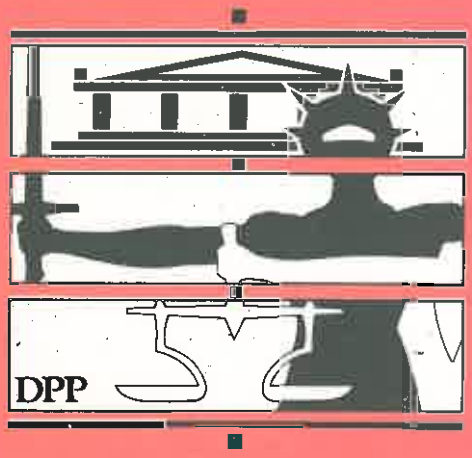
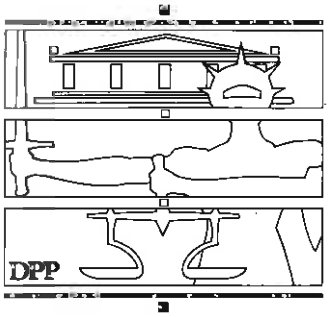
Commonwealth Director of Public Prosecutions



Annual Report 1990-91



Commonwealth Director of Public Prosecutions
Annual Report 1990-91

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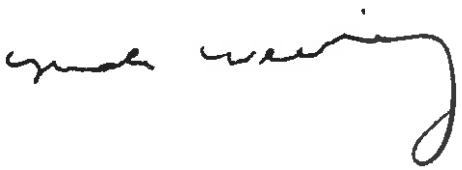
The Hon. Michael Duffy MP
Attorney-General
Parliament House
CANBERRA ACT 2600

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 1991, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully,



Mark Weinberg QC
Director

25 October 1991

Compliance statement

This report has been prepared for the purpose of section 33 of the *Director of Public Prosecutions Act 1983*.

Section 33(1) requires that the Director of Public Prosecutions shall, as soon as practicable after 30 June each year, prepare and furnish a report to the Attorney-General with regard to the operations of the Office during the year.

Section 33(2) provides that the Attorney-General shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of receipt.

The report has been prepared in accordance with *Guidelines for the Preparation of Annual Reports* that were tabled in the House of Representatives on 10 April 1991 and in the Senate on 11 April 1991.

As aids to access, the report includes a table of contents, a glossary, an alphabetical index and a compliance index showing where each item that is required under the guidelines, and which is applicable to the DPP, can be found.

People interested in knowing more about the DPP should also have regard to the following documents:

- *Prosecution Policy of the Commonwealth*;
- *DPP Information Booklet*;
- *DPP Civil Remedies Report 1985-87*; and
- the Program Performance Statement for the Attorney-General's Portfolio.

The DPP has also produced a short information video entitled *Prosecuting in the Public Interest*, which outlines the work of the Office and where it fits into the criminal justice system.

Copies of the documents can be obtained by writing to the DPP at any of the addresses that appear at the start of this report. Copies of the video are available for sale from Film Australia, Eton Road, Linfield 2070.

Any questions or comments about this report may be directed to the DPP Journalist who works in DPP Head Office and who may be contacted during business hours by telephoning 06 270 5666.

Contents

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Director's overview

Mark Weinberg QC,
Commonwealth Director of Public Prosecutions

This is the eighth annual report of the Office of the Director of Public Prosecutions. It is the third such report under my hand. It is also my last report.

When I was offered the position of Director, it was suggested to me that a term of five years might be appropriate. I declined that offer. I suggested instead that three years would probably be long enough. In hindsight, I would say that I was mistaken. The new Director needs some time (and patience) before he or she can properly deal with the range of intricate problems which arrive on an almost hourly basis. Perhaps a four year term would be ideal. I am convinced, however, that five years is too long. The position of Commonwealth Director is necessarily a highly stressful one. The hours can be very long, particularly when the Director engages in a considerable amount of court appearance work, as I have done. The time spent away from home can place a good deal of strain

upon the incumbent, and his or her family. I would describe the position of Director as one which produces 'burn out' far more quickly than private practice. Certainly this had been my experience, and the experience of my State counterparts as well.

The last three years have been very challenging ones for both myself and my Office. The DPP has undergone a number of significant changes. Among the highlights of my term of office have been the assumption of the prosecution function in relation to corporate crime (a task of monumental proportions), the development of a new statement of the *Prosecution Policy of the Commonwealth*, the adoption of that statement by the States to ensure uniform policies throughout this country, the opening of our Adelaide Office, and most recently the inauguration of what I hope will become a regular event, an international heads of prosecution agencies conference. Among comparatively few disappointments, there has been the loss of our prosecution function in the ACT, and the delay in bringing to fruition war crimes prosecutions.

One area which I single out for special mention is that of taxation fraud. It has been a source of concern to me that there appears to be a difference in philosophy between the Australian Taxation Office and the DPP regarding how best to deal with fraud upon the revenue. ATO, understandably from its point of view, sees itself as primarily concerned with the protection of the revenue. It seeks to recover taxes not paid as a result of fraud. Prosecution of offenders is given much lower priority. Accordingly the ATO is inclined, wherever possible, to utilise measures which lead to the recovery of unpaid taxes, and in some cases to impose administrative penalties. It is reluctant to invoke the prosecution process. The DPP takes the view that those who set out to defraud the Commonwealth of large amounts of tax ought, when apprehended, be prosecuted. Tax cheats should, in appropriate circumstances, face the possibility of imprisonment as well as having to disgorge benefits derived from fraudulent activity. The differences between our two positions are narrowing, but they come to the fore from time to time. This is a debate which I am happy to bequeath to my successor.

Chief among other matters which have caused me concern is the delay in bringing criminal prosecutions to court, and the length of some of these matters when they are finally dealt with. A Director's overview is not an appropriate vehicle for musing about the causes of delay and protracted hearings. One factor which is plainly at play here is the availability of interlocutory applications under the *Administrative Decisions (Judicial Review) Act 1977*, the *Judiciary Act 1903* and the inherent jurisdiction of the higher courts to grant declaratory and prerogative relief.It is all too frequent an occurrence to find a committal hearing, or a trial, being interrupted by forays into the superior

Left to right: Paul Coghlan, Associate Director; Mark Weinberg QC.

courts seeking interlocutory relief on a range of matters including the decision to prosecute, the form of the charges, rulings on evidence during the course of the hearing, and the decision to commit. Fortunately the High Court has indicated in strong terms that such interlocutory applications should not be entertained save in the most exceptional circumstances. While the jurisdiction exists, however, those who are accused of offences will be tempted to invoke it. Delay always works in favour of an accused. It is the prosecutor's worst enemy.

Something must be done to shorten complex criminal cases. I strongly favour the retention of our system of trial by jury. That system will be jeopardised if complex trials routinely run for many months. It is asking too much of ordinary citizens to give up so much of their time to sit in judgment upon their peers

under conditions which are often less then satisfactory. Judges must become more interventionist in these cases, putting pressure upon prosecutors to avoid charging broad-ranging conspiracies or overloading indictments. Judges must also do more to ensure that the real issues in the case are identified at an early stage, and that proper concessions are made by the defence. There is nothing more disheartening than to see a procession of formal witnesses brought to court, often at great expense, and then not be cross-examined at all, or only perfunctorily so. Regrettably, Commonwealth crime tends to be complex. Prosecutions are often hard-fought. Even so, there must be something wrong with a system which permits a single committal hearing to run for a number of years, as has happened on more than one occasion. Such delay simply cannot be tolerated.

I have been told that it is inappropriate in a Director's overview to single out named individuals for special mention and for personal expressions of gratitude. Having always been somewhat rebellious, I propose to disregard that advice. I will mention firstly a number of individuals from outside my Office with whom I have had regular and always pleasant dealings. First, the Attorney-General, the Honourable Michael Duffy, who has taken over a difficult portfolio. In his relations with the DPP he has always been conscious of the need to support its independence. The Solicitor-General, Dr Gavan Griffith, was responsible for my being offered this position. I thank him for his faith in me, and for the lively interchange we have enjoyed when appearing together in constitutional matters in the High Court. Alan Rose, the Secretary of the Attorney-General's Department, has been helpful, and thoroughly professional, in all our dealings.

I thank all members of heads of Commonwealth law enforcement agencies, the HOCOLEA Group (Commonwealth acronyms are wonderful, nothing can match the LEPR Committee). In particular, I mention Peter McAulay, the Commissioner of the Australian Federal Police, who has never left me in doubt as to where he stands on any matter. He has ensured that relations between the DPP and the AFP have never been better. His Honour Justice Phillips, the Chairman of the National Crime Authority has taken on a difficult job, and has displayed a willingness to ensure that the NCA becomes a cooperative and facilitative agency, rather than one which is insular and secretive. Tony Hartnell, Chairman of the Australian Securities Commission, has ensured that what could have been a difficult teething period in the development of relations between the DPP and the ASC has gone smoothly, and with a minimum of fuss. I also thank my State counterparts, the State Directors of Public Prosecutions and Crown Prosecutors for their support and cooperation. Among prosecution agencies in Australia, there is, and always has been, remarkable goodwill and harmony. There are others too numerous to mention

Back row left to right:
Paul Evans, Deputy Director Brisbane; Grant Niemann, Deputy Director Adelaide; Grahame Delany, Deputy Director Sydney; Terry Gardner, Director of Legal Services Darwin; Bill Nairn, Deputy Director Perth; Tony Davis, Director of Legal Services Hobart; Peter Wood, Deputy Director Melbourne.

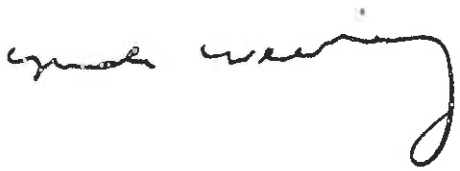
Front row left to right;
Paul Coghlan, Associate Director; Mark Weinberg ; Peter Walshe, First Deputy Director.

but they will know that I refer to them when I thank all who have worked harmoniously with my Office over the past three years.

From within the DPP, I must acknowledge the invaluable assistance of my Associate Director, Paul Coghlan. He, and his predecessor John Dee, have both supported me with the utmost loyalty. Each had the ability to bring me back to earth whenever it became appropriate to do so. Peter Walshe, my First Deputy Director, has shouldered the management responsibilities of a large and diffuse organisation. In his own quiet way, he has demonstrated qualities of

judgement and common sense which have permitted us to ride out many storms. I must mention specifically each of my Deputy Directors in charge of State regional offices. Grahame Delaney, Peter Wood, Paul Evans, Bill Nairn, Grant Niemann, and, until we lost our ACT Office, Ian Bermingham have all provided me with sound advice and have run their regional offices in a thoroughly professional and competent manner. At a personal level my Media Liaison Officer, Leonie Kennedy, has taught me the value of having someone to protect me from the worst depredations of the media. My former Personal Assistant, Robyn Oliver, gave me three years of committed and loyal service.

If there is one thing which gives me greatest pride about my association with the DPP, it is the fact that my staff have shown themselves to be not only competent and dedicated prosecutors, but above all lawyers imbued with a strong sense of fairness. The measure of any liberal democratic society must surely lie in the way in which it deals with those accused of having broken its laws. It is not difficult for people who have been working assiduously upon a case to become zealously committed to it. Such an approach must be put to one side when it comes to the prosecution process. The prosecutor must strive to be objective, and dispassionate. That does not mean that prosecutors are expected to be humourless automatons. The many delightful and interesting people that I have encountered within the DPP are living testimony to that fact. I shall miss them all.



Mark Weinberg QC

Commonwealth Director of Public Prosecutions

Chapter 1
Office of the DPP

Establishment

The Office of the DPP was established under the *Director of Public Prosecutions Act 1983* and commenced operations in 1984.

The Office is headed by a Director, who is appointed for a statutory term of up to seven years, and an Associate Director.

The current Director, Mark Weinberg QC, was appointed from the Melbourne Bar for a period of three years commencing on 7 November 1988. There is provision under section 18 of the DPP Act for the Director to be appointed subject to terms and conditions. No terms or conditions were specified in the case of the present Director.

The current Associate Director, Paul Coghlan, was also appointed from the Melbourne Bar and is employed under contract.

The DPP is within the portfolio of the Commonwealth Attorney-General. However, the Office operates independently of the Attorney-General and of the political process.

Under section 8 of the DPP Act the Attorney-General has power to issue guidelines and directions to the DPP. However, that can only be done after there has been consultation between the Attorney-General and the Director. In addition, any direction or guideline must be in writing and a copy must be published in the Gazette and laid before each House of Parliament within 15 sitting days.

No guidelines or directions were issued under section 8 in the past year.

Role

The primary role of the DPP is to prosecute alleged offences against Commonwealth law. It also has important functions in relation to the recovery of the proceeds of Commonwealth crime and the prosecution of corporate offences.

The majority of Commonwealth prosecutions, whether they proceed summarily or on indictment, are prosecuted by the DPP. The remaining cases consist mainly of high volume matters of low complexity which, for reasons of convenience, are conducted by other agencies under arrangement with the DPP. State authorities also conduct some Commonwealth prosecutions, again for reasons of convenience.

The DPP also has responsibility for the conduct of prosecutions for offences against the laws of Australia's external territories, other than Norfolk Island.

Up until 30 June 1991, the DPP was also responsible for conducting prosecutions for offences against the laws of the ACT. In 1990-91 the DPP performed that function under an agency arrangement with the ACT authorities. That ceased to operate on 1 July 1991.

The DPP's involvement in the prosecution of corporate offenders dates from 1 January 1991 when the Commonwealth assumed responsibility for the regulation of companies and securities. This area of work is described in Chapter 4.

The DPP's practice in relation to the recovery of criminal assets is described in Chapter 5. In general terms, the DPP's charter is to ensure that Commonwealth offenders who have derived significant financial benefits, and who have accumulated assets, are not only prosecuted but are also stripped of those assets.

The DPP is not an investigative agency. It can only act in a matter when there has been an investigation by an agency which has an investigative role. The DPP often provides legal advice and other assistance during the investigative stage. However, its formal role only commences when the investigation has been completed and a brief of evidence prepared.

Heads of Prosecution Agencies Conference

On 18 and 19 July 1991 the DPP hosted a conference of heads of prosecution agencies from a number of common-law countries. The conference was opened by the Attorney-General the Honorable Michael Duffy. *For further details see page 108, Chapter 7.*

The Attorney-General the Honorable Michael Duffy MP, (left) and the Director of Public Prosecutions, Mark Weinberg QC, at the Prosecution Agencies Conference.

Sitting (left to right): Tan Boon Teik, Michael Duffy MP, Ken Crispin QC.

Standing (left to right): Sir Allan Green KCB QC, Simon Moore, Tan Chee Meng, Michael Ruffin, John Wood CB, David Morris, Libby Woods, John McKechnie QC, Charles Sturt, Paul Coghlan, Mark Weinberg QC, Grahame Delaney, Betty King, Bruce Macfarlane QC, Reg Blanche QC, Len Flanagan QC, Royce Miller QC, Bernard Bongiorno QC, Barbara Mills QC, Justin McCarthy, Alan Oakey, Peter Walshe, Chris Meaney, Paul Rofe, Damian Bugg.

The Commonwealth's main investigative agencies are the Australian Federal Police, the National Crime Authority and the Australian Securities Commission. However a number of other agencies have an investigative role as part of their function in admininstering a particular program. The main agencies in this group are the Australian Taxation Office, the Australian Customs Service, the Department of Social Security and the Health Insurance Commission, although many other Commonwealth agencies conduct investigations in some circumstances.

The result is that the DPP receives briefs of evidence from, and provides legal advice to, a wide range of different agencies. It also maintains liaison arrangements with a wide range of agencies.

All decisions in the prosecution process are made in accordance with the guidelines laid down in the *Prosecution Policy of the Commonwealth*, which is a publicly available document.

Corporate Plan

Under its Corporate Plan, the DPP's objectives 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.

These objectives are designed to advance social justice by ensuring compliance with the laws of the Commonwealth by deterring and discouraging breaches of those laws.

The plan identifies strategies to achieve each objective and criteria by which the performance of the Office can be judged.

The chapters and tables which follow describe the work undertaken by the DPP during the past year to pursue these objectives.

The Corporate Plan has now been in force for over 18 months. It will be kept under review to ensure that it remains an appropriate basis for reviewing the work of the DPP and planning for the future.

Functions and powers

The DPP is created by statute and only has those functions and powers which are given to the Director by legislation.

The functions of the Director are to be found in section 6 of the DPP Act and specific legislation like the *Proceeds of Crime Act 1987*.

The main functions of the Director have already been referred to. The Director also has a number of miscellaneous functions including:

- to prosecute indictable offences against State law where, with the consent of the Attorney-General, he is authorised to do so under the laws of that State;
- to conduct committal proceedings and summary prosecutions for offences against State law where a Commonwealth officer is the informant;
- to assist coroners in inquests and inquiries under Commonwealth law; and
- to appear in extradition proceedings.

The Director also has the function under section 6(1)(g) of the DPP Act to recover pecuniary penalties in respect of matters specified in instruments signed by the Attorney-General. This provision covers cases, mostly in the revenue area, where Commonwealth law is enforceable by quasi-criminal proceedings rather than by prosecution.

To date there has only been one general instrument signed for the purpose of section 6(1)(g). That instrument was signed on 3 July 1985. Paragraph (b) of the instrument makes it clear that the DPP is responsible for conducting all prosecutions under taxation laws. However, the DPP does not conduct prosecutions under the *Customs Act 1901*, except in the case of narcotics offences. The responsibility for prosecuting non-narcotic matters rests with the Australian Government Solicitor.

The Director is given a number of specific powers under the DPP Act. These include power to:

- prosecute by indictment and authorise others to sign indictments on his behalf;
- decline to proceed further in the prosecution of a person who has been committed for trial;

- take over proceedings commenced by another and either carry them on or discontinue them;
- discontinue proceedings being conducted by the DPP even if the informant wishes to proceed;
- grant indemnities to potential witnesses; and
- exercise any right of appeal that may be open to the Attorney-General or to the Director in his own right.

The Director has widely delegated his powers. The majority of operational decisions are made at regional office level without involvement from Head Office. However, current arrangements ensure that the key decisions in major matters are made by the Director or the Associate Director.

Organisation

The DPP has a Head Office located in Canberra and regional offices in Sydney, Melbourne, Brisbane, Perth and Adelaide. There is also a sub-office of the Brisbane Office in Townsville.

Up until 1 July 1991, the DPP also had a regional office in Canberra.

The DPP has no office in Tasmania or the Northern Territory. In those places, Commonwealth prosecutions and related civil proceedings are conducted on behalf of the DPP by the Australian Government Solicitor pursuant to an arrangement under section 32 of the DPP Act. For all practical purposes, however, the AGS offices in Hobart and Darwin perform the same role in the criminal sphere as the DPP regional offices.

Head Office

Head Office provides policy and legal advice to the Director, controls and co-ordinates the activities of the DPP across Australia, liaises at senior level with the investigative and other agencies with which the DPP deals, and provides administrative support to the Director. After 1 July 1991, Head Office will also be responsible for conducting prosecutions for Commonwealth offences committed in the ACT and for related criminal assets proceedings.

As at 30 June 1991, Head Office consisted of five branches: Legal, Corporate Prosecutions, Criminal Assets, Policy and Administrative Support.

The first three branches supervise the conduct of cases by the regional offices, provide input and assistance where it is needed, and advise the Director in matters warranting his involvement. They also liaise with investigative and other agencies, provide advice on legal issues of general relevance, and provide

input into the development of policy on matters within their areas of responsibility.

The Policy Branch is responsible for assisting the Director to develop and apply consistent policies across the Commonwealth in relation to the DPP's prosecution functions. It is also responsible for developing and maintaining guidelines for the assistance of DPP officers and for making recommendations to other agencies, particularly the Attorney-General's Department, in relation to Commonwealth criminal law and proposed changes to it.

The Administrative Support Branch is responsible for the national co-ordination of budget and personnel policy, automatic data processing and library support. It also provides administrative services to the Director and Head Office.

Sydney, Melbourne, Brisbane, Perth and Adelaide Offices

The regional offices are responsible for conducting prosecutions and civil recovery action in matters within their region.

Each office other than Sydney and Melbourne is divided into four branches: General Prosecutions, Corporate Prosecutions, Criminal Assets and Administrative Support. Sydney has two additional General Prosecutions Branches and Melbourne has one additional General Prosecutions Branch. There is also a small war crimes unit in the Adelaide Office.

The sub-office in Townsville deals with work in north Queensland.

Canberra Office

As stated above, the Canberra Office closed on 1 July 1991. In the period under review the Canberra Office conducted all prosecutions in the ACT for both Territory and Commonwealth offences. For reasons of convenience, the office also conducted some prosecutions and appeals in areas surrounding the ACT.

The Canberra Office was unique in that its practice covered the whole calendar of criminal offences. The organization of the office reflected that fact.

In 1990-91 there were five branches in the Canberra Office: General Prosecutions, Superior Courts, Fraud, Criminal Assets and Administrative Support.

The General Prosecutions Branch was responsible for all prosecutions in the ACT Magistrates Court and the ACT Children's Court. It was also responsible for providing assistance in coronial inquests. The Superior Courts Branch was responsible for trials on indictment, sentence matters before the ACT Supreme

Court and appeals to superior courts. The Fraud Branch dealt with fraud against the Commonwealth and against individuals. The Criminal Assets and Administrative Support Branches had the same functions as their counterparts elsewhere.

Hobart and Darwin

In Tasmania and the Northern Territory, prosecutions and criminal assets work is carried out by the Australian Government Solicitor. In both places the criminal work is conducted as part of the general work of the office and most lawyers have a mixture of criminal and civil work.

Program structure

During 1990-91 the various branches of the DPP offices were managed under four programs:

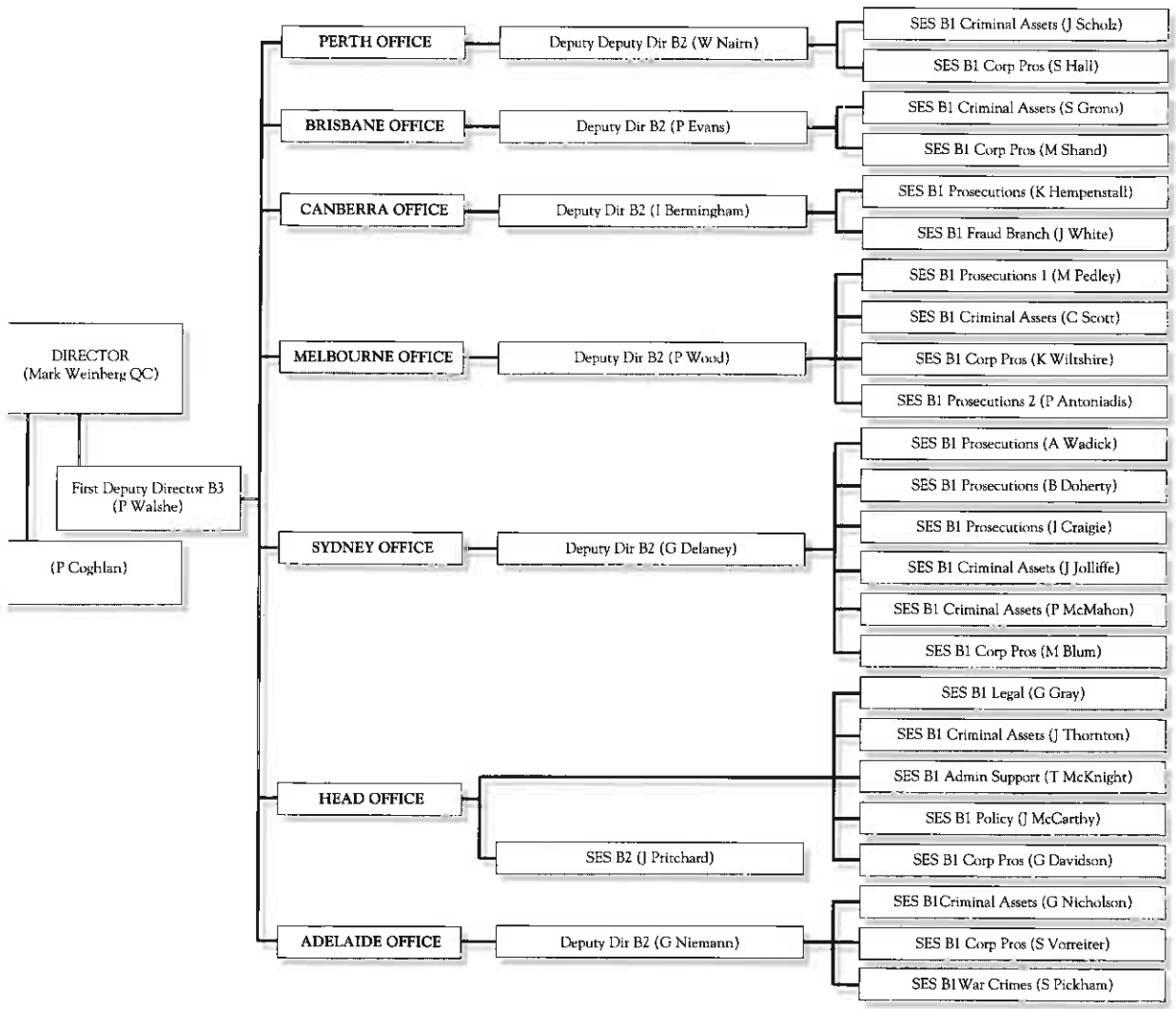
- Executive and Support;
- Prosecutions;
- Criminal Assets; and
- ACT Prosecutions.

Corporate prosecutions were managed as part of the Prosecutions program.

The Executive and Support program comprised the Director, the Associate Director and the First Deputy Director as well as the Administrative Support Branches.

The responsibility for managing each program within the regional offices rests on the Deputy Directors and the officers in charge of branches within those offices.

Senior management chart



Chapter 2
Exercise of statutory powers

This chapter deals with the exercise of the statutory powers which the Director has not delegated beyond Head Office, or has only delegated in a limited way.

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.

This power has only been partially delegated. Senior officers in DPP regional offices, and in the AGS offices in Hobart and Darwin, have power to reject a no-bill application that is made at the court door if it clearly lacks merit and they have power to discontinue a prosecution if the defendant has already been dealt with on counts under State law which cover the same factual situation. In Queensland, the Deputy Director has power to invoke a State procedure under which a no bill can be filed during the course of a trial in some circumstances. In all other cases any no-bill application received by a regional

office, and any proposal by a regional office not to file an indictment, must be referred for consideration by the Director or Associate Director.

In the course of the year there were 38 no-bill applications received from or on behalf of defendants. Of these, 21 were granted and 17 refused. A further 31 prosecutions were discontinued on the basis of a recommendation from a regional office without prior representations from the defendant. An additional two matters in Queensland were discontinued following an adverse ruling by a trial judge on a point of evidence that went to the heart of the prosecution case. A breakdown of these statistics appears in Table 1.

Table 1 - No bill matters

State	Applications by Defence			Action by DPP	Total discontinued
	Granted	Refused	Total		
NSW	8	4	12	13	21
Vic.	3	2	5	1	4
Qld	4	4	8	12	16
WA	1	1	2	1	2
SA	2	5	7	1	3
Tas.	1	-	1	-	1
NT	-	-	-	1	1
ACT	2	1	3	4	6
Total	**21**	**17**	**38**	**33**	**54**

Of the 54 matters discontinued prior to trial, the sufficiency of evidence was the main factor in 38 cases. There was either insufficient evidence to warrant proceeding to trial or there was barely sufficient evidence in circumstances where other factors, such as the defendant's age or ill-health, weighed against the matter proceeding.

In ten of those 38 cases, the deficiency in the evidence only became apparent following the decision of the Supreme Court of South Australia in the matter of *R v. Bartlett*. The ramifications of that decision are outlined in Chapter 7. In all ten cases, alternative charges were available against the defendant, but they could only be dealt with summarily.

The remaining 14 cases that were discontinued prior to trial fell into a number of different categories. In three cases it became apparent after committal that there were legal obstacles facing the prosecution which could not be overcome, in three the defendant had pleaded guilty to other charges, in two the defendant was too ill for the matter to proceed to trial, in one a co-offender pleaded guilty to related matters and took the blame on his shoulders, in three the charges were considered too trivial to warrant trial by jury, and in one the defendant had died and the filing of a no bill was a formality.

In the remaining case, which arose in the ACT, the main witness in a sexual assault case was not emotionally able to cope with a re-trial after the defendant had successfully appealed against conviction.

A breakdown of these statistics appears in Table 2.

Table 2 - Reasons for discontinuing prior to trial.

State	Reasons						Total
	Evidence	Law	Health/ death	Triviality	Plea to other charges	Health of witness	
NSW	15	1		3	2		21
Vic.	1		2		1		4
Qld	12	1	1				14
WA	2						2
SA	3						3
Tas.	1						1
NT					1		1
ACT	4	1				1	6
Total	**38**	**3**	**3**	**3**	**4**	**1**	**52**

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 available to the Attorney-General.

This and related provisions give the DPP power to appeal against an inadequate sentence, whether imposed following a summary hearing or a trial, to appeal in some cases against a grant of bail and to apply for a variation of a recognizance entered into for a Commonwealth offence. The DPP also has power, in most jurisdictions, to seek review of a ruling by a magistrate where charges have been dismissed on a point of law.

The DPP has no power in any jurisdiction to seek review of a jury verdict acquitting the defendant on the merits. However, there are provisions in some places which give the Director limited power to seek review of a verdict entered by direction of the trial judge. There is also provision in most places which empowers the DPP to seek further review where an intermediate court has ordered a retrial or entered a verdict of acquittal following an appeal by a defendant convicted at first instance.

The DPP follows a policy of restraint in these matters. The Office only appeals in cases where there is a strong public interest in seeking review of a decision entered at first instance.

All proposed appeals must be referred to Head Office for decision by the Director or Associate Director unless the appeal period is about to expire. In that case a Deputy Director may file appeal papers and seek retrospective approval for the appeal.

Statistics on the number of appeals lodged by the DPP during the year appear in the tables at the end of this report. Details of some of the cases in which appeals were lodged appear below and in Chapter 6, dealing with prosecutions in the ACT.

El Karhani

This was the first matter dealt with by the NSW Court of Criminal Appeal under the new Commonwealth sentencing regime, which came into operation on 17 July 1990.

The defendant, a 62 year old resident of Lebanon, pleaded guilty to one charge under the *Customs Act 1901* of importing 447 grams of heroin on a plane from Lebanon. The defendant suffered from poor health and could neither speak nor understand English. He was sentenced in the NSW District Court to imprisonment for three years and nine months with a non-parole period of two years and three months. The DPP appealed on the basis that the sentence was manifestly inadequate.

The Court of Criminal Appeal set aside the sentence and substituted a sentence of six years with a non-parole period of four years. In doing so, the court addressed the problems facing a sentencing court when dealing with an aged foreigner who has entered Australia solely to import drugs. It also addressed the proper interpretation of the new sentencing provisions as they apply in NSW. In particular, the court considered the proper application of section 16G of the *Crimes Act 1914* in a State like NSW where remissions do not apply under State law.

The decision of the Court of Criminal Appeal provides guidance on the proper interpretation of the new sentencing provisions. Much of what was decided is of limited relevance outside NSW because the sentencing legislation of each State is different, with the consequence that the Commonwealth sentencing provisions operate differently in each jurisdiction. However, the court did make comments of general application in relation to the question of general deterrence. This issue is addressed in Chapter 7.

Oancea

This was the first case to come before the WA Court of Criminal Appeal under the new Commonwealth sentencing regime. Once again the judgment provides guidance on how the new provision apply in WA. Again, however, the decision has limited relevance outside WA.

The defendant was detected in the process of bringing 84 grams of heroin into WA by road and was charged with one count of possessing narcotic goods reasonably suspected of having been imported in contravention of the Customs Act. The pure weight of the heroin was 32.6 grams. The defendant pleaded guilty and was sentenced to imprisonment for four years and six months with a minimum term of 16 months and two weeks.

The Court of Criminal Appeal found that the penalty was manifestly inadequate and increased it to six years with a minimum term of two years and 36 weeks.

The Court held that under the new sentencing provisions the defendant was entitled to remissions, of about one third, on the head sentence but not on the minimum term. In accordance with section 19AG of the Crimes Act, the Court reduced the minimum term it would otherwise have imposed by three days for every months to compensate the defendant for remissions for good behaviour that would have been available if he had been a State offender.

Anau and Gibuma

The defendants in this matter were Torres Strait Islanders who imported 469 grams of cannabis by boat from Papua New Guinea. They were charged with offences against section 233B of the Customs Act, to which they both pleaded guilty. On 25 February 1991, they were each sentenced to three months imprisonment in the Circuit Court at Cairns.

The Director appealed because the sentencing judge stated that he was imposing reduced sentences because the defendants are members of an indigenous population within Australia.

The Court of Criminal Appeal declined to intervene. The Court was not satisfied that the sentencing judge had intended to suggest that indigenous people are, for that reason alone, to be treated differently.

Stay and Play Australia Ltd

At the time of the last annual report, an appeal in this matter was pending before the Supreme Court of Queensland.

The issue in the case was whether the defendant company had provided tourist facilities or established a tourist program in the B zone of the Great Barrier Reef Marine Park within the meaning of the relevant zoning plan. The defendant operated a regular ferry service to Green Island, which is in the B zone. It did not hold a permit to operate in the B zone, which is an environmentally sensitive area in which there are strict controls on commercial operators.

At first instance, the magistrate held that the defendant's activities did not contravene the zoning plan and dismissed all charges against it. The DPP appealed to the Supreme Court by way of application for an order to review the decision.

In December 1990 the Supreme Court upheld the appeal finding that the defendant's activities did amount to the establishment of a tourist program. The court remitted the matter to the magistrate for further consideration. In April 1991 the magistrate convicted the defendant company on the charges against it and imposed fines totalling $11 000. The company was also ordered to pay costs of the proceedings before the magistrate and the Supreme Court.

By the time the matter was finally disposed of the defendant company had sold its interest in the ferry business to another operator, apparently without informing it of the pending litigation. The legislation had also been changed to remove any possible ambiguity from the relevant part of the plan. The Commonwealth had also obtained an injunction to prevent further incursions by the defendant into the B zone.

Paunovic and Lambert

These defendants both pleaded guilty in Perth to charges relating to the importation of 997 kilograms of cannabis. The case involved a sophisticated operation to bring a boat load of cannabis from Thailand to WA. The conspirators intended to carry the drugs by truck from WA to NSW where they would be sold

Paunovic was alleged to be the Australian principal of the importation. He arranged the finance, recruited the other conspirators and purchased the boat. Lambert was a lesser participant than Paunovic, although he was involved throughout the scheme.

Paunovic was sentenced to imprisonment for 10 years with no non-parole period. Lambert was sentenced to seven years and nine months with a non-parole period of four years and six months. The Director appealed on grounds of manifest inadequacy.

The Court of Criminal Appeal upheld the appeal in the case of Paunovic, who it described as the entrepreneurial manager and director of the enterprise. It increased the sentence to 16 years imprisonment, noting that it had made a substantial discount to reflect Paunovic's plea of guilty.

The court did not interfere with the sentence imposed on Lambert.

Carroll

This defendant obtained over $200 000 in sickness benefits to which he was not entitled by claiming benefits in up to eight false names. On 13 July 1990 he was sentenced to three and a half years imprisonment with a non-parole period of two and a half years.

The defendant had an extensive criminal record and had committed the offences over a period of five years. The defendant maintained that he had not instigated the offences, and had not been the sole beneficiary, but he did not identify the people who he said were the main offenders.

The Victorian Court of Criminal Appeal set aside the original sentence and substituted a penalty of four years imprisonment with a non parole period of two years and eight months. The court noted that the new penalty reflected a greater increase on the original sentence than was apparent because under the new Commonwealth sentencing regime the non-parole period would not attract remissions.

Lamond

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*.

The relevant butterflies were found under a layer of cotton wool in a display case which the defendant produced to a Customs officer on arrival in Australia. There were 13 other butterflies in the box, none of which required a permit to be brought into Australia. Those butterflies were all on top of the cotton wool.

At first instance the magistrate dismissed the charge on the basis that there was no evidence that the defendant knew the species name of the relevant butterflies or that he knew that the importation of butterflies of that species was prohibited without a permit. The magistrate was not prepared to find that the defendant had deliberately attempted to conceal the butterflies. He accepted the defendant's explanation that the butterflies had been placed underneath the cotton wool to protect them.

The DPP appealed to the NSW Supreme Court by way of a stated case under section 101 of the *Justice Act 1902* (NSW). The Supreme Court held that there was no onus on the prosecution to prove that the defendant knew the species name of the butterflies or that importation of that species was prohibited without a permit. The court remitted the matter to the magistrate for rehearing.

When the matter was re-heard, the defendant was convicted of the offence and fined.

Hoji Tamaru

The defendant was the master of a Japanese fishing boat which under-recorded and under-reported the amount of fish caught under a quota. He was charged with five offences against the *Fisheries Act 1959*. The value of the fish which had not been reported was about $57 000.

The defendant pleaded guilty to the offences before the Hobart Court of Petty Sessions. The magistrate recorded convictions and ordered that the defendant not fish in Australian waters for a period of two years. However, he declined to impose any fine and declined to order forfeiture of any part of the catch. The DPP appealed against penalty.

The appeal was upheld. The Tasmanian Supreme Court imposed a fine of $3 500 on each of the five charges, a total of $17 500. The court also stated that if the matter had been before it at first instance it would have ordered forfeiture of at least that part of the catch which had not been recorded and

reported. By the time the appeal was heard, however, the boat and catch had left the jurisdiction and a forfeiture order was no longer possible.

Indemnities

Section 9(6) of the DPP Act empowers the Director to give an undertaking to a potential witness in Commonwealth proceedings that any evidence he or she may give, and anything derived from that evidence, will not be used in evidence against the person other than in proceedings for perjury.

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

In some cases the only way of proceeding against a serious offender is to call evidence from lesser participants in the criminal scheme. It is desirable that the lesser offenders be prosecuted for their role before they are called as witnesses. However that is not always possible. The only way of proceeding in some cases is by giving the witness an undertaking under section 9(6) or 9(6D) before calling him or her to give evidence.

The Director's powers under section 9(6) and 9(6D) are only used as a last resort in cases where the public interest clearly justifies indemnifying the proposed witness.

In the past year the Director or Associate Director signed a total of 50 undertakings under section 9(6) and 9(6D). Twenty three of those undertakings were signed in one matter, which involved the prosecution of a person alleged to have organized marriages of convenience to enable foreign nationals to illegally enter or remain in Australia. In all, indemnified witnesses were used in only 22 matters. A breakdown of these statistics appears in Table 3.

Section 9(6B) of the DPP Act empowers the Director to give an undertaking to a potential witness in State or Territory proceedings that any evidence he or she may give, and anything that may be derived from that evidence, will not be used in subsequent proceedings under Commonwealth law other than in proceedings for perjury.

During the past year, the Director signed only one undertaking under section 9(6B). That document was signed at the request of the NSW DPP in respect of a drug prosecution under NSW law.

The Director also has power under section 30(5) of the *National Crime Authority Act 1987* to sign undertakings in respect of people who are to appear as witnesses before the National Crime Authority. No undertakings were signed under that provision in the past year.

Table 3 - Number of indemnities

State	Matters	Indemnities		Total
		Section 9(6)	Section 9(6D)	
NSW	14	14	1	15
Vic.	6	29	1	30
Qld	2	5		5
WA				
SA				
Tas.				
NT				
ACT				
Total	22	48	2	50

Taking matters over

Under section 9(5) of the DPP Act the Director has power to take over a prosecution for a Commonwealth offence that has been instituted by another and either carry it on or bring it to an end. The power was not exercised during 1990-91.

Ex-officio indictments

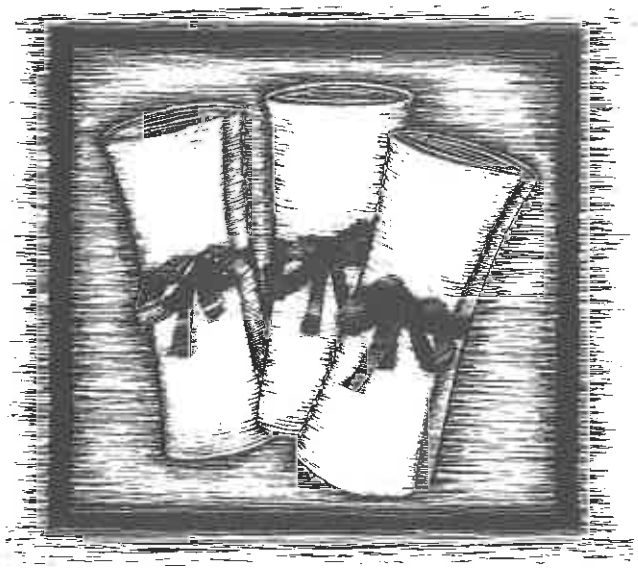
The Director has power under section 6(2D) of the DPP Act to file an indictment against a person for charges in respect of which he or she has not been examined or committed for trial. The power cannot be delegated.

The power was used once in 1990-91. The case involved a defendant who decided to plead guilty to some of the charges against her part way through committal proceedings. She was committed for sentence on those charges. The defendant subsequently withdrew her plea. It was decided that the matter should proceed to trial but on charges other than those for which the defendant had been committed for sentence.

The Director decided to exercise his power under section 6(2D) to avoid any argument about the validity of the indictment.

In the event, the defendant was convicted on the charges against her.

Chapter 3
General prosecutions



The General Prosecutions Branches of the regional offices conduct all DPP prosecutions other than those for corporate offences. They also handle extradition proceedings and court work arising from a request by a foreign country for assistance in a criminal matter.

The conduct of litigation is the most obvious part of the work of the branches. However, there is also considerable work involved in preparing cases for hearing, providing advice and other assistance to investigative agencies, drafting charges, and settling informations for search warrants, listening devices and telephone intercepts. The regional offices are also heavily involved in the training of non-police investigators, who are becoming a common feature of Commonwealth law enforcement.

As a general rule, in all places other than the ACT, the DPP only prosecutes offences against Commonwealth law. The main areas of activity arise from the importation of narcotics, fraud on the Commonwealth, and offences against the *Crimes Act 1914* involving interference with Commonwealth property, services or personnel. However, most Commonwealth legislation creates offences of

some kind and the range of matters which the DPP is called upon to prosecute is very wide.

The Commonwealth does not have its own criminal courts. The DPP prosecutes cases in State and Territory courts, which are vested with jursidiction to deal with Commonwealth matters by section 68 of the *Judiciary Act 1903*. The result is that DPP prosecutors operate under different rules of procedure and different laws of evidence in each jurisdiction. That arrangement sometimes makes it difficult to achieve consistent practices across the Commonwealth.

The majority of court work, both before magistrates and superior courts, is conducted in-house by DPP lawyers or in-house counsel. However, the DPP briefs senior or junior counsel from the private bar in cases which warrant that course due either to the complexity of the matter or because the Office needs special expertise which is not available in-house. The DPP also briefs out a high proportion of trial work in Melbourne where there are historical restrictions on the appearance rights of in-house lawyers.

The case reports which follow give an indication of the types of matter dealt with during the year.

Sydney

Operation Soy

In this matter eight Chinese nationals were convicted in Australia on charges relating to the importation of 50 kilograms of high-grade heroin from Hong Kong via Vanuatu. The trial lasted for over six months. A ninth defendant is still awaiting trial.

The importation was alleged to have been organized by an officer of the Hong Kong Customs Service. He purchased the heroin and arranged for it to be shipped to Vanuatu packed in a van. In Vanuatu the drug was re-packed into refrigeration and heating units which were then shipped to Australia.

Unknown to the Hong Kong Customs officer, two of the people he recruited to help in the scheme were police informers. They alerted police to the importation. The Australian Federal Police were able to monitor the arrival of the drugs and to arrange a controlled delivery within Australia.

The eight defendants at the trial comprised two residents of Hong Kong and six residents of Australia. At the end of the trial, all eight defendants were convicted on counts arising from the importation. They were sentenced to terms of imprisonment ranging from 11 years with a non-parole period of seven years to 28 years with a non-parole period of 20 years.

All the defendants except one have appealed against conviction or sentence.

The Hong Kong customs officer who is alleged to have organized the importation has not yet stood trial. He resisted extradition from Hong Kong. While his efforts were eventually unsuccessful, they delayed his extradition so that he could not stand trial with his co-defendants. That matter is listed for trial in August 1991.

Dellapatrona and Duffield

This case arose from a conspiracy in 1988 to import three kilograms of heroin from Pakistan via the Phillipines.

The main instigator was Dellapatrona who recruited a married couple to carry the drugs. The married couple reported the approach to the AFP. The AFP arranged for the couple to continue their dealings with Dellapatrona and report on developments.

Duffield became involved at a later stage, but he was a willing and active participant in the scheme. He recruited a further prospective courier in Manila.

No drugs were ever imported into Australia, but it was not for want of trying on the part of the defendants.

The case was based upon evidence from the married couple and the person recruited by Duffield, who gave evidence under indemnity, supported by incriminating conversations tape-recorded by the married couple.

After a six week trial both defendants were convicted of conspiring to import a commercial quantity of heroin. They were each sentenced to thirteen and a half years imprisonment with a non-parole period of ten years. The trial judge stated that he would have imposed sentences of 16 years with non-parole periods of 12 years but for assistance that the defendants had given in a State prosecution.

Shore

Shore is an American citizen who was arrested in Australia in 1974 in connection with the importation of 55 kilograms of cannabis resin in 15 false-bottomed suitcases. It was alleged that Shore acted as a courier and that he recruited others for that role. In all, six people were arrested and charged.

Three of the defendants were convicted and jailed but Shore and two others absconded while on bail.

Nothing further was heard of Shore until 1982 when he was located in the USA by officers of the Federal Bureau of Investigation. The Australian government commenced extradition proceedings but Shore disappeared again before he could be arrested.

In November 1990 Shore was located once more in the USA. This time the US authorities were able to arrest him before he disappeared.

On 7 February 1991 the US District Court made an extradition order against Shore. He arrived back in Australia in March 1991. On 19 June 1991 he pleaded guilty to one charge of conspiring to import narcotics into Australia and one charge of possessing narcotic goods. He was committed for sentence in the NSW District Court. As at 30 June 1991, sentence had not been imposed.

Michaels

This defendant was charged with two counts of possessing a traffickable quantity of cocaine and one count of escaping from lawful custody. He pleaded guilty to the drug charges but not guilty to the escape charge. He was convicted on the escape charge following a jury trial. In May 1991 he was sentenced to a total of 10 and a half years imprisonment with a minimum term of six years.

The first possession count concerned 60 hammocks which had been imported from Columbia and which were impregnated with cocaine.

It was not possible to test all the hammocks and, accordingly, it was not clear how much cocaine was involved. The sentencing judge was satisfied that the amount exceeded two kilograms on the basis of a test of some of the hammocks and a comparison of the weight of the impregnated hammocks against hammocks that did not contain cocaine. Two kilograms is a commercial quantity of cocaine. However, the judge was constrained by the terms of the indictment to sentence on the basis that the drugs did not exceed a traffickable quantity.

The second possession charge related to 113 grams of cocaine that were found at Michaels' place of employment.

The escape charge arose from an attempt by Michaels to escape from a first floor interview room at AFP headquarters in Redfern. Without warning Michaels picked up a chair, held it in front of his body, and ran directly at a window. Michaels crashed through the window and fell five metres to the street below. He was slightly injured but was able to get up and run. He was re-captured after a short chase.

Jeffery

Jeffery was the last of 11 people arrested in connection with a scheme to import over three tonnes of cannabis by boat in 1988. Jeffery was one of the Australian organizers of the scheme.

The drug was brought to Australia from the Bay of Thailand on board the ketch *Jalina*. It was transhipped onto two rented pleasure cruisers just north of Sydney. The authorities had fore-warning of the operation and all three vessels were detained at sea and boarded by officers of the AFP, the Australian Customs Service and the NSW police.

Most of the defendants were arrested in June 1988. However Jeffery evaded capture until 20 march 1991 when he was found at Sydney Airport on board a plane bound for San Francisco. Jeffery was travelling under a false name and was in possession of a false passport. He was subsequently charged with an offence against the *Passports Act 1938*, to which he pleaded guilty.

Jeffery pleaded not guilty to the drug charges against him but was convicted by a jury after a three week trial. He was sentenced to 14 years imprisonment with a non-parole period of 10 years.

Sheppard

This case involved a scheme to import a plane-load of cannabis from Papua New Guinea. It appears that the conspirators originally intended to import gold but were unable to finance the operation. They then turned their attention to cannabis.

Sheppard and two co-conspirators travelled to PNG, where they were put in touch with local growers of cannabis in the highlands of PNG.

The scheme fell through when one of the co-offenders attempted to recruit a pilot in Australia. The person he approached was an undercover police officer.

On 29 August 1990, after a six and a half week trial, Sheppard was convicted on one court of conspiring to import a commercial quantity of cannabis. He was sentenced to eight years imprisonment with a non-parole period of three years. The DPP has appealed against the penalty on the grounds that it is manifestly inadequate.

One of Sheppard's co-conspirators, James Norman, pleaded guilty to a conspiracy charge in 1989 and was sentenced to eight years with a non-parole period of five years.

Another alleged co-conspirator is still to be tried.

Courtney-Smith

This matter was reported in last year's annual report. At that stage the defendant had applied for special leave to appeal to the High Court against his conviction in connection with the importation of 750 kilograms of cannabis resin in a sea container.

The special leave application raised a number of questions. However, the issue which attracted most attention involved the question of when an importation can be said to have been completed. The NSW Court of Criminal Appeal has interpreted the term importation with some flexibility in a number of cases including the present. In this case the drugs had been in Australia for about two weeks before being seized by the AFP. As the drugs were still in the container, the Court of Criminal Appeal held that the process of importation was still in train.

The High Court recognized that there is uncertainty in this area but did not see this as a case in which to resolve the issue. The court accordingly refused special leave to appeal.

Doney

This is another matter in which an application for special leave to appeal to the High Court was outstanding at the time of the last annual report.

The case concerned the importation of 20 kilograms of cannabis resin in 1984. The defendant was convicted of being knowingly concerned in the importation on the basis of evidence from an indemnified co-offender. He was sentenced to 16 years imprisonment with a nine year minimum term. The Court of Criminal Appeal confirmed the conviction and sentence.

The special leave application raised two issues: whether a trial judge has power to prevent a case going to the jury on the basis that a conviction would be unsafe or unsatisfactory, and whether a document in the defendant's handwriting was capable of corroborating the evidence of the co-offender. The document showed that the defendant was involved with the relevant drug at a stage after importation but did not directly connect the defendant with the importation.

The High Court ruled against the defendant on both issues. It held that a trial judge has no power to withdraw a case on the basis that a conviction would be unsafe or unsatisfactory. It also found that the relevant document was capable of corroborating the co-offender, rejecting a narrow approach to the concept of corroboration.

Shepherd

This is a further case in which an application for special leave was pending at the time of the last report.

The defendant was convicted in 1986 on charges of conspiring with Terrence Clarke and others to import heroin into Australia. Shepherd was sentenced to 25 years imprisonment with no minimum term.

The main issue before the Court of Criminal Appeal and the High Court was the sufficiency of directions given by the trial judge in relation to circumstantial evidence, and specifically whether they complied with the decision of the High Court in *R v. Chamberlain*.

The High Court granted special leave to argue the issue but dismissed the appeal on its merits. In doing so, the High Court clarified the law in this area and the directions that must be given to a jury by the trial judge.

Bazos

This is one of the first matters in which an alleged fraud against the Australia Customs Service was dealt with by way of criminal proceedings under the Crimes Act. Traditionally such matters have been dealt with under the pecuniary penalty provisions of the Customs Act.

It was alleged that Bazos, through his company, evaded $294 000 in customs duty between 1983 and 1987 by importing timber products under a dual invoice scheme. It was alleged that Bazos presented invoices to ACS which showed less than the true value of the goods. Those invoices were used by the ACS to assess customs. Meanwhile, the genuine invoices were sent direct to Bazos' company and were used as a basis for payment to the exporter.

The trial in the case lasted for over four months. At the end of the trial, the jury convicted Bazos and his company of all charges against them. On 28 August 1991 Bazos was sentenced to four and a half years imprisonment with a minimum term of two years and eight months. The company was fined $134 500 and ordered to repay the Customs duty at current values.

Shaloub

Shaloub was an employee of the Department of Social Security. Over a period of two and a half years Shaloub and his co-offenders obtained between $300 000 and $400 000 by claiming unemployment benefits in as many as 15 false names.

Shaloub was charged with one count of conspiring to defraud the Commonwealth and one count of defrauding the Commonwealth. He was

convicted by a jury on the first charge. He then entered a plea of guilty to the second charge.

On 17 May 1991 Shaloub was sentenced to an effective term of four years imprisonment with a non-parole period of two years.

Humphrey

This was the first prosecution in NSW under the computer crime provisions in Part VIA of the Crimes Act which came into operation on 30 June 1989.

The defendant was an officer of the Department of Social Security. He accessed the department's computer records concerning the wife of a person who was suing him for damages in respect of a motor vehicle accident. The defendant arranged for a field officer to investigate the wife's domestic circumstances and for her supporting parent's benefit to be suspended. It was alleged that the defendant took this action in order to bring pressure on the husband to discontinue the civil action.

The defendant was charged with one count under section 76B(2)(b)(v) of the Crimes Act, which makes it an offence intentionally and without authority to obtain access to data stored in a Commonwealth computer relating to the personal affairs of another person.

The defendant pleaded guilty to the offence but denied that his motive in accessing the computer was to blackmail the husband. The matter proceeded as a contested plea before a magistrate and it was necessary for the prosecution to call virtually all its evidence.

In the result, the magistrate found against the defendant. He convicted him but ordered that he be released on a good behaviour bond and directed that he pay a pecuniary penalty of $4 000.

The defendant has lodged an appeal against penalty.

Kakura and Sato

These defendants were the master of a Japanese fishing boat, the *Shoun Maru No. 21*, and the managing director of the company that owned it. Both were charged under the *Fisheries Act 1952* in relation to false reports concerning catches of southern bluefin tuna and albacore tuna.

Southern bluefin tuna are a long living, slow growing species. Stocks have been depleted by over-fishing over the past 30 years. They are, accordingly, a scarce fish and they are very valuable, fetching prices in excess of $50 per kilogram in Japan. Albacore tuna, on the other hand, are relatively common and are worth less on the Japanese market.

It was alleged that, in order to avoid their licencing restrictions, the defendants deliberately under-reported the amount of southern bluefin tuna the boat caught and that they partially covered the discrepancy by over-reporting the amount of albacore tuna caught. It was alleged that the master of the vessel had been directed by the managing director to falsify the catch record. When the matter came to light the boat had over 500 000 kilograms of tuna on board of which about 25 000 kilograms was southern bluefish tuna which had not been reported.

The defendants pleaded guilty before the Supreme Court of NSW and were fined. However the real issue was whether the boat and its catch should be forfeited to the Commonwealth. The boat was worth between $3 million and $4 million and the catch between $1 million and $2 million. At first instance the judge ordered that both the boat and the catch be forfeited.

The defendants appealed to the Court of Criminal Appeal against the forfeiture order. The judgment of the court is reported at (1990) 20 NSWLR 638. The court held that it had no jurisdiction to entertain the appeal but stated that if it had jurisdiction it would have dismissed the appeal in any event.

The defendants sought special leave to appeal to the High Court directly from the order made at first instance. The court refused leave.

The matter was finally disposed of when the boat and catch were sold back to the original owners for $4.7 million.

Melbourne

Mooseek

The defendant in this matter was charged with a mixture of Commonwealth and State counts arising from the alleged importation and distribution of heroin between 1980 and 1984. On 7 November 1990, after a trial that lasted nine weeks, he was convicted on six counts.

On 14 November 1990 the defendant was sentenced to an effective sentence of life imprisonment with a minimum term of 16 years on the Commonwealth counts and 25 years imprisonment with a minimum term of 20 years on the State counts. The State minimum term will attract remissions under Victorian law but the Commonwealth minimum term will not.

The matters came to light in November 1984 when Mooseek was arrested and found to be in possession of half a kilogram of pink rock heroin. He was eventually charged in respect of four importations of heroin and the subsequent distribution of those drugs. The total amount of heroin handled by the defendant was alleged to have been about 35 kilograms.

The case against Mooseek turned on evidence from two indemnified witnesses who had distributed heroin on his behalf. The witnesses were former heroin addicts and confessed co-offenders. Accordingly the prosecution went to great lengths to call corroborating evidence. That evidence included material from telephone intercepts and listening devices, evidence of Mooseek's spending pattern during the relevant period, and evidence of Mooseek's activities in using hollow wooden lampstands to smuggle goods. This last piece of evidence was relevant because the prosecution alleged that Mooseek had used that method to import the heroin into Australia.

Committal proceedings commenced in October 1985 but Mooseek absconded while on bail. He was located in the Phillipines in 1989 and was deported to Australia where he was re-arrested.

The jury convicted Mooseek in relation to three of the four alleged importations. They acquitted Mooseek on charges where there was minimal corroboration for the indemnified witnesses.

Mooseek appealed unsuccessfully to the Victorian Court of Criminal Appeal against conviction and sentence. He has now applied for special leave to appeal to the High Court.

Singh

This was one of a number of matters dealt with by the Melbourne Office in which it was alleged that defendants organized marriages of convenience to assist foreign nationals to enter or remain in Australia.

In the present case it was alleged that Singh and another person organized nine marriages of convenience to enable Fijians to apply for permanent residency. The Australian parties were paid between $2 000 and $5 000 for their services. The scheme required that the parties to the marriages provide false information to the Department of Immigration, Local Government and Ethnic Affairs to give the impression that they intended to live together as man and wife.

The case against Singh turned on evidence from the Australian parties to the marriages. Without such evidence in these cases it is often difficult to show that the marriages were not genuine.

In the course of the proceedings Singh approached one of the witnesses on three separate occasions and attempted to induce her to change her evidence. When those matters came to light he was charged with three counts of attempting to corrupt a witness contrary to section 37(b) of the Crimes Act.

On 25 September 1990, Singh pleaded guilty to all charges against him. He was sentenced to six years imprisonment with a non-parole period of four years.

This was reduced on appeal to five years imprisonment with a non-parole period of two years.

Charges against Singh's co-defendant are still pending.

Esso Australia Limited

This matter arose from a fire on the West Kingfish oil platform in Bass Strait on 6 November 1986. One person was killed and a second badly burned.

The defendant company, and two other companies involved in the operation of the platform, were charged with offences under the *Petroleum (Submerged Lands) Act 1967* alleging that they failed to maintain the platform in a safe condition.

On 17 January 1991 the defendant pleaded guilty to three charges against it; one alleging that it failed to secure the safety, health and welfare of persons engaging in recovering oil, one alleging that it failed to maintain the fire sprinkler system on the platform in good condition and repair, and one alleging that it failed to properly maintain equipment designed to prevent pressure from building up in the platform's skimmer pile. The company was convicted and fined $5 000 on each count. It was also ordered to pay $100 000 costs. The maximum penalty for the relevant offences was a fine of $10 000.

The charges against the other two companies were withdrawn when it became apparent that Esso Australia Limited had sole day to day responsibility for operations on the West Kingfish platform.

Moore

This defendant was the proprietor of a private nursing home at Geelong between 1983 and 1986. It was alleged that throughout that period she falsified the financial records of the nursing home to give a false picture of the cost of running the home, thereby obtaining more Commonwealth financial assistance than she was entitled to receive.

Specifically, it was alleged that the defendant ghosted staff, pretending to have employed staff who did not exist, and that she also pretended to have entered contracts for management, cleaning and laundry services which were not provided. In order to operate the scheme it was necessary for the defendant to forge and falsify a large number of documents as well as to submit false payment claims to the Department of Community Services and Health.

The trial in the matter took two and a half months. The jury convicted Moore on 14 out of the 17 counts against her. She was sentenced to a total of four and a half years imprisonment with a minimum term of two years. She has now filed an application for leave to appeal against the sentence.

Dimos and Poulos

The defendants in this case were a father and son who imported luxury cars from the United Kingdom. A total of eight cars were involved, although the allegations against Poulos only related to six of the vehicles. It was alleged that the defendants understated the purchase price of the vehicles, thereby evading a total of $88 000 in customs duty and $59 000 in sales tax.

It was alleged that the defendants caused deliberate superficial damage to the vehicles before they entered Australia so that if they were checked by customs officers they would appear to be of low value. Poulos owned a panel beating business in Melbourne and was able to restore the cars at minimal cost.

The matter was complicated by the fact that three of the vehicles were subject to hire purchase agreement in the United Kingdom which did not allow them to be exported to Australia.

Dimos was charged with one count of defrauding the Commonwealth contrary to section 29D of the Crimes Act and one count of handling stolen goods contrary to section 88 of the Victorian *Crimes Act 1958*. Poulos was charged with one count of defrauding the Commonwealth.

Both defendants pleaded guilty, but only after eight days of committal proceedings in which the defence tested the credibility of witnesses brought from the UK to give evidence concerning the origins of the vehicles.

The defendants have still to be sentenced.

Wetherall and Cessario

These defendants were an estate agent and an estate sub-agent. They brought and sold real estate in false names and operated bank accounts in false names to conceal their property dealings in order to evade income tax. They were charged under section 86A of the Crimes Act with conspiring to defraud the Commonwealth. The total amount of tax evaded was $404 000.

The defendants both pleaded guilty. They were each sentenced to 18 months imprisonment which in both cases was suspended upon them entering into a good behaviour bond. They were subsequently disqualified from acting as estate agents.

The sentencing judge was influenced by the background of the defendants and the fact that they had lost professional standing and community respect. But for these matters the defendants may well have gone to jail.

Pannam

This defendant was a Queen's Counsel and a leading member of the Victorian Bar. Between 1981 and 1983 he understated his income by a total of $110 000, thereby evading the payment of approximately $50 000 in income tax.

On 18 March 1991 the defendant pleaded guilty to one count of imposing on the Commonwealth contrary to section 29B of the Crimes Act. He was sentenced to six months imprisonment, which was suspended upon him entering into a good behaviour bond for a period of twelve months. The defendant was also ordered to pay costs of $8 100. He had already paid $95 000 by way of back tax and penalty tax.

In imposing sentence the magistrate took into account character evidence called on behalf of the defendant and the likely effect of the conviction on his professional and community standing.

The defendant was subsequently barred from practice for a period of six months by the Victorian Bar Association.

Salamanca

This case also involved a Melbourne barrister. The defendant understated his income for the years ending 1986, 1987 and 1988 by a total amount of about $100 000. The tax avoided was about $46 000.

During the relevant period the defendant omitted to disclose taxable income, overstated the rent paid on his chambers and claimed expenses in respect of property which he did not possess. He was charged with one count of imposing on the Commonwealth contrary to section 29B of the Crimes Act.

The defendant pleaded guilty and was sentenced to imprisonment for three months, which was suspended upon him entering a good behaviour bond.

In sentencing Salamanca, the magistrate took into account character evidence that was called on his behalf. The magistrate found that the defendant was genuinely contrite. He also took into account the likely consequences of conviction on the defendant's professional life.

Salamanca was subseqently barred from practice by the Victorian Bar Association for a period of three months.

Roberts

On 8 September 1989 Roberts pleaded guilty to one count under section 73(3) of the Crimes Act of corrupting a Commonwealth officer in the performance of his duty. The charge related to an arrangement between Roberts and a

Commonwealth officer, Andrew McDermott, under which the latter improperly allocated commercial fishing rights to boats owned by Roberts. McDermott was convicted in 1989 on charges of corruption, accepting a secret commission and making a false entry in a record maintained by the Australian Fisheries Service.

At first instance Roberts was released without conviction on a bond to be of good behavior for two years. He was also ordered to pay $2 000 to a charity.

The DPP appealed against the penalty on the grounds that it was manifestly inadequate. On 30 November 1990, the Victorian County Court convicted the defendant of the offence and sentenced him to nine months imprisonment, which was suspended on him entering into a good behavior bond.

The defendant initially cross-appealed against the magistrate's order on the basis that he intended to withdraw his plea. He also commenced proceedings under the *Administrative Decision (Judicial Review) Act 1977* challenging the Director's decision to appeal against penalty. However both sets of proceedings were withdrawn.

Brisbane

Chiu

Chiu was a medical practitioner who was convicted on 17 counts under section 128B of the *Health Insurance Act 1973* for making false statements in documents that were capable of being used in connection with a claim for payment under that Act.

The charges concerned 200 consultations in respect of which the defendant overstated the time he spent with the patient. The matter came to light when a former receptionist reported Chiu's conduct to the Health Insurance Commission. She had kept records of the time the defendant actually spent with each patient and these formed the basis for the prosecution case.

The trial judge sentenced the defendant to imprisonment for two and a half years. He took into account the fact that Chiu had previous convictions for medifraud offences. He also took into account the fact that the defendant had deliberately abused a position of trust that he had been placed in by virtue of his role as a medical practitioner.

The defendant appealed against his conviction and sentence but the appeal was dismissed.

Gale and Davis

This case involved a scheme to forge NSW birth certificates, birth extracts and driver's licences in the Phillipines. The object of the exercise seems to have been to sell the documents to people who wished to establish a false identity.

The defendants travelled to Manila in December 1988 and recruited a long-time associate of Gale's to arrange printing. A large number of documents were printed by a Phillipine printer at a cost of about A$10 000.

Some of the forged documents were posted to various addresses in Queensland and NSW but the bulk were shipped to Gale's business premises at Southport. The matter came to light when the shipment was intercepted at Brisbane by officers of the Australian Customs Service and the AFP.

The defendants were both charged with 13 counts against section 65(1)(e) of the Crimes Act and 13 against section 66(e). The charges alleged that Gale and Davis were knowingly concerned in forging the signature of the Principal Registrar of Births, Deaths and Marriages in NSW on about 1 000 blank birth certificates and 1 000 blank birth extracts.

Gale's associate in the Phillipines and two Fillipinos gave evidence at the trial. The defence was, in effect, that the associate had arranged for the documents to be printed and had sent them unsolicited to Gale.

After a trial that lasted 12 days both defendants were convicted. They were each sentenced to three years imprisonment. Gale, who was in poor health, was ordered to be released forthwith on a good behaviour bond and was directed to perform 240 hours community service. Davis was ordered to serve nine months imprisonment before being released on a bond for the remainder of his sentence.

Manton

Manton was the director of a company, Major Mitchell Wines and Spirits, that purchased liquor from a NSW supplier for sale to hotels and clubs in Queensland. It was alleged that on eight occasions between July 1986 and February 1987 Manton understated the amount of liquor sold by his company in order to avoid sales tax.

According to sales tax returns prepared by Manton, the company only sold $45 000 worth of liquor during the relevant period. It was alleged that actual sales were close to $1.3 million and that the company had evaded sales tax of approximately $250 000.

Manton was charged with eight counts of defrauding the Commonwealth contrary to section 29D of the Crimes Act and eight alternative counts of

imposing on the Commonwealth contrary to section 29B. Each set of charges related to one sales tax return. Manton's defence was that he thought the money his company paid to the NSW supplier included a component for sales tax. The prosecution led evidence from the supplier and tendered documents from the supplier and from Manton's company to refute that claim. There was also evidence that taxation officers had visited Manton and explained his obligations under the sales tax legislation during the relevant period.

The jury convicted Manton under section 29D in respect of seven returns and convicted him under section 29B in respect of one return. Manton was sentenced to two years imprisonment to be released on a good behaviour bond after 12 months.

On appeal, the conviction under section 29B was set aside. The Court of Criminal Appeal found that, in the circumstances of this case, there was no practical difference between the allegations made under section 29D and those made under section 29B. Accordingly it was inconsistent for the jury to convict Manton under section 29B in respect of any of the returns if it was not satisfied that there was a case under section 29D in respect of that return. The court confirmed the conviction on the other seven counts.

Agaky-Wanda

This defendant was born in Irian Jaya and was a member of the OPM, a movement dedicated to opposing Indonesian rule in Irian Jaya. He came to Australia in the mid-1980's after spending time in custody as a political prisoner in Indonesia. At the time of his arrest the defendant had been in Australia for five years as a temporary resident. He had applied for permanent residency as a refugee.

It was alleged that the defendant purchased six military rifles and 2 000 rounds of ammunition which he was holding at his house with the intention of sending to Irian Jaya for use by the OPM. He was charged with three offences against the *Crimes (Foreign Incursions and Recruitment) Act 1978*.

The matter came to light when a local gun dealer reported to police that the defendant had made inquiries about buying up to 500 guns and a corresponding quantity of ammunition. This led to a long and detailed investigation by the AFP. It appears that the defendant did not have sufficient money to buy more than six guns.

On 14 March 1991 the defendant pleaded guilty to the charges in the Innisfail District Court. He was sentenced to nine months imprisonment with an order that he be released on a good behaviour bond after serving three months.

Bedford and Bowie

These defendants were the masters of two ships which, with 14 dinghys, undertook an expedition to collect trochus shells from the B zone of the Great Barrier Reef Marine Park in far north Queensland.

The expedition was organized as a protest by members of a Torres Strait Island community. The community had not been granted the permits and licences it needed to continue what it regarded as a traditional activity in collecting and selling trochus shells. The defendants were advisors to the community.

The B zone of the Marine Park comprises about five per cent of the total park area and all hunting and collecting is prohibited within it. The zone is intended to provide a means for measuring the effect of human activity on other areas of the reef and to provide an untouched area for scientific research and recreational use.

The defendants were each convicted and fined $1 200.

Copper wire

This case involved the alleged theft of disused telephone lines. The telephone lines were made of copper wire, which had a commercial value of about $2 per kilogram. The lines were installed in the 1920's and were used until the 1980's. Large quantities of the wire were left in place when the lines were no longer of use, although the wire remained the property of the Commonwealth.

In the present matter, residents of an isolated community in north Queensland noticed that people who did not appear to be Telecom employees were progessively removing the wire from the old overhead telephone lines. This led to a police inquiry as a result of which 7.2 tonnes of copper wire was found in a shed. Police charged the lessee of the shed and two others.

Two of the defendants, Ian and Phillip Maitland, were convicted on counts of receiving the wire knowing it to be stolen. They were sentenced on the basis that they were involved in selling the wire but not in the original theft. They were each released on good behaviour bonds and ordered to perform community service.

The third defendant, who was alleged to have been the organizer of the scheme, was found not guilty after a trial at Cairns.

Cannabis importations

During the year the Townsville sub-office handled a number of prosecutions involving the importation of cannabis from Papua New Guinea. Cannabis is plentiful in PNG and is relatively easy to import across Torres Strait by boat or plane or by concealing it in commercially carried cargo.

As at 30 June 1991, nine defendants were waiting trial in Cairns after being committed on charges relating to the importation of cannabis from PNG. In one case, a large quantity of cannabis was found buried on a remote island in Torres Strait by members of the Australian Army engaged on manoeuvers. In another case cannabis was found concealed inside large hydraulic rams which had been converted to provide hollow centres for that purpose. In a third case four defendants were awaiting trial in a matter in which it is alleged that a person who has not yet been located embarked on a scheme to sell cannabis in Cairns to finance the purchase of fire-arms to ship back to PNG.

The proceedings against Anau and Gibuna, which went to the Queensland Court of Criminal Appeal, have already been referred to in Chapter 2.

A large number of matters have also been dealt with in the Cairns Magistrate's Court. In one case the defendant was detected with wads of cannabis concealed in his underpants, shoes and wallet.

O'Neill and Black

These defendants both pleaded guilty to conspiring to import a commercial quantity of cannabis. On 17 May 1991 they were each sentenced to seven years imprisonment with a non-parole period of two years and three months.

The charges arose from a plan to import 100 kilograms of cannabis from the Phillipines packed inside hollowed-out sheets of plywood. The shipment was to be a trial run for a larger shipment of one tonne of cannabis.

O'Neill and Black travelled to the Phillipines and recruited a person to help organize the importation. That person reported the approach to the AFP. The information provided by the informant was supplemented by electronic surveillance.

No cannabis was ever imported into Australia. However, the informant purchased 30 kilograms with funds supplied by the defendants. The defendants also took steps to line up local distributors to buy the cannabis when it arrived in Australia. O'Neill and Black expected to make up to $825 000 profit from the operation.

At sentence, evidence was called on behalf of O'Neill to try and establish that he was suffering from a stress disorder arising from his service during the Vietnam war. It was said that he had been living a Walter Mitty existence since the 1960's and had been drawn into the present scheme through his tendency to fantasise. The sentencing judge did not consider that these matters excused O'Neill's conduct or outweighed the need for general deterrence.

Perth

Martin and Smith

The defendants in this matter were charged with conspiring to intercept telephone calls contrary to the *Telecommunications (Interception) Act 1979*. The telephone in question belonged to a person who was a witness in criminal proceedings against Martin. Martin recruited Smith, who was a private investigator, to tap the telephone in the hope of obtaining material that would be useful in his trial.

Smith and his employees taped a total of about 135 conversations. They removed the tap the day after the prosecution closed its case against Martin.

In the event, Martin was acquitted of the charges against him. However the AFP subsequently found the illegal tapes in a safe at Martin's house and transcripts of them in Smith's possession. Both defendants were convicted on the conspiracy charge after a twelve-day trial.

At first instance, Martin and Smith were each sentenced to three years imprisonment with an order that they be released on recognizance after 320 days. Three years was the maximum penalty available for the offences. The sentencing judge described the defendants' conduct as being an outrageous invasion of privacy.

On appeal, the Court of Criminal Appeal reduced the head sentence for each defendant to two years imprisonment but left the recognizance release orders untouched.

Sacks and Gregory

This matter involved two medical practitioners who operated a shop-front medical service in Perth. It was alleged that when ultrasound tests were conducted by receptionists or other non-qualified staff it was the defendants' practice to place an item number on the medicare forms which made it appear that they had attended professionally on the patient. Ultrasound tests do not attract medicare benefits if they are conducted by people who are not medically qualified.

Sacks was charged with 20 counts of making a false statement contrary to section 128B(1) of the *Health Insurance Act 1973*. He was convicted by a jury in December 1990 and fined a total of $40 000. The sentencing judge took a further 40 offences into account in setting the penalty.

Gregory was charged with 35 counts of making a false statement. He was convicted by a jury in January 1991. At first instance, Gregory was fined a total

of $70 000, after an additional 40 offences were taken into account. The fine was reduced on appeal to $40 000.

Hastie

This defendant was charged together with two others in respect of a scheme to understate the value of mining machinery imported from Scandinavia in order to reduce the customs duty assessed upon it. The defendants arranged for the vendor's agent to provide false invoices which understated the sale price of the equipment. The defendants provided the false invoices to the Australian Customs Service.

In all, there were six relevant shipments of equipment and the total amount of duty evaded was about $200 000. Hastie and his co-defendants were charged with conspiring to defraud the Commonwealth in respect of the first two shipments and Hastie was charged with defrauding the Commonwealth in relation to each of the last four shipments.

One of Hastie's co-defendants ultimately pleaded guilty and gave evidence against the other two. He received a reduced sentence to reflect his willingness to co-operate with the authorities.

After a jury trial Hastie was convicted on the conspiracy count and the other defendant was acquitted. Hastie then pleaded guilty to the fraud charges. He was sentenced to a total of three years imprisonment less time spent in custody awaiting sentence.

Lee and Johannessen

These defendants were the directors of a company that failed to purchase tax stamps in respect of tax deducted from the wages of its employees over a 21 month period. The company went into liquidation owing over $50 000 to the Australian Taxation Office.

In the circumstances there was little to be gained in prosecuting the company. However, section 87 of the *Taxation Administration Act 1953* provides that where a company commits a taxation offence, a person who takes part in the management of the company is deemed to have also committed the offence. The onus is on the defendant to prove that he or she was not involved in the commission of the particular offence.

Both defendants were charged pursuant to section 87 with 95 counts against section 221G(1)(b) of the *Income Tax Assessment Act 1936*. They both pleaded guilty. They were each sentenced to three months imprisonment to be released

upon entering bonds to be of good behaviour for a period of five years. Both were also ordered to pay a pecuniary penalty of $20 000 and to pay the outstanding tax.

The defendants have appealed against their sentences.

Indonesian fishermen

Mention was made in the last annual report of incursions by Indonesian fishing vessels into Australian waters.

In late 1990 and early 1991 a further 13 motorised fishing boats were apprehended off the north-west coast of WA. The vessels carried a total of 232 people of whom 173 were charged with offences against the *Continental Shelf (Living Natural Resources) Act 1968*, the *Quarantine Act 1908* and the *WA Fisheries Act 1905*. The charges were dealt with in the Broome Court of Petty Sessions over three days in January 1991.

All the defendants pleaded guilty to the charges against them and, where appropriate, consented to summary disposition. The magistrate recorded convictions against all defendants and proceeded to impose penalties which saw all adult defendants jailed for periods ranging from 100 days to two years.

All adult defendants charged under the WA Fisheries Act were jailed directly as were the masters of fishing vessels who had been charged under the Quarantine Act. Defendants charged under the Continental Shelf (Living Natural Resources) Act and crew members charged under the Quarantine Act were fined but given little or no time to pay. As none of these defendants had the means to pay their fines, all were imprisoned in default.

Just under half of the adult defendants had been apprehended on previous occasions and some had been prosecuted before and placed on good behaviour bonds. All defendants who were on bonds had their recognizances estreated, were given no time to pay, and were imprisoned in default.

In March 1991 applications were made to the WA Supreme Court for orders to review the magistrate's actions in relation to 23 defendants. The applications were made by two Perth barristers acting on the instructions of a firm of solicitors who apparently acted for free.

On June 1991 the Supreme Court upheld the appeals, finding that there had been a number of defects in the proceedings before the magistrate. The court was critical of a number of the measures taken to expedite the proceedings, stating in particular that insufficient care had been taken to ensure that all defendants had properly consented to summary disposition of charges against them and that all were aware of the prosecutor's submissions on sentence.

Details of some of the extradition matters completed during the year are as follows.

Tomishima

This was the first matter in which a person was extradited from Australia to Japan.

The defendant was wanted in Japan for alleged large scale tax fraud. A warrant was issued for his arrest in Australia in July 1990. However it took until 16 October 1990 for the police to track him down. He was arrested while trying to leave Australia on a cruise liner.

Tomishima ultimately consented to extradition. Initially he indicated that he intended to contest the proceedings and it was necessary to prepare the case on the basis that extradition would be opposed. The matter raised a number of issues in relation to dual criminality and the DPP and the Attorney-General's Department worked closely on settling the documents required under the Extradition Act.

Schuldreich

This defendant was a German national who was wanted in the USA on charges of attempted murder and aggravated assault with a deadly weapon. It was alleged that in 1985 Schuldreich stabbed a person in the stomach with an eleven-and-a-half-inch bayonet. The defendant was located in Melbourne and arrested on a warrant under the Extradition Act on 3 January 1991.

The defendant applied for bail but was not successful. He appealed against the refusal to the Supreme Court of Victoria which held that it had no jurisdiction to entertain the appeal.

The defendant contested the extradition proceedings but was found to be eligible for surrender. At the time of reporting he was being held in custody in Australia pending the arrival of officers from the USA to escort him to that country.

Curylo

Curylo was a Swedish national who was wanted in Sweden on charges of robbery and assault. At the time the extradition request was received he was being held in custody by the Victoria Police in relation to alleged offences against Victorian law.

On 19 April 1991 Curylo pleaded guilty to the State offences. He was sentenced to three months imprisonment. He subsequently consented to being extradited to Sweden.

Winter

This defendant was wanted in Germany on charges of fraud, misuse of cheques and credit cards, and embezzlement. He was arrested in Victoria.

Winter originally opposed extradition on the basis that the English translation of the German warrant that had been placed before the magistrate was not accurate. The magistrate held that he was precluded by the Extradition Act from testing the accuracy of the translation. Winter then consented to extradition.

Dietz

This defendant was also wanted in Germany on charges of fraud and embezzlement. He eventually consented to extradition. The case is interesting in that Dietz was granted bail during the extradition proceedings to enable him to sit for his final examination in dentistry in Victoria. He passed the examination.

Summerhayes

Summerhayes was wanted in California on charges of armed robbery. It was alleged that in 1983 he held up two banks while armed with a sawn-off shotgun.

In 1984 the defendant was arrested in the USA but was found to be mentally incompetent to stand trial. In 1989 the Californian authorities obtained information suggesting that the defendant may have feigned mental illness. On 15 December 1989, the Superior Court for the State of California ordered that the defendant undergo further medical tests. The defendant fled to Australia before the order could be carried out.

A provisional arrest warrant was issued in the ACT on 7 August 1990. It was then found that the defendant, who had dual US and UK citizenship, was being held in custody under the *Migration Act 1958* pending deportation to the UK. The deportation order was subsequently revoked and the defendant was arrested pursuant to the warrant under the Extradition Act.

The defendant eventually consented to deportation and returned to the USA in the custody of a Deputy US Marshall.

Mutual assistance

International co-operation between investigating and prosecuting agencies is becoming increasingly important.

Organized crime and drug syndicates no longer recognize national boundaries, if they ever did. It is also becoming common in domestic fraud prosecutions to find that a financial transaction has an overseas loop built into it. In some cases the loop was designed to take advantage of foreign tax concessions but in other cases the sole purpose seems to have been to make detection of the fraud more difficult.

There has always been a measure of international co-operation in law enforcement, but it is only recently that concerted efforts have been made to prosecute cases on the basis of evidence obtained from overseas.

The *Mutual Assistance in Criminal Matters Act 1987* did not mark the start of this process but it provided a major impetus for its development. That Act is not the sole avenue for obtaining information from overseas.

The DPP is responsible for conducting proceedings under the Mutual Assistance Act in cases where a foreign country requests that evidence be taken from witnesses in Australia for use before the courts of that country.

This is important work, although it is generally fairly straightforward. The real difficulties have arisen in cases where the DPP has needed evidence from overseas for use in Australia.

The difficulties in this area should not be underestimated. Each country Australia deals with has a different system of law and evidence and often a different language. The assistance they can provide, the matters in which they can provide it, and the way in which they can assist vary greatly. Each time Australia approaches a country it has not previously dealt with it is necessary to address a new range of issues.

It is also expensive to send police and prosecutors to other countries. If evidence is to be taken on commission before a foreign court, the Australian government usually has to bear the cost of sending defence counsel to attend the proceedings as well as the cost of sending its own representatives.

The DPP has put considerable effort into pursuing overseas evidence, as indeed have the AFP and the Attorney-General's Department, which has administrative responsibility for the Mutual Assistance Act. The results have been mixed. In some cases considerable time and effort has been expended trying to obtain documents or other evidence with no result.

It has become clear that the expense involved in pursuing evidence overseas can only be justified in major cases involving serious criminality. It is also clear that there will always be restrictions on the scope for international law enforcement unless some way can be found to compel reluctant witnesses to give evidence in foreign proceedings. However, the potential benefits from international cooperation are such that the efforts in this area must continue.

Under present administrative arrangements all formal requests that are made to other countries must be processed through the Attorney-General's Department and presented through diplomatic channels. However, it has become apparent that there needs to be a greater level of direct contact at a less formal level if the initiatives in this are are going to work. It can be useful, for example, if the DPP can ascertain from its counterparts in other countries what assistance they are able to provide in a matter before a formal request is made.

The DPP is working to develop ties with overseas prosecutors, as evidenced by the Director's decision to host the meeting of the heads of prosecuting agencies referred to in Chapter 7. Those moves are likely to increase the DPP's effectiveness in this area, although there is really no substitute for the type of experience that can only be developed by trial and error in actual cases.

Bottom of the harbour

The last bottom-of-the-harbour prosecution is set down for trial in Sydney in February 1992.

In that matter four defendants remain before the court charged with conspiring to defraud the Commonwealth in respect of the company stripping activities of a promoter who has died.

Committal proceedings in the matter lasted for over four years. Estimates of the likely length of the trial range from two months to six months. The defendants were not represented at the committal and current indications are that they will not be represented at the trial.

War crimes

On 25 January 1990 Ivan Polyukhovich was charged with nine counts of murder under section 9 of the *War Crimes Act 1945* as amended in 1989. The offences are alleged to have been committed in the Ukraine between 1941 and 1943.

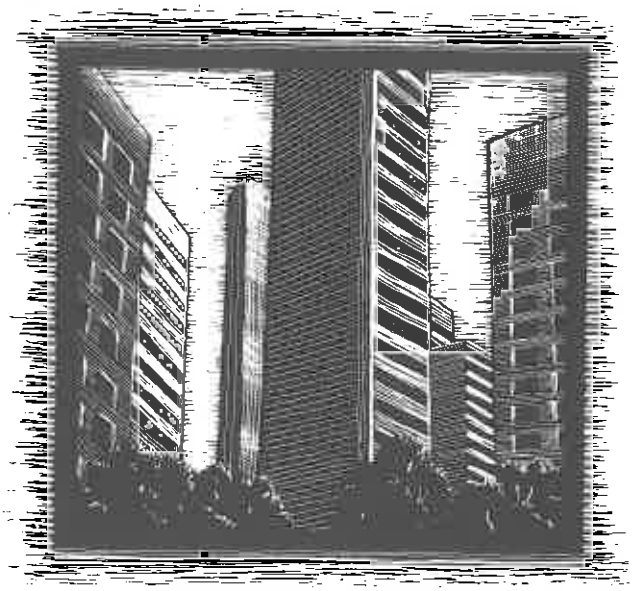
Committal proceedings were listed to commence in the Adelaide Magistrate's Court on 30 July 1990 but were delayed because the defendant was shot and seriously injured on 29 July 1990.

The matter was further delayed when the defendant commenced proceedings in the High Court challenging the constitutional validity of the 1989 amendments to the War Crimes Act. The prosecution was stayed pending a decision on the challenge.

Argument before the High Court concluded in November 1990 and the court reserved its decision. On 14 August 1991 the High Court ruled by majority that the legislation is valid. The committal proceedings have been set down to commence on 28 October 1991.

On 6 September 1991 two further people were charged with offences against the War Crimes Act.

Chapter 4
Corporate prosecutions



The term corporate prosecutions is a convenient way to describe the DPP's function of prosecuting offences arising under the Corporations Law and the National Cooperative Scheme Codes. The DPP assumed this responsibility on 1 January 1991 with the commencement of the Corporations Law in all States and Territories. This legislation heralded a new approach to national regulation of companies and securities in Australia.

Prior to 1 January 1991 each State and the Northern Territory had legislation commonly referred to as National Cooperative Scheme Codes that dealt with the regulation of companies, the acquisition of shares, the regulation of people and institutions involved in dealing with securities listed on a securities exchange and the regulation of people and institutions involved in dealing in futures contracts. The National Companies and Securities Commission was established to administer and regulate the scheme legislation. However enforcement, and in particular the prosecution function, was the responsibility of State and Territory Corporate Affairs Commissions or Offices.

On 1 January 1991, with the commencement of the *Corporations Act 1989* and the various corresponding Corporations Acts of the States and the Northern Territory, the Commonwealth assumed responsibility for the administration and

enforcement of laws relating to companies, the acquisition of shares, and the securities and futures industries. The Australian Securities Commission is the primary body through which the Commonwealth discharges this responsibility.

Pursuant to the legislation and guidelines agreed with the ASC, the DPP has responsibility for prosecuting the majority of offences that arise under either the Corporations Law or the National Cooperative Scheme Codes.

The guidelines provide that the ASC may prosecute minor regulatory matters. However, in respect of the majority of offences specified in the legislation, cases must be referred to the DPP for prosecution, after investigation by the ASC and/or the Australian Federal Police.

There are no special guidelines for deciding whether to institute corporate prosecutions. The general guidelines set out in the *Prosecution Policy of the Commonwealth* are applicable to these prosecutions. In accordance with the legislative scheme, offences against the Corporations Law and National Cooperative Scheme Codes are treated as if they were offences against Commonwealth law.

Staffing and resources

At an early stage the DPP recognised that in order to discharge the corporate prosecutions function in a timely and efficient manner it needed to establish, as quickly as possible, an appropriate level of expertise in this area. This has been done, in part, through the recruitment of people from outside the DPP with experience in the corporate area (though not necessarily prosecutions) on a contract basis. The use of in-house specialists in this area can easily be justified on the basis that the work performed would otherwise have to be briefed out to the private profession. It is anticipated that the employment of these specialists will produce significant savings.

In order to employ specialists the remuneration offered must be commensurate with their level of experience and expertise. Consequently the salary and conditions of these positions is at SES level. All the specialist positions in the corporate prosecutions area are subject to review to ensure that the basis upon which they have been allocated can be justified.

To further assist the develpoment of DPP expertise in this area, a Corporate Prosecutions Branch has been established within each regional office. A manager for each branch has been recruited at SES level to ensure the branch operates at maximum efficiency. National co-ordination and liaison is provided to all regional offices from Head Office.

The DPP has a policy of using its own lawyers and specialists as advocates in appropriate cases. However, where it is appropriate, both senior counsel and junior counsel will be briefed to advise in relation to all stages of the prosecution.

It is self-evident that the prosecution of large corporate matters requires adequate resources. The major matters will require a minimum of two lawyers working on them at any one time. As the matters progress more lawyers and para-legal support will be required to augment the prosecution teams.

Case loads

The ASC has compiled a list of companies to which it is giving priority in investigating alleged contraventions of the criminal law. The ASC has already referred six of these matters to the DPP and the DPP is actively involved in seven other matters that have not been formally referred. The DPP expects to be involved at some stage in most of the matters being given priority. It is not expected that prosecutions in these major matters will be completed in the short-term. Each is large and complex and it can be expected that they will be strongly defended. These matters are extremely large and multi-faceted. In one matter alone nine separate briefs have been referred to the DPP.

In addition the DPP has been briefed in, or is involved with the ASC in, approximately 40 other matters. Typically these matters are less complex and smaller than the matters being given priority. However, there are exceptions to this and some cases are potentially very large with allegations of multiple offences.

The following is a brief description of the more important cases being handled by the DPP in which charges have been laid.

Entity Group Limited

On 29 November 1990 the NSW Corporate Affairs Commission laid a number of informations against Garry Carter, a former director of Entity Group Limited. The matter was referred to the DPP in early January 1991. Following consideration of the matter new charges were laid on 21 March 1991 against Carter and two other former directors of Entity Group Ltd. The charges previously laid were withdrawn on 28 March 1991.

The current charges concern transactions that were allegedly entered into in 1987 and 1988. It is alleged that these transactions involved the fraudulent application of approximately $17 million in 1987 and $20 million in 1988 of the funds of Entity Group Limited.

The matter has been set down for a four week committal hearing commencing on 3 January 1992.

Spedley Securities Limited

In 1990 charges were laid by the NSW Corporate Affairs Commission against Brian Yuill, a director of Spedley Securities Limited and other companies in the Spedley Group. The charges arose from a special investigation instituted under the *Companies (NSW) Code* into the Spedley Group. The matter was referred to the DPP in early 1991. In April 1991 charges alleging breaches of section 229(1) and section 229(4) of the Companies Code were laid in substitution for the previous charges.

The current charges relate to a number of transactions in 1988 between Spedley Securities Limited and other companies allegedly controlled by Yuill. It is alleged that the effect of these transactions was to remove from Spedley Securities Limited's accounts any reference to a number of loans made by that company to Yuill.

The matter has been set down for a four week committal hearing commencing on 14 October 1991.

Qintex Australia Ltd.

On 27 May 1991 Christopher Skase was arrested and charged by the ASC with two offences of contravening section 229(4) of the *Companies (Queensland) Code*. It is alleged that Skase made improper use of his position as an officer of Qintex Australia Ltd to gain an advantage for himself and Kahmea Investments Pty Ltd (a company in which Skase had an interest) by causing a Qintex Australia Limited subsidiary, IPH Finance Pty Ltd, to make a series of payments totalling over $19 million to Qintex Group Management Services Pty Ltd, a company controlled by Skase and others.

The matter was adjourned to 26 July 1991 and no date has been set for the committal proceedings.

Estate Mortgage Managers Ltd

A brief in this matter was received by the DPP in February 1991. On 9 May 1991 Reuben Lew was committed to stand trial on charges relating to the receipt of an alleged secret commission of $500 000 and the alleged contravention of section 229(1) of the *Companies (Victoria) Code*. Anthony Arnold was committed on charges of paying and conspiring to pay the alleged secret commission.

The charges arise out of an alleged series of transactions in 1987 and 1988 when a development company sought a loan from Estate Mortgage Managers Ltd.

It is expected that a trial in the County Court of Victoria will commence in the first half of 1992.

Liaison arrangements with ASC and AFP

Liaison arrangements have been instituted at regional level between the ASC and DPP. In general, regular liaison meetings occur at monthly intervals between senior officers of the ASC and DPP. The AFP are invited to these meetings. They are not meant to, and do not, supplant regular contact at the case officer level to discuss particular cases. Rather, the regular liaison meetings are designed to focus on structural and administrative issues. Initially the focus has been on purely practical matters.

Strategies for dealing with present cases

As indicated previously, the ASC and DPP have agreed upon guidelines which deal with the referral of matters by the ASC to the DPP. Those guidelines set out the criteria that are appropriate for the ASC to take into account when considering whether to refer a matter to the DPP for prosecution.

The matters referred to the DPP to date, and those matters in which the DPP is involved at the investigation stage, mostly relate to offences allegedly committed before 1 January 1991. A large number of the matters referred to date represent investigations that were started by, and in some cases were completed by, State Corporate Affairs Commissions or Offices. In cases where charges were laid it has been necesary to re-examine the brief of evidence to determine whether the prosecution should proceed. All such decisions have been made in accordance with the guidelines set out in the *Prosecution Policy of the Commonwealth* after careful consideration of the matter and usually after receiving counsel's advice.

Strategies for dealing with future cases

The DPP considers it important to establish close contact with ASC investigators at an early stage in important investigations. While the DPP is not and does not hold itself out to be an investigative agency, DPP involvement at an early stage should assist the ASC investigators to determine the direction the investigation should take, and to concentrate on the most significant areas of potential criminality. Further, when the matter is eventually referred to the DPP the Office will have an appreciation of the case and

confidence in the brief. It is also the DPP's practice to encourage ASC investigators to seek our advice at an early stage in relation to questions of law or evidence.

The stated policy of the ASC is to give priority to civil proceedings before instituting criminal proceedings. However, it is clearly in the public interest for criminal prosecutions to be brought before the courts as soon as possible. The DPP and ASC must be alert to the potential for pursuing the criminal charges at an early date. The solution to this aspect is close liaison between both organisations.

One danger that the DPP is careful to guard against is the possibility that charges will be laid against defendants in circumstances where the DPP has not been given an opportunity to come to an informed decision on whether there is a case for prosecution.

There is an understandable desire and expectation on the part of the public for charges to be brought as soon as possible. However, there is a potential for the law to be brought into disrepute if charges are laid prematurely or before investigations have revealed the full extent of the suspected criminal activity.

Other initiatives

The DPP has engaged the expertise of specialist lawyers to assist in the training of staff. A series of videos has been produced under DPP auspices in relation to company law. There is also ongoing in-house training of DPP lawyers in relation to company law and the complexities involved.

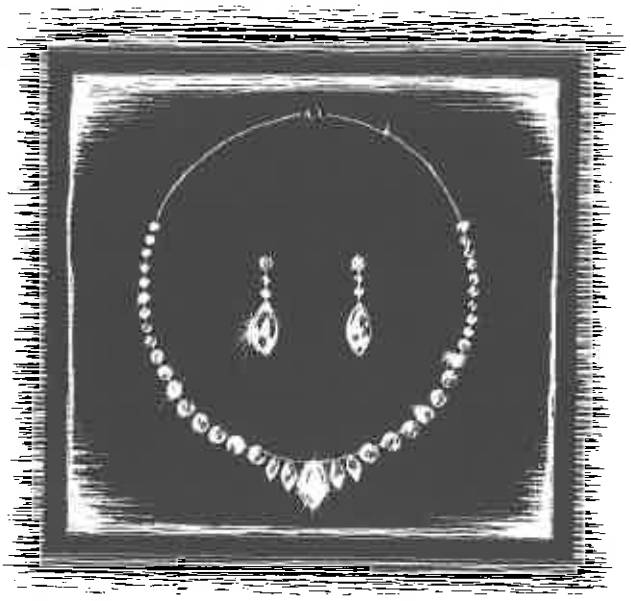
The DPP has instituted a system for the ongoing monitoring of all major cases at a central level. There is direct Head Office involvement in a number of the most important investigations and prosecutions and the Director maintains a close personal interest in a large number of those cases. The Director is also kept informed of problems with the legislation and practical difficulties encountered.

The DPP has instituted a centralized system for retaining important opinions and materials in relation to corporate prosecutions. Those materials are distributed to the regional offices at regular intervals.

Law reform

Any difficulties that come to light with the new legislation are discussed with the Attorney-General's Department. The Department has been receptive to putting forward suggested amendments for consideration by government.

Chapter 5
Criminal assets



The DPP has a Criminal Assets Branch in each regional office. The function of these branches is to ensure that offenders are deprived of the proceeds and benefits from their criminal activity.

In recent years there has been a variety of new legislation, both in Australia and in other common law countries, aimed at confiscating the benefits derived from criminal conduct. Much of this modern confiscation legislation gives special emphasis to, or relates exclusively to, drug crime. This reflects the view that more traditional responses were not succeeding in winning the so-called war on drugs.

In Australia a series of Royal Commissions called for action in relation to large scale drug dealing and the huge funds it generates. The 1985 Special Premiers' Conference on Drugs reached general agreement for confiscation action against those convicted of narcotics offences. Model uniform legislation was agreed to at the Standing Committee of Attorneys-General. Uniform legislation did not eventuate but all States except Tasmania now have confiscation legislation. Many of the principles in the various acts are consistent regarding the freezing and confiscation of assets.

While the impetus for modern confiscation legislation came from the fight against drugs, the legislation has a much wider application. The general criteria for its use is the existence of a suspected or proven indictable offence. The legislation has an important role to play in combating all serious crime.

The rationale for confiscating property associated with crime is to reduce the profit motive for people to become involved in often lucrative criminal activities. Historically, drug traffickers have often accepted the risk of arrest and conviction because of the potentially enormous profits. In relation to organised crime, the arrest and removal of participants, even ring leaders, leaves the organisation intact to continue its activities with replacements for those incarcarated. There is a need to attack the organisation itself; to remove the wealth and destroy the economic power base.

In the Commonwealth sphere, the main relevant areas of criminal activity are large-scale narcotics offences and fraud on the Commonwealth. Stripping offenders of the proceeds or benefits obtained can be particularly effective in helping to combat these types of crime which are usually aimed at the accumulation of power and wealth. The DPP has three main avenues of achieving this purpose:

- the civil remedies function;
- the *Proceeds of Crime Act 1987*; and
- in narcotics cases, the forfeiture and pecuniary penalty provisions of the *Customs Act 1901*.

In the last financial year more than $6.5 million was recovered in connection with taxation and other fraud on the Commonwealth through the exercise of the civil remedies function. This brings the total recoveries in this area since 1985 to more than $85 million. Approximately $2.3 million was also paid into consolidated revenue under the Proceeds of Crime Account in the last twelve months. As at 30 June 1991 property with a net value of approximately $43 million was restrained under the Proceeds of Crime Act and the Customs Act to meet possible future confiscation orders.

The deterrent effect, which is a significant part of the rationale for adopting confiscation legislation, cannot be calculated in dollar terms, but it is undoubtedly significant.

Proceeds of Crime Act

The Proceeds of Crime Act provides a comprehensive scheme aimed at tracing, freezing and confiscating criminal assets. The principal objects of the Act are described as being:

- to deprive people of the proceeds of, and benefits derived from, the commission of offences against the Commonwealth;
- to provide for the forfeiture of property used in, or in connection with, the commission of such offences; and
- to enable the tracing of such proceeds, benefits and property.

The Act is conviction-based, which means that no final order in respect of property can be made unless and until a person has been convicted or had a case found proven in respect of an indictable offence against Commonwealth law.

Forfeiture

Where a person is convicted of an indictable offence the 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 by any person from the commission of the offence. It is, for example, the yacht used to import drugs or the real estate purchased out of funds that can be traced back to the offence.

The court has a discretion whether to make a forfeiture order. In exercising that discretion it may have regard to any hardship that the order may reasonably be expected to cause, the use that is ordinarily made of or is intended to be made of the property and the gravity of the offence concerned. Property ordered to be forfeited becomes Commonwealth property and may be disposed of in accordance with the directions of the Attorney-General. It is usually sold with the receipts going into consolidated revenue. Where appropriate, the property may be retained and used by law enforcement agencies.

There are separate forfeiture provisions in relation to what are called serious offences. These are defined as:

- narcotics offences involving more than a traffickable quantity of drugs;
- organised fraud offences created by section 83 of the Proceeds of Crime Act; and
- money laundering offences 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 which has been restrained under the Proceeds of Crime 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

Shortly after the defendant was charged, a restraining order was obtained over a bank account into which most of the money had been paid, the defendant's interest in a family home, and over a car that was partly paid for with defrauded money. A pecuniary penalty order of $344 206 has been sought. If an order is made it is expected that most if not all of the pecuniary penalty will be recovered.

Table 2

Proceeds of Crime Act - Pecuniary penalty orders - 1 July 1990 to 30 June 1991

	Number of orders made	Amount of orders $	Number of orders from which amounts received	Amounts received from orders (i) $
NSW	10	593 879	7	156 564
Vic	3	253 922	1	4 269
Qld	1	46 150	2	16 806
WA	2	94 294	2	131 617
SA				
ACT	2	171 000	2	54 000
Total	**18**	**$1 159 245**	**14**	**$363 256**

(i) Includes amounts received from pecuniary penalty orders made in previous years.

Settlements

In some matters where action is commenced under the Proceeds of Crime Act, and property is restrained, the defendant decides to settle by repayment in full of the amount defrauded or stolen. Once a defendant's property is restrained he or she may have little choice about repaying, one way or another, the benefits obtained from the offence. If the person makes voluntary repayment, that may count to his or her credit at sentence in the event of conviction on the criminal charges.

Repayment in these cases may be made out of unrestrained assets, by arranging a mortgage on restrained property or by selling the restrained property. In all such cases the repayment goes to the agency defrauded and is recorded by the agency in the same way as any other recovery. It will not be recorded as a recovery under the Proceeds of Crime Act.

Table 3
Proceeds of Crime Act - Settlements - 1 July 1990 to 30 June 1991

	Number of Matters	Amounts received from settlements $
NSW	1	197 546
Vic.	1	51 396
Qld	4	81 891
WA		
SA		
ACT		
Total	6	$ 330 833

Case note

The defendant was a director of a construction company. It was alleged that he received income in the names of ghost employees of the company in order to minimize his tax bill. It was also alleged that he received tax refunds to which he was not entitled in respect of those ghost employees. He was charged with defrauding the Commonwealth and a restraining order under the Proceeds of Crime Act was obtained over his interest in real property.

Taxation assessments were raised against the defendant and the DPP exercised its civil remedies function. The amount of the assessments exceeded the benefits derived from the offences because additional tax had been levied for late payment of the tax liability. The outstanding tax was paid to the Australian Taxation Office on the afternoon before the Proceeds of Crime Act restraining order was to be renewed. The DPP allowed the restraining order to lapse. The defendant was able to say on sentence that all the tax defrauded had been repaid. He was given a 12 months suspended sentence with a recognizance to be of good behaviour for 12 months. The amount of tax recovered was approximately $46 000.

Restraining orders

In order to prevent the property of criminals being dissipated while proceedings are on foot, the Proceeds of Crime Act provides that a Supreme Court may order that no person may dispose of specified property or deal with it in any way. If satisfied that circumstances so require, the court may direct the Official Trustee to take custody and control of the property. These orders may be sought at any time and up to 48 hours before charges are laid.

Generally before it can make a restraining order, a court has to be satisfied that there are reasonable grounds for believing that the person committed an indictable offence and either that the property concerned is tainted or that the person derived a benefit from the commission of the offence. In the case of serious offences, however, it is only necessary to show that there are reasonable grounds for believing that the defendant committed the offence. All the property owned by the defendant or under his or her effective control can then be restrained. This ties in with the statutory forfeiture provisions which place the onus on the defendant to establish that his or her property was not derived from any unlawful activity.

The Commonwealth is usually required to give an undertaking as to possible damages when it seeks a restraining order. Wherever possible, the DPP seeks restraining orders over assets that are unlikely to depreciate in value or lead to other losses. The restraint of businesses is usually avoided.

Deciding whether to seek a restraining order can be difficult. In many cases if assets are not restrained at an early stage they will be hidden, transferred, consumed or otherwise dissipated so as to be unavailable to meet any final orders. A decision may have to be made quickly on whether to seek a restraining order at a time when information about the extent of the defendant's property is still being collected. There must also be an assessment at a very early stage about the likelihood of ultimate conviction.

The DPP recognises that restraining orders may involve a serious interference with a person's property prior to any conviction. Every effort is made not to inconvenience people in their 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 themselves restrained. The ability to quickly obtain restraining orders is usually crucial to the success of confiscation action.

Case report

In April 1991 the defendant and an associated company were committed for trial on charges relating to the alleged receipt and/or disposal of $16.5 million reasonably suspected of being the proceeds of crime contrary to section 82 of the Proceeds of Crime Act.

The funds were suspected to be the proceeds of drug trafficking in the USA which were transferred into Australia by telegraphic transfer from Hong Kong and the USA and used to purchase real property in the name of the defendant and the associated company.

Restraining orders have been obtained over 14 parcels of real estate as well as an expensive motor vehicle and jewellery. The estimated net value of property restrained is approximately $13 million.

Table 4

Proceeds of Crime Act - Restraining orders current at 30 June 1991

	Number of restraining orders	Net value of property restrained	Estimate of potential confiscation order
		$	$
NSW	39	28 379 712	37 815 725
Vic.	34	6 616 178	5 000 000
Qld	2	363 806	363 806
WA	4	365 000	285 000
SA	4	600 000	500 000
ACT	4	450 000	200 000
Total	**87**	**$36 774 696**	**$44 164 531**

Customs Act

Pecuniary penalty orders

The pecuniary penalty scheme contained in Division 3 of Part XIII of the Customs Act was the forerunner to the pecuniary penalty provisions in the Proceeds of Crime Act. Many of the operative provisions of the two Acts are therefore the same or very similar. The most notable differences are that the Customs Act pecuniary penalty provisions apply only to dealings in narcotics and they are not conviction-based.

Proceedings under the Customs Act are civil in nature and the court has to be satisfied that the person has engaged in a prescribed narcotics dealing. This is defined to include such things as importing, conspiring to import, possessing and selling narcotic goods in contravention of the Customs Act. These dealings largely mirror the narcotics offences in the Customs Act except that there is no Commonwealth offence in relation to selling narcotic goods. A pecuniary penalty can be made under the Customs Act regardless of whether the person has been charged or convicted of an offence.

The pecuniary penalty is assessed as the value of benefits derived from the prescribed narcotics dealing. The method of assessment is similar to that in the Proceeds of Crime Act. 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.

These pecuniary penalty provisions were inserted into the Customs Act in 1979 and have been used fairly extensively since 1985. With the introduction of the Proceeds of Crime Act in 1987 there has been less scope for the use of the Customs Act provisions. While the Customs Act provisions are not conviction based, there is usually a criminal charge in the matter and that charge is usually for a serious offence as defined in the Proceeds of Crime Act. Accordingly, it is often more effective to institute proceedings under the Proceeds of Crime Act than the Customs Act.

Nevertheless, the pecuniary penalty provisions of the Customs Act still have an important role in stripping proceeds from some drug offenders. Because the provisions are not conviction based they can be effective in cases where State and not Commonwealth charges are laid. The State offence will often constitute a prescribed narcotics dealing which will found a basis for applying for a pecuniary penalty order under the Customs Act.

In 1990-91 pecuniary penalty orders were made to the value of $27 000 and $205 400 was received from pecuniary penalty orders made in this and previous years.

Restraining orders

The restraining order provisions under the Customs Act are very similar to those under the Proceeds of Crime Act, although a restraining order under the Customs Act may only 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 a restraining order the court has to be satisfied that there are reasonable grounds to believe that the defendant engaged in a prescribed narcotics dealing and derived a benefit from it. There is also provision for the Official Trustee to take custody and control of restrained property where a court is satisfied that circumstances so require.

A restraining order was obtained under the Customs Act in one significant new matter last year. The defendant's property had originally been restrained under the Proceeds of Crime Act but the defendant was committed for trial on State charges only. The Proceeds of Crime Act restraining orders could not stand without a current charge for a Commonwealth indictable offence. It was alleged that the defendant committed prescribed narcotics dealings under the

Customs Act based on the same facts as the State charges. A restraining order was obtained over property to the value of $460 000.

Table 5

Customs Act - Restraining orders current at 30 June 1991

	Number of cases	Net value of property restrained $
NSW	7	4 610 000
Vic.	1	1 120 649
Qld		
WA		
SA	3	500 000
ACT		
Total	**11**	**$6 230 649**

Forfeiture

The forfeiture provisions in the Customs Act developed from the need to control the importation of goods. These provisions now have an important application in relation to narcotic goods. The scheme is that ships, aircraft and goods used in contravention of the Customs Act are declared forfeit. These goods may be seized and it is encumbent upon any claimant to seek to prevent their condemnation and disposal by the Commonwealth. Ships used to smuggle goods and any carriage used in the unlawful importation or conveyance of any goods come within these provisions. Typically these provisions are applied to vessels used to import narcotics and vehicles used to convey illegally imported drugs.

There was some doubt whether the conveyance of narcotics was unlawful under the Customs Act. This doubt has been removed by an amendment which makes it a specific offence to convey or attempt to convey any prohibited import.

A police officer may seize any forfeited goods or any goods that he or she believes on reasonable grounds are forfeited goods. A seizure notice must be served. Any claimant must then make a claim within 30 days and, if required, follow up with an action to recover the goods within four months. The usual

action is a claim in detinue or conversion. If these time limits are not met the goods are automatically condemned as forfeited to the Crown. Where the act resulting in the forfeiture of goods is also an offence, the conviction of the person for the offence has effect as a condemnation of the goods.

Narcotic-related goods which are condemned as forfeited to the Crown are disposed of in accordance with the directions of the Commissioner or Deputy Commissioner of the AFP.

Apart from giving advice, the DPP usually only becomes involved in these matters when action is taken to seek the recovery of seized goods.

Table 6
Customs Act - Forfeitures and recoveries - 1 July 1990 to 30 June 1991 (i)

	Number of seizures	Estimated value of property seized $	Number of condemnations	Estimated value of property condemned $	Number of disposals	Amount realized from disposals $ (ii)
NSW	23	901 455	11	621 705	8	153 070
Vic.	1	20 000	3	41 500		
Qld	3	900			2	85 616
WA	5	30 000				36 133
SA	4	53 600			4	51 320
ACT						
Total	**36**	**$1 005 955**	**14**	**$663 205**	**14**	**$326 139**

(i) Does not include matters dealt with exclusively by the AFP.

(ii) Does not include figures from all condemnations.

Civil remedies

The DPP's civil remedies function is to take or coordinate or supervise the taking of civil remedies on behalf of the Commonwealth or authorities of the Commonwealth. This can be done in matters connected with or arising out of an actual or proposed prosecution, or a course of activity which is being considered for the purpose of deciding whether to institute a prosecution.

The civil remedies function involves no new powers of confiscation or recovery. It gives the DPP a role in the normal civil recovery process in respect of matters that it is prosecuting or that are being considered for prosecution. In these matters the DPP has access to information from a number of different sources which often includes information on actual or potential liabilities to the Commonwealth. The DPP is in a central position to assemble this information and to coordinate and supervise the activities of a variety of a Commonwealth agencies. It is also in a position to coordinate the civil process with any related criminal prosecution.

In some matters the DPP exercises a supervising and coordinating role only, with the civil recovery action being taken by the Australian Government Solicitor. In other matters it is more efficient for the DPP to take the civil recovery action itself. The civil remedies function can be divided into two main areas: tax recovery and non-tax recovery.

Tax recovery

The impetus for the civil remedies initative arose from efforts to combat large-scale taxation fraud. Recovery of unpaid taxes continues to be a major area of civil remedies recovery. In the case of taxation fraud the benefits can be recovered directly by civil action. It is also possible to use tax recovery action to recover the proceeds of other types of crime. Few criminals pay tax on their illegal income. The raising and enforcement of default assessments can be an effective way of removing some or all of the illegal proceeds from the offender.

Table 7

Civil remedies - Tax matters - 1 July 1990 to 30 June 1991

	Judgments entered or leave to enter judgments $	Amounts secured by injunction or otherwise at 30.6.91 $	Amounts recovered $	Number of cases from which amounts recovered
NSW	19 462 685	2 417 399	2 137 549	7
Vic.		573 428	1 266 363	6
Qld	35 735	3 025 000	500 542	
WA			338 893	2
SA	2 426 536	2 300 000	580 000	2
ACT				
Total	**$21 924 956**	**$8 315 827**	**$4 823 347**	17

Case note

The taxpayer was a solicitor who was under investigation for criminal offences. Taxation assessments were raised and the DPP exercised its civil remedies function. There was found to be insufficient evidence to prosecute the taxpayer for any offence but the DPP continued to exercise its civil remedies function.

The taxpayer became bankrupt late in 1988 and the Australian Taxation Office was a major creditor. He sought to dispose of some major assets just prior to his bankruptcy. His assets included his legal practice, an interest with his wife in a property, shares in a company which held property and a valuable motor vehicle.

Proceedings were brought in relation to two properties purchased by the taxpayer's wife from the proceeds of sale of their jointly-owned property. These proceedings were settled and the Federal Court declared that one half interest in the properties held by the wife were available to the trustee in bankruptcy. The court further ordered, by consent, that the shares in the taxpayer's company be transferred to the trustee. The properties held by the wife are believed to have gross values of $500 000 and $140 000.

The trustee also recovered approximately $100 000 from an associate of the

taxpayer who was alleged to have purchased the taxpayer's legal practice at an undervalued price. Finally, the sum of $45 000 was recovered from the taxpayer's wife in respect of the taxpayer's motor vehicle.

Case note

In this matter the DPP applied for a pecuniary penalty order under the Customs Act and all of the taxpayer's assets were restrained under section 243E of that Act. There was insufficient evidence to establish that all of the taxpayer's property was derived from drug related activities. However, financial analysis showed there was a net increase in the defendant's assets of over $400 000 during a period when her only legitimate income was a supporting mother's benefit.

Amended taxation assessments were issued and judgment was obtained for $279 700. Bankruptcy proceedings were instituted to recover the debt. The taxpayer subsequently died. A total of $167 182 has become available to creditors from the sale of the taxpayer's property.

Non-tax recovery

Apart from the recovery of taxes, the DPP can exercise its civil remedies function in other matters or types of matters specified by the Attorney-General by instrument in writing. The Attorney-General can specify an individual matter or a class of matters. A total of 26 such instruments have been signed since the enactment of the DPP Act. The most important are three class instruments which allow the DPP to exercise its civil remedies function in respect of the recovery of moneys improperly obtained through social security fraud, medifraud and nursing home fraud.

Table 8

Civil remedies - Non-tax matters - 1 July 1990 to 30 June 1991

	Judgments entered or leave to enter judgments $	Amounts secured by injunction or otherwise at 30.6.91 $	Amounts recovered $	Number of cases from which amounts recovered
NSW	238 266	705 000	954 659	6
Vic.			75 521	2
Qld			9 282	
WA			43 000	2
SA	904 499	1 124 100	676 104	36
ACT				
Total	**$1 142 765**	**$1 829 100**	**$1 758 566**	**46**

Confiscated assets trust fund

At present monies recovered under the Proceeds of Crime Act and the Customs Act are paid into consolidated revenue. In future these monies will be paid into a trust fund which is being established under the Proceeds of Crime Act. The relevant amendments to the Proceeds of Crime Act were assented to on 27 June 1991 and the provisions establishing the trust fund will come into force no later than six months from that date.

Half of the funds available for distribution under the trust fund will be used to fund law enforcement projects designed to enhance the detection, investigation and prosecution of major criminal activity. The Attorney-General will select the projects. The other half of the funds will be used for drug rehabilitation and drug education programs selected by the Minister for Health.

Distributable funds may also be used to reimburse Government Business Enterprises if the recovery stems from offences which caused financial loss to an enterprise. For example, if an amount is recovered under the Proceeds of Crime Act in respect of a fraud upon Australia Post it will be possible to reimburse Australia Post to the extent of the amount recovered.

Provision will also be made for the equitable sharing of money with a State or Territory where that State or Territory has participated in the matter. Such

participation may be in the action to confiscate the criminal assets or in the investigation or prosecution of the unlawful activity from which the criminal assets were derived.

Amounts recovered pursuant to the civil remedies function, and amounts recovered where Proceeds of Crime Act actions are settled prior to completion, will continue to be returned to the agency defrauded rather than being paid into the trust fund. Amounts recovered by way of a taxation recovery will go to the Australian Taxation Office and not the trust fund.

Payment of legal fees out of restrained assets

One of the most vexing questions that can arise under confiscation legislation is the extent to which a defendant should be allowed access to restrained assets in order to meet the cost of defending the criminal charges that he or she faces.

On the one hand, defendants are presumed to be innocent until proven guilty and it can be argued that they should be allowed access to their funds in order to brief the lawyer of their choice and defend the criminal charges in the way they think best. On the other hand, the community has an interest in ensuring that money that may ultimately be confiscated as the proceeds of crime is not frittered away on pointless legal challenges to the prosecution case or on unnecessarily lavish legal representation.

There is provision in both the Customs Act and the Proceeds of Crime Act for a court to allow a person access to restrained assets in order to meet legal expenses if he or she has no other source of funds from which to do so. The courts have generally been reluctant to deny defendants access to restrained assets. In a number of cases that has resulted in large sums of money being spent at the committal stage.

A person facing serious charges, and who has the resources to do so, may want to explore every possible avenue for avoiding conviction. There may be an added incentive for the defendant to pursue all avenues if he or she realises that the restrained property is likely to be lost anyway in the event of conviction.

There is virtually unlimited scope for a defendant to draw out committal proceedings, if he or she has the resources and the will to do so, and to seek collateral review of decisions made in, or in connection, with the proceedings.

There is an incentive for lawyers to assist their clients to pursue legal challenges, even if they are clearly doomed to fail, given that the lawyers are likely to be the only winners if the defendant spends all the restrained money on legal expenses.

In one matter, over $1.3 million that was released out of restrained assets was spent on committal proceedings and litigation concerned with the release of

the funds. The defendants were eventually committed for trial. By that stage there was insufficient money left to fund a trial of any magnitude. The defendants ultimately pleaded guilty to the charges against them.

In another matter in which access was sought to restrained assets, defence counsel told the Supreme Court that it was estimated that committal proceedings would last eight weeks and cost $164 000. The defence then spent more than 10 weeks cross-examining the first prosecution witness. The committal proceedings eventually lasted for over nine months and cost the defendants more than $700 000.

In the first of the two matters referred to above Pincus J. made the following comments in the Federal Court in relation to an application that restrained property belonging to one defendant should be used to fund the defence of other defendants:

> It should be added that if there were power to do so, I would, as a matter of prudence, require some evidence that those defendants whose property is proposed to be expropriated have given what might be called an informed consent to that course. It has been clear to me that some of the applications to this court have been in the interests of the solicitors as well as the clients, a point which has been commented on by counsel. In view of the history of the matter, I would not, if I had power to do so, take away the property of any of these defendants to meet another defendant's costs merely on a statement from the Bar table. (*Commissioner of Australian Federal Police v Kirk* (1989) 24 FCR 528 at 230).

The current legislation can also place the DPP in an invidious position when access is sought to restrained funds. The DPP will need to decide whether to oppose or consent to the application. That can involve it making an assessment of the reasonableness of a course of action proposed by the defence. That is not a function that prosecuting authorities normally perform.

There is a need for a new mechanism to balance the competing interests in these matters. One possibility is to give an independent body the function of assessing the merits of each application for access to restrained funds, including the reasonableness of the use proposed to be made of those funds, and to supervise the expenditure of any money released. It may be that this role could be performed by the legal aid authorities, who have expertise and experience in addressing issues of this kind. This area is being looked at by the DPP and the Attorney-General's Department.

Crimes (Superannuation Benefits) Act

The *Crimes (Superannuation Benefits) Act 1989* is aimed at ensuring that Commonwealth employees who are convicted of corruption offences and are

sentenced to more than twelve months imprisonment are deprived of government funded superannuation benefits. A corruption offence is defined to be any offence by a Commonwealth employee if:

- the commission of the offence involved an abuse by the person of his or her office as an employee;
- the offence was committed for a purpose that involved corruption; or
- the offence was committed for the purpose of perverting, or attempting to pervert, the course of justice.

The DPP may apply for a superannuation order against a person if authorised to do so by the Attorney-General. The court must make the order if satisfied that the person was convicted of a corruption offence and that the other legislative requirements are met. Once an order is obtained, all the employee's rights and benefits under the superannuation scheme cease although the order does not affect a person's entitlements to his or her own contributions to the scheme, plus interest. This penalty is in addition to any confiscation order that may be made against the employee.

The legislation provides that the possibility that a superannuation order may be made against a person is not to be taken into account in sentencing. There is a similar scheme under the *Australian Federal Police Act 1979* which covers AFP officers, although the AFP scheme applies to dismissal for certain disciplinary offences as well as convictions for corruption offences.

On 28 May 1991 the Attorney-General made the first authorisation to the DPP to apply for a superannuation order. The case involved a defendant who pleaded guilty to theft from the Department of Defence while working as a cashier at a military base. She was sentenced to a term of imprisonment and was ordered under the Proceeds of Crime Act to pay a pecuniary penalty to the Commonwealth. The application for the superannuation order is yet to be heard. Further details on this case appear in the case reports at the end of Chapter 6.

There are a number of other cases in progress that may be appropriate to be dealt with under the new legislation.

Investigation powers under the Proceeds of Crime Act

The first major challenge to the search warrant powers under section 71 of the Proceeds of Crime Act was heard in the matter of *Karina Fisheries v Mitson* (1990) 96 ALR 629. In February 1990 the AFP executed search warrants under section 10 of the Crimes Act and section 71 of the Proceeds of Crime Act in connection with the investigation of an alleged failure by the applicants to declare millions of dollars in income.

Both sets of warrants were challenged in the Federal Court. At first instance the section 10 warrants were held to be valid but the section 71 warrants were held to be invalid on the grounds that:

- the warrants did not contain a statement of the purpose for which they were issued as required by section 71(7)(a); and
- the warrants did not contain a statement of a belief as to the nature of the indictable offences that had been committed as also required by section 71(7)(a).

On appeal the Full Federal Court confirmed the finding that the warrants were invalid on the first ground. The court said that it may have been sufficient for the warrants merely to state that their purpose was to authorize the entry of relevant premises or to authorize the search of those premises for property tracking documents and the seizure of them. The court acknowledged that 'the result could be seen to prefer form at the expense of substance'. However it held that section 71(7) must be construed strictly and that the failure to state the purpose invalidated the warrants.

In relation to the second ground the Full Court found that section 71(7) does not require a statement of belief that the suspected offences have been committed. It only requires a reference to the relevant indictable offences.

The documents in question were subsequently obtained from the Registrar of the Federal Court under a production order issued pursuant to the Proceeds of Crime Act.

Forfeiture under the Fisheries Act

The prosecution of Kakura and Sato is reported on in Chapter 3. In that matter the defendants were convicted of offences under the *Fisheries Act 1952* in relation to false reports concerning catches of tuna.

The relevance of the case, from a criminal assets perspective, is that the trial judge ordered that the fishing vessel, its gear and the catch be forfeited under the provisions of the Fisheries Act. The Court of Appeal dismissed an appeal in the matter on the basis that it lacked jurisdiction. However, the court stated that if it had jurisdiction it would have dismissed the appeal in any event.

In deciding that the forfeiture provisions of the Fisheries Act applied, the judge was satisfied that the offences of under recording and under reporting the catch could be said to 'arise out of the master having the vessel in his possession or in his charge'. The judge was also of the view that alternative forfeiture provisions applied in that the vessel could be said to have been 'used in the commission of the offence'.

The judge acknowledged that the forfeiture would cause serious hardships and substantial economic loss to the defendants. The vessel was subject to a mortgage of A$2.9 million which the owner would still have to pay. However, he found that these factors were outweighed by factors warranting forfeiture.

In particular, the offences occured over a prolonged period, were premeditated and involved a breach of trust by the defendants. The defendants' action also had the potential to undermine the basis of international fisheries management, threaten the commercial viability of the industry and possibly the continued existence of southern bluefin tuna. The judge noted that fines in matters of this kind could be regarded by the defendants as a form of taxation or an operating expense.

Chapter 6
Prosecutions in the ACT

The prosecution of offences against ACT law has traditionally been carried out by Commonwealth authorities. Since 1985 the function has rested with the DPP.

In 1989 the ACT Government first announced that it proposed to appoint its own Director of Public Prosecutions. In June 1991 the ACT government announced that it would establish its own DPP office with effect from 1 July 1991.

In 1990-91, the DPP conducted prosecutions for offences against Territory law under an arrangement with the ACT Government. The ACT Government reimbursed the Commonwealth for those services.

The establishment of an ACT DPP means that in future the only prosecutions that the DPP will carry out in the ACT will be for offences against Commonwealth law and the occasional prosecution for an ACT offence where the defendant has also been charged with offences against Commonwealth law. Those matters will be the responsibility of a prosecutions unit located within DPP Head Office. This unit was set up in May 1991 in anticipation of the

separation of prosecution functions in the ACT. The new unit has been operating smoothly since its establishment.

The ACT practice was unique in the Commonwealth DPP for it comprised a mix of ACT criminal offences, mainly offences against the person and property, together with the whole range of Commonwealth offences. This blend provided a broad basis for experience not found in any other prosecution office, either State or Commonwealth, in Australia. It was always a popular office in which to work and was a responsibility which the DPP enjoyed having.

A large number of the DPP legal and administrative staff stayed on to form the new ACT DPP Office. The separation of staff accorded broadly with the split up of ACT and Commonwealth work. Consequently the ACT DPP has a solid basis of experience and will doubtless continue to provide the citizens of the ACT with an excellent prosecution service.

There is continued liaison with the ACT DPP with respect to a variety of matters which are, and will remain, of common interest. In particular, arrangements are being made for the conduct of cases involving a mixture of ACT and Commonwealth offences. Liaison with the ACT courts and the AFP is also in hand in order to ensure a co-ordinated and economical approach to the conduct of prosecutions in the ACT.

Committals

There were 97 committal orders made during the year, comprising 59 committals for trial and 38 committals for sentence. This compares with a total of 93 committal orders in the previous year, comprising 53 committals for trial and 40 committals for sentence.

Prosecutions in the Supreme Court

There were 27 trials in the Supreme Court (35 in 1989-90) involving 34 defendants (33 in 1989-90). There were seven joint trials and one re-trial. Of the 34 defendants, 14 were acquitted and 15 were convicted. There was one hung jury and in another case the jury was discharged. In three of the trials no prima facie case was established.

The number of days occupied by Supreme Court trials was 134 which is comparable to last year when 135 days were so occupied.

The principal counts on indictments presented in the Supreme Court were:

Sexual intercourse without consent	5
Sexual intercourse with young person	2
Possess heroin for supply	3
Conspiracy to supply heroin	3
Receive or give secret commission	3
Arson	1
Assault	3
Conspiracy to defraud the Commonwealth	2
Incest	1
Possess prohibited import	2
Utter and theft	1
Trespass with intent	1
Make false instrument	1
Armed robbery	1
Maliciously inflict grievous bodily harm	2
Untrue representation	1
Possess stolen property	1
Assault and theft	1
Total	**34**

Fifty people were dealt with in the Supreme Court by way of a plea of guilty during the year. This compares with 54 people so dealt with last year.

Federal Court appeals

During the year there were 18 appeals to the Federal Court following conviction in the ACT Supreme Court.

Five of those appeals were instituted by the DPP against inadequacy of sentence. There were no appeals instituted by the Office last year. Four of the appeals were successful and the penalty was increased. A decision in the remaining case is yet to be handed down.

Two further appeals were instituted by the DPP following the dismissal of appeals from magistrates' rulings. One of these appeals was successful. A decision has not been handed down in the other.

There were five appeals by convicted defendants against conviction and penalty. Three appeals were dismissed. The remaining two appeals were successful and re-trials were ordered in both matters. One matter is yet to be listed for retrial. In the other matter, involving charges of sexual intercourse without consent, the matter was discontinued because of the complainant's trauma as a result of the alleged offences. She was not able to give evidence a third time after having given evidence in the committal and at the first trial.

There were six appeals by convicted defendants against penalty alone. One was successful and the remaining five appeals were dismissed.

Supreme Court appeals

In the past year there were 19 appeals to the Supreme Court from decisions of the Magistrates Court. This compares with 50 appeals last year. Of the 19 appeals, 18 were by defendants. Ten appeals were against conviction and sentence, and eight were against sentence only. There was one application by the DDP for an order to review. Of the appeals against conviction and sentence, one was withdrawn, three were dismissed and six were allowed. Of the eight severity appeals, one was withdrawn, three were dismissed and four were allowed.

The order to review was sought against a magistrate who dismissed a taxation prosecution. The application was successful and the matter was remitted to the magistrate for further hearing.

NSW courts

By arrangement with the Sydney Office, the Canberra Office conducted a number of prosecutions in the NSW Local and District Courts in areas surrounding the ACT.

During the year the Canberra Office had the carriage of 10 appeals against the severity of sentence, including one instituted by the DPP, and one all grounds appeal heard in the NSW District Court. Three of the appeals against severity of sentence were allowed, including the appeal instituted by the DPP, and the other seven appeals were dismissed. The appeal against conviction and sentence was also dismissed.

Magistrates Court

The Magistrates Court practice continued to increase in both volume and complexity during 1990-91. Two additional full-time magistrates were appointed in April 1990 and five special magistrates sat regularly. As a result, there was an increase in the number of court sitting days, rising from an average of 36 sitting days per month in 1988-89 to about 60 sitting days in 1990-91. This has seen a significant reduction in the average time taken to finalise matters.

In the latter part of 1990-91, the court regularly set three criminal hearing lists per day. The average time taken to deal with these lists was 61 sitting days per month. The court also set an average of nine traffic lists per month and 21 general lists. There was an average of 21 Children's Court lists per month over the year.

Excluding parking prosecutions and pleas by post, 11 956 defendants were dealt with for 14 685 offences. This compares with 9 571 defendants and 12 556 offences in 1989-90. Pleas of not guilty were entered in respect of 3 017 charges, which represents a very slight decrease on the 3 107 charges in 1989-90. Of this figure, 2 153 charges resulted in conviction, 293 in acquittal and 571 did not proceed following conviction or acquittal on more serious charges.

During the year, DPP lawyers appeared to assist the Coroner in 73 inquests. The matters included 21 deaths from motor vehicle accidents, 30 suicides, three drownings, four accidental deaths and one death by fire. Open findings were returned in five inquests.

Social security prosecutions

A total of 90 social security prosecutions were completed during the year. These involved a total of 734 charges with 722 pleas of guilty and 12 defended cases. Of the 12 defended cases, four resulted in acquittal and eight cases were withdrawn.

Most of the defended cases involved alleged offences by people claiming benefits while living in a de-facto relationship. The DPP is now providing more detailed advice on evidence in these cases to the regional office of the Department of Social Security. That office is ensuring that proper evidence of the existence of a de facto relationship is available before matters are referred to the DPP.

The social security cases prosecuted involved a total of $743 930 in overpayments.

As at 30 June 1991 there were 67 social security matters on hand which included 16 before the courts, four matters awaiting court dates, 18 matters that had been sent back to the department for further investigation, and 29 matters being considered by the DPP with a view to possible prosecution.

Municipal prosecutions

There has been an increase in the number of municipal prosecutions since the advent of self-government in the ACT. These prosecutions are instituted under various provisions of ACT legislation. The investigations in these matters are carried out by departmental officers and the informant is usually a departmental officer. The Canberra Office played a major part in the preparation of these cases by providing advice, preparing summonses and ensuring that cases were ready to proceed before charges were laid.

There was an increase in both the number of defendants and the number of charges laid compared with last year. In particular, there was a sharp increase in the number of pleas of not guilty, with 215 such pleas this year as compared with 79 in 1989-90.

Of the 215 defendants who pleaded not guilty, 142 were convicted and 53 acquitted. Twenty charges were discontinued following conviction on a more serious offence.

The Canberra Office also conducted prosecutions in the Act and surrounding area for agencies such as Telecom and the Australian Postal Corporation. The DPP acknowledges the invaluable assistance provided by NSW Police prosecutors who appeared from time to time in these matters on its behalf in the NSW Local Court.

Corporate prosecutions

A small corporate prosecutions unit has been established to take over the work previously handled by the former ACT Corporate Affairs Commission and cases arising under the new legislation. As at 30 June 1991, the unit had nine matters on hand, including three matters before the courts. Advice on evidence has been provided in the other six cases.

The matters alleged in these cases include offences arising from false and misleading statements made to the Australian Securities Commission, directors involved in the management of companies while they were disqualified, insider trading, directors acting dishonestly, insolvent trading and failing to keep proper books of account.

The DPP had an excellent working relationship with the staff of the former ACT Corporate Affairs Commission. This has continued with the staff of the ACT office of the Australian Securities Commission.

Criminal assets

The ACT does not have its own criminal assets legislation. At present the provisions of the Commonwealth *Proceeds of Crime Act 1987* continue to apply to ACT offences. That Act will apply to those offences until March 1992 unless ACT criminal assets legislation comes into force before then. It is not known at this stage whether the ACT will enact proceeds of crime legislation.

The Canberra Office had a small Criminal Assets Branch to handle matters arising under the Commonwealth Act. During the year, two pecuniary penalty orders were obtained involving a total of $171 000. Of that amount, $54 000 has been recovered. As at 30 June 1991, four restraining orders were in force, affecting property with a net value of $450 000. A total of 11 restraining orders were obtained during the year, but five lapsed as a result of acquittals in a joint trial and two were removed on the DPP's application.

During the year the Canberra Office was also authorised under section 16 of the *Crimes (Superannuation Benefits) Act 1989* to seek a superannuation order arising out of a conviction in the NSW District Court at Wagga. This was the first matter in which an application was made under the 1989 Act. Further details of the matter appear in the case reports below.

Fraud

The Fraud Branch was responsible for a number of significant prosecutions during the year. This included a mixture of fraud cases referred by various Commonwealth Departments, in particular the Department of Defence, the Department of Administrative Services and the newly formed ACT Fraud Control Unit.

Commonwealth fraud matters are now being handled by the prosecutions unit in Head Office. These include 24 matters of varying complexity, including offences of fraudulent misappropriation, stealing Commonwealth property, forgery, tax evasion, imposition upon the Commonwealth, defrauding the Commonwealth and fraudulently destroying mail.

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.

Winchester Inquest

A report on this matter was given in last year's report. As at 30 June 1991, the coroner had sat for a total of 132 days and taken evidence from 231 witnesses.

Browning

Browning was charged under the *Crimes (Internationally Protected Persons) Act 1976* with four counts of being knowingly concerned in damaging property belonging to an internationally protected person and one count of being knowingly concerned in sending a threatening letter to an internationally protected person. The charges arose out of a series of incidents involving damage to diplomatic cars in Canberra in 1988. There was evidence to suggest that these incidents were politically motivated and, in particular, associated with an anti-apartheid sentiment.

The defendant was tried before a jury in the ACT Supreme Court in June 1991. She was acquitted on the four counts of being knowingly concerned in damaging property of an internationally protected person but was convicted on the count of being knowingly concerned with sending a threatening letter to an internationally protected person. She was sentenced to a suspended term of 18 months imprisonment.

Browning has appealed against her conviction and sentence. That appeal is yet to be heard.

Boudelah/Charlston and House/Thorne

The defendants in these two unrelated cases pleaded guilty in the Supreme Court to a number of counts of sexual offences. All four were sentenced by the same judge to terms of imprisonment for four years to be released after serving a non-parole period of six months.

The DPP appealed to the Federal Court against the inadequacy of the sentences. The Federal Court upheld the DPP's appeal in three cases and increased the sentences from a six month non-parole period to an 18 month non-parole period. The fourth person, a juvenile, had been released prior to the decision. The Federal Court declined to return the defendant to custody.

Mossman

Louise Mossman was convicted in the Wagga District Court on charges of stealing $11 000 from the pay office at the Kapooka Military Camp. Garry Mossman was convicted of being knowingly concerned in those offences.

Louise Mossman was sentenced to imprisonment for 15 months to be released after serving six months upon entering into a recognizance to be of good

behaviour. She was also ordered to pay a pecuniary penalty under the Proceeds of Crime Act in the sum of $100 000. Garry Mossman was sentenced to 15 months imprisonment to be released after nine months upon entering into a recognizance.

This is the matter in which the Attorney-General has authorised the DPP to seek an order under the Crimes (Superannuation Benefits) Act.

Woodward

Woodward was charged with defrauding the Commonwealth and the ACT Administration of an amount of $71 000. The money was gambled away before the fraud was discovered. Woodward pleaded guilty and was sentenced in the Supreme Court to a term of imprisonment of 15 months. He was also ordered to pay a pecuniary penalty to the Commonwealth of $71 000. A cheque for $308 184.89, being the full amount of Woodward's superannuation contributions, has been forwarded to the DPP.

Skillen

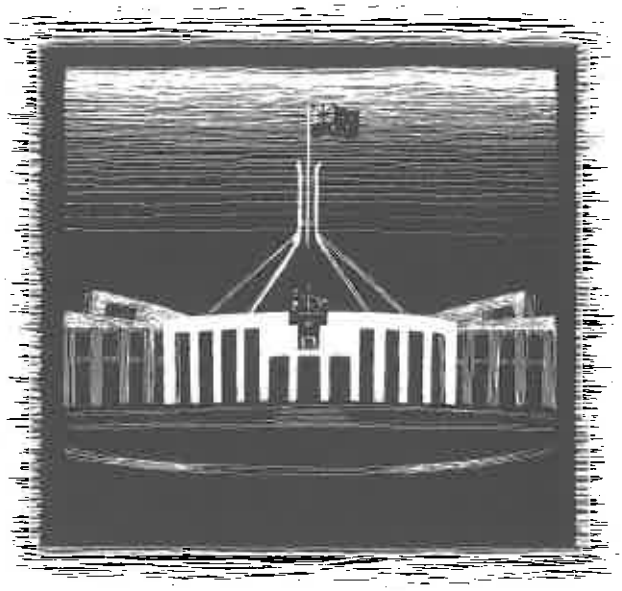
On 21 October 1988, in two unrelated incidents, Skillen killed one person and attacked and seriously injured another person. In two separate trials he was convicted of murder and of maliciously inflicting grievous bodily harm.

Following the first trial Skillen was sentenced to 20 years imprisonment with a non-parole period of 12 years. After the second trial Skillen was sentenced to 12 years imprisonment with half of that period to be served concurrently with his first sentence, and half to be served cumulatively. A non-parole period of 16 years was set.

Between the two trials the *Sentencing Act 1989* (NSW) came into effect. That Act regulates the sentence of ACT prisoners serving time in NSW prisons. The effect of the Act was to abolish remissions in NSW, with the result that Skillen would have been required to serve a full 16 years in prison if his sentence had not been changed.

Skillen appealed to the Federal Court on the ground that the sentence was manifestly excessive. In May 1991 the Federal Court upheld the appeal. The non-parole period was reduced to 11 years.

Chapter 7
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 1990-91.

This chapter also discusses a number of issues of concern to the DPP of a more operational nature.

Commonwealth sentencing legislation

As noted in last year's report, on 17 July 1990 the provisions of the *Crimes Legislation Amendment Act (No. 2) 1989* relating to the sentencing of federal offenders came into operation. They provide for a separate regime in the sentencing of federal offenders.

The new legislation has been the subject of trenchant criticism by a number of trial judges and Courts of Criminal Appeal. In *R v. Paull* (1990) 20 NSWLR 427, for example, Hunt J. of the NSW Supreme Court concluded his remarks on sentence with the following observation:

> It is to be hoped that the federal Parliament will quickly come to realise the difficulties caused by this unnecessarily complicated and opaque legislation and that it will give urgent reconsideration to its provisions. At the present time, the question of sentence will take longer to deal with in the average trial than the question of guilt itself.

Similar sentiments have been expressed by the NSW and Victorian Courts of Criminal Appeal in the cases of *El Karhani* (1990) 97 ALR 373 and *Carroll* (unreported, 2 November 1990). In his remarks on sentence in the case of *Choi* (unreported, 4 September 1990) Sully J. of the Supreme Court of NSW commented:

> It is, in my opinion, a disgrace that any sentencing judge should be expected to deal with someone else's personal liberty and with the protection of the public while hobbled by a statutory scheme, many of the provisions of which are internally inconsistent, and the conceptual framework of which is, to speak plainly, a mess.

While the DPP has made recommendations for a number of amendments to the new sentencing legislation, the following comments are confined to the new section 16A(2). It is this provision which has attracted the most criticism from the courts. The sub-section sets out 13 matters that the court must take into account in passing sentence to the extent that they are relevant and known to the court.

The DPP would prefer to see this provision repealed. However, if that is not acceptable there are still a number of changes that should be made to render the provision more consistent with generally accepted sentencing principles.

While the sub-section does not purport to set out an exhaustive list of the factors that may be properly taken into account by a sentencing court, in listing such a relatively large number of factors there is a danger the sub-section will be treated as a de facto codification, particularly by less experienced sentencers. There is a real risk that a sentencing court will concentrate on the matters listed and overlook other considerations that may be just as relevant in the circumstances of a particular case.

Another criticism of the sub-section is that it confuses what have been traditionally regarded as the purposes or justifications for which sentences are imposed with the matters that a court may properly have regard to in

sentencing a particular offender. If the Commonwealth's sentencing legislation must deal with these matters at all, the purposes or justifications should be dealt with separately, as is the case under the new sentencing legislation of Victoria.

However, the main criticism that has been levelled at the sub-section concerns the inclusion of some factors but not others, and the description of certain of the factors listed.

The most glaring omission from the list is any reference to general deterrence. This has traditionally been regarded as one of the main purposes of punishment. Indeed, in the case of some offences general deterrence may override all other factors.

In *El Karhani*, the NSW Court of Criminal Appeal considered that the omission of general deterrence from the 'checklist' in section 16A(2) was merely a 'legislative slip'. The court found that section 16A(2) does not purport to be exhaustive of the matters that could be properly taken into account by a sentencing court. The court observed that 'it would have been surprising indeed if such a fundamental principle of sentencing [as general deterrence], inherited from the ages, had been repealed by the Act'. Accordingly, general deterrence remains a matter to be considered by a court when sentencing a person for a federal offence.

Despite the decision in *El Karhani*, which has been followed by courts in other jurisdictions, the DPP has recommended that general deterrence be specifically listed in section 16A(2). Without such an amendment there is the potential for the less experienced sentencer to be led astray by the omission of any reference to general deterrence. It would also indicate that general deterrence remains an important consideration in the sentencing of federal offenders.

In its Fifth Interim Report, issued in June 1991, the Review of Commonwealth Criminal Law made the same recommendation.

One of the matters listed in section 16A(2) is 'the personal circumstances of any victim of the offence'. It is not clear exactly what is encompassed in this phrase. While no doubt it includes the age, sex, status and antecedents of the victim, it is not clear whether it includes, for example, the extent to which the conduct of the victim contributed to the commission of the offence. As the sub-section does not provide an exhaustive list of the matters that may be taken into account at sentence, the conduct of the victim may be taken into account under the general law, where it is relevant, whether or not it is covered by section 16A(2). However, this issue illustrates the pointlessness of the legislation listing some matters but not others, or providing a description which is incomplete.

Paragraph (g) of section 16A(2) provides that the fact that the offender has pleaded guilty should be taken into account on sentence. The effect of this paragraph is presumably that a court would be entitled to give an offender a discount even though it was not satisfied that the plea demonstrated remorse. However, given the differing views that have been expressed in the cases on this issue, it should be made clear that this factor may be taken into account even if the plea is not accompanied by remorse. This paragraph should also provide that the weight to be attached to a plea of guilty will depend on the stage in the proceedings in which the offender pleaded guilty or first indicated an intention to plead guilty.

Paragraph (p) requires a sentencing court to take into account 'the probable effect that any sentence or order under consideration would have on any of the person's family or dependents'. On its face this paragraph appears to represent a major departure from the position at common law, which is that unless the circumstances are exceptional a sentencing court should ignore the effect that any sentence may have on the offender's family or dependants. However, in the decision of the WA Court of Criminal Appeal in *Sinclair* (unreported, 10 December 1990), the court concluded that the inclusion of this paragraph was not to be taken as representing a change from the position at common law. The DPP has recommended that this paragraph be omitted to ensure that there is no confusion as to the circumstances in which it would be appropriate to have regard to the effect of a sentence on the offender's dependants or family.

Section 165 of the Social Security Act

In July 1990 the DPP recommended to the Department of Social Security that section 165 of the *Social Security Act 1947* be amended to overcome the problem identified in the South Australian case of *Bartlett*. In its decision handed down on 14 December 1990, the South Australian Court of Criminal Appeal held, by a majority, that the section operated to render inadmissible information furnished pursuant to a notice issued under section 163 of the Social Security Act in a prosecution for an offence against the Crimes Act.

Many social security prosecutions conducted by the DPP relate to the furnishing of false or misleading information in purported compliance with a notice issued under section 163 of the Social Security Act. That section is the general notification and review provision in the Act. Under section 163 a person in receipt of a pension, benefit or allowance under the Act can be required:

- to notify the Department of the occurrence of some specified event or circumstances which might affect payment of that pension, benefit or allowance; or
- to furnish information relating to matters which might affect payment of that pension, benefit or allowance.

Until the decision in *Bartlett*, conduct involving or arising out of the making of a false or misleading statement in purported compliance with a notice issued under section 163 was prosecuted under section 239 of the Social Security Act or, in more serious cases, under an appropriate provision of the Crimes Act.

Section 165 overrides any right a person may have to claim the privilege against self-incrimination by providing that a person must comply with a notice issued under section 163 notwithstanding that the information furnished may tend to incriminate the person. However, the section goes on to provide that any information furnished is not admissible in evidence against the person in any criminal proceedings, other than proceedings under, or arising out of, section 163(5). Section 163(5) creates an offence of knowingly or recklessly furnishing information that is false or misleading in purported compliance with a notice. The offence is punishable, in the case of a natural person, by a fine of $1 000 or imprisonment for six months, or both.

Since *Bartlett* the prosecution of many social security offences has been frustrated by section 165. In some cases it has been necessary to conduct further inquiries to establish a case which does not rely on information furnished pursuant to a section 163 notice. More importantly, it has been necessary to discontinue a number of cases where, in the particular circumstances, section 165 was fatal to a successful prosecution.

If a person's right to claim the privilege against self-incrimination is to be abrogated by statute, then it is clearly necessary that the authorities should be prevented from using any incriminatory disclosures that have been compulsorily obtained in criminal proceedings against that person.

However, there can be no justification for affording a person protection with respect to information furnished which is false or misleading.

The difficulties that the section now presents are a result of the means chosen to confine the protection afforded by the section within appropriate limits. For some reason it was decided to provide for a specific false statement offence in section 163(5) than to rely on the more general offence provisions. This offence has proved to be virtually useless. A prosecution under section 163(5) must be commenced within one year of the commission of the offence. As a matter of practical reality, by the time a matter has come to the attention of the

department, has been investigated and then referred to the DPP for prosecution, any offences against section 163(5) will have become statute barred. That is especially so in the case of long-running frauds, which are often the cases that most clearly warrant prosecution.

In any event, at present the DPP cannot use the provisions of the Crimes Act in the more serious cases if the prosecution case would depend on proving the making of a false or misleading statement in a section 163 form.

It has been recommended to the Department of Social Security that section 165 be completely recast to limit the protection afforded by the section to those disclosures which, but for the section, could have been the subject of an allowable claim of privilege. Alternatively, it has been suggested that consideration be given to whether the administration of the social security system would in fact be prejudiced if the recipient of a section 163 notice was to retain the right to claim the privilege.

At the time of writing it is understood that the department does not propose to seek an amendment to section 165. Rather it has proposed that the offences under sections 163(5) and 239 of the Act be made indictable and punishable by a maximum penalty of two years imprisonment.

In the view of the DPP such amendments would attack only the symptoms of the problem and not the cause. Further, it would not be a complete solution to the problems presented by section 165. Such an increase in maximum penalties could also have the unintended consequence of resulting in some increase in sentences imposed in this area, even for less serious cases.

Resolution of jurisdictional problems between military and civil law

The *Defence Force Discipline Act 1982* is essentially a code regulating the exercise by service tribunals established under that Act of jurisdiction to hear and determine charges against members of the defence force. The Act creates a large number of what are known as service offences. It also makes provision for the investigation and prosecution of service offences and the punishment of defence members convicted of service offences.

The service offences created by the Act include such offences as mutiny, offences relating to operations against the enemy, desertion and unauthorised absence which are clearly related to the discipline of the defence force. However, there are many service offences under the Act where the relationship to the discipline of the defence force might be thought to be more tenuous. This is particularly so in the case of the service offences created by section 61.

The effect of that section is to pick up the provisions of the general criminal law applicable in the ACT and to render all offences against that law service offences for the purposes of the Act if committed by a defence member. Thus, the service offences created by section 61 may have no connection with the defence force and its discipline other than the offender's status as a defence member.

While the Defence Force Discipline Act vests exclusive jurisdiction in service tribunals to try service offences, defence members remain amenable to the jurisdiction of the civil courts in respect of breaches of the general criminal law. Given that many service offences will have a civil law counterpart, in many instances the service tribunals will have concurrent jurisdiction with the civil courts over the same conduct.

The Act makes little attempt to address the inevitable jurisdictional problems arising from this dichotomy. Section 63(1) is the only provision which places any limits on the exercise by service tribunals of jurisdiction in these matters. Under that section, consent is required to the institution of proceedings under the Act for a small number of service offences created by section 61, such as murder, manslaughter and sexual assault. As a result of an amendment to section 63(1) which came into operation in October 1990, the Commonwealth DPP has replaced the Attorney-General as the authority responsible for giving the consent required by that section.

Most of the provisions of the Defence Force Discipline Act came into operation on 3 July 1985. In the absence, by and large, of any mechanism within the Act to determine whether a matter should be dealt with as a service offence or prosecuted in the civil courts, it was necessary for this issue to be addressed administratively. To that end guidelines were agreed between the DPP and the Department of Defence in 1986 which set out broad criteria for determining whether there is a sufficient service connection to justify a breach of the civil law being tried as a service offence. Those guidelines do not address the situation where the counterpart criminal offence is one against State law.

The 1986 guidelines have been recently reviewed by the DPP. It has concluded that they do not provide an appropriate basis for resolving the jurisdictional problems arising from the Defence Force Discipline Act. A number of State prosecuting agencies have also expressed concern at the exercise by service tribunals of jurisdiction over criminal offences.

Where a defence member commits a criminal offence, there will almost invariably be some potential for that act to prejudice the discipline of the defence force or bring discredit upon it. However, in the past those disciplinary considerations have been allowed to dominate the question whether a matter

should be dealt with by a civil court or a service tribunal. In many cases these disciplinary considerations, being incidental to the commission of what must be viewed as a breach of the civil law, will not be such as to justify the exercise of service jurisdiction.

Defence members should not lose any of the rights and duties of a citizen upon their appointment as a defence member. However, a defence member tried before a service tribunal for a criminal offence may lose some of the protection to which he or she would otherwise be entitled. The most important protection that is lost is the right to trial by jury in the case of serious offences.

Service tribunals are invested with jurisdiction to deal with both the disciplinary and general community aspects of a charge for a service offence. However, as Brennan and Toohy JJ pointed out in the High Court in *Re Nolan; ex parte Young* (1991) 100 ALR 645, 'conviction for a service offence does not necessarily entail the same consequences in terms of disqualifications, forfeitures and disabilities as a conviction for a corresponding criminal offence.' It is understood, for example, that the civil authorities are usually not informed of convictions before service tribunals. Accordingly, such convictions are not available to be taken into account by a civil court in sentencing a defence member who at some later stage is convicted of a subsequent criminal offence. Nor can action be taken under the Proceeds of Crime Act against a defence member convicted of a service offence, as such offences are not indictable offences for the purposes of that Act.

There is a clear public interest in criminal charges against defence members being tried in the civil courts where it is convenient and practical to do so. The DPP's view is that these matters should only be tried before service tribunals where the potential prejudice to the discipline or reputation of the defence force arising from the commission of the alleged offences is so great that it outweighs the public interest in the case being dealt with in the civil courts.

The jurisdictional problems arising from the Defence Force Discipline Act were discussed at a meeting in late 1990 of Commonwealth, State and Territory prosecuting agencies. As a result of that meeting, it has been proposed to the Department of Defence that guidelines be formulated to assist in the resolution of the jurisdictional problems arising from the Act. Such guidelines would apply to all criminal offences, whether against State, Territory or Commonwealth law. A draft of such guidelines has been submitted to the Department of Defence for its consideration.

The need for some mechanism to resolve these jurisdictional problems has become particularly acute given the recent decision of the High Court in *Re*

Nolan referred to earlier. That case indicates that there is considerable divergence of opinion within the High Court as to the constitutional validity of the Defence Force Discipline Act.

Finally, as noted earlier, the Commonwealth DPP is now responsible for determining whether consent should be given to the prosecution of certain serious offences as service offences. This is not a function that the Office is comfortable with, given that in many instances the counterpart criminal offence will be one against State rather than Commonwealth law. It has been recommended to the Attorney-General's Department that section 63(1) be amended to require the service authorities to seek the consent of the relevant State or Territory authorities where the counterpart criminal offence is one against State or Territory law.

Migration Act - illegal entrants

The Office has recently recommended that either the *Migration Act 1958* or the regulations made under that Act be amended to enable an illegal entrant who is required to give evidence in Australia, but who is unlikely to return to Australia if deported, to remain in Australia until he or she has given evidence.

In recent years the DPP has conducted a number of prosecutions where the case has depended on the evidence of one or more illegal entrants. In a number of these cases the illegal entrants had travelled to Australia for the purpose of committing criminal offences and the chances of them voluntarily returning to Australia if deported were minimal. In such cases deportation of the illegal entrants could have resulted in the prosecution being discontinued.

The DPP acknowledges that there are risks involved in allowing an illegal entrant to remain in Australia. However, in some cases it will be preferable to take that risk rather than allow an important prosecution to collapse.

It is understood that the Department of Immigration, Local Government and Ethnic Affairs takes the view that once a person has been identified as an illegal entrant the Minister has no discretion but to make a deportation order. Further, when such an order has been made, the department considers that it has no discretion but to enforce it, except in circumstances specified in the Act or regulations. That interpretation of the legislation is open to question. However, it is clearly desirable that the issue be put beyond doubt.

It has been recommended that the legislation be amended to give the Minister, or an appropriate officer, a clear discretion to delay the deportation of an illegal entrant who is needed as a witness in criminal proceedings. Of course, it is recognised that in each case it will be necessary to balance the public interest in deporting an illegal entrant against the public interest in proceeding with the prosecution.

Section 85ZF of the Crimes Act

An apparent deficiency in section 85ZF of the Crimes Act came to light as a result of a series of prosecutions conducted by the Sydney Office. The allegations in those matters involved operators connecting international telephone calls without activating Telecom's billing equipment. In at least three of the cases the operators concerned were running a commercial operation connecting international calls for a fee.

The above prosecutions all involved charges under section 87(2) of the *Telecommunications Act 1975*. That Act has since been repealed, with the offence provisions being relocated in the Crimes Act. However, the new section 85ZF, which is the equivalent to the old section 87(2), contains the same apparent deficiency.

Under section 85ZF it is an offence to use an apparatus or device to, amongst other things, knowingly or recklessly cause a carrier to supply a telecommunications service to another person without payment by that other person of the proper rental, fee or charge.

In the only one of the prosecutions referred to above which was contested, the magistrate at the committal hearing ruled that an offence against the old provision in the Telecommunications Act was only committed if a person used an apparatus or device external to the telecommunications system.

It is considered that the deficiency with the section can be overcome by a relatively minor amendment.

Part IIIA of the Evidence Act

Part IIIA of the *Evidence Act 1905*, which is based on Part IIC of the NSW *Evidence Act 1898*, makes comprehensive provision for the admissibility of business records in judicial proceedings. One provision of Part IIIA, section 7J, enables authorised people, which includes members of the Australian Federal Police of or above the rank of sergeant, to give evidence 'on information and belief' of the contents of business documents even if the documents are not produced to the court.

One of the effects of section 7J is to permit AFP investigators to travel overseas, sight and copy relevant business documents and give evidence in Australia as to the contents of the documents. This section can save the need for original documents to be sent to Australia and for overseas witnesses to travel here solely to identify documents.

However, Part IIIA applies only to proceedings before federal courts and, for

the present, the Supreme Court of the ACT. The vast majority of Commonwealth offences are dealt with in State courts, so reliance must therefore be placed upon the relevant evidence law of the particular jurisdiction with respect to the admissibility of business records. Unfortunately, the laws of some jurisdictions are not as comprehensive as the provisions of Part IIIA of the Evidence Act. In particular, a number of jurisdictions lack an equivalent of section 7J.

There is always the possibility that witnesses will be unwilling to come to Australia to give evidence, even if only for the purpose of formally proving documents. The problems associated with having to secure the attendance of overseas witnesses are likely to be exacerbated under the new corporations legislation given that prosecutions for offences under that legislation will not infrequently require proof of overseas business records.

Accordingly, the DPP has proposed to the Attorney-General's Department that Part IIIA of the Evidence Act be extended to apply to criminal and civil proceedings, or at least those civil proceedings for which the DPP is responsible, before State courts exercising federal jurisdiction.

In addition, as the major proportion of corporate prosecutions the DPP will conduct over the next few years will involve offences against the former cooperative scheme law (i.e. offences against State law), the DPP has also pointed out the need for the evidentiary laws of a number of jurisdictions to be amended so that they contain a provision like section 7J.

Part IIIA of the *Crimes Act 1900* of NSW in its application to the ACT.

Part IIIA (sections 92-92U) of the *Crimes Act 1900* is, in effect, a code dealing with sexual offences.

Section 92K(1) provides that it is an offence for a person to commit an act of indecency upon, or in the presence of, another person who is under the age of 10 years. The offence is punishable by imprisonment for 12 years. Section 92K(2) provides for a separate offence in similar terms but relating to a young person between the ages of 10 and 16 years. It is punishable by imprisonment for 10 years. It is clear from these sections that age is a necessary element of each offence, and that the onus is on the prosecution to prove this element.

In one matter dealt with by the Canberra Office, the young person concerned was about 10 at the time of the alleged offences. However, as the complaint had been made some time after the alleged offences, the young person could not remember precisely on which day the alleged offences had occurred. The

defendant ultimately pleaded guilty. However, if the matter had proceeded to trial the prosecution may have faced problems in establishing beyond reasonable doubt the young person's precise age at the time of the alleged offences. In the circumstances there could have been doubt as to whether the child was under 10 years, and similarly whether the child was between 10 and 16. In short, even if the act of indecency was proved, if the age of the victim could not be established beyond reasonable doubt a jury would have had no choice but to acquit.

There would seem to be no possibility for a jury to bring in an alternative verdict in these matters. Part IIIA contains its own alternative verdict provision in section 92S which makes no provision for alternative verdicts with respect to the offences in section 92K.

The DPP also considers that there is a potential for similar difficulties in respect of other offences under Part IIIA (eg sections 92E and 92L).

The ACT Government Law Office has agreed that legislation is necessary to correct the difficulties in this area.

Analyst certificates in the Customs Act

The 1989-90 report noted that the DPP had recommended that section 233BA of the *Customs Act 1901*, and similar provisions in other Commonwealth legislation, be amended to address the issue of continuity of evidence, thus obviating the need to call an analyst solely to establish continuity in relation to the substance analysed.

This amendment was made to the Customs Act by section 27 of the *Customs and Excise Legislation Amendment Act 1990* which received Royal Assent on 21 December 1990. At the time of writing, work is in progress to settle an approved form for the analyst's certificate now required by section 233BA(2) of the Customs Act.

Statutory Declarations Act

Section 11(1) of the *Statutory Declarations Act 1959* provides that it is an offence for a person to wilfully make a false statement in a statutory declaration. Section 11(2) provides that the offence may be prosecuted either summarily or upon indictment. Where the offence is prosecuted summarily the maximum penalty is a fine not exceeding $200 or imprisonment for a term not exceeding six months, or both. If the offence is prosecuted upon indictment the penalty is imprisonment for a term not exceeding four years.

The DPP took the view that the penalty upon summary conviction was low

compared to the punishment available upon indictment, and that the monetary penalty had not kept pace with inflation. Accordingly, the DPP wrote to the Attorney-General's Department, which administers the Statutory Declarations Act, recommending that the penalty for the offence upon summary conviction be increased.

The Attorney-General's Department has agreed with the DPP's view and proposes to submit a bid for a legislative amendment at the earliest opportunity to increase the penalty available upon summary conviction.

Privacy Act - applications for Public Interest Determinations

In last year's report attention was drawn to the DPP's applications under the *Privacy Act 1988* for Public Interest Determinations to enable the Victorian Mental Health Review Board to have access to DPP files in certain cases, and to enable the DPP to pass relevant information to disciplinary bodies including public service disciplinary bodies. It was noted that the first mentioned application was being finalised and that the other application was 'part heard'.

On 26 October 1990 the Privacy Commissioner advised that he had made a determination (PID No.1) pursuant to section 72 of the Privacy Act relating to the Victorian Mental Health Review Board. This determination contains a number of conditions, one of which requires the DPP to report annually on the number of times that information has been disclosed to the Victorian Mental Health Review Board. As at 30 June 1991, no information had been disclosed to the Board under the determination.

On 29 November 1990 the Privacy Commissioner advised that he had made PID No.2 relating to the passing of information by the DPP to disciplinary bodies and that, in accordance with section 80 of the Privacy Act, the determination had been tabled in Parliament.

On 21 December 1990 the Chairperson of the Senate Standing Committee on Regulations and Ordinances wrote to the Privacy Commissioner advising that she had given a protective notice of motion of disallowance in respect of PID No.2. Senator Giles had taken this course of action in order to preserve the Standing Committee's option to recommend disallowance if the Privacy Commissioner was unable to satisfy various concerns held by the Standing Committee with respect to the determination.

At a meeting between the Privacy Commissioner and members of the Standing Committee held on 21 February 1991 it became apparent that the Standing Committee's main concern was that PID No.2 permitted the release of personal

information to public service disciplinary bodies but that this had not been made explicit in the notice published by the Privacy Commissioner under section 74 of the Privacy Act inviting expressions of interest and preliminary views from the public on the DPP's application. In the event, the Privacy Commissioner decided to revoke PID No.2 due to the procedural concerns which had been raised by the Standing Committee.

The Privacy Commissioner then decided to consider the DPP's application afresh. On 13 March 1991 a further public notice was published by the Privacy Commissioner which clarified that disclosure under the proposed determination was to be to disciplinary and regulatory bodies including public service employers. On 20 March 1991 the Privacy Commissioner circulated a copy of the new draft determination which was in terms largely similar to the revoked determination. A conference for the purposes of section 76 of the Privacy Act was set down for 17 May 1991. This conference seemed to attract less interest than the conference originally held to consider the revoked determination, although three new parties did attend. They were two public sector unions which opposed the making of the determination and the Complaints Unit of the NSW Department of Health which supported the proposed determination.

As at 30 June 1991, no decision had been made by the Privacy Commissioner on the DPP's application. Given that the DPP first made its application on 5 September 1989, it is regrettable that the situation is much the same as it was when reported on last year.

Heads of prosecution agencies conference

On 18 and 19 July 1991 the DPP hosted a conference of heads of prosecution agencies from a number of common-law countries. The conference was held in Sydney.

It is believed the conference was the first of its kind held in Australia. In addition to the various State, Territory and Commonwealth DPPs and equivalents, the people who attended the conference included:

- Sir Allan Green KCB QC, the DPP for England and Wales;
- Barbara Mills QC, the Director of the Serious Fraud Office in London;
- Charles Sturt, the Director of the New Zealand Serious Fraud Office;
- David Morris, the New Zealand Crown Solicitor, who was accompanied by Simon Moore and Michael Ruffin;
- John Wood CB, the DPP for Hong Kong;

- Tan Boon Teik, the Attorney-General of Singapore who was accompanied by Tan Chee Meng; and
- Bruce MacFarlane QC, an Assistant Deputy Attorney-General in Canada.

The conference was opened by the Commonwealth Attorney-General.

The aim of the conference was to give heads of prosecution agencies an opportunity to meet and to discuss matters of contemporary significance and general principle as well as issues of practical importance. Discussion at the conference was structured around papers prepared by the DPP and circulated in advance to participants, covering the following topics:

- Relationship between the prosecutor and police or other investigative body (discussion leader: Reg Blanch QC, the DPP for NSW);
- Examination of the role of the public interest in the decision to prosecute (discussion leader: Damian Bugg, the DPP for Tasmania);
- Ethics of the prosecutor (discussion leader: Bruce MacFarlane QC);
- Witness immunity/indemnity (discussion leader: John McKechnie QC, Crown Prosecutor for WA);
- International criminal law issues and problems (discussion leader: John Wood CB);
- Plea bargaining/accountability of the prosecutor (discussion leader: Sir Allan Green KCB QC);
- Presenting and prosecuting complex cases (discussion leader: Barbara Mills QC); and
- Role of the prosecutor in confiscation of criminal assets (discussion leader: Mark Weinberg QC).

The conference was highly successful and the view of the participants was that similar conferences should be held on a regular basis.

Multiculturalism: criminal law

In its discussion paper on *Multiculturalism: Criminal Law* (Discussion Paper No. 48) issued in May 1991, the Australian Law Reform Commission examined, among other things, the implications in a multicultural society of the legal principle that ignorance of the law is not a defence to a criminal charge.

The Commission noted that there are certain common features in the criminal law of all modern societies. Every legal system has an offence of murder, for

example, although the precise elements of that offence may differ from place to place. However, as the Commission observed:

> (E)ach society also has its own rules designed to maintain standards of health and safety and to regulate various social activities, for example, trading, drinking and smoking and shooting animals and birds. These rules vary considerably from place to place and so behaviour that is considered ordinary in one country or community may be treated as criminal elsewhere.

The Commission considered that the principle gives rise to special problems when it is applied to people who have lived much of their lives under a different legal system, particularly when that system does not prohibit the acts in question. The principle could also be seen as unduly harsh in its application to people who are prevented by language barriers from finding out about some relevant prohibition.

The Commission acknowledged that it would not be appropriate to address these problems by providing for a comprehensive defence of ignorance of the law. Rather it provisionally proposed that 'prosecution guidelines should include a provision that, in exercising their discretion to prosecute, the authorities should take into account the fact that a person did not know that what he or she did was an offence and could not reasonably be expected to have known'.

The Commission's proposal was discussed at a meeting of Australian heads of prosecution agencies in July 1991. The consensus of opinion was that the fact that a person did not know that what he or she did was an offence, and could not reasonably be expected to have known, was a relevant factor in determining whether the public interest required a prosecution.

The guidelines under which the DPP operates may not require any specific amendment to deal with this matter. Paragraph 2.10 of the *Prosecution Policy of the Commonwealth* lists a number of factors which may arise for consideration in determining whether the public interest requires a prosecution. They include any mitigating circumstances, the alleged offender's background, and the degree of culpability of the alleged offender in connection with the alleged offence.

Chapter 8
Administrative support

As stated in Chapter 1, there is an Administrative Support Branch in each DPP office which is responsible for providing services to that office.

The Head Office branch also has a coordinating role in areas of national importance. For the most part, however, administrative responsibility has been devolved to the regional offices or is in the process of being devolved. In 1990-91, for example, the responsibility for creating, abolishing and re-classifying positions was devolved to the regions.

Each regional branch is headed by an Executive Officer who works under the supervision of the appropriate Deputy Director.

During the year the Head Office branch was rearranged into two groups to reflect its dual role. One group now coordinates matters of national importance and the second group is concerned with the provision of administrative support to Head Office.

The Administrative Support Branches form a relatively small component of the DPP. Their workload is heavy and is increasing, mainly as a result of the need

to set up and support units to deal with the DPP's new responsibilities in relation to corporate crime. Some regions will need additional staff to meet the new demands.

The DPP has made considerable progress in a number of areas over the past year. Some of these are detailed in the remainder of this chapter.

Human resources

Staff numbers

As at 30 June 1991 the total number of staff in the DPP was 450. A breakdown of this figure appears in Tables 1 to 4.

The main development during the year was the creation and filling of positions in the new Corporate Prosecutions Branch. Approximately 20 positions were filled as at 30 June 1991, including 12 at Senior Executive Service level. Ultimately the proper performance of the new function will require at least 75 people.

Six of the new SES positions have been filled by legal specialists. This brings the total number of SES legal specialists employed by the DPP to nine. The DPP also employs two members of the private bar as in-house counsel, one in Sydney and one in Melbourne.

The appointment of in-house counsel is a relatively recent initiative which is already showing benefits in Sydney and Melbourne where the DPP has had in-house counsel for several years. The initiative should result in financial savings to the DPP as well as providing an improved career structure for DPP lawyers. In-house counsel also have an important role in training legal and para-legal staff.

Staff turnover for 1990-91 was 20 per cent for legal staff and 29 per cent for administrative staff. The rate was lower than it has been in some years, although it was still high enough to cause problems in some offices, particularly Brisbane where the turnover rate for lawyers was far higher than the national average.

A number of people who are employed as Administrative Service Officers perform duties as para-legal clerks. Para-legal clerks conduct legal research, prepare informations and summonses in routine matters and generally provide clerical and administrative support for DPP lawyers.

Table 1: Staff as at 30 June 1991

Classification (i)	HO	Vic	NSW	SA	WA	QLD	ACT
Director	1						
SES Band 3	1		1				
Band 2	1	1	1	1	1	1	1
Band 1	7	5	9	4	3	3	2
Legal 2	6	17	22	4	4	6	6
Legal 1	1	19	27	7	4	10	13
SITOB	2	1					
SITOC	3		1				
ITO2	1						
SPOB	1						
SPOC		1	1	1	1	1	1
PO2	1		2				
PO1	1						
Journalist	1						
SOG B	3	3	2	1	1		
SOG C	1						
ASO 6	4	4	5	1	1	2	
5	2		1		1	1	1
4	1	8	21		2	2	1
3	7	12	23	6	6	6	7
2	2	16	24	5	10	8	6
1	2	13	14		1	2	
Office trainee		2					
Total	**49**	**102**	**154**	**30**	**35**	**42**	**38**
Grand total	**450 (unpaid inoperative staff are not included)**						

Legend

SES	Senior Executive Service Officer
SITO	Senior Information Technology Officer, grade B or C
ITO	Information Technology Officer
SPO	Senior Professional Officer, grade B or C
PO	Professional Officer, grade 1 or 2
SOG	Senior Officer, grade B or C
ASO	Administrative Services Officer, classes 1 to 6

Staffing summary

Director	1
Total number of staff employed under the Public Service Act	441
Total number of staff appointed or employed under the DPP Act	8
Total	**450**

The total number of temporary staff included in this figure is 45.

Table 2:

Staff as at 30 June 1991 by gender and category

Category	Full-time		Part-time	
	Male	Female	Male	Female
Director	1			
SES				
Band 3	2			
Band 2	7			
Band 1	25	8		
Legal	91	50	1	4
Senior Officer	7	3		1
Administrative Service Officer	51	170	2	8
Information Technology Officer	7	1		
Professional Officer		9		1
Journalist				1
Total	**191**	**241**	**3**	**15**

SES gains for the year were 17 and losses were four.

The proportion of staff dedicated to corporate support in 1990-91 was 18 per cent.

Table 3:
Staff allocation & usage by office

Office	Approved average staffing 1990-91	Actual average staffing 1990-91	Allocation 1991-92
Head Office	43	46.56	47
NSW	142	140.50	153
Vic	108	106.00	110
QLD	45	40.14	47
WA	32	36.00	39
SA	29	28.50	29
ACT	39	35.00	
Unallocated	51		89
Total	**489**	**432.7**	**514**

The unallocated positions cover staffing for corporate prosecutions and war crimes. They will be allocated in each location as required.

Table 4:
Staff allocation & usage by program

Program	Estimate 1990-91	Actual 1990-91	Estimate 1991-92
Prosecutions (i)	298	243.4	354
Criminal Assets	55	54.2	55
Executive and Support	103	106.3	105
ACT Prosecutions (ii)	33	28.8	
Total	**489**	**432.7**	**514**

(i) Including the corporate prosecutions function

(ii) This program will cease on 30 June 1991. Resources required to conduct Commonwealth prosecutions in the ACT, 6.2 staff years for 1991-92, will be transferred to the Prosecutions program.

Legal officers award

The most significant development in the personnel area during the year was the introduction of a new award for lawyers below SES level. The award came into operation in January 1991 and was the culmination of extensive negotiations between the unions, the Attorney-General's Department and other affected agencies including the DPP.

Under the new award, all legal positions below SES were reclassified as either Legal 1 or Legal 2. Salary advancement within these classifications is dependent upon an officer achieving a satisfactory rating under a staff appraisal scheme, as measured against a performance agreement settled at the start of the appraisal cycle. There is provision for accelerated advancement when an officer's performance has been rated as being above competent.

The new structure has gone some way to addressing the DPP's problems in attracting and retaining legal staff. However, problems still remain at the top of the Legal 1 and Legal 2 classifications. The DPP needs greater flexibility to pay lawyers at those levels what they are worth.

Some problems have emerged in the implementation of the appraisal scheme. Most of these are likely to be resolved by discussions with the unions and the Attorney-General's Department. However, it may be necessary for some issues to be taken before the Industrial Relations Commission at some stage.

The DPP plans to review the operation of the appraisal scheme when the award has been in operation for a full year.

There has been an appraisal scheme in force for SES staff since April 1990, although it is not linked to salary advancement.

Other awards

In the course of the year a review was conducted in each DPP office to assess the effectiveness of changes introduced as a result of the Office Structures Implementation exercise.

Changes were made in a number of places following the review. These included the restructuring of the Administrative Support Branch in Head office that has already been referred to, a restructuring of the Administrative Support Branch in the Sydney Office and an upgrading of the positions of Executive Officer in Adelaide, Perth and Brisbane.

Training and development

Under the new legal officers award, lawyers at Legal 1 level are required to receive a minimum of twenty hours of continuing legal education each year. Lawyers at Legal 2 level are required to receive a minimum of five hours training each year and provide a minimum of four hours training.

Prior to the new award coming into operation, NSW was the only place where there was a formal requirement for DPP lawyers to participate in continuing legal education. The training requirements under the award are met by a combination of in-house seminars and external courses. The cost is borne by the DPP.

Training for administrative staff is not geared to any industrial award. It is the responsibility of each Deputy Director to ensure that staff are receiving appropriate training.

The DPP is currently working to develop a national training program. The project has been delayed because of the need to incorporate the training requirements of the new lawyers award. However, the DPP should be in a position to discuss a draft program with the unions in the new year.

During the year the DPP reviewed its studies assistance scheme and developed a new study-bank policy which is currently being considered by the unions. The new policy is designed to encourage staff to undertake study by providing financial and other support. The policy will give managers greater flexibility than in the past so that study assistance can be geared to the needs of the individual officer while maintaining operational efficiency.

The DPP also holds national conferences each year for prosecutors, criminal assets lawyers, corporate prosecutors and executive officers. In addition, the Sydney and Brisbane offices conduct two day conferences each year for legal staff. These conferences provide an opportunity for people to discuss and resolve issues of common concern. They also provide a forum for the exchange of information and experience and form an important part of the DPP's training strategy.

The DPP did not participate in any staff interchange scheme during the past year.

The average number of staff in the DPP for 1990-91 was 433, the annual payroll for the purposes of the *Training Guarantee (Administration) ACT 1990* was $16 744 471 and the one per cent minimum training requirement was $167 445. Net eligible expenditure on training for the year was $460 572 after taking into account the sum of $35 730 allocated by the Public Service Commission for middle management training. There was accordingly no

shortfall for the purposes of the *Training Guarantee (Administration) Act 1990*. A further $48 137 was spent on training that did not meet the definition of eligible training.

There was an average of 2.8 training days per staff member during 1990-91 and 90 per cent of staff participated in training activities.

Total expenditure for middle management training was $64 842, which includes a sum of $35 730 allocated to the DPP by the Public Service Commission for middle management training.

There was an average of 2.1 training days for each member of the SES. The training programs they attended included the SES Development Module, the Senior Women in Management program, the Executive Development Scheme, performance appraisal training and other personal development activities.

Further details on the DPP's training activities appear in Table 5.

Table 5:
Expenditure on training

(a) Eligible training programs (i)

Programs	Time spent (person days)	Money spent
Internal	294	$ 92 806
Service wide	65	$ 25 670
External	746	$171 078
Work experience	33	$ 11 915
Other	77	$ 30 777
Course fees, travel, etc.		$164 054
Total	**1 215**	**$496 302**

(i) As defined in the *Training Guarantee (Administration) Act 1990*.

(b) Middle management training

A total of $64 842 was spent on middle-management training made up as follows:-

Head Office $ 9 917 Regional offices $54 925

This figure is included in part (a).

(ii)An additional $48 137 was spent on training that does not comply with the definition of eligible training.

Equal employment opportunity

The DPP recognises the need to discourage discrimination in all its forms in order to ensure the most effective use of the skills and abilities of all staff members.

In May 1991 the Public Service Commission approved a new Employment Equity Plan for the DPP. The new plan is essentially a revised version of the previous EEO plan, although it is more comprehensive, addressing all aspects of personnel administration and the need to eliminate harassment. The new plan has been discussed with the unions but will not be put into operation until it has been ratified by them. Hopefully that will occur early in the new year.

A key element of the new plan is the devolution of responsibility for EEO to the regional offices. The Deputy Directors will have primary responsibility for implementing the plan, with Head Office performing a supervisory role and providing assistance as needed through a national coordinator.

This move is designed to ensure that the responsibility for EEO rests with the people who are directly affected by it and who are best placed to assess the effectiveness of the DPP's plan. In particular, the Deputy Directors will be responsible for preparing schedules for the implementation of the plan and for ensuring that the schedules are complied with.

The DPP has had success in attracting and retaining competent female lawyers. Over one third of all lawyers are female and, as at 30 June 1991, eight women, all lawyers, occupied positions in the SES.

There has been slower upward movement among women employed in clerical positions. This is an issue which will be addressed under the new Employment Equity Plan.

During the year the DPP arranged to employ a legal undergraduate under the Aboriginal Cadetship Program. The person concerned will start work as a professional assistant in the Melbourne Office early in the new year.

No EEO-related grievances were lodged during the year.

The major EEO priorities for 1991- 92 include:

- the implementation of the revised Employment Equity Plan throughout the regions, including the development of effective review and evaluation mechanisms;
- the conduct of a nation-wide EEO survey, the product of which will be fully integrated into the DPP's personnel information system so that accurate statistical profiles of staff may be prepared; and

- the maintenance of regular reporting on EEO activities in quarterly reports to the Attorney-General.

Table 6:
EEO Profile of the DPP as at 30 June 1991

Classification (i)	Male	Female	ATSI	PWD	NESB1	NESB2
Director	1					
SES 3	2					
2	7					
1	25	8		2		1
Legal 2	42	24		1		1
Legal 1	50	31			2	2
Senior Officer						
Grade B/C and eq.	14	15				
Admin. Serv. Off. Class 5-6 and eq.	11	17		2	1	
Admin. Serv. Off. Class 1-4	42	161		4	3	5
Total	**194**	**256**		**9**	**6**	**9**

Legend

ATSI Aboriginal and Torres Strait Islanders

PWD People with Disabilities

NESB1 Non-English Speaking Background, born overseas and arrived aged 5 or more

NESB2 Non-English Speaking Background, first generation or arrived as infants

Note (i): The above categories, other than Male and Female, only include officers who have voluntarily identified themselves as belonging to a particular group. The figures in the table may accordingly be incomplete.

Industrial democracy

The DPP is committed to the principles of industrial democracy. An Industrial Democracy Plan was settled with the relevant unions in 1988 and was revised in 1989.

The plan provides for formal consultative meetings with the unions at regional and national level. These meetings are held with varying frequency in different places. The next meeting of the national Industrial Democracy Committee will

be held in Canberra in July 1991. While formal meetings are important, they are not a substitute for regular consultation in the workplace.

The DPP has always had a close relationship with the Australian Government Lawyers Association. That is not surprising given that a majority of senior positions in the DPP are occupied by lawyers, many of whom are members of AGLA and some of whom are past or present office bearers in the union. The DPP has had less contact with the unions that represent its clerical and administrative staff.

The position is likely to change however. AGLA is in the process of merging with the Professional Officers Association which, in turn, appears likely to merge with the Public Sector Union. It seems likely that there will soon be a single union representing all DPP staff. That should simplify the lines of communication and help advance industrial democracy for all staff.

Occupational health and safety

The DPP has prepared a draft Occupational Health and Safety policy statement and a draft agreement which will be discussed with the unions at the July meeting of national Industrial Democracy Committee.

The draft documents reflect the requirements of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* which will come into operation on 6 September 1991. They provide for each DPP office to become a designated work group, with committees at regional and national level.

In the meantime, Occupational Health and Safety contact officers in each office are responsible for ensuring that the DPP provides a safe workplace for its employees. For the most part that involves ensuring that all officers have and use ergonomically sound furniture and that staff observe safe procedures when operating keyboard equipment.

Post-separation employment

During the past year the DPP did not receive any applications under Chapter 13 of the *Guidelines on Official Conduct of Commonwealth Public Servants*. That chapter applies to officers who propose to accept business appointments on retirement or resignation from the Public Service.

Financial management

Audited financial statements are included at the end of this report. They give a detailed picture of the financial position of the DPP.

In summary, the DPP's expenses for 1990-91 totalled $37.656 million and income was $6.252 million. The corresponding figures for 1989-90 were $33.571 million and $3.359 million.

The increase in expenditure from 1989-90 was due primarily to inflation and the assumption by the DPP of the corporate prosecutions function. The increased income resulted mainly from financial arrangements under which the ACT government paid the DPP for services provided in the ACT.

The DPP's budget for the year was $46.820 million. A substantial underspending occured because proceedings under the *War Crimes Act 1945* were delayed while the High Court considered the validity of the legislation. Of $9.5 million budgeted for proceedings under the War Crimes Act, only $0.327 million was spent.

Program budgetting

In 1990-91 the DPP operated under four programs: Prosecutions, Criminal Assets, Executive and Support, and ACT prosecutions. Corporate prosecutions were treated as part of the Prosecutions program. Details of the activities carried out under each program appear in the relevant chapters of this report. The expenditure incurred in respect of each program appears in the financial statements at the end of this report.

The cost of ACT prosecutions during 1990-91 was approximately $2.115 million. The ACT government paid $2.769 million to the Commonwealth for the service. This reflected the direct costs to the DPP plus additional costs incurred by the Commonwealth, such as superannuation and the cost of providing centralized corporate services.

Financial systems

The past year saw a continuation of the service wide trend to devolve financial responsibility to program areas. The DPP responded by purchasing a new financial management information system, called FINEST, to give the Office greater capacity and flexibility in financial management.

The FINEST system was purchased as a result of recommendations made by an evaluation group consisting of representatives from all offices and from a range of levels. The system is co-ordinated from Head Office, but its main advantage is that it allows a great measure of control to be devolved to the regional offices.

It is proposed that the system administrator in each office will become responsible for testing and developing a particular module of the FINEST system. There should then be a number of experts on the system within the DPP, instead of just one or two. That should ensure maximum involvement in the system by the people who use it while at the same time sharing the burden of maintaining the system.

The other main financial system operated by the DPP is the fines and costs management system. This is used to maintain a record of fines and costs awarded against defendants in Commonwealth matters and to record payments made by defendants. The system is used to ensure that recovery action is taken when fines and costs are not paid and that such action is discontinued when money is received.

The DPP is still working on producing a *Financial Handbook* and a *Fines and Costs Manual*. Work on these projects was delayed because the need to set up the FINEST system and train operators in its use took priority.

Fraud Control

The DPP prepared a Fraud Control Plan in 1989 which is still in force. The plan is due to be reviewed next year.

The DPP does not consider itself to be at high risk of fraud. Most of the DPP budget is spent on salaries, administrative support and legal expenses. There are clearly risks of fraud in these areas, but the scope for large-scale fraud is limited.The plan relies on a system of authorisations and delegations designed to separate different aspects of the procurement and revenue collecting processes. All administrative support systems have internal control mechanisms such as passwords and in-built audit trails. The DPP utilizes the services of the Internal Audit Unit of the Attorney-General's Department to ensure that its control measures are adequate.

Several new administrative systems have been introduced during the year which should assist in the control of assets and money. These include the FINEST system which has already been referred to.

The DPP regards fraud in any form as a serious matter, particularly if it is alleged that a DPP officer was involved. Appropriate cases will be referred to the Australian Federal Police for investigation with a view to possible prosecution. The DPP has not entered formal arrangements with the AFP in this respect. However the DPP is as well placed as any Commonwealth agency to consider each case on its merits.

The DPP does not see itself as having an investigative function in relation to fraud. If an investigation is required, the matter will be referred to the AFP.

The DPP is highly conscious of the need to control and prevent fraud. The subject is covered in the staff induction process and is addressed in staff training whenever an appropriate opportunity arises.

There were no cases of fraud or suspected fraud reported during the year. Accordingly, no cases were referred to the AFP and there were no relevant disciplinary proceedings under the *Public Service Act 1922*.

Claims and losses

The total cost to the Commonwealth of claims and losses incurred by the DPP during the year, other than costs incurred in the course of litigation conducted by the DPP, was less than $10 000.

It follows that there were no individual claims or losses that resulted in a net cost to the Commonwealth of $50 000 or more.

Purchasing

A DPP Purchasing Reform Plan was approved by the Attorney-General during the year. A *Purchasing Handbook* is being prepared to give effect to the plan.

The implementation of the FINEST system should improve the efficiency of the DPP's purchasing activities. The DPP is also making increased use of government credit cards, which is reducing administrative costs in this area.

There were several occasions during the year on which the DPP failed to comply with the requirement to notify details of purchases in excess of $2 000 in the *Commonwealth (Purchase and Disposal) Gazette*.

All instances occurred through oversight. Most of the failures occurred while officers were involved in setting up the FINEST system. This imposed a heavy additional burden on everyone involved in the project and disrupted normal work.

The FINEST system is now up and running and the DPP should have less difficulty complying with gazettal requirements in future.

Consultancy services

Section 28 of the DPP Act gives the Director power to engage consultants. The DPP's policy is to only engage consultants in cases where the Office needs special skills which are not available in-house and where the most cost effective way of obtaining the skills is by hiring consultants.

The DPP's practice has been to invite expressions of interest from a number of consultants who are known to have the expertise required for a particular task and who seem likely to be interested in tendering for it.

During 1990-91, the DPP incurred expenditure under seven consultancy agreements at a total cost of $425 699. Not all payments realted to work performed in the period under review. Details appear in Table 7.

Table 7: Consultancy services

Consultant	Purpose	Cost	Justification
Commonwealth Rehabilitation Service	Conduct health risk assessment of keyboard positions	1 070	Expertise not available in-house
L. Flatters	Consult on acquisition and implementation of computer systems	21 356	Expertise not available in-house
Coopers & Lybrand	Provide training on performance appraisal	22 747	Expertise not available in-house
P. Coghlan	In-house counsel in Winchester Inquiry	78 973	Cost effective means of obtaining experienced counsel
T. Buddin	In-house counsel, Sydney	100 000	Cost effective means of obtaining experienced counsel
B. King	In-house counsel, Melbourne	100 000	Cost effective means of obtaining experienced counsel
P. Coghlan	Associate Director and, as required, Acting Director (including travel and accommodation)	101 553	Cost effective means of obtaining experienced counsel as Associate Director
Total		**$425 699**	

The above consultancies were not publicly advertised before being filled.

Libraries

The DPP libraries operate as a network providing legal materials and a reference and information service to the Office.

All libraries have access to local and overseas databases. A considerable amount of legal information is now available on compact discs, in CD-ROM form, and most libraries have purchased readers to take advantage of this development. The Head Office library produces a monthly information service covering legal developments of interest to the DPP and is responsible for maintaining ORACLE, which is the DPP's opinion database.

As foreshadowed in the last report, the DPP has purchased a library management system, the Wang-based LIBMAN. The system has now been

implemented and all libraries are in the process of adding records to the system. By the end of 1991 all staff should have access to an enquiry module through desk-top computers.

All regional office libraries, with the exception of Perth, have been permanently staffed in line with new classification standards. The position in Perth is to be advertised soon. In Head Office the position of Library Coordinator has been permanently filled and a Systems Librarian has been appointed to maintain LIBMAN and other on-line systems.

Information systems

As in other areas of DPP administration, the responsibility for providing computer support to the Office has been largely devolved to the regions with Head Office retaining a supervisory and support role. The DPP's computer system is networked throughout the Office. It is also connected to the IBM mainframe computer of the Attorney-General's Department. That gives the DPP access to some information systems maintained by the department.

Computer systems are used extensively for litigation support in major cases, where there are invariably large numbers of documents and lengthy transcripts. Such cases can become virtually unmanageable without the indexing and search facilities provided by computer technology. The DPP also uses computer systems for case matter management. The proposed development of a new system to keep track of cases in the corporations areas has already been mentioned in this report. The DPP also uses computers to maintain management and personnel systems including the fines and costs management system, FINEST and LIBMAN which have also been mentioned.

The DPP has adopted an Information Technology Strategic Plan to coordinate future developments in this area. The main strategy of the plan is a move towards greater use of personal computers and away from dumb terminals. That should give lawyers and other staff the flexibilty needed to take maximimum advantage of developing technology in this area.

Capital works

In the past year the DPP did not engage in any capital works that cost $6 million or more.

Program evaluation

The DPP has a three year Program Evaluation Plan which came into operation in 1990. So far there has been an evaluation of some aspects of the criminal assets function and an evaluation of the fines and costs function has commenced.

There has been some slippage of the timetable in the evaluation plan, due largely to the novel nature of this work for the DPP. However, it is hoped that a major evaluation of the prosecution function will commence next year.

The evaluation of the criminal assets function concluded that the work in that area is performed effectively and that the resources allocated are being used efficiently. It found that the management practices in different offices varied but that there was no need to make major changes to office procedures.

The proposed introduction of a computerised case management and information system for criminal assets matters should make it easier to conduct future evaluations in this area.

The evaluation of the fines and costs function was initially intended to cover all aspects of the function. However, the project was reviewed following discussions with the Department of Finance, which has extensive experience in conducting evaluations. It was decided to reduce the scope of the evaluation, at least until after an analysis of the type of information that can be extracted from the fines and costs management system.

Since then, the information needed to carry out the proposed evaluation has been identified and the reporting format of the system has been changed in order to obtain it. The evaluation will resume in the new year.

It has become apparent, even from the limited evaluations undertaken to date, that the resources required to properly carry out an evaluation are greater than was expected. It may be necessary for staff to be dedicated to program evaluation on a full-time basis, at least when major aspects of large programs are being reviewed.

Social justice

The DPP's activities are directed to ensuring compliance with the laws of the Commonwealth by deterring the commission of offences against those laws.

Paragraph 2.13 of the *Prosecution Policy of the Commonwealth* provides that decisions made in the prosecution process must not be influenced by considerations of race, religion, sex, national origin, political association or beliefs. The same principle applies in relation to the recovery of criminal assets, and indeed to all areas of the work of the DPP.

The DPP is well placed, because of its independent status, to resist pressure from vested interest groups and to ensure that the Commonwealth criminal justice system operates as fairly and equitably as possible.

DPP officers regularly participate in training sessions for staff of investigating agencies. Part of their role is to ensure that investigators are aware of the prosecution policy and, in particular, the importance of ensuring that decisions are not influenced by improper consideration.

The DPP's current Access and Equity Plan came into effect in February 1991. It is designed to ensure that there is no discrimination in the opportunities given to people dealing with the DPP. In particular, it provides that there shall be equal opportunity to all properly qualified and competent counsel to be retained in those cases where the DPP briefs barristers from the private bar.

External scrutiny

Auditor-General

The DPP was referred to in one report by the Auditor-General during the year. The relevant report was *Audit Report No. 22 1990-91: Aggregate and Departmental Financial Statements 1989-90.*

The relevant part of the report was as follows:

> 9.9 The results of the audit of the accounts and records of the DPP were satisfactory. The audit report on the Financial Statements for the DPP for 1989-90 was unqualified.
>
> The DPP did, however, breach Finance Direction 3K on numerous occasions. This Direction requires that revenue be accounted for promptly in the Department of Finance ledger. The breach referred to operations of DPP Fines and Costs bank accounts through which money collected by State courts on behalf of the Commonwealth is processed. Monies are held in these accounts pending identification of the convicted person paying such fines and/or costs and of the Commonwealth Department or agency to whom the money is to be disbursed. The system involves dealing with all State courts and as a result in many cases it is difficult to identify such details and money may take some time to be processed. An evaluation of the Fines and Costs function is to be completed by the end of 1991 and recommendations are expected to be made to improve processes.

Freedom of information

During the year, two requests were received under the *Freedom of Information Act 1982.* One request was refused and one matter was unresolved as at 30 June 1991.

The total fees charged were $30. The completed matter was dealt within 30 days.

A statement for the purpose of section 8 of the Freedom of Information Act appears as an Appendix to this report.

Privacy

The Privacy Commissioner had no occasion in the past year to investigate acts or practices of the DPP. Accordingly, there were no reports served on the DPP under section 30 of the *Privacy Act 1988*.

Dealings between the DPP and the Privacy Commissioner in relation to a proposed Public Interest Determination that would permit the DPP to provide information to disciplinary bodies are described in Chapter 7.

Public comments

The DPP has no formal arrangements for inviting complaints from the general public. However, any person is at liberty to write to the Director and many people do so.

Most of the correspondence received during the year was from people charged with criminal offences, or their solicitors, asking that the matter not proceed. All such request were considered on their merits. Statistics on the results in cases where representations were made after committal appear in Chapter 2.

A large proportion of the remaining correspondence concerned alleged offences which, in the writer's opinion, should have been the subject of prosecution. In many cases the correspondence concerned actions by politicians and others in the public eye.

This correspondence was also considered on its merits. Any case in which it appeared that there might be substance to an allegation was referred to the AFP or other appropriate agency for investigation.

Most of the remaining representations concerned perceived deficiencies in the criminal law or the criminal process, including the time taken by that process. Where appropriate, such representations were referred to the Attorney-General's Department.

During the past year only one change was made to DPP practices as a direct result of comments received from a member of the public. The matter concerned documents that had been given to a process server to be delivered to a witness together with a subpoena. The witness resisted service and the subpoena and documents were left at his feet. The witness subsequently pointed out that the documents, which contained confidential information, could have blown away if he had not picked them up.

All DPP offices have been asked to ensure that in future cases of this kind documents are given to the process server in a sealed envelope.

During the course of the year a number of comments were made by judges and magistrates in relation to different aspects of Commonwealth legislation. All such comments were drawn to the attention of the Attorney-General's Department.

Other

During 1990-91, the DPP's activities were not the subject of any concluded inquiry by a Parliamentary Committee and were not the subject of a report by the Ombudsman under a relevant provision of the *Ombudsman Act 1976*.

There were also no decisions by any courts or administrative tribunals that required changes to the administrative procedures of the DPP.

Impact monitoring

Status of women

The DPP does not have specific policies addressing the status of women, other than in relation to employment issues addressed under EEO.

Given the nature of the functions the DPP performs, the Office has limited capacity to promote the status of women other than in the general sense of ensuring that there is no discrimination against them in the criminal process. That includes ensuring that all relevant matters are placed before judges and magistrates called upon to sentence female offenders.

The DPP does not have a women's unit. The responsibility for ensuring that proper consideration is paid to the status of women rests on the Deputy Directors.

Environmental matters

The DPP has appointed an officer to be its energy manager. That officer has attended a training course and has put systems in place with a view to measuring the DPP's energy use.

However the DPP has not yet put in place any specific energy improvement measures.

The capacity for the DPP to conserve energy is somewhat limited as the DPP occupies leased premises and runs a fleet of vehicles hired from the Department of Administrative Services. DPP Office Managers are already aware of the need to make the most efficient use of resources. However, the energy manager will review all practices to ascertain whether further savings are possible.

The DPP's Purchasing Reform Plan requires that preference be given to environmentally sound products whenever possible. Similarly, waste is recycled wherever practicable.

No action was taken during the past year which concerned matters covered by the *Australian Heritage Commission Act 1975* or the *Environment Protection (Impact of Proposals) Act 1974*.

Business regulations

The DPP has no role to play in business regulation, other than to prosecute criminal offences in appropriate cases.

The DPP's activities in this respect are reported in Chapter 4.

Prosecution statistics and processing time

The following tables and graphs provide a picture of the prosecutions conducted by the DPP during the year in NSW, Victoria, Queensland, Western Australia and South Australia.

For the reasons noted in last year's report, only basic information is provided on prosecutions conducted by AGS Hobart and Darwin.

Largely because of the unique nature of its practice within the DPP, the Canberra Office only entered data onto the DPP's case matter management system for certain matters, for example where a summary matter referred by the Australian Federal Police was to be defended or where there had been a request for particulars. Accordingly, in the case of the Canberra Office it has not been possible to compile statistics in the areas covered by the following tables and graphs. However, the statistics provided in Chapter 6 dealing with the operations of the Canberra Office provide a reasonably detailed picture of the prosecutions conducted by that office for offences against both ACT and Commonwealth law.

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.

Worthy of special mention is the drop in social security prosecutions indicated by the statistics. While there was only a slight fall, of approximately four per cent, in the total number of defendants dealt with by the DPP compared with the corresponding figure for the preceding financial year, there was a 21.5 per cent drop in the number of defendants dealt with for offences in the social security area. The number was down to 1 254 defendants from the 1989-90 figure of 1 598.

The fall in social security prosecutions can be attributed almost exclusively to the decision of the South Australian Court of Criminal Appeal in *Bartlett*, which is the subject of a note in Chapter 7 of this report. Despite the fall in numbers, however, it proved necessary to allocate more resources to this area of practice than had been the case in previous years. The Department of Social Security required considerable assistance from the DPP in preparing briefs of evidence to avoid relying on evidence which would be inadmissible by reason of section 165 of the Social Security Act. Matters referred for prosecution required careful scrutiny to determine whether charges could be laid which would not be affected by the decision in *Bartlett*. There was also a certain amount of double handling, with some matters in the post-committal stage being discontinued and fresh proceedings instituted on summary charges which did not rely on evidence which was inadmissible by virtue of section 165.

Once the problems posed by section 165 have been rectified by an amendment to the Social Security Act it can be expected that prosecutions in this area will return to the old level. Indeed, as a result of changes to the arrangements for the referral of cases for prosecution that were agreed to in the latter half of the financial year, future years could well see an increase in the number of prosecutions in this area. Under the new arrangements, in most places the Department of Social Security will no longer filter out those cases that it considers do not warrant prosecution in the public interest; rather that decision will be made by the DPP. This change was made with the objective of achieving a greater measure of consistency in charging practice in this area.

Table 1(a)
Matters dealt with summarily in 1990-91 (i) (vii)

State	Defendants outstanding at 1.7.90	Matters received during year	No. of defendants dealt with	Pleas of guilty to all charges	No. of summary trials
NSW(v)	356	922	811	629	139
Vic.	666	887	878	731	71
Qld	62	530	522	425	49
WA	93	719	651	609	37
SA (vi)	249	1085	1047	903	54
Total	**1 426**	**4 143**	**3 909**	**3 297**	**350**

Notes : (i) See tables in Chapter 6 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. defendant died prior to hearing

(iv) e.g. all charges against a defendant withdrawn or no evidence offered by the prosecution in respect of any charge.

(v) Does not include certain prosecutions conducted in south-eastern NSW by Canberra DPP.

(vi) The Adelaide Office conducted 555 prosecutions of people who failed to vote in the 1990 federal election. While 40 of the defendants concerned entered a plea of guilty, in 512 cases the charge was found proven following an 'ex parte' hearing. The matters dealt with 'ex parte' have been recorded as pleas of guilty for the purposes of this table.

Outcome of summary trials

No. of defendants convicted (ii)	No. of defendants acquitted on all charges	Unresolved (iii)	Other (iv)	Defendants outstanding at 30.6.91
85	49	6	42	467
55	17	-	75	675
32	20	-	45	70
29	9	-	4	161
48	7	-	89	287
249	**102**	**6**	**255**	**1 660**

(vii) The Australian Government Solicitor, Hobart, dealt with 337 defendants, 320 of whom pleaded guilty. Ten defendants were convicted following a plea of not guilty. One defendant was acquitted on all charges, and all charges were withdrawn in respect of the remaining 6 defendants. The Australian Government Solicitor, Darwin, dealt with 151 defendants, 129 of whom pleaded guilty, and all charges were withdrawn or proceedings were otherwise discontinued in respect of the remaining 20 defendants.

Table 1(b)
Legislation: matters dealt with summarily in 1990-91 (i)

Legislation	NSW	Vic.	Qld	WA	SA	Total
Australian Federal Police Act	9	1	2	1	2	15
Air Navigation Act or Civil Aviation Act	7	7	13	3	7	37
Bankruptcy Act	5	9	5	2		21
Cash Transaction Reports Act	8	13	10	14	3	48
Commonwealth Electoral Act	8	14		5	555	582
Continental Shelf Act				84		84
Copyright Act	7	1	2	1		11
Crimes Act	250	239	108	166	142	905
Crimes (Currency) Act	3	5		1	6	15
Customs Act	47	52	28	24	15	166
Export Control Act		2	2		1	5
First Home Owners Act	5	9	17	9	3	43
Fisheries Act	7	1	5	95		108
Health Insurance Act		4	1			5
Marriage Act	3	1			1	5

Legislation	NSW	Vic.	Qld	WA	SA	Total
Migration Act	16	9	1			26
Non-Commonwealth legislation (ii)	69	69	57	28	7	230
Passports Act	8	3		3	1	15
Postal Services Act	5					5
Public Order (Protection of Persons and Property) Act	1	4	20	1		26
Proceeds of Crime Act	1					1
Quarantine Act	6		2	1		9
Radio Communications Act	9	5	6	7	3	30
Social Security Act	178	313	172	167	152	982
Statutory Declarations Act	3					3
Student Assistance Act	29	8	8	5	7	57
Taxation legislation	65	10	7	19	10	111
Telecommunications Act	1	3		4	2	10
Trade Practices Act	3					3
Wildlife Protection Act	2		2			4
Other	14	21	9	7	41	92
Total	**769**	**803**	**477**	**647**	**958**	**3 654**

Notes: (i) See tables in Chapter 6 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.

Table 1(c)
Crimes Act 1914: matters dealt with summarily in 1990-91 (i)

	NSW	Vic.	Qld	WA	SA	Total
Breach of recognisance etc. (ss.20A, 20AC)	1	10	1	12	4	28
Damage property (s.29)	7	4	1	2	27	41
False pretences (s.29A)	22	11	4	3	2	42
Imposition (s.29B)	84	68	40	81	23	296
False statements (s.29C)		1	1			2
Fraud (s.29D)	6	20	5		1	32
Seizing Commonwealth goods (s. 30)		2	1		2	5
Offences relating to administration justice (ss.32-50)		2	1			3
Forgery and related offences (ss.65-69)	47	42	29	23	15	156
Disclosure of information (s.70)	1					1
Stealing or receiving (s.71)	24	21	14	20	12	91
Falsification of books (s.72)	5		1			6
False returns (s.74)		3				3
Personating public officers (s. 75)			1	1		2
Resisting etc. public officers (s. 76)	1	2			2	5
Espionage and official secrets (ss. 77 - 85D)		1				1
Offences relating to postal services (ss. 85E - 85ZA)	14	6	2	8	8	38
Offences relating to telecommunications services (ss. 85ZB - 85ZKB)	25	32	6	10	28	101
Conspiracy (s.86)	2	10				12
Trespass on Cwlth land (s.89)	4			2	8	14
Other	7	4	1	4	10	26
Total	**250**	**239**	**108**	**166**	**142**	**905**

Notes : (i) See Chapter 6 for details of prosecutions under the *Crimes Act 1914* conducted in the ACT Magistrates Court.

Table 2(a)
Matters dealt with on indictment in 1990-91 (i)(v)

State	Defendants outstanding as at 1.7.90	Matters received during year	Number of defendants dealt with	Pleas of guilty to all charges	Number of trials
NSW	193	238	218	135	57
Vic.	55	84	80	72	7
Qld	31	113	101	66	21
WA	16	50	47	34	11
SA	18	42	45	39	3
Total	**313**	**527**	**491**	**346**	**99**

outcome of trials

Number of defendants convicted (ii)	Number of defendants acquitted on all charges	Unresolved (iii)	No bills (iv)	Defendants outstanding as at 30.6.91
40	16	10	17	213
6	1		1	59
13	9		13	43
11	1		1	19
3			3	15
73	**27**	**10**	**35**	**349**

Notes : (i) See Chapter 6 for details of matters dealt with on indictment in the ACT.

(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.

(iv) See Chapter 2 for details of no bills entered during the financial year. The number of no bills do not include those cases where the power under section 9(4) of the DPP Act was exercised, but the prosecution proceeded on State charges.

(v) In trials conducted by the Australian Government Solicitor, Hobart, one defendant was convicted and two defendants were acquitted. The Australian Government Solicitor, Darwin, dealt with 10 indictable matters, all of which were pleas of guilty.

Table 2(b)
Legislation: matters dealt with on indictment in 1990-91 (i)

Legislation	NSW	Vic.	Qld	WA	SA	Total
Bankruptcy Act	1	3	4	2		10
Cash Transaction Reports Act			2			2
Crimes Act	95	55	58	14	38	260
Customs Act	80	15	12	22	3	132
Health Insurance Act			2	2		4
Marriage Act	1					1
Non-Commonwealth	11	1	8	2	1	23
Other	13	5	2	4		24
Total	**201**	**79**	**88**	**46**	**42**	**456**

Note : (i) See Chapter 6 for the categories of cases dealt with in the Supreme Court of the ACT in 1990-91.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 1990-91

	NSW	Vic.	Qld	WA	SA	Total
False pretences (s.29A)	12	3	3		10	28
Imposition (s.29B)	47	19	21	3	14	104
Fraud (s.29D)	7	17	3	1	2	30
Offences relating to admin of justice (ss.32-50)					1	1
Forgery and related offences (ss.65-69)	6	1	7	2		16
Disclosure of information (s. 70)				2		2
Stealing or receiving (s.71)	7	6	17		3	33
Falsification of books (s.72)	1		1	1		3
False returns (s.74)	1					1
Resisting etc. public officers (s. 76)			1			1
Offences relating to postal services (ss. 85E - 85ZA)			2			2
Conspiracy (s.86)	1	8	3	3		15
Conspiracy to defraud (s. 86(1)(e) or s. 86A)	9			2	6	17
Other	4	1			2	7
Total	**95**	**55**	**58**	**14**	**38**	**260**

Table 2(d)
Duration of trials on indictment completed in 1990-91

State	Number of trials	Total number of defendants dealt with	Number of hearing days						
			Less than 5	5 - 10	11 - 15	6 - 20	21 - 25	26 - 30	More than 30
NSW	57	66	21	18	4	3	2	6	3
Vic.	7	7	3	2	1				1
Qld	21	22	15	3	3				
WA	11	12	6	3	2				
SA	3		2		1				
Total	**99**	**107**	**47**	**26**	**11**	**3**	**2**	**6**	**4**

Table 3(a)
Prosecution appeals against a sentence imposed by a court of summary jurisdiction in 1990-91

State	Number of appeals dealt with	Type of matter			Outcome of appeal	
		Drugs	Social security	Other	Upheld	Dismissed
NSW	1			1	1	
Vic.						
Qld						
WA	1			1		1
SA						
Total	2			2	1	1

Table 3(b)
Prosecution appeals against a sentence imposed following a conviction on indictment in 1990-91

State	Number of appeals dealt with	Type of matter		Outcome of appeal	
		Drugs	Other	Upheld	Dismissed
NSW	2		2	2	
Vic.	1		1	1	
Qld	2		2		2
WA	3	2	1	2	1
SA					
Total	8	2	6	5	3

Table 3(c)
Other prosecution appeals in 1990-91

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.	5	5			4	1
Qld	1			1	1	
WA	1	1			1	
SA	2	2			1	1
Total	9	8		1	7	2

Table 4(a)
Appeals by people convicted by a court of summary jurisdiction in 1990-91(i)

State	Number of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction and sentence
NSW	120	31	63	26
Vic.	51	13	26	12
Qld	12	1	5	6
WA	1		1	
SA	12	1	7	4
Total	196	46	102	48

Notes : (i) Does not include appeals that were withdrawn.

Table 4(b)
Appeals by people convicted on indictment in 1990-91 (i)

State	Number of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Apeals against conviction and sentence
NSW	20	3	13	4
Vic.	6	1	5	
Qld	6	1	4	1
WA	10	3	7	
SA	5		4	1
Total	47	8	33	6

Notes : (i) Does not include appeals that were withdrawn.

Table 5(a)
Matters dealt with in committal proceedings in 1990-91

State	Defendants outstanding at 1.7.90	Matters received during year	No. of defendants dealt with	Outcome of defended committal proceedings					Defendants outstanding at 30.6.91
				No. of defendants committed for sentence	No. of defended committal proceedings	No. of defendants committed for trial	No. of defendants discharged on all charges	Other (i)	
NSW	102	188	211	101	106	108	1	1	79
Vic	51	114	111	2	98	100	6	3	54
Qld	18	81	77	5	50	68		4	22
WA	12	28	40		36	40			
SA	47	38	51	2	25	26		23	34
Total	**230**	**449**	**490**	**110**	**315**	**342**	**7**	**31**	**189**

Notes: (i) All charges withdrawn prior to hearing.

Table 5(b)
Duration of defended committal proceedings completed in 1990-91

State	No. of defended committal proceedings	Number of hearing days									
		Up to 1	2	3	4	5-10	11-15	16-20	21-25	26-30	More than 30
NSW	106	91	1	4	3	6	1				
Vic.	98	84	1	3		7			2	1	
Qld	50	42	2	5		1					
WA	36	29	1	3	1	2					
SA	25	12	3	3	3	2			1		1
Total	315	258	8	18	7	18	1		3	1	1

Table 6
Advice matters in 1990-91 (i)

State	Matters dealt with	Type of advice			
		General	Insufficient evidence	Prosecution not appropriate	Other (ii)
NSW	282	121	39	85	37
Vic.	406	58	77	179	92
Qld	274	65	40	110	59
WA	124	26	19	52	27
SA	162	11	44	48	59
Total	**1 248**	**281**	**219**	**474**	**274**

Notes : (i) This table only includes advice matters recorded on the Case Matter Management 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 system for security reasons. Many matters recorded as advice matters as at the end of the financial year will progress beyond the advice stage.

An advice matter falls into two broad categories - either the provision of general advice (recorded under 'general' above) or matters referred to the DPP 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.

The table does not include advice provided by Head Office

(ii) e.g. where time limit on the institution of a prosecution had expired or service of summons could not be effected.

Table 7(a)

Social security prosecutions: matters dealt with summarily in 1990-91

State	Defendants outstanding at 1.7.90	Matters received during year	No. of defendants dealt with	Pleas of guilty to all charges	Outcome of summary trials					Defendants outstanding at 30.6.91
					No. of summary trials	No. of defendants convicted (i)	No. of defendants acquitted on all charges	Unresolved (ii)	Other iii)	
NSW (iv)	88	188	211	203	6	4		2	2	65
Vic.	274	359	372	350	6	4	2		16	261
Qld	20	217	210	191	6	4	2		13	27
WA	41	140	177	163	10	9	2		3	4
SA	113	230	190	166	3	2	1		21	153
Total	536	1 134	1 160	1 073	31	23	7	2	55	510

Notes: (i) i.e. where a defendant was convicted on at least one charge, or at least one charge was found proved.

(ii) e.g. defendant died prior to hearing

(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.

Table 7(b)
Social security prosecutions: matters dealt with on indictment in 1990-91

State	Defendants outstanding as at 1.7.90	Matters received during year	Number of defendants dealt with	Pleas of guilty to all charges	Outcome of trials				Defendants outstanding as at 30.6.91
					Number of trials	Number of defendants convicted (i)	Number of defendants acquitted on all charges	No bills	
NSW	28	45	38	36	1	1		1	35
Vic.	5	21	22	22					4
Qld	3	14	17	10				7	
WA	1	2	3	3					
SA	11	4	14	12				2	1
Total	**48**	**86**	**94**	**83**	**1**	**1**		**10**	**40**

Notes : (i) i.e. where a defendant was convicted on at least one charge.

Table 7(c)
Social security prosecutions: advice matters in 1990-91 (i)

State	Matters dealt with	Type of advice			
		General	Insufficient evidence	Prosecution not appropriate	Other
NSW	40	12	8	9	11
Vic.	100		12	46	42
Qld	84	10	11	48	15
WA	29	4	4	10	11
SA	31	2	13	6	10
Total	**284**	**28**	**48**	**119**	**89**

Notes: (i) See notes to Table 6.

Table 7(d)
Social security prosecutions: matters dealt with in 1990-91: amount defrauded in charges found proven

		NSW	Vic.	Qld	WA	SA	Total
Matters dealt with summarily (i)							
No. of male defendants		110	182	120	93	96	601
Amount defrauded	$	1 128 826	889 931	858 629	550 372	602 656	4 030 414
No. of female defs.		97	172	75	79	72	495
Amount defrauded	$	1 080 487	1 394 160	792 663	625 165	412 883	4 305 358
Total defendants		207	354	195	172	168	1 096
Total amount defrauded	$	2 209 313	2 284 091	1 651 292	1 175 537	1 015 539	8 335 772
Matters dealt with on indictment							
No. of male defendants		17	8	7		7	39
Amount defrauded	$	845 655	472 806	238 101		205 331	1 761 893
No. of female defs.		20	14	3	3	5	45
Amount defrauded	$	749 634	670 556	71 693	162 903	161 644	1 816 430
Total defendants		37	22	10	3	12	84
Total amount defrauded	$	1 595 289	1 143 362	309 794	162 903	366 975	3 578 323
Grand total							
Grand total defendants		244	376	205	175	180	1 180
Grand total amount defrauded	$	3 804 602	3 427 453	1 961 086	1 338 440	1 382 514	11 914 095

Notes : (i) Includes cases where charges were laid under the *Crimes Act 1914* but those charges were dealt with summarily.

Table 8
Appearance work by DPP lawyers in 1990-91(i)

	NSW (%)	Vic. (%)	Qld (%)	WA (%)	SA (%)
Defended summary hearing	91	94	98	100	89
Undefended summary hearing	78	100	92	98	98
Committal with a plea of guilty	89	50	100		100
Committal with a plea of not guilty	80	81	88	94	60
Trials on indictment	14	29	48	64	67
Sentencing proceedings in superior courts	73	86	85	97	53
Prosecution appeals		40	50	100	100
Defendant appeals	81	84	95	73	84

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).

Table 9(a)
Matters dealt with summarily in 1990-91: referring agencies (i)

	NSW	Vic.	Qld	WA	SA	Total
Australian Electoral Commission	4	14		4	555	577
Australian Federal Police	313	364	161	187	71	1 096
Australian Postal Commission	30	8		8	10	56
Australian Securities Commission				1	4	5
Australian Taxation Office	64	11	8	15	10	108
Civil Aviation Authority	4	6	13	3	7	33
Dept of Community Services and Health	9	9	16	9	3	46
Australian Customs Service	6	1	4	175	5	191
Dept of Employment, Education and Training	30	9	10	6	7	62
Dept of Social Security	202	299	161	141	141	944
Dept of Transport and Communications	5	5	6	3	3	22
Health Insurance Commission		1	2		1	4

	NSW	Vic.	Qld	WA	SA	Total
Official Receiver	3					3
Dept of Primary Industries & Energy	7	7	5		1	20
Australian Telecommunications Corporation	30	46	5	39	23	143
Trade Practices Commission	3					3
Non-Commonwealth agencies (other than State Police)	1	9	45	19	4	78
State Police	22	4	40	28	90	184
Dept of Immigration and Ethnic Affairs	16	4	1			21
National Crime Authority	4	1			1	6
Other	16	5		9	22	52
Total	**769**	**803**	**477**	**647**	**958**	**3 654**

Note: (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 1990-91, although matters recorded under 'other' in Table 1(a) have not been taken into account.

Table 9(b)
Matters dealt with on indictment in 1990-91: referring agencies (i)

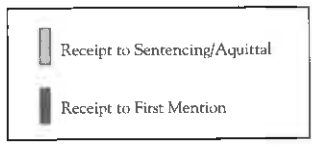
	NSW	Vic.	Qld	WA	SA	Total
Australian Federal Police	136	55	39	37	29	296
Australian Postal Commission	2		2			4
Australian Taxation Office		2				2
Civil Aviation Authority			1			1
Australian Customs Service	2		3	4		9
Dept of Education, Employment and Training			1			1
Dept of Social Security	37	12	6	3	5	63
Health Insurance Commission			2	2		4
Official Receiver	1					1
Dept of Primary Industries and Energy	2					2
Australian Telecommunications Corporation	2				1	3
Non-Commonwealth agencies (other than State Police)	2	1				3
State Police	5	9	33		1	48
National Crime Authority	9				6	15
Dept of Immigration and Ethnic Affairs	1					1
Other	2		1			3
Total	**201**	**79**	**88**	**46**	**42**	**456**

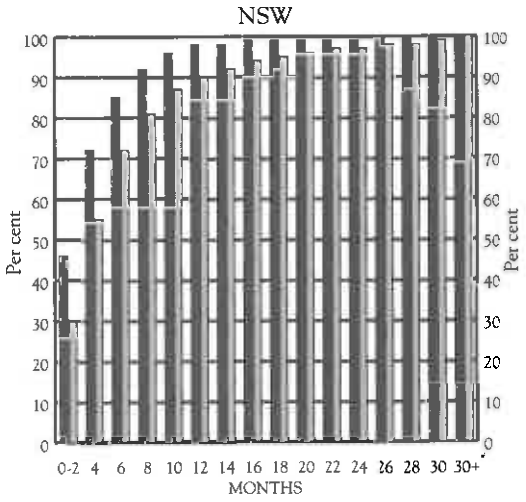
Note: (i) This table provides information as to those agencies that referred matters for prosecution to the DPP. These agencies would have carried out any necessary investigation prior to referral to the DPP. The figures supplied are by reference to matters dealt with on indictment in 1990-91.

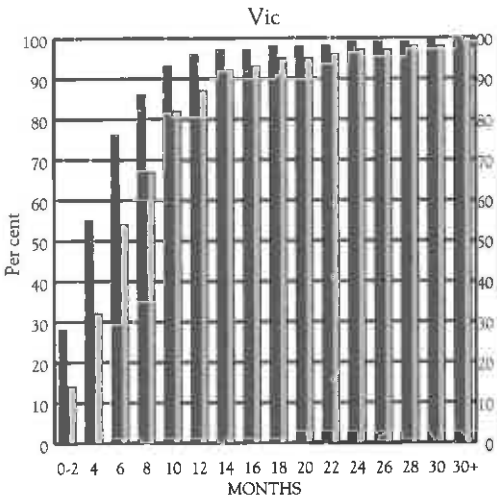
Processing Time

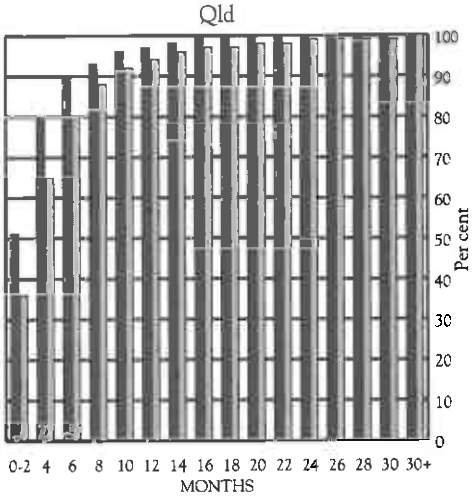
The following graphs provide information as to the time taken to complete summary, committal, indictable and advice matters conducted by the Office during the year. In each case the information is provided in the form of cumulative percentage.

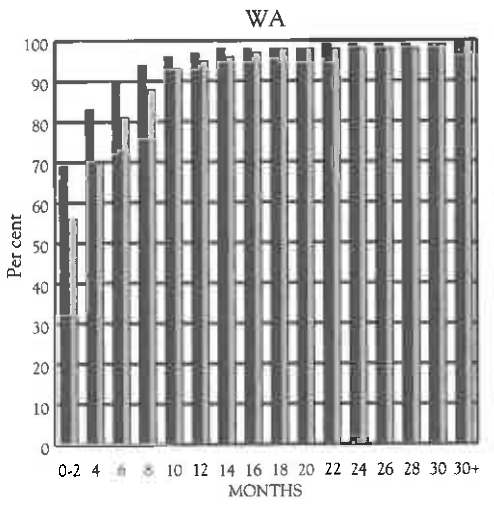
Processing times for undefended summary matters

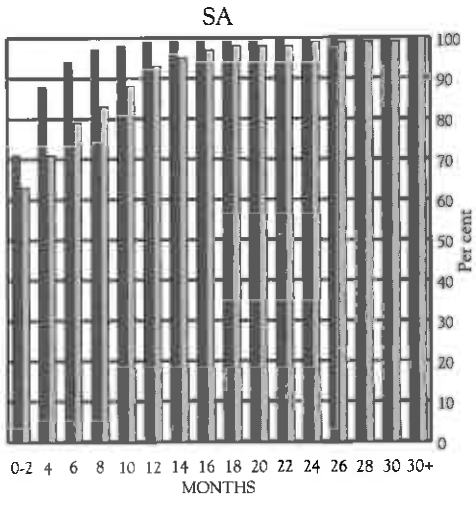




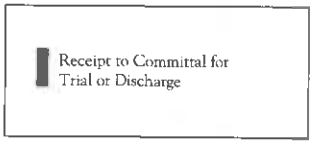


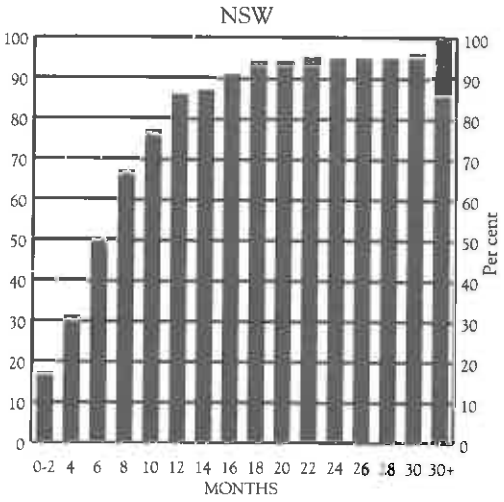


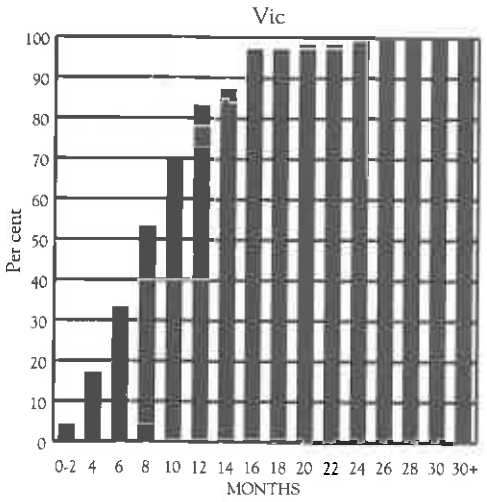


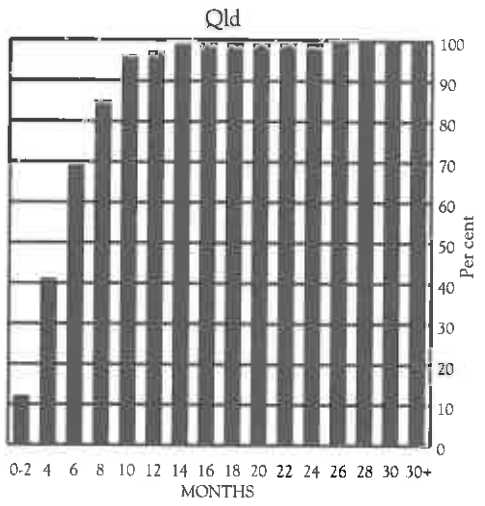


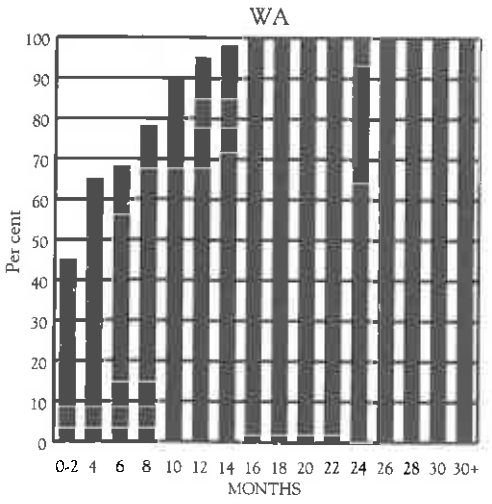
Times for defended committals

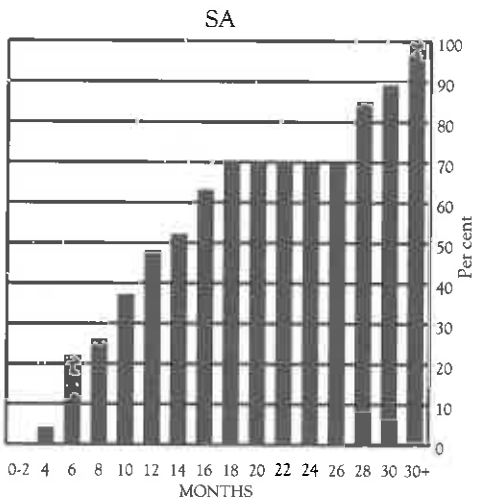












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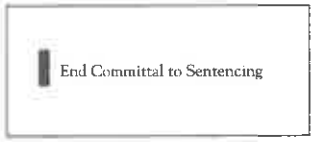

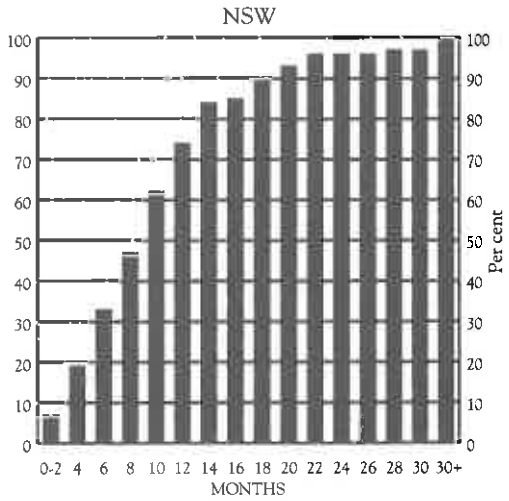

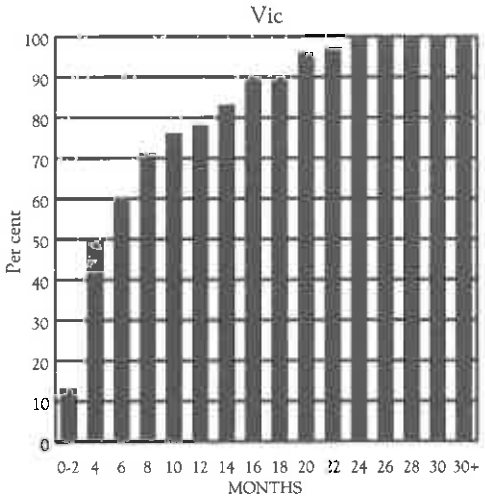

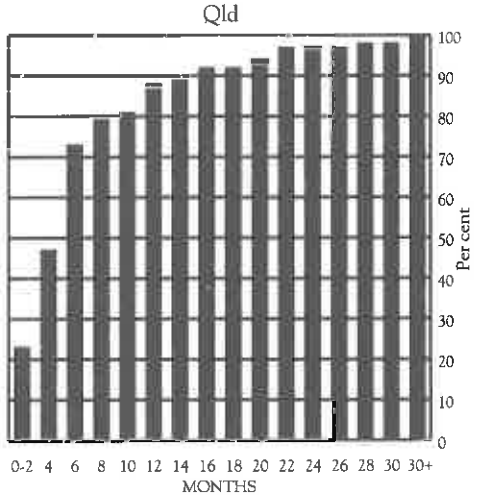

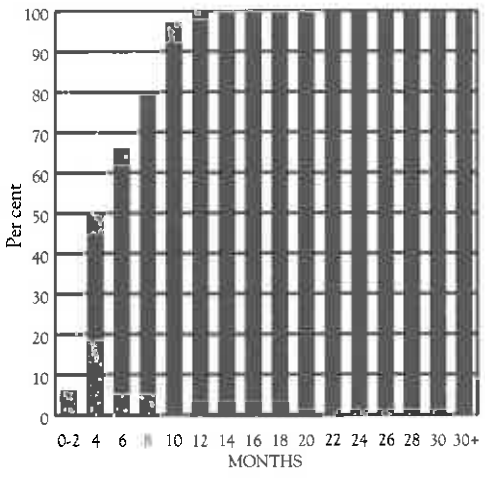

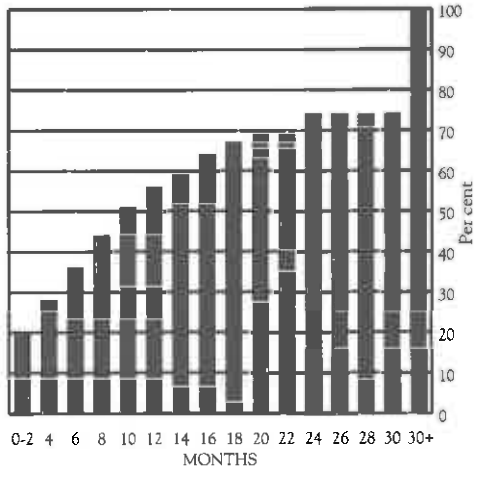

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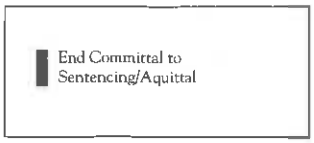
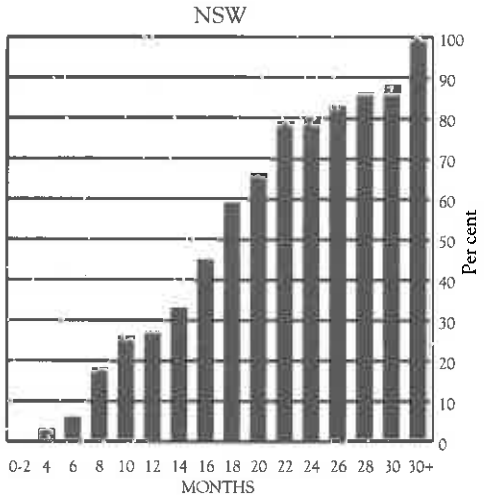
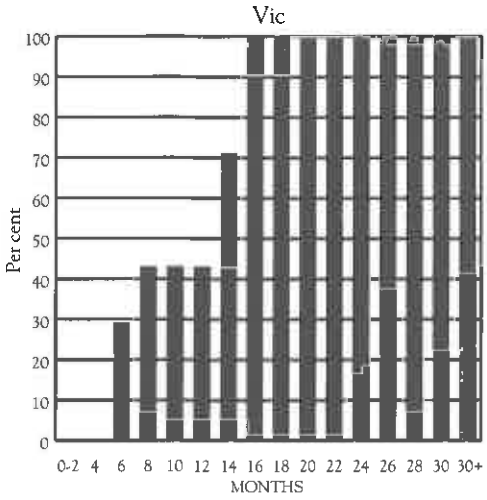
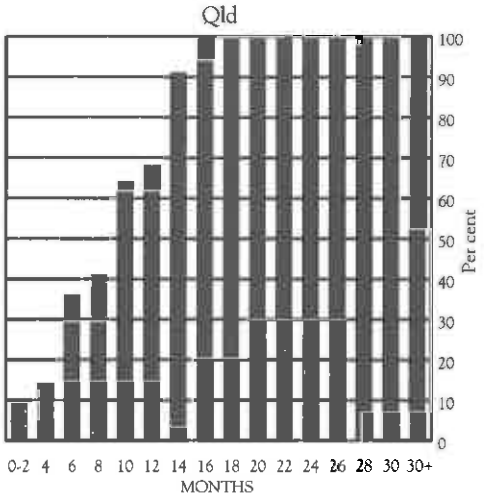
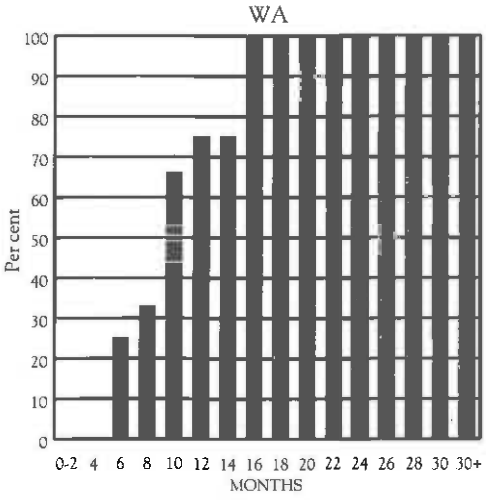
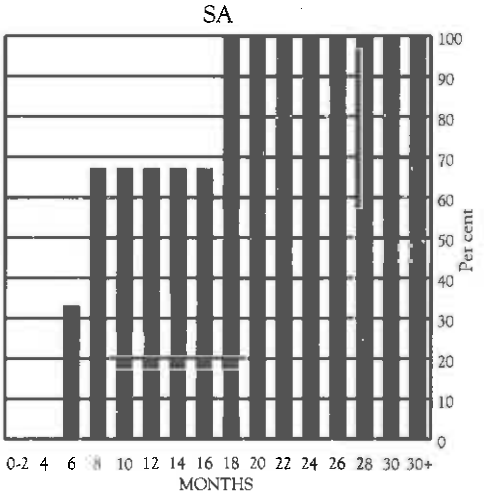




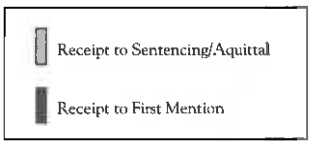


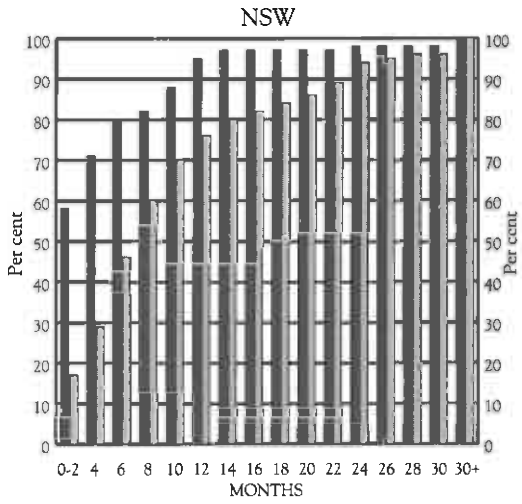


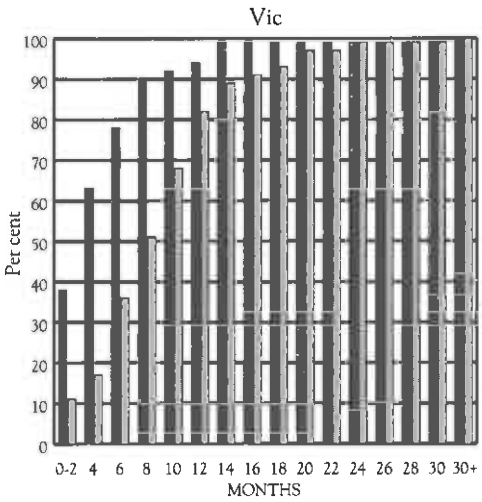


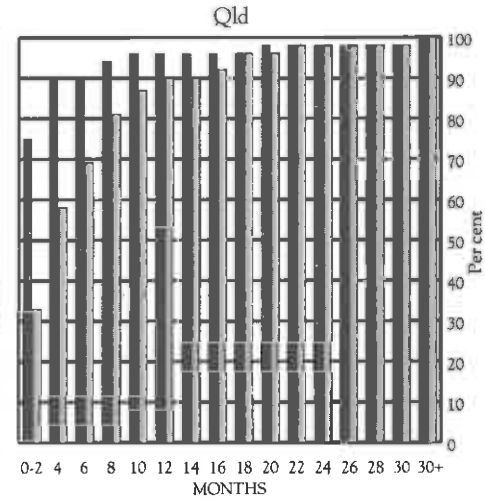


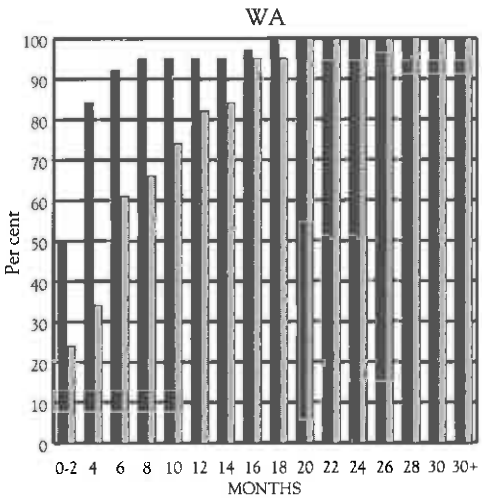
Processing times for defended summary matters

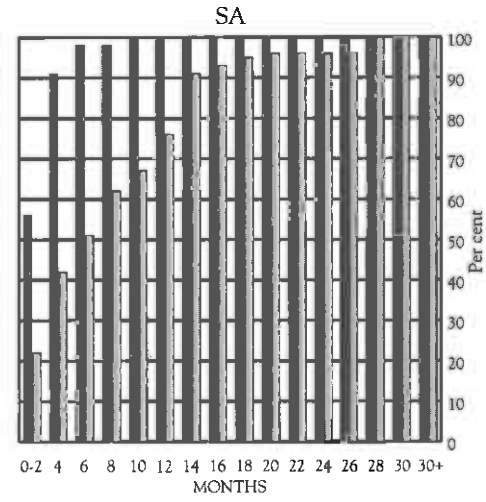




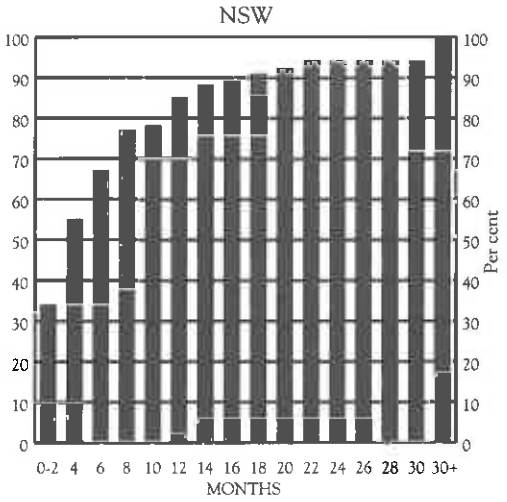


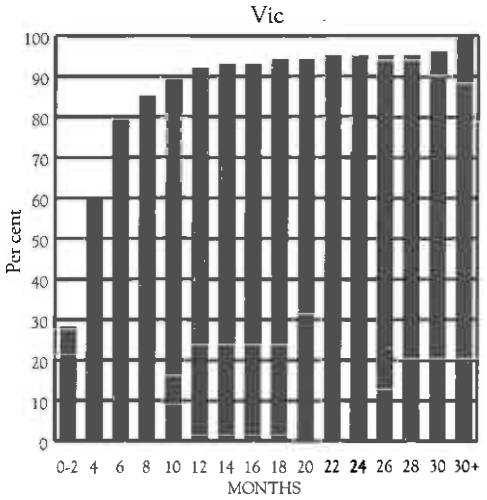


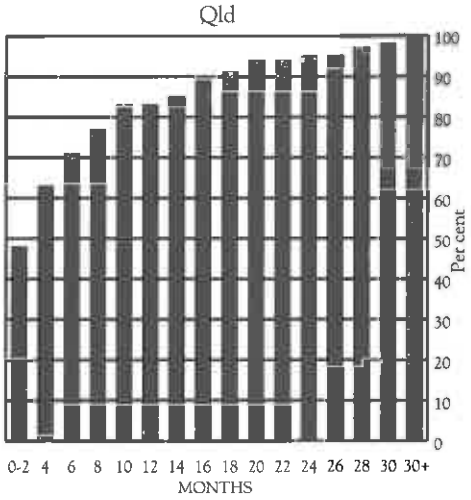


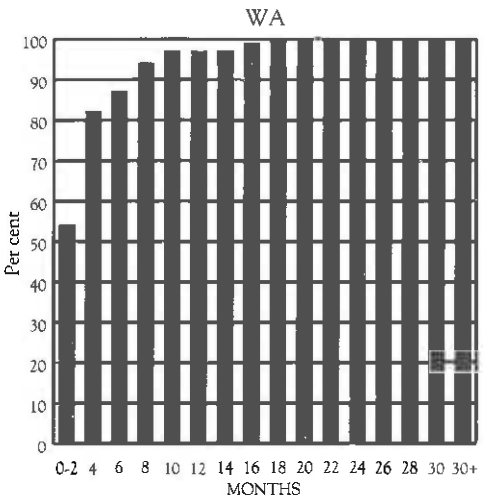


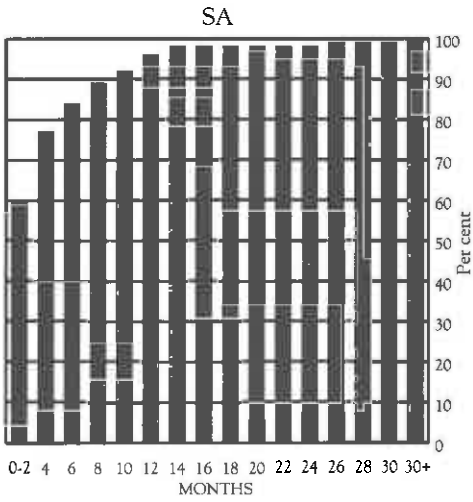
Times for advices











Appendix: Statement under section 8 of the 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 DPP 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, or the subject of criminal assets proceedings, may make representations to the Director concerning the proceedings against them either directly or through their legal representatives. Any matters raised will be taken into account when a decision is made whether to continue the prosecution or the criminal assets proceedings.

(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 the Act, free of charge upon request.

The DPP maintains the following documents:

- documents relating to legal advice, including correspondence from Commonwealth departments and agencies and copies of notes of advice given;
- documents referring to criminal matters and prosecutions before courts and pre-court action, including counsels' briefs, court documents,

witnesses' statements and documents provided by referring departments and agencies;

- general correspondence including intra-office, ministerial and interdepartmental correspondence;
- internal working papers, submissions and policy papers;
- internal administration papers and records;
- investigative material, a considerable amount of which is held on data base and in the from of tape recordings;
- documents held pursuant to search warrants;
- accounting and budgetary records including estimates; and
- prosecution and civil remedies manuals.

The following categories of documents are made available (otherwise than under the Freedom of Information Act) 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. Requests may be sent or delivered to the FOI Coordinating Officer at any of the addresses set out at the beginning of this Report. Business hours are 8.30am to 5.00pm.

Requests for access in States and Territories where there is no regional office of the DPP 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 may be made at any of the addresses referred to.

In accordance with sub-section 51(1) of the Act, I now report that in my opinion the parts of the statement prepared in accordance with paragraph 50(2)(a) are:

- in agreement with the accounts and records kept in accordance with section 40 of the Act, and

- in accordance with the financial statement guidelines made by the Minister of Finance.

R.W. Alfredson
Executive Director
Australian National Audit Office

28 October 1991

Financial Statements
1990-91

Contents

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1990-91

STATEMENT BY THE DIRECTOR

AND

PRINCIPAL ACCOUNTING OFFICER

CERTIFICATION

We certify that the financial statements for the year ended 30 June 1991 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 disclosure requirements of the Financial Statements Guidelines for Departmental Secretaries issued in June 1991, except as indicated in Notes 1(b)(iii), 3 and 4 to the statements.

Mark Weinberg
Director

Signed
Dated
24/10/91

T McKnight
Senior Assistant Director
Administrative Support
Branch

Signed
Dated
24/10/91

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

AGGREGATE STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1991

This Statement shows aggregate cash transactions, for which the DPP is responsible, for each of the three funds comprising the Commonwealth Public Account (CPA).

1989-90 ACTUAL $		1990-91 BUDGET $	1990-91 ACTUAL $
CONSOLIDATED REVENUE FUND (CRF)			
3,358,559	Receipts	7,286,000	6,253,219
nil	Expenditure from Special Appropriations	nil	nil
	(Expenditure from Annual	)	
	(Appropriations	46,764,000)	
	(Expenditure from Appropriations -	)	
33,570,999	(Section 35 of the Audit Act 1901 (Note 7)	30,000)	37,655,776
33,570,999	Total Expenditure	46,794,000	37,655,776
LOAN FUND			
nil		nil	nil
TRUST FUND			
na	Balance 1 July 1990		nil
na	Receipts		21,910
na	Expenditure		21,910
na	Balance 30 June 1991		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 1991

This statement shows details of cash transactions, for which the Office is responsible, for the Consolidated Revenue Fund and the Trust Fund (The Office was not responsible for any transactions of the 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 :

1989-90 ACTUAL $		SUB-PROGRAM*	1990-91 BUDGET $	1990-91 ACTUAL $
819,929	Fines and Costs	1. (a)	1,000,000	1,106,337
2,491,206	Proceeds of Crime	2. (a)	3,500,000	2,312,410
17,851	Miscellaneous	1. (b)	nil	9,161
nil	ACT payment	4. (b)	2,756,000	2,769,000
29,573	Section 35 of the Audit Act 1901 (Note 7)	** 3. (b)	30,000	56,310
3,358,559	TOTAL RECEIPTS TO CRF		7,286,000	6,253,219

The attached notes form an integral part of these statements.

* Refer to Program Statement (this information has not been subject to audit).

(a) - Revenue
(b) - Receipts offset within outlays

** - to be credited to Running Costs - Division 181

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

DETAILED STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1991

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 :

1989-90 ACTUAL $		1990-91 APPROPRIATION $	1990-91 ACTUAL $
	Annual Appropriations		
	(Appropriation Act No.1	46,764,000)	
	(Appropriation Act No.4	nil)	
	(Appropriation under	)	
	(Section 35 of the Audit	)	
33,570,999	(Act 1901 (Note 7)	56,310)	37,655,776
	Total Expenditure from		
33,570,999	Annual Appropriations	46,820,310	37,655,776
33,570,999	TOTAL EXPENDITURE FROM CRF	46,820,310	37,655,776

The attached notes form an integral part of these statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

DETAILED STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1991

DETAILS OF EXPENDITURE FROM ANNUAL APPROPRIATIONS

1989-90 ACTUAL $		SUB-PROGRAM*	1990-91 APPROPRIATION $	1990-91 ACTUAL $
	APPROPRIATION ACT NO. 1 **			
	Division 181 - Director of Public Prosecutions			
21,659,140	1. Running Costs - Annotated Appropriation (Note 7)	#	27,572,310	24,201,535
6,773,440	2. Property Operating Expenses	#	8,154,000	7,690,494
5,138,419	3. Other Services 01 Legal Expenses	#	11,094,000	5,763,747
33,570,999			46,820,310	37,655,776

The attached notes form an integral part of these statements.

* Refer to Program Statement (this information has not been subject to audit).

** Includes Section 35 - Annotated appropriation where applicable.

Allocated to various sub-programs.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PROGRAM STATEMENT
FOR THE YEAR ENDED 30 JUNE 1991

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.

1989-90 ACTUAL $'000		1990-91 BUDGET $'000	1990-91 ACTUAL $'000
	1. PROSECUTIONS		
	Running Costs (181.1)(p)		
9,071	Salaries	11,574	9,125
3,325	Administrative Expenses	4,478	2,442
4,033	Property Operating Expenses (181.2)(p)	5,081	4,294
4,868	Legal Expenses (181.2)(p)	10,640	4,991
21,297	Expenditure from Appropriations	31,773	20,852
	Less Receipts offset Within Outlays		
18	Miscellaneous	nil	9
21,279	Outlays	31,773	20,843
	Revenue		
820	Fines and Costs	1,000	1,106

The attached notes form an integral part of these statements.

1989-90 ACTUAL $'000		1990-91 BUDGET $'000	1990-91 ACTUAL $'000
	2. CRIMINAL ASSETS		
	Running Costs (181.1)(p)		
2,325	Salaries	2,653	2,317
928	Administrative Expenses	973	554
1,033	Property Operating Expenses (181.2)(p)	1,081	1,004
271	Legal Expenses (181.2)(p)	310	412
4,557	Expenditure from Appropriations	5,017	4,287
4,557	Outlays	5,017	4,287
	Revenue		
2,491	Proceeds of Crime	3,500	2,312
	3. EXECUTIVE AND SUPPORT		
	Running Costs (181.1)(p)		
3,842	Salaries	3,980	4,245
2,169	Administrative Expenses	2,208	3,989
1,707	Property Operating Expenses (181.2)(p)	1,716	2,168
7,718	Expenditure from Appropriations	7,904	10,402
	Less Receipts offset Within Outlays		
30	Section 35 of the Audit Act 1901 (see Note 7)	30	56
7,688	Outlays	7,874	10,346

The attached notes form an integral part of these statements.

1989-90 ACTUAL $'000		1990-91 BUDGET $'000	1990-91 ACTUAL $'000
	4. ACT PROSECUTIONS (ie FOR AND ON BEHALF OF THE ACT GOVERNMENT)		
	Running Costs (181.1)(p)		
na	Salaries	1,252	1,189
na	Administrative Expenses	428	340
na	Property Operating Expenses (181.2)(p)	276	225
na	Legal Expenses (181.2)(p)	144	361
na	Expenditure from Appropriations	2,100	2,115
	Less Receipts offset Within Outlays		
na	ACT Payment	2,756	2,769
na	Outlays	(656)	(654)

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 1991

This Statement is not subject to audit.

1989-90 $		NOTES	1990-91 $
	CURRENT ASSETS		
433,121	Cash	2, 12	374,649
2,133,878	Receivables	3, 12	3,209,896
	NON-CURRENT ASSETS		
86,246	Furniture	4	165,667
915,635	Plant and Equipment	4	784,652
1,945,083	ADP equipment	4	1,411,683
	CURRENT LIABILITIES		
432,784	Creditors	5	519,598

The attached notes form an integral part of these statements.

NOTE 8

AMOUNTS WRITTEN OFF

The following details are furnished in relation to amounts written off during the financial year 1990-91 under sub-section 70C(1) of the Audit Act 1901 (430 amounts totalling $36,501 were written off in 1989-90).

		Up to $1000		OVER $1,000	
		No.	$	NO.	$
(i)	Losses or deficiencies of public moneys	-	-	-	-
(ii)	Irrecoverable amounts of revenue	4	600	2	12,800
(iii)	Irrecoverable debts and overpayments	37	2,167	1	1,250
(iv)	Amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Minister, be uneconomical	90	5,731	4	164
(v)	Lost, deficient, condemned, unserviceable or obsolete stores	31	4,230	-	-

NOTE 9

LOSSES AND DEFICIENCIES IN PUBLIC MONEYS AND OTHER PROPERTY

No case involving loss of property was recorded during the financial year 1990-91 under Part XII of the Audit Act 1901. No case involving loss of moneys was recorded during the financial year 1990-91 under Part XII of the Audit Act 1901.

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 1990-91 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 1990-91 financial statements was $74,150. (The notional audit fee for the previous financial year 1989-90 was $69,750).

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

. Contract negotiation services for computer hardware and software. The Department of Administrative Services provides a service of negotiating contracts on behalf of agencies. This service has been used in recent years to negotiate the Finest financial and Libman library systems

NOTE 12

FINES and COSTS BANK ACCOUNTS

During 1990-91 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 late in 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 1991-92.

A total of $292,650 ($356,278 for 1989-90) remained undisbursed in Fines and Costs bank accounts around Australia at 30 June 1991. This was represented by (see also Note 2):

1989-90 $		1990-91 $
356,178	Cash at bank	286,580
100	Cash on hand	6,070
356,278		292,650

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.

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