Commonwealth Director of Public Prosecutions

Annual Report 1991-92

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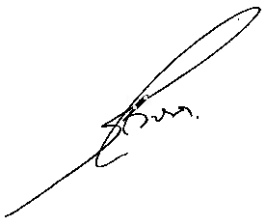
The Hon. Michael Duffy MP
Attorney-General
Parliament House
CANBERRA ACT 2600

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 1992, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully,



MICHAEL ROZENES QC
Director

25 October 1992

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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, Lindfield NSW 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.

Director's overview

Michael Rozenes QC

At the time of writing this, the ninth annual report, I have been Director for some seven months.

It is appropriate, first of all, that I thank all members of DPP staff for the great level of support shown to me at the commencement of my term of office. To them I am singularly grateful. Secondly, I wish to record my thanks to the senior staff of the Attorney-General's Department for the assistance and cooperation afforded to me upon my appointment.

I also note that a sound and proper working relationship was quickly established between the Attorney-General and myself. I thank the Honorable Michael Duffy for his willing contribution in this regard. This report would be incomplete without particular credit being given to my predecessor, Mark Weinberg QC, who after his three years as Director has left the Office in

excellent shape and also to Paul Coghlan who stayed on as Associate Director until 30 June to ensure a smooth transition. Edwin J. Lorkin, a member of the Victorian Bar, was appointed as the Associate Director on and from 1 July, 1992.

It is perhaps a little early in my term to express concluded views about all aspects of the work undertaken by my Office. What is clear, however, is that there are highly complex forces involved in the discharge of the duty of prosecutor. The decision to prosecute is, in many cases, a delicate balanced one requiring a consideration of manifold competing factors. My experience as a barrister, practising almost exclusively in criminal law, has armed me well for this aspect of the work. On the other hand, I have found administrative matters both fascinating and challenging.

The work undertaken by this Office of the Commonwealth DPP is in some respects unique. Unlike its State counterparts the Office derives some of its most important work from agencies who, in the discharge of their statutory functions, do not see criminal prosecution as their prime objective. Generally speaking, police do see the detection of crime and the successful prosecution of those charged as a fundamental exercise in law enforcement. That is not to say that there is not an important role to be played by the police in the area of crime prevention.

Perhaps it is naive to expect that agencies such as the Australian Taxation Office (ATO), the Australian Securities Commission (ASC) and the Australian Customs Service (ACS) would have a similar commitment to criminal prosecutions as an appropriate and effective law enforcement tool.

The different emphasis of regulatory and revenue agencies were highlighted in the differences of opinion with the ASC which unfortunately became a public issue. The issues were articulated in the Report of the Joint Statutory Committee on Corporations and Securities which was tabled in Parliament on 6 October 1992. I should add that my office and the ASC are operating cooperatively in accordance with the Directions issued by the Attorney-General.

The important point that must be made is that civil action cannot, in cases of fraud or dishonesty, be an adequate and effective deterrent. In my view, in cases involving fraud or dishonesty, there must exist a real deterrent in the form of criminal prosecution with appropriate penalties for those convicted.

Such cases, whether they involve fraud in the company context or fraud against the Commonwealth generally, should be dealt with along broadly similar lines. The prosecution policy of the Commonwealth is directed at making the system fair so that '... it does not display arbitrary and inexplicable differences in the way ... classes of cases are treated locally or nationally'. Whilst there is a place for administrative penalties and alternative responses short of prosecution in minor or routine cases, prosecution should be considered in all the more serious cases.

Prosecution action can of course be extremely frustrating to those unused to the criminal justice system. The time involved to properly investigate and prosecute major corporate fraud in often measured in years. No doubt advances can be made to streamline the investigation and prosecution of these sorts of cases but at the end of the day the offender must have his or her guilt proved to the criminal standard. The frustrations that are felt resulting from such long lead times must not lead to the conclusion that the criminal process is inappropriate.

Those who contravene the law must recognise that ultimately they will be brought to book. It has been said that a regulatory strategy without a credible threat of prosecution is simply no strategy at all. I agree with such sentiments.

I am not to be taken as saying that civil remedies play no part in the proper regulation of those involved in criminal enterprise. On the contrary, civil remedies form an important weapon in the fight against Commonwealth crime. It must however, be understood that the only real and effective deterrent for the criminal is the perceived likelihood of detection followed by the certainty of punishment. To advocate otherwise is to simply encourage corporate wrongdoers to factor into the cost of doing business the cost of having to pay back ill-gotten gains. Such an approach will only ensure that assets are well-hidden and that otherwise the risk is accepted.

Another matter which has occupied a significant amount of time during this reporting period has been the operation and effectiveness of the *Proceeds of Crime Act 1987*.

Most practitioners see the legislation as authorising a draconian interference with personal property before an accused has been convicted. I must confess that in the past I shared the view. However, I now concede that the legislation is a most important law enforcement tool. The extent to which it is effective is directly related to how much of the restrained assets remain intact and available for ultimate forfeiture after conviction. The lack of effective control over the payment of legal fees out of assets restrained under the Act continues to be of great concern.

The Act allows an accused person access to restrained assets in order to meet the cost of legal expenses if there are no assets which are not the subject of a restraining order available to meet those expenses.

There is no doubt that an accused person should be adequately represented rather than face the prospect of conducting a complex criminal trial without representation.

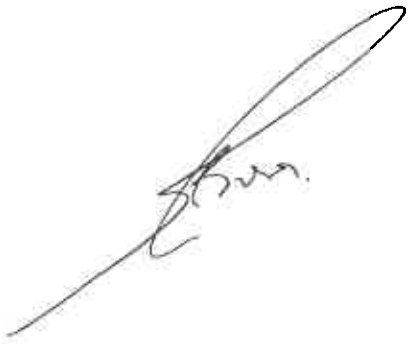
Unfortunately, the experience of my Office has been that some members of the legal profession have, on a number of occasions, acted without the requisite degree of restraint by expending as much of the restrained funds as possible. In one case, over a million dollars was drawn down and spent on committal proceedings which ultimately ended in a plea of guilty once the money was gone.

What must not be lost sight of is that, in addition to the total depredation of the fund, valuable prosecuting resources were lost and the court was occupied to the exclusion of other litigants for nine months. It is vital that mechanisms be devised and implemented to more effectively control the payment of monies from frozen funds for legal representation. It is necessary to guarantee that an accused will be adequately represented while at the same time ensuring that the funds will not be dissipated so as to completely thwart the objects of the legislation.

Finally, I anticipate that the great challenge facing my Office, as it does all other Directors of Public Prosecutions, is to ensure that the criminal courts of this country are able to deal with complex fraud trials in a way which affords justice both to the parties and to the community at large.

To this end the recent initiative of the Standing Committee of Attorneys-General calling for special legislation to be enacted for the conduct of complex fraud trials is to be applauded. If the changes there proposed are adopted, we will have come a substantial step closer to ensuring that complex fraud trials are a manageable exercise.

It will be appreciated that my Office conducts prosecutions in all States and Territories and accordingly those proceedings are governed by the procedural laws and practices applicable in those places. It is accordingly of singular significance to my Office that the reform of the way in which we litigate complex trials is uniformly effected throughout the whole of Australia.



Michael Rozenes QC

1 Office of the Director of Public Prosecutions

Establishment

The Office of the DPP was established under the *Director of Public Prosecutions Act 1983* and began 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, Michael Rozenes QC, was appointed from the Victorian Bar for a period of three years commencing on 1 February 1992. 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 previous Director, Mark Weinberg QC, completed his three-year term of office on 25 October 1991. The Associate Director, Paul Coghlan, was appointed from the Victorian Bar and was employed under contract.

While The DPP is within the portfolio of the Commonwealth Attorney-General, 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 this financial year.

Role

The primary role of the DPP is to prosecute alleged offences against Commonwealth law. It also has important functions in recovering 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.

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.

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 administering 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 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 two-and-a-half years. 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 discussed. 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 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.

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 coordinates 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. Head Office is also responsible for conducting prosecutions for Commonwealth offences committed in the ACT and for related criminal assets proceedings.

As at 30 June 1992, Head Office consisted of five branches: Legal; Corporations; 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 coordination 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.

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
- Corporate Prosecutions.

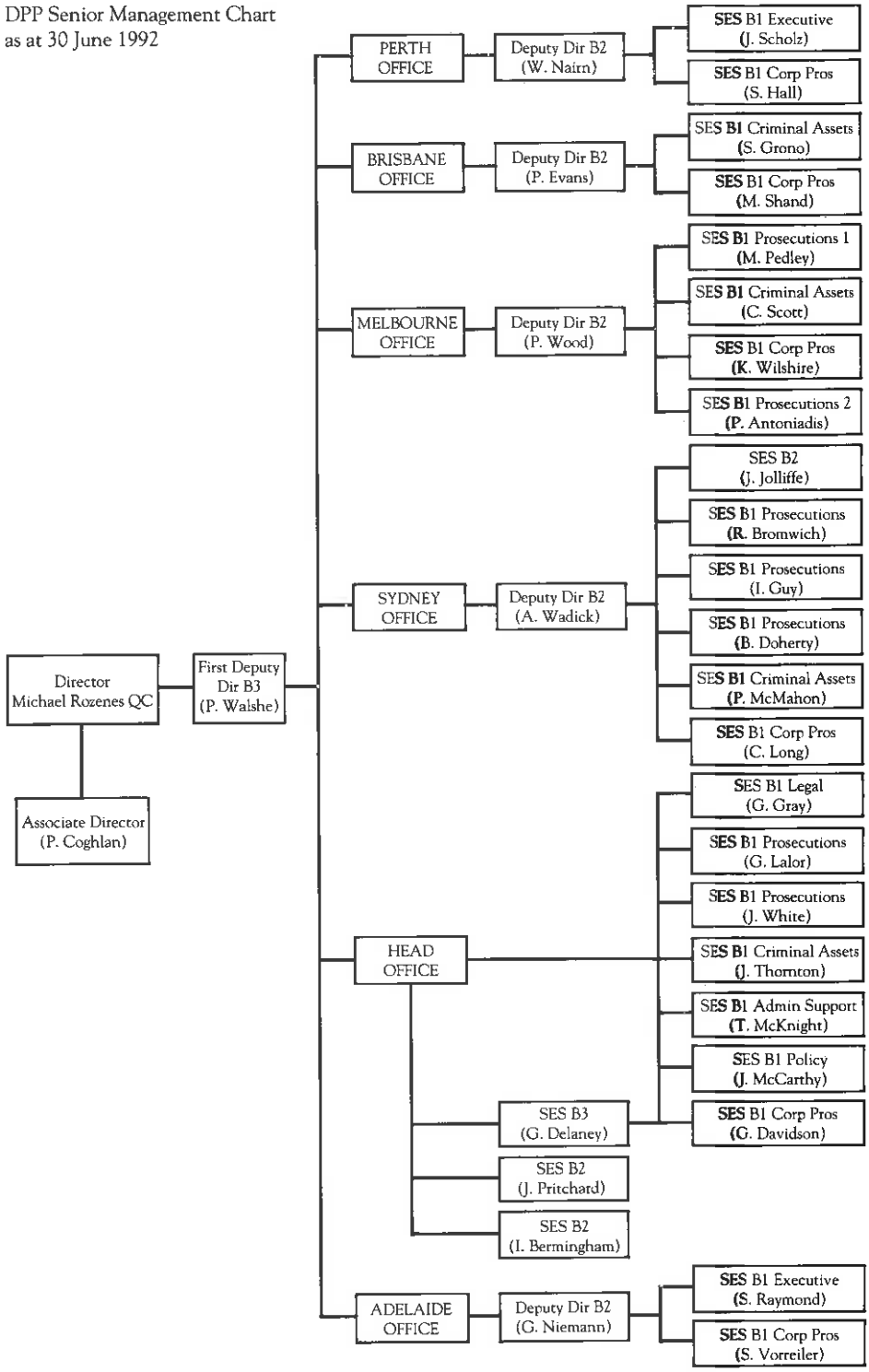
The Executive and Support program comprised the Director, the Associate Director and the First Deputy Director as well as the Administrative Support Branches.

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.

A Senior Management chart follows.

Senior Management Chart

DPP Senior Management Chart
as at 30 June 1992



2 Exercise of statutory powers

This chapter 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 in the prosecution of a person who has been committed for trial by a magistrate.

This power has only been partially delegated. Senior officers in the regional offices have power to reject a no-bill application made at the court door if it clearly lacks merit. In 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 decision by the Director or the Associate Director.

In the course of the year there were 34 no-bill applications received from defendants. Of these, 18 were granted and 16 refused. A further ten prosecutions were discontinued on the basis of a recommendation from a regional office without prior representations from the defendant. A breakdown of these statistics appears in table 1.

Table 1 - No bill matters

State	Applications by Defence			Action by DPP	Total Discontinued
	Granted	Refused	Total		
NSW	7	6	13	3	10
Vic.	3	4	7	3	6
Qld	7	4	11	2	9
WA	0	1	1	1	1
SA	1	0	1	0	1
Tas.	0	0	0	1	1
NT	0	0	0	0	0
ACT	0	1	1	0	0
Total	**18**	**16**	**34**	**10**	**28**

Of the 28 matters discontinued prior to trial, the sufficiency of evidence was the main factor in 20 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.

The remaining eight cases that were discontinued fell into three categories. In four cases the defendant's mental or physical health was the main reason for discontinuing, in three cases the defendant had already been dealt with on other charges arising from the same matter. In the last case, involving alleged offences against the *Migration Act 1958*, it was not possible to proceed to trial because the defendant left Australia after being told by an officer of the Department of Immigration, Local Government and Ethnic Affairs that he would not be prosecuted further if he left Australia voluntarily. The officer had no authority to give the assurance in question. However, it effectively tied the hands of the DPP.

A breakdown of these statistics appears in table 2.

Table 2 - Reasons for discontinuing prior to trial

State	Reasons				Total
	Evidence	Health of Defendant	Convicted on Other Charges	Other	
NSW	7	2	0	1	10
Vic.	3	1	2	0	6
Qld	8	1	0	0	9
WA	0	0	1	0	1
SA	1	0	0	0	1
Tas.	1	0	0	0	1
NT	0	0	0	0	0
ACT	0	0	0	0	0
Total	**20**	**4**	**3**	**1**	**28**

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, to appeal in some cases against a grant of bail and to apply for a variation of recognisance 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 set aside a conviction.

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 the 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.

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 the person 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 they 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 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).

In the past year the Director or the Associate Director signed a total of 35 undertakings under section 9(6) and 9(6D). In some cases, indemnities were given to more than one witness. In total, indemnities were given in 20 cases, of which only 18 were prosecutions. In one case an indemnity was given to a witness appearing in civil proceedings and in the remaining case indemnities were given to a witness appearing in proceedings in Australia under the *Mutual Assistance in Criminal Matters Act 1987*.

A breakdown of the above figures appears in tables 3 and 4.

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 they may give, and anything that may be derived from that evidence, will not be used in subsequent proceedings under Commonwealth law other than proceedings for perjury. 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 either provision in the past year.

Table 3: Indemnities – numbers

State	Matters	Indemnities		Total
		S.9(6)	s.9(6D)	
NSW	13	22	1	23
Vic.	4	4	1	5
Qld	1	1	-	1
WA	1	2	-	2
SA	1	4	-	4
Tas.	-	-	-	-
NT	-	-	-	-
ACT	-	-	-	-
Total	**20**	**33**	**2**	**35**

Table 4: Indemnities - types of case (i)

State	Drugs	Fraud	Citiznshp Act	Mutual Assis.	Non-Crim.	Corp	Other	Total
NSW	2(4)	4(4)	2(9)	-	1(1)	1(1)	3(4)	13(23)
Vic.	1(1)	1(1)	-	1(2)	-	-	1(1)	4(5)
Qld	1(1)	-	-	-	-	-	-	1(1)
WA	1(2)	-	-	-	-	-	-	1(2)
SA	-	1(4)	-	-	-	-	-	1(4)
Tas.	-	-	-	-	-	-	-	-
NT	-	-	-	-	-	-	-	-
ACT	-	-	-	-	-	-	-	-
Total	**5(8)**	**6(9)**	**2(9)**	**1(2)**	**1(1)**	**1(1)**	**4(5)**	**20(35)**

(i) The figures in the table show the number of matters, with the number of indemnities given in brackets.

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 1991-92.

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 twice in 1990-91. Both cases involved defendants alleged to have committed drug offences.

In one case, the defendant resisted extradition from Hong Kong. Those proceedings went as far as the Privy Council in the United Kingdom. While those proceedings were in progress, eight other defendants were committed for trial in Australia. The Director considered that the defendant had been given ample opportunity to know and understand the case against him. In the second case, the Director decided that the magistrate had clearly erred in not finding that there was sufficient evidence to commit the defendant for trial and considered that the matter was sufficiently serious to warrant a trial notwithstanding the magistrate's decision.

Back row left to right:
Paul Evans, Deputy Director Brisbane; Tony Wadick, Deputy Director Sydney; Bill Nairn, Deputy Director Perth; Peter Wood, Deputy Director Melbourne; Grant Niemann, Deputy Director Adelaide.
Front row left to right:
Peter Walshe, First Deputy Director; Michael Rozenes QC; Paul Coghlan, Associate Director

3 General prosecutions

The General Prosecutions Branches conduct all DPP prosecutions other than those for corporate offences. They also handle extradition proceedings and court work arising from requests by foreign countries that evidence be taken in Australia for use in foreign proceedings.

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. DPP officers are also involved in the training of non-police investigators, who are becoming a common feature of Commonwealth law enforcement.

In extradition matters, the DPP conducts litigation in Australia where a foreign country has sought the return of a person found in Australia. The DPP effectively acts as solicitor for the foreign country acting on instructions transmitted through the Attorney-General's Department. DPP officers also appear in court where evidence is required to be taken in connection with a request by Australia for the extradition of a person wanted in respect of a alleged offence against Commonwealth law.

As a general rule, 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 DPP also prosecutes some offences against State law, normally in cases where a person has been charged with both State and Commonwealth offences arising from a single course of conduct.

The Commonwealth does not have its own criminal courts. The DPP prosecutes most of its cases in State and Territory courts, which are vested with jurisdiction 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.

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 case requires special expertise which is not available in-house.

The DPP also often briefs local solicitors or police prosecutors to represent it on mentions and pleas of guilty in matters dealt with in country areas. The cost of sending DPP lawyers to deal with all such matters would be prohibitive and our thanks go to those who provided assistance to us during the past year.

Statistics on the number of cases dealt with during the year appear at the end of this report. Those statistics show that there has been a general increase in work over the past year.

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

Sydney

Chase

In this matter the defendant was convicted on one count of being knowingly concerned in the importation of a traffickable quantity of cocaine. He subsequently appealed unsuccessfully against his conviction to the NSW Court of Criminal Appeal.

The main ground of the appeal was that, in the course of summing up to the jury, the trial judge had mis-stated part of the evidence given by Chase in an unsworn statement. The trial judge told the jury that Chase had not contradicted the evidence of an accomplice who had given evidence against him. There was no dispute that the trial judge had made an error in this respect. The question was whether that error was significant given the weight of evidence against Chase.

The difficulty Chase faced was that his counsel made no objection to the summing up at trial. The Crown argued that this showed that the mis-statement was of little moment.

The Court of Criminal Appeal dismissed the appeal, whereupon Chase applied for special leave to appeal to the High Court.

The High Court granted special leave to appeal but dismissed the appeal. In doing so, the High Court approved the following passage from an earlier judgment of the NSW Court of Criminal Appeal in the matter of *R v. Tripodina and Morabito* (1988) 35 A Crim R 183:

> Although the court is obliged to be astute to secure for the accused a fair trial according to law, in accordance with what was said in *Pemble*, nonetheless, in my opinion, it should be astute also to ensure that points, especially those of little or no merit, which were not thought by counsel appearing at the trial to be of any great significance, should not be raised for the first time on appeal. Furthermore, the fact that no objection was taken at the trial is in many cases cogent evidence of the fact that, having regard to the atmosphere of the trial and the manner in which it was conducted, the matter later complained of what not regarded as being of significance, or likely to give rise to any miscarriage of justice.

Cowra Abbatoir Ltd

This matter arose after the Commonwealth withdrew the services of meat inspectors from Cowra Abbatoir on the basis that it had not been paid the full amount due in respect of the services of those inspectors. The abbatoir proceeded to slaughter approximately 2 500 sheep and cattle which had not been inspected as required under the provisions of the *Meat Inspection Act 1983*.

The defendant company was charged with one offence of slaughtering animals which had not been inspected. It pleaded not guilty.

The defence to the charge was, in essence, that the Commonwealth had improperly increased meat inspection fees, that the new fees were therefore invalid and that the Commonwealth had no right to withdraw meat inspectors from the abbatoir. The defendant alleged that the Commonwealth had failed

to comply with the terms of a 1983 agreement between the Commonwealth and NSW which required consultation with the industry before any change was made to meat inspection charges.

As the argument raised a potential Constitutional issue, concerning the status of the 1983 agreement, notice of the case was served on the Commonwealth and NSW Attorneys-General under section 78B of the Judiciary Act. In the event, the NSW Attorney-General intervened in the proceedings but argued that there was no Constitutional issue.

The charge was heard by a magistrate, who ruled that the 1983 agreement had no statutory force. The defendant was convicted and fined $1 000.

Farrugia

This defendant pleaded guilty in the District Court of NSW to one count of attempting to transfer more than $5 000 out of the country without filing a report as required under section 15 of the *Cash Transaction Reports Act 1987*. The amount involved was $44 500.

The defendant was fined $4 000. However, the real significance of the case is that the judge also ordered that both the $44 500 and an airline ticket worth $800 be forfeited under section 19(1) of the *Proceeds of Crime Act 1987*.

The money was found hidden in the defendant's shoes and his hand luggage as he attempted to board a flight to Singapore. The defendant admitted that the money was his and that he knew about the reporting requirements. However, he claimed that he had saved the money from his earnings as a painter and docker and said that he was taking it to Singapore to invest. He also said that he mistrusted banks and had kept the money under the floorboards of his home until he was ready to travel to Singapore.

The defendant's story fell apart when it was shown that some of the notes were not in circulation until after he had ceased working as a painter and docker and could not have been derived from that source. The court had little difficulty in finding that the money was intended for some nefarious purpose.

The defendant filed a notice of appeal against penalty but subsequently withdrew it.

Ferrer-Esis

In this case the defendant was found to be carrying 4.2kg of cocaine in his luggage upon arrival in Australia from Venezuala. He was charged with possessing the drug and importing it into Australia.

The defendant said that he had been asked by a stranger to take a bag through Customs for $500 and that he did not know that the bag contained cocaine.

On the first day of the trial, the defendant pleaded guilty to the possession charge. The DPP withdrew the second count.

The defendant was initially sentenced to six years with a non-parole period of three-and-a-half years. Both the defence and the prosecution appealed against the penalty.

On 25 July 1991 the NSW Court of Criminal Appeal quashed the original sentence and substituted a sentence of nine years with non-parole period of five years.

The court ruled that the starting point in NSW for couriers carrying a substantial quantity of heroin or cocaine is a head sentence of between eight-and-a-half and eleven years. The court rejected an argument that sentences for cocaine offences should generally be lower than those for offences involving heroin.

Gutierrez

The defendant in this matter was alleged to have been engaged in extracting cocaine that had been imported, impregnated in plastic resin.

The matter came to light when the AFP executed a search warrant at Gutierrez's house. They found bags of impregnated resin and quantities of cocaine at different stages of the extraction process. They also found equipment and chemicals which, according to expert evidence, were used in the process of extracting cocaine from plastic resin.

The defendant was charged with possessing a traffickable quantity of cocaine under section 233B of the Customs Act. There was no direct evidence that the cocaine had been imported in breach of the Customs Act. However, expert evidence was called to identify the cocaine as a foreign product.

The defendant was found guilty of the charge and was sentenced to seven years imprisonment with a non-parole period of four years.

Operation Lorikeet

This case arose when AFP officers, who were conducting an investigation into unrelated matters, came upon evidence that a number of past and present Customs officers were engaged in the systematic theft of goods under Customs control.

The method used involved the deliberate short counting of goods where cartons were found to be damaged. A 'pillage survey form' would be completed which would list less goods than were in the cartons, and would blame the difference on overseas pillagers. The excess goods would be removed from the cartons after they had been released from Customs control.

The goods involved included running shoes, golf shoes, watches and new clothing.

The main offender was a Customs agent, who was a former Customs officer. However, at least three serving Customs officers were involved in the matter, and presumably took their share of the stolen goods.

The main offender has been convicted on 28 charges of stealing or receiving Commonwealth property and having goods in custody contrary to the *NSW Crimes Act 1900*. He is presently awaiting sentence.

Two Customs officers pleaded guilty to charges arising from the matter and a third was found guilty upon summary hearing on two counts of having goods in custody. Another three people pleaded guilty to charges in the matter.

Mai and Tran

The defendants in this case were both charged with possessing a traffickable quantity of heroin. Mai was also charged with attempting to possess a traffickable quantity of heroin.

The heroin was contained in a suitcase that was sent as unaccompanied baggage from Bangkok. The suitcase contained 10.3 kg of heroin (6.9 kg pure) in 37 blocks.

The AFP detected the heroin and arranged a substitution for all but 50g of heroin. They then delivered the suitcase to a motel at Bondi Beach and took up surveillance.

The defendants were seen to travel to a motel, where Tran took possession of the suitcase. When arrested, Tran was found with eight-and-a-half blocks. Mai was found in possession of only one block, and that did not contain any heroin.

Both defendants were convicted at trial, each was sentenced to an effective term of 13 years imprisonment with a non-parole period of 10 years. They both appealed against conviction and sentence.

The appeals were unsuccessful. However, the Court of Criminal Appeal gave some useful guidance on the circumstances in which a charge can be laid of attempting to commit an offence.

The defendant Mai claimed that the charge of attempting to possess heroin was invalid. That charge related to the block found in his possession which, as events transpired, contained no heroin. It was argued that he had been charged with attempting the impossible.

The court reviewed the authorities and held that a charge of attempt will lie if the prosecution can prove that:

- the defendant committed the relevant act with the state of mind required to constitute the final offence; and
- the act in question went beyond mere preparation.

In so finding the court followed the Victorian decision of *Britton v. Alpogut* [1987] VR 929 and the Western Australian decision of *R v. Lee* (1990) 47 A Crim R 187 in preference to the earlier NSW decision of *R v. Gulyas* [1985] 2 NSWLR 260.

Montgomery

Montgomery was charged with two counts of possessing a traffickable quantity of cocaine. The total amount of cocaine involved was 639g.

The charges related to cocaine found in a briefcase, which was in turn found inside a suitcase, and another quantity of cocaine found in a bucket on the verandah of the unit where Montgomery resided. The second quantity of cocaine was contained within a waxy substance.

The defendant said that the cocaine all belonged to another person, who had died following a heroin overdose. He said that he had allowed the other person to store things at his unit.

There was evidence to connect the defendant with the briefcase, and hence the cocaine it contained. That evidence included documents in names that were used by the defendant. However, the only evidence to connect the defendant with the cocaine in the bucket was expert evidence that small particles of a waxy substance similar to that found in the bucket were also found inside the briefcase.

The jury convicted Montgomery on both charges. At the time of reporting, the defendant has not been sentenced.

Mutual assistance

This matter relates to the prosecution of a company and an individual on charges, under section 82 of the *Proceeds of Crime Act 1987*, of receiving and disposing of property reasonably suspected of being the proceeds of drug sales in the United States.

It is alleged that a person who has been charged with drug offences against US law, and who is presently resisting extradition to the USA from Hong Kong, remitted approximately $15 million to Australia. It is alleged that the money is reasonably suspected of being the proceeds of drug transactions in the USA. It is also alleged that the defendants in the Australian proceedings received the money and used it to buy property in Australia knowing, or at least suspecting, that the money was the proceeds of crime.

There are a number of elements that the prosecution must prove in order to establish a case against the Australian defendants. They include that the money sent to Australia can be traced back to the alleged drug offender and that the money can reasonably be suspected of being the proceeds of his drug offences. Both of these elements require evidence from overseas.

Considerable documentary material has been gathered in the USA, Hong Kong and Australia to identify the source of the relevant money. The Hong Kong authorities, in particular, have provided a great deal of assistance in helping to unravel the complex financial arrangements by which money sent initially to Hong Kong found its way to Australia.

On 19 February 1992 the Supreme Court of NSW issued letters of request under Part 111B of the *Evidence Act 1905* asking that evidence be taken in the USA for use in the proceedings in Australia. A DPP officer subsequently travelled to the USA, with Australian counsel and took evidence from three people who were willing to give evidence in the case but who did not wish to travel to Australia.

The Australian defendants were represented in the proceedings by US lawyers, who were allowed to cross-examine the witnesses.

The proceedings in the USA were recorded on video and were transcribed. The prosecution will seek to have the video tape admitted into evidence at the trial.

A trial in the matter is likely to take place early in 1993.

Pontello

The defendant in this matter was charged with a number of counts under section 85ZKB of the *Crimes Act 1914* of advertising, selling, possessing and manufacturing devices capable of intercepting a communication in contravention of section 7(1) of the *Telecommunications (Interception) Act 1979*.

The devices in question included an apparatus that broke the telephone line and sent a signal that could be picked up on an ordinary FM radio.

The principal argument raised by the defence was that it was not an offence to possess the relevant apparatus because it could not, when used alone, enable a person to intercept a communication. It could only achieve that result when used in conjunction with other equipment.

The defendant was convicted at first instance but lodged an appeal. The matter was heard on appeal by the Common Law Division of the Supreme Court. The judge rejected the defendant's argument, finding that the apparatus was of a kind that is capable of being used to intercept a communication within the meaning of section 85ZKB(1).

The judge held that what matters when construing section 85ZKB, is the kind of article in question, that is whether it can reasonably be regarded as having as its purpose, or one of its purposes, the clandestine listening to, or recording of, telephone communications.

That decision gives some indication of the approach courts are likely to take if relevant equipment can be used for a number of purposes other than intercepting telecommunications.

Operation Saddler

This case involved an investigation by Telecom into allegations that a number of Telecom employees had improperly obtained money by way of travelling allowance to which they were not entitled.

Approximately 50 matters were referred to the Sydney Office. It was generally alleged that employees had submitted receipts showing that they had stayed at a hotel or motel for more days than they had actually stayed or that they had paid more per night than was actually paid. The employees were usually assisted by employees of the relevant hotel or motel. Some employees went even further and obtained or created receipts for periods when they were not at the relevant hotel or motel. One officer even created receipts for hotels that did not exist. A substantial amount was overpaid to the employees and Telecom was keen to show that such conduct would not be tolerated.

The Operation is still in progress although the majority of matters have been completed.

Most employees had been disciplined prior to the prosecution proceedings or had resigned from Telecom. The sentences imposed on those convicted of offences ranged from good behaviour bonds under section 19B of the Crimes Act to a two-year jail sentence.

United Telecasters (Sydney) Ltd

This case involved the prosecution of the proprietors of a television station for contempt of court.

The charge related to a story broadcast on a news bulletin concerning an immigration scam, allegedly masterminded by a person who was facing unrelated charges of conspiring to defeat the operation of the *Migration Act 1958*. The item was broadcast on the day the trial began. The trial judge discharged the jury because of the risk of prejudice arising from the television item.

The station was aware of the trial and took some steps to conceal the identity of the defendant. However, a number of things appeared in the course of the story which were capable of identifying the defendant.

The contempt charge was heard by the Court of Appeal, which found that there had been a contempt of court.

The court found that the telecast had a real tendency, as a matter of practical reality, to interfere in the trial. The court also found that the fact that the jury had been discharged was not conclusive of that issue and that it was up to the court to form its own view on the potential for prejudice.

The court found that the contempt was unintended but that the matter was serious, given that the defendant was aware of the trial, and that the broadcast had resulted in a mistrial. The court imposed a fine of $20 000.

White

White was one of four people charged with conspiring to defraud the Commonwealth of sales tax of the sum of $239 000. The alleged fraud took place between May and December 1984, during which time the maximum penalty for the offence was increased from three years imprisonment to five.

Two of the alleged conspirators pleaded guilty and were dealt with shortly after arrest. They were sentenced on the basis that the maximum penalty applicable was three years imprisonment.

White initially pleaded not guilty but changed his plea on the first day of the trial. He subsequently gave evidence against the fourth defendant, although that person was acquitted by a jury.

White was sentenced to two years imprisonment to be released after 10 months. He was sentenced on the basis that the maximum penalty for the offence was five years imprisonment.

White appealed against penalty, the main issue being whether the maximum available was three years or five. The Court of Criminal Appeal held that as conspiracy is a continuing offence the maximum penalty was five years not three. However, the court also held that the fact that the penalty had been changed during the currency of the conspiracy was a matter that should be taken into account in setting penalty.

The court did not alter the sentence.

Whitelock

This defendant was an accountant who, despite not being registered as a tax agent, carried on business as a tax agent. He was committed for trial on 215 charges of forgery and fraudulent misappropriation. He subsequently stood trial on 53 charges and was convicted on 51.

It was alleged that Whitelock regularly forged tax documents and used them to improperly obtain money from his clients.

One of Whitelock's methods was to forge or falsify notices of assessment that he sent to his clients. The notices would show that the client owed more in tax than he or she in fact owed. The clients would send a cheque to Whitelock to pay the tax. He would deposit the cheque in his trust account, pay the amount due by way of tax and retain the difference.

Another of Whitelock's methods was to alter group remittance forms provided to him by clients, so that the forms showed a lesser amount than was originally entered by the client. He would forward less money to the ATO than had been given to him by the client.

When Whitelock was sentenced he asked that a further 240 similar offences be taken into account. He was sentenced to eight years imprisonment with a minimum term of five years.

Melbourne

Bakri and Toubya

This case involved the importation of 486.2g of heroin from Lebanon. The drug was impregnated into clothing and a towel which were in a bag carried by the defendant Bakri. The items were stained, stiff to the touch and had an acidic smell.

Bakri denied any knowledge of the heroin. He assisted the police by contacting the defendant Toubya, who was alleged to be the intended recipient of the drug. The AFP subsequently recorded a number of telephone conversations between Toubya and Bakri, and between Toubya and people in Lebanon.

Both defendants pleaded not guilty to drug charges but were convicted after separate trials. Bakri was sentenced to eight years imprisonment with a minimum term of four years. Toubya was sentenced to imprisonment for 14 years with a minimum term of seven years. Bakri's sentence was substantially reduced to reflect his cooperation with the authorities after his arrest.

Both defendants appealed against conviction and sentence. Bakri's appeal was not successful. Toubya's appeal is still to be heard.

Bakri's appeal raised an issue concerning the admissibility of telephone conversations between Toubya and people in Lebanon. The defence sought to call evidence of certain calls which they said contained material that tended to exculpate Bakri. The DPP argued that the material was inadmissible as hearsay and that, in any event, it was not exculpatory when taken in context.

The evidence was ruled inadmissible at the trial and that ruling was upheld on appeal.

Browne-Kerr

The defendant in this case was charged with 26 counts of forging documents deliverable to the Department of Social Security, being 23 applications for unemployment benefits and three Reserve Bank cheques. It was alleged that the defendant had improperly obtained unemployment benefits in a false name. The documents which were the subject of the charges had all been signed in that name.

Browne-Kerr was eventually convicted by a jury on 23 of the 26 counts. He was sentenced to two years imprisonment to be released on recognisance after eight months.

The defence raised a number of legal arguments before the trial began. The most significant concerned the admissibility of the application forms which were the subject of 23 of the charges.

The defence argued that those forms could not be used in evidence because they fell within section 135TE of the *Social Security Act 1947*. That section provided, in effect, that information obtained by compulsion under the Social Security Act could not be used in evidence in criminal proceedings except in respect of the specific offence of providing false or misleading information. (A similar argument was raised successfully in relation to different forms in the matter of Bartlett, which was reported last year).

The defence argued that section 135TE covered all relevant forms, including those which predated its enactment.

The trial judge ruled that section 135TE had no retrospective effect, and hence no application to any form that predated 24 October 1983. He also ruled that, as none of the application forms that were signed after 24 October 1983 compelled the defendant to provide information, they did not fall within the protection of section 135TE either. Clearly the defendant needed to complete the forms if he wished to continue receiving unemployment benefits. However, he had a choice whether to do so.

The decision did not deal with the admissibility of forms completed after 31 October 1986, when the legislation relating to the relevant forms was changed.

Caltex Tanker Company (Australia) Pty Ltd and Hickey

This matter arose from a discharge of oil off the Victorian coast by the oil tanker MT *Arthur Philip*. It is alleged that the discharge caused the death of at least 270 fairy penguins and numerous other wildlife. The owners of the vessel and the ship's master were charged with offences under the *Protection of the Sea (Prevention of Pollution by Ships) Act 1983*.

In June 1992 the owners pleaded guilty to one count of discharging oil. The master pleaded guilty to one count of discharging oil and one count of failing to report the discharge.

At the time of reporting, penalties were still to be set. The maximum penalty for an offence by an individual is a fine of $55 000. The maximum penalty for a body corporate is a fine of $220 000.

The prosecution is also seeking a reparation order under section 21B of the Crimes Act in respect of the cost of cleaning up the oil spill.

Delaney

This defendant was a senior officer at the Department of Social Security. He used his knowledge of the department's procedures to create 22 fictitious beneficiaries and arrange for benefits to be paid into bank accounts opened in the false names.

Delaney used his brother and another person to set up the accounts and collect the benefits. The offenders defrauded the Commonwealth of a total of $157 000.

In April 1992 Delaney pleaded guilty to 22 counts of defrauding the Commonwealth. He was subsequently sentenced to five-and-a-half years imprisonment with a non-parole period of three-and-a-half years. He was also ordered to pay $75 000 under the Proceeds of Crime Act.

Delaney's brother was sentenced to one-and-a-half years imprisonment with a minimum term of six months. He was ordered to pay $21 700.

Dietrich

This case raises the question of whether there is any right to legal representation in criminal matters in Australia.

The defendant was charged with importing and possessing heroin. He was convicted by a jury on the importation counts and two of three possession counts.

Dietrich represented himself at the trial before the County Court after being denied legal aid. He subsequently appealed unsuccessfully against conviction and sentence.

Dietrich then applied to the High Court for special leave to appeal claiming that, as an indigent person charged with a serious indictable offence, he had a legal right to be represented at his trial by counsel appointed at public expense.

The High Court gave special leave to appeal and heard argument on the issue. At the time of reporting judgment was reserved.

Traditionally, Australian courts have not recognised a right to representation in criminal matters. It has been thought that the trial judge can ensure that a person who is not represented receives a fair trial. The leading Australian authority on the issue is the High Court decision in *McInnis v. R* (1979) 143 CLR 575.

It was argued in the appeal that the traditional approach is not consistent with the provisions of the International Covenant on Civil and Political Rights and with the concept of due process.

The case has obvious implications for the legal aid authorities in all Australian jurisdictions.

Morris

Morris is a barrister at the Victorian Bar. He was charged with nine counts of imposition on the Commonwealth under section 29B of the Crimes Act.

It was alleged that Morris evaded $270 000 in income tax by understating his income for each year from 1980 to 1988. His total income for the period was $1 152 100. He declared $652 097.

The matter first came to light in March 1989 when the Australian Taxation Office contacted a number of barristers' clerks in Melbourne and requested details of the income and expenditure of barristers on their lists. The defendant's clerk informed him of the request. One week later the defendant contacted the ATO and requested an appointment. He subsequently admitted that he had understated his income over the relevant period.

The ATO advised the defendant that it considered his disclosure to be voluntary and that, accordingly, there would be no publicity and no prosecution. On 1 September 1989 the defendant paid $286 000 in full settlement of his taxation liability. That figure was only marginally more than the primary tax that had been evaded.

The DPP became aware of the case in mid-1990 as a result of a newspaper article in which the ATO was quoted as saying that large sums of money had been recovered from members of the Victorian Bar. The DPP called for the files relating to barristers. The files that were provided included that relating to the defendant.

The DPP decided that in view of the seriousness of the case criminal charges should be laid despite the assurances that had been given to the defendant.

The defendant waived his rights to a committal but applied to the County Court for a stay of proceedings on the grounds that the prosecution constituted an abuse of process. That application was withdrawn part-way through and, on the same day, the defendant pleaded guilty to the nine counts against him.

On 17 March 1992 the defendant was sentenced to an effective term of imprisonment of two years which was fully suspended.

The DPP appealed against the sentence. On 22 June 1992 the Supreme Court upheld the appeal and substituted an effective sentence of 18 months imprisonment, with a minimum term of six months to be served.

Nichols

In this case the defendant was apprehended at Melbourne Airport as he was about to board a flight to New Zealand. Customs officers found 74 lizards in his baggage.

The lizards had been packed in two suitcases wrapped in blankets with their legs taped to prevent movement. The lizards were of two types, bearded dragon and shingle backed. Both are native to Australia. They have an overseas value of $150 and $300 respectively.

The defendant was charged with one count under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*. He pleaded guilty in the County Court and was sentenced to 18 months imprisonment, to be released on recognisance after eight months.

Pope and Johnson

The defendants in this case were experienced deep-sea divers. They were charged with offences against the *Historic Shipwrecks Act 1976*. Pope was charged with removing relics from a historic shipwreck and Johnson with interfering with a historic shipwreck. The wreck in question was that of the Dutch ship Loch Ard which sunk off the coast of Port Campbell in the 1870s.

The case was originally heard by a magistrate who ruled that the notice in the Government Gazette which declared the remains of the Loch Ard to be a historic shipwreck was invalid. The informations against both defendants were dismissed.

The DPP then applied to the Supreme Court for an Order to Review in respect of the magistrate's ruling. The Supreme Court allowed the application, declared the Gazette Notice to be valid and remitted the matter back to the Magistrate's Court for hearing.

On 16 June 1992 both defendants were convicted and fined.

Scotis

The defendant was the owner of a pharmacy which regularly supplied goods to a number of nursing homes and special accommodation homes in Victoria. Each month the defendant submitted claims to the Department of Health and the Department of Veterans's Affairs in respect of goods supplied during the month.

It was alleged that between 1986 and 1987 the defendant lodged 19 claims which had been inflated. In some cases the defendant claimed for items that had not been supplied at all. In other cases the defendant had supplied non-pharmaceutical items but claimed payment on the basis that he had supplied pharmaceutical items. It was alleged that the defendant had improperly claimed $95 500.

The defendant pleaded guilty to 19 counts under section 29A of the Crimes Act of obtaining money from the Commonwealth by a false pretence. A further five offences were taken into account at sentence, reflecting an additional $42 000 that had been improperly obtained by the defendant.

The defendant was sentenced to three years imprisonment, to be released on a good behaviour bond after serving 10 months. Most of the overpayment was recovered by the Commonwealth prior to sentence.

Trewhitt

The defendant is a former member of the Victoria Police who received unemployment benefits at the married rate while both he and his wife were working. The fraud continued for five years, during which time the defendant improperly obtained $50 250.

The defendant pleaded guilty to one count of defrauding the Commonwealth contrary to section 29D of the Crimes Act. He was sentenced to 18 months imprisonment.

Zakaria

This defendant was detected at Melbourne airport carrying 2.7kg of heroin after arriving on a flight from Lebanon. Two kilograms of the heroin was inside a false-bottomed suitcase and the rest was impregnated in bed sheets which the defendant was carrying in her hand luggage. The street value of the drug was between $5 million and $6 million.

The defendant claimed that she had been given the suitcase and bedsheets in Lebanon and that she was delivering them to Australia as a favour. She denied knowing that they contained heroin.

The prosecution called evidence to show that, even when it was empty the suitcase was very heavy and quite difficult to carry. The sheets, which were supposedly new, were visibly stained and smelt of vinegar.

After a lengthy trial, Zakaria was convicted on one count of importing the heroin and one count of possessing it. She was sentenced to 14 years imprisonment with a minimum term of eight years.

The defendant has appealed against the conviction and sentence.

Brisbane and Townsville

Ashauer

On 19 July 1991 Ashauer pleaded guilty to two counts of defrauding the Commonwealth contrary to section 29D of the Crimes Act.

It was alleged that Ashauer made two false claims for diesel fuel rebate while working in a senior position in the section of the Australian Customs Service which administered the rebate scheme. The defendant improperly obtained a total of $34 400. The first claim involved only $13 600 and it appears to have been a trial run to test the effectiveness of the scheme devised by Ashauer.

Ashauer was sentenced to six years imprisonment with a non-parole period of two years. The sentencing judge noted that he had blatantly abused a position of trust, that the offences had involved a high degree of deliberation and planning, and that the fraud would probably have continued indefinitely if it had not come to light by accident.

Ashauer was also ordered to pay a pecuniary penalty under the Proceeds of Crime Act.

Houssart

In this case the defendant was charged with five offences against section 8(4) of the *Crimes (Internationally Protected Persons) Act 1976*. The defendant sent a series of letters to Dutch diplomats in Australia and New Zealand threatening to kill them unless certain demands were met. The last charge related to a letter that was sent after the first four charges had been laid.

Committal proceedings commenced in September 1990. At the start of the proceedings the prosecution raised the question of Houssart's fitness to stand trial. The magistrate referred the question to the District Court for determination in accordance with section 20B of the Crimes Act.

The matter was first mentioned in the District Court on 1 October 1990 but was not resolved until September 1991. The delay was caused partly because Houssart absconded from Queensland and it was necessary to seek his extradition from Western Australia. However, much of the delay was caused by problems that arose in working out how section 20B should apply. The section gives no guidance on the procedure that should be followed once the question of fitness to stand trial has been referred to a superior court.

The procedure that was eventually agreed between the parties, and adopted by the District Court, was to apply section 613 of the Queensland Criminal Code, which deals with want of understanding by an accused person, to the extent that its provisions were not inconsistent with section 20B.

Houssart was examined by a psychiatrist and a psychologist, who both found him fit to stand trial. However, it was still necessary to empanel a jury to make a formal finding on the issue.

The jury found Houssart fit to stand trial and the matter was referred back to the magistrate for the completion of the committal proceedings. In March 1992 the defendant was committed for trial.

In June 1992 Houssart pleaded guilty to all five counts against him. He was sentenced in the District Court at Brisbane to twelve months imprisonment, to be released forthwith upon entering a good behaviour bond.

By the time of sentence, Houssart had spent a total of nine months in custody. There was also evidence that Houssart's problems with the Dutch authorities had been addressed.

Mamic

The defendant in this case was alleged to have sent a threatening letter to an officer of the Department of Social Security. He was originally charged with an offence against section 76 of the Crimes Act of obstructing a public officer. He was committed for trial on that charge.

The committal proceedings were conducted by the Queensland Police. When the papers were referred to the DPP it was decided that the more appropriate charge was for a summary offence against section 85S of the Crimes Act for improper use of the postal services. The original proceedings were discontinued and a fresh charge was laid against Mamic.

When the fresh charge came on for hearing the defence applied for a stay of proceedings on the ground that the proceedings were an abuse of process. The magistrate agreed and ordered that the proceedings be stayed. The DPP appealed against that order to the Court of Appeal.

The Court of Appeal upheld the appeal and set aside the magistrate's order. The court remitted the matter back for hearing before another magistrate.

When the matter came back before the Magistrates Court the defendant pleaded guilty to the charge under section 85S. He was convicted but released on a good behaviour bond.

The Court of Appeal made some useful comments in relation to the circumstances in which proceedings should be stayed as an abuse of process. They found that such a course is exceptional and that there is no power to suppress a prosecution simply because it is inconvenient or because the court considers that some alternative procedure or charge may have been more appropriate.

Ralston-Smith

The defendants in this matter were a married couple who were charged with defrauding the Commonwealth.

The husband was a former officer of the Department of Social Security. He retired due to ill-health and claimed sickness benefits, which were subsequently converted to an invalid pension. At the same time he was receiving a service pension from the Department of Veteran's Affairs, which he did not disclose. The husband also received rental assistance under each pension. He received $27 500 in excess of his entitlements.

The wife managed to obtain multiple benefits in different names from the Department of Social Security. At the same time she received a wife's pension from the Department of Veteran's Affairs. She received $106 000 in excess of her entitlements.

Both defendants pleaded guilty to charges against them. The husband, who was 68, was a heavy drinker, and had health problems arising from alcohol abuse. He was sentenced to 12 months imprisonment but was ordered to be released on a good behaviour bond in view of his poor health.

The wife, who was 58, was sentenced to three years imprisonment to be released on a good behaviour bond after nine months.

The court made pecuniary penalty orders against both defendants under the Proceeds of Crime Act.

Operation Termite

Operation Termite was a joint operation in North Queensland between the AFP and the Queensland Police. It involved the use of an undercover officer, listening devices and telephone intercepts. The operation resulted in the seizure of large quantities of cannabis and 78g of imported heroin (57g pure weight). It also resulted in the conviction of four people on drug charges.

The prime mover in the importation of the heroin was John Abeleven, who travelled to Europe and recruited a family friend, Koch, to act as a courier. Koch imported the heroin via Perth.

The other two defendants, William Abeleven and Witmar, were to be involved in distributing the drug in Australia.

During the course of the operation, evidence was obtained that Witmar was also involved in supplying cannabis in Australia.

The Abeleven brothers pleaded guilty to charges of conspiring to import heroin. The heroin had a wholesale value of $184 000 and a street value of about $427 500. Both defendants were sentenced to 12 years imprisonment with a non-parole period of five years.

The courier Koch, pleaded guilty to one count of importing heroin. He was sentenced to seven years imprisonment, with a non-parole period of two years and nine months.

Witmar pleaded guilty to charges under Queensland law. He was sentenced to eight years imprisonment with a recommendation that he be considered for parole after three years.

Terry

This prosecution followed the emergency landing of a single engine four seat Cessna on a busy public roadway at Yorkey's Knob outside Cairns. The pilot was charged with one offence against the Civil Aviation Regulations of commencing a commercial flight without ensuring that he had adequate fuel for the flight.

The plane had been scheduled to fly from Cooktown to Cairns with two paying passengers. About ten minutes out of Cairns the plane ran out of fuel and the pilot was forced to make the emergency landing. The plane narrowly missed several cars and clipped a sign post before coming to a stop. Fortunately no one was hurt, although the passengers were shaken by the experience. When the case came on for hearing, the passengers chose to drive from Cairns to Cooktown rather than risk another small plane flight.

The hearing lasted for two days in the Cooktown Magistrate's Court. The defendant claimed that fuel thieves must have milked the plane. However, the magistrate found that the defendant's fuel management procedures were not adequate.

The magistrate convicted the defendant and ordered that he perform 240 hours community service and pay $5 000 in court costs. The magistrate also commended the defendant for the skill he showed in effecting the emergency landing.

Operation Tie

This case arose from the chance discovery of 286.7kg of compressed cannabis by Australian soldiers on exercise on a remote island in the Torres Strait. The cannabis was found in 39 cardboard boxes hidden among mangroves on the island.

The cannabis had been left by a national of Papua New Guinea who had been rescued from the island by Customs Officers four days earlier. His story at the time was that he had been stranded when his boat broke down while he was looking for sea cucumbers. He subsequently admitted that he had been taking the cannabis to Australia and that he had been marooned on the island when his boat developed engine trouble.

As a result of information provided by the Papua New Guinean man, charges were laid against two expatriate Australians who were living in Papua New Guinea. The Papua New Guinean man was indemnified to give evidence against the defendants.

The witness claimed that there had been two importations of cannabis to Australia, both arranged by the defendant Neilson.

In the first, cannabis had been loaded onto an old half-cabin cruiser anchored at an island outside Port Moresby. In the second, the witness and another person had attempted to take two small boats loaded with cannabis to Australian waters to rendezvous with a larger vessel. It was during this operation that the witness experienced engine problems and became separated from the second defendant.

The case involved a large number of witnesses, many of whom had to be brought from Papua New Guinea or remote parts of Australia.

Shortly before the trial was due to begin in the Supreme Court in Cairns, Neilson was arrested on drug charges against State law. The *Cairns Post* newspaper published an article reporting the arrest and referring to the pending trial. The defence applied for the trial to be adjourned. After hearing submissions, the judge ordered that the trial be transferred to Brisbane.

Neilson then decided to change his plea to one of guilty and offered to give evidence against the second defendant.

The trial of the second defendant lasted for seven days. The defendant was acquitted.

Neilson was sentenced to five years imprisonment with a non-parole period of 18 months. The judge indicated that if Neilson had not given assistance the appropriate head sentence would have been eight years.

Trummer

The defendant in this matter was an Austrian citizen who collected butterflies. When he attempted to leave Australia, after a visit, he was found to be carrying several containers of live caterpillars, pupae, dead butterflies and several species of flora. He was also carrying butterfly nets, jars and acid of a type used to kill specimens.

The defendant admitted to Customs officers that he had collected and packed the specimens while in Australia. He also admitted to having caught, killed and packaged butterflies and caterpillars on two previous trips to Australia.

The defendant pleaded guilty to two counts of under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*. He was convicted and fined $240 on each count.

Perth

Aydlett and Nielson

These were the last two defendants to be dealt with in relation to a scheme to import one tonne of cannabis by yacht from Thailand into Western Australia.

The prosecution case was based upon the testimony of an indemnified co-offender and on evidence obtained by surveillance of various offenders in Perth and Albany while they were preparing to receive the cannabis.

Both defendants were convicted of conspiring to import the cannabis after a 12 day trial. They were sentenced, respectively, to six-and-a-half years, with a non-parole period of three-and-a-half years, and eleven-and-a-half years, with a non-parole period of six years and one month.

The defendants appealed unsuccessfully against their convictions. They have also appealed against sentence and the DPP has appealed against sentence in the case of Nielson. Those appeals are still outstanding.

Buckley

This defendant was the effective owner of a flourishing escort agency which operated in various names in Perth over many years.

It was alleged that the defendant, who was an undischarged bankrupt, used other women as fronts to hide her ownership of the business. It was also alleged that the business was operated so that cash takings, which comprised about 70 per cent of its income, were not recorded or declared for income tax purposes.

It was alleged that approximately $2.8 million in income was not declared over a four-year period. The amount of tax avoided is estimated to be between $700 000 and $1.4 million.

The ATO conducted a four-year investigation into Buckley's affairs but was unable to establish that she was the owner of the business. They eventually called in the AFP. With considerable effort and determination, and with assistance from the ATO and the DPP's financial analyst, the AFP were able to build a case against Buckley.

In November 1991 the defendant pleaded guilty to charges of defrauding the Commonwealth. She also pleaded guilty to a charge of attempting to pervert the course of justice, relating to an approach by her to a prosecution witness, and to State charges of breaking and entering and attempting to procure the commission of arson. She also asked that two offences of making menacing phone calls be taken into account on sentence.

The following month, the defendant was convicted by a jury on a further State charge of procuring arson.

The defendant was sentenced on the federal charges to an effective term of three years and five months with a non-parole period of 18 months. The sentence was substantially discounted to reflect the plea of guilty and time already spent in custody.

The defendant was sentenced to an effective term of eight years on the State counts and was declared to be eligible for parole.

Buckley was ordered to pay reparation to ATO in the sum of $700 000. Recovery action is being pursued by the Australian Government Solicitor and the ATO.

Herbert

This defendant was the brother of a person charged with, and subsequently convicted of, drug offences. The DPP obtained a restraining order under the Proceeds of Crime Act over various items belonging to the brother, including a Chevrolet Corvette motor vehicle which was registered in the defendant's name.

The defendant commenced proceedings in the Supreme Court seeking to recover the vehicle. In those proceedings he filed a statutory declaration in which he claimed that the vehicle was his property. The DPP opposed the application and filed affidavits outlining the evidence that showed the true ownership of the vehicle.

When the defendant received copies of the affidavits that had been filed by the DPP he left WA and made no further claim to the vehicle. He was eventually extradited back from the Northern Territory and charged with attempting to pervert the course of justice contrary to section 43 of the Crimes Act.

The defendant pleaded guilty and was fined $7 000.

The Chevrolet Corvette was eventually sold for $30 500 and that amount, less sale expenses, was paid into consolidated revenue.

Nuttall

This defendant pleaded guilty in the District Court of WA to 37 charges under section 269 of the *Bankruptcy Act 1966*. It was alleged that Nuttall obtained $45 700 in credit from various people without declaring that he was an undischarged bankrupt. He was sentenced to six years imprisonment with a non-parole period of 19 months.

Nuttall subsequently appealed to the Court of Criminal Appeal against both his conviction and sentence. He was not represented on the appeal. Nuttall argued that he thought he had been discharged from his bankruptcy on the basis of documents which he said were in the possession of the Official Receiver.

The court made an order under section 697 of the WA Criminal Code calling for the production of Nuttall's file from the Official Receiver. Nuttall was allowed to examine the file but could not find the documents that he claimed supported his appeal.

The court reviewed the authorities dealing with an appeal against conviction after a plea of guilty has been entered. It concluded that there were not exceptional circumstances of the kind that would justify it entertaining the appeal. The appeal was dismissed.

Pak

Pak was charged with one offence against section 31 of the *Cash Transaction Reports Act 1988* of structuring a transaction to defeat the reporting requirements of that Act.

Pak visited the Burswood Casino in September 1990. Early in the evening he approached a cashier to cash a large quantity of gaming chips. As the value of the chips exceeded $10 000, he was offered a cheque. When he declined the cheque he was told that if he was paid in cash a cash transaction report would have to be completed.

During the course of the evening Pak entered into seven separate transactions with three different cashiers. As a result, he received $63 000 cash in payments of less than $10 000. The casino provided a suspect transaction report to Cash Transaction Reports Agency.

Pak pleaded guilty to one charge under section 31 and to charges of opening and operating false name bank accounts contrary to section 24 of the Cash Transaction Reports Act. He was fined a total of $3 900 including $1 500 in respect of the offence against section 31.

Repacholi

Repacholi was charged with attempting to pervert the course of justice contrary to section 43 of the Crimes Act.

The offences arose from the hearing of five summary charges against the defendant under the Civil Aviation Regulations. Those charges involved various offences alleged to have been committed by Repacholi while flying a particular aircraft. It was alleged that the defendant switched the identification markings on two aircraft and then arranged for an independent witness to examine both planes. He thereby attempted to fabricate evidence designed to show that the plane he was alleged to have been flying at the time of the offences was in a wrecked condition and could not have been flown.

Repacholi attempted to call the independent witness at the hearing of the summary charges but the witness declined to attend.

The defendant was convicted on one count of attempting to pervert the course of justice. He was sentenced to imprisonment for 23 months to be released on a good behaviour bond after ten months. The sentencing judge took Repacholi's long record of offences against the Civil Aviation Regulations and the Air Navigation Regulations into account in setting sentence.

Schoenmaker

This case involved a Dutch merchant who runs a multimillion-dollar business of exporting cannabis seeds by mail in response to mail order applications.

The defendant was indicted by a Grand Jury in the USA for offences against US law in early 1990. It does not appear that the defendant had travelled to the USA at any relevant time but he was alleged to have mailed cannabis seeds to that country.

Schoenmaker, who holds both Australian and Dutch passports, travelled to Australia to visit his family in 1990. The USA authorities requested that he be extradited to the USA from Australia. Schoenmaker was arrested on 23 July 1990.

On 26 July 1990 Schoenmaker made the first of six unsuccessful applications for bail. He made further applications to the Federal Court and the Supreme Court of Western Australia, both of which declined to hear the application for want of jurisdiction.

On 27 November 1990 Schoenmaker was found to be elligible for surrender on 44 charges. He appealed against that decision to the Supreme Court of WA. He also made a further application for bail, which was refused.

On 13 May 1991 the Supreme Court found that Schoenmaker was eligible for surrender on all but one of the 44 charges. Schoenmaker then appealed against that finding to the Full Court of the Federal Court of Australia.

On 21 June 1991 Schoenmaker made a further application to the Federal Court for bail. On this occassion the judge granted bail. He found that there were 'special circumstances' within the meaning of the Extradition Act because of the time Schoenmaker had spent in custody. The judge imposed stringent reporting conditions and required Schoenmaker to surrender his passport. He also required that substantial sureties be lodged.

The day before Schoenmaker's appeal was due to be heard, he failed to report as required under his bail conditions. He subsequently failed to attend the hearing of his appeal. It is believed that he left Australia for Europe using a false passport.

The Federal Court struck out the appeal and ordered that all sureties be forfeited. The DPP obtained an injunction over property in Schoenmaker's name and commenced recovery against the people who had agreed to provide sureties for him.

Teng

This matter involved the first jury trials ever held in the Territory of Christmas Island. A previous attempt to hold a jury trial on a murder charge failed in 1987 when it was not possible to empanel an impartial jury from among the 1500 residents on the island. That trial was eventually held on the mainland.

Teng, a resident of Christmas Island, faced three groups of charges. It was alleged that he broke into the supermarket on the island and stole goods worth in excess of $30 000; that he set fire to a police sea rescue boat, and that he assaulted another resident of the island.

Two prosecutors travelled from Perth to prosecute the case. Justice Gallop, a judge of the ACT Supreme Court and the Federal Court, presided in his capacity as a judge of the Supreme Court of the Territory of Christmas Island. The judge's staff also travelled to the island for the proceedings, as did court officials and court transcription officers.

Teng stood trial on each of the first two sets of charges. On each occasion he was convicted by a jury. He then pleaded guilty to the assault charges. He was sentenced to an effective term of nine years imprisonment with a non-parole period of five years and four months.

The trials were the first and last to be conducted under the 1953 Penal Code of Singapore in its application to the Territory of Christmas Island. As from 1 July 1992, the criminal laws of Western Australia will apply to the Territory.

Adelaide

Carson and Hanna-Rivero

These matters involved two prosecutions in the Federal Court of Australia for offences against section 132 of the *Copyright Act 1968*.

The defendants were both charged with possessing large numbers of infringing copies of computer programs, mostly games, for the purpose of trade. The defendants both held libraries of computer programs and operated mailing and swap networks.

The defendants both pleaded guilty and were convicted.

Carson, who was unemployed at the time, was ordered to perform 1209 hours of community service. Hanna-Rivero was fined $1 200. Forfeiture orders were also made against computer equipment belonging to the defendants and against infringing copies of programs, including copies that were not the subject of criminal charges.

Extradition case

In this matter a person was sought by the US Government in connection with the alleged fraudulent misappropriation of opals worth $3.5 million. The defendant had been charged in Hawaii with offences in relation to the matter.

The events which gave rise to the request occurred in 1986. The extradition request was made in 1991.

The defendant was arrested on a provisional warrant on 10 May 1991 and came before a magistrate on 3 July 1991. The magistrate found the defendant eligible for extradition and made an order under section 19 of the *Extradition Act 1988* on 16 August 1991.

The defendant appealed against the order to a single judge of the Federal Court and, when that appeal failed, to the Full Court of the Federal Court.

The main ground of appeal was that there had been unwarranted delay by the US authorities in seeking extradition. The Federal Court found that neither it, nor the magistrate, had jurisdiction to stay the proceedings because of delay.

When the defendant had exhausted all legal avenues he made representations to the Australian Attorney-General requesting that he not be extradited.

On 19 March 1992 the Federal Attorney-General decided that the defendant should not be extradited.

Phoenix Enterprises Pty Ltd

This company traded in abalone meat. Its four directors held abalone fishing licences. It was alleged that the directors set up a scheme of false invoicing with the connivance of overseas companies. The scheme allowed the company to understate its income in its income tax returns. In the financial years 1985 to 1987 the company evaded tax totalling $350 000.

The company was charged with three counts of defrauding the Commonwealth under section 29D of the Crimes Act. The directors were each charged with being knowingly concerned in the commission of those offences.

All five defendants pleaded guilty. The company was fined $50 000. Each director was fined $10 000 and sentenced to a suspended sentence of twelve months imprisonment.

The company also had to pay the tax evaded plus penalties and interest totalling $270 000.

Pook

This defendant was originally charged with one offence against section 239(1)(b) of the *Social Security Act 1942* and 14 under section 239(1)(a). It was alleged that he received $3 500 in unemployment benefits to which he was not entitled because he was working.

Shortly after the charges were laid judgment was handed down in the matter of Bartlett which was reported last year. It was necessary to review the charges under section 239(1)(a) to see how many of the documents on which those charges were based could still be used by the prosecution. It was decided to lay a fresh complaint which included only six counts under section 239(1)(a). Those counts related to application forms completed by the defendant for the payment of unemployment benefits.

The defendant pleaded not guilty. It was argued on his behalf that the application forms were inadmissible by virtue of section 165 of the Social Security Act in the same way as the forms ruled inadmissible in Bartlett.

The magistrate rejected the defence argument and ruled that the forms were admissible. He found that the forms did not contain words compelling the defendant to provide information and were not expressed to have been issued under either section 163 or section 164 of the Act. He ruled that the forms accordingly did not fall within the protection of section 165.

The magistrate then stated a case for consideration by the Supreme Court. The Supreme Court agreed with the rulings made by the magistrate.

When the matter came back before the magistrate, the defendant pleaded guilty to the charges against him.

Hobart

Mansell

The defendant in this matter was prosecuted under section 101 of the *Commonwealth Electoral Act 1910* for failing to enrol to vote.

The matter was defended on the basis that, as an Aboriginal, the defendant did not consider himself to be an Australian citizen and was therefore not bound by the Commonwealth Electoral Act.

The argument was rejected by the magistrate, who found the offence proved. The defendant was fined $25. He refused to pay the fine stating that he preferred to go to jail. However, the fine was paid by an unknown benefactor.

Darwin

Braam

This defendant was charged with importing 7.5kg of white powder containing 5.46kg of pure heroin. This was the first prosecution in the Northern Territory in respect of the importation of a commercial quantity of drugs.

The heroin was detected at Darwin Airport by a Customs Officer who noticed that Braam had arrived on a flight from Singapore, but his bag had come from Bangkok.

The defendant told the AFP that he had been promised $15 000 by a Mr Tan of Hong Kong to travel to Darwin from Holland and pick up the bag. He believed that the bag would contain travellers cheques and passports. He was to deliver the bag to Sydney.

The defendant conceded that his suspicions were aroused that the bag may have contained narcotics when he lifted it off the carousel. Nevertheless, he attempted to take the bag out of the airport area.

The jury found the defendant guilty. He was sentenced to imprisonment for 13 years and six months with a non-parole of six years and nine months. The sentencing judge took into account Braam's cooperation with the law enforcement agencies in respect of other matters and stated that if that cooperation had not been forthcoming the defendant would have been sentenced to eighteen years imprisonment with a non-parole period of nine years.

Druett

Druett was charged with being knowingly concerned in the importation of a traffickable quantity of heroin into Darwin. At the time he was on parole for two Territory offences of possessing heroin for the purpose of supply, and was unable to leave Australia. He recruited a heroin user by the name of Campbell to travel to Chiang Mai in Thailand to purchase heroin.

Campbell was arrested by the AFP on his return to Darwin. He was found to have concealed the heroin internally. He subsequently made admissions which implicated Druett.

Campbell pleaded guilty to his part in the importation and gave evidence against Druett.

Druett's trial began with preliminary legal argument which ran for three weeks. The matter was then adjourned. Unfortunately the trial judge became ill with a rare tropical disease, he eventually resigned from the bench, which necessitated a second trial.

The second trial was aborted after two weeks when one of the jurors received threatening telephone calls.

On the third occasion the trial ran its full course. The jury delivered a verdict of guilty.

The defendant was sentenced to 12 years imprisonment with a six year non-parole period. In addition, because Druett was in breach of parole, he will be required to serve the unexpired portions of his Territory sentences.

Druett appealed against conviction. The appeal has been heard by the Court of Criminal Appeal, which has reserved judgment.

Erdfelder and Woitzik

Erdfelder and Woitzik are German nationals who are members of the German Association for Herpetology and Terrarium Sciences. Erdfelder collects lizards and Woitzik collects snakes. Both men travelled to Australia for the specific purpose of finding and capturing reptiles and posting them back to Germany.

When the defendants arrived in Australia, via Brisbane, their luggage was found to contain a large number of cloth pouches. Erdfelder told Customs Officers that he had brought the pouches to store telephoto lenses and Woitzik claimed that the pouches were for his dirty washing. The defendants were allowed into the country but their subsequent movements were monitored.

The defendants purchased thirty post packs and $154 worth of postage stamps in Brisbane. They then hired a camper van which they used to tour outback Australia. Their journey took them through Rockhampton, Mt. Isa, Tennant Creek, Alice Springs and then back up the Stuart Highway to eventually finish in Darwin.

Bottom of the Harbour

At the time of the last Annual Report, there was one bottom-of-the-harbour case still before the courts. In that matter four defendants were awaiting trial in Sydney.

The trial in the matter commenced on 3 February 1992 and was completed on 18 August 1992. The jury was unable to agree on a verdict.

The Director subsequently decided that there should not be a retrial.

War Crimes

The DPP has conducted proceedings against three people under the provisions of the *War Crimes Act 1945*. All three are residents of South Australia. Details of the cases appear below.

The DPP has been provided with a total budget for war crimes prosecutions of $9 177 000; $2 236 434 was spent in 1991-92 made up as follows:

Salaries	$ 318 560
Administration	$ 141 102
Property	$ 95 373
Legal expenses	$1 681 399
	$2 236 434

Staffing resources within the Adelaide Office were 6.3 Average Staffing Level made up as follows:

SES	2.3 ASL
non-SES	4.0 ASL

Some assistance was also provided by DPP Head Office but this was not charged against the war crimes budget.

Polyukovich

On 25 July 1990 this defendant was charged with nine offences. Further charges were laid on 7 August 1990 bringing the number of charges to 13.

Committal proceedings began in the Adelaide Magistrates Court on 28 October 1991. Forty-seven witnesses were called to give evidence for the prosecution. Of these, 36 witnesses came from overseas counties including Ukraine, Israel, the USA, Canada Germany and Czechoslovakia. The defence did not call any witnesses.

After the evidence had been completed, the prosecution redrafted a number of charges to more properly reflect the evidence that had been given and withdrew five charges.

On 5 June 1992 the magistrate committed the defendant to stand trial on two charges. Those charges relate to the alleged killing of six people. The magistrate discharged the defendant of all the remaining charges except one, which was an alternative charge to one of the counts on which the defendant had been committed for trial.

The counts on which the magistrate discharged the defendant included a charge alleging that he was involved in the mass murder of approximately 850 people, known as the 'Jews of Serniki'. The magistrate declined to give reasons for his decision.

On 5 July 1992 the Director filed an indictment in the Supreme Court of South Australia which contained five counts. Those counts included the charges on which the defendant was committed for trial and a count alleging that he was involved in the murder of the Jewish people of Serniki.

The defendant has pleaded not guilty to the indictment and has commenced proceedings seeking to have the indictment quashed. Those proceedings are expected to be held in November 1992.

The trial, if it proceeds, should commence in early 1993.

Berezowski

This defendant was charged with one count under the War Crimes Act. The charge related to an alleged offence in the village of Gnivan in the Ukraine.

Committal proceedings began in the Adelaide Magistrates Court on 22 June 1992. A total of 25 witnesses were called, including 22 from overseas, and statements from the other witnesses were tended by consent.

On 29 July 1992 the magistrate discharged the defendant on the charge against him.

Wagner

This defendant has been charged with three offences relating to alleged war crimes in the Ukraine between 1942 and 1943. It is alleged that he was involved in the murder of 104 Jewish people, 19 children whose fathers were Jewish, and a railway construction worker.

Committal proceedings commenced on 1 June 1992 and are still in progress. The prosecution expects to call up to 42 witnesses, including 36 from overseas, although it may be possible to tender statements from some witnesses to reduce the length of the proceedings.

4 Corporate prosecutions

Staff and resources

On 1 January 1991 the DPP assumed the function of prosecuting, on a national basis, offences under both the Cooperative Scheme Laws and the Corporations Law. This function was given to the DPP by the *Corporations Act 1989* and the corresponding Corporations Acts of the various States and the Northern Territory. Prior to that time both the responsibility for investigation and prosecution of offences for corporate misconduct had rested with State Corporate Affairs Offices and State prosecution authorities.

The responsibility for investigating offences against both the Cooperative Scheme Laws and the Corporations Law is vested in the Australian Securities Commission (ASC). With the exception of minor regulatory matters, guidelines agreed between the ASC and DPP require the ASC to investigate and prepare briefs of evidence for the DPP to prosecute.

The guidelines set out in the *Prosecution Policy of the Commonwealth* apply to corporate prosecutions. For the purposes of these guidelines, and in accordance with the legislative scheme, offences against both the Corporations Laws and Cooperative Scheme Laws of the States and Northern Territory are treated as offences against Commonwealth Law.

Case loads

At the time it commenced its operations the ASC indicated that it was allocating priority to the investigation of 16 major corporate matters. Since that time a number of other matters have been added to the list.

Of the 16 matters originally nominated, charges have been laid by the DPP in seven cases. Further work is being carried out by either the DPP or ASC in seven other cases. One matter investigated by the ASC has not resulted in a

brief of evidence being referred to the DPP. The remaining matter is that of Rothwells which is being prosecuted by the Western Australian Director of Public Prosecutions.

Recent reports have indicated that the investigation of these matters would be substantially complete by 30 June. However, while much of the investigative work has been completed these cases will require considerable resources to complete investigations and, where appropriate, lay charges. Further, the time required to complete the process in relation to these prosecutions is likely to be measured in years rather than months. This is due to the level of complexity of the alleged crimes.

It is appropriate, at least in what is the initial phase of this function, to give further details on the efforts of both the ASC and DPP in this area. The statistics are for an 18 month period - 1 January 1991 to 30 June 1992. During this period the ASC referred 147 separate matters to the DPP (including the Australian Government Solicitors's Office in Hobart and Darwin). In this context the term 'matter' refers to an allegation, or allegations, against one or more persons ranging from a complete or incomplete brief, or briefs, of evidence to a collection of papers requesting advice as to possible criminality. In some matters multiple briefs of evidence have been referred. Of the 147 matters referred, 49 have been completed. The following table indicates the general outcome of those cases:

No charges laid	18
Defendant found guilty	21
Defendant acquitted	4
Other	6

In relation to the 98 matters that are still current, charges have been laid in 47. In the other 51 matters, the ASC and DPP are working together to finalise the work necessary to enable a decision as to prosecutions to be made.

As with many statistics the figures do not tell the complete story. It should be noted that these matters range in size and complexity from comparatively minor cases, to large complex cases of corporate fraud and misconduct. A summary of some of the more important and/or interesting cases is set out below.

New South Wales

Garry Carter

On 21 March 1991 a total of twenty charges under both the Companies (NSW) Code and *Crimes Act 1900* (NSW) were laid against Garry Carter, Christopher Blaxland and Dennis Vickery, all of whom were former directors of Entity Group Limited. The charges concern transactions that were entered into in 1987 and 1988. It is alleged that these transactions involved, among other things, the fraudulent application of approximately $17 million in 1987 and $20 million in 1988 of funds belonging to Entity Group Limited.

On 1 May 1992, following a six-week committal hearing, all defendants were committed for trial to the Supreme Court of NSW. A trial date is yet to be allocated, however, it is expected the trial will take between two and three months.

Triton Matter

On 24 October 1991 Brian Yuill, the former managing director of Spedley Securities Limited (SSL), and a number of associated companies was committed for trial on two charges under sub-section 229(1) of the Companies (NSW) Code (the Code) and six charges under sub-section 229(4) of the Code. Five of the sub-section 229(4) Code charges relate to occasions during 1987 and 1988 when Yuill allegedly authorised SSL funds to be used to pay debts which either he, or his private companies, had incurred. The payments by SSL were allocated to a sundry debts account at SSL which did not charge interest. Immediately prior to 31 October 1988, Yuill's sundry debts account at SSL amounted to over $3 million. The remaining charges relate to a round robin transaction in October 1988 which Yuill authorised and which, it is alleged, was intended to conceal the existence of the sundry debt from the other directors and the shareholders of SSL. No trial date has been set.

Chelsea Property and Nodrigan matters

On 22 May 1992 Brian Yuill was charged with four offences under sub-section 299(1) of the Code and four charges under sub-section 230(5) of the Code. The charges relate to two separate transactions whereby SSL funds were advanced indirectly to Yuill and a private company controlled by Yuill. It is alleged that approximately $2.5 million was indirectly advanced by SSL to Yuill in May 1987 to enable him to purchase a property in the UK, and that in June 1986 $17 million was indirectly advanced by SSL to a private company controlled by Yuill to enable it to purchase shares in a public company. It is alleged that the transactions were structured by Yuill with the intent to conceal the fact that SSL funds had been advanced to Yuill and his private company. Committal proceedings have been listed for hearing in March 1993.

Growth Industries

On 18 June 1992 David Towey and Peter Flude were arrested and charged with offences under the Companies (NSW) Code.

The charges arose out of an ASC investigation into the activities of companies in the Growth Industries Group. The investigation began after the companies collapsed in mid 1990. The companies in the group ran horticultural and viticultural projects funded by public investment in unit trust schemes.

It is alleged that Towey, the managing director of companies in the Growth Industries group, misused his position by authorising payments from the funds of companies in the group to repay loans in his own name, and to fund projects not related to the companies. It is also alleged that he misused his position as a director of one of the companies by issuing units in one of the unit trust schemes in order to extinguish a debt to its creditor, ATA Services Ltd. It is alleged this method of repayment was contrary to the interests of the company that issued the units.

The Company ATA Services Ltd provided agricultural technology services to companies in the Growth Industries group and had a role in the viticultural and horticultural projects. It is alleged that Flude, the managing director of ATA Services Ltd, misled the auditor of ATA Services Ltd in relation to a payment received by ATA Services Ltd from a Growth Industries group

company in purported payment of a debt. It is also alleged that Flude was involved in the authorisation by Towey of the issuing of units in the unit trust to ATA Services Ltd referred to above.

The charges against both defendants have been set down for a four-week committal hearing in April 1993.

Victoria

Richard Lew and Carl Davis

On 18 September 1991 Richard Lew and Carl Davis were charged under section 125 of the Securities Industry (Vic) Code for causing the dissemination of false and misleading material regarding the sale of prescribed interests. These proceedings were initiated by Corporate Affairs of Victoria. The prescribed interests were units in the Estate Mortgage Trusts. It was alleged the defendants had disseminated certain advertisements soliciting investments in the Estate Mortgage Trusts. Lew and Davis were directors of Estate Mortgage Managers Ltd which was the manager of the Estate Mortgage Trusts.

It was alleged that over a period of approximately 15 months, a sustained television and print media campaign was undertaken in which statements were made as to the security of the investments, the nature of the investements undertaken by the Trusts and other matters. The amount of investment funds raised as a direct consequence of the advertising campaign was in excess of $500 million. Richard Lew pleaded guilty to three counts; one each as to knowingly disseminating misleading information, recklessly disseminating misleading information and negligently disseminating misleading information.

Carl Davis pleaded guilty to two counts, one of recklessly disseminating misleading information and one count of negligently disseminating misleading information. On 23 October 1991 Richard Lew was sentenced to eight months and Carl Davis to 12 months imprisonment.

Both Lew and Davis appealed against the sentence imposed. Lew's appeal was dismissed. Davis's appeal was allowed and his sentence reduced to eight months imprisonment.

Reuben Lew and Anthony Arnold

In July 1990 Reuben Lew was charged with offences against section 229(4) of the Companies (Vic.) Code and with receiving a secret commission contrary to section 176 of the *Crimes Act 1958* (Vic.). Anthony Collis Arnold was charged with secret commission offences.

In May 1991, following a two-week committal, both defendants were committed for trial.

The case against each defendant revolves around the alleged acquisition by Lew, or a company controlled by him, of $500 000. It is alleged this money was paid by way of secret commission in return for Lew arranging finance in relation to a particular project. It is alleged Arnold assisted in the offence by holding, on Lew's behalf, shares in a company that became the proprietor of the land on which the relevant project was developed. In February 1992 an indictment was filed, it is expected that the trial will take place in early 1993.

Reuben Lew and Richard Lew

In July 1990 Reuben and Richard Lew were charged with offences against the secret commission provisions of the *Crimes Act 1958* (Vic.). It is alleged that Reuben and Richard Lew received secret commissions in relation to the organisation of finance for a certain project. The source of the funds for the project was monies invested by the public in the Estate Mortgage Trust. In November 1991 the defendants waived their rights to have a committal in respect of these charges.

In February 1992 an indictment was filed in respect of these charges. Following the giving of the Attorney-General's consent the indictment also contained counts under section 229(4) of the Companies (Vic.) Code. The trials of Reuben Lew, Richard Lew and Anthony Arnold are expected to be heard in early 1993.

Queensland

Christopher Charles Skase

As reported in the 1990-91 Annual Report, Christopher Skase was charged by the ASC with two offences alleging contraventions of section 229(4) of the Companies (Queensland) Code.

A committal hearing involving Skase was set to take place in Brisbane Magistrates Court commencing 13 April 1992. However, prior to the committal, Skase's solicitors indicated that his medical condition was such that he would be unable to attend Brisbane Magistrates Court on that day. It was also indicated that Skase did not desire a committal hearing and that he would consent to the presentation of an ex-officio indictment.

Medical reports indicate that Skase may currently be suffering from a medical condition which would prevent his return to Australia from Spain, where he now resides, to face the charges. Skase's medical condition is being kept under review.

It is anticipated that the ex-officio indictment will be presented prior to the next mention of the matter in Brisbane Magistrates Court on 22 August 1992.

David Paul Howe, Nigel Peter Smith, John Keith Campbell

On 13 March 1992 David Paul Howe, Nigel Peter Smith and John Keith Campbell were committed for trial in relation to various offences against section 229(4) of the Companies (Queensland) Code. The trial of those defendants is listed to commence in the Brisbane District Court on 26 October 1992. It is anticipated that the trial will last for approximately four weeks.

The charges arise out of the acquisition, in January 1988, of a property at Lloyd Bay in North Queensland by Farndale Limited for the sum of $14 million. David Howe and John Campbell were directors of Farndale Limited at the relevant time.

It is alleged that in September 1987, Howe Corporation Pty Ltd (Howe Corporation), the private company of David Howe, entered into a contract with Iron Range Developments Pty Ltd (Iron Range Developments) for the

purchase of the property at Lloyd Bay for the sum of $4.5 million. Nigel Smith was the solicitor engaged by Howe Corporation to handle the conveyance of the property. That contract was never completed. However, at the instigation of Howe and Smith, Iron Range Developments agreed, instead of transferring the property at Lloyd Bay to Howe Corporation, to sell the issued shares in Iron Range Developments to Waracoil Pty Ltd. This in effect equated to the selling of the property as the property was the only asset of Iron Range Developments.

The shares in Iron Range Developments were sold on 15 January 1988 to Waracoil Pty Ltd, a company associated with Nigel Smith for the sum of $4.57 million. The same day, Iron Range Developments, under its new control, sold the property at Lloyd Bay to Farndale Limited for $14 million. Part of the proceeds of the sale were then loaned by Iron Range Developments to Howe Corporation to assist that company which was in financial difficulties.

Howe and Campbell are alleged to have breached their duties to Farndale Limited and Smith is alleged to have been knowingly concerned in Howe's offence.

Ian Robert Donald

On 24 February 1992 Ian Robert Donald, a former director of Ardina Electrical (Queensland) Pty Ltd was committed for trial in the Brisbane District Court on 52 counts under section 229(4) of the Companies (Queensland) Code. The trial is listed to commence on 5 October 1992 and it is anticipated that it will last approximately four weeks.

Donald is alleged to have made improper use of his position as a director of Ardina Electrical (Queensland) Pty Ltd to gain an advantage for two companies of which he and his wife were the directors and shareholders. Ardina Electrical (Queensland) Pty Ltd was a large electrical contracting company which carried out work on a number of major construction sites in Queensland. Without the knowledge of his fellow directors, Donald is alleged to have signed cheques drawn on Ardina Electrical (Queensland) Pty Ltd in favour of his two companies amounting to over $800 000 over a period of approximately three years.

Western Australia

Kevin Parry

In August 1991, Kevin Parry was charged with offences against sections 229(4), 230(5) and 230(8) of the Companies (Western Australia) Code.

The charges arise from the alleged authorisation of the use of the assets of one company in the Parry Group for the benefit of another company in the group. A preliminary hearing of the charges was heard in May 1992 and Parry was committed for trial to the District Court.

Michael John Fuller, Joseph Patrick Cummings, Richard Godfrey Webb

Michael John Fuller and Joseph Patrick Cummings were arrested in Adelaide by officers of the Australian Federal Police on 28 February 1992. They appeared in a magistrate's court and were bailed to appear in the Perth Court of Petty Sessions pursuant to the provisions of section 18 of the *Service and Execution of Process Act 1901*.

Also appearing at that time was Richard Godfrey Webb of Perth, who was summonsed in relation to related charges. All three have been charged with offences against section 229(4) of the Companies (Western Australia) Code. It is alleged that the defendants authorised the use of assets of companies within the Independent Resources group for other than the purposes or benefit of those companies.

A tentative date for the preliminary hearing of the charges has been set for early 1993.

Robin Sarah Greenburg

On 22 August 1991 Robin Sarah Greenburg was arrested in Perth by officers of the Australian Federal Police and charged with offences relating to the concealment and destruction of company records pursuant to section 67 of the Australian Securities Commission Act 1989, and section 590 of the Corporations Law. She was subsequently further charged with stealing, contrary to section 378(a) of the Criminal Code (WA), and improper use of position as a director, contrary to section 229(4) of the Companies (WA) Code. The latter charges related to the alleged authorisation by Greenburg of

transfers of company funds to an account in her own name, or use of company funds for which they were not properly available. The total amount alleged to have been misappropriated is in excess of $4 million.

Greenburg elected to dispense with preliminary hearings and was committed for trial to the District Court of Western Australia. On 30 July 1992 she pleaded guilty to all charges. Greenburg was remanded in custody until September with Judge Viol informing her:

> You will be sentenced to long terms of imprisonment for what can only be described as scandalous criminal behaviour involving a company under your control in which members of the public were encouraged to invest.

South Australia

Graham John Tuckwell

This was only the second-ever prosecution for stock market manipulation in Australia and the first to go to trial.

On 17 July 1991 informations were laid against Graham John Tuckwell alleging that he had caused various transactions to take place on the Australian Stock Exchange's automated trading system that were calculated to give a false and misleading impression of the share price of Intrepid Oil Company N.L., contrary to section 124(1) of the Securities Industry (South Australia) Code.

Tuckwell was the chairman of directors of Intrepid, which announced a scrip takeover offer for Pacarc Nuigini N.L. on 19 November 1990. The terms of the offer were seven Intrepid shares for every two Pacarc shares, and the announcement referred to the last sale price of Intrepid shares of eight cents.

It was alleged that Tuckwell had given simultaneous instructions to an Adelaide broker to enter bids at 7.5 cents for the minimum parcel of shares in the last minute of trading, and cancel those bids before the opening of trading on the following day, on 13, 14 and 16 November 1990. Each of these bids raised the best bid price at the close of the market from six cents to 7.5 cents. It was also alleged Tuckwell instructed the broker to buy the minimum parcel

of shares at eight cents on 16 November, which raised the last sale price from 6.5 cents to eight cents. This sale was the one referred to in the takeover announcement.

Thereafter, during the period leading to the offer documents being dispatched to Pacarc shareholders, Tuckwell purchased various parcels of Intrepid shares, all these purchases having the effect of making the share price appear stronger than it otherwise would have.

Tuckwell pleaded not guilty and the trial began in the District Criminal Court before a judge and jury on 18 March 1992. The prosecution sought to prove, by the circumstantial evidence of motive and the pattern of trading, that Tuckwell's purpose was to raise or maintain the price of Intrepid shares. Tuckwell accepted that the various transactions had the effects contended by the prosecution but claimed that his purpose was to, initially, test the market and, later, to simply purchase shares at the best price. The trial took three weeks and concluded with the jury acquitting Tuckwell by majority verdict on 8 April 1992.

Stephen Borrett and Alexander Robert Haig

On 2 May 1990 Stephen Borrett and Alexander Robert Haig were charged by complaint with three counts of making improper use of their positions as directors of The Gun Rack (Mount Gambier) Pty Ltd to cause detriment to the corporation, contrary to section 229(4) of the Companies (South Australia) Code. The company carried on a business as a firearms dealer. Haig owned the premises from which the company traded and Borrett was the manager of the business. In January 1988 Borrett and Haig each purchased 10 per cent of the issued shares of the company and both were appointed directors. Borrett and Haig later attempted to buy out the majority shareholders or, alternatively, sell their minority interests back to them, however, no agreement was reached.

On 31 May 1988 Haig, as landlord, wrote to Borrett, as company secretary, terminating the company's shop lease, effective on 30 June 1988. Haig and Borrett, as directors, then resolved that the company surrender its Firearms Dealers Licence on that date. They also entered into a partnership effective from 1 July 1988 to trade as firearms dealers from the same premises under the name of 'The Gun Shop'. Finally, they sold the stock of the company's business to the partnership.

Thus, on one day, 'The Gun Rack' (owned by the company) was trading from the shop premises. The next, 'The Gun Shop' (a business of the partnership) took over with the same stock and personnel. All this took place without any notice to the shareholders who held 80 percent of the company's shares.

On 13 June 1991, following a seven-day hearing, Borrett and Haig were found guilty on each count by a magistrate. In sentencing on 17 June 1991, the magistrate exercised his discretion under section 16 of the Criminal Law (Sentencing) Act and refrained from recording a conviction. He fined each defendant $3 000 plus $2 925 costs.

The DPP appealed to the Supreme Court against the magistrate's decision not to record a conviction, and Borrett and Haig cross-appealed against the finding of guilt.

On 6 September 1991, Millhouse J dismissed the cross-appeal and upheld the DPP's appeal against sentence: see (1991) 54 A Crim R 452. His Honour described Borrett and Haig's actions as 'so barefaced, ... so deliberate, so underhand, so deceitful', as to be 'just the kind of conduct against which the public ought to be protected', and not an appropriate case to omit to convict.

Ernst Van Reesema

On 8 February 1988, following the magistrates' finding that he had a case to answer, Ernst Abraham Siewertz Van Reesema pleaded guilty to, and was convicted of, two offences against section 555 of the Companies (South Australia) Code in that the company of which he was a director failed to take all reasonable steps to comply with the requirements of section 267 to keep accounts.

The defendant appealed against his conviction to the Supreme Court. On 31 March 1989 O'Loughlin J delivered judgment dismissing the appeal. The defendant did not pursue any application for leave to appeal against that decision at that time.

In a separate (but related) matter, Van Reesema was charged on 22 October 1990 with 12 offences against section 227(2) of the Companies (South Australia) Code. It was alleged that he was a director of 11 companies within

five years of the date of his convictions for the section 555 offences without leave of the Court. The offences were alleged to have occurred between 9 February 1988 and 12 July 1990.

On 18 March 1991 the defendant entered pleas of not guilty to these charges in the Adelaide Magistrates Court.

On the same day the defendant lodged an application for leave to appeal to the Full Court against the decision of O'Loughlin J.

The trial of the section 227(2) charges proceeded on 18, 19, 20 March 1991, and on 7 and 8 May 1991. On 8 May 1991, the defendant was convicted of all charges.

On 16 May the defendant was sentenced to a total of two years imprisonment with a non-parole period of 12 months. The defendant immediately lodged an appeal against those convictions and sentence and was released on bail pending the determination of his appeal.

Leave to appeal against the decision of O'Loughlin J was granted by the Full Court of the Supreme Court of South Australia on 3 October 1991.

The Full Court heard argument on 5 February 1992 and delivered judgement on 5 March 1992 dismissing the appeal: see (1992) A.C.S.R. 225. King CJ (Bollen and Prior JJ. concurring) held that the two obligations imposed upon a company by section 267(1) are to keep such records as correctly record and explain the transactions of the company and its financial position, and to keep those records in such a manner as will enable the preparation, from time-to-time, of the accounts of the company and will enable the accounts of the company to be conveniently and properly audited.

The court noted that the obligation under section 267(1) is not met either by keeping the source materials from which a set of books may be written up or by bringing into existence after the liquidation entries purporting to record transactions occurring during the life of the company.

Van Reesema sought special leave from the High Court to Appeal against the judgment of the Full Court. The High Court dismissed the application for special leave in Melbourne on 8 May 1992.

On 11 June 1992 Van Reesema's appeal against conviction and sentence on the section 227(2) offences was heard in the Supreme Court by Duggan J. The appeal against conviction was not pursued. Duggan J allowed the appeal against sentence, set aside the sentence and remitted the matter for rehearing before another magistrate. The appeal was allowed because the magistrate had misdirected himself on the standard and onus of proof to be applied to a dispute of facts.

Australian Capital Territory

White Constructions Ltd

On November 1991 charges were laid against four directors, one former director and the auditor of White Constructions in relation to a prospectus issued in 1987 by White Constructions Ltd when it was floated by its parent company, White Industries Ltd.

The chairman of White Constructions Ltd, Geoffrey Bernard White, managing director, Travers William Duncan, directors John Spinks and Frank Stratton McAlary QC, and former director Alan John Wells, were charged under section 108 of the *Companies Act 1981*. It is alleged that the directors authorised or caused the issue of a prospectus in which there were untrue statements and material non-disclosures.

Geoffrey Charles Clarke, a senior partner with Coopers and Lybrand was charged with an offence under section 125 of the *Securities Industry Act 1981*. It is alleged that he made a statement, or disseminated information, in an investigating accountant's report which was false or misleading and was likely to induce the purchase of securities by other persons.

Committal proceedings commenced in June 1992 and were continuing at 30 June 1992.

Nathan Bank

In July 1983 Nathan Bank was summonsed on four counts of breaching section 173 of the *Crimes Act 1900* (NSW) in its application to the ACT, and four counts of breaching section 124 of the Companies Ordinance. The charges related to events which occurred in 1974 and 1975.

The committal hearing commenced on 15 October 1984. The matter was adjourned on a number of occasions. The prosecution case was finally closed on 16 March 1988. Written submissions for the informant were delivered in September 1988 and, for the defence, in November 1989.

On 17 January 1992 Chief Magistrate Cahill found there was a prima facie case and adjourned the matter for further hearing. At the request of the DPP's Office the matter was adjourned to 1 April 1992 to consider submissions by the defence.

On 1 April 1992 the prosecution was discontinued on the basis that the defendant not seek costs. In view of the considerable age of the case and attendant evidentiary difficulties, and the likely penalty in the event of a conviction, it was considered it would not be in the public interest to indict the defendant in the event he were to be committed for trial.

The Corporate Law Reform Bill

Pursuant to an invitation issued by the Attorney-General's Department this Office provided extensive comment on the Corporate Law Reform Bill and, in particular, the impact that that Bill might have on corporate prosecutions.

Use immunity provisions

In June 1991 the Joint Parliamentary Committee on Corporations and Securities resolved to inquire into the effect of the use-immunity provisions in both the *Australian Securities Commission Act 1989* and the Corporations Act 1989. The expression 'use-immunity provisions' refers to provisions which preclude the admission into evidence in criminal proceedings of evidentiary material derived from a person's testimony or documents produced pursuant to a claim of self-incrimination.

On 12 August 1991 the ASC and DPP provided a joint written submission to the Committee on the impact of section 68(3) of the *Australian Securities Commission Act 1989* and section 597(12) of the Corporations Law. On 11 October 1991 representatives from the DPP, the ASC and other bodies appeared before the Committee to make oral submissions in support of the written submissions.

In November 1991 the Committee presented its report. A majority of the Committee considered that legislative amendment ought to be made to both section 68(3) and section 597(12) to remove the use immunity provisions. The *Corporations Legislation (Evidence) Amendment Act 1992* was subsequently passed by Parliament to give effect to the Committee's recommendations. The amendments removed what was considered to be a major obstacle to the investigation and prosecution of corporate crime.

The prosecution of State Crimes Act offences

Under the Prosecution Policy of the Commonwealth this Office advises the laying of charges in criminal matters that most appropriately reflect the perceived crime. In the Commonwealth legal sphere this exercise is relatively straightforward as there is usually only a limited number of possible Commonwealth offences applicable.

In the corporate law area this issue is complicated by the fact of the federalisation of offences under both the Corporations Law and the ASC Law. For all intents and purposes these offences are to be treated as Commonwealth offences although in truth they arise under State legislation. It is this Office's view that such offences, while federalised, should not be read in isolation from State Crimes Act offences which deal with either fraud or misconduct in relation to companies. Where such charges most appropriately reflect the criminality of those involved then charges under those provisions should be laid whether or not Corporations Law offences are also laid.

This policy is even more appropriate in respect of offences under the Cooperative Scheme Laws, that is offences arising before 1 January 1991. These offences are, and continue to be, offences against State law. It is clear that they cannot be read as a separate code constituting the full spectrum of possible corporate criminality. They must be read in conjunction with other State Crimes Act offences which may be general in nature.

The ASC apparently takes the view that the true criminality of offences relating to corporations and securities industry in Australia is reflected most appropriately by charges brought under corporate law.

In this light the ASC has a policy of laying State Crimes Act charges only where there is a preponderance of corporate law charges and there are incidental State Crimes Act charges which give tactical weight to the corporate law charges. A further condition is that such State Crimes Act charges will only be laid where there is no extra cost involved in prosecuting the State Crimes Act charges. Where the substantial criminality is comprehended by State Crimes Act offences (for example, simple theft by a company officer from a corporation, or fraud perpetrated by the falsification of books) the ASC will not fund the matter but instead states that the matter will be referred to the most appropriate State enforcement agency.

In the view of the DPP a solution is to include in the Corporations Law offences of defrauding a company or its members or creditors. With that result in mind the question of an appropriate amendment has been referred to the Criminal Law Officers Committee.

Corporations Law referrals

The ASC recently indicated that it was winding up, or in the process of winding up, its investigations into corporate crime committed in the 1980s. As indicated previously a substantial number of matters relating to corporate misconduct have been referred to this Office. The vast majority of matters in which this Office is involved, relate to offences occurring prior to 1 January 1991, that is offences arising under the Cooperative Scheme Laws. In the 18 months in which this Office has had a function of corporate prosecution only three matters have been referred which relate to corporate misconduct post 1 January 1991.

Obviously the ASC has devoted the bulk of its investigative resources to examining aspects of the 1980s. The efforts of the ASC in this regard should not be discounted. However, it is unrealistic to assume that offences ceased to occur on 1 January 1991.

While much may usefully be said about corporate regulation and proactive efforts to prevent offences occurring, true deterrence of serious corporate crime will be incomplete without prosecution.

Ministerial consent to extend time for prosecutions

During the year Ministerial consent was sought to extend the time for prosecutions in two matters. The first related to extending the time in which to file an indictment against Richard and Reuben Lew in connection with the Estate Mortgage matter. The second instance related to extending the time in which to file charges against Brian Yuill in relation to the Nodrogen matter (referred to in this chapter).

In both cases Ministerial consent was sought under section 91(3) of the Corporations Act of the State concerned, and section 1316 of the Corporations Law.

Section 77 arrangements

Section 77 of the Corporations Act of each State and the Northern Territory provides that where an arrangement between the Attorney-General of the State and the Commonwealth Attorney-General provides that an officer, or authority, of the Commonwealth has certain functions or powers under a relevant State law, those functions or powers are conferred on that authority or officer. This section is primarily concerned to ensure that there is no legislative want of power in respect of prosecutions where both Corporations Law or Cooperative Scheme Law offences are laid together with offences under State Crimes Acts. Arrangements under this section may also empower a State officer or authority to have a function or power in respect of Corporations Law offences. In the absence of such an arrangement a State officer or authority has no function or power in relation to such offences.

This Office regards such arrangements as being important in ensuring that prosecutions involving both Corporate Law and State Crimes Acts offences are carried on with a minimum of technical difficulty. There have been extensive discussions with the Attorney-General's Department which has proved receptive to our suggestions and comments on the need for and form of such arrangements. Hopefully these arrangements will be put in place as soon as is practicable.

5 Criminal assets

Criminal assets confiscated

In 1991-92 the DPP recovered approximately $5.2 million in criminal assets. Details are as follows.

Proceeds of Crime Act (PoC Act)

$2.19 million was confiscated under the PoC Act. At 30 June 1992 a further $1.45 million in property was forfeited but not disposed of, and $1.35 million in pecuniary penalties had been ordered but not paid.

In 1991-92 the DPP obtained restraining orders over $11.68 million worth of property. Including property restrained in previous years $41.65 million worth of property is currently restrained under the PoC Act.

Customs Act

In 1991-92 the DPP recovered $240 000 under the narcotics provisions of the Customs Act 1901. $940 000 in property was seized and $220 000 in property was condemned. As at 30 June 1992 $3.38 million in property was restrained and $7.93 million in pecuniary penalty orders remained unpaid.

Civil remedies

In 1991-92 $2.17 million was recovered by civil remedies in taxation matters and $610 000 was recovered by civil remedies in non-taxation matters. At 30 June 1992 $8.12 million in property was secured by injunction or otherwise and $7.57 million in judgment debts was outstanding.

Further statistics are given throughout this chapter. Detailed tables are at the end of the chapter.

Rationale for criminal assets initiative

The rationale for recovering criminal assets is to reduce the profit motive for people involved in crime. Drug traffickers and other major offenders often seem ready to accept the risk of arrest and conviction because of the enormous profits they stand to gain. In organised crime, the arrest and removal of participants, even ring leaders, can leave the organisation intact. The organisation can often replace those imprisoned. Indeed, there is disturbing evidence that some major criminals have been able to continue their criminal activities from prison. There is a need to attack the organisation itself by removing its wealth and destroying its economic power base.

In recent years many countries have introduced legislation aimed at confiscating the proceeds of crime.

In Australia a series of Royal Commissions called for action in relation to drug dealing and the huge profits it generates. The 1985 Special Premiers' Conference on Drugs agreed to implement 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 now have confiscation legislation.

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

Overview of Commonwealth legislation

The DPP has four main avenues for recovering the proceeds of crime:

- the PoC Act;
- in narcotics cases, the forfeiture and pecuniary penalty provisions of the Customs Act;
- the civil remedies function; and
- the *Crimes (Superannuation Benefits) Act 1989* and Part VA of the *Australian Federal Police Act 1979*.

The DPP's approach is to consider each case on its merits to determine which course is the most appropriate and effective.

Organisational arrangements

The DPP has a Criminal Assets Branch in each regional office. These branches are responsible for bringing confiscation proceedings in their region, working in conjunction with prosecutors and law enforcement agencies.

There is also a Criminal Assets Branch in Head Office. It is concerned with coordinating the confiscation initiative and policy development. It also conducts criminal assets cases for Commonwealth matters in the ACT and surrounding areas.

PoC Act

Main objectives

The PoC Act provides a comprehensive scheme aimed at tracing, freezing and confiscating criminal assets.

The Act is conviction based. No final order relating to 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.

Tainted property (section 19)

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 from the commission of the offence.

For example, a yacht used to import drugs, or real estate purchased out of funds that can be traced back to the offence are both tainted.

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.

Forfeited property is usually sold and the receipts paid into the Confiscated Assets Trust Fund. However, the property may be disposed of in some other way if a direction is made by the Attorney-General. A motor vehicle for example, may be made available for use by a law enforcement agency.

In 1991-92 the DPP obtained forfeiture orders in five cases. The estimated value of the property involved was $70 000. As at 30 June 1992, $120 000 in property was forfeited as tainted under section 19.

Farrugia

The defendant pleaded guilty to attempting to take $44 500 in Australian currency out of Australia without giving a report required under section 15 of the *Cash Transaction Reports Act 1988*. He attempted to board a flight to Singapore with $5 500 in a wallet, $10 000 concealed in a pair of shoes and $29 000 wrapped in a paper parcel in his luggage.

The NSW District Court fined the defendant $4 000 and ordered forfeiture of the $44 500 and the defendant's airline ticket to Singapore.

The Judge found that the money was to be used to purchase drugs or for some other nefarious purpose. The defendant's unlawful intention was demonstrated by his criminal history including a role as entrepreneur in a drug importation. He also told lies to Customs and police officers and to the Court.

The defendant claimed that he saved the money from his wages as a result of frugal living, and from a payment on termination of his employment. He said he had kept the money under his floorboards because he did not trust banks. He claimed he intended to invest the money in an unnamed bank in Singapore. The court found that this story was inherently fragile. The fatal evidence was that some of the bank notes seized had not been in circulation at the time the defendant claimed they came into his possession.

Kizon

The defendant pleaded guilty to 16 counts under section 24 of the Cash Transaction Reports Act, of opening bank accounts in false names. On 30 August 1990 he was sentenced to 12 months imprisonment and fined $10 000. The amount of money deposited in the false name accounts was originally $300 000 but with interest it totalled $427 000 at the time of the hearing. The DPP applied for forfeiture of the funds as tainted property. The WA Supreme Court ordered forfeiture of $50 000 only.

The defendant conceded that the $300 000 was tainted property within the meaning in the PoC Act. The court also found that interest earned on these funds was derived directly from the opening and operation of the false name accounts and was tainted. However the court has a discretion whether to order forfeiture. The Judge held that regard should be had to the defendant's sentence and fine, the gravity of his offences and his significant tax liability. He considered that forfeiture of all the money and interest would be disproportionate to the gravity of the offences.

Deane-Johns

The defendant was convicted of a serious drugs offence. In the course of committing these offences she used a mobile telephone to contact an accomplice in Thailand. The phone, worth $1 000, was forfeited to the Commonwealth as tainted property.

Serious offence (section 30)

There are special provisions in relation to serious offences. Serious offences are:

- narcotics offences involving more than a traffickable quantity of drugs;
- organised fraud offences under section 83 of the PoC Act; and
- money laundering offences involving the proceeds of a serious narcotics offence or an organised fraud offence.

Where property has been restrained and a person is convicted of a serious offence the restrained property is automatically forfeited to the Commonwealth six months after the date of conviction unless the defendant

obtains a court order (under section 48(4)) during that period. To do that the convicted person must satisfy a court that the defendant's interest in the property was lawfully acquired, the property was not used in connection with or derived from, an unlawful activity.

In other words, property derived from prior criminal activity may be forfeited without the DPP needing to obtain a conviction in relation to the prior criminal activity. In most cases, unless the defendant can show a legitimate source of income the property will be forfeited.

In 1991-92 the DPP obtained forfeiture under section 30 in eight cases. The estimated value of the property forfeited was $480 000. As at 30 June 1992 $1.33 million in property was forfeited under section 30.

Case note

The defendant was convicted of being knowingly concerned in the importation of a commercial quantity of cannabis. The six month period for statutory forfeiture expired on 16 January 1992.

The DPP had restrained:

- approximately $35 000 being proceeds for the sale of the defendant's home;
- a property worth over $100 000;
- two motor vehicles; and
- currency worth approximately $40 000.

The defendant applied under section 48(4) of the PoC Act to have the property unrestrained. He was almost completely unsuccessful, obtaining only the return of one car. He could not satisfy the court that the other property was not derived from some form of unlawful activity. In particular, the defendant had failed to furnish taxation returns over a period of 14 years, and had committed offences against the *Taxation Administration Act 1953*. The property may have been derived from the funds available to the defendant as a result of his failure to pay tax.

The defendant has appealed.

Abbott and Horsfall

The defendant made an application under section 48(4) of the PoC Act to have unrestrained $29 100 in cash which was found in a safety deposit box.

The defendant claimed that $19 100 of the money was savings from legitimate income. The court examined the defendants taxation returns. It found it impossible to reconcile the figures with the claimed savings.

Even though there was nothing to show that the defendant did not acquire the money lawfully, the defendant failed to discharge the onus of satisfying the court that the money was acquired lawfully.

The balance of $10 000 was claimed by the defendant's girlfriend who made an application under section 48(3) of the PoC Act. She claimed that she had given the $10 000 to the defendant to look after. The judge found her to be a truthful witness and was satisfied that it was more probable than not that she owned the $10 000. Accordingly the court excluded the $10 000 from the restraining order.

Case note

The defendant was charged with a serious narcotics offence and the DPP obtained a restraining order over his property under the PoC Act. The Official Trustee, who has control of the restrained property, discovered that a block of land purchased by the defendant for $35 000 had been transferred to him after the restraining order came into operation, and was then transferred by him to his wife on the same day.

The DPP applied to the Supreme Court of Victoria under section 52(2) of the PoC Act for the Court for an order reversing the disposition. The Court made the order sought.

Pecuniary penalty orders

Where a person has obtained benefits from the commission of an indictable offence a court can impose a pecuniary penalty. The order will be for the amount of the benefit derived. The order gives rise to a civil debt due to the Commonwealth. It can be enforced against any of the person's property,

whether linked to the offence or not. The gross, not the net, benefit is assessed. Expenses or outgoings incurred in the course of deriving the benefit are not taken into account.

In many cases it will be difficult to quantify the benefits derived from a criminal activity. The PoC Act provides that the penalty shall be assessed by the court having regard to all or any of a number of prescribed factors including:

- the money or value of property coming into the possession or under the control of the defendant by reason of the commission of the offence;
- the value of any other benefit provided to the defendant, or to another person at the request of the defendant, by reason of the offence;
- the value of the defendant's property before, during and after the offence; and
- the defendant's income and expenditure before, during and after the offence.

Where the value of a defendant's property is greater after the commission of an offence than it was before, there is a rebuttable presumption that the value of the benefits derived from the commission of the offence is not less than the increase in value.

In 1991-92 the DPP obtained 18 pecuniary penalty orders with a total value of $1.6 million. As at 30 June 1992 there were 22 current pecuniary penalty orders worth $1.34 million.

Dowde

As an employee of Telecom Australia, the defendant's job entailed ordering tyres for vehicles in the Telecom fleet. He used his position to order tyres which he then sold for his own benefit. He was charged with 79 charges under section 71 of the Crimes Act. He pleaded guilty and was sentenced to five years imprisonment with a non-parole period of 12 months.

The cost of the tyres to Telecom was $220 000. The sentencing judge ordered a pecuniary penalty order for that amount. The defendant admitted to selling the tyres for approximately $80 000 to $100 000. However, the court had regard to the full value of the tyres when assessing the benefit derived from the offence.

Teh

The defendant had been employed by the National Companies and Securities Commission. He was convicted of 27 counts of misusing restricted information which had come into his knowledge by reason of his duties. He had misused information regarding proposed corporate takeovers by engaging in private share transactions in advance of market reactions to the takeovers. The Court made a pecuniary penalty order of $37 000.

Voluntary repayments

Action under the PoC Act frequently encourages defendants to turn their mind to repayment before sentencing.

This may be because of genuine contrition. Alternatively, a defendant may realise that once property is restrained he or she may have little choice about repaying, one way or another, the benefits obtained from the offence. If a person is convicted, the fact that they made voluntary repayment will usually count to their credit at sentence.

Repayment may be made in a number of ways. It may be paid out of unrestrained assets, by arranging a mortgage on restrained property or by selling the restrained property. In all cases the repayment will be paid to the agency defrauded and not into the Confiscated Assets Trust Fund.

In 1991-92 the DPP recovered $380 000 in voluntary payments.

Hampton

The defendant indicated he would plead guilty to stealing $67 500 from Australia Post. He was advised that the DPP would seek a pecuniary penalty order of that amount at sentence. The defendant had no cash available to repay the amount but was due to receive a superannuation payout in a few months. At sentence the defendant indicated he would repay the money when he received his payout and produced a signed undertaking to that effect. The DPP pressed for a pecuniary penalty order. The court adjourned the sentence to a date several days after the superannuation payout was due. The defendant paid $67 500 to Australia Post and was sentenced on the basis that he had made voluntary restitution.

Restraining orders

The DPP may apply to a Supreme Court for a restraining order to prevent property being dissipated while the prosecution and PoC Act proceedings are on foot. The order may be sought over specified property or all the property of the defendant. The court may direct the Official Trustee to take control of property in appropriate circumstances. Restraining orders may be sought from 48 hours before charges are laid.

The Commonwealth is usually required to give an undertaking as to possible damages when it seeks a restraining order. As a matter of policy, the DPP gives an undertaking in all cases. Wherever possible, the DPP seeks restraining orders over assets such as real estate, cash and jewellery 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. If assets are not restrained at an early stage they will often be hidden or dissipated so as to be unavailable to meet any final orders. The ability to quickly obtain restraining orders can be crucial to the success of confiscation action. 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 to limit the inconvenience to people in their use of or access to 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.

Where the estimated value of the property to be restrained exceeds $200 000, the decision whether to seek the order is referred to the DPP Head Office. In other cases, the decision is made at a senior level in the regional office concerned.

In 1991-92 the DPP obtained 44 restraining orders which involved approximately $11.68 million in property. At 30 June 1992 the DPP had 83 current orders restraining an estimated $41.66 million in property.

Pecuniary penalty orders

The pecuniary penalty scheme contained in Division 3 of Part XIII of the Customs Act was the forerunner to the PoC Act. Many of the provisions of the two Acts are similar.

The main differences between the two Acts is that proceedings under the Customs Act are civil in nature and are not conviction-based. Jurisdiction is exercised by the Federal Court, rather than the State courts and the Customs Act provisions also apply if a person has engaged in a prescribed narcotics dealing.

Prescribed narcotic dealings are 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. A pecuniary penalty can be made under the Customs Act regardless of whether the person has been charged with 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 PoC Act. An amount ordered to be paid is a civil debt due to the Commonwealth and may be enforced as if it were an order made by the court in civil proceedings.

While the Customs Act provisions are not conviction-based, there is usually a a criminal charge in the matter and that charge is frequently a serious offence as defined in the PoC Act. In such cases it is often more effective to institute proceedings under the PoC Act than the Customs Act.

Nevertheless, the pecuniary penalty provisions of the Customs Act have an important role in stripping proceeds from some drug offenders. 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 1991-92 the DPP obtained four pecuniary penalty orders worth a total of $110 000. At 30 June 1992 five pecuniary penalty orders remained unpaid, with a total value of $7.93 million outstanding.

Cornwell

A detailed report of this matter appears on pages 118 and 119 of the 1989 DPP Annual Report.

Bruce Cornwell pleaded guilty in 1987 to conspiring to import two commercial quantities of cannabis.

Cornwell received a head sentence of 23 years imprisonment. The Court assessed that Cornwell had made $6.9 million profit from drug dealings and ordered he pay a pecuniary penalty of $6.9 million.

The Official Trustee in Bankruptcy was ordered to take control of property owned by Cornwell. Property placed under the Official Trustee's control included race horses, a horse stud, real estate and shares. Shares in the United Kingdom and bank accounts in Jersey were secured by injunctions.

The District Prosecutors Office in Zurich also froze funds in Switzerland which were alleged to have been the proceeds of drug trafficking and were beneficially owned by Cornwell. Those funds, which totalled approximately $1 million, were confiscated by the Swiss authorities.

The Australian Taxation Office brought separate debt recovery proceedings against Cornwell. The defendant has now declared himself bankrupt claiming a tax debt of $24 million.

The DPP has claimed the $6.9 million pecuniary penalty order as a debt due to the Commonwealth provable in the bankrupt estate. The Commonwealth should receive a dividend from the bankrupt estate which will eventually be paid into the Confiscated Assets Trust Fund.

Restraining orders

The restraining order provisions under the Customs Act are very similar to those under the PoC Act, although a restraining order under the Customs Act may only be sought once a proceeding for a pecuniary penalty has been instituted. Before granting a restraining order the court must be satisfied that there are reasonable grounds to believe that:

- the defendant engaged in a prescribed narcotics dealing; and
- derived a benefit from the dealing.

There is also provision for the Official Trustee to take control of restrained property where a court is satisfied that circumstances so require.

The DPP obtained two restraining orders in 1991-92, restraining approximately $930 000 in property. At 30 June 1992 there were 10 current restraining orders, restraining approximately $3.39 million in property.

Forfeiture

The provisions of the Customs Act provide for the automatic forfeiture of illegally imported goods, and of vessels, vehicles and other property used in connection with their importation.

A considerable amount of property is seized under those provisions each year from suspected drug offenders.

The DPP becomes involved in these matters when action is taken to seek the recovery of seized goods.

In 1991-92 the DPP was involved in 27 cases involving $940 000 in seized property and 10 cases involving $220 000 million in condemned property. In 1991-92 condemned property was disposed of in seven cases, netting $70 000.

Civil remedies

The DPP is given a civil remedies function by paragraphs 6(1)(fa) and (h) of the DPP Act. This function is to take, coordinate or supervise the taking of civil remedies on behalf of the Commonwealth or authorities of the Commonwealth.

The civil remedies function involves no new powers of confiscation or recovery. It simply gives the DPP a role in normal civil recovery processes in a matter that the DPP is prosecuting, or which is being considered for prosecution. Civil recovery processes include obtaining a civil judgments, debt, bankruptcy, liquidation of companies and garnishee of wages.

In a prosecution the DPP may have access to information from a number of different sources 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. The DPP is also in the best position to coordinate the civil recovery processes with the related criminal prosecution.

In some matters the DPP exercises a supervising and coordinating role only, with recovery action being taken by the Australian Government Solicitor. In other matters it is more efficient for the DPP to take the recovery action itself.

The DPP obtained a total of $2.78 million by way of civil remedies in 1991-92.

Tax recovery

The impetus for the DPP having a civil remedies function was the special problems involved in combating large-scale tax fraud. Recovery of unpaid taxes continues to be a major area of civil remedies recovery. It is also possible to use tax 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 to recover some of the illegal proceeds from the offender.

In 1991-92 the DPP obtained $2.17 million in civil remedies in taxation matters. This was recovered in 20 cases. As at 30 June 1992 there are 15

current cases, with $7 million outstanding in civil judgment debts and $5.64 million in property restrained under Mareva injunctions and otherwise.

Kulik

The defendant was investigated for his connection with a person charged with serious drug offences. The DPP forwarded the defendant's title documents to the ATO. The NCA, the AFP and the DPP provided the ATO with the evidence that a company was the defendant's alter ego.

The ATO raised income tax assessments of over $12 000 000 and the matter was referred to the Australian Government Solicitor. In December 1990 the Supreme Court of NSW granted a Mareva injuction to restrain the defendant from dissipating his assets. Eventually judgment was obtained against the defendant in NSW and registered in Queensland. In December 1991 the Supreme Court of Queensland appointed receivers over the defendant's property, including the property of the company.

The Supreme Court of Queensland subsequently ordered the sale of properties registered in the company's name.

Waters

The defendant had been audited by tax as a result of information provided by the Cash Transaction Reports Agency. The ATO issued notices of amended assessments totalling $233 500. In anticipation of the assessment notices, the defendant moved $NZ210 000 to a New Zealand bank. The ATO referred the matter to DPP for prosecution and civil recovery action.

The DPP applied ex parte for a Mareva injunction to restrain the defendant from dissipating his assets and filed a statement of claim for the tax liability. The defendant did not challenge the injunction. He provided further documentation to the ATO on the basis of which the ATO reduced his assessment to $44 500.

The defendant then agreed to pay the tax assessment.

Non-tax recovery

The DPP can exercise its civil remedies function in a matter, or type of matter, specified by the Attorney-General by instrument in writing. The Attorney-General has signed 26 such instruments. The most important are three class instruments concerning:

- social security fraud;
- medifraud; and
- nursing home fraud.

In 1991-92 the DPP recovered $610 000 by way of civil remedies in non-tax cases. This amount was recovered in 35 cases. At 30 June 1992 there was $560 000 in civil judgement debts outstanding in 17 cases. A total of $2.48 million in property was restrained under Mareva injunctions or otherwise in 44 cases.

Case note

The defendant was charged with social security fraud which had run for over 23 years and involved the use of seven false names. The principal overpayments were $600 000 which, with interest, accumulated to $1.2 million. The defendant's assets totalled $700 000 to $800 000. The DPP decided that civil recovery should be used instead of the PoC Act because the defendant was 79 years old, blind, in frail health and said she would repay the money. The matter was passed to the Australian Government Solicitor for civil recovery. The defendant agreed to execute mortgages to the Commonwealth over all her properties. Caveats were also lodged to further protect the Commonwealth's interest.

Confiscated Assets Trust Fund

For the first half of the year, money recovered under the PoC Act and the Customs Act was paid into Consolidated Revenue. On 27 December 1991 the Confiscated Assets Trust Fund commenced operation. From that date, money recovered under the PoC Act, the Customs Act and the Crimes Act is paid into the Trust Fund.

A total of $640 000 was paid into the Trust Fund during 1991-92.

Half of the fund available for distribution from the Trust Fund will be used to fund law enforcement projects selected by the Attorney-General. The other half will be used for drug rehabilitation and drug education programs selected by the Minister for Health.

The Trust Fund may also be used to reimburse Government Business Enterprises (GBE) if the recovery stems from offences which caused financial loss to the GBE. For example, if an amount is recovered under the PoC Act in respect of a fraud upon Australia Post it will be possible to reimburse Australia Post to the extent of the amount recovered.

Amounts recovered pursuant to the civil remedies function and amounts paid voluntarily by a defendant without an order under the PoC Act 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 into the Trust Fund.

Equitable Sharing Program

Money paid into the Trust Fund is available for equitable sharing with a State or Territory which has participated in the matter which lead to a recovery. The participation may be in the action to confiscate the criminal assets or in the investigation or prosecution of the offences from which the criminal assets were derived.

The Western Australian Government was paid $50 000 in the matter of Kizon, as reported earlier in this chapter.

Payment of legal fees out of restrained assets

One of the most vexing questions that arises 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 faced.

Both the Customs Act and the PoC Act allow a Court to permit 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. In practice, courts have been reluctant to be seen as limiting the right of defendants to access the counsel of

their choice. In all too many cases, this has resulting in over-servicing and the protraction of legal proceedings, absorbing large amounts of scarce court time and other public resources, as well as consuming large amounts of restrained property. There is a major public interest involved in eliminating these abuses.

A person facing serious charges, and who has the financial resources to do so, will often want to explore every possible avenue for avoiding or delaying conviction. However, there is an added incentive for the defendant to filibuster, by bringing frivolous interlocutory appeals and protracting committal proceedings, if he or she realises that the restrained property is likely to be confiscated in the event of conviction. There is great 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.

A defendant is presumed innocent until proven guilty. It has therefore been argued that a defendant should be allowed unfettered access to restrained funds to brief the lawyer of his or her choice and to defend the criminal charges in the way he or she she thinks best. However, the community has a legitimate interest in ensuring that money that may ultimately be confiscated as the proceeds of crime is not consumed in pointless legal challenges or on unnecessarily lavish legal representation. Also, the community has a major interest in seeing that scarce and expensive court resources are not absorbed in unmeritorious proceedings. A further significant consideration is that the standing of the legal profession is endangered by those practitioners who assist the abuse by over-servicing.

One factor which inhibits the ability of the DPP to combat abuse in this area is the perception that the DPP is 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. The DPP may have to assess 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. Considerable work has been done in the DPP, in conjunction with the Attorney-General's Department, in attempting to resolve this serious problem. Unfortunately, no solution was found in the past year.

Case note

The defendant was charged in connection with a major drug importation. His very considerable property was restrained. The defendant then sought access to restrained assets to fund his legal defence. Defence counsel advised the Supreme Court it was estimated that committal proceedings would last eight weeks and cost $164 000. The Supreme Court granted access to restrained assets for legal expenses. The defence then spent more than 10 weeks cross-examining the first prosecution witness. The committal proceedings lasted for eleven months at the end of which the defendant was committed for trial. To date a total of $1.2 million of restrained assets has been spent on legal fees.

In handing down his decision to commit the defendant for trial, the magistrate was very critical of the conduct of the defence counsel saying, in particular, 'I find it difficult to try to put into writing the extent of the harrassment suffered by the prosecution witness'.

Subsequently the DPP examined the defendant about the nature and extent of his assets. He refused to answer a number of questions on the ground that they related to third parties and to his defence, not to his financial affairs. The defendant was charged with contempt. He then applied for access to restrained property to defend the contempt proceedings. This was granted by the court. The defendant also applied for access to allow a fresh legal team to prepare for the trial. He was allowed access.

The defendant's legal advisers have estimated that two months full-time preparation is required for them to master the prosecution case, at a cost of $4 000 per day.

Applications to unrestrain property

As discussed above, if a person is convicted of a serious offence all restrained property is automatically forfeited under section 30 of the PoC Act six months after being convicted. A defendant can avoid forfeiture by having his or her property, or some part of it, unrestrained under section 48(4) of the PoC Act. Opposing section 48(4) applications has been an important new area of work for the DPP this year.

Blake

The defendant pleaded guilty to serious drugs offences. A house and a rural property were restrained. The defendant's young children lived in the house with their grandmother. The mother and father were in custody and were likely to remain there for many years. The Judge found that the major portion of the purchase price of the rural property was obtained from drug and tax offences. The defendant therefore did not satisfy the court that this property should be unrestrained. The Judge found however, that a major part of the house was not derived from unlawful activity.

The defendant had also made a claim to the house under section 48(3)(g) on public interest grounds namely that his young children would suffer financial hardship if their home was forfeited. The Judge ordered that the house be unrestrained.

Superannuation benefits

The *Crimes (Superannuation Benefits) Act 1989* and Part VA of the *Australian Federal Police Act 1979* provide that a Commonwealth employee convicted of a corruption offence, who is sentenced to more than twelve months imprisonment, is deprived of government-funded superannuation benefits. The philosophy behind the Acts was outlined in the second reading speech for the CSB Act, in which the Attorney-General stated:

> The Government views corruption of office as a failure to fulfil a condition of employment which should result in the disentitlement to publicly-funded superannuation benefits.

The loss of superannuation is in addition to any confiscation order that may be made against an employee.

Both Acts provide that the possible making of a superannuation order is not to be taken into account in sentencing.

A corruption offence is defined to be any offence committed by a Commonwealth employee where:

- 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 must apply for a superannuation order against a person once an authorisation has been issued by the Attorney-General. The DPP has no discretion once the authorisation has been given. The court that hears the application must make the order if satisfied that the person was convicted of a corruption offence and that the other legislative requirements have been met. Once an order is obtained, all the employee's rights and benefits under the superannuation scheme cease. The person is given a new right to be paid an amount equivalent to his or her own contributions to the scheme, plus interest.

Under the provisions in the Australian Federal Police Act dismissal for certain disciplinary offences may also lead to loss of superannuation.

Some difficulties have been experienced in administering the Acts. The DPP has identified a number of practical problems which need to be remedied.

The DPP has a policy of notifying the Attorney-General's Department of all potential cases in which orders may be available under the Acts.

In 1991-92 the DPP was authorised to seek three superannuation orders. Two authorisations were subsequently revoked by the Attorney-General. The DPP obtained a superannuation order in the third case.

Mossman

The defendant pleaded guilty to theft from the Department of Defence while working as a cashier at a military base. She was sentenced to 18 months imprisonment to be released upon recognisance after six months. She was ordered to pay a pecuniary penalty of $100 000 to the Commonwealth pursuant to the PoC Act. On 3 October 1991 the DPP sought and obtained a superannuation order against her.

Tables

The following tables give details of work done and money recovered in 1991-92 and the situation at 30 June 1992.

Table 1A

PoC Act—Work done in 1991-92 including work done on cases opened prior to July 1991

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Number of new matters	91	62	2	11	45	6	217
Estimated value (net) of restraining orders	10 342 174	868 000		237 000	230 000		11 677 174
No. of restraining orders obtained	21	16		2	5		44
Total amount of PPOs ordered	336 518	298 275	127 986		765 926	75 500	1 604 205
No. of PPOs obtained	5	5	2		5	1	18
Estimated value of S.19 forfeitures	7 000	9 120		51 000			67 120
No. of S.19 forfeitures	1	2		2			5
Estimated value of S.30 forfeitures	355 780	35 012		89 116			479 908
No. of S.30 forfeitures	3	3		2			8

Table 1B

PoC Act—Details and value of cases Outstanding as at 30 June 1992

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Estimated net value of current restraining orders	37 182 392	3 924 384		317 000	230 000		41 653 776
No. of current restraining orders	46	30		3	4		83
Estimated value of property forfeited under S.19 and not yet disposed of	105 700	9 120		1 000			115 820
No. of current S.19 forfeiture orders	4	2		1			7
Estimated value of property forfeited under S.30 and not yet disposed of	1 257 280	75 701		600			1 333 581
No. of current S.30 forfeiture orders	6	3		1			10
Total amount of current PPOs not yet paid	467 993	298 275	36 205	71 043	396 933	75 500	1 345 949
No. of current PPOs not yet paid	7	5	1	2	6	1	22

Table 1C

PoC Act—Money received during 1991-92

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Amounts paid under PPOs	16 357	160 819	95 951	38 474	389 993		701 594
Amounts recovered from S.19 forfeitures	4 200	4 664		50 000			58 864
Amounts recovered from S.30 forfeitures	825 867	9 312		95 927	33 000		964 106
Amounts recovered from settlements	35 000	139 292		70 000		139 157	383 449
Amounts recovered in some other way via POC Act		52 000			30 000		82 000
Amount paid into Criminal Assets Trust Fund	352 620	34 586	91 781	139 116	1 100		619 203
Total recovered	881 424	366 087	95 951	254 401	452 993		2 190 013

Table 2A

Customs Act—Work done 1991-92—Restraining orders and Pecuniary Penalty orders

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
No. of new matters			2		6	1	9
Value of property restrained	800 000		130 000				930 000
No. of restraining orders	1		1				2
Total amount of PPOs		86 000	19 959				105 959
No. of PPOs		2	2				4

Table 2B

Customs Act—Work done 1991-92 —Seized and Condemned Property

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Value of seized property	108 000	639 607	159 293	15 000	9 100	4 000	935 000
No. of cases where property seized	6	10	6	2	2	1	27
Value of condemned property	37 955	138 800	27 858	4 600	6 600		215 813
No. of condemnations	2	4	1	1	2		10
Amount recovered from disposals	17 000	9 500	27 858	4 600	12 000		70 958
No. of disposals	1	2	1	1	2		7

Table 2C

Customs Act—Cases outstanding as at 30 June 1992—Restraining orders and Pecuniary Penalty Orders

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Value of current restraining orders	2 300 000	958 485	130 000				3 388 485
No. of restraining orders	2	7	1				10
Value of current PPOs	7 112 782	818 000					7 930 782
No. of PPOs	2	3					5

Table 2D

Customs Act—Cases outstanding as at 30 June 1992—Seized and Condemned Property

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Value of seized property	$93 000	480 807	131 435	24 000	4 600	8 000	741 842
No. of cases	5	9	5	3	2	2	26
Value of condemned property	$55 955	138 800			1 500		196 255
No. of cases	2	4			1		7

Table 2E

Customs Act–Money received 1991-92

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Amounts paid under PPOs	2 500	70 450	19 959				$92 909
Amounts received from disposal of condemned property	17 000	9 500	27 858	4 600	12 000		$70 958
Amounts received in some other way under Customs Act					75 000		$75 000
Amounts paid into Criminal Assets Trust Fund		5 769		4 082	7 455		$17 306
Total amounts recovered	19 500	79 950	47 817	4 600	87 000		$238 867

Table 3A

Civil Remedies—Work done 1991-92—Tax Cases

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
No. of new matters	17	3		3	29	1	53
Value of property secured by injunction or otherwise	180 000	449 009		610 000	2 500 000		$3 739 009
No. of cases	1	3	6	4	1		15
Amount of judgments entered or leave to enter judgment granted				700 000	982 120		$1 682 120
No. of cases				1	2		3

Table 3B

Civil Remedies—Work done—1991-92—Non-tax Cases

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
No. of new matters	9	1	99		9		118
Value of property secured by injunction or otherwise		76 524	812 287				888 811
No. of cases		1	16		1		18
Amount of judgments entered or leave to enter judgment granted			414 338		70 082		484 420
No. of cases			14		2		16

Table 3C

Civil Remedies—Cases outstanding at 30 June 1992

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Value of property in tax cases where property secured by injunction or otherwise	3 100 000	40 000			2 500 000		$5 640 000
No. of cases	2	1			1	1	5
Amount of judgments oustanding in tax cases	478 315		3 327 786	700 000	2 500 000		$7 006 101
No. of judgments	1		7	1	1		10
Value of property in non-tax cases where property secured by injunction or otherwise	438 661	76 524	1 953 863		15 000		$2 484 048
No. of cases	4	1	38		1		44
Amount of judgments outstanding in non-tax cases	56 031		401 701		105 499		$563 231
No. of judgments	1		13		3		17

Table 3D

Civil Remedies—Recovery of money—1991-92

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Payments under judgments in tax cases					103 782		$103 782
No. of payments					1		1
Other payments in tax cases e.g. settlement, bankruptcy	$257 359	563 925	243 402	683 000	319 189		$2 066 875
No. of payments		5	4	5	5		19
Payments under judgments in non-tax cases	$		13 742				$13 742
No. of payments			2				2
Other payments in non-tax cases	$		567 916		26 422		$594 338
No. of payments			32		1		33
Total recovered	$257 359	563 925	825 060	683 000	449 393		$2 778 737

6 Law reform and other issues

One of the objectives of the DPP is to provide sound, constructive and timely recommendations with respect to the laws or proposed laws of the Commonwealth relating to the criminal justice system. The DPP is uniquely placed to identify deficiencies in the application of existing laws, as well as assessing proposed law reform in the light of operational experience. This chapter outlines some of the areas in which the DPP was active in 1991-92.

Reducing the length and cost of fraud trials

With the establishment, on 1 January 1991, of the new national scheme for the regulation of companies, and the securities and futures industries, there is now an increased emphasis on the investigation and prosecution of corporate fraud.

Many of the cases involving corporate fraud that are now being investigated can be characterised not only by their seriousness, but also their complexity. We are now facing the real prospect of extremely large and complex fraud trials in this country, the like of which we have rarely seen.

There is however, concern whether our criminal justice system will be able to cope if these cases are to be prosecuted in accordance with more traditional notions of how a criminal trial is conducted. One has only to look to recent experience in the United Kingdom to see the impact of 'mega' fraud trials on the criminal justice system. A number of the trials conducted in the UK by the Serious Fraud Office have taken more than a year to complete, and have cost tens of millions of dollars.

It is now generally recognised that something must be done to address the very real problems posed by complex fraud prosecutions if they are not to overwhelm our criminal justice system.

The problems raised by the investigation and prosecution of complex fraud cases was the subject of a conference organised by the National Crime Authority in Melbourne in June 1992. The conference was attended by judges, legislators, police officers, government lawyers, members of the private bar, law reform groups and others concerned with the enforcement and administration of the criminal law. The following is a summary of the views put by the Director in a paper presented at the conference.

The Director stated that, if we are to reduce the length of complex fraud trials, and indeed ensure that some of these cases will be triable in the first place, changes are required in three areas.

First, new procedures must be established designed to identify the real issues in dispute between the prosecution and the defence prior to empaneling the jury.

Second, certain rules of evidence should be modified in recognition of the fact that complex fraud cases are essentially document orientated. Specific provision should also be made for evidence to be given in a form which will assist the jury's comprehension of the issues.

Third, there must be a change in attitude on the part of the courts and legal practitioners. The key personnel in the trial process must be committed to ensuring that the trial proceeds as smoothly and efficiently as circumstances and the interests of justice permit.

In a typical trial a great deal of time will be taken up with the prosecution proving matters which were never really in dispute. This is particularly so in large fraud trials which tend to involve very large numbers of documents. Usually the documents themselves are not in dispute; rather it is the inferences to be drawn from those documents that form the basis of the real issues in the case.

However, as the onus rests on the prosecution to prove the guilt of the defendant, it is for the prosecution to prove all the facts upon which it wishes to rely. The defence is under no obligation at law to concede those facts it does not dispute. The defence rarely sees it as in its interest to agree to facts and to simplify the issues to be considered by the jury. At the very least, there

is always the possibility that the sheer weight of facts that the prosecution must prove will muddy the waters, and make it easier for the defence to introduce doubt in the mind of the jury.

The fact is that the criminal justice system was not designed to deal with complex fraud cases which are a relatively new phenomenon. If the sort of complex fraud case we are likely to be confronted with is to be kept within manageable limits, it is essential that new procedures be introduced which are designed to crystalise the issues in dispute prior to empaneling the jury so that the case can be presented to the jury as simply as possible and with the minimum of interruption.

In 1987, following publication in the previous year of the *Report of the Fraud Trials Committee* chaired by Lord Roskill, the United Kingdom Parliament passed the Criminal Justice Act. The aim of this legislation was to make both the investigation and prosecution of serious and complex fraud cases more efficient and effective. Perhaps the most significant feature of the provisions dealing with the prosecution of complex fraud cases was the introduction of the 'preparatory hearing' procedure.

Under the UK Act the purposes of a preparatory hearing are:

- to identify the issues which are likely to be material to the verdict of the jury;
- to assist with the jury's comprehension of any such issues;
- to expedite the proceedings before the jury; and
- to assist the judge's management of the trial.

In addition, the court may also determine at the preparatory hearing any question of law relating to the admissibility of evidence, and indeed any other question of law relating to the case, thus minimising the potential for the proceedings before the jury to be interrupted.

The radical change brought about by the preliminary hearing procedure was the introduction of a limited form of criminal pleading. Not only is the prosecution required to make full and timely disclosure of its case, but the Criminal Justice Act introduced a complementary system of defence

disclosure. The accused is required to indicate during the course of the preparatory hearing what matters are genuinely in dispute and to admit facts which are not.

While such a system of defence disclosure represents a modification to a defendant's existing right to make no concessions at trial, such a departure is a relatively minor one and can be justified, particularly when balanced against the intractable problems that serious and complex cases pose for the criminal justice system if they are to be prosecuted in accordance with traditional procedures.

Late last year a Crimes (Fraud) Bill was introduced in the Victorian Parliament. This Bill was also designed to simplify the prosecution of complex fraud cases, and adopted a number of the provisions of the UK Act, including the preparatory hearing procedure.

A significant feature of the UK Act and of the Victorian Bill is that they both provide for the committal hearing to be by-passed by the prosecution. Certainly in some cases the time taken to complete a committal hearing can be quite unreasonable and can constitute the main reason for delay in bringing cases on for trial. However, to the extent the finger can be pointed at the committal hearing as a cause of unreasonable delay, it is considered that the appropriate remedy is not to dispense with committal proceedings, even in complex fraud cases. Rather the procedure should be refined so that the committal hearing can be run on far tighter lines than may be the case at present.

A number of the rules of evidence, and the way evidence is traditionally presented, in their own way do much to frustrate the objective of a speedy trial which is confined to the real issues in dispute. In reference to a criminal justice system very similar to our own, the Roskill Committee concluded that 'the rigidity and artificiality of the present rules [of evidence] are an obstruction to the just and expeditious disposal of fraud cases'. The changes to our rules of evidence should include the following.

First, in the age of the photocopier, the facsimile and other means of automatically reproducing documents with complete accuracy there is now no justification for retaining the best evidence rule.

Second, the hearsay rule in its application to documents should be modified to remove any requirement to call the person who supplied the information recorded in the document, save where a party can satisfy the court that it is in the interests of justice that the person be called.

Third, the requirement for a witness to give oral testimony should be dispensed with where that evidence is not disputed. Rather the evidence should be given in the form of a written statement or report. It would still be open in such a case for the defendant to require the maker of the statement to attend for cross-examination where the defence wishes to make some point not covered in the written statement.

Fourth, the presentation of evidence in the form of charts, graphics, schedules and other computer generated visual aids should not be dependent on the agreement of the other party. Specific provision should be made permitting evidence to be presented in a form which will aid the jury's comprehension. The defence will have the primary documents upon which the graphics etc. are based, and will be able to ascertain for itself whether they are factual and non-interpretative.

Fifth, provision should be made for certain material, such as transcripts, trial judge's summing up, charts and diagrams to be given to the jury for the purpose of assisting it to understand the issues.

Investigation of Commonwealth Offences

On 9 May 1991 the *Crimes (Investigation of Commonwealth Offences) Amendment Act 1991* received the Royal Assent, although the operative provisions of the Act did not commence until 1 November 1991.

The new legislation amends the *Crimes Act 1914* by the introduction of Part 1C which provides for the detention of arrested persons for investigation for up to four hours (or two hours in the case of persons under 18, Aboriginal persons and Torres Strait Islanders). Provision is made for certain periods of 'dead time' to be excluded in the calculation of the relevant 'investigation period', and for the investigation period to be extended for up to a further eight hours by a magistrate.

The legislation also establishes a system of 'safeguards', the main one being the mandatory tape recording of confessional material. Other safeguards introduced by the legislation include the right for people under arrest to be permitted to communicate with a relative or friend and a lawyer and to have a lawyer present during questioning.

Over the past year the DPP has made a number of recommendations to the Attorney-General's Department for amendments to the legislation. A number of these recommendations are noted below.

Paragraph 23B(2)(b) – The obligation to comply with the various safeguards under Part 1C is not dependent on the suspect having been actually arrested. By reason of section 23B(2) the safeguards will also apply in certain circumstances where, for the purposes of Part 1C, a person is deemed to be under arrest. Those circumstances are where a person is in the company of an investigating official for the purpose of being questioned and:

(a) the official believes that there is sufficient evidence to establish that the person has committed a Commonwealth offence that is to be the subject of the questioning; or

(b) the official would not allow the person to leave if the person wished to do so; or

(c) the official has given the person reasonable grounds for believing that the person would not be allowed to leave if he or she wished to do so.

With respect to (b), prior to the enactment of Part 1C it was quite clear that such a situation did not constitute an unlawful detention of the suspect. That is, provided the police when inviting a suspect to accompany them did not convey to the suspect that he or she had no real choice in the matter, a suspect would not be regarded as being detained unlawfully although the police had decided, unbeknown to the suspect, that the suspect would not be allowed to leave if he or she wished to do so. It is not entirely clear whether the courts will continue to take this approach now that the police have been authorised to detain an arrested person for investigation. Be that as it may, the DPP has recommended that the legislation be amended by the addition of a provision on the lines of section 29 of the *Police and Criminal Evidence Act 1984* (UK). That section provides:

> Where for the purpose of assisting with an investigation a person attends voluntarily at a police station or at any other place where a constable is present or accompanies a constable to a police station or any such other place without having been arrested -
>
> (a) he shall be entitled to leave at will unless he is placed under arrest;
>
> (b) he shall be informed at once that he is under arrest if a decision is taken by a constable to prevent him from leaving at will.

Section 23C(6)- As noted in the explanatory memorandum, this sub-section:

> ensures that within any 48 hour period a person cannot be arrested on more than one occasion and detained each time for the full specified maximum period. The permissible investigation period for any subsequent arrest following the initial investigation period is diminished by the time which elapsed in the previous period or periods.

The policy behind this provision, clearly, is to prevent the police from artificially extending the relevant investigation period by releasing the arrested person without charge after an initial period of questioning, and then rearresting the person a short time later either in relation to the particular offence for which he or she was first arrested, or some other offence that the investigators were aware of at the time of the first arrest.

The difficulty with the provision however, is that it applies irrespective of whether there is any connection between the matters giving rise to the two arrests, or whether the investigators responsible for the rearrest were aware of the offence for which the person was first arrested.

It is not difficult to envisage situations where the sub-section would lead to anomalous results. For example, a person may be rearrested within a period of 48 hours in respect of an offence allegedly committed after the person was released following the initial arrest. There would seem to be no good reason why the police should not be able to question the person for a reasonable time as determined by section 23C(4) where there is no connection between that offence and the offence for which he or she was first arrested. The provision could also work against the interests of a suspect in that he or she may be denied an opportunity to present his or her side of the story before being charged.

The DPP has recommended that the provision should only apply where a person is rearrested in relation to the same course of conduct that prompted the first arrest. However, if this is not acceptable, at the very least it is considered the section should not apply where a subsequent arrest relates to an offence committed after the person was released following an earlier arrest.

Section 23C(7) – Where it is decided to charge an arrested person following the detention of that person for the purpose of investigation, section 23C(3) requires that the arrested person either be released on bail within the investigation period, or brought before a magistrate within that period or as soon as practical thereafter.

Although any questioning of an arrested person must be completed within the relevant investigation period, inevitably some time will be taken up following the completion of questioning with formulating and laying charges. That time may be considerable in a complicated case. There may also be additional delay in arranging for the arrested person to be brought before the police officer responsible for the granting of police bail, especially if there are other groups of investigators pressing to comply with the requirements of section 23C(3). However, the time taken to complete the necessary administrative formalities involved in charging and the granting of police bail, or to arrange for the arrested person to be brought before a magistrate if police bail is refused, cannot be disregarded for the purpose of determining the relevant investigation period pursuant to section 23C(4).

The DPP has therefore recommended that section 23C(7) be amended by adding a further paragraph to the effect of the following:

> After the conclusion of any questioning of the person, the time (if any) that is reasonably required to formulate and lay a charge against a person and to determine whether the person should be released on bail.

The DPP has also recommended that section 23C(7) be amended to allow the detention of a person under the provisions of Division 1B of Part XII of the Customs Act, and the conduct of an external or internal search under those provisions, to be counted as 'dead time' for the purposes of section 23C(4). The provisions of Division 1B of Part XII were inserted by the *Customs (Detention and Search) Act 1990*, and provide, amongst other things, for a suspect to be detained for the purposes of an external or internal search. By

reason of section 23B(2)(e) of the Crimes Act, such detention does not constitute either an actual or a constructive arrest, and for the most part the provisions of Part 1C will not apply unless, prior to being detained under the Customs Act provisions, the suspect was arrested.

Where a person is first arrested before being detained under the Customs Act for the purposes of an external or internal search, the police may be denied the opportunity of questioning that person when that search has been completed even if the search resulted in evidence of the commission of an offence being obtained. Given the period that would usually be required to conduct an internal search, in most cases the investigation period will have long since expired before illegal drugs are recovered. In that event, upon recovery of the illegal drugs the police will not be able to question or otherwise investigate the suspect. Rather they will be required to deal with the person as required by section 23C(3).

Section 23V(2) – This sub-section provides that if a video or audio tape recording is made in accordance with section 23V(1) the investigating official must, free of charge, make the recording or a copy of it available to the person or his or her legal representative within seven days. If both a video and an audio recording is made the audio recording or a copy of it must be made available within seven days, and the official must notify the person or his or her legal representative that the video recording may be viewed on request. A copy of any transcript that is prepared must be made available free of charge to the person or his or her legal representative within seven days of its preparation.

If there is non-compliance with a requirement of section 23V(2), section 23V(6) provides that evidence of the confessional material may nevertheless be admitted into evidence if the court is satisfied that in the circumstances compliance was not practicable.

It is understood that section 23V(6) was inserted to take account of situations where, despite the best endeavours of the police, it was not practicable to comply with a requirement in section 23V(2), for example, because a person who had been interviewed could not be located. However, the provision has the potential to lead to quite anomalous, and indeed absurd, results. To take an extreme example, evidence of a taped confession could be excluded if

through inadvertance a transcript of the tape recording was not made available within the time limit specified by section 23V(2).

It is clearly appropriate that a copy of any taped interview with a suspect, and any transcript of the tape recording that is prepared, should be made available to the person concerned. However, they would be made available to an accused in any event. Whether or not there is compliance with the various requirements of section 23V(2), particularly the time limits, is not a matter that should have any bearing on the admission into evidence of confessional material.

The DPP has therefore recommended that section 23V(6) be omitted, and that section 23V(5) be amended in such a way that non-compliance with the requirements of section 23V(2) cannot give rise to any issue as the admissibility of evidence to which section 23V applies.

Sentencing of Federal offenders

During the year the DPP made the following recommendations for amendments to the Commonwealth's sentencing legislation (Part 1B of the Crimes Act).

Where a federal offender receives a suspended sentence under section 20(1)(b), and is subsequently found by a court to have failed to comply with a condition of his or her release, the court may either take no action in respect of the breach or order the person to serve the balance of his or her sentence.

The DPP considers that the options open to a court in dealing with a breach of a suspended sentence are too limited. In some cases the breach may be such that, while it would be inappropriate to take no action, the breach is not so serious as to warrant the court ordering the person to serve the balance of his or her sentence. In such cases the appropriate disposition of the breach proceedings may be, for example, to allow the person to remain under conditional release but to extend the period of supervision or to impose further conditions, such as the performance of community service.

The DPP has therefore recommended that the relevant provision, section 20A(5)(c), be amended to increase the options open to a court in dealing with a breach of an order under section 20(1)(b).

The DPP has also made two recommendations with respect to section 19AH of the *Crimes Act 1914*.

Where a court fails to fix, or properly to fix, a non-parole period or recognisance release order an application may be made to the court pursuant to section 19AH to correct the error. However, at present an application under the section may only be made by the Attorney-General, the Director of Public Prosecutions or the person in respect of whom the sentence was imposed. The DPP has recommended that the class of people authorised to make an application be extended to cover the situation where State authorities have had the carriage of the prosecution of a Commonwealth offence, perhaps in conjunction with the prosecution of State offences.

The second recommendation was to rectify an ambiguity in section 19AH(2).

By way of background, where a federal offender is sentenced to a term not exceeding three years imprisonment, the court is required by section 19AD to make a recognisance release order and must not fix a non-parole period. Where, however, the sentence exceeds three years imprisonment the court may either fix a non-parole period or make a recognisance release order (section 19AB).

It is a relatively common error for a court when sentencing a federal offender to fix a non-parole period in respect of a sentence of three years imprisonment or less instead of making a recognisance release order as required by section 19AD. However, there is a question whether an application can be made under section 19AH to correct such an error. Section 19AH(2) provides:

> A court shall not ... be taken to have failed to fix a non-parole period in respect of a sentence or sentences in respect of which it has made a recognizance release order or to have failed to make a recognizance release order in respect of a sentence or sentences in respect of which it has fixed a non-parole period.

The provision on its face appears to have the effect that an application cannot be made under section 19AH where the sentencing court has not complied with section 19AD.

The DPP has been informed by the Attorney-General's Department that section 19AH(2) was only intended to preclude an offender making an

application where section 19AB applied, but the offender contended that a recognisance release order should have been made instead of a non-parole period or visa versa. However, such an intention could have been given effect to in clear and unambiguous terms without much difficulty. As it is, the provision appears to have the effect that an application cannot be made where the sentencing court has not complied with section 19AD.

The DPP has accordingly recommended that section 19AH(2) be amended to clearly confine its operation to what, apparently, was originally intended.

Use of video cameras

On 12 December 1988 a warrant was issued pursuant to the Customs Act authorising the use of a listening device 'for the purpose of listening to or recording words spoken by, to, or in the presence of a named individual'. The warrant also authorised police 'to enter on any premises on which (the individual) is, or is likely to be, for the purposes of installing, maintaining, using or recovering such a listening device or a part of a listening device...'.

Pursuant to the authority conferred by that warrant, police entered the suspect's flat on a number of occasions for the purposes of installing and maintaining various listening devices. However, on one occasion the police entered the premises for the purpose, amongst other things, of installing a video camera. Thereafter, until February 1989 when all equipment was removed, the police entered the premises on three occasions for purposes associated with the video camera. On one of those occasions entry was effected for the purpose of maintaining both the video camera and the listening devices.

For the purposes of the listening device provisions of the Customs Act, 'listening device' is defined in section 219A(1) to mean:

> any instrument, device or equipment capable of being used, whether alone or in conjunction with any other instrument, device or equipment, to record or listen to spoken words;

The video camera was capable only of recording visual images. Such a device was not a 'listening device' for the purposes of the Customs Act. Accordingly, installation and maintenance of the video camera had not been authorised by the warrant.

The restrictions contained in the Customs Act provisions apply only to the use of a listening device as defined and to the disclosure of information obtained by using such a device. The use of a video camera or other device for recording visual images for the purpose of filming a suspect is not of itself unlawful. However, the trial judge ruled that the various entries onto the premises for the purposes of installing and maintaining the video camera constituted a trespass. This was so notwithstanding that on two occasions the relevant entry had also been for the purposes of installing or maintaining the authorised listening devices. The trial judge ruled that the authority to enter the premises conferred by the warrant was only for the purposes of installing and maintaining a listening device. Insofar as entry was effected for an additional purpose which was not authorised by the warrant, such an entry amounted to a trespass.

Although the evidence obtained from the use of the video camera had therefore being obtained by unlawful means, that of itself did not render that evidence inadmissible. Rather the court had a discretion to either reject it or to admit it having regard to the principles enunciated by the High Court in *R v Ireland* (1970) 126 CLR 321 and *Bunning v Cross* (1977-78) 141 CLR 54. In this case the discretion was exercised to exclude the evidence.

Following the ruling the DPP recommended that the listening device provisions of the Customs Act and the Australian Federal Police Act be amended to authorise under warrant the use of optical surveillance devices for the purposes of viewing and recording visual images in circumstances that would otherwise amount to a trespass.

Jurisdictional problems between military and civil law

In last year's report it was noted that it had been proposed to the Department of Defence that guidelines be formulated to assist in the resolution of jurisdictional problems arising from the *Defence Force Discipline Act 1982*, with such guidelines applying to all criminal offences, whether State, Territory or Commonwealth. At the time of writing a draft of such guidelines had been submitted to the Department of Defence for its consideration.

Unfortunately, it has not been possible for guidelines to be agreed to which are acceptable to both parties. However, early in 1992 the Department of Defence prepared its own internal guidelines, and it was proposed by the Department that those guidelines be applied by the three services for a two-year trial period. It was suggested that this would facilitate the collection of data on which to base an assessment of whether or not the internal guidelines had been effective.

While the Defence document contains a few positive features, the DPP considered that it was not an appropriate vehicle to resolve the problems in this area.

One of the few positive features in the Defence document was that the service authorities appeared prepared to inform the civil authorities, at an early stage, of matters that involved a breach of the ordinary criminal law. Nevertheless, it remained the case that it was the service authorities which would decide whether to institute proceedings under the Defence Force Discipline Act. Further, although there was some acknowledgment that there are cases where it will be inappropriate for the matter to be dealt with by a service tribunal, no real attempt was made to articulate the criteria that would be applied by the service authorities in identifying such cases.

While the DPP admitted that it could not give its endorsement to the Defence guidelines, the DPP said that it was prepared to participate in a two-year trial period, provided the Defence guidelines provide for a consultative mechanism which would enable the competing issues that arise in particular cases to be discussed by the relevant parties.

Public Order (Protection of Persons and Property) Act

With self-government for the ACT, and the establishment of a separate office of the DPP for the ACT, this Office has raised with the Attorney-General's Department the need to review a number of 'State type' offences which now have no Commonwealth connection.

One such offence is that of trespass on premises contrary to section 11 of the *Public Order (Protection of Persons and Property) Act 1971*. The term 'premises' is defined so as not to include Commonwealth premises. The fact that this

Commonwealth offence covers an area of purely ACT concern has led to practical difficulties for both this Office and the ACT DPP.

Telecommunications (Transitional Provisions and Consequential Amendments) Act

The *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991* effected a number of amendments to various Commonwealth Acts. These included the substitution of a new definition of 'carrier' for the purposes of the *Telecommunications (Interception) Act 1979* and the offences in Part VIIB of the Crimes Act. While the new definition of 'carrier' came into force on 1 July 1991, it was dependent on the issue of a licence to a carrier under the relevant provisions of the *Telecommunications Act 1991*. In fact, licences were not issued to Telecom, Aussat or OTC until November 1991, with the result that there was a period of some five months when those corporations were not carriers for the purposes of the Crimes Act provisions or the Telecommunications (Interception) Act.

Upon indentifying this problem the DPP drew the matter to the attention of the relevant authorities. The impact on the Telecommunications (Interception) Act was a matter of particular concern due to doubts whether warrants issued under that Act in fact conferred any authority to intercept communications during the relevant period.

Action has already been taken to rectify the problem in so far as the Telecommunications (Interception) Act is concerned. Late in the Autumn session, Parliament enacted the *Telecommunications (Interception-Carriers) Act 1992*. At the time of writing it is understood that similar action will be taken in the Budget session later this year to correct the problem in so far as the Crimes Act is concerned.

Prosecution time limits

Section 15B of the Crimes Act sets out the time limits within which a prosecution must be commenced. Where the penalty specified for the offence exceeds six months imprisonment, section 15B(1)(a) provides that a prosecution may be commenced at any time. However, where the penalty

specified for the offence is a pecuniary penalty and no term of imprisonment is specified, section 15B(1)(c) provides that any prosecution must be commenced within one year of the commission of the offence.

There is a question which of these two paragraphs apply with respect to the prosecution of a corporation given that only a pecuniary penalty can be imposed if a corporation is convicted.

The DPP considers the better view is that section 15B(1)(a) applies to the prosecution of a corporation if the maximum penalty specified for the offence itself is a term of imprisonment exceeding six months. However, the matter was referred to the Attorney-General's Department for its consideration whether any amendment is necessary to put the matter beyond doubt. At the time of writing it is understood that amendments to section 15B will be introduced in the 1992 Budget session clarifying the application of the section to the prosecution of a corporation.

Listening devices

The DPP has recommended that the *Australian Federal Police Act 1979* be amended to rectify an error in that Act relating to the admissibility in proceedings of information lawfully obtained by the use of a listening device.

Even if information has been lawfully obtained by means of a listening device, at present the AFP Act provides that evidence of that information may not be given in proceedings for an offence (other than a narcotics offence as defined) if that offence is punishable by less than three years imprisonment.

It is understood that approval has been given for an amendment to the relevant provisions of the AFP Act to provide that information lawfully obtained by means of a listening device may be admitted in evidence in proceedings in relation to the relevant offence.

7 Administrative support

Each DPP Office has an Administrative Support Branch responsible for providing services to that office.

The Head Office branch also plays a coordinating role in areas of national importance as well as providing public relations and publishing services. For the most part, administrative responsibility has been devolved to the regional offices.

Each regional branch is headed by an Executive Officer who works under the supervision of the respective Deputy Director for that State.

The Administrative Support Branches, while a relatively small component of the DPP, are responsible for all personnel, information technology, library and accounting services as well as general administration.

Human resources

Staffing

Total staff at 30 June 1992 was 464. Breakdowns for this appear in the following tables 1 to 4.

Although staffing has only increased by 14 over the 1990-91 figure of 450, significant changes have occurred affecting staff deployment. With the transfer of Territorial prosecutions function of the ACT Office to the ACT Government, 26 staff transferred from the Commonwealth while 12 remained. Staff that remained went to Head Office to undertake the residual prosecution function for Commonwealth offences committed in the ACT. The net reduction in staff numbers was offset by an increase in corporate prosecutions staffing and the transfer of pay processing from the Attorney-General's Department which increased administrative support staff by six.

The transfer of the pay function from A-G's was an important development in the DPP's administration during the year. Pay processing was the last major personnel management function undertaken by the Department on the DPP's behalf and its transfer was in accord with the Department's desire to devolve this function across the portfolio wherever possible. Transfer was effected by 1 November 1991 and has proved successful.

The DPP pay function was established centrally in Head Office to provide for a viable unit and regions are linked to the unit through the NOMAD Personnel Management System. This has given regions on-line access for inquiries in the personnel area for the first time. The DPP is appreciative of the Attorney-General's Department's efforts in undertaking this work on the DPP's behalf since the estabishment of the Office.

A significant development reported on last year was the introduction of staff positions to act as in-house counsel. In-house counsel undertake work which otherwise would be briefed to the private bar. The positions were approved by the Department of Finance subject to evaluation over this and the next financial year. An interim evaluation for the 1990-91 financial year was undertaken which demonstrates that these positions have been highly successful, both in contributing to the overall productivity and performance of the DPP, and in terms of cost savings to the budget.

These positions and the specialist SES Corporate Prosecutions postions will be kept under further review and discussion with the Department of Finance over the next financial year.

Staff turnover for the year was low with only seven per cent of lawyers and 12 per cent of non-legal staff leaving the office. Several factors have worked to keep these figures low, especially the expansion in the corporate prosecution area which has provided career opportunities for staff. Also the recession has limited work opportunities outside the DPP.

The percentage of staff dedicated to administrative support remained at approximately 23 per cent when compared with figures for last financial year. While this figure was reported at 18 per cent in last financial year's annual report, the definition of administrative support staff has been refined and the transferred pay staff from Attorney-General's have been included. An adjusted figure on this basis for last financial year would be 23 per cent.

There were no requests for post separation employment received 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.

Table 1:

Staff as at 30 June 1992

Classification	HO	Vic.	NSW	SA	WA	QLD
Director	1					
SES Band 3	2		1			
Band 2	2	1	2	1	1	1
Band 1	6	4	9	5	3	4
Legal 2	7	14	29	7	6	7
Legal 1	3	22	31	10	7	14
SITO A	2					
SITO B	1	1				
SITO C	3		1			
ITO 2			1			
ITO 1	1					
SPO B	1					
SPO C	1	1	1	1	1	1
PO 2	1		1			
PO 1	1					
PAO Grade 3	1					
SOG B3	3	3	3	1	1	1
SOG C	1					
ASO 6	5	5	4	1	1	3
5	5		2	1		1
4	5	10	18		1	3
3	10	14	22	8	11	9
2	3	16	29	5	2	9
1	1	15	4		1	3
PAAB		1				
Office Trainee		2				
TOTAL	**66**	**109**	**158**	**39**	**36**	**56**

Grand Total 464 (unpaid inoperative staff are not included)

Legend

SES	Senior Executive Service Officer
SITO	Senior Information Technology Officer, Grade A, B or C
SPO	Senior Professional Officer Grade B or C
SOG	Senior Officer Grade B or C
ASO	Administrative Service Officer Classes 1 to 6
PAAB	Professional Assistant Aboriginal
PAO	Public Affairs Officer

Staffing summary

Director	1
Total number of staff employed under the PS Act 1922	446
Total number of staff employed under the DPP Act 1983	17
Total	464

The total number of temporary staff included in this figure is 44

Table 2:

Staff as at 30 June 1992 by gender and category

	Full-time		Part-time	
Category	**Male**	**Female**	**Male**	**Female**
Director	1			
Senior Executive Service				
Band 3	3			
Band 2	8			
Band 1	22	10		
Legal	92	63	1	3
Senior Officer	9	4		
Administrative Service Officer	59	161	1	5
Information Technology Officer	8	2		
Professional Officer		9		1
Journalist		1		
PAAB	1			
Total	**202**	**251**	**2**	**9**

Senior Executive Service staff gains 1 and loses 1.

Key performance indicators

The proportion of staff dedicated to corporate support (Library/IT/Administration) for 1991-92 was 23 per cent

Staff Turnover 1991-92	- Legal	7 per cent
	- Non-legal	12 per cent

Table 3:

Staff usage by office

Office	Estimated Average Staffing 91-92	Actual Average Staffing 91-92	Estimated 92-93
Head Office	47	60	65*
NSW	153	149	151
Vic	110	106	108
QLD	47	48	46
WA	39	34	38
SA	29	36	39
Unallocated	89		20
Total	**514**	**433**	**467**

* Increase reflects transfer of ACT Prosecutions and pay function to Head Office.

The unallocated provision covers extra staffing for prosecutions referred by the Australian Securities Commission and for War Crimes prosecutions and is allocated only as required.

Table 4:

Staff usage by program

Program	Estimate 1991-92	Actual 1991-92	Estimate 1992-93
Prosecutions			
- General		211	231
- Corporations		41	58
- War Crimes		6	10
Total	354	258	299
Criminal Assets	55	48	48
Executive & Support	105	127	120
Total	**514**	**433**	**467**

Training and development

A draft national training policy and plan has been developed and is close to settlement with the relevant unions. This is a major initiative and when implemented will provide for structured identification of work-related training needs and provision of appropriate development opportunties.

During the reporting year performance appraisal was implemented for senior officers modelled closely on the existing lawyers' performance appraisal scheme. Each of these schemes require an individual training agreement to be prepared based on skill development needs identified from a discussion between the supervisor and the officer concerned. The draft national training plan will take this further with the introduction of training agreements for all other staff. These training agreements will use the Public Service Commission's core competencies for ASOs 1-6 and Senior Officers.

The DPP's required training expenditure for the year in accordance with the Training Guarantee Act was 1.5 per cent of salary expenditure which equates to $270 631. Actual expenditure on eligible training exceeded this amount. New computer records indicate that eligible training was at least 1.7 per cent ($306 109), but as these are known to be incomplete eligible training expenditure was higher, possibly closer to 2.5 per cent. These records will be more complete as the new system is fully implemented during 1992-93.

For legal staff this training was largely undertaken to fulfil continuing legal education requirements of the Legal Award (a requirement equivalent of 20 hours per lawyer), and for administrative staff for job specific skills development needs or core competency requirements. The average number of training days per staff is estimated as three, and approximately 90 per cent of staff participated in training.

A total of $33 980 was allocated to the DPP under the Government's Middle Management Development Program. These funds were used to develop middle manager's time management, presentation skills and staff selection techniques. In addition two officers were sponsored for participation in Graduate Management Qualifications through the University of New South Wales.

The DPP approved one staff interchange during the year with a Legal 2 officer, Mr A Payne, working with the UK DPP for a period of 12 months, (expected to end October 1992).

Equal Employment Opportunity

The DPP's revised EEO Plan, approved by the Public Service Commission in May 1991, was agreed to by unions during this year. Implementation of the plan has, in some respects, been a little slower than anticipated, but devolution of EEO operations to the regional offices has occurred and specific implementation plans for each office will be finalised early in the new financial year.

The impact of these changes will be to place the emphasis on achieving EEO initiatives at the office level. In addition to normal EEO practices, which are now a standard feature of office management, it is hoped that each office will be able to achieve at least one specific initiative each year.

Resources dedicated to EEO are spread across each office and Head Office. An ASO6 position in Head Office has a primary coordination role as a 50 per cent responsibility. It is estimated that the combined effort across the DPP dedicated to EEO equates approximately 1.4 ASL. The SES officer with responsibility for EEO is the Senior Executive, Administration, Band 1 in Head Office. It is expected that the staffing effort during the next financial year will be approximately the same.

Consultation on EEO with the unions was via the National Industrial Democracy Committee meeting and discussions with branch and workplace delegates regarding the revised EEO Plan. EEO is a standard topic for discussion at the biannual Executive Officers' Conference and is discussed at regional industrial democracy meetings. Staff with EEO responsibilities attend EEO network meetings in the various offices as appropriate.

Major achievements in 1991-92 include:

- the finalisation of the revised EEO Plan with unions;
- an increase in the employment of Aboriginal staff via the Aboriginal Legal Cadetship and recruitment from the Aboriginal ASO1 list;
- the provision of childcare facilities at office conference;
- the preparation for the conduct of the national survey; and
- an increase in the number of women in senior positions (SES + 2 and lawyer + 11).

The major EEO priorities for 1992-93 will be:

- the completion of implementation plans in each office and the achievement in each of at least one specific EEO initiative; and
- the completion of the gathering of EEO data via a nation wide EEO survey and existing personnel data.

While it is not always easy to observe or measure results of EEO initiatives it is pleasing to note that one office has monitored the promotion rate of EEO target groups and reports they are strongly represented among total promotees (34 of 41 promotions or 83 per cent).

With the DPP now having full access to, and control over, its computerised personnel management system (NOMAD), the opportunity exists in the next year to substantially enhance the EEO data available and to utilise this to further target and evaluate our efforts in the EEO area. This will be a major focus of EEO in the next year.

No EEO related grievances were lodged during this year.

Table 6:

EEO Profile of the DPP as at 30 June 1992

Classification (i)		Male	Female	ASTI	PWD	NESB1	NESB2
Director		1					
SES	3	3					
	2	8			1		
	1	22	10		1		1
Legal	2	44	26		1	2	5
Legal	1	49	40			1	9
SOG	B/C and eq.	16	7			2	1
ASO	5-6 and eq.	10	23		1	1	2
ASO	1-4	51	154	2	12	21	12
Total		**204**	**260**	**2**	**16**	**27**	**30**

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 has an agreed Industrial Democracy Plan with the relevant unions which was last revised in 1989.

A National Industrial Democracy Committee meeting was held in July 1991 and another is planned for September 1992. As a result of this meeting the Director issued a strong statement in support of the Industrial Democracy

process and union membership, and policies were issued on the acceptance of gifts and the need for gradual return of some officers to work after extended periods of leave. This meeting also considered the Occupational Health and Safety Policy statement and Agreement and resulted in further consultation and changes in this area.

Industrial Democracy within each office continues to be achieved by either specific Industrial Democracy meetings which are convened in the larger offices or staff consultation and discusion of Industrial Democracy as appropriate as part of larger staff meetings in smaller offices. Head Office staff have liaised extensively with national and branch union delegates during the year, resulting in agreement to the issue of a range of policy and procedures in the personnel management area.

Industrial Democracy is coordinated from Head Office, but implementation is the responsibility of each office. Resources dedicated to ID are estimated to equate approximately one ASL. No major issues emerged during the year or are expected next year and ID arrangements are expected to be similar in the next year.

Occupational health and safety

In accordance with the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, the DPP has prepared a draft Occupational Health and Safety policy, procedures and agreement. These have been agreed in principle by the unions and the agreement is set for signature in July 1992.

In accordance with the draft procedures, each office has established an Occupational Health and Safety framework including the election of Occupational Health and Safety representatives and their training through accredited providers. These representatives meet with management regularly and discuss workplace OH & S issues and resolve any difficulties.

National OH&S matters are coordinated through Head Office and OH&S is a regular agenda item for the biannual Executive Officers' Conference.

Privacy

No reports were served on the DPP by the Privacy Commissioner under Section 30 of the Privacy Act.

Information Technology

The IT sections have been through an extremely busy stage in the last financial year, with significant progress made towards the commencement of re-equipping all the DPP offices with up to date computer facilities.

A description of the major projects undertaken this year follows.

Re-equipment

Following approaches to the Department of Finance for additional funding to assist the Offices of the DPP in providing computing facilities, it was agreed that an IT Acquisition Council should be set up.

The council agreed that the re-equipment should proceed because of computing capacity problems and the age of the equipment. The situation in our Sydney and Melbourne Offices was recognised as critical.

The Department of Finance agreed on the funding of the re-equipment which was costed, following indicative costings from industry, to be $4.7 million, this was arranged by borrowing from future years and repaying over a 12-year period.

The Acquisition Council recommended that the re-equipment program should be carried out by Systems Integration services, and that the request for tender should be limited to six selected systems integrators. The draft request for tender was issued at the end of March this year and following industry comments was re-released in June. Of the six Systems Integrators selected only four responded. The evaluation of these tender responses is currently under way.

Hardware

Personal computers

Due to the timing of the re-equipment process, the move to personal computers has been necessary to provide access to word processing and take the word processing load off the minicomputers. The software provides for not only word processing and spreadsheets but also text retrieval and PC databases used in litigation support. In order to provide PC printing facilities there has been a high use of printer sharers. Novell Local Area Networks (LANs) have been set up in three regions Canberra, Perth and Melbourne. The Perth LAN is used by the entire office for word processing and other PC software. Canberra has been required by the pay team to provide a gateway access to pay/personnel system NOMAD on the Attorney General's Department mainframe, and office automation products. Melbourne has set up a small pilot LAN to test LAN and PC products.

Wang VS Minicomputer

The Head Office central Wang VS Disaster Plan was completed this year. Contract negotiations are in progress for provision of a backup facility, and also replacement equipment. An additional 1GB Hard Disk was purchased for the same machine for backup testing purposes and additional memory in an attempt to prolong its life until the planned replacement with the re-equipment project.

Software was purchased to enhance security and assist with file closing. Replacement of the Department of Finance's Teletype machines necessitated the routing of queries through the Wang network. This was successfully resolved.

Applications

Finance Management FINEST, a new version of FINEST was installed, also links to the Department of Finance Ledger System to transfer data through the Attorney General's mainframe were tested and finalised.

Library Management LIBMAN upgrades to this package have occurred through the year also providing access direct to the Australian Bibliographic Network (National Library) for cataloguing facilities and direct enquiry. Use of barcode equipment to track borrowing has been effectively implemented.

Case Matter Management (CMM) enhancements this year included simplifying and modernising the input screens and adding a file archive feature.

Criminal Assets Recording (CAR) enhancements also included an archiving feature.

IT in litigation support was provided by both contractors and internal staff, this included simple databases for exhibit lists through to graphic and/or projection data for court presentation.

Work on a Comparative Sentencing application is now commencing.

A formal Help Desk service was set up to provide for support between the hours of 8.30 a.m. and 6.00 p.m.

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 and to legal information on CD-ROM.

The Head Office library performs a national role, coordinating the network, producing a monthly information service, cataloguing for the network and maintaining the library management system and ORACLE, the DPP's opinion database. The information service, produced in hard copy since its inception is now also available on computer disk.

The library management system, LIBMAN, has been fully implemented. The system has been modified to meet the needs of the DPP by providing access to judgments and legislation. The system is networked and 56\400 records have been added to date. Records include 4\309 book titles, 2\675 judgments, 724 serial titles (which include law reports) and 213 audio-visual titles.

Officers can process their own loans using dedicated terminals in the libraries. Although desktop access to the enquiry module, foreshadowed in the last report, has been delayed until after the IT re-equipment, library access is available.

All regional offices are now permanently staffed in line with new classification standards. The Perth position, which had not been advertised at the time of the last report was filled in January.

Public relations

All media inquiries are handled by the DPP Journalist working in Head Office, Canberra. These include inquiries regarding prosecutions conducted by regional offices.

The DPP has a policy of providing accurate information which is available on the public record.

The DPP Journalist is also responsible for the Office's publishing program.

A corporate video, *Prosecuting in the Public Interest*, produced by Film Australia, details the work of the Commonwealth DPP. Copies are available from Head Office and from Film Australia, Lindfield, NSW.

The DPP Journalist can be contacted on 06 2705 672.

Financial management

Salaries for the purposes of the Training Guarantee Act

The total amount paid by the DPP for salaries in 1991-92 was $18 042 048.

Financial statements

Audited financial statements for the DPP are included at the end of this report.

In summary, the DPP's expenses for 1991-92 totalled $41.341 million against a budget of $52.606 million and income was $1.974 million. The corresponding figures for 1990-91 were $37.656 million against $46.820 million and $6.252 million.

The increase of expenditures over 1990-91 was due primarily to inflation and wage awards, the commencement of the Corporate Prosecutions function with effect from 1 January 1991, and War Crimes committal proceedings in Adelaide.

Significant underspending in 1991-92 resulted from:

- corporate prosecutions briefs not being received as originally estimated (expenditure of $3.788 million was recorded against a budget of $7.107 million);
- the deferral of the computer replacement program to 1992-93 ($1.478 is to be carried over into 1992-93 for this purpose); and .
- fewer War Crimes matters proceeding in 1991-92 than was provided for in the budget (expenditure of $2.23 million was recorded against a budget of $9.177 million).

For further information on DPP budgets refer also to the Attorney-General's Program Performance Statements for 1990-91 – Sub-program 6.8, and 1991-92 - Sub-program 6.6.

Program budgeting

In 1991-92 the DPP had three sub-programs for resource management : Commonwealth Prosecutions (which includes war crimes prosecutions and corporate prosecutions), Criminal Assets and Executive and Support. 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.

In 1990-91 the ACT Prosecution function was undertaken by the DPP for the ACT Government on a cost recovery basis and reported in the DPP's 1990-91 Annual Report. From 1 July 1991 the function was taken over fully by the ACT Government when an ACT Office of the Director of Public Prosecutions created. Approximately $2.115 million was expended on ACT activities during 1990-91. The ACT Government paid $2.769 million to the Commonwealth, being an agreed amount to meet direct DPP costs, as well as non-DPP oncosts such as superannuation, central corporate services, etc.

Agency evaluations

A DPP Evaluation Plan was developed during 1990-91. This plan provides for the evaluation of significant DPP activity within a five-year cycle.

A review of the Fines and Costs function was undertaken during 1991-92. As a result of this evaluation a full review of the systems used to manage Fines and Costs is to be undertaken during 1992-93 and the system redeveloped as required.

The DPP will be represented on a portfolio evalution of the corporate law function to be coordinated by the Attorney-General's Department late in 1992.

An evaluation of the criminal prosecution function is scheduled to commence later this year and will be the first comprehensive review of the operations of this office since its inception.

Claims and losses

The DPP had no claims or losses which individually resulted in net costs to the Commonwealth of $50 000 or more.

The DPP had no claims or losses which resulted in costs to the Commonwealth in aggregate in the range of $10 000 to $50 000.

Purchasing

A DPP Purchasing Reform Plan was approved by the Attorney-General during 1990-91 and implemented during 1991-92. This plan, along with related purchasing policies and procedures, is being reviewed during 1992-93 to fine tune processes and to prepare for the anticipated repeal of the *Audit Act 1901* and its replacement with new financial management legislation.

The devolution of financial functions to program areas continues, as does the implementation of the use of credit cards and the evolution of government purchasing processes.

To meet the present and continuing demands of the changing financial environment, the DPP's Financial Management Information System -

FINEST, was upgraded during 1991-92, and development will continue to meet expanding reporting requirements and changes to central financial systems.

During 1991-92 the DPP failed to gazette purchases in excess of $2 000 within the required time frame in several instances. Such purchases were gazetted later in the financial year. These failures were due partly to a breakdown in office procedures and partly to the upgrade of the FINEST Financial Management Information System which involved a significant additional workload and disrupted processes at various times during the year. The continued development of the FINEST FMIS, along with review of purchasing procedures should assist in minimising instances that gazettal requirements are not fulfilled in future years.

Consultancy services

During 1991-92 the DPP incurred expenditure under six consultantcy agreements at a total cost of $388 547. Details appear below:

Name	Purpose	Cost	Justification
1. T. Buddin *	In-house Counsel, Sydney	$109 267	Cost effective means of obtaining experienced counsel
2. B. King *	In-house Counsel, Melbourne	$70 771	Cost effective means of obtaining experienced counsel
3. P. Coghlan *	Counsel and as required Acting Director including travel and accommodation)	$168 809	Cost effective means of obtaining counsel
4. P. Coghlan *	In-house Counsel in Winchester Inquiry	$ 5 700	Cost effective means of obtaining experienced counsel
5. DPXEL *	Consult on purchase of computer systems, as member of IT Acquisition Council	$5 000	Independent external representative
6. L. Flatters *	Consult on acquisition and implementation of computer systems, applications and training in Perth	$29 000	In house expertise not available

Consultancies marked with an asterix were not publicly advertised.

Capital works management

The DPP had no major capital works projects costing not less than $6 million in 1991-92.

Reports by the Auditor-General

The DPP was referred to in one report by the Auditor-General:

> Audit Report No.23 1991-92 - Aggregate and Departmental Financial Statements 1990-91.

Comments made in that report in respect of the DPP were :

> An unqualified audit report was submitted on 28 October 1991 to the Attorney-General in respect of the part of the Office's financial statement which was subject to audit in 1990-91.
>
> The results of the audit of the Office's accounts and records were satisfactory except for the following matters:
>
> - approvals to incur expenditure were not always documented;
> - deficiencies in the formal certification of accounts;
> - delays in clearing bank accounts.

Also reported were several technical breaches of Finance Directions, related to pay processing and general accounts processing.

The DPP took over the pay processing function from Attorey-General's during 1991-92 and established a central pay team in head office. Concerns raised by audit were addressed in setting-up the function.

Breaches relating to inadequate documentation of delegations and approvals have been addressed by reviewing procedures and reminding staff of their responsibilities.

Delays in clearing bank accounts relate to the 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. Following recommendations from the evaluation of the Fines and Costs function, procedures and systems are being reviewed to address these issues and improve administrative processes.

The DPP has no significant issues outstanding from previous Auditor-General reports.

During 1991–92, 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.

Environmental matters

The DPP appointed an Energy Manager during 1990-91. During that year training was undertaken and processes were commenced to identify use of energy by the DPP.

The DPP has not put in place any specific energy improvement measures as the capacity to do so is fairly limited because the DPP occupies leased premises and runs a fleet of vehicles hired from the Department of Administrative Services. DPP Office Managers are aware of the need to make the most efficient use of resources whenever it is in their power to do so.

The DPP's Purchasing Reform Plan requires that preference be given to environmentally sound products wherever possible. Similarly, waste is recycled wherever practicable.

Finance general matters

Financial systems

The past year saw continued expansion of external reporting requirements and the commencement of the revelopment of core Department of Finance accounting systems.

The DPP operates two significant financial systems, the FINEST Financial Management Information System and a computerised Fines and Costs Management system for managing the fines and costs awarded by the various courts in Commonwealth prosecutions.

FINEST was upgraded at the commencement of 1991-92 and development is continuing to meet the increasing demands of financial reporting and management.

Financial procedures are to be reviewed early this year to consolidate progress to date and fully incorporate the benefits of computerised accounting systems. The review will be conducted so that the office is well-placed to implement new financial legislation expected to be introduced next year, as well as the new technology to flow from the redevelopment of Department of Finance accounting systems. It is expected that these two projects will have a significant impact on the financial operations of this office and will require the full-time involvement of experienced staff.

As a result of the evaluation of the Fines and Costs function, a full review of the systems used to manage Fines and Costs is to be undertaken during 1992-93 and the system will be redeveloped as required.

The devolution of functions and continuing reforms to financial management has meant that Head Office and State offices financial managers have to take a greater role in information dissemination and training and this role is expected to expand as developments above are put in place.

Accounts processing

Australian government credit cards are used wherever possible, and are proving to be most efficient, particularly in respect of library operations. The implementation of the FINEST FMIS with the capacity to electronically transfer accounts data to the Department of Finance has further improve the accounts payment process.

Accounts processing is significantly devolved to action areas in some States, with other States choosing a more centralised approach at this stage. It is estimated that 7 825 claims for payment were processed nationally during 1991-92. Of these payments, approximately 95 per cent were paid on the due

date. Approximately 3 950, further transactions were processed by credit card during 1991-92 and this number is expected to significantly increase in future years. The new FMIS operates on a method of automatic payment by due date and should assist in ensuring that requirements are met.

Freedom of information

During the year two requests were received under the Freedom of Information Act. One request was refused and one granted. Both were dealt with within 30 days.

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.

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.

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.

Most of the correspondence received during the year was from people charged with criminal offences, or their solicitors, asking that the matter not proceed. 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. 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. Where appropriate, such representations were referred to the Attorney-General's Department.

Fraud Control

The DPP prepared a Fraud Control Plan in 1989 which is still in force.

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.

The DPP took over the Internal Audit function from the Attorney-General's department from 1 July 1992. During 1992-93 the DPP Fraud Control Plan, to develop an integrated Fraud Control/Internal Audit Plan for the office and to perform the function of Internal Auditors for the office.

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, South Australia and the ACT.

For the reasons noted in previous reports, only basic information is provided on prosecutions conducted by AGS Hobart and Darwin.

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. For example, much work may have been involved in preparing a case for trial only for the defendant to plead guilty at the last moment. In 22 indictable matters conducted by our Sydney office, for example, a plea of guilty was entered either on the first day of the trial or after the trial had been underway for a number of days.

Court backlogs will also effect the effort required to deal with matters. A case may be listed for trial on 3 or 4 occasions before it actually commences. However, a case must be prepared for trial each time although some of the work involved will be largely wasted if the case is not reached and it has to be relisted.

As noted elsewhere in this report, since 1 July 1991 the ACT Director of Public Prosecutions has been responsible for the conduct of prosecutions for offences against ACT law, and prosecutions in the ACT for offences against Commonwealth law are now the responsibility of the Prosecutions Branch located within DPP Head Office. Matters conducted by that Branch are now included in all the following tables for the first time.

The following tables indicate that there were increases in the number of matters dealt with in all three areas of summary, committal, and indictable matters. In 1990-91 the number of matters dealt with summarily included 555

(iv) Does not include certain prosecutions conducted in south-eastern NSW by DPP Head Office (Canberra).

(v) The Australian Government Solicitor, Hobart, dealt with 165 defendants, 146 of whom pleaded guilty. Eight defendants were convicted following a plea of not guilty. Two defendants were acquitted on all charges, and all charges were withdrawn in respect of the remaining 8 defendants. The Australian Government Solicitor, Darwin dealt with 126 defendants, 84 of whom pleaded guilty. Five 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 36 defendants.

Table 1(b)

Legislation: matters dealt with summarily in 1991-92 (i)

Legislation	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Australian Federal Police Act	6	6	4		2	83	101
Civil Aviation Act	2	5	16	8	3		34
Bankruptcy Act	4	8	4	3	1		20
Cash Transaction Reports Act	28	21	10	11	7		77
Census and Statistics Act	12	8	6	3	17		46
Commonwealth Electoral Act		6	1	1	1	1	10
Continental Shelf Act			2	43			45
Copyright Act	5	2	1	7	2	3	20
Crimes Act	295	262	111	145	123	79	1015

Table 1(b) continued

Legislation: matters dealt with summarily in 1991-92 (i)

Legislation	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Crimes (Currency) Act	11	14		4	1		30
Customs Act	61	42	53	14	20	1	191
Companies Code	3		1	7		1	12
Export Control Act		3	1		1		5
First Home Owners Act	2	3	9	1	1		16
Fisheries Act	9		12	1			22
Great Barrier Reef Marine Park Act			50				50
Health Insurance Act	2	11	2		2	2	19
Marriage Act	1	4	1	2	2		10
Migration Act	104		1	5			110
Non-Commonwealth legislation (ii)	59	46	16	25	1	2	149
Passports Act	17	8	6	3	1		35
Postal Services Act							

Table 1(b) continued

Legislation: matters dealt with summarily in 1991-92 (i)

Legislation	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Public Order (Protection of Persons and Property) Act	2	2	5	2	3	29	43
Proceeds of Crime Act							
Quarantine Act		3	4				7
Radio Communications Act	3	7	14	11	1	1	37
Social Security Act	215	340	259	259	240	60	1373
Statutory Declarations Act	4	1	1	2			8
Student Assistance Act	57	27	13	18	12	5	132
Taxation legislation	42	15	30	29	9	13	138
Telecommunications Act	3	1			2		6
Trade Practices Act					2		2
Wildlife Protection Act	1		3	1			5
Other	13	17	14	9	28		81
Total	**961**	**862**	**650**	**614**	**482**	**280**	**3849**

Notes: (i) 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 1991-92

Legislation	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Breach of recognisance etc. (ss.20A, 20AC)	23	14	2	9	2	4	54
Damage property (s.29)	1	1		7	20	8	37
False pretences (s.29A)	17	3	6	6	2		34
Imposition (s.29B)	99	79	18	58	29	19	302
False statements (s.29C)		1	2				3
Fraud (s.29D)	5	40	6			4	55
Seizing Commonwealth goods (s. 30)	1				1		2
Offences relating to administration of justice (ss.32-50)	1	2	1	1	1		6
Forgery and related offences (ss.65-69)	55	55	25	21	9	11	176
Disclosure of information (s.70)	1	2					3
Stealing or receiving (s.71)	43	29	12	11	23	16	134
Falsification of books (s.72)	1	3	1	2		5	12

Table 1(c) continued

Crimes Act 1914: matters dealt with summarily in 1991-92

Legislation	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Bribery (ss.73 & 73A)	3	1		1			5
False returns (s.74)	1			1			2
Personating public officers (s. 75)				1			1
Resisting etc. public officers (s. 76)	2	1			3	1	7
Offences relating to computers (ss 76B - 76E)	1		2			1	4
Espionage and official secrets (ss. 77 - 85D)							
Offences relating to postal services (ss. 85E - 85ZA)	11	9	20	6	5	3	54
Offences relating to telecommunications services (ss. 85ZB - 85ZKB)	27	13	11	15	16	6	88
Conspiracy (s.86)		7	1				8
Conspiracy to defraud (s.86A)		1					1

Table 1(c) continued

Crimes Act 1914: matters dealt with summarily in 1991-92

Legislation	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
(Trespass on Commonwealth land (s.89)			3	5	7		15
Other	3	1	1	1	5	1	12
Total	**295**	**262**	**111**	**145**	**123**	**79**	**1015**

Table 2(a)

Matters dealt with on indictment in 1991-92

State	Defendants outstanding at 1.7.91	Matters received during year	Number of defendants dealt with	Pleas of guilty to all charges	Outcome of summary trials					Defendants outstanding at 30.6.92
					Number of trials	Number of defendants convicted (i)	Number of defendants acquitted on all charges	Unresolved (ii)	No Bills (iii)	
NSW	229	216	223	173	44	28	14	2	6	222
Vic.	64	131	106	83	16	11	9		3	89
Qld	33	131	124	85	25	13	13		13	40
WA	14	54	47	28	15	14	2		3	21
SA	17	50	48	34	9	7	3		4	19
ACT	3	10	7	4	1			1	2	6
Total	**360**	**592**	**555**	**407**	**110**	**73**	**41**	**3**	**31**	**397**

Notes: (i) i.e. where a defendant was convicted on at least one charge.

(ii) eg 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.

(iii) 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.

(iv) The Australian Government Solicitor dealt with 2 defendants on indictment. One defendant pleaded guilty and the remaining defendant was acquitted. The Australian Government Solicitor, Darwin, dealt with 7 defendants on indictment, 4 of whom pleaded guilty to all charges. Following the trials of the remaining 3 defendants, two defendants were convicted and the third defendant was acquitted.

Table 2(b)

Legislation: matters dealt with on indictment in 1991-92 (i)

Legislation	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Bankruptcy Act	1				2		3
Cash Transaction Reports Act	6	2	1	2			11
Companies Code			1	1			2
Crimes Act	119	56	62	14	29	5	285
Crimes (Currency) Act	1	1		1			3
Customs Act	78	32	32	21	7		170
Health Insurance Act		1					1
Marriage Act							
Non-Commonwealth	1	4	13	4	6		28
Wildlife Protection Act	7	3					10
Other	4	4	2	1			11
Total	**217**	**103**	**111**	**44**	**44**	**5**	**524**

Note: (i) 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 1991-92

	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Breach of recognizance etc. (ss.20A, 20AC)				1			1
Damage Property (s.29)	1	1	7				9
False pretences (s.29A)	12	3	4	1			20
Imposition (s.29B)	65	17	9	1	16	1	109
False statements (s.29C)							
Fraud (s.29D)	16	21	11	2	7	1	58
Offences relating to administration of justice (ss. 32-50)	2	1		3			6
Forgery and related offences (ss.65-69)	11	2	7		1	1	22
Disclosure of information (s. 70)							
Stealing or receiving (s.71)	7	1	21	3			32
Falsification of books (s.72)	2	1	1	1		2	7
Bribery (ss.73 and 73A)		1	1	1			3

Table 2(c) continued

Crimes Act 1914: matters dealt with on indictment in 1991-92

	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
False returns (s.74)							
Resisting etc. public officers (s.76)							
Offences relating to postal services (ss.85E - 85ZA)		1		1			2
Offences relating to telecommunications services (ss.85ZB - 85 ZKB	1						1
Conspiracy (s.86)	1	1	1				3
Conspiracy to defraud (s.86(1)(e) or s.86A)	1	4			4		9
Other		2			1		3
Total	**119**	**56**	**62**	**14**	**29**	**5**	**285**

Table 2(d)

Duration of trials on indictment completed in 1991-92

State	Number of trials dealt with	Total number of defendants	Number of hearing days						
			Less than 5	5 - 10	11 - 15	16 - 20	21 - 25	26 - 30	More than 30
NSW	44	44	26	13	1				4
Vic.	16	20	3	2	4	4		1	2
Qld	25	26	20	3				1	1
WA	15	16	10	3	2				
SA	9	10	6	1	1	1			
ACT	1	1	1						
Total	**110**	**117**	**66**	**22**	**8**	**5**		**2**	**7**

Table 3(a)

Prosecution appeals against a sentence imposed by a court of summary jurisdiction in 1991-92

State	Number of appeals dealt with	Type of matter			Outcome of appeal	
		Drugs	Social security	Other	Upheld	Dismissed
NSW	4		3	1	4	
Vic.	2		1	1	2	
Qld						
WA	3		2	1	2	1
SA	1			1		1
ACT						
Total	**10**		**6**	**4**	**8**	**2**

Table 3(b)

Prosecution appeals against a sentence imposed following a conviction on indictment in 1991-92 (i)

State	Number of appeals dealt with	Type of matter		Outcome of appeal	
		Drugs	Other	Upheld	Dismissed
NSW	3	3		3	
Vic.	1		1	1	
Qld					
WA	5	5		5	
SA	1	1		1	
ACT					
Total	**10**	**9**	**1**	**10**	

Note: (i) Does not include appeals that were withdrawn.

Table 3(c)

Other prosecution appeals in 1991-92

State	Number of appeals dealt with	Decision appealed from			Outcome of appeal	
		Failure to convict or commit	Grant of bail	Other	Upheld	Dismissed
NSW	6	5		1	5	1
Vic.						
Qld	1			1	1	
WA						
SA	3	2	1		2	1
ACT						
Total	**10**	**7**	**1**	**2**	**8**	**2**

Table 4(a)

Appeals by persons convicted by a court of summary jurisdiction in 1991-92 (i)

State	Number of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction and sentence
NSW	85	18	52	15
Vic.	39	2	26	11
Qld	12	5	4	3
WA	8	5	2	1
SA	9		3	6
ACT				
Total	**153**	**30**	**87**	**36**

Notes: (i) Does not include appeals that were withdrawn or abandoned.

Table 4(b)

Appeals by persons convicted on indictment in 1991-92 (i)

State	Number of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction and sentence
NSW	30	10	10	10
Vic.	9		7	2
Qld	2			2
WA	11	4	6	1
SA	2	2		
ACT				
Total	**54**	**16**	**23**	**15**

Notes: (i) Does not include appeals that were withdrawn or abandoned.

Table 5(a)

Matters dealt with in committal proceedings in 1991-92

State	Defendants outstanding at 1.7.91	Matters received during year	No. of defendants dealt with	Outcome of Defended Committal Proceedings				Other (i)	Defendants outstanding at 30.6.92
				No. of defendants committed for sentence	No. of defended committal proceedings	No. of defendants committed for trial	No. of defendants discharged on all charges		
NSW	126	187	227	115	101	106	3	3	86
Vic.	63	128	130	1	116	121	7	1	61
Qld	22	82	87	6	61	81			17
WA	13	36	48	7	34	40		1	1
SA	37	44	50	3	33	41		6	31
ACT	3	10	5	1	4	4			8
Total	**264**	**487**	**547**	**133**	**349**	**393**	**10**	**11**	**204**

Note: (i) All charges withdrawn prior to hearing.

Table 5(b)

Duration of defended committal proceedings completed in 1991-92

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	101	85	1	6	2	1	1				5
Vic.	116	77	10	12	1	5	7	4			
Qld	61	55	5	1							
WA	34	31	2				1				
SA	33	21		4	3	1	2			1	1
ACT	4	4									
Total	**349**	**273**	**18**	**23**	**6**	**7**	**11**	**4**		**1**	**6**

Table 6

Advice matters in 1991-92 (i)

State	Matters dealt with	Type of advice			
		General evidence	Insufficient not	Prosecution appropriate	Other (ii)
NSW	309	34	40	174	61
Vic.	474	89	66	231	88
Qld	298	79	70	91	58
WA	184	18	18	105	43
SA	166	9	61	33	63
ACT(iii)	52	14	6	21	11
Total	**1483**	**243**	**261**	**655**	**324**

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 verbally. 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.

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.

(ii) e.g. where time limit on the institution of a prosecution had expired, service of summons could not be effected, or where a matter was referred to a State prosecution agency.

(iii) Only includes advice matters dealt with by the Prosecutions Branch, DPP Head office.

Table 7(a)

Social security prosecutions: matters dealt with summarily in 1991-92

State	Defendants outstanding at 1.7.91	Matters received during year	No. of defendants dealt with	Pleas of guilty to all charges	Outcome of summary trials					Defendants outstanding at 30.6.92
					No. of summary trials	No. of defendants convicted (i)	No. of defendants acquitted on all charges	Unresolved (ii)	Other (iii)	
NSW (iv)	115	225	261	235	18	15	2	1	8	79
Vic.	174	463	419	385	25	20	5		9	218
Qld	27	321	296	263	13	7	6		20	52
WA	41	232	270	254	13	10	3		3	3
SA	154	276	285	247	9	5	4		29	145
ACT	21	71	60	57	2	2			1	32
Total	**532**	**1588**	**1591**	**1441**	**80**	**59**	**20**	**1**	**70**	**529**

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 ofany charge.
(iv) Does not include certain prosecutions conducted in south-eastern NSW by DPP head office.

Table 7(b)

Social security prosecutions: matters dealt with on indictment in 1991-92

State	Defendants outstanding at 1.7.91	Matters received during year	Number of defendants dealt with	Pleas of guilty to all charges	Outcome of summary trials: Number of trials	Number of defendants convicted (i)	Number of defendants acquitted on all charges	No Bills	Defendants outstanding at 30.6.92
NSW	51	49	69	64	3	3		2	31
Vic.	4	31	31	28	1	1		2	4
Qld		13	9	8				1	4
WA		1							1
SA	1	17	15	14	1	1			3
ACT									
Total	**56**	**111**	**124**	**114**	**5**	**5**		**5**	**43**

Notes: (i) i.e. where a defendant was convicted on at least one charge.

Table 7(c)

Social security prosecutions: advice matters in 1991-92 (i)

State	Matters dealt with	Type of advice			
		General evidence	Insufficient	Prosecution not appropriate	Other
NSW	91	5	11	56	19
Vic.	121	1	20	66	34
Qld	59	5	15	19	20
WA	59	1	6	38	14
SA	42		29	9	4
ACT	12	2	2	5	3
Total	**384**	**14**	**83**	**193**	**94**

Notes: (i) See notes to Table 6.

Table 7(d)

Social security prosecutions: matters dealt with in 1991-92: amount defrauded in charges found proved

Matters dealt with summarily (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
No. of male defendants	149	231	195	175	165	34	949
Amount defrauded	$1 124 247	1 677 058	1 399 145	793 914	892 361	230 702	6 117 427
No. of female defendants	101	174	75	88	87	25	550
Amount defrauded	$ 864 536	1 845 087	796 495	544 190	660 006	228 083	4 938 397
Total defendants	**250**	**405**	**270**	**263**	**252**	**59**	**1499**
Total amount defrauded	**$1 988 783**	**3 522 145**	**2 195 640**	**1 338 104**	**1 552 367**	**458 785**	**11 055 824**

Matters dealt with on indictment

No. of male defendants	33	18	4		6		61
Amount defrauded	$ 896 639	741 397	191 636		188 910		2 018 582
No. of female defendants	34	11	4		9		58

Table 7(d) continued

Social security prosecutions: matters dealt with in 1991-92: amount defrauded in charges found proved

Matters dealt with on indictment

	NSW	Vic.	Qld	WA	SA	ACT	Total
Amount defrauded	$1 140 947	493 535	226 241		387 935		2 248 658
Total defendants	**67**	**29**	**8**		**15**		**119**
Total amount defrauded	**$2 037 586**	**1 234 932**	**417 877**		**576 845**		**4 267 240**

Grand total

Grand total defendants	**317**	**434**	**278**	**263**	**267**	**59**	**1618**
Grand total amount defrauded	**$4 026 369**	**4 757 077**	**2 613 517**	**1 338 104**	**2 129 212**	**458 785**	**15 323 064**

Note: (i) Includes amount defrauded where charges were laid under the *Crimes Act 1914* but those charges were dealt with summarily.

Table 8

Appearance work by DPP lawyers in 1991-92(i)

	NSW (%)	Vic. (%)	Qld (%)	WA (%)	SA (%)	ACT (%)
Defended summary hearing	88	92	93	94	96	96
Undefended summary hearing	79	99	91	80	97	74
Committal with a pea of guilty	90	100	83	100	100	100
Committal with a plea of not guilty	72	59	97	91	91	100
Trials on indictment	32	13	80	75	89	100
Sentencing proceedings in superior courts	80	73	84	84	90	100
Prosecution appeals	44	67	50	83	75	100
Defendant appeals	80	78	73	93	81	100

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 State 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 1991-92: referring agencies (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Electoral Commission		6	1	1		1	9
Australian Federal Police	367	381	220	205	88	168	1429
Australian Postal Corporation	24	14	9	9	11	14	81
Australian Securities Commission	3	1	1	7		1	13
Australian Taxation Office	45	15	30	13	11	13	127
Civil Aviation Authority	2	7	16	3	3		31
Dept of Community Services and Health	2	2	8	1	1		14
Australian Customs Service	1		9	3	1		14
Dept of Employment, Education and Training	57	29	16	19	12	4	137
Dept of Social Security	231	329	213	222	229	65	1289
Dept of Transport and Communications	4	6	15	12	1	1	39

Table 9(a) continued

Matters dealt with summarily in 1991-92: referring agencies (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
Federal Airports Corporation					17		17
Health Insurance Commission	1	2	1		3	1	8
Official Receiver							
Dept of Primary Industries & Energy	2	8	3	44	1	1	59
Australian Telecommunications Corporation	39	24	7	23	14	7	114
Trade Practices Commission					2		2
Non-Commonwealth agencies (other than State police)	7	12	65	7	1	3	95
State police	33	12	24	36	69		174
Dept of Immigration Local Government and Ethnic Affairs	120	1	1	1			123
Australian Telecommunications Authority	1	1					2
Australian Bureau of Statistics	12	8	6	3	17		46

Table 9(a) continued

Matters dealt with summarily in 1991-92: referring agencies (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
National Crime Authority	2				1		3
Other	8	4	5	5		1	23
Total	**961**	**862**	**650**	**614**	**482**	**280**	**3840**

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 1991-92, although matters recorded under 'other' in table 1(a) have not been taken into account.

Table 9(b)

Matters dealt with on indictment in 1991-92: referring agencies (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Federal Police	137	77	64	41	31	4	354
Australian Postal Corporation	1		2	2		1	6
Australian Taxation Office	1	2					3
Civil Aviation Authority				1			1
Australian Customs Service	9	4		1			14
Dept of Education, Employment and Training							
Dept of Social Security	56	13	4		8		81
Health Insurance Commission	1		1				2
Official Receiver							
Dept of Primary Industries and Energy							
Australian Securities Commission		1	1	1	2		5
Trade Practices Commission		1					1

Table 9(b) continued

Matters dealt with on indictment in 1991-92: referring agencies (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Telecommunications Corporation	2	1			1		4
Non-Commonwealth agencies (other than State police)		1		1			2
State police	7	3	38		2		50
National Crime Authority			1				1
Dept of Immigration Local Government and Ethnic Affairs							
Other	3						3
Total	**217**	**103**	**111**	**47**	**44**	**5**	**527**

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 1991-92, although matters recorded under "other" in Table 2(a) have not been taken into account.

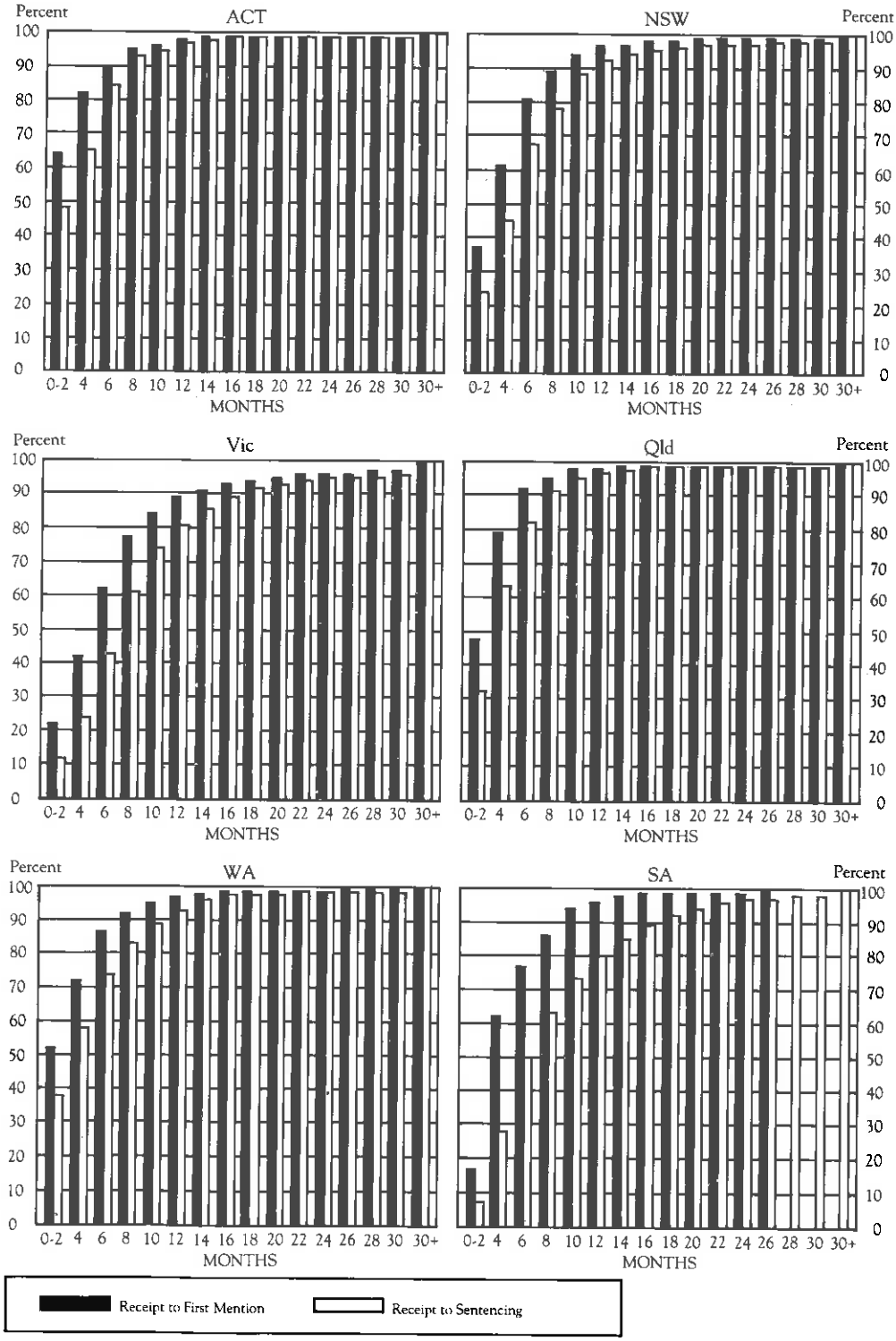
Processing time

The following graphs provide information as to the time taken to complete summary, committal (defended only) and indictable matters, as well as those matters where it was decided not to commence a prosecution (advice matters). The information is provided by reference to matters completed in 1991-92.

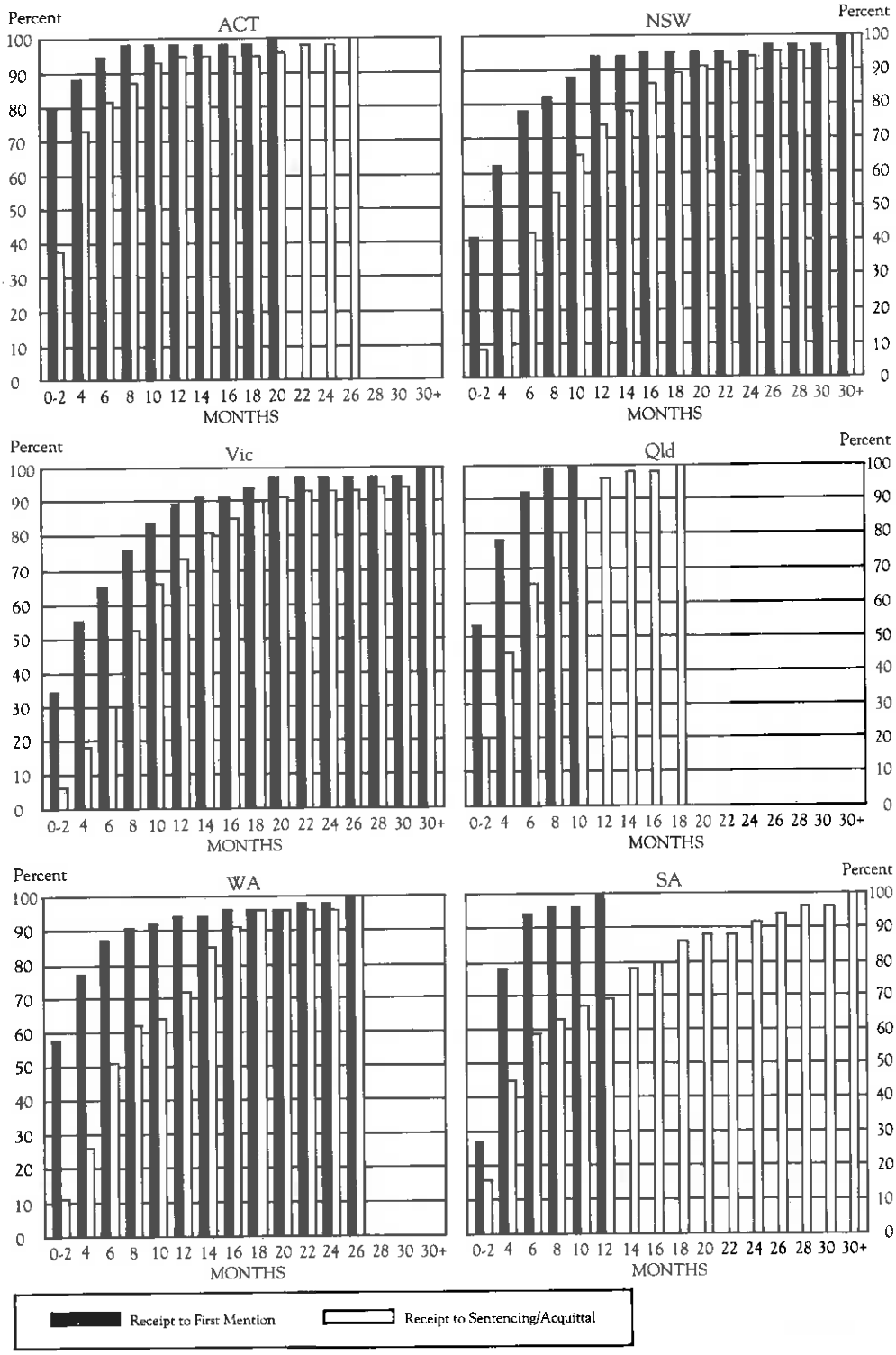
While some matters are received by the DPP following arrest and charge, in the vast majority of cases a prosecution is instituted following the receipt of a brief of evidence from the relevant investigative body for decision whether a prosecution should be instituted and, if so, on what charge or charges. In some cases a prosecution will not be instituted until further investigations have been undertaken to close gaps in the evidence disclosed by the DPP's examination of the brief of evidence. Following the decision of the DPP that a prosecution should be instituted, the agency that referred the matter will be responsible for the issue of the summons. To allow for sufficient time to effect service of the summons, in some jurisdictions the summons may be made returnable on a date which is up to 6 to 8 weeks from the date of issue. These matters should be borne in mind when considering the graphs relating to processing time for summary and defended committal matters.

With respect to the graphs dealing with advice matters, the actual date the DPP decides whether a prosecution should be commenced is not recorded on the DPP's Case Matter Management system. Accordingly, those graphs are based on the period between receipt of a matter and the date the relevant file was closed. In some cases a decision whether to prosecute may have been deferred pending further, but unsuccessful, investigations.

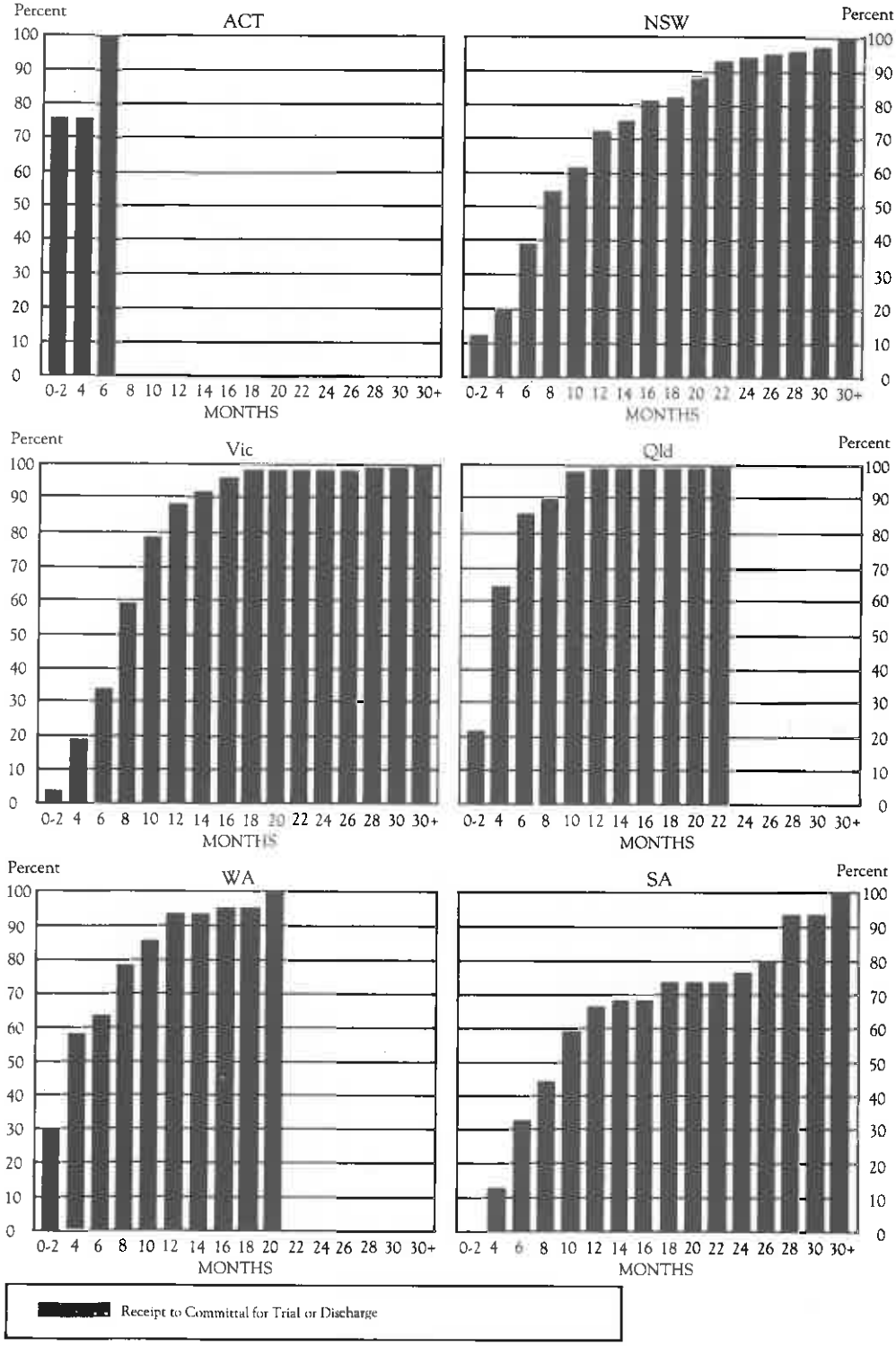
Processing times for undefended summary matters



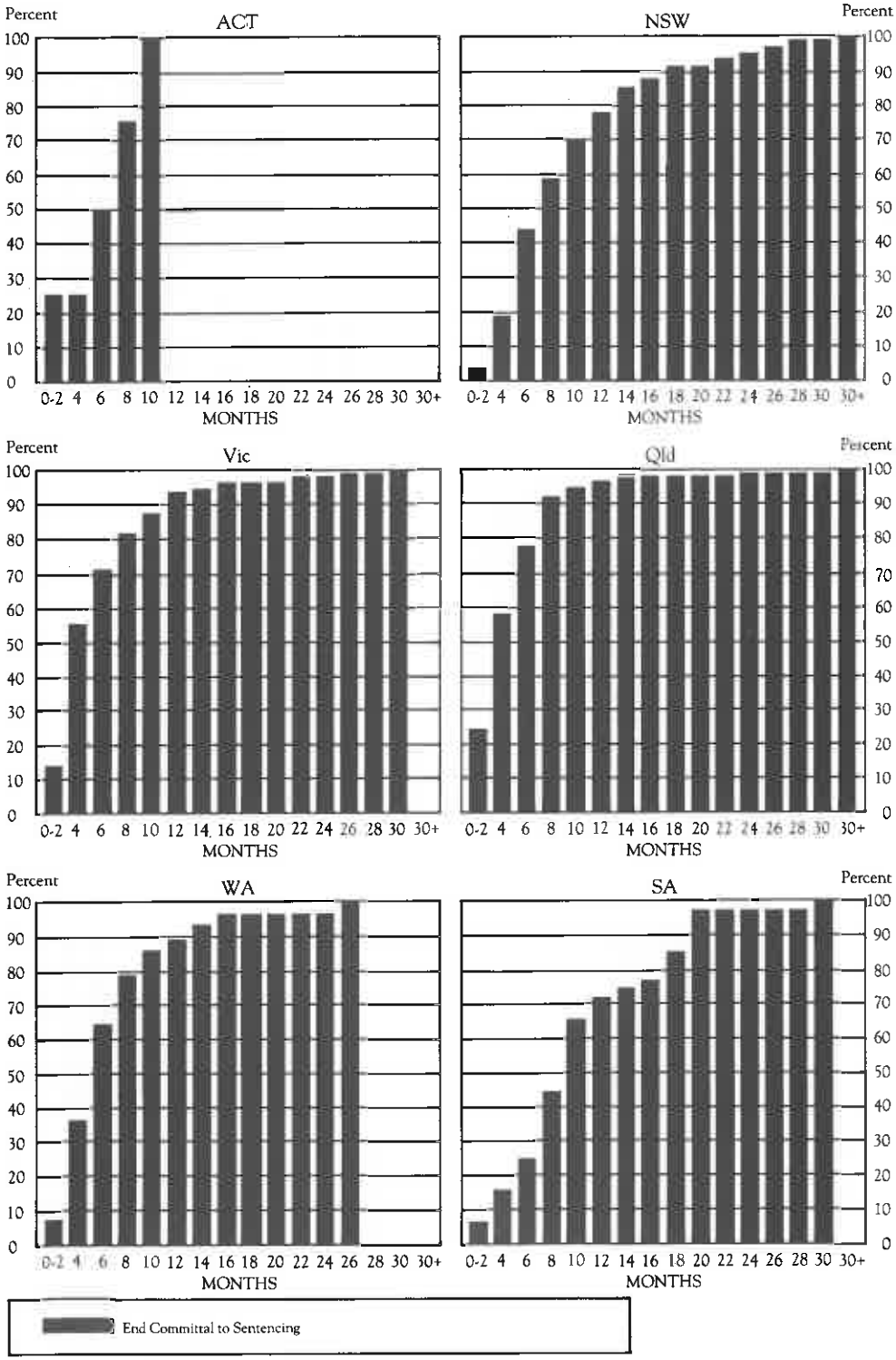
Processing times for defended summary matters



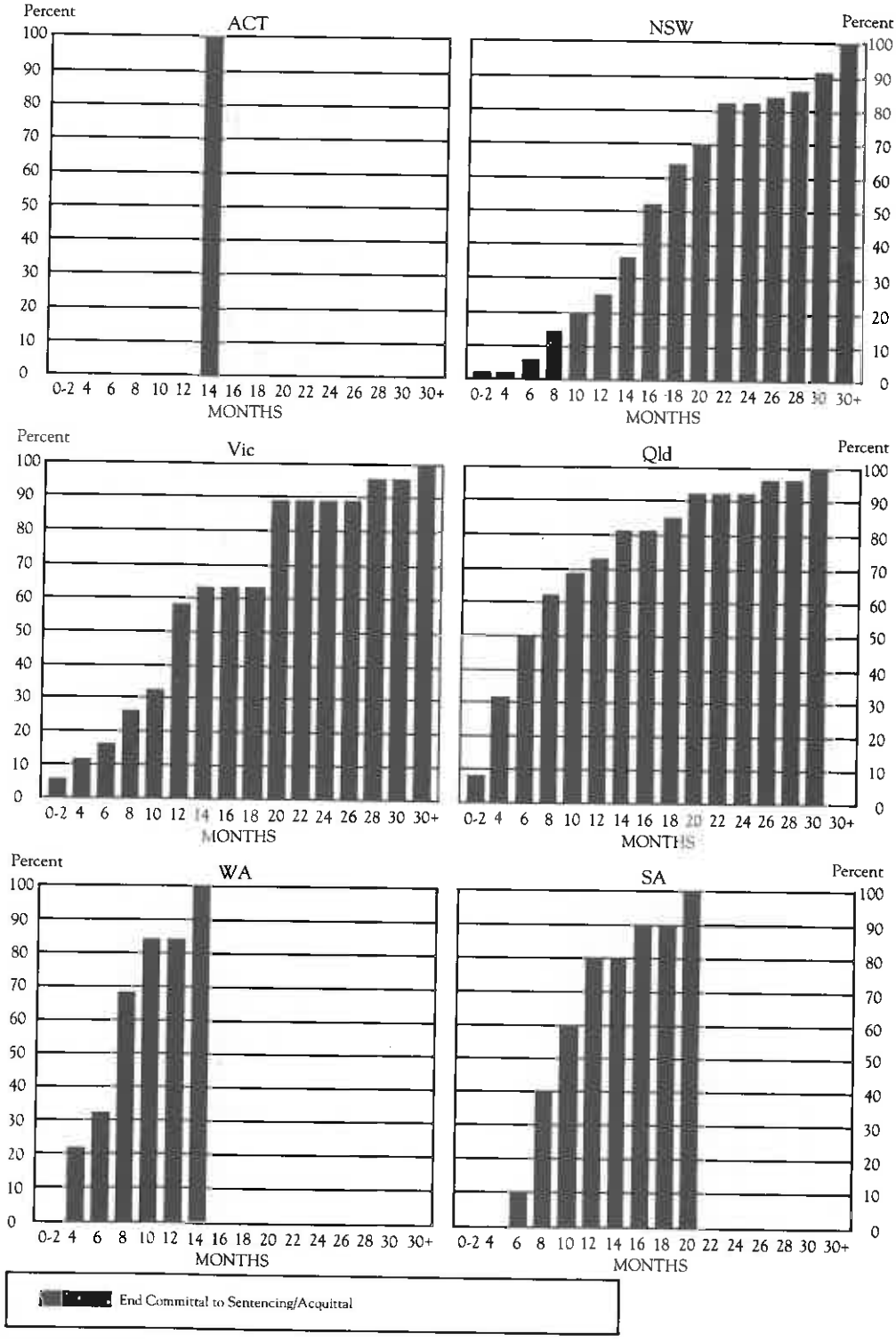
Processing times for defended committals



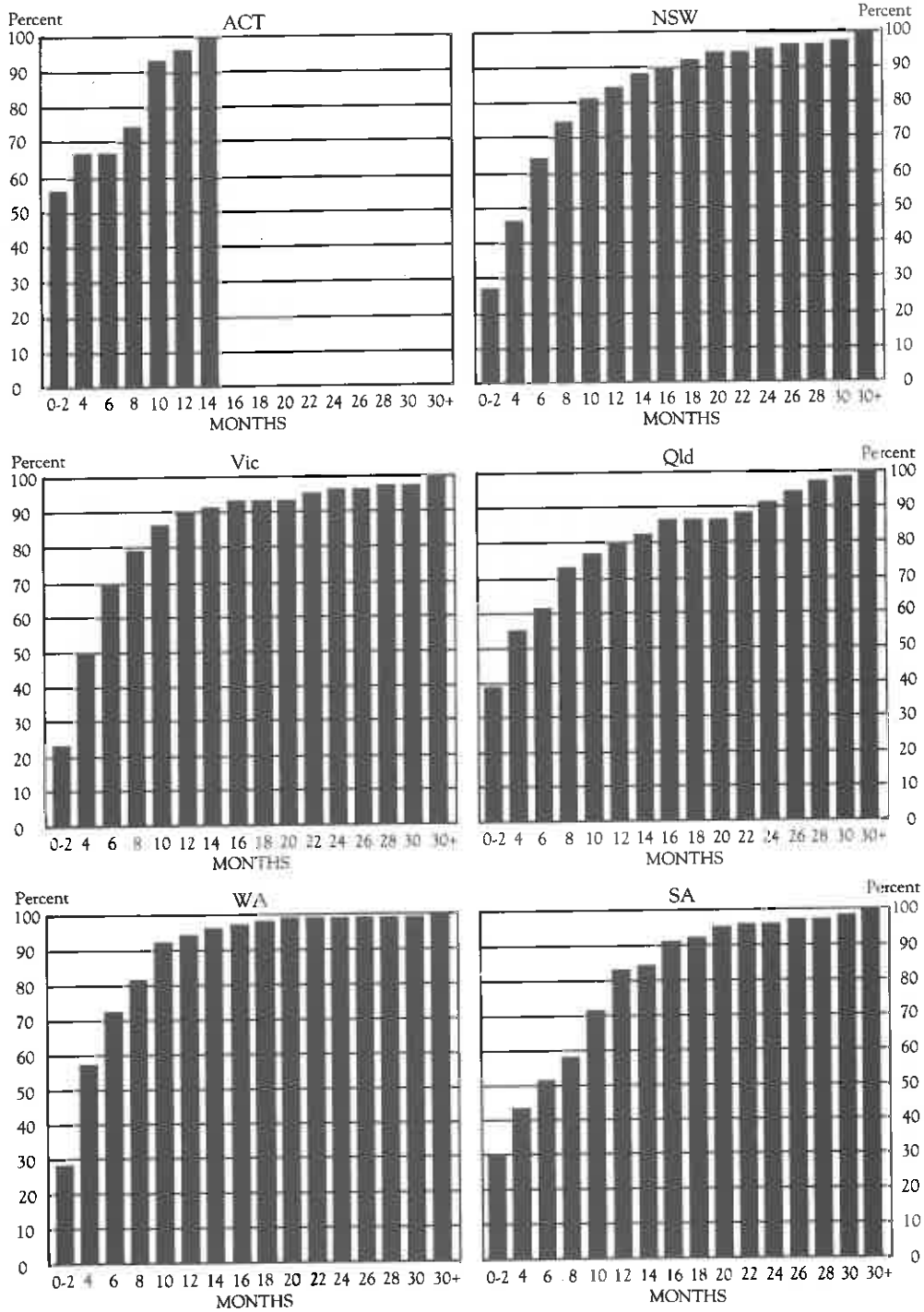
Processing times for undefended indictable matters



Processing times for trials on indictment



Processing 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 form 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 8.30 a.m. to 5.00 p.m.

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 to Head Office.

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.

Glossary

ACS	Australian Customs Service
AFP	Australian Federal Police
AGS	Austrlian Government Solicitor
ASC	Australian Securities Commission
ATO	Australian Taxation Office
EEO	Equal Employment Opportunity
HOCLEA	Heads of Commonwealth Law Enforcement Agencies
LEPR	Law Enforcement Policy and Resources Committee
NCA	National Crime Authority
PoC	Proceeds of Crime Act

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AUSTRALIAN NATIONAL AUDIT OFFICE

Medibank House
Bowes Street
Woden ACT 2606

our ref;

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
INDEPENDENT AUDIT REPORT

Scope

In accordance with sub-section 50(1) of the *Audit Act 1901*, the Director of the Office of Public Prosecutions has submitted for audit the financial statement of the Office for the year ended 30 June 1992.

The statement comprises:

- an Aggregate Statement of Transactions by Fund
- a Detailed Statement of Transactions by Fund
- a Program Summary
- a Program Statement
- a Statement of Supplementary Financial Information
- Notes to the Financial Statements, and
- a Certificate by the Director and the Senior Executive Officer, Administration.

During the year the Minister for Finance determined under sub-section 51(2) of the Act that the financial statement for the year ended 30 June 1992 would be subject to full audit examination for the first time. As a result, certain comparative figures for the previous year have not been subject to audit and these are identified in the statement.

The Director and the Senior Executive Officer, Administration are responsible for the preparation and presentation of the financial statement and the information it contains. I have conducted an independent audit of the financial statement in order to express an opinion on it.

The audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards, to provide reasonable assurance as to whether the financial statement is free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statement, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion whether, in all material respects, the financial statement is in agreement with the accounts and records of the Office of the Director of Public Prosecutions and has been presented in accordance with the guidelines made by the Minister for Finance so as to present a view of the Office which is consistent with my understanding of its financial position and operations.

The audit opinion expressed in this report has been formed on the above basis.

GPO Box 707 Canberra Australian Capital Territory 2601 Telephone (06) 283 4777 Facsimile (06) 285 1223

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1991-92

STATEMENT BY THE DIRECTOR

AND

PRINCIPAL ACCOUNTING OFFICER

CERTIFICATION

We certify that the financial statements for the year ended 30 June 1992 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 July 1992.

Michael Rozenes
Director

Signed
Dated
13.11.92

T McKnight
Senior Executive,
Administration.

Signed
Dated
18/11/92

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

AGGREGATE STATEMENT OF TRANSACTIONS BY FUND FOR THE YEAR ENDED 30 JUNE 1992

This Statement shows aggregate cash transactions, for which the DPP is responsible, for each of the three funds comprising the Commonwealth Public Account (CPA).

	1990-91 Actual $	1991-92 Budget $	1991-92 Actual $
CONSOLIDATED REVENUE FUND (CRF)			
Receipts	6,253,219	2,070,000	1,974,076
Total Receipts CRF	6,253,219	2,070,000	1,974,076
Expenditure from Special Appropriations	0	0	0
Expenditure from Annual Appropriations		52,546,000	
Expenditure from Appropriations - Section 35 of the Audit Act 1901	35,655,776	60,000	41,341,185
Total Expenditure CRF	37,655,776	52,606,000	41,341,185
LOAN FUND			
Total Loan Fund	0	0	0
TRUST FUND			
Opening balance 1 July	0		0
Receipts	21,910		42,090
Expenditure	21,910		37,934
Closing balance 30 June	0		4,156
Represented by:			
Cash	0		4,156
Investments	0		0
Total Trust Fund	0		4,156

The attached notes form an integral part of these statements.

DETAILED STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1992

TRUST FUND

DPP - Services for Other Government's and Non Departmental Bodies

Legal Authority - Audit Act 1901, Section 60.
Purpose - payment of costs in connection with services performed on behalf of other governments and non-departmental bodies.

	1990-91 Actual $	1991-92 Actual $
Receipts and Expenditure -		
Opening balance 1 July	0	0
Receipts	21,910	42,090
Expenditure	21,910	37,934
Closing balance 30 June	0	4,156

The attached notes form an integral part of these statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PROGRAM SUMMARY
FOR THE YEAR ENDED 30 JUNE 1992

This statement shows the outlays for each program administered by the DPP and reconciles the DPP's total outlays to total expenditure from appropriations. 'Expenditure' refers to the actual amount of resources consumed by a program whereas 'outlays' refers to the 'net' amount of resources consumed, after offsetting associated receipt and other items.

This Statement also reconciles the total receipts classified as revenue for each program, with 'receipts to CRF'.

Comparative figures for 1990-91 have not been subject to audit

	1990-91 Actual $'000 *	1991-92 Budget $'000	1991-92 Actual $'000 *
EXPENDITURE			
Outlays			
1. Prosecutions	20,843	36,376	26,298
2. Criminal Assets	4,287	4,497	3,836
3. Executive and Support	10,346	11,663	11,069
4. ACT Prosecutions	(654)	0	0
Total Outlays	34,822	52,536	41,203
Plus Receipts Offset Within Outlays			
1. Prosecutions	9	0	0
3. Executive and Support	56	70	138
4. ACT Prosecutions	2,769	0	0
TOTAL EXPENDITURE FROM CRF	37,656	52,606	41,341
RECEIPTS			
Revenue			
1. Prosecutions	1,106	1,000	944
2. Criminal assets	2,312	1,000	892
Total Revenue	3,418	2,000	1,836
Plus Receipts Offset Within Outlays			
1. Prosecutions	9	0	0
3. Executive and Support	56	70	138
4. ACT Prosecutions	2,769	0	0
Total Receipts Offset Within Outlays	2,834	70	138
TOTAL RECEIPTS TO CRF	6,252	2,070	1,974

* Note 1

The attached notes form an integral part of these statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PROGRAM STATEMENT
FOR THE YEAR ENDED 30 JUNE 1992

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. The DPP appears as program 6.8 in the Attorney-General's Program Performance Statements.

A detailed explanation of each sub-program is provided elsewhere in this Report.

Comparative figures for 1990-91 have not been subject to audit

	1990-91 Actual $'000 *	1991-92 Budget $'000	1991-92 Actual $'000 *
1. PROSECUTIONS			
Running Costs (178.1)(p)			
Salaries	9,125	15,314	11,263
Administrative Expenses	2,442	4,360	3,077
Property Operating Expenses (178.2)(p)	4,294	6,438	4,854
Legal Expenses (178.3)(p)	4,991	10,264	7,104
Expenditure from Appropriations	20,852	36,376	26,298
Less Receipts offset Within Outlays			
Miscellaneous	9	0	0
Total Outlays	20,843	36,376	26,298
Revenue			
Fines and Costs	1,106	1,000	944

* Note 1

The attached notes form an integral part of these statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PROGRAM STATEMENT
FOR THE YEAR ENDED 30 JUNE 1992

	1990-91 Actual $'000 *	1991-92 Budget $'000	1991-92 Actual $'000 *
2. CRIMINAL ASSETS			
Running Costs (178.1)(p)			
Salaries	2,317	2,497	1,914
Administrative Expenses	554	560	554
Property Operating Expenses (178.2)(p)	1,004	1,020	988
Legal Expenses (178.3)(p)	412	420	380
Expenditure from Appropriations	4,287	4,497	3,836
Total Outlays	4,287	4,497	3,836
Revenue			
Proceeds of Crime	2,312	1,000	892
3. EXECUTIVE AND SUPPORT			
Running Costs (178.1)(p)			
Salaries	4,245	4,419	4,864
Administrative Expenses	3,989	5,018	4,109
Section 35 of the Audit Act 1901 (Note 2)	0	60	0
Property Operating Expenses (178.2)(p)	2,168	2,236	2,234
Expenditure from Appropriations	10,402	11,733	11,207
Less Receipts offset Within Outlays			
Section 35 of the Audit Act 1901 (Note 2)	56	60	60
Miscellaneous	0	10	78
Total Outlays	10,346	11,663	11,069

* Note 1

The attached notes form an integral part of these statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PROGRAM STATEMENT
FOR THE YEAR ENDED 30 JUNE 1992

	1990-91 Actual $'000 *	1991-92 Budget $'000	1991-92 Actual $'000 *
4. ACT PROSECUTIONS (ie FOR AND ON BEHALF OF THE ACT GOVERNMENT)			
Running Costs (178.1)(p)			
Salaries	1,189	0	0
Administrative Expenses	340	0	0
Property Operating Expenses (178.2) (p)	225	0	0
Legal Expenses (178.3)(p)	361	0	0
Expenditure from Appropriations	2,115	0	0
Less Receipts offset Within Outlays			
ACT Payment	2,769	0	0
Total Outlays	(654)	0	0

* Note 1

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 1992

The comparative figures for 1990-91 have not been subject to audit.

	NOTES	1990-91 $	1991-92 $
CURRENT ASSETS			
Cash	4	245,132	124,302
Receivables	5	2,939,042	1,337,508
Prepayments	15	n/r	1,034,606
Sub-Total		3,184,174	2,496,416
NON-CURRENT ASSETS			
Receivables	5	270,854	114,609
Property, Plant and Equipment	6	4,604,916	6,793,739
Sub Total		4,875,770	6,908,348
TOTAL ASSETS		8,059,944	9,404,764
CURRENT LIABILITIES			
Creditors and Accruals	7	519,598	877,795
Lease	9	72,567	94,456
Sub-Total		592,165	972,251
NON-CURRENT LIABILITIES			
Lease	9	388,442	293,986
Sub-Total		388,442	293,986
TOTAL LIABILITIES		980,607	1,266,237

n/r - not reported and not required in 1990/91.

The attached notes form an integral part of these statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 1992

NOTE 1

STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

(a) **Basis of Accounting** - The financial statements have been prepared in accordance with the 'Financial Statements Guidelines for Departmental Secretaries' approved by the Minister for Finance in July 1992.

(i) The financial statements have been prepared on a cash basis with the exception of the Statement of Supplementary Financial Information which includes certain accrual-type information.

(ii) The financial statements have been prepared in accordance with the historical cost convention and do not take account of changing money values or current values of non-current assets except for certain property, plant and equipment valued at estimated disposal value (see Note 6).

(b) **Receivables (Fines and Costs)** - The DPP prosecutes matters under Commonwealth Law on behalf of Commonwealth Agencies. In addition the DPP prosecutes under the Crimes Act 1914 which is administered by the DPP itself.

Fines and Costs awarded by the Court as a result of prosecutions under the Crimes Act 1914 and due to the DPP are reported as receivables in the Statement of Supplementary Financial Information.

Fines and Costs awarded under other legislation (not administered by DPP) and due to other agencies are reported only in the receivables note (Note 5) and not on the face of the statements.

A significant amount of debts outstanding may not be recovered, as fines and costs may be converted by serving time in prison, by performing community service or similar provisions. A number of fines and costs will also be written off as unrecoverable. An estimate of the value of these adjustments to the receivables figures as at 30 June has been made on the basis of 1991/92 data. The basis of this estimate will be reassessed and refined in future years.

(c) **Program Statement** - All Property Operating Expenses and some Administrative Expenses are charged to a Common cost code and are apportioned between programs based on estimated square metres occupied for each program or estimated average staffing levels, respectively.

The Office has changed the basis for allocation of staff against sub-programs between 1990-91 and 1991-92. This has had the effect of moving 11 staff from the Criminal Assets sub-program to the Executive and Support sub-program. This is reflected in the difference between 1990-91 and 1991-92 Salaries expenditure for these sub-programs.

The Prosecutions Program includes the costs of War Crimes and Corporate Prosecutions.

(d) **Rounding** - Amounts shown in the Aggregate Statement of Transactions by Fund, the Detailed Statement of Transactions by Fund and the Statement of Supplementary Financial Information have been rounded to the nearest $1. Amounts shown in the Program Summary and Program Statement have been rounded to the nearest $1,000.

(e) **Non-Current Assets** - Land and buildings, fixtures and fittings not paid for by the DPP, intangibles and minor assets having a unit cost less than $2,000 have not been accounted for in the Statement of Supplementary Financial Information.

(f) **Employee Benefits** - Salaries, wages and related benefits payable to officers and employees of the DPP have not been accounted for in the balance of creditors in the Statement of Supplementary Financial Information.

(g) **Foreign Currencies** - Amounts paid to and by the DPP during the year in foreign currencies have been converted at the rate of exchange prevailing at the date of each transaction.

(h) **Administrative Expenses** - Administrative expenses include minor capital expenditure items (ie costing less than $250,000) as they are considered part of ordinary annual services for the purposes of the Appropriation Acts.

(i) **Creditors** - In 1990-91 figures declared for creditors included only claims on hand as at June 30 1991. For 1991-92 the figure includes estimates of goods and services, including legal services provided, received prior to 30 June 1992 as well as claims on hand at 30 June 1992 (Note 7).

NOTE 2

RUNNING COSTS (ANNOTATED APPROPRIATION DIVISION 178.1.00)

This appropriation was annotated pursuant to section 35 of the Audit Act 1901 to allow the crediting of receipts from contributions for senior officers official vehicles, contributions towards the cost of semi-official telephones and receipts from the sale of surplus and/or obsolete assets.

The Annotated Appropriation operated as follows -

Appropriation Division 178.1	Section 35 Receipts	Total Appropriation	Expenditure
32,168,000	60,000	32,228,000	25,781,095

NOTE 3

RECEIPTS

Receipts in 1991-92 ($1,974,076) are considerably lower than 1990-91($6,253,219). This is due to the following:

ACT Prosecutions Function

During the establishment of the ACT Government the Commonwealth Director of Public Prosecutions undertook to continue the prosecutions function on an agency basis. The DPP was appropriated money to continue to perform the function and the ACT Government reimbursed the DPP for its services. These moneys were paid back into the CRF. The ACT Prosecutions function was formally transferred to the ACT Government at the end of last financial year 1990-91.

Proceeds of Crime

Revenue from the result of Proceeds of Crime (POC) action was previously collected and administered by this Office. On the 28th of December 1991 the responsibility for the administration and reporting of POC revenue was formerly taken over by the Insolvency and Trustee Service, Australia, which is part of the Attorney-General's Department.

NOTE 4

CASH

Cash includes amounts held in Fines and Costs bank accounts, in legal advance accounts and other minor accounts. Amounts held in Credit Card Settlement Accounts are not included in cash balances. Cash balances reported for 1990-91 have been adjusted to reflect cash book balances.

	1990-91 $	1991-92 $
Cash at Bank -		
Legal Advance accounts	50,948	41,053
Other accounts	5,265	0
Cash on Hand -		
Legal Advance accounts	4,336	473
Other Advance accounts *	21,451	35,120
Cash on Trust -		
Fines and Costs (see also Note 14)	163,132	42,900
Trust Fund Balances	0	4,756
Total Cash at bank and on hand	245,132	124,302

* An administrative working advance has been made to the Special Investigations Unit for the conduct of War Crimes Prosecutions in Adelaide. The unacquitted balance at 30 June 1992 was $11,721.

Moneys held in Fines and Costs bank accounts include amounts to be disbursed to DPP revenue accounts (see Statement of Transactions by Fund) for matters under the Crimes Act or to other Departments or agencies for Acts administered by them (eg Taxation, Social Security etc).

NOTE 5

RECEIVABLES

(a) Receivables - DPP (Note 1(b))

	1990-91 $	1991-92 $
Current :		
Fines and Costs	2,938,353	1,467,934
Less doubtful debts	n/a	180,281
	2,938,353	1,287,653
Other	689	49,855
Net Receivables	2,939,042	1,337,508
Non-Current :		
Fines and Costs	270,854	141,329
Less doubtful debts	n/a	17,357
Net Receivables	270,854	123,972
Total Net Receivables	3,209,896	1,461,480

(b) Age Analysis - Receivables DPP

	1990-91 $	1991-92 $
Gross Receivables	3,209,896	1,659,118
Not overdue	n/a	803,028
Overdue less than 30 days	n/a	36,836
Overdue 30 to 60 days	n/a	26,944
Overdue more than 60 days	n/a	792,310
Total receivables	3,209,896	1,659,118

n/a - information not available in 1990-91.

(c) Receivables to Other Agencies

Fines and Costs receivable by agencies other than DPP are not reported in the Statement of Supplementary Financial Information.

Amounts receivable by these agencies as at 30 June were as follows:

	1990-91 $	1991-92 $
Commonwealth Public Account (CPA) Revenue (Non-DPP)		
Gross Receivables outstanding	n/a	6,695,364
Less doubtful debt	n/a	1,090,739
Net receivables outstanding	n/a	5,604,625
Non - Commonwealth Public Account Revenue (Non-DPP)		
Gross Receivables outstanding	n/a	644,122
Less doubtful debt	n/a	19,893
Net receivables outstanding	n/a	624,229

Total net receivables outstanding for all Commonwealth Agencies (including DPP) as at 30 June 1992 were $7,690,334

n/a - information not available in 1990-91.

(d) Write-Offs 1991-92

A significant amount of the debts outstanding may not be recovered, as fines and costs may be converted by serving time in prison, by performing community service or similar provisions. A number of fines and costs will also be written off as irrecoverable. During 1991-92 the following amounts were written out of the books:

Agency/ Type	DPP $	CPA $	Non CPA $	Total $
Prison Sentence	112,951	294,915	7,868	415,734
Community Service	98,482	118,734	8,495	225,711
Irrecoverable	12,587	28,425	125	41,137
Total Write-Off	224,020	442,074	16,488	682,582

NOTE 6

PROPERTY, PLANT AND EQUIPMENT

A new computerised asset system is in the final stages of implementation in the DPP. The information reported as at 30/06/92 has been validated by stocktakes conducted during the year as part of the data capture process.

A stocktake of assets was conducted in all DPP offices during May/June 1991 as preliminary data collection for the implementation of the new computerised asset module. Data collected in that stocktake was used as the basis for the 1990/91 statements. However, the integrity of the valuations attached to assets as at 30/06/91 was doubtful and was reviewed during 1991-92 during the final phase of implementing the assets module.

Assets are, except as noted below, valued at historic cost based on purchase records. Where the purchase record of an asset could not be located, the asset is valued by DPP staff (Officer's valuation) based on the cost of a similar item of similar age. The 1990-91 value for fitout and leased equipment was not reported in the 1990-91 Financial Statements.

The DPP is undertaking an IT Asset replacement program and all Wang VS and associated equipment is expected to be disposed of within 12 to 18 months. The reported value of this equipment is an officers valuation of the expected disposal value for such equipment. A formal valuation has not been undertaken and in view of the short life of the items it was not considered economic to obtain a formal valuation.

Fitout represents improvements to buildings leased by the DPP funded from Property Operating Expenses - Capital since the DPP took over responsibility for funding such items on 1 July 1989.

Closing Balance 30 June :	**1990-91 $**	**1991-92 $**
1. Items at cost :		
Computers	1,411,683	2,569,594
Furniture	165,667	253,696
Plant & Equipment	784,652	1,073,718
Fitout	1,696,469	2,224,868
Sub-Total	4,058,471	6,121,876
2. Items at estimated disposal value:		
Computers	0	100,000
3. Items at Lease Valuation :		
Plant and Equipment	546,445	571,863
Total Property, Plant & Equipment	4,604,916	6,793,739

NOTE 7

CREDITORS AND ACCRUALS

Creditors and Accruals at 30 June 1992 totalled $877,795 ($519,598 in 1991). Of this total, creditors of $3,839 were overdue ($157,926 in 1991).

Creditors are considered overdue 30 days after receipt of a correctly rendered account.

Classes	1990-91 $	1991-92 $
Administrative Expenses :		
Library	n/a	29,150
Computer	n/a	15,746
Other	n/a	212,423
Legal Expenses	n/a	448,752
Property Operating Expenses:		
Current	n/a	99,224
Capital	n/a	72,500
Total Creditors	519,598	877,795
Age Analysis		
Less than 30 days	157,478	3,839
30 - 60 days	0	0
More than 60 days	448	0
Total	157,926	3,839

NOTE 8

FORWARD OBLIGATIONS

The DPP has entered into forward obligations as at 30 June 1992 of $25,331,056 ($24,446,671 as at 30 June 1991) and are payable as follows :

Item	Not later than 1 year $	1-2 years $	Later than 2 years $	Total $
Property leases	8,256,610	8,537,223	8,537,223	25,331,056

NOTE 9

LEASE LIABILITIES

Reconciliation of lease commitments of Plant & Equipment to the present value of the Lease Liability as at 30 June 1992 is as follows :

	1991		1992	
	$	$	$	$
Current :		166,685		172,976
Non Current :				
Due within 1-2 years	172,976		168,132	
Due within 2-5 years	389,023		220,891	
Greater than 5 years	0	561,999	0	389,023
Total Lease commitment		728,684		561,999
Less: Future finance charges		267,675		173,557
Minimum lease payments		461,009		388,442
Current Lease Liability		72,567		94,456
Non-current Lease Liability		388,442		293,986

NOTE 10

AMOUNTS WRITTEN OFF

The following details are furnished in relation to amounts written off during the financial year 1991-92 under sub-section 70C(1) of the Audit Act 1901 (430 amounts totalling $36,501 were written off in 1991-92).

		Up to $1000		Over $1,000	
		No.	$	No.	$
(i)	Losses or deficiencies of public moneys	-	-	-	-
(ii)	Irrecoverable amounts of revenue	24	5,467	1	1,550
(iii)	Irrecoverable debts and overpayments	13	519	-	-
(iv)	Amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Minister, be uneconomical	88	3,898	-	-
(v)	Lost, deficient, condemned, unserviceable or obsolete stores	5	569	1	5,261

NOTE 11

LOSSES AND DEFICIENCIES IN PUBLIC MONEYS AND OTHER PROPERTY

No case involving loss of property was recorded during the financial year 1991-92 under Part XII of the Audit Act 1901.

No case involving loss of moneys was recorded during the financial year 1991-92 under Part XII of the Audit Act 1901.

NOTE 12

CONTINGENT LIABILITIES

There is one civil matter in progress against the DPP. If the DPP is unsuccessful in defending the matter the DPP may be liable for damages awarded against it. The DPP is unable to declare an estimate of the contingent liability due partly to the uncertainty of the outcome of matter, but more particularly to the sensitivity of the information as the matter is still before the Court.

If a matter being prosecuted by the DPP is defended successfully, 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 13

RESOURCES RECEIVED FREE OF CHARGE

During the 1991-92 financial year, a number of 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:

State Police

Conduct minor prosecutions on behalf of the DPP in remote locations.

Attorney-General's Department

- Prosecution and related services in Tasmania and the Northern Territory, where the DPP does not have offices;
- The Office of the Commonwealth Director of Public Prosecutions officially took over the function of pay roll processing for its own staff in September 1991. This was previously performed by the Attorney-General's Department. Payroll support is still being provided by Attorney-General's in the way of computer resources.

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 14

FINES and COSTS TRUST ACCOUNTS

Legal Authority - The accounts were opened in accordance with Section 20 of the Finance Directions by the Director as a delegate of the Minister for Finance.

Purpose of Accounts - The purpose of the accounts is to process fines and costs awarded in Commonwealth prosecutions. Such moneys are collected by State Courts and forwarded regularly to the DPP. 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).

	1990-91 $	1991-92 $
Opening Balance 1 July	n/a	157,062
Receipts	n/a	3,073,340
Expenditure	n/a	3,194,098
Closing Balance 30 June	157,062	36,304

n/a - not available for 1990-91

This was represented by (see also Note 4):

	1990-91 $	1991-92 $
Cash at bank	157,062	36,304
Cash on hand	6,070	6,596
	163,132	42,900

NOTE 15
PREPAYMENTS:

Prepayments represent amounts paid but for which goods or services have not yet been received at 30 June 1992. The reporting of prepayments was not required in 1990-91.

	1990-91 $	1991-92 $
Administrative Expenses :		
Library	n/r	144,581
Computer	n/r	34,262
Other	n/r	236,853
Legal Expenses	n/r	
Property Operating Expenses:		
Current	n/r	448,910
Capital	n/r	170,000
Total Prepayments	n/r	1,034,606

NOTE 16

UNACQUITTED ADVANCES

There were no unacquitted overseas travel advances at 30/6/92.

APPENDIX: GLOSSARY OF TERMS

ACT OF GRACE PAYMENTS: Section 34A of the Audit Act 1901 provides that, in special circumstances, the Commonwealth may pay an amount to a person notwithstanding that the Commonwealth is not under any legal liability to do so.

ADMINISTRATIVE EXPENSES: Includes not just expenditure on office based activities but all operational expenditure (excepting salaries). The item includes both direct costs and overhead expenditure: it includes, inter alia, minor capital expenditure (ie items less than $250,000) which is considered part of ordinary annual services; it does not include, inter alia, major capital expenditure, grants, loans or subsidies.

ADVANCE TO THE MINISTER FOR FINANCE (AMF): The contingency provisions appropriated in the two Supply Acts and the two annual Appropriation Acts to enable funding of urgent expenditures not foreseen at the time of preparation of the relevant Bills. These funds may also be used in the case of changes in expenditure priorities to enable 'transfers' of moneys from the purpose for which they were originally appropriated to another purpose pending specific appropriation.

ANNUAL APPROPRIATIONS: Acts which appropriate moneys for expenditure in relation to the Government's activities during the financial year. Such appropriations lapse on 30 June. They are the Appropriation Acts.

APPROPRIATION: Authorisation by Parliament to expend public moneys from the Consolidated Revenue Fund or Loan Fund for a particular purpose, or the amounts so authorised. All expenditure (ie outflows of moneys) from the Commonwealth Public Account must be appropriated ie authorised by the Parliament.

APPROPRIATION ACT (No 1): An act to appropriate moneys from the Consolidated Revenue Fund for the ordinary annual services of Government.

APPROPRIATION ACT (No 2): An act to appropriate moneys from the Consolidated Revenue Fund for other than ordinary annual services. Under existing arrangements between the two Houses of Parliament this Act includes appropriations in respect of new policies (apart from those funded under Special Appropriations), capital works and services, plant and equipment and payments to the states and the Northern Territory.

APPROPRIATION ACTS (Nos 3 and 4): Where an amount provided in an Appropriation Act (No 1 or 2) is insufficient to meet approved obligations falling due in a financial year, additional appropriation may be provided in a further Appropriation Act (No 3 or 4). Appropriations may also be provided in these Acts for new expenditure proposals.

AUDIT ACT 1901: The principal legislation governing the collection, payment and reporting of public moneys, the audit of the Public Accounts and the protection and recovery of public property. Finance Regulations and Directions are made pursuant to the Act.

COMMONWEALTH PUBLIC ACCOUNT (CPA): The main bank account of the Commonwealth, maintained at the Reserve Bank in which are held the moneys of the Consolidated Revenue Fund, Loan Fund and Trust Fund. (The Dpp is not responsible for any transactions relating to the Loan Fund or Trust Fund).

CONSOLIDATED REVENUE FUND (CRF): The principal working fund of the Commonwealth mainly financed by taxation, fees and other current receipts. The Constitution requires an appropriation of moneys by the Parliament before any expenditure can be made from the CRF.

EXPENDITURE: The total or gross amount of money spent by the Government on any or all of its activities (ie the total outflow of moneys from the Commonwealth Public Account) (c.f. 'Outlays'). All expenditure must be appropriated ie authorised by the Parliament, (see also 'Appropriations').
Every expenditure item is classified to one of the economic concepts of outlays, revenue (ie offset within revenue) or financing transactions.

FORWARD OBLIGATIONS: Obligations existing at 30 June which create or are intended to create a legal liability on the Commonwealth to provide funds in future years and which have not been exempted from the forward obligations system. In special circumstances, arrangements which do not create a legal liability, but which require forward obligations cover for effective program management, may also be included in the forward obligations system eg memoranda of understanding with other Governments and foreign aid arrangements. The following items are exempted from the forward obligations system:

- all items classified in Appropriation Acts as Running Costs (ie salaries and administrative expenses);
- those items for which payment is authorised by special legislation where the amount and timing of payments are specified or clearly dictated by eligibility criteria (ie most,but not all, Special Appropriations); and
- those items which have been exempted by the Minister for Finance as a result of specific case-by-case requests from departments.

OUTLAYS: An economic concept which shows the net extent to which resources are directed through the Budget to other sectors of the economy after offsetting recoveries and repayments against relevant expenditure items ie outlays consist of expenditure net of associated receipt items. The difference between outlays and revenue determines the Budget balance (ie surplus or deficit). See also 'Appropriations'; and 'Receipts offset within outlays'.

PREPAYMENTS: Prepayments include amounts paid by the Office in respect of goods or services (excluding approved grants) that have not been received as at 30 June 1992. (Amounts relating to salaries, wages, annual leave, long service leave, superannuation and other employee entitlements with respect to officers or employees of the department, are exempted from the disclosure requirements.

RECEIPTS: The total or gross amount of moneys received by the Commonwealth (ie the total inflow of moneys to the Commonwealth Public Account). Every receipt item is classified to one of the economic concepts of revenue, outlays (ie offset within outlays) or financing transactions. See also 'Revenue'.

RECEIPTS NOT OFFSET WITHIN OUTLAYS: Receipts classified as 'revenue'. See also 'Revenue'.

RECEIPTS OFFSET WITHIN OUTLAYS: Refers to receipts which are netted against certain expenditure items because they are considered to be closely or functionally related to those items.

REVENUE: Items classified as revenue are receipts which have not been offset within outlays or classified as financing transactions. The term 'revenue' is an economic concept which comprises the net amounts received from taxation, interest, regulatory functions, investment holdings and government business undertakings. It excludes amounts received from the sale of government services or assets (these are offset within outlays) and amounts received from loan raisings (these are classified as financing transactions). Some expenditure is offset within revenue eg refunds of PAYE tax instalments and the operating expenditure of budget sector business undertakings. See also 'Receipts'.

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