 71 ALR 641. After several hours deliberation, the jury found the accused not guilty.

Table 1
Matters Dealt With Summarily in the ACT in 1989–90 (i)

Description	*No. of defendants*	*No. of charges*	*Pleas of guilty*	*Outcome of hearings*		
				Pleas of not guilty	*Conviction*	*Acquittal*
Commonwealth legislation	780	2 319	1 883	436	356	80
Crimes Act 1900	2 373	3 567	2 222	1 345	993	352
Miscellaneous ACT legislation	264	358	279	79	54	25
Poisons and narcotics	237	265	190	75	68	7
Traffic offences	5 917	6 017	4 845	1 172	935	237
Total	9 571	12 526	9 419	3 107	2 406	701

Note: (i) Table does not include pleas by post and parking prosecutions.

Table 2
Crimes Act 1900 (NSW) in its Application to the ACT: Matters Dealt with Summarily in the ACT in 1989–90(i)

Description	No. of defendants	No. of charges	Outcome of hearings: Pleas of guilty	Pleas of not guilty	Conviction	Acquittal
Abduction	5	8	6	2	1	1
Assault	213	242	150	92	58	34
Assault occ. actual bodily harm	50	56	46	10	7	3
Breach of recognisance	91	92	59	33	19	14
Burglary	89	239	140	99	78	21
Contravene CSO	28	33	22	11	11	
Damage property	177	192	97	95	75	20
Dishonest use of computer	3	17	4	13	13	
Escape lawful custody	27	27	18	9	8	1
Handling stolen property	35	47	24	23	20	3
Harbouring escapee	3	3	1	2	1	1
Indecent assault	3	8	2	6	6	
Indecent behaviour	6	8	2	6	4	2
Indecent exposure	7	8	8			
Make false instrument	40	150	77	73	48	25
Malicious wounding	8	9	2	7	6	1
Obtaining by deception	16	37	22	15	13	2
Offensive behaviour	101	104	73	31	14	17
Offensive manner	148	157	124	33	16	17
Offer bribe	7	9	6	3	3	
Possess false instruments	7	9	7	2	2	
Possess housebreaking implements	4	4		4	3	1
Possess offensive weapon	28	32	23	9	8	1
Possess stolen goods	56	73	47	26	15	11
Public mischief	78	79	73	6	6	
Receiving	38	52	36	16	8	8
Robbery	17	18	11	7	7	
Take and use motor vehicle	105	199	93	106	81	25
Theft	614	946	637	309	192	117
Trespass with intent	173	344	195	149	126	23
Unlawful damage	10	12	5	7	7	
Unlawful possession of property	24	37	21	16	16	
Use false instrument	43	133	51	82	82	
Warrants of apprehension	29	49	48	1	1	
Other	90	134	92	42	38	4
Total	2 373	3 567	2 222	1 345	993	352

Note: (i) A defendant may have been charged with offences under more than one provision of the Act.

Table 3
Commonwealth Legislation: Matters Dealt with Summarily in the ACT in 1989–90 (i)

Description	No. of defendants	No. of charges	Pleas of guilty	Outcome of hearings: Pleas of not guilty	Outcome of hearings: Conviction	Outcome of hearings: Acquittal
Australian Federal Police Act 1979	276	329	217	112	78	34
Careless Use of Fire Act 1936	1	1		1	1	
Census Statistics Act 1905						
Companies Act 1981	125	314	255	59	32	27
Conciliation Arbitration Act 1904						
Crimes Act 1914	95	481	266	215	213	2
Customs Act 1901	3	3	2	1		1
Commonwealth Electoral Act 1918	84	84	81	3		3
Insurance Act 1973	1	1	1			
Migration Act 1958						
Postal Services Act 1975	1	8	7	1	1	
Public Order (Protection of Persons Property) Act 1971	16	18	12	6	2	4
Radiocommunications Act 1983						
Securities Industry Act 1980						
Social Security Act 1947	126	994	980	14	7	7
Statutory Declaration Act 1959	1	1		1	1	
Student Assistance Act 1973	2	6	2	4	3	1
Taxation Legislation	27	41	27	14	13	1
Telecommunications Act 1975	22	38	33	5	5	
Total	780	2 319	1 883	436	356	80

Note: (i) A defendant may have been charged with offences under more than one Act.

Table 4
***Commonwealth Crimes Act 1914*: Matters Dealt with Summarily in the ACT in 1989–90 (i)**

				Outcome of hearings		
Description	*No. of defendants*	*No. of charges*	*Pleas of guilty*	*Pleas of not guilty*	*Conviction*	*Acquittal*
Damage property (S29)	30	30	19	11	10	1
False pretences (S29A)	1	1	1			
Forge and utter (S65–69)	19	68	44	24	23	1
Fraud (S29D)	14	30	11	19	19	
Imposition (S29B)	17	318	165	153	153	
Other	14	34	26	8	8	
Total	95	481	266	215	213	2

Note: (i) A defendant may have been charged under more than one provision of the *Crimes Act 1914*.

Table 5
Poisons and Narcotic Drugs Legislation: Matters Dealt with Summarily in the ACT in 1989–90 (i)

				Outcome of hearings		
Description	*No. of defendants*	*No. of charges*	*Pleas of guilty*	*Pleas of not guilty*	*Conviction*	*Acquittal*
Administer amphetamine	5	6	3	3	3	
Administer heroin	12	13	9	4	3	1
Cultivate prohibited plant	7	7	5	2	1	1
Cultivate cannabis for supply	9	9	7	2	2	
Possess amphetamine	28	28	20	8	8	
Possess cannabis	116	134	106	28	24	4
Possess cannabis resin	2	2	2			
Possess cannabis for supply	4	4	4			
Possess cocaine	1	1	1			
Possess drug of dependence	6	7	3	4	4	
Possess heroin	28	32	12	20	19	1
Possess morphine						
Present false prescription						
Supply cannabis	13	16	12	4	4	
Use cannabis	6	6	6			
Total	237	265	190	75	68	7

Note: (i) A defendant may have been charged with offences under more than one provision.

Table 6
Traffic Offences: Matters Dealt with Summarily in the ACT in 1989–90 (i)

Description	*No. of defendants*	*No. of charges*	*Outcome of hearings*			
			Pleas of guilty	*Pleas of not guilty*	*Conviction*	*Acquittal*
Culpable driving	1	1		1	1	
Drive contrary to special licence	23	23	13	10	10	
Drive in a manner dangerous	137	137	79	58	55	3
Drive under the influence	22	22	10	12	11	1
Drive unregistered vehicle	1012	1026	874	152	116	36
Drive while licence cancelled	116	118	49	69	66	3
Drive without licence	464	489	347	142	124	18
Drive without third party insurance	969	980	841	139	110	29
Fail to report an accident	24	24	17	7	5	2
Fail to stop after an accident	34	35	27	8	6	2
Negligent driving	376	380	296	84	50	34
Prescribed concentration of alcohol	1254	1263	1089	174	120	54
Speeding	679	685	534	151	128	23
Speeding in a manner dangerous	20	20	18	2		2
Other	786	814	651	163	133	30
Total	5 917	6 017	4 845	1 172	935	237

Note: (i) A defendant may have been charged with offences under more than one provision.

Table 7
Miscellaneous ACT Legislation: Matters Dealt with Summarily in the ACT in 1989–90 (i)

Description	*No. of defendants*	*No. of charges*	*Pleas of guilty*	*Outcome of hearings*		
				Pleas of not guilty	*Conviction*	*Acquittal*
Air Pollution Act 1984	1	3	3			
Classification of Publications Act 1959						
Co-operative Societies Act 1939						
Dog Control Act 1975	45	57	45	12	10	2
Domestic Violence Act 1986	58	76	66	10	1	9
Electricity Act 1971	3	6	6			
Gaming and Betting Act 1945	18	18	13	5	5	
Gun Licence Act 1937	61	77	64	13	6	7
Hawkers Act 1936	5	5	5			
Landlord Tenant Act 1949						
Liquor Act 1975	46	59	32	27	21	6
Prevention of Cruelty to Animals Act 1959	2	2	2			
Public Health Act 1929	3	3	3			
Remand Centre Act 1976	1	2	2			
Scaffolding Lifts Act 1957						
Water Pollution Act 1984	1	1		1	1	
Weights Measures Act 1929	7	9	5	4	4	
Workmens' Compensation Act 1951	1	1	1			
Other	12	39	32	7	6	1
Total	264	358	279	79	54	25

Note: (i) A defendant may have been charged with offences under more than one provision.

Chapter 5
Criminal assets

Criminal assets is used as a generic term to cover the variety of methods available to the DPP to deprive offenders of the proceeds and benefits of crime. The term includes the pursuit of civil remedies to recoup losses arising from criminal activity.

The modern approach to law enforcement recognises the vital role of criminal assets recovery action in combating criminal activity aimed at the accumulation of wealth. Such action removes the rewards and therefore reduces the incentive for this type of criminal activity. It also reduces funds available to finance further crime.

Criminal assets action is particularly relevant in dealing with large-scale narcotics offences and revenue fraud on the Commonwealth.

The DPP has been active in the field of recovering ill-gotten gains associated with criminal activity since 1985. The impetus provided in 1985 was the expansion of the DPP's civil remedies function and the allocation of resources with the specific task of implementing the legislative initiative. Vigorous pursuit of recoveries in narcotics cases

by way of pecuniary penalties and forfeiture under the Customs Act also dates from this time. The Proceeds of Crime Act (POC Act) commenced on 5 June 1987. It provides a comprehensive scheme to deprive those convicted of Commonwealth indictable offences of the proceeds and benefits derived from those offences. The civil remedies function, the POC Act and the Customs Act are the three main avenues of recovery available to the DPP.

The POC Act and Customs Act pecuniary penalty and forfeiture provisions should be viewed as law enforcement measures, largely designed to act as a deterrent to criminal activity and not primarily as revenue raising initiatives.

It was expected that there would be quite a lead time before significant results were achieved under the POC Act. It takes time to recruit staff and set up necessary infrastructure. More importantly, the POC Act is conviction-based. Experience to date suggests that it will take more than two years to recover in larger matters, even where a defendant pleads guilty and the realisation of assets is straightforward.

Significantly, the majority of recoveries to date have come in the last financial year. This reflects the fact that recoveries are now being made in some of the larger matters that take a considerable time to complete. Recoveries and forfeitures under the POC Act since 1 July 1989 total $2.24 million. Some of the property forfeited has yet to be realised and some of the recoveries have been by way of settlement. Recoveries from Customs Act pecuniary penalties in the same period were $2.08 million. Total recoveries from these two sources in the financial year to 30 June 1990 are therefore more than $4.3 million. In addition, $778 000 in restrained assets has been recovered by way of tax. The cost of the POC Act initiative on a yearly basis is $3.9 million.

With property of an estimated net value greater than $46.7 million currently restrained under the POC Act and Customs Act, prospects for future recoveries look good. Much has been achieved in a relatively short period through the cooperative efforts of all agencies involved.

Results should be enhanced by some new factors. The money laundering offences created by the POC Act are already being used in a number of large cases. The *Cash Transaction Reports Act 1988* should assist in the detection of offences and the identification of the proceeds of crime.

A strengthening trend has been the interaction of the various avenues of removing proceeds from criminals. The civil remedies function and in particular the recovery of taxes continues to play an important role. Criminals seldom pay taxes and that can provide a basis for pursuing their assets. Since 1985 more than $72 million has been recovered in tax related civil remedies matters and more than $2.7 million in non-tax matters.

Proceeds of Crime Act

The scheme of the POC Act shares a number of features with confiscation legislation enacted in other Australian jurisdictions. This includes the following general powers :

- forfeiture of property connected to an offence or derived from the proceeds of the offence;
- pecuniary penalties based on benefits derived from the offence;
- restraint of property at an early stage pending determination of the substantive application; and
- investigative powers.

The POC Act is conviction-based. No final orders can be made under the POC Act unless and until a person has been convicted of, or has had a case found proven against them, in respect of an indictable offence under Commonwealth or Territory law.

Forfeiture

Where a person is convicted of an indictable offence a court may order that 'tainted property' be forfeited to the Commonwealth. Tainted property is property used in, or in connection with, the indictable offence or property derived or realised directly or indirectly by any person from the commission of the offence.

In exercising its discretion to grant a forfeiture order the court may have regard to any hardship that the order may reasonably be expected to cause to any person, the use that is ordinarily made or is intended to be made of the property and the gravity of the offence concerned. Property ordered to be forfeited vests absolutely in the Commonwealth except that registrable property vests in equity until the applicable registration requirements have been complied with.

The other forfeiture provisions in the POC Act are triggered by what are called 'serious offences'. These are defined as :

- a narcotics offence involving more than a traffickable quantity of drugs;
- an organised fraud offence which is created by section 83 of the POC Act; or
- a money laundering offence in relation to the proceeds of a serious narcotics offence or an organised fraud offence.

Where a person is convicted of a serious offence any property that has been restrained under the POC Act, and which remains restrained at the end of a period of six months after the date of conviction, is automatically forfeited to the Commonwealth at the end of that period. This forfeiture occurs simply by a lapse of the six month period following conviction and does not require any assessment or order by the court.

To avoid automatic forfeiture a person must have a court lift the restraining order prior to the end of the six month period. To do that the person must satisfy the court that the property was not used in, or in connection with, any unlawful activity and was not derived by any person from any unlawful activity, and that the person's interest in the property was lawfully acquired.

It is not sufficient to satisfy the court that the property was not linked to the offence for which the person was convicted. Unlawful activity means conduct that constitutes an offence against a law of the Commonwealth, a State, a Territory or a foreign country. All these possibilities must also be ruled out.

Table A — Proceeds of Crime Act — Forfeitures — Recoveries June 1987 to 30 June 1990.

	Number of forfeitures	*Estimated value of property forfeited (i)* $	*Amount realised from forfeited property* $
NSW	7	256 010	95 837
Vic.	3	48 125	—
Qld	3	120 000	59 460
WA	4	280 000	28 591
SA	—	—	—
ACT	—	—	—
Total	17	704 135	183 888

(i) Does not include cases where property has been realised; they are included under 'amount realised from forfeited property'.

Wallace

A description of this matter is given in chapter 3. Wallace, while an AFP officer, was charged with a number of narcotics offences. He pleaded guilty and was sentenced to 12 years imprisonment.

During the investigation search warrants were executed on Wallace's house and the houses of members of his family. A number of sums of money totalling $243 010 were located and seized. Wallace admitted that the money was his and had been obtained from the sale of drugs. On 28 May 1990 the NSW Supreme Court ordered, pursuant to the POC Act, that the $243 010 be forfeited to the Commonwealth as tainted property being proceeds from the offences of which Wallace was convicted. This matter was investigated by NSW State Police and it is likely that the money forfeited will be shared with NSW. Arrangements are in place for the sharing of Commonwealth recoveries with States involved in an investigation.

Lynch

Lynch was charged in October 1987 with importing heroin in April 1987. He pleaded guilty to this offence on 19 May 1988 at the District Court in Perth. He satisfied the judge that the offence had not been committed for any purpose relating to the sale of or any other commercial dealing in the heroin and was sentenced to pay a fine of $1 500.

On 29 October 1987 a POC Act restraining order was obtained over a piece of real estate owned by Lynch. Lynch sought to recover the real estate and, as it was a serious offence, bore the onus of satisfying the court on the balance of probabilities that the house had not been derived from any unlawful activity.

His application was heard in the WA Supreme Court on 6 October 1989 and the judgment of the Commissioner delivered on 2 February 1990. The Commissioner adopted the practical test that Lynch could not succeed unless he could identify some lawful source or activity which produced or generated the monies used to purchase the property. Lynch claimed to have derived the monies used to purchase the house from gambling and from trading in gold and jewellery.

The Commissioner found Lynch not to be a credible witness and was not satisfied that the house was not derived from any unlawful activity. He dismissed Lynch's application leaving the Commonwealth free to deal with the forfeited property.

Pecuniary penalties

Forfeiture operates against goods or property which are linked to the offence of which the person is convicted or, in the case of serious offences, not shown not to be linked to any unlawful conduct. Pecuniary penalty provisions operate against persons who have obtained benefits from the commission of indictable offences. A penalty equal to those benefits can be ordered against the person. This order becomes a civil debt due to the Commonwealth and may be enforced against any property of the person regardless of whether it can be linked to the indictable offence.

Table B — Proceeds of Crime Act — Pecuniary Penalty Orders Recoveries — June 1987 to 30 June 1990

	Number of orders	*Amount of orders* $	*Amounts received from orders* $
NSW	18(i)	1 571 257	150 219
Vic.	8(ii)	351 504	73 060
Qld	4(iii)	155 766	23 382
WA	2	689 000	560 302
SA	—	—	—
ACT	2	68 000	45 000
Total	34	2 835 527	851 963

(i) Includes seven cases where restraining orders over property to the value of $340 000 are still on foot to secure payment of outstanding pecuniary penalties totalling $392 306.

(ii) Includes three cases where caveats have been lodged over real estate to secure the payment of outstanding pecuniary penalties totalling $253 619.

(iii) Includes one case where a restraining order over property to the value of $60 000 is still on foot to secure payment of a pecuniary penalty of $55 900.

Ward

Between August 1986 and April 1987 Ward defrauded his employer, the Australian Customs Service, of approximately $395 000 by creating fictitious names and farming properties to claim fuel rebates. On 9 September 1988 Ward was arrested and charged with defrauding the Commonwealth. Pursuant to the POC Act, restraining orders were obtained over all of Ward's property on 15 September 1988.

On 6 June 1989 Ward pleaded guilty and was convicted on 10 counts of defrauding the Commonwealth contrary to section 29D of the Crimes Act and was given a total head sentence of seven years imprisonment. Ward's wife claimed an interest in a number of the restrained properties. Proceedings were commenced in the Supeme Court of WA on 1 December for forfeiture and pecuniary penalty orders against Ward.

Following discussions consent orders were entered. Two units valued at a total of $112 500 were ordered to be forfeited to the Commonwealth as tainted property. Both units were purchased by Ward in a false name out of the proceeds of the offences and transferred into his wife's name for no consideration. Ward was also ordered to pay a pecuniary penalty to the Commonwealth of $360 218. This amount was arrived at by adjusting the amount of the fraud by the CPI as provided by the POC Act and deducting the value of the property forfeited.

It is expected that about $290 000 of the pecuniary penalty orders will be recovered out of restrained property under the control of the Official Trustee. To date $206 208 has been realised. As part of the negotiations Ward repatriated some $90 000 that he had

previously sent offshore to Singapore and restraining orders were withdrawn on the matrimonial home and a motor vehicle.

Settlements

In many matters where an action is commenced under the POC Act by restraining property, the defendant decides to settle by repayment in full of amounts defrauded or stolen. It is the use of the POC Act which often induces the payment.

If the defendant is to get credit on sentencing for repaying the amount defrauded he or she has to pay it back before sentencing or at least show the court that arrangements have been made to repay the money. There is therefore great incentive to arrange to repay the agency defrauded prior to going to court where the defendant may in fact plead guilty. He or she is then sentenced on the basis that arrangements have been made to repay amounts defrauded or the repayment has been made. The repayment may be made out of other unrestrained assets, by arranging a mortgage on the restrained property or by selling the restrained property. The repayment is made to the agency defrauded and becomes a recovery to it and is recorded by the agency in the same way as any other recovery. It will not be recorded as a recovery by way of final order under the POC Act.

It is the use of the POC Act to restrain the property which leaves the defendant with no choice about repaying, one way or another, the amount defrauded. If assets are not restrained the defendant may well dissipate or hide the assets, claim not to have any assets and not make any repayments to the agency defrauded.

Table C — Proceeds of Crime Act — Settlements — Recoveries — June 1987 to 30 June 1990

	Number of matters	*Amount received from settlement (i)* $
NSW	13	403 325
Vic.	2	314 323
Qld	9	311 326
WA	1	6 000
SA	—	—
ACT	1	23 498
Total	26	1 058 472

(i) Matters settled without the need to obtain pecuniary penalty or forfeiture orders following the commencement of Proceeds of Crime action.

Hennessy

Hennessy, a former Postal Manager, was charged on 5 December 1989 with fraudulently converting to his own use $123 232 belonging to Australia Post contrary to section 71 of the *Crimes Act 1914*.

He applied for an adjournment of the hearing of the charges so that he could sell a house and pay the proceeds towards the amount defrauded. Negotiations were conducted in relation to this course of action and after indicating that he was waiting to speak to his solicitor who was away, Hennessy went ahead and sold the house.

A POC Act restraining order was urgently obtained ex parte and the net proceeds from the sale of the house, together with a refund of superannuation contributions and interest, were placed under the control of the Official Trustee. By agreement these monies were paid to Australia Post in reduction of the amount defrauded. Added to leave and other entitlements withheld by Australia Post this reduced the debt by $81 478. Hennessy is not known to have any other assets.

On 18 June 1990 Hennessy was sentenced to four and a half years imprisonment to be released after one year on entering into a $1 000 recognisance to be of good behaviour for three and a half years.

Case report

Two persons have been charged with conspiring to defraud the revenue by concealing taxable capital gains from real estate investments. POC Act restraining orders were obtained over properties belonging to the defendants.

Subsequently, tax assessments were raised against the defendants for large amounts. The DPP exercised its civil remedies function and coordinated the recovery litigation. By agreement the restraining order was varied to allow the restrained properties to be sold and the proceeds to be paid towards the defendants' tax liabilities.

The settlement of these liabilities should result in the recovery of $545 000 by way of tax. Of this amount approximately $385 000, which includes the proceeds of the sale of the restrained properties, has already been received by the Australian Taxation Office and the balance is due by September 1990.

Restraining orders

To ensure that the assets of criminals are not dissipated prior to the obtaining of final orders the POC Act provides for the restraining of assets from the time a person is charged or up to 48 hours prior to a charge being laid.

The restraining order may direct that property is not to be disposed of or dealt with by any person. Where the court is satisfied the circumstances so require, it may also direct the Official Trustee to take custody and control of the property. This latter order will normally be sought to protect property such as money or other liquid assets that can easily be disposed of or where for some other reason it is necessary to provide an extra safeguard in respect of restrained property. The other main reason to involve the Official Trustee is where there is a need to manage or maintain the property in question.

Breach of a restraining order is an offence and any dispositions so made may be set aside. The Commonwealth is required to give an undertaking as to damages and wherever

possible restraining orders are sought over assets that are unlikely to depreciate in value or lead to other losses.

Restraining orders may involve a serious interference with a person's ability to deal with his or her property prior to any conviction. The decision to seek a restraining order is not taken lightly. Approval is only given at senior level within the DPP. Every effort is made to cause as little inconvenience as possible in the use of restrained property. Usually a sale of restrained property by a defendant will be agreed to provided the proceeds of the sale, or part of them sufficient to cover any likely confiscation order, are restrained.

However, restraining orders are a key element in ensuring the effectiveness of confiscation legislation. Without them many who are charged with offences would hide, transfer, consume or otherwise ensure that their assets were not available to meet any final orders. To allow this to happen would effectively defeat the objects of the legislation.

Table D — Proceeds of Crime Act Restraining Orders — Current at 30 June 1990

	Number of restraining orders	*Estimate of potential confiscation order* $	*Net value of property restrained* $
NSW	44(i)	31 388 771(ii)	28 759 110(iii)
Vic.	18	7 794 756	7 602 756
Qld	5(iv)	213 811(v)	393 526(vi)
WA	5	900 000	860 000
SA	4	650 000	900 000
ACT	5	800 000	600 000
Total	81	41 747 338	39 115 392

(i) Includes seven cases where outstanding pecuniary penalties totalling $392 306 have been ordered.

(ii) Does not include the seven cases in (i) above.

(iii) Includes the value of the property ($340 000) actually still restrained in the seven cases in (i) above.

(iv) Includes one case where a pecuniary penalty of $55 909 has been ordered but not recovered.

(v) Does not include the case mentioned in (iv) above.

(vi) Includes the value of the property ($60 000) still restrained in the case mentioned in (iv) above.

Case report

In March 1990 the defendant and an associated company were charged with offences under section 82 of the POC Act in relation to the receipt and/or disposal of approximately $16.5 million reasonably suspected of being the proceeds of crime.

The money is believed to be the laundered proceeds of the drug trafficking activities in the USA of the defendant's former husband. He has been charged in the USA with

involvement in a conspiracy relating to the possession and distribution of 2 050 kilograms of heroin and is alleged to have personally received approximately 380 kilograms of that heroin with a retail value in the USA of between $US220 million and $US293 million.

The former husband is currently defending proceedings in Hong Kong aimed at extraditing him from there to the USA. He is believed to be connected to some 250 false-name bank accounts in Hong Kong.

The moneys suspected of being the proceeds of drug trafficking were received into Australia by way of telegraphic transfers from Hong Kong and New York and used to buy property in Australia. POC Act restraining orders have been obtained over a number of pieces of real estate as well as other items such as a Mercedes Benz valued at $130 000 and items of jewellery valued at upwards of $100 000. The estimated net value of property restrained is $13.3 million. Committal proceedings against the defendant have not yet been set down for hearing.

Case report

Three defendants have been charged in respect of a number of offences pursuant to section 233B of the Customs Act and sections 81 and 82 of the POC Act arising from the alleged importation during 1989 of approximately 10 tonnes of cannabis resin.

The money laundering charges relate to sums totalling more than $5.5 million found in cash in a number of premises and further sums totalling in excess of $6 million which were remitted overseas in 1989.

The importation charges concern an amount of approximately 10 tonnes of cannabis resin allegedly imported in January 1989 after an offshore rendezvous between a foreign vessel and a locally owned yacht. It is believed that the sale of the resin ultimately grossed over $77 million for the importers.

POC Act restraining orders have been obtained over all the property of the defendants. The estimated net value of property presently identified as being subject to the restraining orders is more than $8 million and includes cash, real estate, jewellery and interests in racehorses.

In addition, proceedings have been commenced in the Royal Court in Jersey to freeze a bank account held by one of the defendants with a believed balance of up to $1 million. An 18 metre yacht owned by one of the defendants with an estimated value of at least $800 000 has been seized by the AFP as forfeited goods under the Customs Act.

Case report

On 29 June 1990 the defendant was charged with five counts of opening bank accounts in false names contrary to section 24(1) of the *Cash Transaction Reports Act 1988*. He admitted that he conducted the false name accounts to avoid paying tax on the interest earned on the funds and has also been charged with defrauding the Commonwealth

between November 1984 and June 1989 contrary to section 29D of the Crimes Act. It appears that in the past six years he has used 42 accounts in false names to avoid paying tax.

The AFP searched the defendant's residence and found and seized $201 200 in cash notes as well as passbooks for the false name bank accounts. The five operative accounts contain deposits totalling $43 600.

The cash and bank accounts have been restrained under the POC Act and placed under the control of the Official Trustee. Investigations are being conducted into the amount of tax defrauded, which will be the direct benefit to the defendant from committing the offences.

Customs Act

Pecuniary penalties

Division 3 of Part XIII of the Customs Act contains a pecuniary penalty scheme similar to that in the POC Act. The most notable differences are that the Customs Act pecuniary penalty provisions apply only to dealings in narcotics, and they are not conviction-based. The proceedings are civil in nature and the court has to be satisifed that the person engaged in prescribed narcotics dealings. These are defined to include such things as importing, conspiring to import, possessing and selling narcotic goods in contravention of the Customs Act. A pecuniary penalty can be ordered under the Customs Act regardless of whether or not a person has been charged or convicted of an offence.

The pecuniary penalty is assessed as the value of benefits derived from the prescribed narcotics dealings. An amount ordered to be paid is deemed to be a civil debt due by the person to the Commonwealth and the order may be enforced as if it were an order made by the court in civil proceedings.

The pecuniary provisions of the Customs Act have been used less often since the enactment of the POC Act. However, these provisions still have an important role to play in stripping proceeds from drug offenders. Because they are not conviction-based their use is apposite in combined operations, where State charges are laid and property is located in a number of States, and in matters where action has to be taken quickly and it is not possible to assess whether the evidence is likely to be sufficient to obtain a conviction. Most of the section 243B matters started prior to the commencement of the POC Act are still to be completed in terms of obtaining final recovery.

Table E — Customs Act Pecuniary Penalty Orders Under Section 243B — Recoveries — July 1985 to 30 June 1990

	Number of orders	*Amount of orders* $	*Amount recovered from orders* $
NSW	8(i)	10 531 848	2 081 482
Vic.	3(ii)	801 753	1 753
Qld	1	1 628 319(iii)	—
WA	—	—	—
SA (iv)	—	—	—
ACT	—	—	—
Total	12	12 961 920	2 083 235

(i) Includes three cases where control orders over property to the value of $4 219 000 are still on foot to secure payment of outstanding pecuniary penalties totalling $8 418 400.

(ii) Includes one case where control orders over property to the value of $641 000 are still on foot to secure payment of outstanding pecuniary penalties totalling $800 000.

(iii) By agreement property previously secured under section 243E of the Customs Act will be applied towards the defendant's tax debt. $110 000 has been paid to the ATO and there is property with an estimated value of $300 000 which has yet to be realised and applied towards the debt.

(iv) An amount of $668 736 secured under section 243E of the Customs Act in 1986 was recovered by way of tax in 1990. Asset betterment statements were prepared by a DPP financial analyst and passed to the ATO.

Property to the estimated value of $4 860 000 remains restrained to meet outstanding pecuniary penalty orders.

Butler

On 9 March 1988 Butler pleaded guilty in the Sydney District Court to four counts of supplying cocaine, one count of possessing more than the commercial quantity of cocaine, and one count of being knowingly concerned in the importation of more than the commercial quantity of cocaine. The offences occurred over the period 1 October 1985 to 9 April 1987.

Butler was sentenced to a period of 13 years imprisonment with a minimum period of six years. This sentence was increased on appeal to 14 years imprisonment with a minimum period of eight and a half years.

An application for a pecuniary penalty against Butler under section 243B of the *Customs Act 1901* was made in the Federal Court on 10 April 1987. At the same time, orders were sought and obtained under section 243E of the Customs Act directing the Official Trustee to take control of all of Butler's property. This consisted of a major interest in a house in Sydney, shares to the value of approximately $70 000 and cash and bank bills to the value of approximately $1.8 million.

On 29 September 1989 Butler was ordered to pay a pecuniary penalty of $1 808 743 to the Commonwealth, based on the Federal Court's assessment of the value of benefits derived by Butler from his engagement in a course of prescribed narcotics dealings during the period 1 October 1985 to 9 April 1987. The value of benefits derived was assessed by reference to the value of Butler's property before and after the period in which he engaged in the prescribed narcotics dealings.

The pecuniary penalty order has now been paid in full, a sum of $1 695 000 having been paid in December 1989, and the balance in March 1990. The residue of restrained funds, amounting to approximately $280 000, has been recovered by the ATO.

Operation Ailiance

In a combined operation involving the NCA, the AFP and the State police forces of Victoria, WA and NSW, Amad and Elie Malkoun along with a number of other persons were arrested on 18 February 1988 in relation to trafficking in heroin. Some 6.6 kilograms of high-grade heroin were recovered at the time of arrest.

Because State charges were involved and property was located in a number of States it was decided to use the Customs Act to pursue the assets as opposed to the POC Act or State confiscation legislation.

On 20 February 1988 orders were obtained from the Federal Court sitting in Melbourne directing the Official Trustee to take control of the property of seven of the defendants. The property included real estate in Victoria and WA, a nightclub in Perth, a number of motor vehicles, valuable personal property and a number of bank accounts. A safe deposit box was later discovered containing over $90 000 in cash and an amount of jewellery. The total property involved was worth well in excess of $1 million.

There were a number of interlocutory proceedings involving alleged failures to disclose assets, entitlements to payment of legal expenses, alleged interests of third parties in controlled property and the rights and entitlements of the spouse of one of the defendants. A considerable amount of the restrained property was released for the defendants' legal expenses at their committal hearing.

After lengthy committals all defendants were committed for trial. Amad and Elie Malkoun pleaded guilty on 24 August 1987 in the County Court of Victoria to trafficking in a commercial amount of heroin. As part of their pleas both defendants submitted that all of their available property would be absorbed by pecuniary penalty orders in the Customs Act proceedings. Both defendants agreed to pay a pecuniary penalty in the sum of $400 000. The court noted that agreement and on 19 October 1989 sentenced each of Amad and Elie Malkoun to 18 years imprisonment with a non-parole period of 16 years. Both have appealed against sentence.

Pecuniary penalty orders in the sum of $400 000 each were subsequently made against Amad and Elie Molkoun in the Federal Court. The Official Trustee is proceeding to

realise the balance of restrained property. Proceedings against other defendants have yet to be completed. It is likely that the net receipts will be shared with the States involved in the operation.

Operation Tableau

In 1987 10 persons were arrested and charged in Queensland with various offences arising out of two large importations of cannabis resin that took place in 1985 and 1986. The investigation revealed the existence of a large scale international drug smuggling syndicate led by a number of US nationals residing in Australia.

In September 1987, shortly after the arrests, orders under the Customs Act were obtained in the Federal Court placing the property of all defendants under the control of the Official Trustee.

All defendants were committed for trial. A *nolle prosequi* was entered with respect to one defendant while the remaining defendants pleaded guilty to various drug related charges. The four principals were sentenced to terms of imprisonment ranging from 18 to 25 years.

On 25 March 1990 pursuant to section 243B of the Customs Act the Federal Court ordered that one of the principals pay a pecuniary penalty of $1 628 319 to the Commonwealth. By agreement all of the funds of this person under the control of the Official Trustee were paid towards his tax liability. More than $400 000 will be recovered in this way.

Pecuniary penalty proceedings against all other defendants were eventually discontinued because of the complete exhaustion of their property in the payment of their legal fees. A total of approximately $1.3 million out of restrained assets was expended on the defendants' legal fees mainly for the committal hearing.

Forfeitures

The AFP are mainly responsible for forfeitures under the Customs Act in respect to narcotic related goods. The scheme under the Customs Act is that goods used in certain activities are forfeited to the Crown. Typically these provisions are applied to yachts or other vessels used to import narcotics and vehicles used to convey illegally imported narcotics.

The goods may be seized on the basis that they are, or there are reasonable grounds to believe that they are, forfeited goods. The Commonwealth only gets absolute title, and therefore the right to dispose of the goods, once they are condemned. To that extent condemnation under the Customs Act is equivalent to forfeiture under the POC Act. If no action is brought to recover seized goods within certain time limits they are statutorily condemned. Apart from giving advice it is usually only when action is taken in connection with the recovery of seized goods that the DPP becomes involved in these matters.

Table F — Customs Act — Forfeitures — Recoveries — July 1985 to 30 June 1990(i)

	No. of matters	*Estimated value of property seized (ii)* $	*Estimated value of property condemned (ii)* $	*Amount realised from disposal of condemned property (ii)* $
NSW	29	1 436 158	361 100	245 880
Vic.	9	222 500	155 747	—
Qld	4	30 100	975 772	80 500
WA	4	100 000	23 000	—
SA	7	—	—	195 692
ACT	10	105 000	20 000	8 900
Total	63	1 893 758	1 535 619	530 972

(i) Only includes significant matters where the DPP has become involved; other matters may have been dealt with exclusively by the AFP.

(ii) Columns are mutually-exclusive; matters are included under one column only depending upon the stage of recovery.

Restraining orders

As with the POC Act the Customs Act allows assets to be restrained at an early stage to ensure that they are not dissipated prior to the obtaining of final orders.

Under the Customs Act a restraining order may be sought once a proceeding for a pecuniary penalty under section 243B has been instituted. Usually the two applications are made at the same time. To grant the restraining order the court has to be satisfied that there are reasonable grounds to believe that the defendant engaged in prescribed narcotic dealings and derived a benefit. The Customs Act also provides for the Official Trustee to take custody and control of the property where a court is satisfied that circumstances so require. To obtain a restraining order the Commonwealth is required to give an undertaking as to damages.

Most of the property currently restrained relates to matters that have been on foot for a number of years. The property has yet to be applied against pecuniary penalties ordered because of outstanding appeals or time taken to realise the property.

Table G — Customs Act — Restraining Orders — Current at 30 June 1990

	Number of cases	*Number of persons*	*Value of property restrained* $
NSW	7(i)	11	6 080 000
Vic.	3(ii)	10	1 076 483
Qld	1	1	15 000(iii)
WA	—	—	—
SA (iv)	1	1	447 090
ACT	—	—	—
Total	12	23	7 618 573

(i) Includes three cases involving restrained property to the value of $4 219 000 where outstanding pecuniary penalties totalling $8 418 400 have been ordered.

(ii) Includes one case involving two persons and restrained property to the value of $641 000 where outstanding pecuniary penalties totalling $800 000 have been ordered.

(iii) By agreement assets previously secured under section 243E of the Customs Act will be applied towards the defendant's tax debt. $110 000 has been paid to the ATO and there is property with an estimated value of $300 000 which has yet to be realised and applied towards the debt.

(iv) An amount of $668 736 previously secured under section 243E of the Customs Act was recovered by way of tax in 1990. Asset betterment statements were prepared by a DPP financial analyst and passed to the ATO.

Civil remedies

The civil remedies function gives the DPP a role in normal civil recovery action by Government agencies in matters connected with, or arising out of, actual or proposed prosecutions, or a course of activity which is being considered for the purpose of deciding whether to institute a prosecution. This function involves no new powers of recovery or forfeiture. The role is to take or coordinate or supervise the taking of civil remedies on behalf of the Commonwealth or authorities of the Commonwealth. The DPP is in a central position to supervise and coordinate the activities of a variety of Commonwealth agencies to ensure that existing rights of recovery are pursued effectively.

The function applies in relation to the recovery of taxes and other matters or classes of matters specified in writing by the Attorney-General.

Recovery of taxes

The recovery of taxes has an important role to play in the effort to remove illegally obtained benefits from criminals. In the case of taxation fraud the benefits are recovered directly. With respect to other types of crimes, few criminals pay tax on their income. The raising and enforcement of default assessments can be an effective way of removing some or all of the proceeds from the offender.

Table H — Civil Remedies — Judgments — Amounts Secured and Amounts Recovered in Tax Matters in 1989–90

	Judgments entered or leave to enter judgments	*Amounts secured by injunction or otherwise at 30.6.90*	*Amounts received*	*Number of cases in which amounts have been received*
	$	$	$	
NSW	8 802 557	7 678 750	973 400	6
Vic.	—	3 208 363	2 811 181	8
Qld	—	282 308	2 794 467	9
WA	—	—	166 894	3
SA	1 380 794	—	811 309	4
ACT	—	—	57 294	2
Total	10 183 351	11 169 421	7 614 545	32

The amounts recovered pursuant to this function continue to be significant although down on amounts for previous years. This reduction was predicted in last year's annual report because of the winding down of prosecutions and recoveries associated with bottom-of-the-harbour tax frauds. These involved fraud on an unprecedented scale and recoveries per matter were correspondingly large. While the number of matters from which recoveries were made is on a par with previous years, the recoveries have not been as large per case. Recovery from one major promoter of tax avoidance schemes was finalised this year.

Maher

Maher was convicted on 4 October 1985 on one count of conspiring to defraud the Commonwealth contrary to section 86(1)(e) of the Crimes Act and sentenced to two years and nine months imprisonment.

Tax assessments were raised against him and associated companies. A sequestration order was made against his estate on 28 February 1985 on the petition of the ATO. Six associated companies were put into liquidation, some on the petition of the ATO and several on the application of the trustee of Maher's estate or the liquidators of associated companies in relation to intergroup debts. The same registered liquidators were appointed as trustees in bankruptcy and as liquidators of the associated companies. Claims were made against Mrs Maher by the liquidators of one of the associated companies. The subsequent court proceedings were settled and she entered into a deed of composition on 21 August 1988. Receivers and managers were appointed by a financier to two of the associated companies which later went into liquidation.

Money was paid to the ATO pursuant to section 218 notices issued in respect of debts owed to the associated company Thoroughbred International Pty Ltd. These notices

issued after a floating charge was granted to an arms-length financier but before the floating charge crystallised. The validity of the section 218 notice was contested and a decision made by the Full Court of the Supreme Court of Queensland. The financier was refused special leave to appeal to the High Court from a decision of the Full Court of the Supreme Court of Queensland in the ATO's favour.

Maher was examined pursuant to section 69 of the Bankruptcy Act and five other persons were examined pursuant to section 81 of that Act. The DPP examined and summarised large volumes of seized material with the assistance of officers of the Deputy Commissioner of Taxation. These summaries and copies of documents together with a chronology were provided to the trustee and were used in the public examinations.

Extensive real property, cars, boats, antique furniture and interests in a horse stud were sold by the liquidators and receivers. The proceeds from the sale of some of this property went to pay out secured creditors. Just over $1.4 million was paid to the Deputy Commissioner of Taxation — approximately $300 000 pursuant to section 218 notices and the balance as an unsecured creditor in the company liquidations. The final dividend was received in March this year.

Case report

The use of civil remedies in tax matters involving other forms of illegal activity is of increasing importance. In a matter in South Australia a restraining order under section 243E of the Customs Act was obtained over a person's property in 1986. Subsequent investigations and an asset betterment statement prepared by a DPP financial analyst revealed income of at least $706 732 between March 1984 and June 1986. Apart from bank interest the only significant 'lawful' source of income during that period appeared to be the sum of approximately $15 000 in social security benefits. The ATO raised assessments and judgment was obtained in November 1989 in the amount of $774 519. The sum of $668 736 previously restrained was recovered by way of tax.

In Operation Tableau, referred to above, large taxation assessments were raised against one of the principal offenders. By agreement, property restrained under the Customs Act was applied towards the tax debt. $100 000 has been recovered in this way with an estimated $300 000 still to come.

Non-tax recoveries

The DPP's civil remedies function in matters other than the recovery of taxes is dependant upon the Attorney-General signing an instrument in respect of a matter or class of matters.

Three class instruments have been signed giving the DPP standing authority to exercise its civil remedies function in respect of the recovery of monies improperly obtained from social security fraud, medifraud and nursing home fraud.

Table 1 — Civil Remedies — Judgments — Amounts Secured and Amounts Recovered in Non-Tax Matters in 1989–90

	Judgments entered or leave to enter judgments	*Amounts secured by injunction or otherwise at 30.6.90*	*Amounts received*	*Number of cases in which amounts received*
	$	$	$	
NSW	556 762	924 950	138 377	3
Vic.	10 000	—	—	
Qld	—	109 956	8 000	1
WA	—	—	91 338	4
SA	592 166	868 750	470 126	33
ACT				
Total	1 158 928	1 903 656	707 841	41

Recoveries in this area are on par with previous years and the function continues to play an important role in ensuring that offenders do not get to keep the proceeds of their offences. A total of more than $2.7 million has been recovered since 1985 in non-tax matters.

Case report

A defendant received more than $50 000 in widows' pension to which it was alleged she was not entitled as she had remarried twice since first claiming the pension. The civil remedies function was exercised as prosecution was being considered. She was subsequently charged with 11 offences against section 29B of the *Crimes Act 1914* to which she eventually pleaded guilty.

Negotiations proceeded with the defendant with a view to obtaining a consent caveat or bill of mortgage over real property. However, her husband, who was joint tenant of the property, refused to sign any documents and negotiations were brought to a halt.

It was discovered that a contract of sale of the property had been signed and notices pursuant to section 162 of the Social Security Act were issued. The parties separated, and the husband claimed he was entitled to the whole of the net proceeds of sale. He made an application to the Family Court for a property settlement and in the meantime the net proceeds of sale were held in his solicitor's trust account.

The Commonwealth sought and was granted leave to intervene in the Family Court proceedings. On 22 June 1990 the Family Court, after considering the decisions on section 218 of the *Income Tax Assessment Act 1936*, held that the Commonwealth did have a charge over the funds in the trust account up to $21 000, being half of the net proceeds, and that that charge was to be satisfied before it could make orders under the

Family Law Act altering the property rights of the parties to the marriage. The court ordered that the money be paid to the Commonwealth and it was subsequently received.

On 29 June 1990 the defendant was sentenced to 30 months imprisonment to be released after six months on entering into a bond to be of good behaviour for three years.

Chapter 6
Law reform and other issues

One of the objectives of the DPP is to provide sound, constructive and timely recommendations with respect to the laws or proposed laws of the Commonwealth relating to the criminal justice system. The DPP is uniquely placed to identify deficiencies in the application of existing laws, as well as to provide informed assessments in the light of operational experience in relation to proposals for criminal law reform. This chapter outlines some of the areas in which the DPP was active in 1989–90.

Commonwealth sentencing legislation

During the year the DPP was consulted during the development phase of a number of items of Commonwealth legislation which have now been enacted. This was principally with respect to the *Crimes Legislation Amendment Act (No. 2) 1989*. The primary purpose of that Act is to provide for a separate regime in the sentencing of federal offenders. This part of the Act came into operation on 17 July 1990.

This Act represents a major departure from the approach that has hitherto been followed in the sentencing of federal offenders, which was to apply State laws in the sentencing of federal offenders. However, in so doing the Commonwealth was not content to simply

take the State law as it found it. Rather in some instances it provided an overlay of Commonwealth law modifying, sometimes quite substantially, the application of the State law to federal offenders. Since the *Commonwealth Prisoners Act 1967* came into operation the State laws upon which that Act relied had become increasingly diverse and complex, with the result that the 'mesh' between the applied State law and the overlay of Commonwealth law had been found not infrequently to be deficient. Notwithstanding the various amendments to Commonwealth legislation in recent years to 'patch up' some of the more glaring deficiencies, a complete overhaul of Commonwealth sentencing legislation was long overdue.

The policy that has been generally followed by the Commonwealth, and which is reflected in the *Judiciary Act 1901*, is to apply State laws with respect to matters of procedure, the rules of evidence etc. in the prosecution of offences against Commonwealth law. This policy has been adopted in recognition of the fact that, as most Commonwealth prosecutions are heard and determined in State courts exercising federal jurisdiction, there are obvious advantages in a State court applying the law on such matters with which it is familiar. Very few prosecutions coming before State courts involve Commonwealth offences, and hitherto it has been thought to be impracticable, generally speaking, to require State courts to apply a separate body of Commonwealth law when dealing with a Commonwealth offence. The enactment of a separate regime for the sentencing of federal offenders must therefore be seen as a radical departure from that long standing policy. Whether it will prove to be workable remains to be seen.

This Office, of course, will do everything in its power to ensure that State courts are aware of the requirements of the new Commonwealth legislation. Nevertheless, the fact remains that they are most unlikely to acquire the same familiarity with the new legislation that they have with their own sentencing legislation. There is therefore the potential for mistakes to be made, for example in dealing with a Commonwealth offender in a manner authorised by State law but not the applicable Commonwealth law. In this regard, this Office has already found it necessary to institute an appeal against a sentence imposed under the new legislation only a few days after it had come into operation. In this appeal it will be argued that the sentencing court misconstrued a number of the provisions of the new legislation.

During the year the DPP made a number of recommendations for changes to existing legislation, including the following.

'Analyst certificates' in the *Customs Act 1901*

In the 1986–87 Annual Report it was noted that this Office had recommended that the Customs Act be amended to permit evidence of the analysis of drugs in prosecutions under the Customs Act to be given by certificate. The reason for seeking this amendment was to obviate the need for analysts to be called to give formal evidence of the results of the analysis where those results were not in dispute.

While the necessary amendment to the Customs Act was made in 1989 by the addition of section 233BA (Evidence of analyst) to the Customs Act, this section follows the form of similar provisions in other Commonwealth legislation (for example, section12 of the *Crimes (Biological Weapons) Act 1976*). These provisions do not address the issue of continuity of evidence. As a result, the purpose of adding section 233BA has not been realised as it is still necessary to call the analyst to give evidence, not as to the result of the analysis, but in order to prove the chain of continuity of evidence. Failure to call the analyst could result in the defence raising doubts whether the substance referred to in the certificate is in fact the substance which is the subject of the charge against the defendant. This is in contrast to, for example, section192 of the *Drugs of Dependence Act 1989* (ACT) which specifically authorises an analyst's certificate to address such issues as:

- when and from whom the substance was received;
- what labels or other means of identifying the substance accompanied it when it was received;
- what the substance was contained in when it was received; and
- the description and weight of the substance received.

This Office has therefore recommended that section 233BA of the Customs Act, as well as similar provisions in other Commonwealth legislation, be amended to address the issue of continuity of evidence.

Customs Act — importation of military-style weapons

Under the Customs Act military-style weapons are 'prohibited imports', the importation and possession of which is a customs offence under section233 of the Act. At present, offences under section 233 give rise only to a pecuniary penalty pursuant to section 233AB.

The DPP has expressed the view to the Comptroller-General of Customs that the present penalties attaching to the offences of importation and possession of military-style weapons are inappropriate. This Office has therefore recommended that these offences should be punishable by a substantial term of imprisonment in addition to a substantial fine. It has been suggested that the maximum term of imprisonment for the offences should be in the order of seven years as this would better reflect the seriousness of the offences and bring the offences within the scope of the *Extradition Act 1988* and section 46 of the *Telecommunications (Interception) Act 1979*.

Other matters

Action has been taken on a number of recommendations made by the DPP in previous years.

Appeal against sentence in the ACT

In the 1988–89 Annual Report it was noted that the DPP had recommended that the *Magistrates Court Act 1930* (ACT) be amended to permit the prosecution to appeal against a sentence imposed by the ACT Magistrates Court. At that time the ACT was the only jurisdiction in which the prosecution did not have a right to appeal against a sentence imposed by a court of summary jurisdiction.

This Office's recommendation has since been accepted. On 26 June 1990 the *Magistrates Court (Appeals Against Sentence) Act 1990* was passed. This Act introduces a right of appeal by the prosecution against a sentencing decision by the ACT Magistrates Court for an offence punishable summarily, and also amends the *Children's Services Act 1986*(ACT) to provide for appeals by informants from decisions of the Childrens Court relating to young offenders.

Consent to prosecute provisions in ACT legislation

In the 1986–87 Annual Report it was argued that, with the establishment of the Office of the DPP, there was now no need in most cases to have consent to prosecute provisions in Commonwealth legislation. The arguments in favour of repealing consent to prosecute provisions in Commonwealth legislation apply equally to such provisions in ACT legislation. In March 1990 the Director wrote to the ACT Attorney-General recommending the repeal of a number of these provisions.

The majority of the consent to prosecute provisions in ACT legislation have subsequently been repealed by the *Director of Public Prosecutions (Consequential Provisions) Act 1990* (ACT), which came into force on 1 July 1990. The only remaining consent to prosecute provisions now in ACT legislation are section 92L(4) of the *Crimes Act 1900* of NSW in its application to the ACT, and section 255 of the *Credit Act 1985*. Section 92L(4) already recognises the role of the Director of Public Prosecutions in that it requires the written consent of the Director, or a person authorised by the Director, to give consent to the commencement of a prosecution for incest. Section 255 of the Credit Act, which requires the Attorney-General's consent to commence a prosecution for an offence against that Act outside the three year limitation period, is part of a uniform credit law scheme which is to be reviewed shortly.

Reparation orders

In last year's annual report it was pointed out that, where a reparation order was made pursuant to section 21B of the *Crimes Act 1914*, recourse had to be made to section18A of that Act for a mechanism to enforce the order. Section18A picks up the laws of the relevant State or Territory with respect to the payment of amounts ordered to be paid by offenders. This Office noted that the mechanism within section18A for the enforcement of reparation orders was unsatisfactory for a number of reasons, in particular because in some jurisdictions enforcement of reparation orders is dealt with by criminal recovery procedures which could result in imprisonment in default of making reparation payments.

This Office took the view that reparation orders were not intended as a punishment but as compensation for loss and should therefore be enforced civilly. Accordingly, this Office had recommended to the Attorney-General's Department that section 21B be amended to provide that reparation orders be enforceable as civil judgments. This recommendation was given effect to in the *Crimes Legislation Amendment Act (No 2) 1989* which received Royal Assent on 17 January 1990. That amending Act also made the necessary consequential amendments to sections19B and 20 of the Crimes Act referred to in the 1988–89 Annual Report.

Proposed amendments to the DPP Act

During the year the Office sought the following amendments to the DPP Act.

The main recommendation is that a statutory office of Associate Director be created, the duties of which would be to assist the Director and to act as Director when the latter is absent from duty.

There has been a steady increase in the functions of the Office since its establishment and a corresponding increase in the responsibilities of the Director. The stage has been reached where the Office can only operate at optimum efficiency if there is the capacity and flexibility to recruit a high-calibre lawyer to assist the Director both in the discharge of his statutory responsibilities and in the general administration of the Office.

In the meantime it has been necessary for the Office to rely on section 27 of the DPP Act to engage an Associate Director.

As mentioned above, recently the DPP Act was amended by the insertion of a new section 9(6B) empowering the Director to give an indemnity in aid of 'State or Territory proceedings'. However, pursuant to section 9(6C) of the Act, 'State or Territory proceedings' for the purposes of section 9(6B) is defined to mean proceedings in a State or Territory —

'(a) for an offence against, or for the recovery of a pecuniary penalty under, a law of that State or Territory; or

(b) in respect of a forfeiture order under a law of that State or Territory.'

The Office has recommended that this definition be expanded to enable the Director to give an indemnity for the purpose of certain other proceedings, for example, proceedings by way of a coronial inquest or inquiry conducted under the laws of a State or Territory.

The Office has also proposed that section 6(4) of the DPP Act be amended to enable the holder of a power to consent to a prosecution to delegate that power to a member of the staff of the Office as well as to the Director. Although consent to prosecute provisions are still relatively common in Commonwealth legislation, in many instances the question whether consent should be given does not require the personal involvement of the Director, and in many cases it would be appropriate for consent to be given by a senior DPP lawyer.

It has also been recommended that the DPP Act be amended to specifically empower the Director to discontinue a proceeding for either summary conviction or committal for trial which is being carried on by the Director.

At present the DPP Act draws a distinction between the Office carrying on a prosecution instituted by another and where such a prosecution has been taken over in the exercise of the power under section 9(5) of the Act — either with a view to continuing with the prosecution or declining to carry it on further. While the DPP clearly has the power to discontinue a prosecution which has been taken over, the position is otherwise where the Office is merely 'carrying on' a prosecution. If the Office is carrying on a prosecution instituted by an AFP or other Commonwealth officer, and it is decided that the prosecution should be brought to an end (for example, because of insufficient evidence) should the referring agency disagree with that course then the Director must first take over the prosecution before discontinuing it.

It is curious that the Office, having determined that a prosecution it is carrying on should not proceed further, must first take the formal step of taking over that prosecution before then discontinuing it. Indeed, it is doubtful whether this was the intention of those responsible for the preparation of the DPP legislation. Rather it is suspected it was assumed that conferral on the Office of the function of carrying on a prosecution would also confer on it the power to discontinue that prosecution if it saw fit. Only in the case of a private prosecution would it be necessary for the Director to first assume the role of the informant by taking over the prosecution before the Director would be in a position to discontinue it. This assumes that a distinction can be made between an informant who is a private individual and one who, in instituting a prosecution, is acting in the course of a public office or duty. While, of course, there is such a distinction in practice, strictly speaking both are private individuals in the eyes of the court.

Inquiry into the cost of justice

On 10 May 1989 the Senate referred a number of matters relating to the cost of justice to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report.

In keeping with the then Attorney-General's desire that there be close cooperation between agencies in his portfolio on the response to the inquiry, the DPP undertook to provide input into a portfolio submission being prepared by the Attorney-General's Department. The information provided by this Office covered such matters as briefing of outside counsel, counsels' fees, delays in the criminal justice system and proposals for reform in the area of the administration of criminal justice (particularly reform of committal proceedings).

The material provided by the DPP was incorporated into Volume 2, chapter 3 — *The Court Process*, of the Attorney-General's Department portfolio submission to the Inquiry (particularly Part 3.5 dealing with court process in the criminal jurisdiction).

Review of Commonwealth Criminal Law

The 'discussion paper' phase of the work of the Review Committee was completed in 1988–89, and the contributions made by the Office to the work of the Committee during the year were mainly concerned with commenting on the draft legislation to implement the recommendations contained in the Review Committee's interim report on pre-charge detention.

Revised prosecution policy of the Commonwealth

As foreshadowed in last year's annual report, during the year the Office conducted a thorough review of the Prosecution Policy of the Commonwealth, which sets out the guidelines that are applied by the DPP in the making of some of the more important decisions in the prosecution process. This review culminated in the issue of a revised statement. The revised statement has been issued in booklet form and is available on request from DPP Offices.

Although the revised statement deals with a number of areas not covered in the 1986 statement, in many respects it represents a refinement of the principles and guidelines set out in that earlier document. However, there have been changes of some substance in a number of areas, particularly in the crucial area of the criteria governing the decision to prosecute.

It is now generally accepted that there are two fundamental considerations involved in the decision whether to prosecute. The evidence must be sufficient to justify a prosecution, and a prosecution must be required in the public interest. It is the first of these considerations that has occasioned prosecuting authorities the most difficulty. How much evidence must there be before a prosecution will be justified; is a *prima facie* case sufficient, or is more required and if so, what?

The criteria set out in the 1986 statement represented an attempt to address the deficiencies of the test that had been previously applied by the Australian Attorney-General as well as his English counterpart. This test was that it must be more likely than not that the prosecution will result in a conviction — the so-called '51 per cent rule'. While the 51 per cent rule assumed that it would be possible to assess with precision the prospects of a conviction in every case, in reality there are cases where the prosecutor, no matter how experienced he or she may be, will simply be unable to say whether a conviction or an acquittal is the more likely result. The 51 per cent rule provides no real guidance to prosecutors as to what their decision should be in such cases, other than to suggest they should not be prosecuted. This is plainly wrong.

The approach adopted in the 1986 statement was not to abandon the 51 per cent rule altogether, but rather to subsume it within the public interest consideration, so that whether a conviction was the more likely result became the dominant factor in determining whether the public interest required a prosecution. However, as noted in last

year's annual report, this approach has not proved to be entirely satisfactory. The incorporation of the sufficiency of evidence test within the public interest consideration is somewhat artificial, for the latter has traditionally been regarded as separate from considerations relative to the sufficiency of evidence. In addition, because of its artificial nature it would appear that some prosecutors have found the criteria in the 1986 statement difficult to apply.

The test of 'evidential sufficiency' that will now be applied is that a prosecution should not proceed if there is no *reasonable* prospect of a conviction being secured. In this regard, it is stated that this test will not be satisfied if it is considered to be clearly more likely than not that an acquittal will result.

The new test has the merit that it is very similar to other tests applied by prosecuting authorities in Australia.

The sections concerned with the prosecution of juveniles, the exercise of the power under section 9(5) of the DPP Act, the indemnification of witnesses and the exercise of the power to No Bill have also been substantially revised. In many respects, however, the changes that have been made involve either a shift in emphasis or deal with new issues, rather than a departure from the policies and guidelines set out in the 1986 statement.

Two new sections are concerned with the exercise of the power to present an ex-officio indictment and prosecution appeals against sentence. What is said in relation to these two matters does not represent any departure from previous DPP practice.

The statement cannot, of course, tell DPP lawyers what their decision should be. However, it will help them to make the correct decision on the basis of sound judgement and the sensible exercise of discretion. The statement also serves the purpose of informing the public generally of the principles upon which the DPP performs its statutory functions.

Privacy Act — application for a public interest determination

On 1 January 1989 the *Privacy Act 1988* came into force. Broadly speaking, that Act provides privacy protection for individuals in relation to records of personal information held by Commonwealth agencies. The Act requires agencies to comply with what are known as Information Privacy Principles (IPPs) dealing with, amongst other things, the collection, storage, access to, correction of, use and disclosure of 'personal information'. Personal information is defined very widely as 'information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

In common with other Commonwealth departments and agencies, the DPP in early 1989 conducted a review of its practices to see whether any breached the IPPs, particularly IPPs 10 and 11 which impose limitations on the use and disclosure of personal

information. Given the functions of the Office, for the most part the DPP's practices did not contravene those two IPPs.

Under IPP 11, for example, the general prohibition on the disclosure of personal information does not apply where 'the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue'.

However, the position was less clear with respect to two situations where it had been the practice of this Office to disclose personal information. These two practices are —

- Upon request, publishing the reasons for deciding not to proceed with a trial on indictment notwithstanding that the defendant concerned had been committed for trial. This matter was the subject of comment at pages 102–104 of our 1986–87 Annual Report, and the guidelines which have been issued are reproduced in appendix1 of our 1987–88 Annual Report.
- Where appropriate, to pass information obtained by the Office in the performance of its statutory functions to a disciplinary body for consideration whether disciplinary action should be taken, or in connection with disciplinary proceedings that have already been instituted against the individual concerned. For example, following the conviction of a medical practitioner the Office would wish to be in a position to pass information to the relevant State Medical Registration Board if it was considered that the nature of the offence involved may have a bearing on the fitness of that person to continue to practise as a medical practitioner.

On 4 May 1989 the Office wrote to the Privacy Commissioner seeking his views whether these practices contravened the relevant IPP. On 17 July 1989 the Privacy Commissioner replied advising that, while the practice of publishing the reasons for No Bill decisions did not contravene IPP 11, the practice of passing what would be 'personal information' under the Privacy Act to disciplinary bodies would contravene that IPP. The Privacy Commissioner considered that disclosure of 'personal information' for such a purpose would not be 'reasonably necessary for the enforcement of the criminal law'. The Privacy Commissioner did, however, draw attention to Part VI of the Privacy Act which empowers the Commissioner, on the application of an agency, to make a 'public interest determination', permitting an agency to do an act or engage in a practice which breaches an IPP.

In the light of the Privacy Commissioner's letter of 17 July 1989 the Office wrote on 5 September 1989 seeking a public interest determination in respect of the practice of passing relevant information to disciplinary bodies. The Office also sought a determination to enable it to permit the Victorian Mental Health Review Board to have access to DPP files. The Board is a quasi-judicial tribunal established under the *Mental Health Act 1986* (Vic.). One of its functions is to determine whether persons who have been transferred from prison to psychiatric hospitals as security patients should remain as

security patients or be returned to prison. Under its Act the Board in conducting a hearing concerning a security patient is required to have regard to, amongst other things, 'all the circumstances of the case including the person's criminal record.' The Board had sought access to this Office's files to enable it, where it was conducting a hearing in relation to a security patient, to make a more informed judgment as to the criminal record of the patient concerned.

At the time of writing, the application relating to the Victorian Mental Health Review Board is being finalised, while the other application is 'part heard'.

ALRC reference on Customs law

In November 1987 the Attorney-General referred the *Customs Act 1901*, the *Excise Act 1901* and certain related Acts to the Australian Law Reform Commission for review.

At the time of writing the Commission has issued five discussion papers, of which DP 42: *Customs Prosecutions, Jurisdiction and Administrative Penalties* is of most interest to the DPP. This Office has provided a submission to the Commission commenting on the issues raised in that discussion paper.

The most important issue raised by DP 42 is whether the rather curious 'Customs prosecution' procedure should be retained, or alternatively whether offences presently subject to the Customs prosecution procedure should be prosecuted by way of the ordinary criminal procedures.

Over 100 offences under the Customs Act may be dealt with by the Customs prosecution procedure. The maximum penalty that may be imposed is a pecuniary one only, either expressed as a fixed amount or in multiples of the amount of duty evaded. While there can be no real dispute that the nature of many of the *matters* that are dealt with by way of the Customs prosecution procedure is essentially criminal, this is not the case with the nature of the *procedure* which is applied in a Customs prosecution. The reason for this uncertainty is partly historical. The Customs prosecution is based on what Cooper in 'Customs and Excise Law' has described as 'age-old procedures' which were developed by the common law until codified by United Kingdom legislation in the 19th century. The uncertainty also arises from the Customs Act itself. A Customs prosecution may be instituted in either a court of summary jurisdiction or a superior court. If instituted in the former they have always been treated in the same way as ordinary criminal proceedings i.e., the criminal rules of procedure and evidence are applied. However, uncertainty exists in relation to Customs prosecutions instituted in the superior courts. Until recently the weight of judicial authority has been that proceedings instituted in the superior courts are civil in nature. However, there is some recent authority to the effect that the proceedings are criminal in nature, although one appellate judge has suggested that they are more 'hybrid' in nature.

The Commission has recognised that at least the uncertainties that at present exist as to what rules of procedure and evidence apply should be removed, and that the same rules should apply irrespective of the court in which the proceedings are brought. However, the more basic question is whether the concept of a Customs prosecution should be retained. Is there now any justification for determining liability for an offence under the Customs Act other than by the ordinary criminal process.

The Commission has conceded that the 'historical explanation for the origin of the Customs prosecution procedure would not now justify its introduction'. However, it has suggested that 'history may justify the retention of provisions already introduced which have been in operation over a long time'. With respect, this Office disagrees. While certain offences under the Customs Act are regulatory in nature, many are concerned with conduct which, if committed in the context of some other sphere of Commonwealth activity, would be prosecuted in accordance with the ordinary criminal process. The evasion of Customs duty by forgery or other fraudulent means, for example, if dealt with by way of a Customs prosecution, exposes the offender to a monetary penalty only no matter how great his or her culpability. Further, notwithstanding the criminal nature of such conduct, if dealt with as a Customs prosecution the Australian Customs Service may arrive at a monetary settlement with the offender in exchange for not continuing the prosecution.

The anomalous nature of the Customs prosecution is apparent when one contrasts this with the position that applies when a person is charged in relation to broadly similar conduct committed in the context of some other sphere of governmental activity, such as fraud on the social security system. The social security offender is not only dealt with by way of the ordinary criminal process, but he or she may be deprived of their liberty if convicted. Nor is a social security offender able to avoid a conviction by paying an agreed amount to the authorities.

This Office can see no justification for retaining what it considers to be the anachronistic and anomalous Customs prosecution procedure, particularly as there is far greater scope for the Commonwealth to be defrauded of vastly greater sums of money on an individual case basis in the Customs area than in, for example, the social security area.

It should also be noted in this regard that many other countries that either inherited or adopted the Customs prosecution procedure have now abandoned it. Indeed, even the birthplace of this procedure, the United Kingdom, has seen fit to abolish it.

Conduct involving a breach of the Customs Act may also constitute an offence against one or more of the general provisions of the *Crimes Act 1914*. For example, the evasion of Customs duty by fraudulent means (e.g. the use of dual invoices) will constitute both a Customs offence and the offences of imposition and fraud under the Crimes Act. Depending on the option chosen, the arrangements for the conduct of the prosecution, the procedures that would apply and the possible consequences if there is a finding of

guilt, could not be more different. While there are guidelines in place between this Office and the Australian Customs Service as to those matters which should be dealt with as a criminal prosecution, they are a most imperfect solution to what can only be regarded as a quite anomalous situation.

It is understood that the Customs prosecution procedure is sometimes used in circumstances where the issue involved is essentially a dispute as to the applicable duty. A purely civil process should be available to deal with such matters. However, where the issue involved is whether a person has committed a criminal offence under the Customs Act, then that issue should be determined by the ordinary criminal process.

Reform of committal proceedings in the ACT

Some years ago the Chief Magistrate in the ACT formed a Criminal Procedure Committee made up of representatives of various elements of the criminal justice system in the ACT.

The committee provides a useful forum to develop proposals for changes to the procedure relating to the conduct of prosecutions in the ACT Magistrates Court. The DPP is represented on the committee.

In the latter half of 1989 the Attorney-General's Department and the Chief Magistrate circulated for comment a paper proposing a new pretrial procedure for dealing with matters before the ACT Magistrates Court. The proposed procedure made provision for the disclosure of material by the prosecution to the defence, and the use in committal proceedings of written statements provided by the prosecution.

The response of this Office was that, while we were in sympathy with the general sentiments behind the proposed new pretrial procedures, we would have significant reservations if it was intended they be put into effect by way of an essentially administrative arrangement rather than by legislation. Rather than endorse the draft proposals, the DPP argued for the establishment of a legislative scheme making provision for an effective 'hand-up' or 'paper' committal system in the ACT.

Such a legislative scheme should require the prosecution, where a person had been charged with an indictable offence, to supply to the defence and the Magistrates Court a 'hand-up' brief containing all the written statements of witnesses available to the prosecution upon which the prosecution intended to rely. However, given the well established tradition in the ACT of oral committal hearings, there should be no absolute right to cross-examine prosecution witnesses in committal proceedings; rather the leave of the court should be required which leave should only be granted, in the absence of the consent of the prosecution, if the magistrate is satisfied that exceptional circumstances exist and that it is in the interest of justice that the witness be cross-examined on his or her statement. Further, there should be similar restrictions on the right of the prosecution to examine a prosecution witness on his or her statement, although the prosecution

should be permitted with the leave of the court to examine a witness who has declined, or been unable, to provide a written statement.

The present practice in the ACT for dealing with a person who has pleaded not guilty to an indictable offence is for the prosecution to, in effect, present its whole case orally (even where witness statements have already been provided to the defence), and it is only then that the magistrate will decide whether to hear and determine the matter summarily. Obviously any move to an effective legislative 'hand-up' committal procedure would require that decision to be made at a much earlier stage, perhaps at a preliminary directions hearing. At such a hearing the magistrate could also entertain applications to cross-examine witnesses which, if acceded to, could be done at a later hearing.

Following its initial response to the paper prepared by the Attorney-General's Department and the Chief Magistrate, the DPP prepared a paper 'fleshing out' the proposals outlined in the Office's initial response. This paper has been discussed at a number of meetings of the Committee, and at the time of writing it appears likely the question of reform of committal proceedings in the ACT will be formally referred to the ACT Attorney-General with a recommendation that legislation be introduced as a matter of priority.

Revised guidelines on 'welfare fraud' prosecutions

The 1986–87 Annual Report contained a note on the guidelines that had been issued on the use of provisions of the *Crimes Act 1914* in the 'welfare fraud' area.

Section 239(1) of the *Social Security Act 1947* creates a series of offences which, broadly speaking, deal with the making of a false or misleading statement in connection with, or in support of, a claim for a welfare benefit, or the obtaining of such a benefit by means of a false or misleading statement. The offences are summary and punishable by a fine not exceeding $2 000 and/or imprisonment for a period not exceeding 12 months.

Notwithstanding the existence of these specific offences dealing with fraudulent claims on the Department of Social Security, conduct which constitutes an offence against section 239(1) will almost invariably also constitute an offence against one or more of the general provisions of the *Crimes Act 1914*; for example, sections 29A, 29B, 29C, 29D and 67(b). While the maximum penalty applicable on summary disposition may be the same as that applicable for section 239(1) offences, when prosecuted on indictment the maximum penalty applicable for these Crimes Act offences is at least double, and in some cases considerably higher.

While the prosecution policy statement provides some general guidance on the use of provisions of the Crimes Act which cover the same ground as provisions of a specific Act, in the circumstances where there had been a lack of uniformity in the use of Crimes Act provisions in the welfare fraud area, there was an obvious need for more detailed guidance to be provided to prosecutors as to the circumstances which would justify resort to the

Crimes Act in this particular area. Accordingly, in 1987 guidelines were issued to the effect that ordinarily charges should be laid under the Social Security Act unless the evidence disclosed either systematic or internal fraud.

These guidelines were reviewed during the year. While they had proved to be successful in achieving a measure of uniformity in an area where previously there had been great disparities in charging practice, it was considered that they did not cater for all situations where it would be appropriate to proceed under the Crimes Act. For example, it is impossible to distinguish in any meaningful way the criminality of a person who receives dual benefits ('systematic fraud' under the 1987 guidelines) and the receipt of benefits while in full time employment. Again, it is difficult to distinguish any difference between the criminality of the dual claimant and that of a person who, although initially entitled to benefits, subsequently fails to notify the Department of some change of circumstance such as full time employment and as a result over an extended period receives a substantial amount in benefits to which there is no entitlement.

Apart from those cases involving 'systematic' or 'internal' fraud, the revised guidelines provide that charges under the Crimes Act may be laid where the available evidence discloses such circumstances of aggravation that to proceed under the Social Security Act would not adequately reflect the nature and extent of the criminal conduct disclosed by the evidence. In determining whether the circumstances of a particular case are sufficiently serious to warrant charges under the Crimes Act, regard may be had to all relevant matters including the following —

(a) whether it is alleged the claim for a pension, benefit etc. was fraudulent from the outset, rather than a failure to disclose some change in circumstances which would have reduced or eliminated entitlement;

(b) the amount it is alleged was unlawfully obtained, and the period over which the alleged offences occurred;

(c) the use of forged documentation, a false address or a false or misleading identity;

(d) the income received by the alleged offender or that person's spouse or de facto over the relevant period;

(e) changes over the relevant period in the asset position of the alleged offender, that person's spouse or de facto, or children; and

(f) whether the alleged offender has previous convictions for offences involving dishonesty, particularly for similar offences.

While the amount defrauded is an important factor in determining whether to proceed under the Crimes Act, the guidelines counsel against that assuming the role of the sole consideration.

The guidelines also provide that charges under the Crimes Act should not be laid unless it is intended to proceed upon indictment. However, it is recognised that circumstances may change and new facts can come to light and it may be appropriate, having regard to what is said in the prosecution policy statement as to mode of trial, to agree to summary disposition of Crimes Act charges.

Administrative Decisions (Judicial Review) Act

The *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act) permits persons aggrieved by certain administrative decisions to seek review of those decisions in the Federal Court. Section13 of the ADJR Act entitles a person aggrieved by a decision to seek a statement of reasons for that decision, although paragraph(e) of Schedule 2 of the Act excludes 'decisions relating to the administration of criminal justice'.

As was noted in last year's annual report, the Administrative Review Council (ARC) is reviewing the ADJR Act, and in May 1989 submitted a Report to the Attorney-General on the first part of its project, the ambit of the ADJR Act (Report No 32). In this Report the ARC recommended, among other things, that decisions of magistrates in committal proceedings should be excluded from review under the Act, but that the decisions taken in connection with the prosecution of offences should remain subject to review. While agreeing with the first mentioned recommendation, this Office has argued that all other decisions in the prosecution process should also be excluded from review (see pages128–9 of the 1988–89 Annual Report).

On 14 January 1990 the ARC released a discussion paper on the second part of its review of the ADJR Act — statements of reasons. This discussion paper proceeded on the principle that the classes of decisions in respect of which there is an entitlement under the ADJR Act to seek a statement of reasons should be co-extensive with the classes of decisions in respect of which there is an entitlement to seek review. In keeping with the recommendation in ARC Report No 32 that prosecution decisions should be subject to ADJR Act review, the discussion paper argued that paragraph(e) of Schedule 2 of the ADJR Act should be repealed, thereby entitling a person aggrieved by a decision in the prosecution process to seek a statement of reasons for that decision. However, the discussion paper did recognise the need to protect sensitive information from disclosure in statements of reasons. Accordingly, the discussion paper mooted the possibility of amending section13A of the ADJR Act (which provides that certain information need not be disclosed in a statement of reasons) to also exempt information that would affect the enforcement of the law or that would endanger the life or physical safety of any person.

While not contesting the general proposition that the right to seek reasons for a decision should be co-extensive with the class of decisions subject to ADJR Act review, the DPP again argued strongly, for the reasons noted in last year's annual report, that decisions in the prosecution process should not come within the ambit of the ADJR Act. We

continue to adhere to these views which, if ultimately accepted, would mean that a person affected by a prosecution decision would not be able to seek a statement of reasons for that decision.

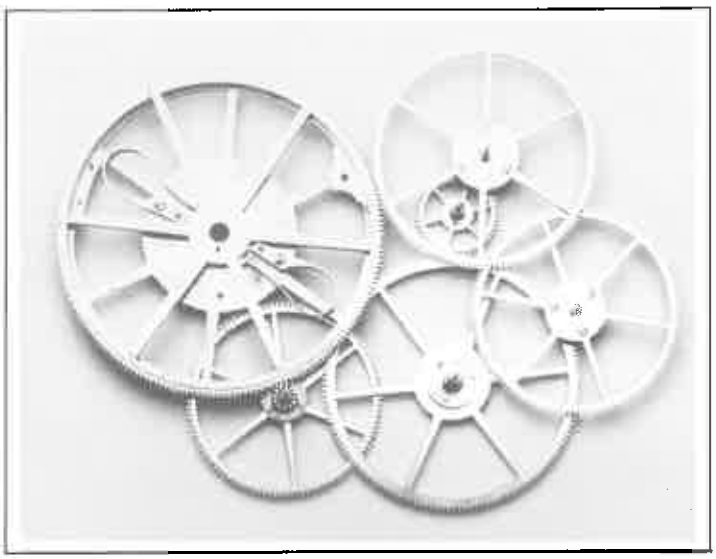
However, assuming the recommendations in ARC Report No 32 are adopted, the view taken by this Office is that the ARC has not made out a compelling case for altering the present position with respect to paragraph(e) of Schedule 2. This Office has consistently argued that the fair and efficient administration of criminal justice is premised upon the avoidance of unnecessary delay, but that recourse to the ADJR Act has the potential to delay and frustrate the criminal justice process. Applications for statements of reasons (which, of course, can be sought with great ease) are bound to cause further delay.

Further, even if the circumstances of a request for a statement of reasons were to fall within an expanded section13A as postulated in the discussion paper, that would not necessarily mean a statement of reasons would not have to be provided. A statement of reasons would still have to be provided with the 'exempt' material being omitted from the statement unless to do so would render the statement false or misleading. Allied to this point, even where information is not included in a statement of reasons, or a statement of reasons not furnished, reasons must still be given for not including the information or not providing the statement.

Finally, there is one other major factor which the DPP argued should be taken into account in the context of the supposed need for a person to be able to obtain a statement of reasons for a prosecution decision. A section13 statement of reasons serves the purpose of enabling a person aggrieved by a decision to find out the reasons for that decision. This simply does not apply to the prosecution process. It is no part of a prosecutor's function to conduct trials by ambush, and indeed it amounts to a miscarriage of justice if a defendant is prevented by surprise from presenting his or her case in defence.

It is obviously in the interests of speedy and fair administration of criminal justice that the issues between the parties are clearly identified at an early stage and those issues fully canvassed before the court. To this end prosecutors seek to ensure that the defence is aware of the charges against them and of the effect of the admissible relevant evidence against the defendant upon which the prosecution intends to rely. A defendant is therefore well aware of the reasons why he or she has been charged before going to court, and in virtually all cases is in possession of all the relevant witness statements; this is considerably more than would be available from a section13 statement of reasons. In addition, in most jurisdictions the hand-up committal procedure ensures that the defence has the prosecution case before committal hearing and trial. In short, the reasons for a decision to prosecute, plus the evidence against the defendant, are to be found in the brief of evidence which will be given to the defendant thus making it unnecessary to provide a statement of reasons.

Chapter 7
Administrative support



The Administrative Support Branch is primarily a coordinating and advisory unit for both policy issues and operational matters with national implications. Regional offices are responsible for most administrative matters. In Head Office group support officers now provide general administrative support for the various branches. This approach allows greater attention to national policy development and global resource management issues.

The size of the Administrative Support Branch remains relatively small. It has not been possible to address all policy and procedural issues this year. Work programs have been developed by each section within the branch to enable priorities to be identified and systematically addressed.

Personnel management

The development of a new award for legal officers has been pursued as a high priority during the year by the DPP in conjunction with the Attorney-General's Department, other interested agencies, the Department of Industrial Relations and the unions. Appropriate remuneration for lawyers is still a key issue in the DPP's strategy to recruit

and retain high calibre staff. The negotiations which are taking place under the structural efficiency principles of the national wage case are nearing completion. Improved remuneration and more flexible advancement arrangements may go some way towards reducing staff turnover which continues to be a problem in some DPP offices. Implementation of the office structures review (OSI) stemming from the second tier wage agreement has now occurred in all Offices except Brisbane. Melbourne and Sydney Offices have undertaken evaluations of the post OSI situation and have refined some aspects. Evaluations of OSI in the other offices are planned for 1990–91.

Equal Employment Opportunity

Equal Employment Opportunity (EEO) within the Australian Public Service remains a high priority of the Government. The DPP is committed to the principles of EEO. Progress is being made and it is the aim of the DPP to ensure that EEO becomes an integral component of the day-to-day management of the office. The DPP will only be able to meet the needs of the community it serves if it has a workplace free from discrimination and a workforce that is representative of the wider population.

The DPP EEO program includes specific measures consistent with the merit principle to actively promote the representation at all levels in the DPP of Aborigines and Torres Strait Islanders, people from non-English speaking backgrounds, people with disabilities and women.

Consultative mechanisms

At the national level, there is a service wide group of EEO coordinators who meet every three months and the DPP is represented at those meetings. The network in Canberra continues to be a major source of information.

There are various meetings of EEO contact officers in the regions and DPP staff participate in some of these.

EEO resources

The Director and senior management are committed to the operation and achievement of EEO for all staff. The Senior Assistant Director of the Administrative Support Branch, Head Office and the Deputy Directors in each state office are responsible for the development, implementation and review of EEO practices.

The national EEO coordinator in head office works in conjunction with the regional EEO contact officers, who are responsible for developing EEO action plans for their local environment.

The highest priority for 1990–91 is to review and evaluate the present program. The revised program will need to be pragmatic in its approach to meet the demands of the service, contemporary management practices and the objectives outlined in the corporate plan. Attempts will made to include a practical monitoring or evaluation component.

Specifically, performance indicators of both a quantitative and qualitative nature will be built into the program to be used as an initial measure of success. The new program will emphasise the responsibility of managers to ensure that EEO becomes an integral part of all human resource management practices.

Personnel records

Establishment records for all DPP positions have now been put on the NOMAD personnel management ADP sytem, which is administered by the Attorney-General's Department.

Other personnel records are being progressively put onto the system throughout Australia and the process should be completed during 1990–91.

Performance appraisal

A performance appraisal scheme was introduced for Senior Executive Service (SES) staff in April 1990. The scheme consists of a performance agreement contract based on the DPP corporate plan and an assessment of core skills required by SES officers. The first round of appraisals and new performance agreements will be prepared during July and August 1990.

The Melbourne Office has introduced a staff appraisal scheme for all staff. The purpose of that scheme is to provide, at six month intervals, an exchange of information between management and staff about work performance. The appraisal will be linked to the corporate objectives and to the duties and selection criteria applying to the particular position. The staff appraisal scheme will also assist in identifying staff development needs. The first appraisals were conducted at the end of March 1990.

Staff development and training

The implementation of the office structures review and changes to work practices stemming from the structural efficiency principles require greater attention and changes in direction to staff development and training. Training in supervision, clerical procedures, computer literacy and keyboard skills has been a high priority area. A national training strategy for legal staff is being developed in the Melbourne office and should be in place during 1990–91.

A skills audit of staff in the Melbourne office was undertaken during the year. The results have been placed on a personnel training record system which was developed to assist the monitoring and planning of the training program.

A policy on payment of the higher education contribution has been developed which enables financial assistance to students in certain circumstances. This is consistent with the DPP's general support to students. A review of the DPP's studies assistance policy was commenced but later postponed pending the outcome of the service-wide review which is now occurring.

Training for middle managers and staff involved in performance appraisal schemes will be a high priority for training during 1990–91.

There was an average of 2.8 training days per staff member during 1989–90 and 79 per cent of staff participated in training activities.

Staffing at 30 June 1990

Full-time	*Permanent* Male	*Permanent* Female	*Temporary* Male	*Temporary* Female
SES	25	3	—	—
Other	151	198	6	28
Sub Total	176	201	6	28
Total	377		34	

Part-time	*Permanent* Male	*Permanent* Female	*Temporary* Male	*Temporary* Female
SES	—	—	—	—
Other	—	10	3	2
Sub Total	—	10	3	2
Total	10		5	

Grand Total 426 (unpaid inoperative staff are not included in this total).

The above figures include:

Paid Inoperative Staff	— 9
Contract staff (under DPP Act)	— 5
Agency	— 6
Director	— 1

Staff as at 30 June 1990

	Full-time		*Part-time*	
	Male	*Female*	*Male*	*Female*
Director	1			
Senior Executive Service				
Band 3	1			
Band 2	6			
Band 1	17	3		
Principal Legal Officer	43	15		2
Senior Legal Officer	35	24		
Legal Officer	13	13		
Administrative Service Officer	57	163	2	8
Computer System Officer	9	1		
Other	—	10	1	2
Total	182	229	3	12

The proportion of staff dedicated to administrative support is (for 1989–90) 25 per cent.

Staff Turnover 1989–90 — Legal 20 per cent
— Non legal 25 per cent

Staff Allocation and Usage by Office

Office	*Approved Average Staffing 89–90*	*Actual Average Staffing 89–90*	*Allocation 90–91*
Head Office	44.5	42	42.5
NSW	143	131	140
Vic.	107.5	103	108.5
Qld	44	46	45
WA	31	31	30
SA	28	26	29
ACT	35	34	39
Unallocated			51
Total	433	413	485

The unallocated provision covers staffing for prosecutions referred by the Australian Securities Commission and for war crimes prosecutions.

The ACT Office figure includes staff for both ACT and Commonwealth prosecutions conducted by that Office.

Staff Allocation and Usage by Program

Program	*Estimate 1989–90*	*Actual 1989–90*	*Estimate 1990–91*
Prosecutions	256	248	294
Criminal Assets	72	55	55
Executive and Support	105	110	104
ACT Prosecutions			32
Total	433	413	485

The 1990–91 allocations are provisional only and will be supplemented by additional resources for prosecutions referred by the Australian Securities Commission and war crimes prosecutions.

Establishments

Preparatory work to devolve to Deputy Directors most establishments action took place towards the end of the year. A handbook was prepared and training sessions for action officers were scheduled. The function will transfer from July 1990. Deputy Directors will have greater flexibility to create, abolish or reclassify positions, except those in the Senior Executive Service, to meet the operational requirements of their particular office, without reference to Head Office.

Occupational health and safety

Changed work practices resulting from work restructuring has created increased demand for computer terminals in all offices as well as increased demand for training. A survey of each work station was undertaken in Head Office which promoted an awareness of occupational health and safety issues and commenced the education process. The survey identified the need for new or modified furniture and equipment and identified training requirements in relation to the use of the equipment. Similar exercises have been undertaken in other offices and further surveys are expected to occur during 1990–91.

A policy and procedure circular relating to workers' compensation and Comcare requirements was developed and issued during the year.

Industrial democracy

The DPP is committed to the principles of industrial democracy. Participative work practices adopted during OSI are gradually flowing to other activities. Meetings with unions are occurring as necessary and some Offices have regular consultative meetings.

Other personnel projects

A new draft DPP personnel security policy and procedure circular has been developed, based on the draft service wide policy which is currently being finalised. Further consultation with staff and unions will be necessary before the DPP draft is settled and implemented.

A new system for the design and control of administrative circulars was implemented during the year. The standard design requires reference to any legislative or other basis for the matters covered in the circulars.

Accommodation

The Melbourne Office was completely refurbished during the year and staff are now located on four consecutive floors. The project provided all lawyers with offices and other staff with properly designed and sized work areas and staff amenities areas. This was in effect the first fitout for the DPP in the premises since it commenced operation and was long overdue. A furniture replacement program was scheduled to coincide with the completion of the fitout and staff now enjoy the high standard of accommodation that prevails elsewhere in the DPP. The Adelaide Office will be relocated within its present

building early in 1990–91 and will require fitting out but otherwise only minor modifications to existing fitouts are programmed for 1990–91.

Archiving of records

The Melbourne office, with the assistance of the Australian Archives Office, finalised the development of national disposal authorities for prosecution records. Authorities for fraud records were also developed and are being tested. Authorities for criminal assets records have been drafted. Most DPP offices have commenced evaluating or transferring prosecution records to archives.

Library services

Library staffing

A review of library staffing based on the new position classification standards was carried out during the year. The main part of the review has been approved by management and the union and most recommendations should be implemented by the end of 1990. This will bring DPP libraries into line with other libraries within the Attorney-General's portfolio. There were two library appointments during the year, one to the new position in the Adelaide library, the other involved the temporary filling of the cataloguing position in Sydney.

Library accommodation

Melbourne library moved to permanent accommodation after being housed temporarily for three months. The new location is more conveniently placed for users and for the first time the whole collection is on the shelves and available for use. The floor space in the Perth library was almost doubled during the year to give legal staff a larger work area. Lack of work areas for the librarian and lawyers continues to be a problem in the Canberra Office. The library is overcrowded and will have to expand to meet the needs of the office. The Head Office library will be extended during the coming year as the present space is used to capacity.

Library management

Networking of DPP State and Head Office computer systems has provided the option of a networked library management system. Previous investigations had been limited to consideration of individual systems installed at each site. A feasibility study was undertaken by the Sydney Office librarian with an on-site evaluation of the recommended system. A submission has been forwarded to the Department of Administrative Services. Should it be approved a project team will be set up for six months to oversee the implementation. The system, if implemented, will assist the libraries in the control of technical operations as well as providing a powerful searching tool for the on-line retrieval of information.

Library services

The information service outlined in the 1987–88 Annual Report continues to play an important role in the distribution of information to legal staff. This is presently distributed in a format designed for card indexing. It is anticipated that the information service will be integrated into the new library management system. This will give on-line access to the material abstracted in the service.

Access to legal databases plays an important part in the provision of library services. Present arangements for overseas databases require dial-up facilities. With the development of the Attorney-General's STX gateway these databases may now be accessed through Attorney-General's mainframe computer. All libraries have applied for access to this facility which will eliminate the problems experienced in the past with dial-up access.

Financial management

During the year significant changes continued in the government finance arena. The devolution of financial functions to program areas continued, as did the progressive implementation of the use of credit cards. Major changes have also been made to government purchasing processes. To meet the present and continuing demands of the changing financial environment, the DPP is to install a Financial Management Information System.

Financial reforms

The main area of change during 1989–90 was in government purchasing, with significant amendments to Finance Regulations taking effect from 1 November 1989. New DPP financial delegations were put in place from that time as required by the amended legislation. Interim purchasing processes were also put in place pending the development and approval of a DPP purchasing reform plan. Preliminary work has been completed on the plan and a first draft has been circulated for comment. It is anticipated that an approved plan will be in place early in 1990–91.

Financial management systems

The DPP continued to operate two significant financial systems during 1989–90, a Fines and Costs system for managing the fines and costs awarded by the various courts in Commonwealth prosecutions, and an accounting system for financial management and accounts processing for the DPP.

During 1989–90 the Fines and Costs system was significantly modified to provide better accounting controls and managerial reports, particularly to enable the DPP to comply with financial reporting guidelines. The modification required considerable additional effort by staff involved, but was succesfully implemented by the end of the financial year.

Experience with and evaluation of the in-house DPP accounting system during the year resulted in the conclusion that the system was not adequate for the DPP to meet its financial management requirements in a rapidly evolving government accounting environment, particularly in view of new financial reporting requirements, a new government purchasing environment and the continued devolution of accounts processing.

A Financial Management Information System (FMIS) evaluation group, consisting of representatives from Head Office and State Offices at various levels, was set up to examine the future needs of the DPP. It was determined that the purchase of a proven FMIS would be most appropriate. Following an evaluation of the products available to operate in a Wang VS environment, the group has recommended the purchase of the FINEST system. This system, used by several departments and agencies, is planned to be implemented in the DPP early in 1990–91 and is expected to meet the financial requirements of the DPP in the medium-term. The chosen system includes assets and travel modules, as well as traditional general ledger, accounts processing and budgeting modules.

Financial training

The devolution of functions and continuing reforms to financial management has meant that both Head Office and State Office financial managers have had to take a greater role in information dissemination and training.

As part of this process, work commenced on a *Financial Handbook*, a *Purchasing Manual* and a *Fines and Costs Manual* during 1989–90. These manuals will draw together relevant information under one cover and will include ready reference procedures as well as formal policies, delegations and procedures. Initial drafts of the first two manuals were distributed late in 1989, but further work has been deferred pending finalisation of a purchasing reform plan and installation of the new FMIS. It is hoped that the final manuals will be issued late in 1990.

The services of other departments and agencies, particularly the Department of Finance and the Purchasing Reform Group, are used wherever possible to train DPP staff in both new and ongoing financial matters. Staff have attended seminars on purchasing reforms, program budgeting and evaluation as well as ongoing financial training.

A set of audio cassette Fines and Costs system training tapes was produced by Film Australia for the DPP to assist in training new staff and as a ready reference for existing staff for modules used only occasionally. The tapes were partly experimental, but initial reaction seems good.

Accounts processing

The use of official government credit cards is becoming widespread within most offices and is proving to be most efficient, particularly for library operations. Payments of legal

expenses will continue to be paid largely by cheque. The implementation of the new FMIS with a capacity to electronically transfer accounts data to the Department of Finance will further improve the accounts payment process.

Accounts processing is significantly devolved to action areas in some states, with other states choosing a more centralised approach at this stage. It is estimated that 10 000 claims for payment were processed nationally during 1989–90. Of these payments, approximately 95 per cent were paid on the due date. Approximately 2 500 further transactions were processed by credit card during 1989–90 and this number is expected to significantly increase in future years.

Budget management

Audited financial statements for the DPP are included at the end of this report. In some instances, as recorded in the notes to the statements, data was not available to provide full year history of items included in the statements. Implementation of the new FMIS will provide all the required data for 1990–91 onwards.

In 1989–90, total revenue recorded against the DPP was $3.358 million with total expenses of $33.571 million. The cost of leasing and maintaining DPP accommodation ($5.558 million) is shown as Property Operating Expenses for the first time in 1989–90. 1989–90 expenditures also included significant one-off expenses of the cost of fitting out DPP offices in Melbourne ($1.216 million) and preliminary costs of the war crimes prosecution begun in Adelaide.

Current budgeting arrangements require that in most instances departments which administer Commonwealth legislation are responsible for the legal outgoings resulting from prosecutions under that legislation and receive fines and costs revenue resulting from such prosecutions. The DPP accounts for Fines and Costs and Legal Expenses therefore records primarily revenue and costs resulting from prosecutions under the Crimes Act. Other legal costs and revenue are recorded against the responsible department or agency such as the Australian Taxation Office or the Department of Social Security. Statistics of matters prosecuted printed elsewhere in this report refer to the total volume of business of the Office and the legal costs reported in the financial statements do not represent the full cost of all such prosecutions.

In 1990–91 the DPP expects to conduct company prosecutions referred by the new Australian Securities Commission. This is expected to result in a significant increase in workload and an associated increase in DPP funds.

For further information on DPP budgets refer also to the *Attorney-General's Portfolio Explanatory Notes 1990–91* — Sub-program 6.8.

Program budgetting

In 1989–90 the DPP had three sub-programs for resource management : Prosecutions, Criminal Assets and Executive and Support. An assessment of performance in each program area is shown in the relevant sections of this report.

From 1 July 1990 the ACT government became responsible for prosecutions under ACT legislation. The Commonwealth DPP is to perform the function on an agency basis and the financial statements for 1990–91 will record such an arrangement as a separate sub-program with an offsetting cost recovery revenue item.

An Agency Evaluation Plan is in the final stages of development for the DPP. This plan will provide for the evaluation of each significant DPP activity within a five year cycle. It is anticipated that the first reviews will include the Proceeds of Crime function and the Fines and Costs function.

Consultants

The following consultants were engaged as in-house counsel to handle a range of matters over a set period for a fixed overall fee, rather than being paid on a fee for brief basis. This was done in consultation with relevant Bar Associations, partly to test the viability of the concept. The exercise has proved to be both efficient and cost effective. A proposal is currently with the Department of Finance seeking to establish specialist in-house counsel positions in the Senior Executive Service.

E Fullerton	Sydney	10 months	$69 545
B King	Melbourne	12 months	$89 086
F Marsh	Perth	2 months	$7 200

Information systems group

The Information systems group is responsible for assisting the Offices in data processing functions, in both legal and administrative applications. This involves the provision and support of the computer hardware and software.

This year there were extensive enhancements to existing software systems, the implementation of the Wang WSN Network and the implementation of two major software packages.

Litigation support

There has been a further increase in the use of personal and lap-top computers in litigation matters. Standard PC packages are used mainly in the provision of simple database systems, spread sheets and text retrieval functions. With the quality and ease of use of these packages, there has been a trend away from writing in-house Wang VS applications and the use of STATUS text retrieval in individual matters.

A number of Wang applications were written to support more complex matters.

Criminal assets

A feasibility study is currently being conducted on the viability of providing a computer application to assist the Criminal Assets Branches. This should assist in monitoring the progress of their matters and provide statistics for management reporting. Subject to approval, it is proposed to develop an application in 1990–91.

Case matter management

There were significant enhancements to this application through the year. The enhancements provided for more stringent validation of input data, new reports dealing with sources of DPP work and matters relating to specific Commonwealth Acts, and improved interfacing to the Fines and Costs system.

Canberra Office

The Canberra Office, in addition to prosecuting Commonwealth matters, also acts as the 'State' prosecutor for the ACT. At this stage, it is envisaged that the Case Matter Management system will be retained for recording and reporting Commonwealth matters and also those referred by local authorities. However for AFP matters, ADP is investigating the possibility of direct keying into the AFP database, rather than duplicating the AFP data.

Fines and Costs

A new module was added to the Fines and Costs system to allow for adjustments and write-offs.

Hardware

All DPP Offices use Wang VS minicomputers for the majority of their word processing and data processing, in conjunction with personal computers connected to the Wangs. There have been upgrades to the existing Wang computers to cater for additional users, as a result of the implementation of multi-skilling. Further disk capacity was added to the Wangs to cater for growth in current systems and allow for new packages.

Through this year the networking of all the DPP Offices' Wang VS's was completed. This Wang WSN network replaces an older BSC network and provides access between all State Office Wangs with a single access point into the Attorney-General's Department's IBM mainframe. This network will provide major benefits to all offices. It will allow the new applications of Finance and Library Management to be accessed from all the DPP Offices, allow access to the Pay/Personnel System (NOMAD) and STATUS databases on the IBM mainframe, and provide for electronic mail.

Bar-code readers were successfully tested for file registry functions and it is proposed to use these for fixed assets, library management and file registry — both case management and administrative.

Prosecution statistics

The following tables and graphs provide a statistical picture of the prosecutions conducted by the Office during the year.

With the enhancements to the Office's Case Matter Management system (CMM) that were made last year it is now possible to provide information on more aspects of the Office's prosecutions, and in greater detail, than was possible in previous years. New areas covered in this report include the percentage of matters in which DPP lawyers appeared as counsel, and the number of matters referred to the Office for prosecution by individual agencies. This year's report also includes a series of tables which provide a detailed statistical breakdown of social security prosecutions conducted by the Office during the year. These tables provide information as to the number of prosecutions in this area that were dealt with summarily or on indictment, the number of social security prosecutions referred by either the Department of Social Security or the AFP, penalties imposed, amount defrauded on charges found proven, and social security prosecutions that proceeded under the *Crimes Act 1914*.

Some caution should of course be exercised in drawing conclusions from the information provided in the following tables and graphs in that they do not take into account

qualitative differences or environmental influences. A particular trial on indictment, for example, may have consumed considerably more resources than other trials, but such qualitative differences will not be reflected in the tables. Again, the time taken to complete matters (set out in the series of graphs dealing with 'processing time') will be affected by delays in the court systems of particular jurisdictions over which the Office has little control.

The information provided on matters dealt with by our Adelaide Office is incomplete in a number of areas. As noted in last year's report, a separate DPP Office was established in Adelaide on 1 July 1989. Previously prosecutions had been conducted by DLS Adelaide on behalf of the DPP. It was not feasible to transfer onto CMM all current matters as at 1 July 1989, and any current file as at that date which was eventually dealt with as a plea in the summary court or merely as an advice was not transferred. On the other hand, all trial and appeal matters were transferred. Where the information on matters dealt with by DPP Adelaide is incomplete, this has been noted on the relevant table or graph.

Largely because of the unique nature of its practice within the DPP, at present data is only entered onto CMM by the Canberra Office for certain matters, for example, summary matters referred by the AFP that are to be defended or where there is a request for particulars. Accordingly, in the case of the Canberra Office it is not possible to rely on CMM for compiling statistics in most of the areas covered by the following tables and graphs. However, in some cases it has been possible to compile statistics manually, although sometimes these statistics are not in a format that is compatible with those produced in respect of other regional DPP Offices. Despite this, the information provided in chapter 4 dealing with the operations of the Canberra Office provide a reasonably detailed picture of the prosecutions conducted by that Office. In addition, in some instances it has been possible to include figures for the Canberra Office in the following tables.

Finally, with the growing sophistication of the reports in respect of prosecutions conducted by DPP regional offices, there has been a corresponding inability on the part of the two DLS offices, Hobart and Darwin, to compile prosecution statistics, both in respect of the areas to be covered and in a format which is compatible with those produced in respect of DPP regional offices. In this regard, the computer system that is used by those two offices does not have programs which enable more than some basic data to be recorded, and in the past it has required considerable manual effort on the part of those two DLS offices to compile prosecution statistics for the DPP Annual Report. However, this has proved to be no longer feasible with the changes that have been made for this year's report. As noted above, not only are more aspects of the Office's prosecutions being covered, but in a number of areas the information provided is more detailed than has been the case in the past. Accordingly, it has been decided that this report will only contain basic information on prosecutions conducted by those two DLS offices.

Table 1(a)

Matters Dealt With Summarily in 1989–90 (i) (vi)

State	*Defendants outstanding at 1.7.89*	*Matters received during year*	*No. of defendants dealt with*	*Outcome of summary trials*					*Defendants outstanding at 30.6.90*
				Pleas of guilty to all charges	*No. of summary trials*	*No. of defendants convicted (ii)*	*No. of defendants acquitted on all charges*	*Unresolved*	*Other (iii)*
NSW(iv)	315	910	861	667	131	49	81	1	63	364
Vic.	598	1330	1361	1040	252	202	49	5	65	567
Qld	121	584	620	525	43	32	11		52	85
WA	92	831	817	744	68	40	26	6	1	106
SA (v)	99	535	423	342	45	29	15	1	36	211
Total	1225	4190	4082	3318	539	352	182	13	217	1333

Notes: (i) See tables in chapter 4 for details of matters dealt with summarily in the ACT.

(ii) i.e. where a defendant was convicted on at least one charge, or at least one charge was found proved.

(iii) e.g. all charges against a defendant withdrawn or no evidence offered by the prosecution in respect of any charge.

(iv) Does not include certain prosecutions conducted in south eastern NSW by Canberra DPP.

(v) Figures incomplete.

(vi) Of the summary prosecutions conducted by DLS Hobart, there were 442 defendants who pleaded guilty and six defendants who were convicted following a plea of not guilty. Two defendants were acquitted on all charges and all charges were withdrawn in respect of a further six defendants. Eighty-five defendants were acquitted on all charges. All charges against six defendants were withdrawn. Approximately 300 of the summary prosecutions conducted by DLS Hobart were in respect of electoral offences. DLS Darwin completed 96 summary prosecutions of which 62 defendants either pleaded guilty or were convicted following a plea of not guilty. Eight defendants were acquitted, and all charges against the remaining 26 defendants were withdrawn.

Table 1(b)

Legislation : Matters Dealt With Summarily in 1989–90 (i)

Legislation	*NSW*	*Vic.*	*Qld*	*WA*	*SA (iii)*	*Total*
Australian Federal Police Act	10	6	1	4	1	22
Air Navigation Act or Civil Aviation Act	4	3	16	12		35
Bankruptcy Act	7	16	4	5		32
Cash Transactions Reports Act		1	4	2	2	9
Census and Statistics Act	3	2		4		9
Commonwealth Electoral Act	2			6	1	9
Continental Shelf Act				151		151
Copyright Act	3	1	5		1	10
Crimes Act	268	254	154	169	158	1003
Crimes (Currency) Act		3	3		3	9
Customs Act	48	31	45	17	13	154
Export Control Act	3	3	4		1	11
Family Law Act		1		1		2
First Home Owners Act	5	15	7	14	10	51
Fisheries Act	2	3	9	44		58
Health Insurance Act	4	3	2	2		11
Marriage Act	3	3				6
Migration Act	9	2	1	3		15
National Health Act	1			1	2	4
Non-Commonwealth legislation (ii)	53	240	17	79	1	390
Passports Act	7	5	2	2		16
Postal Services Act	9	10	9	2	3	33
Public Order (Protection of Persons and Property) Act	6	3	9	1	1	20
Proceeds of Crime Act				3		3
Quarantine Act	2	2	11	73	1	89
Radio Communications Act	8	18	17	5	2	50
Royal Commissions Act		1				1
Referendum (Machinery Provisions) Act	23	40		29	10	102
Social Security Act	246	545	206	130	115	1242
Statutory Declarations Act		1		2		3
Student Assistance Act	3	6	8	19	11	47
Taxation legislation	35	21	9	16	11	92
Telecommunications Act	21	35	3	11	24	94
Telecommunications (Interception) Act		2			2	4
Trade Practices Act		6			2	8
Wildlife Protection Act	2		1	1		4
Other	11	14	21	8	12	66
Total	798	1296	568	816	387	3865

Notes: (i) See tables in chapter 4 for details of the categories of cases prosecuted summarily in the ACT. Cases recorded under 'Other' in table 1(a) have not been taken into account.

(ii) This includes matters that, strictly speaking, concerned Commonwealth offences by reason of the Commonwealth Places (Application of Laws) Act.

(iii) Figures incomplete.

Table 1(c)

***Crimes Act 1914*: Matters Dealt With Summarily in 1989–90 (i)**

Legislation	*NSW*	*Vic.*	*Qld*	*WA*	*SA (ii)*	*Total*
Breach of recognisance etc. (ss.20A, 20AC)	7	14	3	9	6	39
Damage property (s.29)	9	2	1	1	17	30
False pretences (s.29A)	16	5	8	2	2	33
Imposition (s.29B)	105	114	101	77	31	428
False statements (s.29C)	1	6	1	1	3	12
Fraud (s.29D)	13	18		6		37
Seizing Commonwealth goods (s.30)	2	1	1			4
Offences relating to administration of justice (ss.32–50)	4		1		2	7
Forgery and related offences (ss.65–69)	48	39	13	41	9	150
Stealing or receiving (s.71)	30	17	12	14	15	88
Falsification of books (s.72)	3	1	1			5
Bribery (ss.73, 73A)	1	2		1		4
False returns (s.74)	1	5				6
Personating public officers (s.75)			1			1
Resisting etc. public officers (s.76)		7				7
Offences relating to computers (ss.76A — 76E)						
Espionage and official secrets (ss. 77 — 85D)	1					1
Offences relating to postal services (ss. 85E — 85ZA)		4	3	7	2	16
Offences relating to telecommunication services (ss. 85ZB — 85ZKB)	5	6	4	3	12	30
Conspiracy (s.86)	2	4				6
Conspiracy to defraud (s. 86(1)(e) or s. 86A)	1	3		2		6
Trespass on Cwlth land (s.89)	2			2	55	59
Other	17	6	4	3	4	34
Total	268	254	154	169	158	1003

Notes: (i) See table 3 in chapter 4 for details of prosecutions under the *Crimes Act 1914* conducted in the ACT Magistrates Court.

(ii) Figures incomplete.

Table 2(a)

Matters Dealt With on Indictment in 1989–90 (i)

State	*Defendants outstanding as at 1.7.89*	*Matters received during year*	*Number of defendants dealt with*	*Pleas of guilty to all charges*	*Outcome of trials*				*Defendants outstanding as at 30.6.90*
					Number of trials	*Number of defendants convicted (ii)*	*Number of defendants acquitted on all charges*	*Other (iii)*	
NSW	149	239	223	164	41	43	6	10	165
Vic.	53	38	35	27	5	6	1	1	56
Qld	42	116	120	91	20	11	9	9	38
WA	16	55	54	27	20	20	4	3	17
SA	15	52	50	35	10	8	3	4	17
Total	275	500	482	344	96	88	23	27	293

Notes : (i) The Canberra Office conducted 35 trials during the year, two of which were retrials. These trials involved 33 accused, 22 of whom were convicted and 11 acquitted. On three occasions the jury was unable to agree on its verdict.

Seven trials were conducted by DLS Darwin, resulting in seven persons being convicted and one being acquitted. A total of five persons were convicted on indictment in prosecutions conducted by DLS Hobart.

(ii) i.e. where a defendant was convicted on at least one charge.

(iii) e.g. jury unable to agree on verdict or trial aborted after it had commenced (and any retrial not completed in the year under review), accused found unfit to plead, indictment quashed. No Bills have also been recorded under 'other'. See chapter 2 for details of No Bills entered during the year.

Table 2(b)

Legislation : Matters Dealt With on Indictment in 1989–90 (i)

Legislation	*NSW*	*Vic.*	*Qld*	*WA*	*SA*	*Total*
Bankruptcy Act	2	1	1	2		6
Crimes Act	108	19	80	14	30	251
Customs Act	87	11	19	33	11	161
Health Insurance Act	2	1				3
Marriage Act	2		2			4
Non-Commonwealth	7	2	5	2	3	19
Other	12	1	4	3	2	22
Total	220	35	111	54	46	466

Note : (i) See chapter 4 for the categories of cases dealt with in the Supreme Court of the ACT in 1989–90. Some of the cases recorded under 'Other' in Table 2(a) have not been taken into account.

Table 2(c)

***Crimes Act 1914*: Matters Dealt With on Indictment in 1989–90**

	NSW	*Vic.*	*Qld*	*WA*	*SA (iii)*	*Total*
Breach of recognisance etc. (ss.20A, 20AC)	1					1
Damage property (s.29)			1			1
False pretences (s.29A)	10		5			15
Imposition (s.29B)	49	5	37	5	24	120
False statements (s.29C)			2			2
Fraud (s.29D)	23	8	7		3	41
Seizing Commonwealth goods (s.30)			2			2
Offences relating to admin of justice (ss.32–50)		3		2		5
Forgery and related offences (ss.65–69)	10		6	2	1	19
Disclosure of information (s. 70)	1			1		2
Stealing or receiving (s.71)	5	2	18	1	1	27
Falsification of books (s.72)					1	1
Bribery (ss.73, 73A)	1					1
False returns (s.74)						
Personating public officers (s. 75)						
Resisting etc. public officers (s. 76)						
Offences relating to computers (ss. 76A — 76E)						
Espionage and official secrets (ss. 77 — 85D)						
Offences relating to postal services (ss. 85E — 85ZA)						
Offences relating to telecommunications services (ss. 85ZB — 85ZKB)						
Conspiracy (s.86)	5	1	2	2		10
Conspiracy to defraud (s. 86(1)(e) or s. 86A)	1			1		2
Other	2					2
Total	108	19	80	14	30	251

Table 2(d)

Duration of Trials on Indictment Completed in 1989–90

State	Number of trials	Total number of defendants dealt with	Number of hearing days: Less than 5	5–10	11–15	16–20	21–25	26–30	More than 30
NSW	41	59	21	12	5	1	1	1	
Vic.	5	8		1	3				1
Qld	20	20	15	5					
WA	20	27	14	6					
SA	10	11	5	4		1			
Total	96	125	55	28	8	2	1	1	1

Table 3(a)

Prosecution Appeals Against a Sentence Imposed by a Court of Summary Jurisdiction in 1989–90

State	Number of appeals dealt with	Type of matter: Drugs	Social security	Other	Outcome of appeal: Upheld	Dismissed
NSW	—					
Vic.	3		2	1	2	1
Qld	1		1			1
WA	—					
SA	2			2	1	1
ACT (i)	—					
Total	6		3	3	3	3

Note : (i) In the ACT the right to appeal against a sentence imposed by the ACT Magistrates Court was only conferred on the prosecution in June 1990.

Table 3(b)

Prosecution Appeals Against a Sentence Imposed Following a Conviction on Indictment in 1989–90

State	Number of appeals dealt with	Type of matter		Outcome of appeal	
		Drugs	Other	Upheld	Dismissed
NSW	2	1	1		2
Vic.	1	1		1	
Qld	7	6	1	4	3
WA	5	4	1	2	3
SA	—				
ACT	—				
Total	15	12	3	7	8

Table 3(c)

Other Prosecution Appeals in 1989–90

State	Number of appeals dealt with	Decision appealed from			Outcome of appeal	
		Failure to convict or commit	Grant of bail	Other	Upheld	Dismissed
NSW	—					
Vic.	—					
Qld	1			1	1	
WA	3	3			3	
SA	1		1			1
ACT	1	1			1	
Total	6	4	1	1	5	1

Table 4(a)

Appeals by Persons Convicted by a Court of Summary Jurisdiction in 1989–90 (i)

State	Number of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction and sentence
NSW	141	34	105	2
Vic.	83	6	72	5
Qld	10		8	2
WA	5	1	4	
SA	12		11	1
ACT	64	26	23	15
Total	315	67	223	25

Notes: (i) Does not include appeals that were withdrawn.

Table 4(b)

Appeals by Persons Convicted on Indictment in 1989–90 (i)

State	Number of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction and sentence
NSW	36	14	18	4
Vic.	6		5	1
Qld	10		7	3
WA	7	3	4	
SA	9		9	
ACT	14	6	8	
Total	82	23	51	8

Notes: (i) Does not include appeals that were withdrawn.

Table 5(a)

Matters Dealt With in Committal Proceedings in 1989–90 (i)

State	*Number of defendants dealt with*	*Committed for sentence*	*Committed for trial*	*Discharged*	*Unresolved*
NSW	207	126	73	8	
Vic.	62	4	47	7	4
Qld	63	8	55		
WA	45		44		1
SA	44	11	33		
ACT	93	40	53		
Total	514	189	305	15	5

Notes: (i) Does not include matters where all charges withdrawn prior to commencement of committal hearing.

Table 5(b)

Duration of Defended Committal Proceedings Completed in 1989–90

		Number of hearing days									
State	*No. of defended committal proceedings*	*Up to 1*	*2*	*3*	*4*	*5–10*	*11–15*	*16–20*	*21–25*	*26–30*	*More than 30*
NSW	80	61	3	9	4	3					
Vic.	49	34	5	1		3	1			1	4
Qld	54	43	9	2							
WA	44	41	2		1						
SA	32	20	10	1		1					
Total	259	199	29	13	5	7	1			1	4

Table 6

Advice Matters in 1989–90 (i)

State	Advice matters received during year	Matters dealt with	Type of advice: General	Insufficient evidence	Prosecution not appropriate	Other (ii)
NSW	157	278	80	84	54	60
Vic.	280	482	77	62	181	162
Qld	327	198	56	22	56	64
WA	186	159	10	21	80	48
SA (iii)	191	50	2	12	27	9
Total	1141	1167	225	201	398	343

Notes: (i) This table only includes 'advice matters' recorded on the CMM system. A file may not be created where the advice related to a relatively minor matter and was conveyed orally. Other advice matters may be located on 'running files' i.e. the file will relate to more than one matter. Still other advice matters are not recorded on the CMM system for security reasons.

An 'advice matter' falls into two broad categories — either the provision of general advice (recorded under 'general' above) or matters referred to the Office for prosecution which do not proceed beyond the 'advice' stage. It may be decided that there is insufficient evidence to justify a prosecution, or that a prosecution would not be appropriate on public interest grounds. Alternatively, although a summons was issued for some reason it was not served.

In the equivalent table in the 1988–89 report (table 7) details were also provided on the number of 'advice' matters outstanding at the commencement and end of the 1988–89 year. These details have not been included in this table as many of the matters recorded as 'advice' matters outstanding as at the commencement or end of the report period will in fact progress beyond the 'advice' stage.

(ii) e.g. where time limit on the institution of a prosecution had expired or service of summons could not be effected.

(iii) Figures incomplete.

Table 7(a)

Social Security Prosecutions: Matters Dealt With Summarily in 1989–90 (i)

State	Defendants outstanding at 1.7.89	Matters received during year	No. of defendants dealt with	Pleas of guilty to all charges	Outcome of summary trials				Other (iii)	Defendants outstanding at 30.6.90
					No. of summary trials	No. of defendants convicted (ii)	No. of defendants acquitted on all charges	Unresolved		
NSW (iv)	121	287	307	284	15	6	9		8	101
Vic.	298	574	617	539	67	57	7	3	11	255
Qld	73	236	279	255	8	6	2		16	30
WA	33	122	142	131	11	8	2	1		13
SA (v)	52	189	147	127	10	5	5		10	94
Total	577	1408	1492	1336	111	82	25	4	45	493

Notes: (i) Although detailed figures are not available in respect of prosecutions conducted by the Canberra Office, it completed 127 social security prosecutions during the year, including a number in NSW courts. All but two cases resulted in either pleas of guilty or conviction following a plea of not guilty.

(ii) i.e. where a defendant was convicted on at least one charge, or at least one charge was found proved.

(iii) e.g. all charges against a defendant withdrawn or no evidence offered by the prosecution in respect of any charge.

(iv) Does not include certain prosecutions conducted in south-eastern NSW by Canberra DPP.

(v) Figures incomplete.

Table 7(b)

Social Security Prosecutions: Matters Dealt With on Indictment in 1989–90

State	*Defendants outstanding as at 1.7.89*	*Matters received during year*	*Number of defendants dealt with*	*Pleas of guilty to all charges*	*Outcome of trials*				*Defendants outstanding as at 30.6.90*
					Number of trials	*Number of defendants convicted (i)*	*Number of defendants acquitted on all charges*	*Other (ii)*	
NSW	22	43	42	40	2	1	1		23
Vic.		4	2	2					2
Qld	15	21	32	30	2		2		4
WA	2	3	4	4					1
SA	7	29	26	24	1	1		1	10
Total	46	100	106	100	5	2	3	1	40

Notes : (i) i.e. where a defendant was convicted on at least one charge.

(ii) e.g. jury unable to agree on verdict or trial aborted after it had commenced (and any retrial not completed in the year under review), accused found unfit to plead, indictment quashed. No Bills have also been recorded under 'other'.

Table 7(c)

Social Security Prosecutions: Advice Matters in 1989–90 (i)

State	*Advice Matters received during year*	*Matters dealt with*	*Type of advice*			
			General	*Insufficient evidence*	*Prosecution not appropriate*	*Other*
NSW	14	52	10	10	8	24
Vic.	29	128	3	5	17	103
Qld	78	42	3	6	13	20
WA	41	28	2	5	10	11
SA (ii)	54	7		2	2	3
Total	216	257	18	28	50	161

Notes: (i) See notes to table 6.

(ii) Figures incomplete.

Table 7(d)

Social Security Prosecutions: Matters Dealt With Summarily or on Indictment in 1989–90: Referring Agencies (i)

	NSW	*Vic.*	*Qld*	*WA*	*SA (ii)*	*Total*
Dept of Social Security						
Social Security Act	251	527	208	115	103	1204
Crimes Act (S)	50	37	9		5	101
Crimes Act (I)	39		18	2	17	76
Total	340	564	235	117	125	1381
Australian Federal Police						
Social Security Act	2	23	5	14	19	63
Crimes Act (S)	3	25	56	12	13	109
Crimes Act (I)	3	2	14	2	9	30
Total	8	50	75	28	41	202
Other (eg. State Police)						
Social Security Act		4			7	11
Crimes Act (S)	1	1	1			3
Crimes Act (I)						
Total	1	5	1		7	14
Grand Total						
Social Security Act	253	554	213	129	129	1278
Crimes Act (S)	54	63	66	12	18	213
Crimes Act (I)	42	2	32	4	26	106
Total	349	619	311	145	173	1597

Notes: (i) Prosecutions under the Crimes Act 1914 that were dealt with summarily have been recorded under 'Crimes Act (S)', while prosecutions under the *Crimes Act 1914* that were dealt with on indictment have been recorded under 'Crimes Act (I)'.

(ii) Figures incomplete.

Table 7(e)

Social Security Prosecutions: Matters Dealt With Summarily in 1989–90: Penalties Imposed

	Bond (s.19B or s.20)	*Fine*	*Community service*	*Suspended term of Imprison-ment*	*Imprison-ment*	*Suspended sentence and community service*	*Fine and bond*	*Fine and community service*	*Fine and suspended term of imprison-ment*	*Fine and imprison-ment*	*Other*	*Total*
NSW												
Males	26	60	4		37		23	1		1	2	154
Females	48	37	3		21		24			1	2	136
Total	74	97	7		58		47	1		2	4	290
Vic.												
Males	56	139	23	31	46		4	2	10	2	1	314
Females	91	75	39	44	23		6	1	3			282
Total	147	214	62	75	69		10	3	13	2	1	596
Qld												
Males	10	75	8	20	48		1			2		164
Females	28	28	4	19	17				1			97
Total	38	103	12	39	65		1		1	2		261
WA												
Males	11	21	15		21							68
Females	10	18	19	1	21			1			1	71
Total	21	39	34	1	42			1			1	139

SA (i)												
Males	6	13	13	17	7	18		1	2			77
Females	8	7	12	16	3	7	1		1			55
Total	14	20	25	33	10	25	1	1	3			132
Grand total												
Males	109	308	63	68	159	18	28	4	12	5	3	777
Females	185	165	77	80	85	7	31	2	5	1	3	641
Total	294	473	140	148	244	25	59	6	17	6	6	1418

Note : (i) Figures incomplete.

Table 7(f)

Social Security Prosecutions: Matters Dealt With on Indictment in 1989–90: Penalties Imposed

	Bond (s.19B or s.20)	*Fine*	*Community service*	*Suspended term of Imprison-ment*	*Imprison-ment*	*Fine and bond*	*Fine and community service*	*Fine and suspended term of imprison-ment*	*Fine and imprison-ment*	*Other*	*Total*
NSW											
Males	2	1	3		10				1		17
Females	10	1	4		6	2	1				24
Total	12	2	7		16	2	1		1		41
Vic.											
Males					1						1
Females			1								1
Total			1		1						2
Qld											
Males	2	1			11				1		15
Females	4			2	8	1					15
Total	6	1		2	19	1			1		30
WA											
Males					2						2
Females			1		1						2
Total			1		3						4

SA									
Males				3	12				15
Females	1			4	5				10
Total	1			7	17				25
Grand Total									
Males	4	2	3	3	36			2	50
Females	15	1	6	6	20	3	1		52
Total	19	3	9	9	56	3	1	2	102

Table 7(g)

Social Security Prosecutions : Matters Dealt With in 1989–90: Amount Defrauded in Charges Found Proven (i)

		NSW	Vic.	Qld	WA	SA (ii)	Total
Matters dealt with summarily (iii)							
◦ No. of male defendants		154	314	164	68	77	777
◦ Amount defrauded	$	1 482 689	1 688 421	1 235 023	493 500	406 268	5 305 901
• No. of female defs.		136	282	97	71	55	641
• Amount defrauded	$	1 426 544	2 320 015	920 916	661 449	334 835	5 663 759
◦ Total defendants		290	596	261	139	132	1418
◦ Total amount defrauded	$	2 909 233	4 008 436	2 155 939	1 154 949	741 103	10 969 660
Matters dealt with on indictment							
◦ No. of male defendants		17	1	15	2	15	50
◦ Amount defrauded	$	751 785	38 491	449 691	4 222	374 372	1 618 561
• No. of female defs.		24	1	15	2	10	52
• Amount defrauded	$	801 046	38 316	558 551	54 165	334 178	1 786 256
◦ Total defendants		41	2	30	4	25	102
• Total amount defrauded	$	1 552 831	76 807	1 008 242	58 387	708 550	3 404 817
Grand total							
◦ Grand total defendants		331	598	291	143	157	1520
◦ Grand total amount defrauded	$	4 462 064	4 085 243	3 164 181	1 213 336	1 449 653	14 374 477

Notes : (i) Although detailed figures are not available, the total amount involved in prosecutions conducted by the Canberra Office was $729 038.

(ii) Figures incomplete.

(iii) Includes amount defrauded where charges were laid under the *Crimes Act 1914* but those charges were dealt with summarily.

Table 7(h)

Social Security Prosecutions: Matters Dealt with Summarily or on Indictment in 1989–90: Matters which proceeded under the *Crimes Act 1914*, by section and Referring Agency

	NSW		*Vic.*		*Qld*		*WA*		*SA (i)*		*Total*	
	S	*I*	*S*	*I*	*S*	*I*	*S*	*I*	*S*	*I*	*S*	*I*
Dept. of Social Security												
s. 29A	3	3	1		1						5	3
s. 29B	42	32	32	2	7	18		2	2	16	83	70
s. 29C												
s. 29D	2	4									2	4
s. 67			1								1	
Other	2		2						1		5	
Total	49	39	36	2	8	18		2	3	16	96	77
Combined total	88		38		26		2		19		173	
Aust. Federal Police												
s. 29A			1				1				2	
s. 29B	2		10		46	7	8	2	9	7	75	16
s. 29C												
s. 29D		3	7			7	1			2	8	12
s. 67			5		1		2		3		11	
Other	1		1		1				1		4	
Total	3	3	24		48	14	12	2	13	9	100	28
Combined total	6		24		62		14		22		128	

Other													
s. 29A													
s. 29B	1				1						2		
s. 29C													
s. 29D													
s. 67													
Other			1						6		7		
Total	1		1		1				6		9		
Combined total	1		1		1				6		9		
Grand total	53	42	61	2	57	32	12	4	22	25	205	105	
Combined grand total	95		63		89		16		47		310		

Notes : (i) Figures incomplete.

Table 8

Appearance Work by DPP Lawyers (i)

	NSW (%)	*Vic.* (%)	*Qld* (%)	WA (%)	SA *(ii)* (%)
Defended summary hearing	91	99	98	100	84
Undefended summary hearing	77	99	85	88	83
Committal with a plea of guilty	88	100	100	N/A	90
Committal with a plea of not guilty	86	82	96	93	84
Trials on indictment	0(iii)	20	70	60	40
Sentencing proceedings in superior courts	79	76	85	100	88
Prosecution appeals	33	75	50	50	100
Defendant appeals	73	94	64	83	79

Notes: (i) This table identifies the number of matters in which DPP lawyers appeared as counsel, expressed as a percentage of the total matters in a particular category. It should be noted, however, that in some cases a DPP lawyer will have appeared as junior counsel where senior counsel was briefed to appear.

Multiple defendant matters (e.g. a trial involving more than one defendant) have only been counted once.

In some regional offices it is the practice to arrange for a police prosecutor or a local firm of solicitors to appear at the hearing of undefended summary and committal matters in country areas where it would be impracticable for a DPP lawyer to attend. For similar reasons, or where it is otherwise convenient to do so, a prosecutor from a State DPP or similar may also be briefed to appear for the DPP in certain proceedings in the superior courts (e.g. sentencing).

(ii) Figures incomplete.

(iii) The in-house counsel who was employed by the Sydney Office for part of the year appeared in matters other than trials on indictment.

Table 9(a)

Matters Dealt With Summarily in 1989–90: Referring Agencies (i)

	NSW	*Vic.*	*Qld*	*WA*	*SA (ii)*	*Total*
Australian Electoral Commission	25	40		35	10	100
Australian Federal Police	293	497	196	257	80	1323
Australian Postal Commission	30	19	13	23	6	91
Australian Taxation Office	38	22	9	16	11	96
Civil Aviation Authority		1	14	8		23
Dept of Community Services and Health	5	11	7	16	9	48
Australian Customs Service	6	1	12	71		90
Dept of Employment, Education and Training	6	14	8	19	13	60
Dept of Social Security	297	560	209	117	101	1284
Dept of Transport and Communications	6	17	18	1	2	44
Health Insurance Commission		3	6	1	1	11
Official Receiver	2	1	1			4
Dept of Primary Industries Energy	6	18	17	197	1	239
Australian Bureau of Statistics	3	2		4		9
Australian Telecommunications Corporation	49	54	12	28	16	159
Trade Practices Commission		6			2	8
Dept of Veterans' Affairs						
Non-Commonwealth agencies (other than State Police)	4	12	6	7	6	35
State Police	11	15	30	6	129	191
Dept of Immigration and Ethnic Affairs	6					6
National Crime Authority						
Other	11	3	10	1		34
Total	798	1296	568	816	387	3865

Notes: (i) This table provides information as to those agencies that referred matters for prosecution to the DPP. These agencies would have carried out any necessary investigation prior to referral to the DPP. The figures supplied are by reference to matters dealt with summarily in 1989–90, although matters recorded under 'other' in table 1(a) have not been taken into account.

(ii) Figures incomplete.

Table 9(b)

Matters Dealt With on Indictment in 1989–90: Referring Agencies (i)

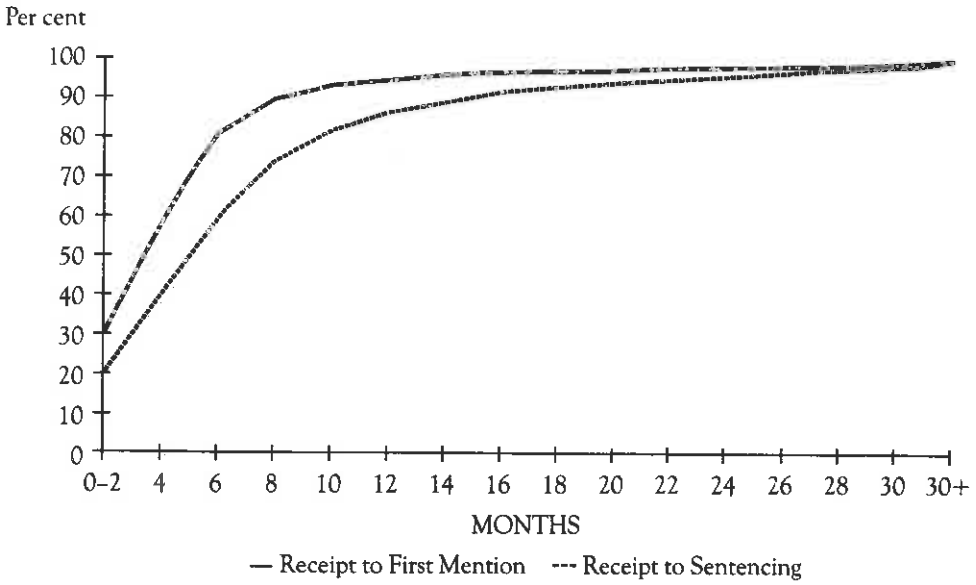
	NSW	Vic.	Qld	WA	SA (ii)	Total
Australian Electoral Commission						
Australian Federal Police	137	31	56	47	28	299
Australian Postal Commission	1		1			2
Australian Taxation Office	1					1
Civil Aviation Authority						
Dept of Community Services and Health						
Australian Customs Service	4	2				6
Dept of Education, Employment and Training			1			1
Dept of Social Security	47		18	2	16	83
Dept of Transport and Communications						
Health Insurance Commission	1					1
Official Receiver	1					1
Dept of Primary Industries and Energy				1		1
Australian Bureau of Statistics						
Australian Telecommunications Corporation	1			1		2
Trade Practices Commission						
Dept of Veterans' Affairs						
Non-Commonwealth agencies (other than State Police)	2	1	14			17
State Police	8	1	19		2	30
National Crime Authority	9			2		11
Dept of Defence	1					1
Dept of Immigration and Ethnic Affairs	1		1			2
Other	6		1	1		8
Total	220	35	111	54	46	466

Notes: (i) This table provides information as to those agencies that referred matters for prosecution to the DPP. These agencies would have carried out any necessary investigation prior to referral to the DPP. The figures supplied are by reference to matters dealt with on indictment in 1989–90.

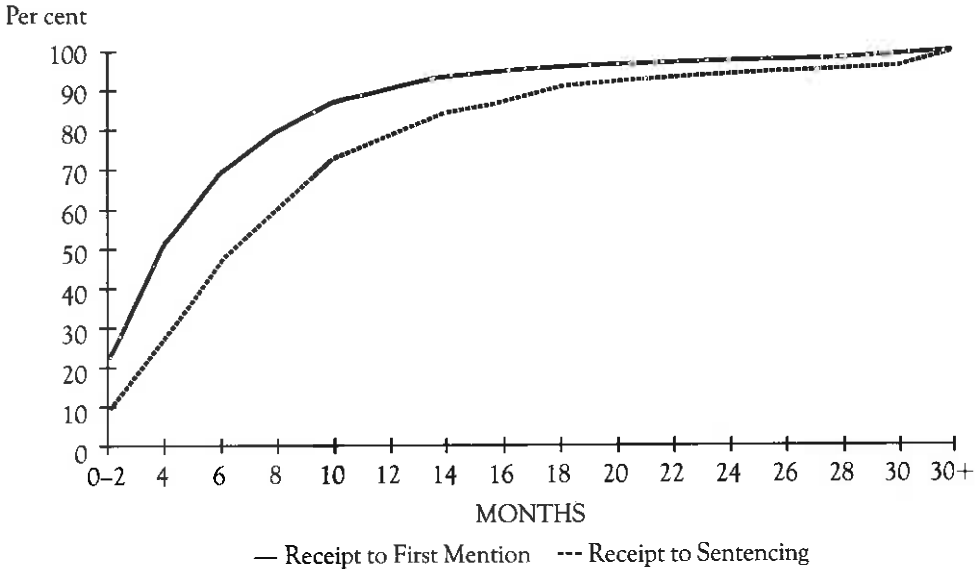
Processing time

The following graphs provide information as to the time taken to complete summary, committal, indictable and advice matters conducted by the Office during the year. In each case the information is provided in the form of a cumulative percentage.

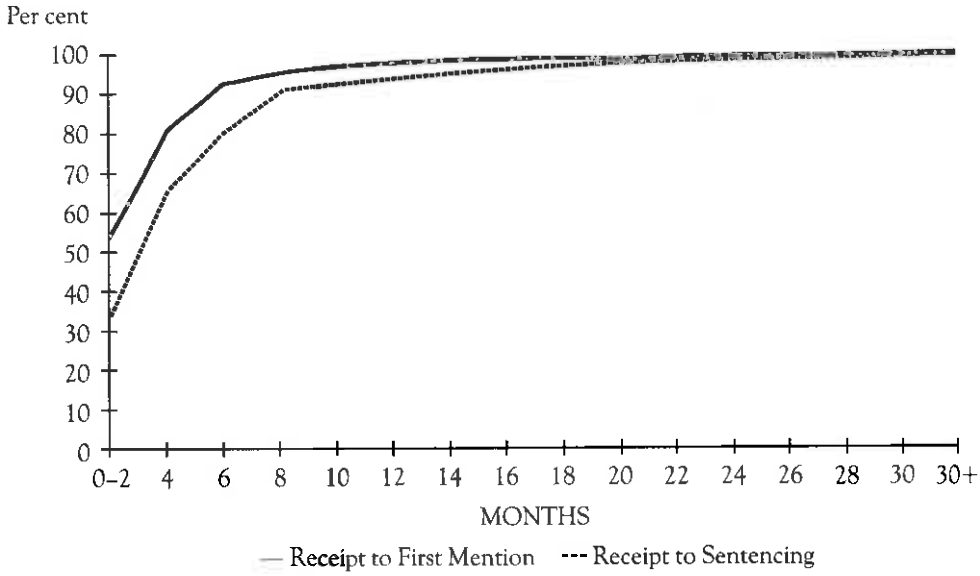
1(a) NSW: Summary Matters Determined by a Plea of Guilty



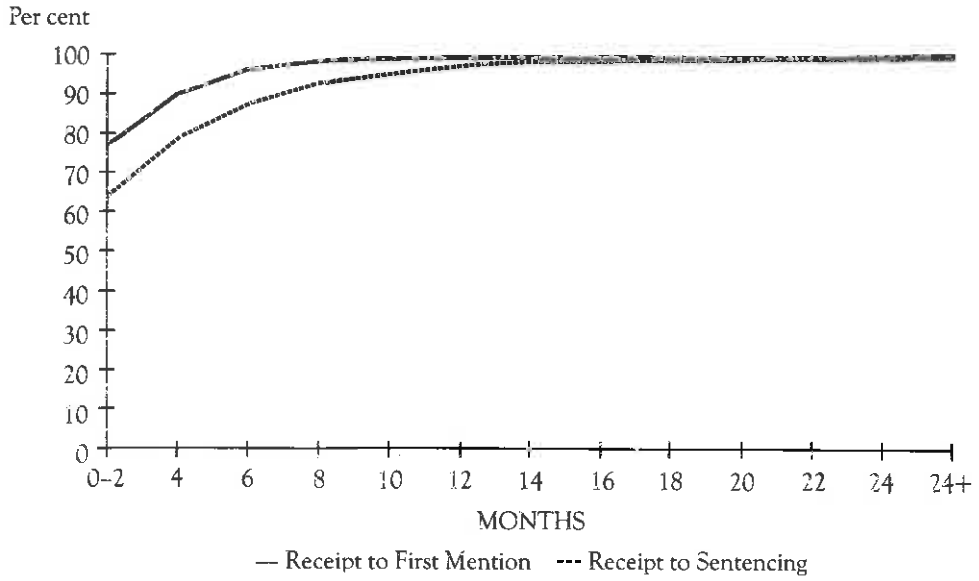
1(b) VIC: Summary Matters Determined by a Plea of Guilty



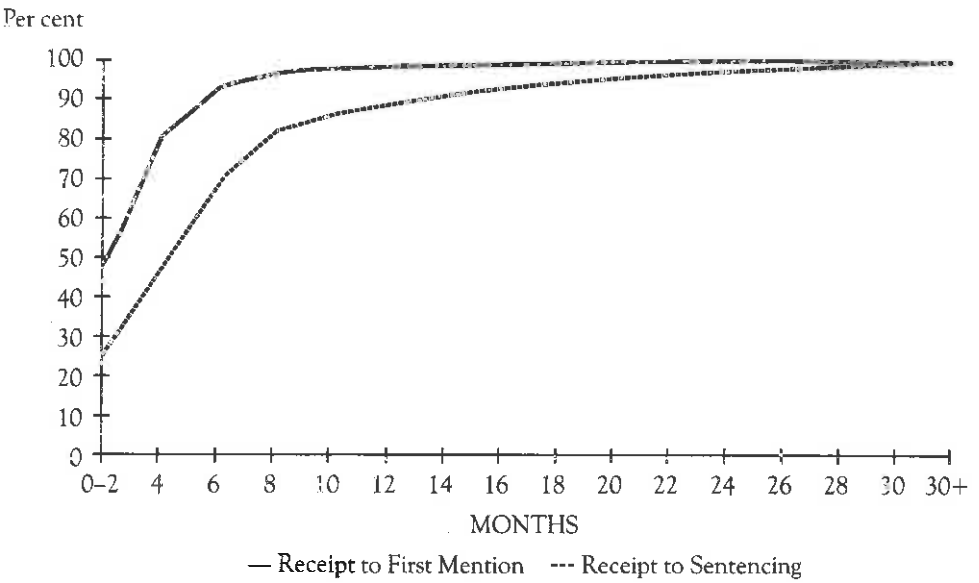
1(c) QLD: Summary Matters Determined by a Plea of Guilty



1(d) WA: Summary Matters Determined by a Plea of Guilty

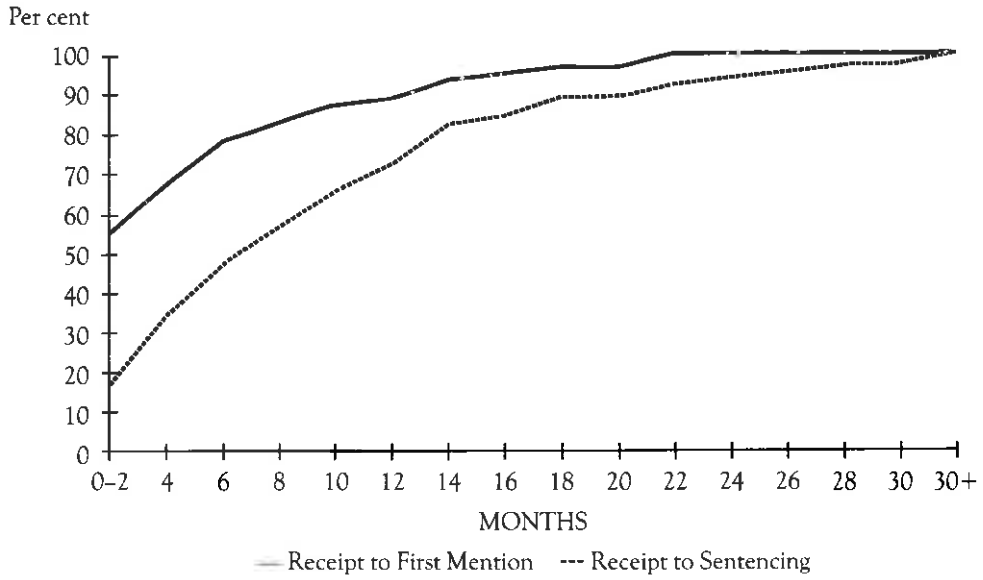


1(e) SA: Summary Matters Determined by a Plea of Guilty*

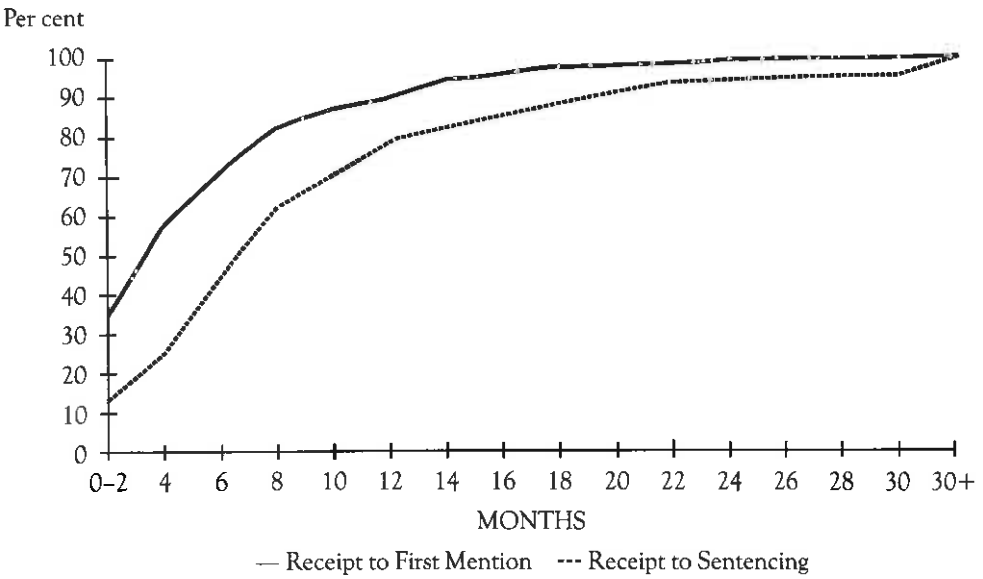


*For the reason given in the introduction to the prosecution statistics, the information on which this graph is based is incomplete.

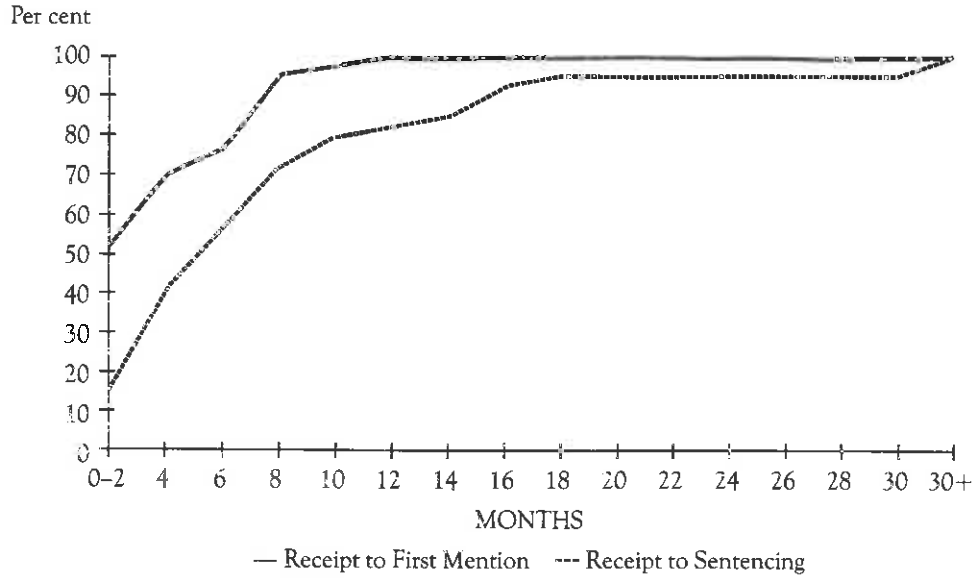
2(a) NSW: Defended Summary Matters



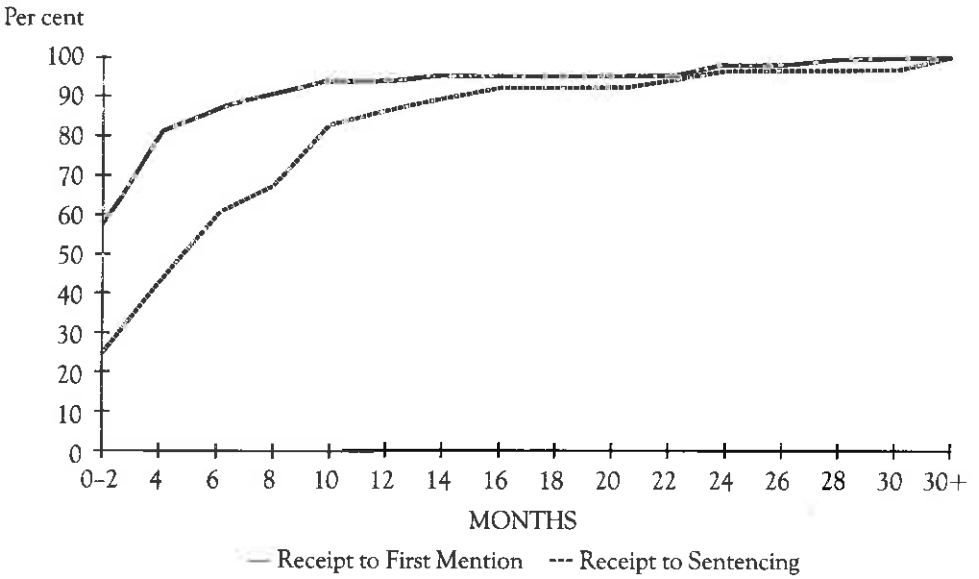
2(b) VIC: Defended Summary Matters



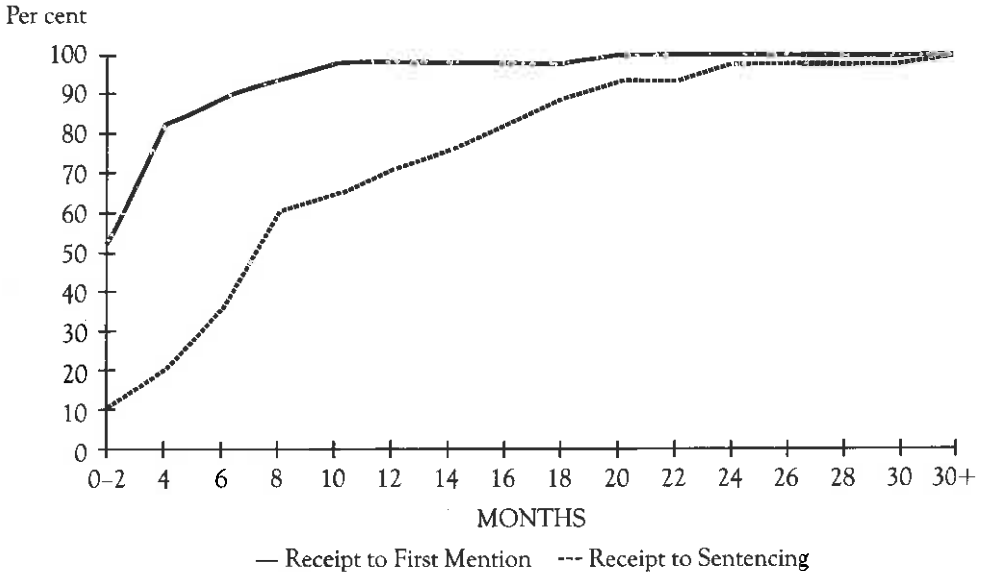
2(c) QLD: Defended Summary Matters



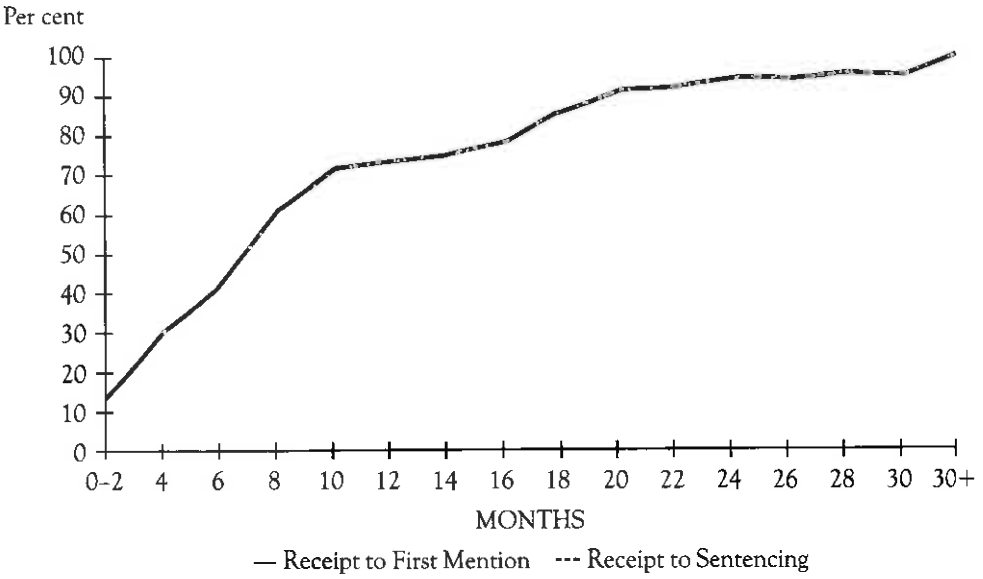
2(d) WA: Defended Summary Matters



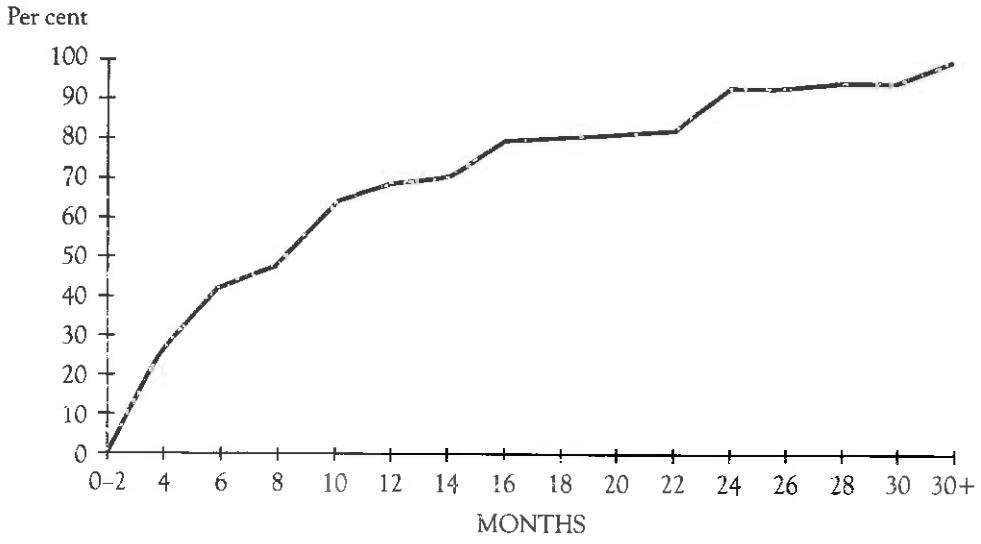
2(e) SA: Defended Summary Matters



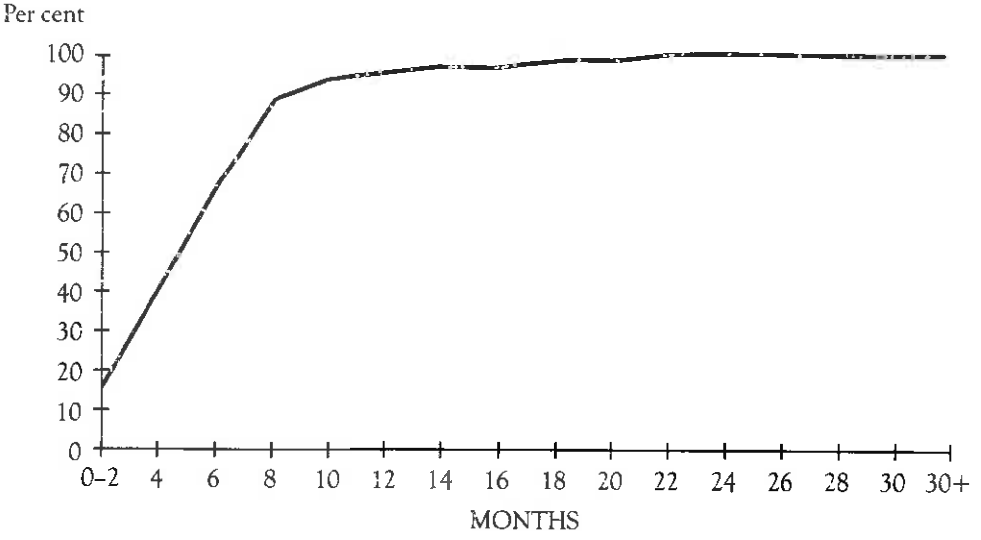
3(a) NSW: Defended Committals: Time from Receipt to Committal for Trial or Discharge



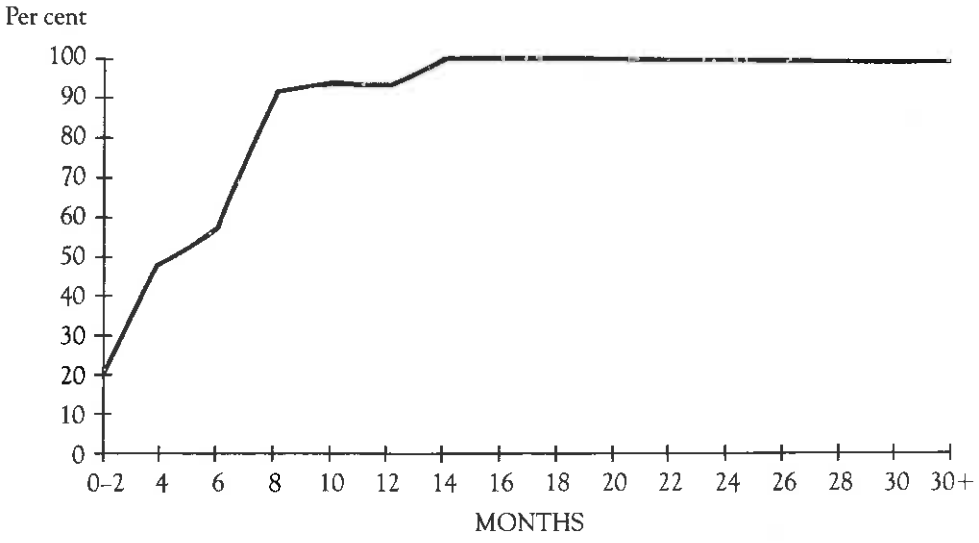
3(b) VIC: Defended Committals: Time from Receipt to Committal for Trial or Discharge



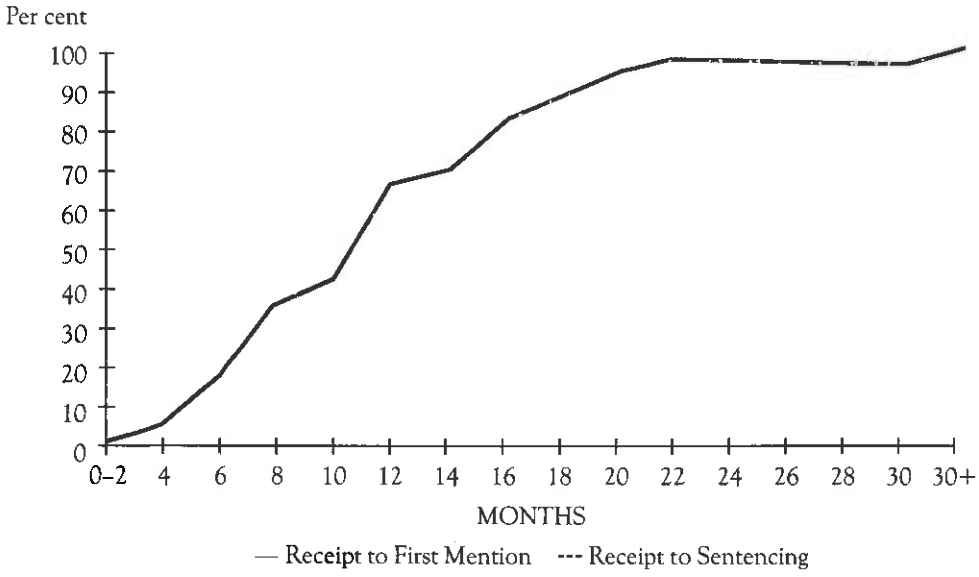
3(c) QLD: Defended Committals: Time from Receipt to Committal for Trial or Discharge



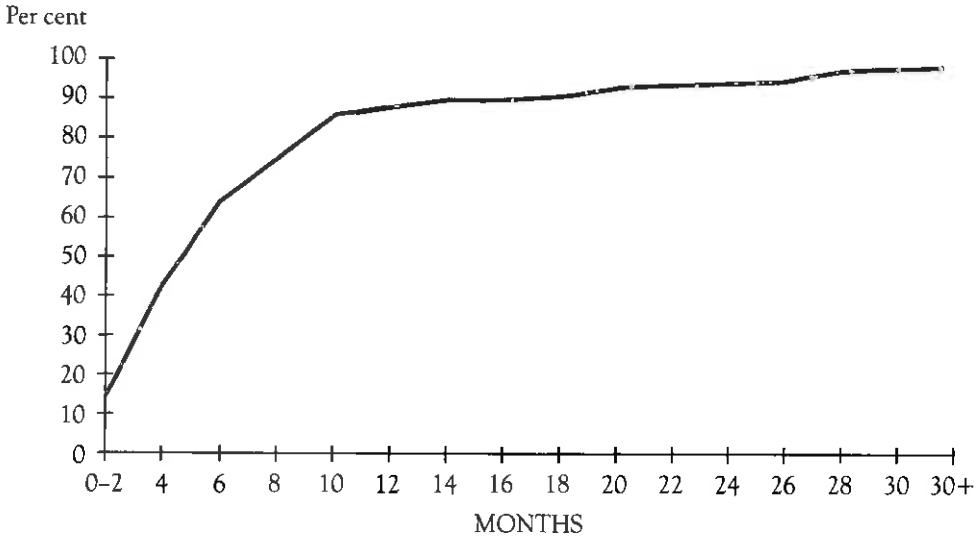
3(d) WA: Defended Committals: Time from Receipt to Committal for Trial or Discharge



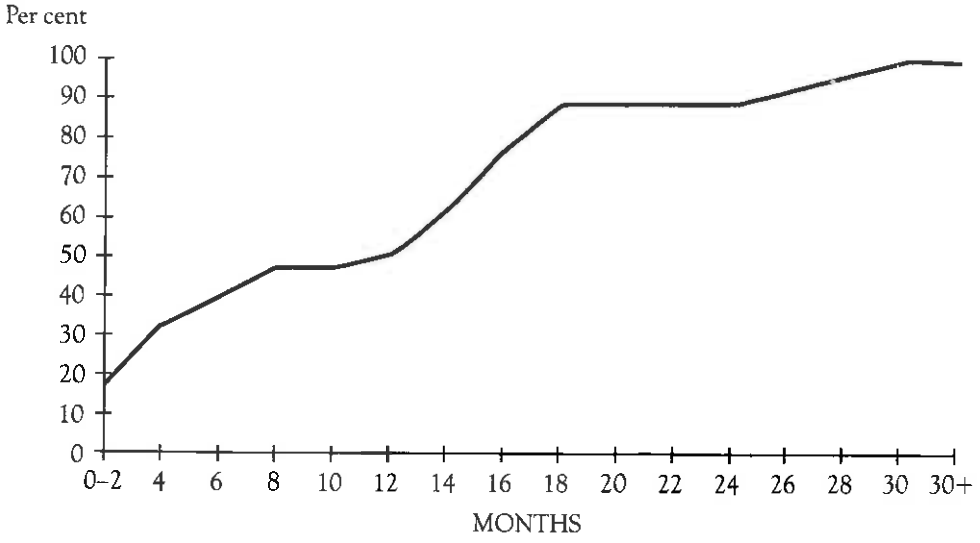
3(e) SA: Defended Committals: Time from Receipt to Committal for Trial or Discharge



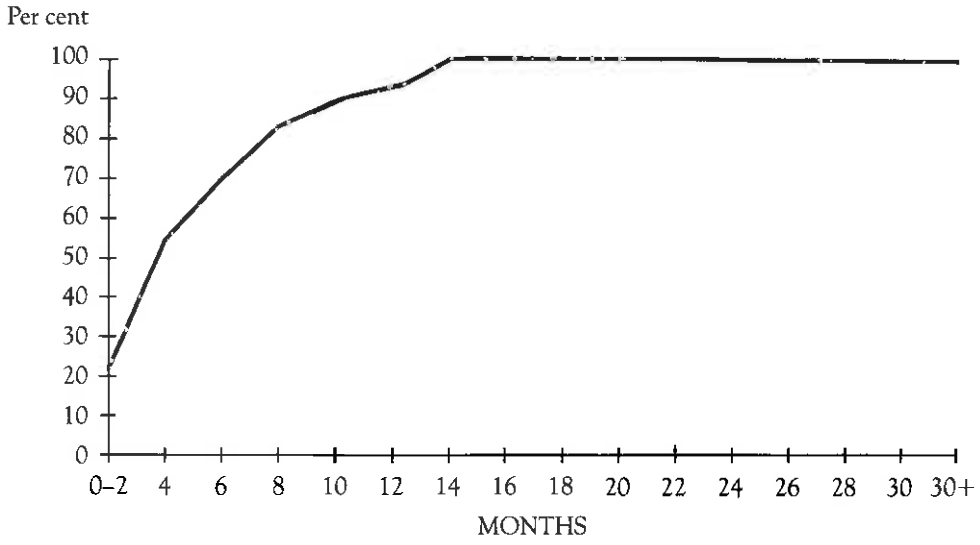
4(a) NSW: Indictable Matters Determined by a Plea of Guilty: Time from End of Committal Proceedings to Sentencing



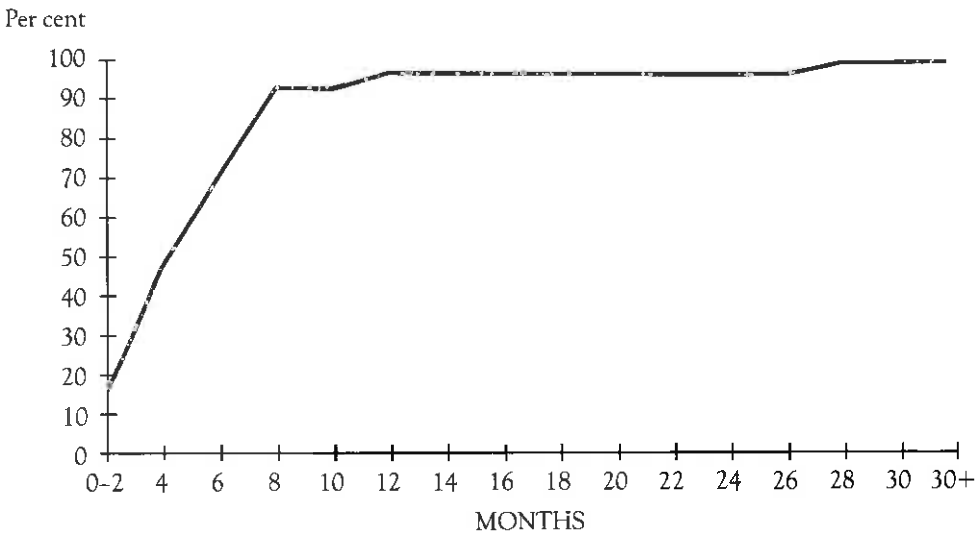
4(b) VIC: Indictable Matters Determined by a Plea of Guilty: Time from End of Committal Proceedings to Sentencing



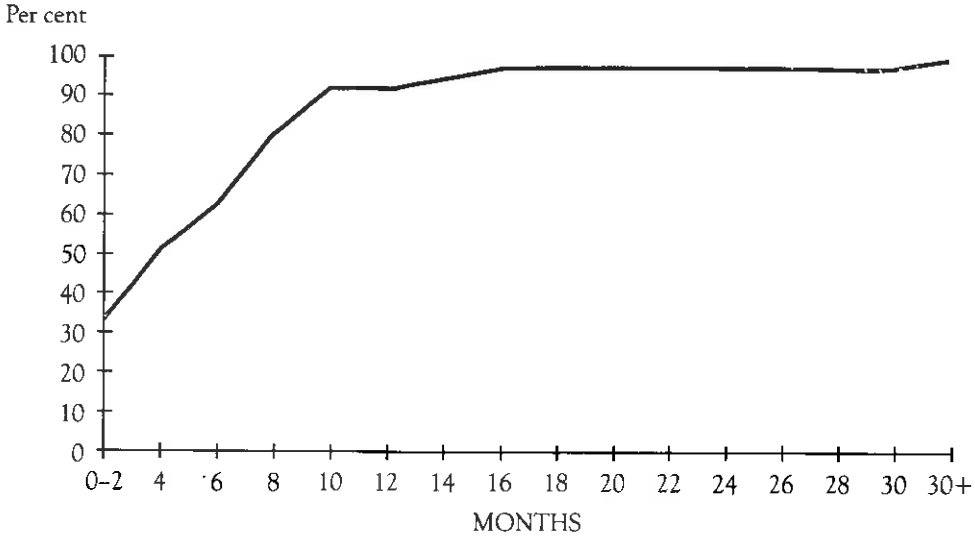
4(c) QLD: Indictable Matters Determined by a Plea of Guilty: Time from End of the Committal Proceedings to Sentencing



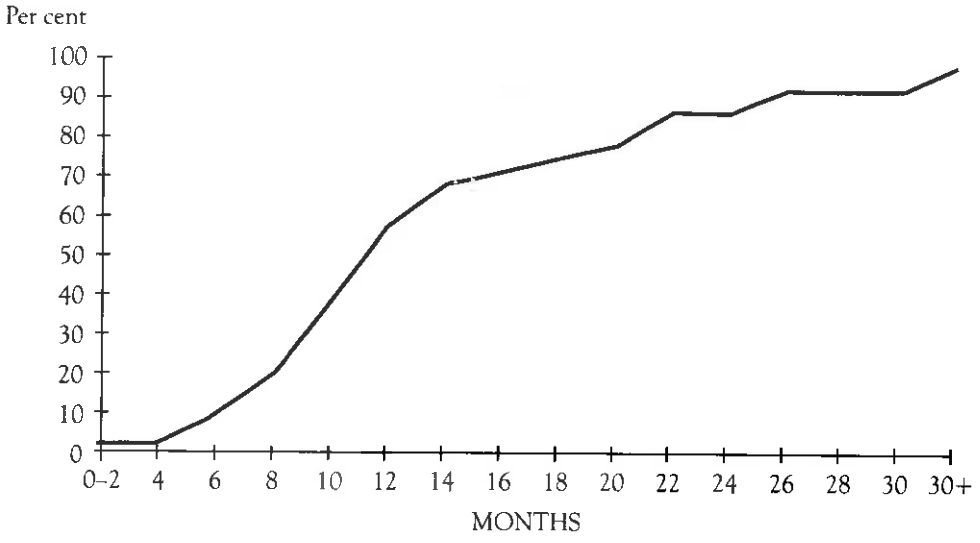
4(d) WA: Indictable Matters Determined by a Plea of Guilty: Time from End of the Committal Proceedings to Sentencing



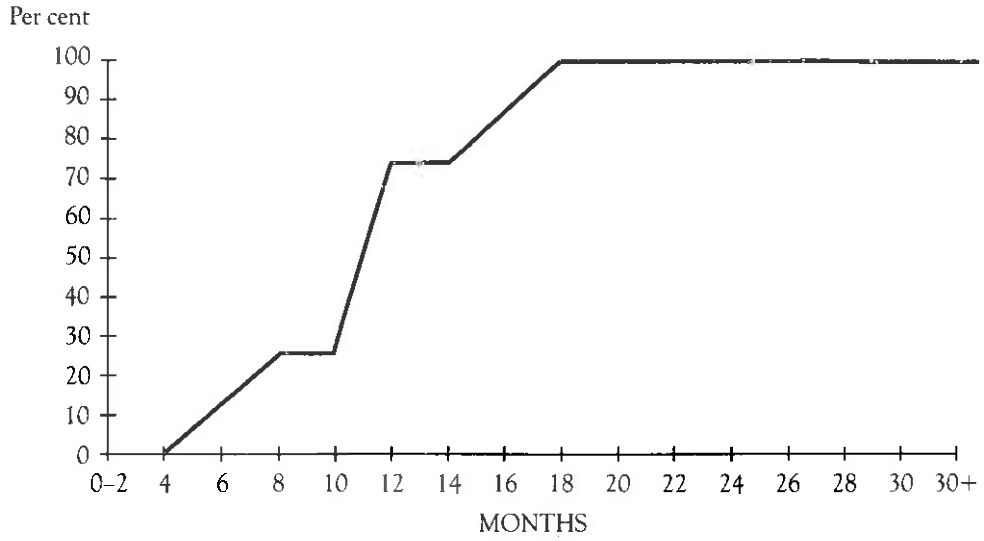
4(e) SA: Indictable Matters Determined by a Plea of Guilty: Time from End of the Committal Proceedings to Sentencing



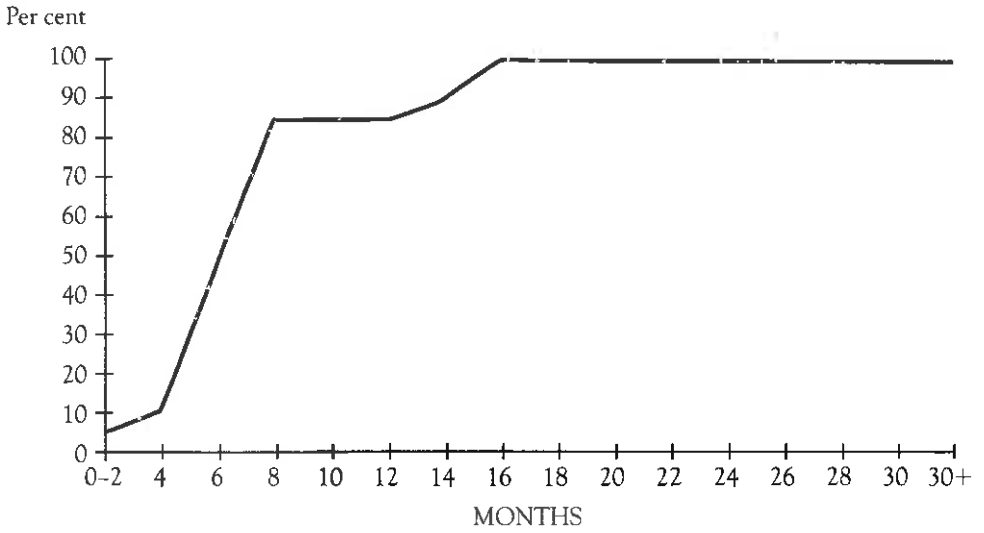
5(a) NSW: Defended Indictable Matters: Time from End of Committal Proceedings to Sentencing/Acquittal



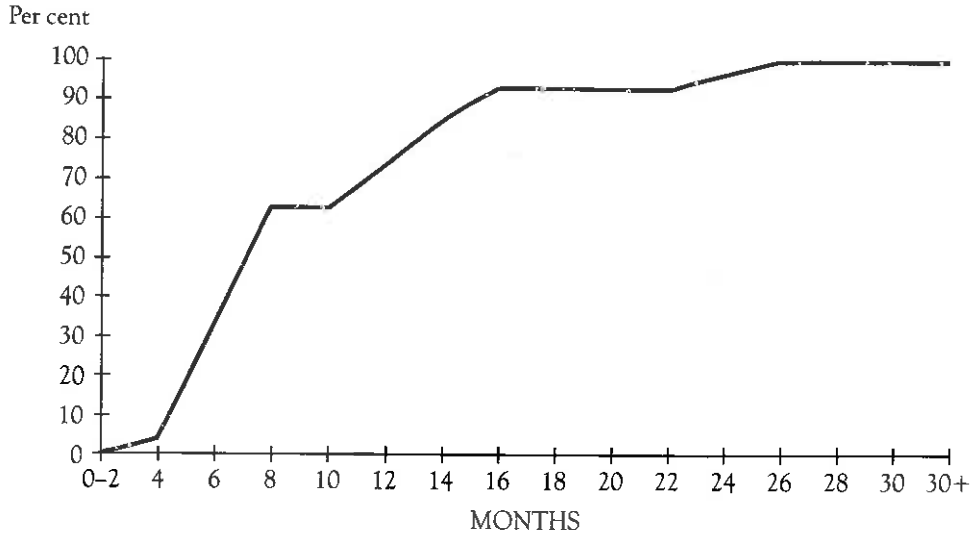
5(b) VIC: Defended Indictable Matters: Time from End of Committal Proceedings to Sentencing/Acquittal



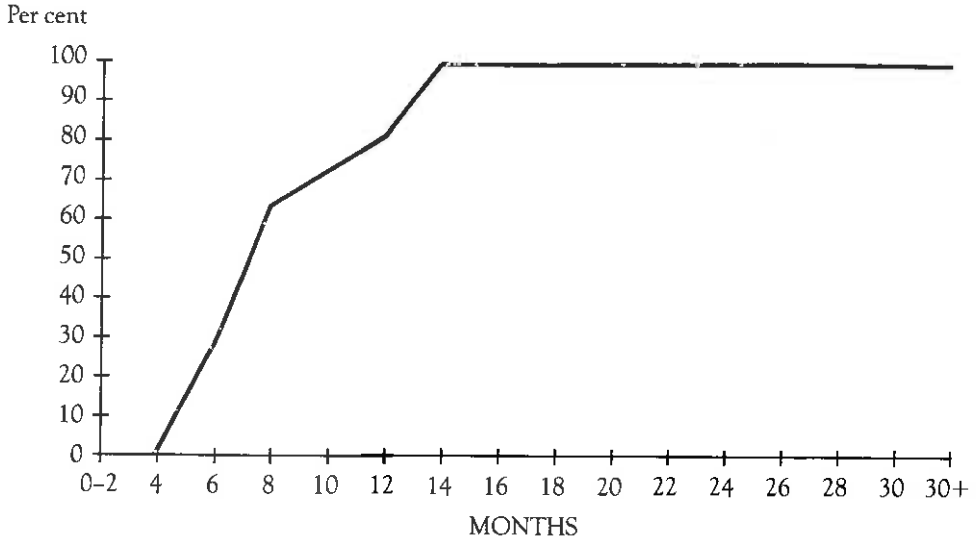
5(c) QLD: Defended Indictable Matters: Time from End of Committal Proceedings to Sentencing/Acquittal



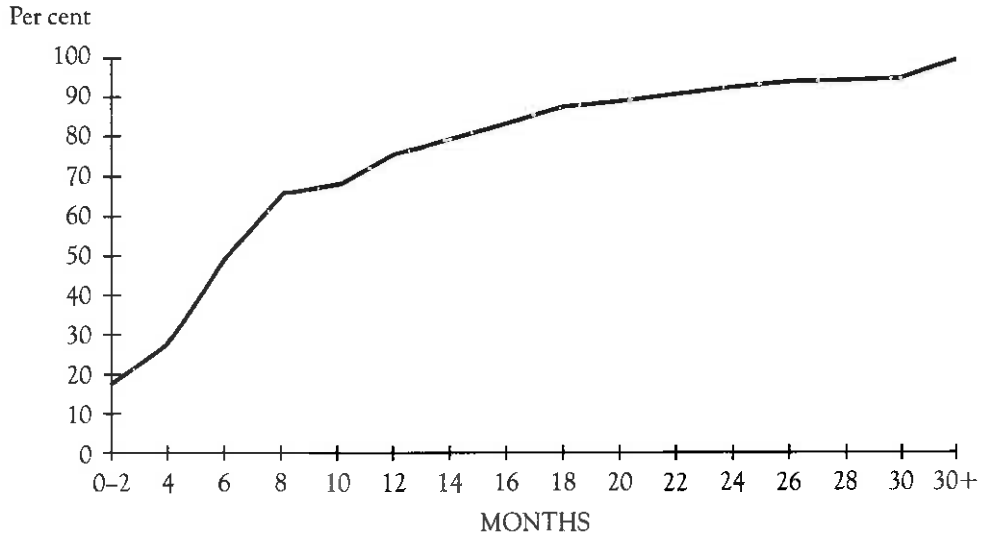
5(d) WA: Defended Indictable Matters: Time from End of Committal Proceedings to Sentencing/Acquittal



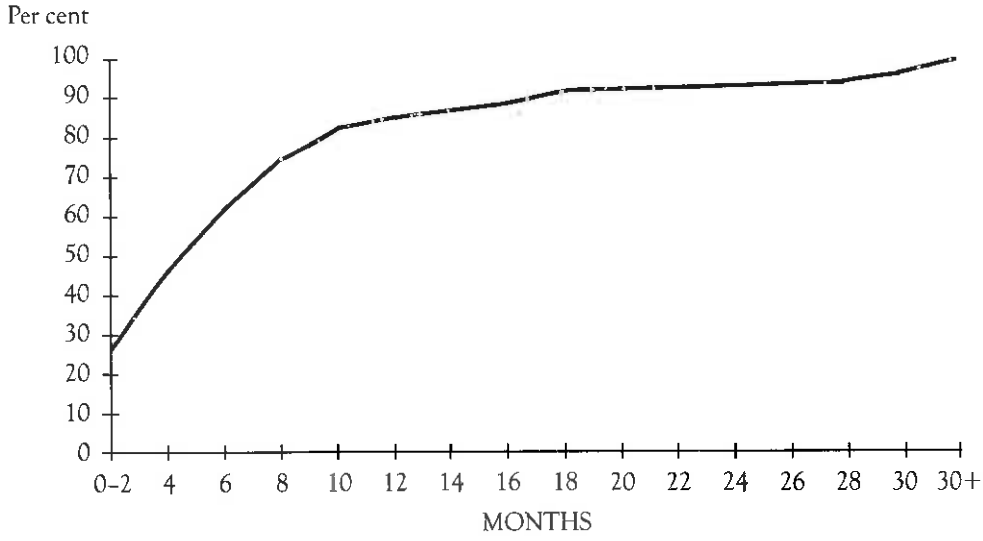
5(e) SA: Defended Indictable Matters: Time from End of Committal Proceedings to Sentencing/Acquittal



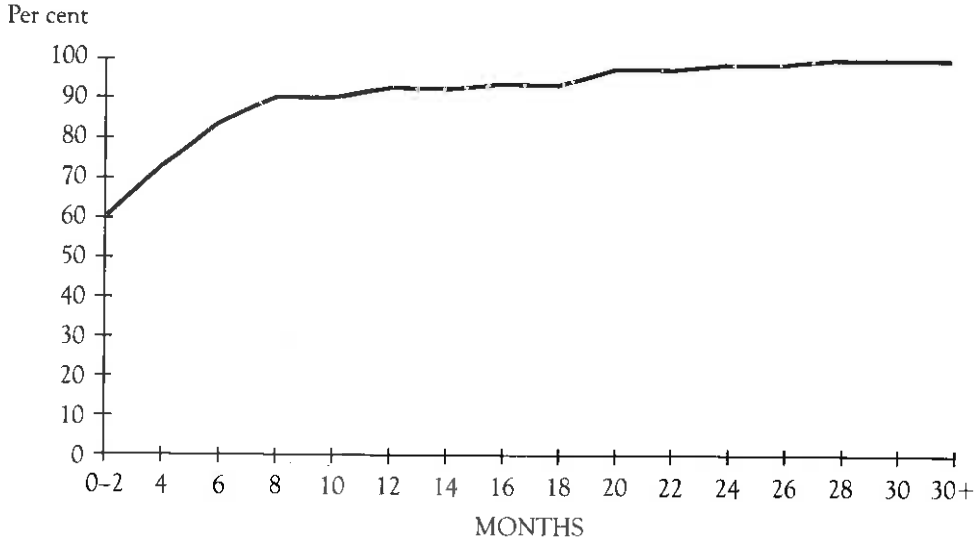
6(a) NSW: Decision Not to Institute a Prosecution: Time from Receipt to Decision Not to Prosecute



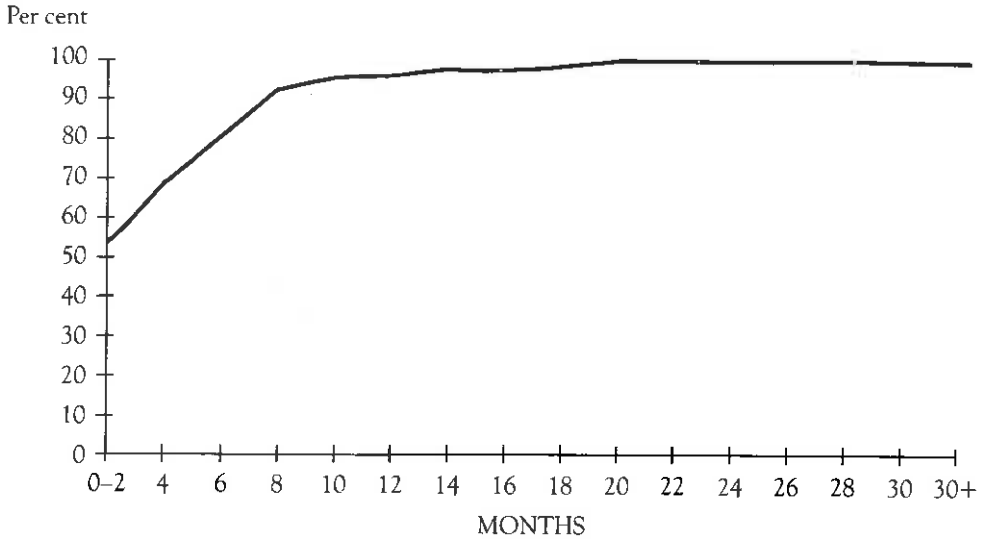
6(b) VIC: Decision Not to Institute a Prosecution: Time from Receipt to Decision Not to Prosecute



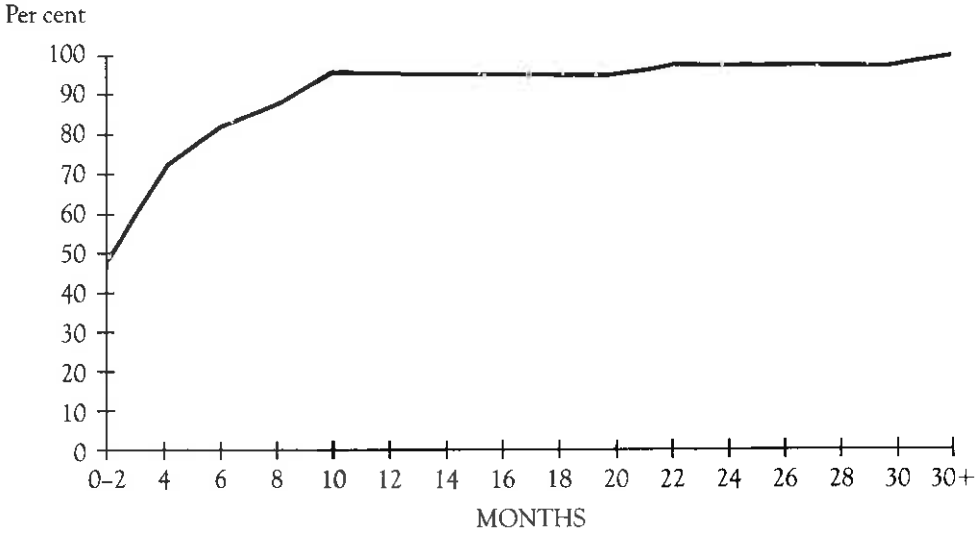
6(c) QLD: Decision Not to Institute a Prosecution: Time from Receipt to Decision Not to Prosecute



6(d) WA: Decision Not to Institute a Prosecution: Time from Receipt to Decision Not to Prosecute



6(e) SA: Decision Not to Institute a Prosecution: Time from Receipt to Decision Not to Prosecute*



*For the reason given in the introduction to the prosecution statistics, the information on which this graph is based is incomplete.

Appendixes

Appendix 1 : **Appointments, authorisations and delegations made by the Director under various Acts as at 30 June 1990.**

The Director has appointed, authorised or delegated certain powers to his officers under various Acts. A summary follows:

Audit Act 1901

The Director has appointed various officers for the purpose of section 70AC(7) of the Audit Act to determine the liability of an officer being investigated in relation to the loss of or damage to public property.

Crimes Act 1914

The Director has authorised various officers in all States, the ACT and the Northern Territory to sign documents under section 16BA which concerns taking other offences into account when sentencing.

Crimes Act 1900 (NSW) in its application to the ACT

The Director has delegated his power to consent to prosecutions under section 92L of that Act to various officers and has authorised them to sign the document referred to in section 448 of the Act which concerns taking outstanding charges into account when sentencing.

Criminal Procedure Code of the Colony of Singapore in its application to the Territory of Christmas Island

The Director has authorised various persons, pursuant to section 391B of the Code, to act for him in the conduct of prosecutions before the Supreme Court, District Court and the Magistrate's Court of the Territory of Christmas Island.

Criminal Procedure Code of the Colony of Singapore in its application to the Territory of Cocos (Keeling) Islands.

The Director has authorised various persons, pursuant to section 391B of that Code, to act for him in the conduct of prosecutions before the District Court and the Magistrate's Court of the Territory of Cocos (Keeling) Islands.

Director of Public Prosecutions Act 1983

Pursuant to section 31, the Director has delegated all his powers under the Act to the Associate Director other than his powers under section 9(2) and the power of delegation. The Director has made a similar delegation to the First Deputy Director subject to certain conditions.

The Director has made the following specific delegations and authorisations:

- he has delegated his power to review bail decisions pursuant to section 48(1) of the *Bail Act 1978* (NSW) and section 9(7) of the *Bail Act 1977* (Vic);
- he has made a limited delegation of his power under section 9(4) to discontinue trials on indictment;
- he has authorised senior officers to sign indictments for and on his behalf;
- he has authorised senior officers to represent him in summary and committal proceedings for offences against the laws of the Commonwealth committed on Norfolk Island; and
- he has authorised some State prosecutors to sign indictments for and on his behalf and to sign the document referred to in section 16BA of the *Crimes Act 1914*.

Director of Public Prosecutions 1990 (ACT)

The Director has again delegated all of his delegable powers to the Associate Director and, with conditions, to the First Deputy Director.

The Director has made the following specific delegations and authorisations:

- he has authorised senior officers to sign indictments for and on his behalf; and
- he has delegated the power under section 8(1) of the Act to take over the conduct of a general prosecution subject to the condition that a delegate will only take over the conduct of a matter if it was instituted by a person acting in an official capacity.

Freedom of Information Act 1982

The Director has delegated to various officers the power to make decisions concerning the provision of access and the amendment of documents.

Public Order (Protection of Persons and Property) Act 1971

The Director has delegated to senior officers his power under section 23(3) to consent to prosecutions.

Public Service Act 1922

The Director has delegated various powers exercisable by him under the Public Service Act.

Taxation Administration Act 1953

The Director has authorised senior officers for the purpose of section 3E of the Taxation Administration Act.

Telecommunications (Interception) Act 1979

The Director has delegated to senior officers the power to consent to summary prosecutions.

Appendix 2 : Statement under section 8, *Freedom of Information Act 1982*

Under section 8(1)(b) of the *Freedom of Information Act 1982* the DPP is required to publish up-to-date information on the following matters:

(i) Particulars of the organisation and functions of the agency, indicating, as far as practicable, the decision making powers and other powers affecting members of the public that are involved in those functions.

Information on this is contained throughout the Annual Report, but particularly in chapter 1: Office of the Director of Public Prosecutions and chapter 2 : Exercise of statutory functions and powers.

(ii) Particulars of any arrangements that exist for bodies or persons outside the Commonwealth administration to participate, either through consultative procedures, the making of representations or otherwise, in the formulation of policy by the agency, or in the administration by the agency of any enactment or scheme.

Persons charged with Commonwealth offences may make representations to the Director concerning those charges either directly or through their legal representatives. The matters raised are taken into account when a decision is made whether to continue the prosecution.

(iii) Categories of documents that are maintained in the possession of the agency, being a statement that sets out, as separate categories of documents, categories of such documents, if any, as are referred to in paragraph 12(1)(b) or (c) and categories of documents, if any, not being documents so referred to, as are customarily made available to the public, otherwise than under this Act, free of charge upon request.

The Office maintains the following documents:

- documents relating to legal advice including correspondence from Commonwealth departments and agencies and copies or notes of advice given;
- documents referring to criminal matters and prosecutions before courts and pre-court action including counsel's briefs, court documents, documents and witnesses' statements from referring departments or agencies;
- general correspondence including intra-office, ministerial and interdepartmental correspondence;
- internal working papers, submissions, reference, issues and policy papers;
- internal administration papers and records;
- investigative material, a considerable amount of which is held on data base and in the form of tape recordings;

- documents held pursuant to warrants;
- accounting and budgetary records including estimates; and
- prosecution manuals.

The following categories of documents are made available (otherwise than under the *Freedom of Information Act 1982*) free of charge upon request:

- annual reports and other reports required by legislation;
- relevant media releases;
- copies of the texts of various public addresses or speeches made by the Director and other senior officers;
- *DPP Bulletin*; and
- *Prosecution Policy of the Commonwealth : Guidelines for the making of decisions in the prosecution process.*

(iv) Particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain physical access to the documents of the agency.

Facilities for the inspection of documents, and preparation of copies if required, are provided at each DPP office. Copies of all documents are not held in each office and therefore some documents can not be inspected immediately upon request in certain offices. Requests may be sent or delivered to the 'FOI Coordinating Officer' at the addresses set out at the beginning of this Report. Business hours are generally 8.30 a.m. to 5.00 p.m.

Requests for access in States and Territories where no Division of the Office of the Director of Public Prosecutions has been established should be forwarded to the FOI Coordinating Officer, Attorney-General's Department, in the relevant State or Territory or to the Head Office of the DPP in Canberra.

(v) Information that needs to be available to the public concerning particular procedures of the agency in relation to Part III, and particulars of the officer or officers to whom, and the place or places at which, initial inquiries concerning access to documents may be directed.

There are no particular procedures that should be brought to the attention of the public. Initial inquiries concerning access to documents should be made at any of the addresses referred to.

Appendix 3 : Freedom of Information Statistics 1989–90

Requests on hand at 30 June 1989	0
Requests received during 1989–90	4

Granted in full	2
Granted in part	0
Access refused	1
Requests withdrawn	1
Requests outstanding at 30 June 1990	0
Response time	0 — 30 days
Fees charged	$30

Appendix 4 : Commonwealth and ACT legislation under which the Director and other DPP officers have been authorised to consent to a prosecution.

Australian Bicentennial Authority Act 1980
Banking Act 1959
Broadcasting Act 1942
Crimes Act 1900 (NSW) in its application to the ACT
Crimes (Aircraft) Act 1963
Crimes (Hijacking of Aircraft) Act 1972
Crimes (Protection of Aircraft) Act 1973
Crimes (Taxation Offences) Act 1980
Family Law Act 1975
Home Savings Grant Act 1964
Home Savings Grant Act 1976
Insurance Act 1973
Navigation Act 1912
Police Offences Act 1930 (ACT)
Public Order (Protection of Persons and Property) Act 1971
Public Works Committee Act 1969
Telecommunications (Interception) Act 1979

Appendix 5 : Joint trial arrangements

The Director has entered into arrangements with each State and the Northern Territory for there to be joint Commonwealth State trials. Various DPP officers have been authorised to sign indictments for State offences and Crown Prosecutors and other State officers have been authorised to sign indictments against Commonwealth law. Below is the agreement entered between the DPP and Tasmanian authorities. The agreement is typical of those entered in other places.

Arrangements for joint Tasmanian-Commonwealth trials

1. While the Commonwealth Director of Public Prosecutions and his nominated officers have been appointed under section 1 of the Criminal Code to present indictments for offences against the laws of Tasmania, and the Tasmanian Director of Public Prosecutions and his nominated officers have been appointed to sign indictments for

offences against the laws of the Commonwealth, those powers will not be exercised in any case without the prior agreement of the other organisation. For this purpose communication will normally be between the Tasmanian DPP and the Director of Legal Services in Hobart.

2. In cases where Commonwealth and State charges may be jointly charged in the one indictment there will be a decision on a case by case basis whether there should be a joint indictment.

3. Which organisation should have the conduct of the proceedings where there is a joint indictment is to be agreed on a case by case basis, but the following will guide the decision:

(i) Normally, if the principal charge is of a Commonwealth offence the Commonwealth DPP should have the conduct of the proceedings on the indictment, and vice versa. The principal charge is to be determined from a comparison of the charges open on the evidence, having regard to the maximum penalties available and the strength of the evidence in support of each charge.

(ii) There may be cases, however, where a particular indictment is one of a number arising out of the one set of circumstances and the overall indictments are predominantly for State or Commonwealth offences. All such indictments should preferably be conducted by the organisation whose charges predominate, even though any individual indictment would otherwise be conducted by the other organisation. In determining which offences predominate the relative seriousness shall be considered in preference to the number of offences. These considerations may even give rise to the Tasmanian DPP prosecuting an indictment that contains only a Commonwealth offence, and vice versa.

(iii) There will also be cases where, for a variety of reasons (for example, the inquiries may have been conducted entirely by the one police force), it will be agreed that the conduct of the prosecution is more naturally the responsibility of one organisation, even though the preceding considerations would suggest the other result.

(iv) The principles set out in paragraph 3(iii) will prevail over the principles set out in paragraph 3(ii) if there is a dispute or difference arising out of conflict between the two paragraphs.

(v) The convenience of the respective organisations may also be considered.

4. While the organisation conducting the prosecution on a joint indictment may consult with the other, the conduct of the prosecution shall be entirely the responsibility of the organisation which has the conduct of them. Subject to paragraph 6, this includes decisions whether to accept pleas to alternative counts. Where, however, it is proposed to take a step which means the formal or practical abandonment of a charge of an offence

of the other organisation (for example, to enter a *nolle prosequi* or not to call evidence) there must first be discussion with the other organisation. If such discussion does not lead to agreement the other organisation is to have the option of taking over the conduct of the charge of its offence.

5. With particular reference to *nolles prosequi* the Commonwealth DPP reserves the ultimate decision with respect to Commonwealth offences, likewise the Tasmanian DPP with respect to Tasmanian offences. This may mean that where a recommendation that a *nolle prosequi* be entered is not accepted by the Commonwealth DPP it will have to take over the conduct of the charge, and vice versa.

6. It is considered desirable that in cases where the organisation which has the conduct of the charge is considering accepting a plea to a lesser or alternative charge in respect of an offence of the other organisation, and the acceptance of the plea would, having regard to the whole indictment, represent a substantial change to the indictment, the organisation having conduct of the trial shall consult with the other organisation before accepting the plea.

Appeals

7. Whilst it is preferable that the organisation which conducts the trial also institutes and conducts, or responds to, any appeal proceedings that follow, it is recognised that a decision to appeal must first be the subject of discussion and agreement. No appeals may be instituted in respect of the other organisation's offences without the agreement of that other organisation.

8. If the organisation which had the conduct of the trial is not prepared to institute an appeal in respect of an offence of the other organisation, the other organisation may do so.

9. There may be cases where it is agreed that the nature of the issues to be raised on appeal make it more appropriate for the conduct of the appeal proceedings to be transferred to the other organisation.

10. The statutory provisions regulating or authorising appeals will determine which party must institute some types of appeals (e.g. the Federal Attorney-General or the DPP alone may institute appeals against inadequacy of sentence in federal matters). That does not determine which organisation has the conduct of the appeal.

Committals

11. Where charges are laid as a result of a joint investigation by the Australian Federal Police and the Tasmanian Police, the Director of Legal Services and the Tasmanian DPP shall consult as soon as possible after the charges have been laid to determine, in accordance with the criteria set out in paragraph 3, which organisation will conduct the prosecution i.e. committal proceedings and trial.

Costs

12. The view is taken that for the moment each organisation should bear the cost of any joint proceedings which they undertake. Experience will reveal whether there is need for some formal cost sharing arrangement in the future. In the meantime each organisation is free to raise the matter of costs, whether generally or in an exceptional case, if that is thought necessary.

Appendix 6 : Speeches and Papers Delivered by Mark Weinberg QC Director of Public Prosecutions

13 July 1989

Proceeds of Crime Act 1987
Criminal Law Association
Brisbane, Queensland

14 July 1989

Some problems associated with the use of section 29D of the Commonwealth Crimes Act

DPP Brisbane and Townsville Conference 1989
Professional Development Centre
Bardon, Queensland

17 August 1989

Corruption commissions : Privatisation of the police function

26th Australian Legal Convention
Sydney Convention Centre
Darling Harbour, Sydney, New South Wales

3 September 1989

Legislation taking the proceeds of crime — draconian overreach or measured response ?

Victorian Council for Civil Liberties — Bill of Rights Conference
Melbourne, Victoria

5 September 1989

Organised crime — delivered by Geoff Gray

Organised Crime Conference
Australian Institute of Criminology, Canberra, ACT

28–29 October 1989

Prosecution of war crimes

Annual Convention of Tasmanian Bar Association
Swansea, Tasmania

12–17 November 1989

Prevention versus prosecution in dealing with corruption

Fourth International Anti-Corruption Conference
(organised by Attorney-General's Department)
Sydney

1–2 May 1990

The future of committals (a prosecution perspective)

Australian Institute of Criminology Conference
Canberra

1990

Proceeds of Crime Act 1987 — New despotism or measured response?

Published in the special anniversary issue of the Monash University Law Review
Volume 15, Numbers 3 and 4

AUSTRALIAN NATIONAL AUDIT OFFICE

Medibank House
Bowes Street
Woden ACT 2606

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
AUDIT REPORT ON FINANCIAL STATEMENTS

In accordance with sub-section 50(1) of the Audit Act 1901, the Director of Public Prosecutions has submitted for audit report the financial statements of the Office of the Director of Public Prosecutions for the year ended 30 June 1990.

Sub-section 50(2) of the Act provides that the financial statements shall be prepared in accordance with financial statements guidelines issued by the Minister for Finance and shall set out:

(a) particulars of the receipts and expenditures of the Consolidated Revenue Fund, the Loan Fund, and the Trust Fund during the financial year in respect of the Office, and

(b) such other information (if any) relating to the financial year as is required by the financial statement guidelines to be included in the statements.

The parts of the financial statements prepared in accordance with paragraph 50(2)(b) of the Act are not subject to audit examination and report unless the Minister for Finance has declared that they are to be subject to full examination. At the date of this report the Minister had not made a declaration in respect of the Office of the Director of Public Prosecutions.

The parts of the financial statements prepared in accordance with paragraph 50(2)(a) of the Act, which are subject to audit, have been prepared in accordance with the policies outlined in Note 1(a), (b)(i), (c), (f) and (h) and have been audited in conformance with the Australian National Audit Office Auditing Standards which incorporate the Australian Auditing Standards.

In accordance with paragraphs 51(1) (a) and (b) and section 70F of the Act, I now report that the parts of the statements prepared in accordance with paragraph 50(2)(a) are, in my opinion:

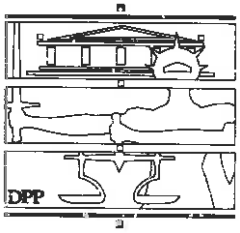
- in agreement with the accounts and records kept in accordance with section 40 of the Act, and

- in accordance with the the financial statement guidelines issued by the Minister for Finance.

R W Alfredson

R.W. Alfredson
Executive Director
Australian National Audit Office

13 November 1990



Office of the Commonwealth
Director of Public Prosecutions

Financial Statements 1989–90

November 1990

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1989-90

CONTENTS

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1989-90

STATEMENT BY THE DIRECTOR

AND

PRINCIPAL ACCOUNTING OFFICER

CERTIFICATION

We certify that the financial statements for the year ended 30 June 1990 are in agreement with the accounts and records of the Office of the Director of Public Prosecutions and, in our opinion, the statements have been prepared in accordance with the Financial Statements Guidelines for Departmental Secretaries issued in May 1990, except as indicated in Notes 1(g), 3 and 4 to the statements.

Mark Weinberg
Director

T McKnight
Senior Assistant Director
Administrative Support
Branch

Signed
Dated 13 NOVEMBER

Signed
Dated 13 November 1990

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

AGGREGATE STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1990

This Statement shows aggregate cash transactions, for which the DPP is responsible, for each of the three funds comprising the Commonwealth Public Account (CPA).

1988-89 ACTUAL $		1989-90 BUDGET $	1989-90 ACTUAL $
	CONSOLIDATED REVENUE FUND (CRF)		
776,959	Receipts	4,521,000	3,358,559
NIL	Expenditure from Special Appropriations	NIL	NIL
23,934,469	Expenditure from Annual Appropriations	31,989,000	33,570,999
na	Funds estimated to be available from receipts credited pursuant to section 35 of the Audit Act 1901 (see Note 7)	21,000	na
23,934,469	Expenditure	32,010,000	33,570,999
NIL	LOAN FUND	NIL	NIL
NIL	TRUST FUND	NIL	NIL

The attached notes form an integral part of these statements.

na not applicable

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

DETAILED STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1990

This statement shows details of cash transactions, for which the Office is responsible, for the Consolidated Revenue Fund (The Office was not responsible for any transactions of the Trust Fund or Loan Fund).

CONSOLIDATED REVENUE FUND (CRF)

RECEIPTS TO CRF

The CRF is the main working fund of the Commonwealth and consists of all current moneys received by the Commonwealth (excluding loan raisings and moneys received by the Trust Fund).
The DPP is responsible for the following receipt items :

1988-89 ACTUAL $		SUB-PROGRAM*	1989-90 BUDGET $	1989-90 ACTUAL $
737,344	Fines and Costs	1.	1,000,000	819,929
39,615	Proceeds of Crime	2.	3,500,000	2,491,206
nil	Miscellaneous	1.	nil	17,851
nil	Section 35 of the Audit Act 1901 - to be credited to Running Costs -Division 181 (see Note 7)	3.	21,000	29,573
776,959	TOTAL RECEIPTS TO CRF		4,521,000	3,358,559

* Refer to Program Statement (this information has not been subject to audit).

The attached notes form an integral part of these statements.

EXPENDITURE FROM CRF

The Constitution requires that an appropriation of moneys by the Parliament is required before any expenditure can be made from the CRF.

The DPP is responsible for the following expenditure items :

1988-89 ACTUAL $		1989-90 APPROPRIATION $	1989-90 ACTUAL $
	Annual Appropriations		
	(Appropriation Act No.1	31,989,000)	
	(Appropriation Act No.3	2,551,000)	
	(Section 35 receipts	29,573)	33,570,999
23,934,469	(Advance to the Minister for Finance	nil	nil
23,934,469	Total Expenditure from Annual Appropriations	34,569,573	33,570,999
23,934,469	TOTAL EXPENDITURE FROM CRF	34,569,573	33,570,999

The attached notes form an integral part of these statements.

1988-89 ACTUAL $		SUB-PROGRAM*	1989-90 APPROPRIATION $	1989-90 ACTUAL $
DETAILS OF EXPENDITURE FROM ANNUAL APPROPRIATIONS				
	APPROPRIATION ACTS NOS 1 AND 3 **			
	Division 181 - Director of Public Prosecutions			
20,010,151	1. Running Costs	#	21,971,573	21,659,140
-	2. Property Operating Expenses	#	6,942,000	6,773,440
3,848,686	3. Other Services 01 Legal Expenses	#	5,656,000	5,138,419
75,632	Payments under s.34A(1) Audit Act	3.	nil	nil
23,934,469			34,569,573	33,570,999

* Refer to Program Statement (this information has not been subject to audit).

** Includes Advance to the Minister for Finance and Section 35 - Annotated appropriation where applicable.

Allocated to various sub-programs.

The attached notes form an integral part of these statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PROGRAM SUMMARY
FOR THE YEAR ENDED 30 JUNE 1990

This statement shows the outlays for each program administered by the DPP and reconciles the DPP's total outlays to total expenditure from appropriations. 'Expenditure' refers to the actual amount of resources consumed by a program whereas 'outlays' refers to the 'net' amount of resources consumed, after offsetting associated receipt and other items.

This Statement also reconciles the total receipts classified as revenue for each program, with 'receipts to CRF'.

This Statement has not been subject to audit.

1988-89 ACTUAL $'000		1989-90 BUDGET $'000	1989-90 ACTUAL $'000
	EXPENDITURE		
	Outlays		
15,011	1. Prosecutions	19,704	21,279
3,915	2. Criminal Assets	5,348	4,557
5,008	3. Executive and Support	6,937	7,688
23,934	Total Outlays	31,989	33,524
	Plus Receipts Offset Within Outlays		
nil	1. Prosecutions	nil	18
nil	3. Executive and Support	21	29
23,934	TOTAL EXPENDITURE FROM CRF	32,010	33,571
	RECEIPTS		
	Revenue		
737	1. Prosecutions	1,000	820
40	2. Criminal assets	3,500	2,491
777	Total revenue	4,500	3,311
	Plus Receipts Offset Within Outlays		
nil	1. Prosecutions	nil	18
nil	3. Executive and Support	21	30
777	TOTAL RECEIPTS TO CRF	4,521	3,359

The attached notes form an integral part of these statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PROGRAM STATEMENT
FOR THE YEAR ENDED 30 JUNE 1990

This statement shows details of expenditure from annual appropriations for each sub-program administered by the DPP. Each 'annual' appropriation item contributing to a sub-program is identified by its description followed by an appropriation code in brackets. Partial allocations of appropriation items to sub-programs are indicated by ('p') following the item. With respect to those sub-programs for which 'expenditure from appropriations' and 'outlays' differ, the Statement discloses information reconciling the amounts concerned.

A detailed explanation of each sub-program is provided elsewhere in this Report.

This Statement has not been subject to audit.

1988-89 ACTUAL $'000		1989-90 BUDGET $'000	1989-90 ACTUAL $'000
	1. PROSECUTIONS		
	Running Costs (181.1)(p)		
8,487	Salaries	8,813	9,071
2,918	Administrative Expenses	3,242	3,325
	Property Operating		
*	Expenses (181.2)(p)	3,511	4,033
3,606	Legal Expenses (181.2)(p)	4,138	4,868
15,011	Expenditure from Appropriations	19,704	21,297
	Less Receipts offset Within Outlays		
nil	Miscellaneous	nil	18
15,011	Outlays	19,704	21,279
	Revenue		
737	Fines and Costs	1,000	820

* The Australian Property Group estimates costs for 1988-89 at $3.399m.

The attached notes form an integral part of these statements.

1988-89 ACTUAL $'000		1989-90 BUDGET $'000	1989-90 ACTUAL $'000
	2. CRIMINAL ASSETS		
	Running Costs (181.1)(p)		
2,731	Salaries	2,893	2,325
942	Administrative Expenses	1,040	928
	Property Operating		
*	Expenses (181.2)(p)	1,150	1,033
242	Legal Expenses (181.2)(p)	265	271
3,915	Expenditure from Appropriations	5,348	4,557
3,915	Outlays	5,348	4,557
	Revenue		
40	Proceeds of Crime	3,500	2,491

* The Australian Property Group estimates costs for 1988-89 at $1.113m.

	3. EXECUTIVE AND SUPPORT		
	Running Costs (181.1)(p)		
3,316	Salaries	3,435	3,842
1,616	Administrative Expenses	2,131	2,169
	Property Operating		
**	Expenses (181.2)(p)	1,392	1,707
nil	Legal Expenses (181.2)(p)	nil	nil
	Payments pursuant to s.34A(1)		
76	of Audit Act (181.2)	nil	nil
5,008	Expenditure from Appropriations	6,958	7,718
	Less Receipts offset Within Outlays		
nil	Section 35 of the Audit Act 1901 - credited to Running Costs -Division 181 (see Note 7)	21	30
5,008	Outlays	6,937	7,688

** The Australian Property Group estimates costs for 1988-89 at $1.348m.

The attached notes form an integral part of these statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

STATEMENT OF SUPPLEMENTARY FINANCIAL INFORMATION AS AT 30 JUNE 1990

This Statement is not subject to audit.

1988-89 $		NOTES	1989-90 $
	CURRENT ASSETS		
230,867	Cash	2, 12	433,121
na	Receivables	3, 12	2,133,878
	NON-CURRENT ASSETS		
na	Furniture	4	86,246
na	Plant and Equipment	4	915,635
na	ADP equipment	4	1,945,083
	CURRENT LIABILITIES		
443,179	Creditors	5	432,784

The attached notes form an integral part of these statements.

na not available

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 1990

NOTE 1

STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

(a) The financial statements have been prepared in accordance with the 'Financial Statements Guidelines for Departmental Secretaries' issued by the Minister for Finance in May 1990 except as stated in Notes 1(g), 3 and 4.

(b) (i) The financial statements have been prepared on a cash basis with the exception of the Statement of Supplementary Financial Information which includes certain accrual-type information.

(ii) The financial statements have been prepared in accordance with the historical cost convention and do not take account of changing money values or, except where stated, current values of non-current assets.

(c) Amounts shown in the Aggregate Statement of Transactions by Fund, the Detailed Statement of Transactions by Fund and the Statement of Supplementary Financial Information have been rounded to the nearest $1; other amounts have been rounded to the nearest $1,000. All totals are the rounded additions of unrounded figures.

(d) Land and buildings and minor assets, other than receivables, having a unit cost less than $2,000 have not been accounted for in the Statement of Supplementary Information.

(e) Salaries, wages and related benefits payable to officers and employees of the DPP have not been accounted for in the balance of creditors in the Statement of Supplementary Financial Information.

(f) Amounts paid to and by the DPP during the year in foreign currencies have been converted at the rate of exchange prevailing at the date of each transaction.

(g) Certain Supplementary Information on Receivables and Non-current assets required by the Guidelines issued by the Minister of Finance was unable to be provided for 1988-89, as noted elsewhere in these statements, as records were not maintained in a suitable format during 1988-89. Such information has been reported in 1989-90, unless stated otherwise in the applicable note.

(h) Administrative expenses include minor capital expenditure items (ie costing less than $250,000) as they are considered part of ordinary annual services for the purposes of the Appropriation Acts.

1988-89 $		1989-90 $
	NOTE 2	
	CASH	
	Cash at Bank -	
160,771	Fines and Costs accounts (see also Note 12)	356,178
44,784	Legal Advance accounts	46,382
226	Other accounts	1,803
	Cash on Hand -	
1,765	Fines and Costs accounts (see also Note 12)	100
832	Legal Advance accounts	7,452
22,489	Other Advance accounts	21,206
230,867	Total Cash at bank and on hand	433,121
	NOTE 3	
	RECEIVABLES	
na	Fines and Costs	2,132,532
na	Other	1,346
	Total receivables	2,133,878

Receivables recorded as Fines and costs comprise amounts awarded by the various courts which will be accounted for as DPP revenue.
The DPP Fines and costs ADP system was enhanced during 1989-90 to record and control amounts owing and subsequently paid through the Courts. This system was not sufficiently developed to enable the aging of debtors in a form suitable for inclusion in these statements, largely due to the variety of systems of time to pay, and payment by installment in the various courts. Similarly, a significant amount of the debts outstanding may not be recovered, as fines and costs may be converted by serving time in prison, by performing community service or similar provisions. A number of fines and costs will also be written off as unrecoverable. System data is not yet adequate to provide a meaningful estimate of amounts not expected to be recovered. System enhancements should allow for the collection of such data in 1990-91.

1988-89 $		1989-90 $

NOTE 4

NON-CURRENT ASSETS

Asset records were not kept in a form that would enable the collection of data for inclusion in the 1988-89 statements. This deficiency in the form of records was overcome in 1989-90. However, the information reported as at 30/6/90 was not validated by stocktake during the year. A full stocktake will be conducted in 1990-91 in conjunction with the implementation of the new computerised asset module.

NOTE 5

CREDITORS

Trade Creditors

Of a total amount of $432,784 on hand as at 30 June ($443,179 in 1989), the following amounts were overdue for -

22,093	Less than 30 days	1,788
1,443	30 - 60 days	292
23,536	Total	2,080

NOTE 6

FORWARD OBLIGATIONS

The DPP has entered into forward obligations as at 30 June ($365,581 in 1989) which are payable as follows :

Item	Not later than 1 year $	1-2 years $	Later than 2 years $	Total $
Plant and Equipment	79,731	80,000	80,000	239,731
Library	60,250	-	-	60,250
ADP	303,900	-	-	303,900
Property leases	6,480,020	6,818,708	7,142,911	20,441,639
Other	294,221	-	-	294,221
Total	7,218,122	6,898,708	7,222,911	21,339,741

NOTE 7

RUNNING COSTS (ANNOTATED APPROPRIATION 181.1.00)

This appropriation was annotated pursuant to section 35 of the Audit Act 1901 to allow the crediting of receipts from contributions for senior officers official vehicles, contributions towards the cost of semi-official telephones and receipts from the sale of surplus and/or obsolete assets.

The Annotated Appropriation operated as follows -

Annotated Appropriation $'000	Receipts $'000	Appropriation $'000	Expenditure $'000
21,942	30	21,972	21,659

NOTE 8

AMOUNTS WRITTEN OFF

The following details are furnished in relation to amounts written off during the financial year 1989-90 under sub-section 70C(1) of the Audit Act 1901 (7 amounts totalling $510 were written off in 1988-89).

	Up to $1000		OVER $1,000	
	No.	$	NO.	$
(i) Losses or deficiencies of public moneys	1	70	-	-
(ii) Irrecoverable amounts of revenue	41	4,516	-	-
(iii) Irrecoverable debts and overpayments	118	5,536	-	-
(iv) Amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Minister, be uneconomical	94	2,644	1	1,280
(v) Lost, deficient, condemned, unserviceable or obsolete stores *	168	19,832	1	2,623

* stocktakes conducted during 1988 and 1989 identified various asset items totalling $17,186 which were formally written-off under category (v) during 1989-90. One case involving loss of moneys of $70 was recorded during 1988-89 and was formally written-off under category 1 during 1989-90 (see also note 9).

NOTE 9

LOSSES AND DEFICIENCIES IN PUBLIC MONEYS AND OTHER PROPERTY

One case involving loss of property, with a cost of $2,623, was recorded during the financial year 1988-89 under Part XII of the Audit Act 1901.
One case involving loss of moneys was recorded during the financial year 1988-89 under Part XII of the Audit Act 1901. The amount of the loss was $70 and the officers responsible for the account were held liable and the money was repaid to consolidated revenue during 1989-90.

NOTE 10

CONTINGENT LIABILITIES

If a matter being prosecuted by the DPP is defended succesfully, the Court may order that the DPP meet certain costs incurred by the defence. Similarly, if assets are frozen under the Proceeds of Crime Act and the related prosecution is unsuccessful, costs/damages may be awarded against the DPP. Costs so awarded are met from DPP or client organisations annual appropriations for Legal Expenses.
Although costs have been awarded against the DPP and will continue to be awarded from time to time, the DPP is unable to declare an estimate of contingent liabilities due to the uncertainty of the outcome of matters, but more particularly to the sensitivity of the information related to matters still before the Courts.
The DPP has no other contingent liabilities.

NOTE 11

RESOURCES RECEIVED FREE OF CHARGE

During the 1989-90 financial year, a number of Commonwealth departments and agencies provided services to the DPP without charge. Expenditure for those services were met from those Department's appropriations. The major services received include :

Australian National Audit Office

. The notional audit fee for the audit of the 1989-90 financial statements was $69,750. (The notional audit fee for services provided during the audit year ended 31/03/89 was $15,300).

Attorney-General's Department

. Prosecution and related services in Tasmania and the Northern Territory, where the DPP does not have offices;
. Payroll support;
. Internal audit services.

Department of Finance

. Payroll and accounting support

Department of Administrative Services

. From 1 July 1989 the DPP commenced paying for services provided by the Department of Administrative Services for the lease of, maintenance of and payment for rented premises occupied by the DPP throughout Australia. The Australian property group of the Department of Administrative Services acts as the agents for departments and agencies in such matters. These expenses are recorded as Property Operating Expenses for 1989-90 in these statements. In 1988-89 such services were provided free of charge.

NOTE 12

FINES and COSTS BANK ACCOUNTS

During 1989-90 Fines and Costs awarded in matters prosecuted by the DPP were processed through Fines and Costs Bank Accounts operating in each state. Moneys collected are initially banked to these accounts and then disbursed to either DPP revenue accounts (see Statement of Transactions by Fund) for matters for which the DPP has administrative responsibility, mainly Crimes Act matters, or to other Departments or Agencies for Acts administered by them (eg Taxation, Social Security, etc).

The DPP Fines and Costs ADP system was enhanced during 1989-90 to record and control amounts owing and subsequently paid through the Courts. This system was not sufficiently developed to to provide reliable data for the full financial year in a form suitable for inclusion in these statements. System enhancements should allow for the reporting of such data in 1990-91.

A total of $356,278 ($162,536 for 1988-89) remained undisbursed in Fines and Costs bank accounts around Australia at 30 June 1990. This was represented by (see also Note 2):

1988-89 $		1989-90 $
160,771	Cash at bank	356,178
1,765	Cash on hand	100
162,536		356,278

APPENDIX: GLOSSARY OF TERMS

ACT OF GRACE PAYMENTS: Section 34A of the Audit Act 1901 provides that, in special circumstances, the Commonwealth may pay an amount to a person notwithstanding that the Commonwealth is not under any legal liability to do so.

ADMINISTRATIVE EXPENSES: Includes not just expenditure on office based activities but all operational expenditure (excepting salaries). The item includes both direct costs and overhead expenditure: it includes, inter alia, minor capital expenditure (ie items less than $250,000) which is considered part of ordinary annual services; it does not include, inter alia, major capital expenditure, grants, loans or subsidies.

ADVANCE TO THE MINISTER FOR FINANCE (AMF): The contingency provisions appropriated in the two Supply Acts and the two annual Appropriation Acts to enable funding of urgent expenditures not foreseen at the time of preparation of the relevant Bills. These funds may also be used in the case of changes in expenditure priorities to enable 'transfers' of moneys from the purpose for which they were originally appropriated to another purpose pending specific appropriation.

ANNUAL APPROPRIATIONS: Acts which appropriate moneys for expenditure in relation to the Government's activities during the financial year. Such appropriations lapse on 30 June. They are the Appropriation Acts.

APPROPRIATION: Authorisation by Parliament to expend public moneys from the Consolidated Revenue Fund or Loan Fund for a particular purpose, or the amounts so authorised. All expenditure (ie outflows of moneys) from the Commonwealth Public Account must be appropriated ie authorised by the Parliament.

APPROPRIATION ACT (No 1): An act to appropriate moneys from the Consolidated Revenue Fund for the ordinary annual services of Government.

APPROPRIATION ACT (No 2): An act to appropriate moneys from the Consolidated Revenue Fund for other than ordinary annual services. Under existing arrangements between the two Houses of Parliament this Act includes appropriations in respect of new policies (apart from those funded under Special Appropriations), capital works and services, plant and equipment and payments to the states and the Northern Territory.

APPROPRIATION ACTS (Nos 3 and 4): Where an amount provided in an Appropriation Act (No 1 or 2) is insufficient to meet approved obligations falling due in a financial year, additional appropriation may be provided in a further Appropriation Act (No 3 or 4). Appropriations may also be provided in these Acts for new expenditure proposals.

AUDIT ACT 1901: The principal legislation governing the collection, payment and reporting of public moneys, the audit of the Public Accounts and the protection and recovery of public property. Finance Regulations and Directions are made pursuant to the Act.

COMMONWEALTH PUBLIC ACCOUNT (CPA): The main bank account of the Commonwealth, maintained at the Reserve Bank in which are held the moneys of the Consolidated Revenue Fund, Loan Fund and Trust Fund. (The Dpp is not responsible for any transactions relating to the Loan Fund or Trust Fund).

CONSOLIDATED REVENUE FUND (CRF): The principal working fund of the Commonwealth mainly financed by taxation, fees and other current receipts. The Constitution requires an appropriation of moneys by the Parliament before any expenditure can be made from the CRF.

EXPENDITURE: The total or gross amount of money spent by the Government on any or all of its activities (ie the total outflow of moneys from the Commonwealth Public Account) (c.f. 'Outlays'). All expenditure must be appropriated ie authorised by the Parliament, (see also 'Appropriations'). Every expenditure item is classified to one of the economic concepts of outlays, revenue (ie offset within revenue) or financing transactions.

FORWARD OBLIGATIONS: Obligations existing at 30 June which create or are intended to create a legal liability on the Commonwealth to provide funds in future years and which have not been exempted from the forward obligations system. In special circumstances, arrangements which do not create a legal liability, but which require forward obligations cover for effective program management, may also be included in the forward obligations system eg memoranda of understanding with other Governments and foreign aid arrangements. The following items are exempted from the forward obligations system:

- all items classified in Appropriation Acts as Running Costs (ie salaries and administrative expenses);
- those items for which payment is authorised by special legislation where the amount and timing of payments are specified or clearly dictated by eligibility criteria (ie most, but not all, Special Appropriations); and
- those items which have been exempted by the Minister for Finance as a result of specific case-by-case requests from departments.

OUTLAYS: An economic concept which shows the net extent to which resources are directed through the Budget to other sectors of the economy after offsetting recoveries and repayments against relevant expenditure items ie outlays consist of expenditure net of associated receipt items. The difference between outlays and revenue determines the Budget balance (ie surplus or defecit). See also 'Appropriations'; and 'Receipts offset within outlays'.

RECEIPTS: The total or gross amount of moneys received by the Commonwealth (ie the total inflow of moneys to the Commonwealth Public Account). Every receipt item is classified to one of the economic concepts of revenue, outlays (ie offset within outlays) or financing transactions. See also 'Revenue'.

RECEIPTS NOT OFFSET WITHIN OUTLAYS: Receipts classified as 'revenue'. See also 'Revenue'.

RECEIPTS OFFSET WITHIN OUTLAYS: Refers to receipts which are netted against certain expenditure items because they are considered to be closely or functionally related to those items.

REVENUE: Items classified as revenue are receipts which have not been offset within outlays or classified as financing transactions. The term 'revenue' is an economic concept which comprises the net amounts received from taxation, interest, regulatory functions, investment holdings and government business undertakings. It excludes amounts received from the sale of government services or assets (these are offset within outlays) and amounts received from loan raisings (these are classified as financing transactions). Some expenditure is offset within revenue eg refunds of PAYE tax instalments and the operating expenditure of budget sector business undertakings. See also 'Receipts'.