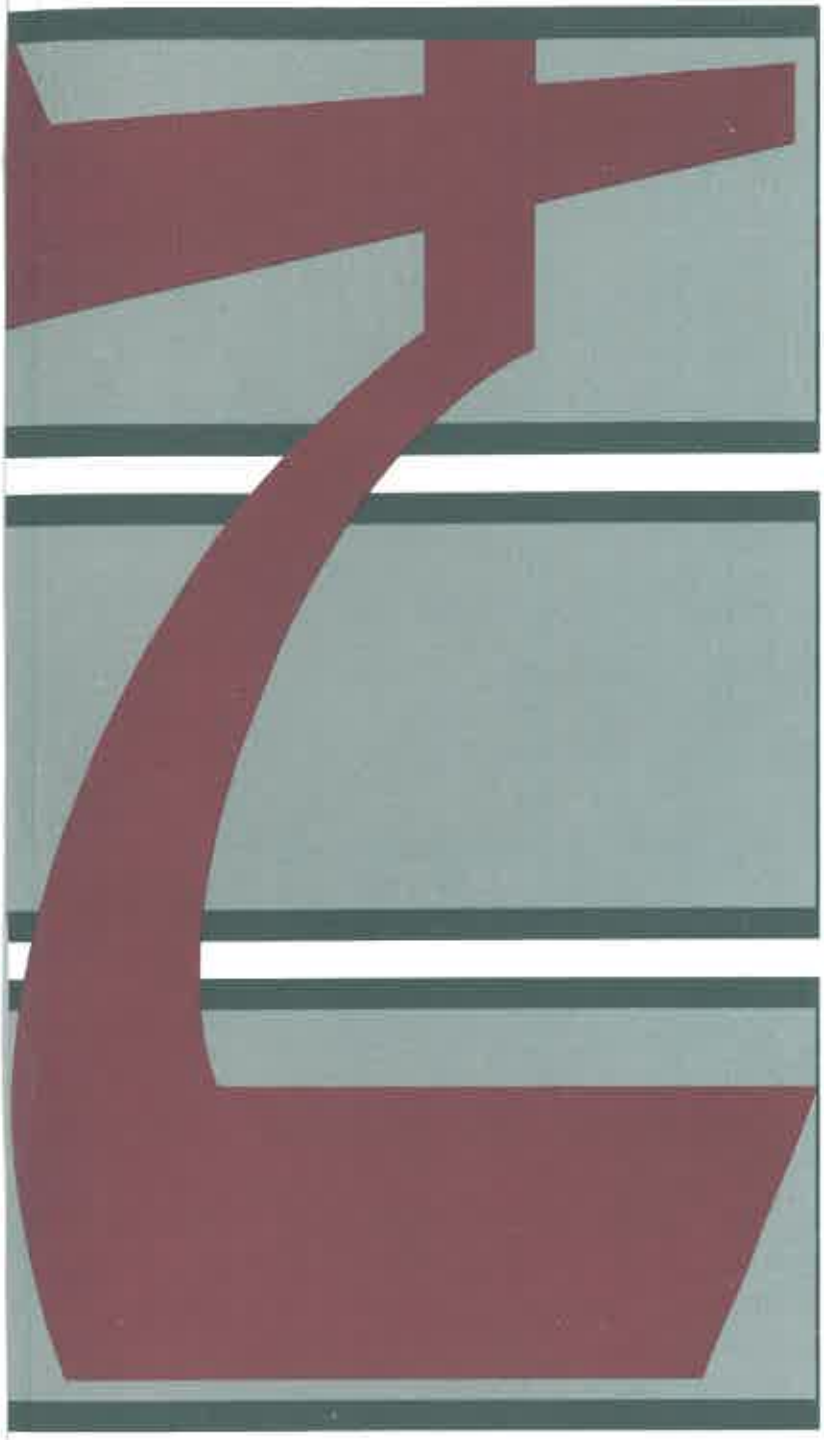
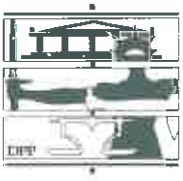


Commonwealth Director of Public Prosecutions



Annual Report 1992–93

Commonwealth Director of Public Prosecutions

Annual Report 1992–93

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The Hon. Michael Lavarch 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 1993, in accordance with section 33(1) of the Director of *Public Prosecutions Act 1983*.

Yours faithfully,

MICHAEL ROZENES QC
Director
25 October 1993

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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.

The report includes a table of contents, a glossary and an alphabetical index as aids to acess. In addition, a compliance index indicates the location of each item required under the guidelines and applicable to the DPP.

Anyone interested in knowing more about the DPP should refer to the following documents:

Prosecution Policy of the Commonwealth;

DPP *Corporate Plan*;

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 on pages vii and viii. 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 at DPP Head Office during business hours by telephoning (06) 270 5666.

Director's overview

Michael Rozenes QC, Commonwealth Director of Public Prosecutions

In March 1993 the Honourable Michael Duffy retired as Attorney-General. I would like to record the fact that I very much enjoyed working with him and wish him well for the future.

On 27 April 1993 the Honourable Michael Lavarch was appointed Attorney-General after a short period during which the Honourable Duncan Kerr held that position. I am pleased to report that relations with the Attorney-General are most cordial and that I have continued to be able to discharge my functions free from any political interference.

Mr Edwin J. Lorkin was appointed Associate Director commencing 1 July 1992. Since his appointment he has worked tirelessly providing great energy and sound advice to the Office, for which I am most grateful.

During the year I had the opportunity to discuss prosecutorial matters with a variety of national and international lawyers. The Office was visited by the Indonesian Attorney-General, the Fijian Attorney-General, the Fijian DPP and the Procurator-General for the Ukraine. I have had extensive discussions with DPPs and prosecutors from the United Kingdom, Canada, the United States and other comparable jurisdictions. The various DPPs in Australia have formed an association which meets regularly and discusses matters of mutual interest. It is clear from all of this that prosecuting agencies have similar problems worldwide and attempt to cope with them in much the same way as we do. I think however that it can safely be said that this Office is at the very forefront of modern prosecuting agencies.

The tables which appear later in this report indicate that, although there was a slight decrease (.9 per cent) in matters dealt with on indictment, overall there was a significant increase in the number of prosecutions completed during the year. For the most part this was in the summary area where there was an 8.6 per cent increase.

Our corporations work continues to be the most challenging aspect of our practice. These cases are usually complex, difficult to investigate and difficult to prosecute. Substantial resources need to be devoted to them. Major fraud, whether it is directed at the corporate or public sector, is on the increase and must be dealt with by the criminal courts. As one judicial commentator has recently observed:

> The indications are that serious fraud is on the increase. We have to be able to deal with it : to deter it, to detect it, and to punish it. Our criminal justice system must play its proper part in this. It must be fair but inevitable. It must be more powerful than the most powerful. It must be effective in convicting the guilty and acquitting both the innocent and those not proved to be guilty. The trials leading to these verdicts must be manageable (for if not manageable, fairness is threatened), and it must not be wasteful either of time or of money. That specification is what we require of the system.[1]

In my report last year I expressed the view that the great challenge for the criminal justice system was to ensure that the criminal courts were able to deal with complex fraud trials in a way which afforded justice to both parties and to the community at large. To this extent I was hopeful that an initiative of the Standing Committee of Attorneys-General (SCAG) calling for special legislation to be enacted for the conduct of complex fraud trials would be adopted by the States and Territories. Only Victoria has so far enacted such legislation. It is highly desirable that all other jurisdictions grapple with this issue.

A factor which must not be overlooked in this context is the extent to which the delays suffered in the court system impact upon the trial of complex fraud trials. Of course, delay varies from jurisdiction to jurisdiction, but it can be said that in NSW and to a marginally lesser extent in Victoria the level of delay is simply unacceptable. By way of example, in NSW a complex fraud committal may, after charges are laid, wait up to 18 months for a hearing date and then up to a further 18 months for a trial date: three years wasted waiting for a court. When one adds to this the fact that the offence may not have been discovered for a period of some years and then investigated for another substantial period, it is no wonder that there is public concern that these cases take far too long to complete.

This brings me to the matter of the law enforcement effort in the area of corporations fraud. During the past year my Office entered into a Memorandum of Understanding with the Australian Securities Commission which, in essence, provided a solid basis for future relations between the two agencies. The Memorandum was the product of extensive discussions with the Chairman and other members of the Commission and has resulted in the production of guidelines which will ensure that there is maximum cooperation between our respective agencies in the investigation and prosecution of corporate crime. In the six months of operations under the guidelines, I am able to report there has been a high level of cohesion in our effort to deal with corporate wrongdoing.

On 13 November 1992 the High Court delivered its judgment in *Dietrich*. The court unanimously reaffirmed that an accused person has a right to a fair trial and in that context held that a trial judge should not, save in exceptional circumstances, proceed with the trial of an indigent accused for a serious criminal offence who through no fault on his or her part is unable to obtain legal representation. The ramifications of this decision for legal aid and the administration of criminal justice are substantial. Cases that had previously proceeded with an unrepresented accused may now not do so. In the very short period since the decision a number of cases have had to be adjourned with the real risk that some defendants may never be brought to trial. SCAG is at present considering a proposed uniform legislative approach to the issues raised by the judgment.

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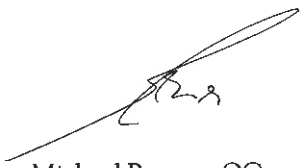
1. Foreword by the Hon. Mr Justice Henry to Kirk and Woodcock, *Serious Fraud: Investigation and Trial.*

In the end result, the question boils down to one of adequate funding. There is no doubt that people charged with serious criminal offences must be adequately represented if a fair trial is to be guaranteed. I recognise that legal aid resources are finite and are being increasingly put under great pressure. If we are to retain public confidence in the administration of the law then the criminal justice system and, in particular, the legal aid agencies must be adequately funded so as to provide the general community with fair, prompt and equitable access to the criminal courts.

Finally, it is of concern that crimes against the revenue are seen by some as being a less serious form of criminal conduct. I consider that those who systematically defraud the revenue, and through it the whole community, of substantial amounts over extended periods and who are motivated by profit and greed should be treated no differently than those who steal directly from private citizens. It is invariably the practice of courts throughout Australia to sentence the latter category of persons to serve actual periods of imprisonment and I see no reason in principle why those who steal from the Commonwealth should be treated more leniently.

I take this opportunity to thank all the officers of the DPP for their fine effort in contributing to the success of the Office over the year and in maintaining its high professional standards. Furthermore, I acknowledge the cooperation of the heads of the various investigative agencies with whom I have regular contact and who do so much to promote the Commonwealth's law enforcement policy.



Michael Rozenes QC
Commonwealth Director of Public Prosecutions

Chapter 1 Office of the Director of Public Prosecutions

Establishment

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 current Associate Director, Edwin J. Lorkin, was appointed for a period of three years commencing on 1 July 1992. Mr Lorkin also came from the Victorian Bar.

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.

The Attorney-General issued one guideline under section 8 during the last financial year relating to the relationship between the DPP and the Australian Securities Commission. This is more fully covered in chapter 4.

Vision

The DPP's vision is:

- to operate as an independent, professional agency with responsibility for controlling and conducting Commonwealth prosecutions at all levels of the criminal process and for controlling and conducting proceedings to recover the proceeds of Commonwealth crime;
- to operate under uniform guidelines with a view to achieving fairness and as much consistency as possible within the constraints involved in operating in a federal system;
- to be accountable for overall operations and financial management but fully independent in operational matters;
- to provide legal advice and other assistance required by Commonwealth investigators, without assuming an investigative role;
- to liaise with investigative agencies, and participate in their training programs, to ensure that they are properly placed to select appropriate cases for investigation, to conduct

investigations and to prepare briefs of evidence of a professional standard for consideration by the DPP;

- to conduct as much advocacy work in-house as is possible, while recognising that it would be unrealistic to aim to conduct all advocacy work in-house; and
- to be properly resourced to perform the above tasks and to have the capacity to seek additional resources should the workload increase.

Role

The primary role of the DPP is to prosecute offences against Commonwealth law and corporations laws. It also has important functions in recovering the proceeds of Commonwealth crime.

The majority of Commonwealth prosecutions 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 all offences against the laws of Jervis Bay and 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. However, the DPP often provides legal advice and other assistance during the investigative stage.

The Commonwealth's main investigative agencies are the Australian Federal Police, the National Crime Authority and the Australian Securities Commission. However, many other agencies have an investigative role as part of their function in administering particular programs. 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 most Commonwealth agencies conduct investigations in some circumstances. Consequently, the DPP receives briefs of evidence from, and provides legal advice to, a wide range of different 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 Corporate Plan identifies strategies to achieve each objective and sets 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 three-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. Those functions and powers are to be found in sections 6 and 9 of the DPP Act and in specific legislation such as 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:

- prosecuting 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;
- conducting committal proceedings and summary prosecutions for offences against State law where a Commonwealth officer is the informant;
- assisting coroners in inquests and inquiries under Commonwealth law; and
- appearing 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 and gives the DPP power to conduct all prosecutions under taxation laws.

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, which are enforceable by quasi-criminal proceedings, 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 and the majority of operational decisions are made at regional level without involvement from Head Office. However, current arrangements ensure that the key decisions in major matters are made personally by the Director or the Associate Director.

Organisation

The DPP has a Head Office 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 criminal matters as the DPP regional offices.

Head Office

Head Office provides policy and legal advice to the Director, controls and coordinates activities across Australia, liaises at senior level with investigative and other agencies and provides administrative support to the Director. Head Office is also responsible for conducting prosecutions for Commonwealth offences in the ACT and for related criminal assets proceedings.

As at 30 June 1993, Head Office consisted of six branches: Litigation, Corporations, Criminal Assets, Policy, ACT Prosecutions, 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 Criminal Assets Branch also has the carriage of criminal assets work in the ACT.

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 to assist 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 ACT Prosecutions Branch is responsible for conducting prosecutions for offences against Commonwealth law in the ACT.

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 the Head Office branches.

DPP regional 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 war crimes unit in the Adelaide Office.

The sub-office in Townsville deals with work in north Queensland. It is not divided into functional units.

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, civil and assets recovery work.

Structure

During 1992–93 the various branches of the DPP offices were managed under four areas:

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

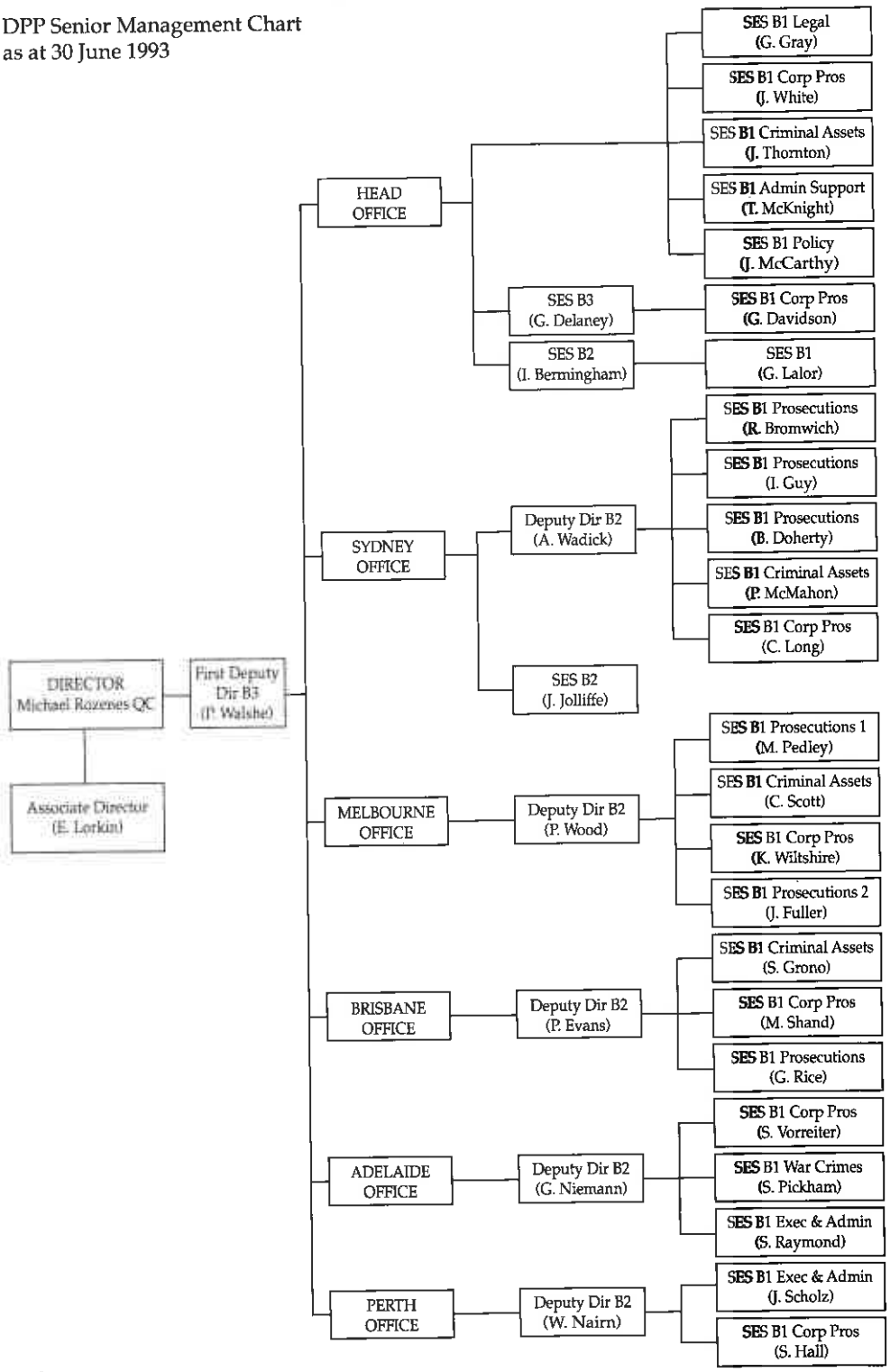
The Executive and Support area comprised the Director, the Associate Director, the First Deputy Director and the Administrative Support Branches.

The responsibility for managing each area 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 1993



Commonwealth DPP Michael Rozenes, QC, (left) and Associate Director Edwin J. Lorkin

First Assistant Director, Ian Bermingham (left), First Deputy Director, Peter Walshe (centre) and Principal Adviser, Corporate Prosecutions, Grahame Delaney (right)

Chapter 2 Exercise of statutory powers

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

No bill applications

The Director has power under section 9(4) of the DPP Act to decline to proceed 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 any other case a 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 25 no bill applications received from defendants or their representatives. Of these, nine were granted and 16 refused. A further 21 prosecutions were discontinued on the basis of a recommendation from a regional office without prior representations from the defendant. A breakdown of these statistics appears in table 1.

Table 1: No bill matters

	Application by defence				
State	Granted	Refused	Total	Action by DPP	Total discontinued
NSW	3	8	11	7	10
Vic.	4	4	8	7	11
Qld	1	3	4	3	4
WA	1		1	2	3
SA				1	1
Tas.				1	1
NT		1	1		
ACT					
Total	**9**	**16**	**25**	**21**	**30**

Of the 30 matters discontinued prior to trial, the sufficiency of evidence was the main factor in 19 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 11 cases fell into several categories. In three cases the defendant's mental or physical health was the main reason for discontinuing; in five cases the defendant had already been dealt with on other charges arising from the same matter; in one case it was decided not to proceed to re-trial after a jury could not reach a verdict following a long and expensive trial; and in one case it was decided that a relatively minor charge should be withdrawn so that the defendant could be deported without delay. In the final case, charges were withdrawn because of concerns about the position of a potential witness if the matter proceeded.

A breakdown of these statistics appears in table 2.

Table 2: Reasons for discontinuing prior to trial

	Reasons				
State	Evidence	Health of defendant	Convicted on other charges	Other	Total
NSW	5	1	2	2	10
Vic.	5	2	3	1	11
Qld	4				4
WA	3				3
SA	1				1
Tas.	1				1
NT					
ACT					
Total	**19**	**3**	**5**	**3**	**30**

In 1991–92 the total number of cases discontinued prior to trial was 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 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 of the case. However, there are provisions in some places which give the Director 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 clear public interest in seeking review of a decision.

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(6B) gives the Director power to give an undertaking to a witness in State proceedings that any evidence the person may give, and anything derived from that evidence, will not be used against that person in criminal proceedings under Commonwealth law.

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. This is equivalent to a transactional indemnity.

In some cases the only way of proceeding against a serious offence 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), 9(6B) or 9(6D).

In the past year the Director or the Associate Director signed a total of 70 undertakings under sections 9(6), 9(6B) and 9(6D). In some cases, indemnities were given to more than one witness. In total, indemnities were given in 26 cases, of which 22 were prosecutions.

In one case eight indemnities were given to witnesses appearing before the NSW Crime Commission, in two cases indemnities were given to witnesses appearing in quasi-criminal proceedings under the *Customs Act 1901* being conducted by the Australian Government Solicitor, and in one case an indemnity was given to a witness in proceedings under the *Administrative Decisions (Judicial Review) Act 1977* challenging the validity of a search warrant.

In 1991–92 the total number of indemnities granted was 35. However, the number of cases in which indemnities were granted was 20, which was only slightly less than the number of cases last year.

A breakdown of the figures for 1992–93 appears in tables 3 and 4.

Table 3: Indemnities—numbers

State	Matters	Indemnities			Total indemnities
		s.9(6)	s.9(6B)	s.9(6D)	
NSW	15	29	8	4	41
Vic.	6	10	1	1	12
Qld	3	13			13
WA	1	2			2
SA	1	2			2
Tas.					
NT					
ACT					
Total	**26**	**56**	**9**	**5**	**70**

Table 4: Indemnities—types of case (i)

State	Drugs	Fraud	Citizenship	Non-citizenship	Corp.	Other	Total
NSW	5(8)	2(6)	2(12)	3(10)	2(3)	1(2)	15(41)
Vic.		2(4)	1(5)	1(1)	1(1)	1(1)	6(12)
Qld	1(2)	1(7)	1(4)				3(13)
WA	1(2)						1(2)
SA	1(2)						1(2)
Tas.							
NT							
ACT							
Total	**8(14)**	**5(17)**	**4(21)**	**4(11)**	**3(4)**	**2(3)**	**26(70)**

(i) The figures in the table show the number of matters, with the number of indemnities shown 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 1992–93.

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 committed for trial and has not undergone committal proceedings. The power, which cannot be delegated, was not exercised in the 92–93 financial year. This does not include cases where a defendant was committed for trial but the charges were different from those on which a committal order was made.

Chapter 3 General prosecutions

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 overseas. A separate unit in the Adelaide office has responsibility for prosecutions under the *War Crimes Act 1945*.

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 applications 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 when 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 taken in connection with a request by Australia for the extradition of a person wanted for an alleged offence against Commonwealth law.

The Commonwealth does not have its own criminal courts. The DPP prosecutes mainly in State and Territory courts, which are vested with jurisdiction to deal with Commonwealth matters under section 68 of the *Judiciary Act 1903*. The result is that DPP prosecutors operate under different procedures, and slightly different laws of evidence, in each jurisdiction.

The majority of court work is conducted in-house by DPP lawyers or in-house counsel. However, the DPP briefs counsel from the private bar in cases which warrant that course, due either to the complexity of the matter or because the case requires 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. Statistics on the number of cases dealt with during the year appear in chapter 8 of this report.

Developments during 1992–93

There were a number of important developments during the past year.

The first is that the number of Commonwealth agencies with an investigative role has continued to expand. The DPP was approached by five agencies during the year seeking assistance in setting up an investigative unit or in expanding the functions of an existing unit to new areas of activity.

The devolution of investigative responsibility began in 1987 when the Federal Government decided that individual agencies should take responsibility for preventing and detecting fraud against their programs and for investigating routine cases of fraud. Since then, the number of agencies which have become involved in investigating fraud has steadily increased.

This development has resource implications for the DPP. That is not only because there are more fraud cases being investigated and referred for prosecution, but because many fraud investigations are now being carried out by non-police investigators, who often have limited experience in the task and can require considerable assistance during the investigation stage. The DPP has had to make lawyers available to provide that assistance and to participate in training programs for investigators.

Another development worth noting is that there have been changes over the past year in the working relationship between the DPP and the Australian Taxation Office.

During the year the ATO set up an Audit Prosecutions Business Management Committee, charged with reviewing ATO's investigation activities across the Commonwealth. The Committee has made recommendations which have seen greater emphasis being given to prosecuting serious tax crime, including an increase in the resources allocated to investigating tax fraud.

ATO and the DPP have also reviewed the liaison arrangements and have set up a new structure under which officers meet more regularly and there is the capacity to discuss individual cases, and decide an appropriate strategy, at an early stage of the investigation. That should result in a more efficient use of investigative resources and should lead to a greater number of serious tax offenders being brought before the criminal courts.

The DPP also accepted an invitation from ATO to provide lawyers to address meetings of ATO auditors. The auditors are the people who first come across tax fraud and it is important that they understand the role of the criminal process in encouraging compliance with the tax laws.

These developments have already produced results. ATO are referring more cases, and bigger cases, to the DPP.

The Department of Social Security also referred a record number of cases to the DPP for prosecution last year.

DSS have been involved in a lengthy process of devolving their administrative and enforcement functions to regional level. The department has long promised that the changes would result in more and better investigations. This is starting to occur.

The year under review also saw continued developments in the use of computer technology to support large prosecutions. The DPP has long used computers to index transcript and maintain exhibit lists. However, computers are now also being used to prepare and present charts and tables in commercial fraud cases. The technology enables the prosecutor to explain complicated transactions to the jury by graphically displaying each step in the transaction and calling up facsimiles of the relevant documents as they are referred to.

The potential savings in court time are enormous. There is no need for the jury to sort through piles of documents each time they are asked to look at an exhibit. A copy of the relevant exhibit can be thrown up on a screen at the touch of a button. More importantly, there is a greater chance of the jury understanding the case if the transactions can be explained in a way that is meaningful to them.

Finally, it should be noted that the High Court decision in the matter of *Cheatle* has significant implications for the conduct of Commonwealth prosecutions. The High Court ruled, on 3 June 1993, that majority verdicts are not permissible in Commonwealth matters.

War crimes

As at 1 July 1992, charges were outstanding against two people. In the course of the year, one of the defendants was acquitted of the charges against him. The other defendant was committed for trial.

Ivan Polyukhovich was arraigned in the Supreme Court of South Australia on 27 July 1992 on five charges under the *War Crimes Act 1945*. He brought an application to stay the proceedings on various grounds, including the delay between the date of the alleged offences and the commencement of the prosecution.

On 11 December 1993, the Supreme Court ordered that one of the five charges be stayed and that a further charge be severed and proceed separately. The DPP subsequently withdrew the charge that had been severed and one other charge.

The trial commenced on 1 March 1993, with legal argument. The jury was empanelled on 18 March 1993 to consider the remaining two counts against the defendant. The prosecution closed its case on 21 April 1993.

Towards the end of the prosecution case the defence sought a further stay of the proceedings on the basis that it was unable to call a witness who lived in the Ukraine. The judge rejected the application but agreed to take evidence overseas under the provisions of the *Evidence Act 1905*.

The defence opened its case on 10 May 1993. The only material it presented was a video of the evidence taken overseas.

On 18 May 1993 the jury returned verdicts of not guilty on both counts.

Heinrich Wagner was charged with three offences against the *War Crimes Act 1945*. Committal proceedings were held in the Adelaide Magistrates Court in August and September 1992. The prosecution called oral evidence from 36 witnesses, of whom 28 came from overseas. In addition a US historian testified from a studio in Washington by video conference link. Statements from another 27 witnesses were tendered in the proceedings.

On 20 November 1992 the defendant was committed for trial on all three counts. An indictment was presented in the Supreme Court of South Australia in December 1992, although one of the counts was withdrawn by the prosecution in June 1993.

The defendant sought a stay of proceedings on the basis of delay. That application was dismissed on 30 June 1993.

The trial is listed to commence on 11 October 1993.

During the year $3 191 079 was spent under the war crimes program as follows:

Salaries	$434 312
Administration	$94 363
Property	$104 344
Legal expenses	$2 558 060
Total	**$3 191 079**

Staffing resources were as follows:

SES	0.9 ASL
non-SES	6.3 ASL

The Midford report

During the year the Joint Committee of Public Accounts tabled its report on the Midford Paramount Case entitled *Customs and Midford Shirts—The Paramount Case of a Failure by Customs* (Report number 325).

The report dealt primarily with dealings between the Australian Customs Service and Midford Paramount Pty Ltd. However, the Committee was critical of aspects of the DPP's conduct of criminal proceedings against the company and three individuals. The Committee made a number of recommendations that affect the DPP.

It would not be appropriate to comment on the report in detail at this stage. However, it must be noted that the DPP is concerned about the thrust of those recommendations that deal with the respective roles of prosecutor and investigator (Recommendations 63, 71 and 74).

If those recommendations were accepted, there would be a reduction in contact between prosecutors and investigators during the investigation stage. The DPP could only become involved in a matter once the case had been investigated and a brief of evidence prepared. Even a request for legal advice would have to be made on the basis of a brief to advise.

Experience of prosecuting authorities, both in Australia and overseas, is that it is not possible to approach the investigation of commercial fraud in that way. These cases are invariably large, complicated and difficult to investigate. They raise issues which need to be addressed early in the investigation so that resources are not wasted pursuing matters that turn out to be irrelevant.

There is general recognition that the best, and possibly the only, way of investigating large scale commercial fraud is by adopting a multi-disciplined approach in which investigators and prosecutors meet early and meet often. In some cases the best way of addressing the problem is to set up a task force under which officers from a number of agencies work out of single premises.

Recommendations 63, 71 and 74 have the potential to severely reduce the Commonwealth's capacity to deal with major fraud against its programs.

Case reports

The reports which follow give some indication of the types of case dealt with by the DPP over the past year.

Sydney

Advance Bank and Sun Alliance

This case related to advertisements placed by Advance Bank Australia Limited in major Sunday newspapers promoting a home mortgage insurance package called 'Safety Net' insurance. The ads asserted in banner headlines that home mortgage insurance was available for $2 per week.

Five charges were laid against the Bank under section 79(1)(a) and 53(e) of the *Trade Practices Act 1974* alleging that the advertisements were misleading as they could lead the reader to conclude that $2 per week, for a mortgage of approximately $60 000, would buy insurance cover both for unemployment and for sickness or disability. In fact $2 per week would only buy cover for unemployment.

The Bank pleaded guilty to the charges and was fined $4 000 in respect of each matter, a total of $20 000.

Sun Alliance Australia Ltd, which issued the insurance policies, was also charged in respect of the advertisements and with offences relating to the wording of the insurance policy documents.

Sun Alliance pleaded guilty to the charges relating to the policy documents. Penalty has not yet been imposed.

Sun Alliance pleaded not guilty to the charges relating to the advertisements. The matter was heard before the Federal Court in June 1993. The Court has reserved its decision.

Canty

Canty was the master of a New Zealand vessel, the *Jay Angela*, which fished inside the Australian Fishing Zone at least 26 times between September and December 1992. It appears that the operators of the *Jay Angela* decided to fish in Australian waters because they did not have the permits needed to fish in New Zealand waters.

The vessel was boarded on 5 December 1992 and was subsequently seized under the provisions of the *Fisheries Management Act 1991*.

Canty was charged with one count of improperly using a foreign fishing boat for commercial fishing in the Australian Fishing Zone. He pleaded guilty to the charge and, on 11 March 1993, was convicted and fined $9 000.

The magistrate also ordered that the vessel and the fishing gear used in the offence be forfeited to the Commonwealth under section 106 of the Fisheries Management Act. The vessel was valued at $173 050.

The magistrate rejected an argument that it would be unfair or oppressive to order forfeiture of the vessel. He also rejected an argument put on behalf of the owners of the vessel, who had leased it to the operating company, that a Commonwealth law which permits the property of an innocent third party to be forfeited breaches section 51(xxxi) of the Constitution. That section provides that any acquisition of property by the Commonwealth must be on just terms.

The owners of the vessel have commenced proceedings in the High Court challenging the validity of the forfeiture provisions.

Dean

In June 1991 the defendant was committed for trial on six charges of conspiring to defeat the execution of the *Migration Act 1958*. It was alleged that the defendant had arranged marriages of convenience to enable foreign nationals to gain entry into, or remain in, Australia.

The defendant was the proprietor of a matchmaking club and an immigration consultancy. It was alleged that in return for a fee he would introduce a foreign national to an Australian citizen who was prepared to participate in a sham marriage. He would arrange the marriage, provide documentation and coach the parties on what to say when questioned by immigration officers.

The case against Dean rested on evidence from Australians who had participated in sham marriages and who were indemnified to give evidence.

The defendant eventually stood trial in respect of four marriages. It was necessary to run two separate trials because it is not possible in NSW to include more than three conspiracy counts on a single indictment. Dean was acquitted on both charges at his first trial. At the end of the second trial Dean was convicted on both charges. He was sentenced to 12 months imprisonment with a non-parole period of eight months.

Extradition case

In this matter three defendants were arrested in Australia on warrants seeking their return to the Netherlands on charges of murder.

The murder victim's arms and legs were found buried in a shallow grave in bushland in the Netherlands after a period of heavy rain. Investigations by the Dutch police led to the location of the suspects in Australia. When the police moved in to arrest the suspects they found two of them in possession of a kilogram of heroin. Those suspects were charged with drug offences under Australian law.

All three suspects agreed to be interviewed by the Dutch police. One of them provided information which led to the victim's head being found in a river. The head had been wrapped in plastic and cemented into a flower pot. The police could not find the victim's torso, which had been placed in a suit case and thrown in the same river.

Following these developments, the other two suspects made extensive admissions to the Dutch police.

It was originally proposed that the first suspect be extradited immediately but that the other two be dealt with on the Australian drug charges before being returned to the Netherlands. However, under Dutch law statements by co-offenders are admissible against each other. Accordingly, all three suspects became witnesses as well as defendants in the Dutch proceedings. As the Dutch authorities faced statutory time constraints in preparing their case, it was decided that all three suspects should be returned to the Netherlands.

The Australian drug charges will be held in abeyance pending the outcome of the Dutch proceedings.

Ito

Another fisheries prosecution, this matter involved two Japanese vessels detected inside the Australian Fishing Zone without authority. The masters of the vessels pleaded guilty to charges under the *Fisheries Management Act 1991* and were fined.

The case is significant because the magistrate ordered that the proceedings of the sale of all fish on board both vessels be forfeited to the Commonwealth even though the fish were not seized. The vessels had returned to Japan after they were spotted, without landing in Australia.

The value of the fish was estimated at $3.2 million. That figure was calculated by reference to catch reports filed by the vessels while they were in Australian waters and by records of sale prices in Japan.

The defendant brought proceedings in the Supreme Court of NSW challenging the forfeiture orders. The Supreme Court dismissed the appeal.

Moussalem

This defendant was charged with one count of possessing a trafficable quantity of heroin and one count of being knowingly concerned in the importation of the drug. The heroin was mailed to the defendant from Lebanon hidden in a box containing cheap ceramic items. The drugs were packed inside a ceramic bear.

The drugs were detected by Customs officers in the United Kingdom, en route to Australia. The UK officials notified the AFP who arranged for a controlled delivery of a sample of the heroin. The defendant and another person were charged with drug offences after they took possession of the box containing the drugs.

The other person was committed for trial, but the defendant was discharged at his committal. The defendant denied that he was expecting the heroin or that he knew there was heroin in the box. The magistrate decided that there was insufficient evidence for a jury to convict. The Director disagreed and decided, in the 1991-92 financial year, to sign an ex-officio indictment.

The prosecution case was that the defendant's conduct up to and after delivery of the parcel was consistent

with knowledge of the heroin. The evidence, including material obtained from a telephone intercept and a listening device, showed an anxiety on his part about the contents of the box. There was no apparent reason why he should have been anxious about the box if he had genuinely thought it contained nothing more than cheap china trinkets.

On 11 May 1993 a jury convicted the defendant. At the time of writing, the defendant was awaiting sentence.

Operation Cyclone

This case began on 21 July 1991 when a US national was subjected to a body search after arriving in Sydney on a flight from the United States. He was found to be carrying two kilograms of cocaine. It subsequently turned out that he was the courier for a major drug syndicate.

The courier assisted police in an operation which identified the Australian principal, two other couriers who had brought drugs to Australia, and three overseas organisers of the syndicate. When police searched the premises of the principal they found two kilograms of cocaine that had been imported on a previous occasion as well as drug paraphernalia and documents that identified the overseas organisers.

The Australian principal, Kissner, pleaded guilty to charges relating to two separate importations of cocaine. He was sentenced to 10 years imprisonment with a non-parole period of seven years. The DPP has filed an appeal against the sentence.

The courier arrested on 21 July 1991 pleaded guilty to one charge of importing cocaine. He was sentenced to seven years imprisonment with a non-parole period of five years and four months. This was reduced on appeal to four years and nine months with a non-parole period of three years and six months. The court stated that the sentence imposed on the courier had been discounted by 55 per cent to reflect the assistance he had given to the police.

The two other couriers also pleaded guilty. They were sentenced to four years, with a non-parole period of two years and six months, and four years, with a non-parole period of two years.

Extradition proceedings have been commenced against the three overseas defendants. One has been returned to Australia and is awaiting committal proceedings. The other two are still at large.

Oviedo-Portela

This case involved the importation of five kilograms of cocaine (two and a half kilograms pure) from the United States in December 1991. The drug was hidden inside two exercise machines posted to Australia by air.

A Customs officer became suspicious about the parcel because it smelled of glue. It was subsequently found that the smell came from the substance used to seal the ends of the metal members of the exercise machines.

The defendant was a Columbian who travelled to Australia via the United States shortly before the importation. The defendant attempted to take delivery of the parcel at Sydney airport but left without it when the Customs officer delayed handing it over.

The defendant had severe physical disabilities as a result of an accident with explosives in Columbia. He was missing one hand, had only the thumb and little finger of the other hand, and was missing an eye. When he was questioned he said that he had travelled to Australia to obtain prostheses for his arms. However, he had not gone near a doctor until he had been in Australia for several weeks. The defendant said that a friend in Australia had asked him to

take delivery of the parcel for a person called Max, who was too unreliable to collect it himself.

The defendant agreed to help police by making contact with Max. However, tapes of the resulting conversations suggest that he was warning his contacts, rather than trying to help police identify them. The defendant was charged with one count of being knowingly concerned in the importation of cocaine.

A first trial was aborted after a week when one of the jurors received information that could have influenced the outcome of the case. The second trial ran for six weeks. The jury found the defendant guilty. He was sentenced to 10 years imprisonment with a non-parole period of seven years.

The defendant has lodged an appeal against conviction.

Sanderson

This matter related to seven kilograms of heroin that were found in the luggage of a courier at Sydney airport in February 1990. The courier cooperated with the police, who subsequently arrested Sanderson and Sanderson's son.

The courier and Sanderson's son pleaded guilty to charges against them and agreed to give evidence against Sanderson. Their evidence was that Sanderson had recruited the courier using his son as a go-between. The drugs were placed on a plane in Bangkok by an unknown person and the courier joined the flight in Singapore. His role was to collect the bag containing heroin and take it through Customs in Sydney. At the time of the importation the courier was 19 and Sanderson's son was in his early 20s.

At the trial Sanderson maintained that the two young men had falsely implicated him and arranged the heroin importation themselves. The jury returned a verdict of guilty. On 5 July 1993 Sanderson was sentenced to 13 years imprisonment with a non-parole period of eight years.

Steffan

This defendant was a private investigator who offered money to an officer of the Department of Social Security to carry out name checks on the department's computer. The defendant offered to pay $10 per check.

The officer reported the matter and subsequently attended meetings with the defendant wearing a listening device provided to him by the Australian Federal Police. The defendant was taped offering money to the officer. He was charged with one count of offering a bribe to a Commonwealth officer and a number of counts under the *Social Security Act 1947* of soliciting confidential information.

The defendant argued at a pre-trial hearing that the evidence obtained from the listening device was inadmissible. The AFP did not obtain a warrant to use the device, but relied on their powers under section 12F of the *Australian Federal Police Act 1979*. The defence argued that, as a matter of construction, section 12F only authorised the departmental officer to use a listening device and did not authorise the AFP to listen to the product of that device.

The trial judge rejected the argument and ruled that the evidence was admissible. He noted that it would be anomalous for the legislature to sanction the use of a transmitter by a person cooperating with the police while prohibiting the use of a receiver by the police themselves. The defence sought special leave to appeal to the Court of Criminal Appeal to re-argue the issue, but leave was denied.

The defendant ultimately pleaded guilty to the charges against him. He has still to be sentenced.

Yates

This case involved an evasion of sales tax totalling $157 000. The defendant was a director of a company that routinely quoted a false sales tax number when purchasing goods, thereby obtaining goods free of sales tax. Yates was the controlling hand of the company.

Yates was eventually convicted, after two separate trials, on 15 charges under NSW law of dishonestly obtaining a financial advantage by deception and 25 charges under the *Crimes Act 1914* of causing a benefit to be given to his company by false pretences.

Yates was sentenced to 14 months imprisonment, with a minimum term of six months, on the Commonwealth charges and six months imprisonment on the State charges to be served concurrently. He was also ordered to pay a pecuniary penalty under the *Proceeds of Crime Act 1987* in the sum of $146 550. The judge noted that the sentence would have been higher but for a number of subjective factors.

The defendant was originally committed for trial in December 1987. However, he applied under the *Administrative Decision (Judicial Review) Act 1977* for review of the committal order. When he was unsuccessful at first instance he appealed to the Full Court of the Federal Court. When the appeal was rejected, he sought special leave to appeal to the High Court. He was again unsuccessful.

The defendant was arraigned for trial in July 1991 but immediately sought a stay of the proceedings. When the application was rejected, he appealed to the Court of Criminal Appeal. When that appeal was rejected he again sought special leave to appeal to the High Court, again without success.

The net effect of the interlocutory proceedings was to delay the trial for almost six years.

Melbourne

Karim

Karim arrived in Australia on 13 February 1993 as a member of the air crew of a Gulf Air aircraft. When leaving the country, on 16 February 1993, he handed a departure card to a Customs officer in which he stated, among other things, that he was not carrying currency in excess of $5 000.

Attention was subsequently drawn to Karim when a drug sniffer dog reacted to a bag he was carrying. The bag was found to contain $99 000 in Australian notes and smaller amounts in Japanese and Singapore currency. The total value of the currency was $110 208.

Karim was charged with two counts under section 15(1) of the *Financial Transactions Reports Act 1988* for transferring currency in excess of $5 000 in and out of Australia without filing the appropriate reports. He pleaded guilty and was fined $1 000 on each charge.

The currency was forfeited to the Commonwealth by consent as tainted property under the *Proceeds of Crime Act 1987*.

Jones

Jones is one of three computer hackers charged under the computer crime provisions of the *Crimes Act 1914*. He pleaded guilty to the charges against him and agreed to give evidence against his co-defendants.

It was alleged that the defendant, who was 20 at the time, used the personal computer in his bedroom to tap into the computer system at the University of Melbourne via a telephone

modem. He was able to gain access through the university computer to computer systems in Finland, New York, Illinois and Washington DC. He used the university computer as an extension of his own computer, even storing information on it that would not fit onto his computer.

The defendant gained access to a range of sensitive data. He also copied information and made alterations to some programs, mainly to provide himself with a ready means of access on later occasions. One of Jones' co-defendants managed to obtain access to computers of the National Aeronautics and Space Administration in Virginia.

The defendant's activities come to light when scientists at Melbourne University became aware that there was an illegal user on their system and arranged for a telephone trace to be placed on it. The trace led back to Jones' computer. The police were able to identify the other offenders by tapping Jones' telephone. The evidence in the case included tape recordings of the defendants bragging to each other about their latest conquests.

It does not appear that Jones had any financial motive in this matter. He seems to have been driven by a desire to show off his computer skills and to see how far they could take him. However, his actions caused a great deal of expense and inconvenience to the owners of the systems he broke into.

The defendant pleaded guilty to 13 counts involving the unauthorised access to, or interference with, a computer by means of a Commonwealth facility and one count of unauthorised access to a Commonwealth computer.

He was given a suspended sentence of six months imprisonment and directed to perform 300 hours of community service. The judge noted that the penalty had been reduced because of the defendant's age and background and because of his undertaking to give evidence against co-offenders.

Lees

The defendant was one of three general practitioners who controlled a company which ran a pathology service.

The business was set up so that it appeared that it was conducted by an independent pathologist. The pathologist was paid a fee for the use of his name and provider number. All claims on Medicare were lodged in the name of the pathologist but the cheques went into the account of the general practitioners. In fact the business was run by the general practitioners and did not qualify for Medicare benefits. The defendant obtained $8 876 to which he was not entitled.

The defendant pleaded guilty to one count under section 129AA(1)(b) of the *Health Insurance Act 1973*. He was released under section 19B of the *Crimes Act 1914* on a bond to be of good behaviour for 12 months. He was also ordered to pay $2 000 to a community health service and $8 876 to the Health Insurance Commission.

McKenzie and Hannan

McKenzie and Hannan were Australian heroin addicts living in Thailand. In 1987 McKenzie was arrested on drug charges in Thailand. He decided to arrange for Hannan to import heroin into Australia so that he could get enough money to buy his freedom.

McKenzie introduced Hannan to a Japanese national who was able to obtain heroin and carry it to Australia. His normal method was to hide the heroin in the soles of his shoes. Hannan, and another person, took on the task of distributing the drugs in Australia.

Hannan arranged nine importations before the operation was broken. McKenzie was able to get out of jail in Thailand after the first three importations. He then helped Hannan organise the remaining six importations.

Hannan organised yet another importation after being released on bail. She used a new courier but he was detected. The courier was charged with one count of importing heroin. He pleaded guilty and was sentenced to nine years imprisonment with a non-parole period of four-and-a-half years.

Hannan was charged with eight counts of importing heroin and one charge under State law of trafficking in heroin. She pleaded guilty and was sentenced to nine years imprisonment with a non-parole period of five years. The sentence was discounted because Hannan agreed to give evidence against her co-offenders.

McKenzie eventually pleaded guilty to nine counts of importing heroin and one count of trafficking. He was sentenced to ten years imprisonment with a non-parole period of seven years. The DPP has appealed against the sentence.

An attempt was made to secure the extradition of the Japanese principal to stand trial in Australia. The Japanese authorities eventually arrested the principal and charged him with exporting heroin to Australia. Material has been sent to the Japanese authorities for use in the proceedings in Japan and evidence has been taken in Australia for use in that country.

McNaughton

This defendant pleaded guilty to seven counts of knowingly giving false testimony contrary to section 35 of the *Crimes Act 1914*. He was sentenced to 18 months imprisonment, to be released after serving six months.

The false testimony appeared in affidavit and oral evidence given by the defendant in the course of maintenance proceedings under the *Family Law Act 1974*. The defendant had a 16-year relationship with a woman which produced five children. However, he denied on oath that there had been any relationship and denied that he was the father of the children. He also gave false evidence about his financial position.

The sentencing judge noted that the offence of perjury strikes at the heart of the judicial system. He also noted that the defendant's false denials had greatly prolonged the maintenance proceedings.

Morrison

This case involved a defendant charged with receiving $26 800 in social security benefits to which she was not entitled. It raised the question of whether a community service order can be made in respect of Commonwealth matters in Victoria.

The defendant pleaded guilty and the magistrate initially imposed an order directing that she perform 500 hours of community work over a period of 12 months. He subsequently changed the order to require the defendant to perform 125 hours of work over a period of six months.

It was the DPP's view that the order was not valid, as the maximum community service that a magistrate can order in Victoria in respect of an offence against the *Social Security Act 1947* is 50 hours. The issue turned upon the meshing of Victorian provisions dealing with community service with those in Commonwealth law in a case where an offence is punishable by either a fine or imprisonment.

The DPP appealed to the Supreme Court in order to clarify the issue. At first instance the Supreme Court decided that community service orders

are not available at all in social security matters in Victoria. On further appeal, the Full Court held that community service orders can be made in social security matters but agreed that the maximum that can be ordered is 50 hours over six months.

Murray and Peters

These defendants were charged with conspiring to defraud the Commonwealth. It is alleged that they assisted another person to launder his black money so that the person did not appear to own it. One effect of the scheme was that the owner of the money evaded paying income tax on his earnings. It was alleged that the defendants knew that the money was black, although they did not know its precise source.

The scheme involved the creation of a sham mortgage, which enabled the owner of the money to buy property worth $180 000 in circumstances where it appeared that he had to borrow money in order to do so. The defendants engaged in a number of other devices to distance the person from the property. These included executing a tenancy agreement which enabled the person to live on the property in a false name. The case relied heavily on evidence of a co-offender who had been indemnified by the DPP. The main issue at trial was whether the evidence of that witness was credible.

The defendants first stood trial in mid-1992, but the jury could not agree on a verdict. The jury at the second trial found both defendants guilty. The defendants were both sentenced to six months imprisonment to be released after two months.

The defendants have sought leave to appeal.

O'Keefe

This defendant is one of three people charged with offering to sell counterfeit $US100 notes. The defendant was identified after he offered to sell notes to a person in the USA, who happened to be a Secret Service agent. The agent travelled to Australia, met the defendants and obtained evidence against them. The defendant was charged with offering to sell $413 000 in counterfeit notes.

O'Keefe pleaded guilty and agreed to give evidence against his co-defendants. At first instance he was sentenced to four years imprisonment with a non-parole period of two years. That was reduced on appeal to 18 months, with nine months to serve.

The trial of the co-defendants is outstanding.

The notes involved in this case have a number of flaws which have also appeared in notes seized in other parts of the country. In total the AFP have recovered approximately $3 million worth of notes. A number of other people have been charged as a result of the operation.

Seymour

The defendant was a South African national who lived in Australia periodically for 10 years. Occasionally he travelled validly to Australia, but mostly he has gained entry by presenting bogus documents to Immigration officials.

In early February 1992 the defendant began buying bank drafts with Australian cash and forwarding them to an account held on the Isle of Man. Over the next six weeks, the defendant purchased 129 bank drafts with a total value of $1.1 million. Each draft was for a little less than $10 000, which is the

threshold at which a financial institution must report a cash transaction under the *Financial Transaction Reports Act 1988*.

When the defendant was arrested, he was found in possession of false British, Australian and New Zealand passports and other false identification documents including drivers licences in false names.

The defendant was charged with five counts under section 31 of the Financial Transactions Reports Act of structuring transactions to avoid the reporting requirements, one count of making a false statement in a passport application and one count of being an illegal entrant. He pleaded guilty to all charges.

The defendant was originally sentenced to 28 months imprisonment to be released after serving two years. The sentence was reduced on appeal to 18 months with 14 months to be served.

It is not known where the defendant obtained his money.

Strauss

From 1984 to 1988 Strauss owned and operated six private nursing homes in Melbourne. It was alleged that he engaged in various practices to inflate the apparent cost of running the nursing homes with a view to obtaining increased payments from the Commonwealth. In particular, Strauss ghosted staff at the nursing homes, pretending to employ people who did not exist and pretending to pay wages that were never paid.

Strauss was charged with 14 counts of defrauding the Commonwealth and one count of organised fraud under section 83(1) of the *Proceeds of Crime Act 1987*.

Strauss stated during the committal proceedings that he was prepared to admit that he had ghosted staff. However, he denied that the extent of the ghosting was as great as alleged by the prosecution. He subsequently pleaded guilty to a rolled-up charge of defrauding the Commonwealth, conceding all elements alleged against him other than quantum.

The sentencing proceedings ran in the County Court for 36 sitting days, during which the prosecution engaged in a lengthy exercise designed to show the extent of the defendant's fraud. The prosecution alleged that the fraud totalled $2.2 million. The defence conceded $300 000 of that figure. At the end of the proceedings the judge found that the prosecution had substantiated $882 000 worth of fraud.

The defendant was sentenced to five years imprisonment with a non-parole period of two years and six months.

An action against the defendant under the Proceeds of Crime Act was subsequently settled on the basis that he pay a pecuniary penalty in the sum of $1.4 million.

Toubya

This case was reported in last year's annual report. At that time an appeal was outstanding. The appeal raised an interesting issue.

The defendant was convicted, at a trial in Melbourne, on one charge of being knowingly concerned in the importation of heroin. He was sentenced to 14 years with a minimum term of seven years.

The drugs were imported into Melbourne by a courier who was detected at the Customs barrier. The courier had planned to deliver the drugs to Toubya, who lived in Sydney. The case against Toubya turned upon telephone conversations between himself and the courier. Toubya became suspicious about the actions of the courier and refused to travel to Melbourne.

Toubya argued on appeal that, as his actions had taken place entirely in NSW, the Victorian court had no jurisdiction to hear the charges against him. The argument turned on section 80 of the Constitution which provides that a person who is alleged to have committed an indictable offence in a State has a right to be tried within that State.

The Court of Criminal Appeal rejected the argument. The Court held that the importation was an element of the offence alleged against Toubya and that, as the importation had taken place in Victoria, Toubya could be tried in that State.

Wang

Wang was one of three people charged in respect of the importation of 16.5 kilograms of heroin (13 kg pure). The drugs had a street value of $32 million.

The drugs were imported via Perth hidden inside a heat-strapping machine shipped from Malaysia. The drugs were detected in Melbourne. Police removed most of the drugs and effected a controlled delivery of the machine.

The machine was delivered to suburban premises that had been rented by Wang using a false name. Wang was in the process of removing the drugs from the machine when the police moved in.

Wang initially made no comments to the AFP. However, he later changed his mind and gave full details of his own role and the identity of his co-offenders. It emerged that Wang's role was limited to renting a safe house, recovering the drugs and taking them to the principal in Sydney. For that he was to be paid $1 000.

Wang pleaded guilty to one charge of being knowingly concerned in importing the heroin and one charge of possessing it. He was sentenced to six years imprisonment with a non-parole period of four years. The sentence was discounted by 50 per cent because of Wang's undertaking to give evidence against the other offenders. The judge noted that Wang was a 22-year-old unemployed man who had been induced to take the most dangerous role in a $32 million operation for very little reward.

Brisbane

Extradition

In this case the Italian authorities requested the extradition of two people who were living on the Gold Coast.

It was alleged that the suspects were part of a cartel involved in importing cocaine to Italy from Columbia and laundering the proceeds. The Italian investigation arose from the importation of 565 kilograms of cocaine into Italy from Columbia. The defendants operated a business which was supposedly engaged in trading gold and jewellery in Los Angeles and New York. It was alleged that in fact the business was channelling money from Italy to bank accounts in Columbia.

The documents provided in support of the extradition request were in Italian, with English translations. The document in English referred to the defendants having been 'charged' with offences in Italy. However, the word used in the original Italian documents was 'indagati' which, the defence pointed out, translates as 'investigated' rather than 'charged'.

Under the terms of the extradition treaty between Italy and Australia, a person is only liable for extradition if he

or she has been charged with a relevant criminal offence. In this case the magistrate found that, on the face of the documents, the defendants were only under investigation and had not been charged. Accordingly he held that the defendants were not eligible for extradition.

The defendants both left Australia before further action could be taken against them. The male defendant was subsequently extradited to Italy from the USA.

Extradition

This case involved a request that a married couple be extradited to the Philippines in relation to the murder of an Australian national who was travelling in their company in 1990. The matter was heard before the Cairns Magistrates Court in August 1992.

The defendants resisted extradition on the basis that the wife's family had a close connection with a banned political party in the Philippines and that could prejudice their chances of a fair trial.

The magistrate found that the defendants were eligible for extradition. He ruled that under the terms of the treaty between Australia and the Philippines, the court had no discretion about whether to refuse extradition, such matters being within the realm of the Attorney-General.

The defendant appealed to the Federal Court. The court dismissed the appeal, but commented adversely on the strength of the evidence available against the defendants. On 16 April 1993 the Attorney-General exercised his discretion against making an extradition order.

Gallagher

The defendant was charged with one count of manufacturing an impression of an official key, contrary to section 83A(1) of the *Crimes Act 1914*, and one count of attempting to procure another to commit grievous bodily harm, contrary to section 539 of the Criminal Code (Qld).

Gallagher, a serving soldier with the rank of Lance Corporal, was a clerk stationed at the Land Warfare Centre at Canungra. He supplied a person, who turned out to be an undercover police officer, with impressions of armoury keys cast in plasticine. The armoury contained pistols, rifles, sub-machine guns and rocket launchers. In exchange the defendant requested that his wife's ex-husband be put 'in hospital for about six months and come out in a wheelchair'.

The defendant argued that the police evidence against him should be excluded on the basis of entrapment. When he lost on that issue, he pleaded guilty to both charges against him. The defendant was sentenced to five years imprisonment on each count with a non-parole period of 18 months.

An appeal against sentence was dismissed.

Gough

Gough was employed as a taxation manager with a firm of accountants. As part of his duties he supervised the lodging of clients' tax returns and checked income tax assessments raised against them.

Between August 1989 and December 1991 Gough diverted 26 tax refund cheques to his own benefit. He paid some of the cheques into bank accounts that he had opened in the names of clients. Other cheques were paid into his own account after he had forged the client's signature on them. The total value of the cheques was $110 700.

Gough admitted his conduct in the matter but claimed that he acted while suffering from mental illness. He produced psychiatric evidence to the effect that he was suffering from an

obsessive compulsive disorder and major depression. He said that he took the cheques to punish people for what he perceived to be improper tax practices. He made extensive admissions at trial and the only issue before the jury was whether Gough was sane.

At the end of the psychiatric evidence, Gough changed his plea to guilty. He was convicted of defrauding the Commonwealth and was sentenced to three years imprisonment to be released on entering a bond after serving eight months.

A pecuniary penalty order was made against the defendant under the *Proceeds of Crime Act 1987*.

Holdsworth

This defendant obtained $5 680 over a nine-month period by forging doctor's receipts on his home computer and using them to claim Medicare refunds. In all, he lodged a total of 163 fraudulent claims.

The defendant pleaded guilty to the charges. He was convicted but released on a good behaviour bond. He was also ordered to repay the money.

The DPP appealed against the penalty. The Court of Appeal upheld the appeal, substituting a sentence of 12 months imprisonment with a minimum term of three months.

The court rejected a suggestion that fraud on the Commonwealth is a victimless crime. They noted that there must be a general expectation that offenders who are caught will go to jail so that those minded to defraud government agents will find the risk unacceptable.

Mathews

On 28 July 1992 Mathews was convicted by a jury in the District Court at Brisbane on one count under section 36A of the *Crimes Act 1914* of intimidating a witness in a judicial proceeding.

It was alleged that two days before sexual harassment proceedings were due to commence against him before the Human Rights and Equal Opportunities Commission, the defendant telephoned the complainant and said 'How would you like the RAAF to know that you are a criminal'. The relevance of the statement was that the defendant's husband was a dog handler at an RAAF base. He had a security clearance which the defendant presumably thought could be affected if it was believed that his wife had a criminal history. The defendant also wrote a letter to the Commander of the RAAF base making a number of allegations against the complainant.

The defendant was sentenced to 12 months imprisonment, to be released on a bond after 14 days. The defendant appealed against his conviction on the grounds that it was unsafe and unsatisfactory and that the trial judge had misdirected the jury on what amounts to 'intimidation'.

The Court of Appeal dismissed the appeal. On the question of 'intimidation' they found that it is not necessary to show that the defendant had any particular result in mind at the time of the relevant conduct. They also held that the word is not a technical term but a word in common use employed in its popular sense. Whether there has been intimidation is a matter for the jury to decide on the evidence before it.

It appears that this is the first case in which section 36A has been considered by a superior court.

Perth

Cole

Cole was convicted of one offence of knowingly importing ten Azalea cuttings into Australia in breach of section 67(1)

of the *Quarantine Act 1908*. Cole was a commercial nurseryman. He hid the cuttings in his glasses case while on a flight returning from Japan. The cuttings were found by a Customs officer at the control barrier.

The maximum penalty for the offence was 10 years imprisonment or a fine of $50 000 or both. Evidence was presented to the court pointing to the potential harm to native plant life and Australian primary industry from breaches of the Quarantine Act.

The defendant pleaded guilty in the District Court and was fined $2 000. The DPP appealed against the penalty and the Court of Criminal Appeal increased the fine to $7 500. The court stressed the importance of general deterrence in sentences for quarantine offences.

Crayfishermen

A joint investigation by the Australian Taxation Office and the Australian Federal Police resulted in criminal charges being laid against a large number of West Australian crayfishermen for under-declaration of income. The investigation centred upon a widespread scheme under which crayfishermen received a proportion of their income from processing companies in cash, which they did not declare to the ATO.

One part of the investigation involved the prosecution on indictment of eight people under section 29B of the *Crimes Act 1914* for evading tax of amounts between $4 000 and $28 000. The defendants were either the skippers or owners of crayfishing boats.

Seven of the eight defendants pleaded guilty and were sentenced by way of fines ranging from $4 000 to $18 000. ATO had already recovered the tax owing, with penalties and interest. Charges against the remaining defendant remain listed for trial.

A large number of other prosecutions were conducted summarily at Geraldton on charges under the *Taxation Administration Act 1953*. Most defendants pleaded guilty and were fined and ordered to pay additional penalties under section 8W of the Taxation Administration Act.

The ATO has advised that tax compliance by the crayfishing industry in Western Australia has drastically improved since these prosecutions were brought.

Safety at sea

Last year, for the first time in Western Australia, the DPP received briefs of evidence from the State Marine and Harbours Department which resulted in prosecutions under the *Navigation Act 1912*. Both cases arose out of incidents at sea beyond territorial waters.

The first incident involved the sinking of a pleasure boat by a crayfishing boat in broad daylight. The pleasure boat, with one person on board, was rammed by the cray boat. Fortunately, there was no loss of life. The skipper of the cray boat was prosecuted for failing to keep a proper lookout. He pleaded guilty and was fined $3 000.

The second incident involved a fishing trawler which, after setting its trawl, drifted into the area of an undersea oil well while the crew were sleeping. The danger of an undersea oil fire was only averted by alert action by the crew of a rig tender. The skipper of the trawler was charged with failing to keep a proper lookout. He pleaded guilty and was fined $2 000.

Adelaide

Cheatle

The defendants in this case were convicted by the majority verdict of a District Court jury on charges of defrauding the Commonwealth. The case involved an alleged scheme between the defendants, who owned a hotel, and the proprietor of a liquor business to evade the payment of sales tax on sales made to the hotel. It was alleged that the defendants evaded sales tax totalling $40 000.

The defendants were each sentenced to imprisonment for 30 months, to be released after serving three months, and were ordered to perform 240 hours of community service.

The defendants appealed against their convictions. The case eventually came before the High Court on the question of whether it is permissible under section 80 of the Constitution for a person to be convicted by a majority verdict in a Commonwealth matter.

On 3 June 1993 the High Court held that majority verdicts are not permissible in Commonwealth matters. The High Court's decision has implications for the DPP in all places where majority verdicts are available in State proceedings.

Cubbon

This defendant was charged with two offences against section 75(b) of the *Crimes Act 1914* of impersonating an ASIO officer and one offence against section 67(b) involving the forging of ASIO documents.

The defendant recruited two people to supposedly work for ASIO. The tasks he gave them were many and varied. They included recruiting prostitutes (with a view to using them to compromise suspected offenders), negotiating to buy guns (supposedly to catch a gun runner), taking females to remote locations and simulating sex with them (supposedly to attract a paedophile so that he could be filmed), following people supposedly involved in the sale of forged passports, ferrying a person who was supposedly a prisoner to and from court, and developing a plan to steal a Harley Davidson motorbike by driving it out of a showroom through a plate glass window with a view to impressing, and eventually infiltrating, a bikie gang.

The defendant produced a forged ASIO identification card to convince the recruits that he was an ASIO agent and had them sign official-looking documents. He made liberal use of a mobile telephone, guns and other props to add colour to his story. On one occasion the defendant produced his ASIO card when pulled over for speeding. The police allowed him to leave without being charged.

Cubbon was also charged with several sex offences under State law relating to his activities with young girls who had supposedly been recruited to help catch the paedophile.

The defendant pleaded guilty to the charges against him and is currently awaiting sentence.

Dolan

The defendants in this matter were a husband and wife who had the contract to collect coins from Telecom payphones in the South Australian country town of Yorketown. They were supposed to keep 5 per cent of the money as their fee and to remit the rest to Telecom.

It was alleged that the Dolans misappropriated $18 300 worth of coins over an 18-month period. They were charged with a total of 118 counts of fraudulently misappropriating Commonwealth property.

After a two-week trial, the husband was convicted on 69 counts and the wife on 19. They were sentenced respectively to two years imprisonment and one years imprisonment, both to be released upon entering a good behaviour bond.

The case was complicated because the relevant coins were deposited into a joint account owned by the Dolans. There was a constant movement of funds through the account. The prosecution bore the onus of showing which transactions involved the Telecom coins and which defendant was responsible for each transaction. The case depended heavily on an analysis of the accounting records prepared by a DPP Financial Analyst.

Ellis

This defendant was charged for a third time with offences against the social security scheme. At the time of the most recent offences she was still subject to a good behaviour bond entered into in 1990.

The defendant was originally prosecuted in 1984 in respect of a series of offences by which she managed to obtain $134 000 in excess of her entitlements. She was sentenced to imprisonment but was released upon entering a good behaviour bond.

At the time she was being sentenced for the first series of offences, the defendant had already started committing the second series of offences. This time she managed to obtain $107 500.

The defendant pleaded guilty to the second series of offences in 1990. At that time she was 82 years old. She was sentenced to eight years imprisonment, to be released on a good behaviour bond after serving six months.

The defendant was dubbed the 'Robin Hood Granny' by the media when evidence was called at sentence that she was a generous and kind woman who gave a great deal of money to charity. She had also managed to purchase property for her own benefit in Queensland, Victoria and South Australia.

On the latest occasion the defendant, who is now 85, managed to obtain $6 785 by claiming a pension in a false name in addition to her normal pension. She came to notice when she tried to obtain yet another pension using a further false name.

Ellis was sentenced to eight years imprisonment with a non-parole period of 18 months for breach of her bond and a further three months imprisonment, to be served concurrently, in respect of the latest round of offences.

Operation beaver

This case involved a scheme to evade the payment of sales tax on liquor sold by a South Australian distributor.

The scheme involved sham sales of liquor by the distributor to a wholesaler in another State. Sales by one wholesaler to another do not attract sales tax. It was alleged that the liquor was actually sold to retail outlets in South Australia and elsewhere, and was sold at a lower price than would have been possible if sales tax had been paid.

The scheme operated between 1984 and 1986 and relied on the fact that in those days the Australian Tax Office did not follow up interstate wholesale sales to confirm that a sale had actually taken place.

It was alleged that the defendants processed $5 million worth of liquor through the scheme and evaded sales tax

of about $1 million. The investigation was complicated and expensive. It was necessary for the investigators to identify all the sales that actually took place in order to prove the extent of the fraud.

Six people were charged with conspiracy to defraud the Commonwealth. Five have pleaded guilty. They were all released with suspended sentences of various terms. The sixth defendant is awaiting trial.

Vreugdenberg

The defendant was a dentist who created 32 fictitious patients and proceeded to register them with various health funds, including Medibank Private. He then submitted refund claims in the names of the patients for services that he had supposedly rendered to them or their dependants.

The matter was investigated jointly by the Australian Federal Police and the South Australian Police. It was alleged that the defendant submitted claims for fictitious services totalling $308 923. He received total rebates of $182 856. The defendant said that he engaged in the fraud because his business was not good and he wanted to avoid going bankrupt. He also said he was being blackmailed.

Vreugdenberg pleaded guilty to 21 counts under section 29D of the *Crimes Act 1914*, two counts of forgery under that Act, two counts of opening a bank account in a false name under section 24 of the *Financial Transactions Reports Act 1988*, and 106 counts of forging and uttering under State law. He asked that a total of 984 other offences be taken into account on sentence.

The defendant was sentenced to an effective term of two years imprisonment on the Commonwealth counts with a non-parole period of 18 months. He was sentenced to a cumulative term of four years on the State counts, with a non-parole period of three years.

The defendant was ordered to repay all outstanding money and to pay investigation costs.

Darwin

Druett

This matter has had a long history. It relates to an importation of heroin that took place in March 1989. The courier was detected at Darwin airport. He eventually identified Druett as the Australian principal.

Druett was committed for trial on 5 December 1989 and the trial commenced in August 1990. Unfortunately the judge became sick with a rare tropical disease which eventually took his life. He retired from the Bench before the trial was completed.

A second trial began on 8 July 1991. That trial was aborted on 19 July 1991 when the judge was informed that one of the jurors had received a threatening telephone call. There was no evidence that Druett had any connection with the call. However, the judge was concerned that the fact that the call had been made might influence some of the jurors against Druett.

A third trial commenced on 30 July 1991. This time the trial was completed. The jury convicted Druett. He was subsequently sentenced to 12 years imprisonment with a non-parole period of six years.

Druett appealed against his conviction. On 9 October 1992 the Court of Criminal Appeal upheld the appeal and ordered a new trial.

A fourth trial commenced on 31 May 1993. The jury again convicted Druett. This time he was sentenced to 11 years imprisonment with a non-parole period of four years and nine months. The reduction from his earlier sentence reflected the time he had already spent in custody.

Druett has now sought leave to appeal against his second conviction.

Frank

This matter came to light when the defendant was seen lodging two unemployment benefit forms. A subsequent search of his room at a Salvation Army hostel revealed that he was claiming six sets of unemployment benefits under six different names.

The material seized included identification documents, banking and taxation documents, drivers licences and a number of small pocket books which listed the names and addresses used by the defendant. The books recorded the alias used for each set of claims and the documents that had been used to support each alias.

The defendant was charged with offences against the *Social Security Act 1991* relating to payments totalling $23 950. He was also charged with offences under section 8U of the *Taxation Administration Act 1953*, relating to the tax file numbers he obtained to support his false identities, and offences against the *Financial Transaction Reports Act 1988*, for opening and operating false name bank accounts.

The defendant pleaded guilty and was sentenced to two years and three months imprisonment to be released on a good behaviour bond after serving nine months.

Kelly

The defendants in this matter were a husband and wife who ran a painting business through a company. It was alleged that the company failed to remit over $300 000 to the Australian Taxation Office in respect of taxation instalments deducted from payments to staff and prescribed payment deductions withheld from payments to subcontractors.

The company ceased trading in November 1990, leaving the tax debt unpaid. However, the defendants continued operating by setting up a new company which rehired many of the old employees and subcontractors.

Peter Kelly pleaded guilty to 22 charges under the *Income Tax Assessment Act 1936*. He was fined $30 000, ordered to perform 480 hours of community service and was placed on a good behaviour bond. He was also ordered to pay $264 953 to the Australian Taxation Office.

Julie Kelly pleaded guilty to a total of 15 charges. She was fined $2 000, released on a good behaviour bond and ordered to pay $38 571.

Mungatopi

This defendant was employed on Melville Island as agent for the Commonwealth Bank from July 1990 to April 1991. It was alleged that during that period she misapplied $52 000. She used the money to buy alcohol and groceries and to give to other people.

The head office of the bank kept a computer record of transactions on Melville Island but had no way of knowing whether the defendant held the amount of cash she was recorded as holding. The agency was only inspected once a year. The defendant was able to keep the bank at bay, for a while at least, by delaying remittances to head office until she had accumulated enough cash from later deposits.

The defendant pleaded guilty to one charge of fraudulent misappropriation under section 71(1) of the *Crimes Act*

1914. She was sentenced to 15 months imprisonment, to be released on a good behaviour bond after four months.

Shabir, Dos Reis and Parvez

In this case the defendants were two brothers from Pakistan and a woman who arrived from Timor as a refugee in 1975.

The first brother, Shabir, was a seaman who jumped ship at Geraldton in 1976. He married the woman, Dos Reis, in 1977 and obtained permanent residency status on the basis of the marriage.

Shabir tried on three occasions to secure entry to Australia for his brother Parvez. When he was unsuccessful, he resorted to a scam which involved divorcing Dos Reis, travelling with her to Pakistan, and arranging for her to enter a marriage of convenience with Parvez. Parvez obtained a visa to emigrate to Australia on the basis of his 'marriage' to Dos Reis. The plan was that Parvez would divorce Dos Reis and that she would then remarry Shabir. It was alleged that at all times Dos Reis and Shabir lived together as man and wife.

The plan got as far as Parvez divorcing Dos Reis. However it fell to pieces when Shabir decided to marry a woman other than Dos Reis. Dos Reis reported the matter to the authorities.

The defendants were all convicted of conspiring to defeat the operation of the *Migration Act 1958*. The male defendants were each sentenced to four months imprisonment. Dos Reis was released on a good behaviour bond.

ACT

Employee fraud

There were a number of cases during the year in which Commonwealth officers were prosecuted in respect of improper claims for the payment of travel and other expenses. While the penalties imposed were generally low, the fact that these cases were investigated and prosecuted is an indication that employee fraud is being treated as a serious matter.

Details of some of the cases are:

Arena: The defendant was charged with the theft and misuse of 15 cabcharge vouchers. He used some vouchers to pay for private taxi fares and others to generate income while working part-time as a taxi driver. The total loss to the Commonwealth was $199. The defendant pleaded guilty. He was convicted and released on a bond.

Arthur: The defendant obtained $2 000 travel allowance in excess of his entitlements by engaging in various devices including not repaying money when he cancelled planned travel and not advising the personnel section when he returned home earlier than planned. The defendant pleaded guilty to ten charges under section 29B of the Crimes Act 1914. He was convicted, fined and placed on a good behaviour bond.

Briggs: This defendant obtained $5 000 in excess of his entitlements when he transferred from Melbourne to Canberra. The defendant told lies about his personal circumstances and intentions in order to maximise the payment of allowances. He pleaded

guilty to three charges under section 29B of the Crimes Act. He was released on a good behaviour bond.

Fenwick: The defendant used cabcharge facilities for private travel. The total loss to the Commonwealth was $8 135. The defendant pleaded guilty to the charges against him. He was released without conviction under section 19B of the Crimes Act 1914. The DPP has appealed against the penalty.

Jones: This defendant obtained $1 227 in excess of entitlements by not advising his personnel section on occasions when he returned from travel earlier than planned. He pleaded guilty to four charges under section 29B of the Crimes Act. He was convicted and fined. He was also convicted and fined on a charge relating to unauthorised access to a computer.

Poynter: This defendant attempted to obtain travel allowance by pretending he had travelled by air on two occasions when in fact he had used a vehicle provided by a firm to which he had been seconded. He pleaded guilty to two offences against section 29B of the Crimes Act 1914. He was released on a good behaviour bond.

Wells: The defendant stole and misused nine cabcharge vouchers. He was charged with a total of 17 offences. He pleaded guilty and was released on a good behaviour bond.

Whitnall

The defendant was a painting contractor who evaded $74 000 in income tax over a four-year period by concealing part of the income earned by his business. He pleaded guilty to four counts of defrauding the Commonwealth. The defendant's company also pleaded guilty to four counts of defrauding the Commonwealth.

The defendant set up a bank account in a false name to conceal the undeclared income. The scheme was described by the trial judge as 'a calculated and systematic fraud'.

The defendant was sentenced to two years imprisonment, fully suspended, and ordered to perform 208 hours of community service. The DPP appealed against penalty on the basis that the defendant's criminality warranted a custodial sentence, especially when compared with penalties imposed in cases involving welfare fraud. On 4 June 1993 the Federal Court dismissed the appeal.

One of the complicating factors in the case was that the defendant had already been assessed to pay penalty tax of $42 000 by the Australian Taxation Office. The defendant's total debt to ATO, when penalties and interest were taken into account, was nearly $144 000. By the time the appeal came on for hearing, the defendant had paid $60 000 and had taken out a bank loan, secured over the family home, to pay the rest.

Both the sentencing judge and the Federal Court referred to the fact that the defendant had already suffered a financial penalty as one of the reasons for not imposing a custodial sentence.

Chapter 4 Corporate prosecutions

Since 1 January 1991 the DPP has prosecuted, on a national basis, offences against 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 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 the Cooperative Scheme Laws and the Corporations Law rests with the Australian Securities Commission (ASC). With the exception of minor regulatory matters, guidelines agreed between the ASC and the DPP require the ASC to refer completed investigations to the DPP for prosecution action. The ASC–DPP Guidelines are discussed in greater detail below.

Offences against the Corporations Law and the Cooperative Scheme Laws of the States and the Northern Territory are treated as offences against Commonwealth Law and are prosecuted in accordance with the *Prosecution Policy of the Commonwealth*.

The Attorney-General's direction

The Director accepted an invitation to appear on 7 September 1992 before the Parliamentary Joint Committee on Corporations and Securities which was inquiring into the relationship between the ASC and DPP. In a submission provided to the Joint Committee the Director articulated the differences in philosophies that had arisen between the DPP and the ASC. The submission was made in the context of evidence given to the Committee by Mr Tony Hartnell, the former Chairman of the ASC, before the Joint Committee on 6 August 1992. The difference in views between the ASC and DPP attracted extensive media coverage.

Following discussions between the Director and Mr Hartnell, on 22 September 1992 the ASC and DPP signed a Memorandum of Understanding which set out, in broad terms, a framework for future dealings between the ASC and DPP. A copy of this Memorandum was forwarded to the Attorney-General on 22 September 1992.

On 30 September 1992, following a process of consultation, the Attorney-General issued a direction under section 12 of the *Australian Securities Commission Act 1989* and section 8 of the *Director of Public Prosecution Act 1983* to the ASC and DPP respectively. The direction required the ASC and DPP to develop and implement policies for the exercise and discharge of their respective powers and functions so as to comply with certain guidelines set out in the direction.

These guidelines were directed at ensuring that greater consultation and cooperation occur between the ASC and DPP. In large part the guidelines codified the existing practice of consultation between the ASC and DPP. The direction and guidelines also resolved a number of issues between the ASC and the DPP including, in particular, the relative emphasis to be placed on criminal as against civil enforcement and the priority to be given to laying charges under State law in the course of criminal enforcement action.

The principles contained in the Attorney-General's direction and associated guidelines together with the Memorandum of Understanding have been incorporated into a set of guidelines agreed between the ASC and DPP.

The guidelines stipulate that the ASC is responsible for making the decision whether to investigate a matter having regard to established criteria and available resources.

The role of the DPP in the corporate criminal investigative process has been clarified. In essence, the guidelines require the DPP to play an advisory role earlier in the investigatory process. Such earlier DPP involvement is aimed at focussing on appropriate criminal conduct in the formative stages of an investigation. This increased role of the DPP requires a greater commitment both in terms of resources and effort by the DPP.

The Attorney-General's direction and guidelines also establishes the National Steering Committee on Corporate Wrongdoing. The committee comprises the Secretary to the Attorney-General's Department, the Chairman of the ASC and the Director. The committee's purpose is to resolve by conciliation any difficulties that might arise between the ASC and DPP. Those matters may be referred to the committee by either the Director or Chairman. The committee met on two occasions during the 1992–93 financial year. No matters of dispute were referred to the committee.

A good relationship has been developed between the ASC and DPP. The Chairman of the ASC and the Director have a particularly effective working relationship. There is regular liaison between the ASC and DPP at management and operational levels. Both organisations now have a clearer understanding of each other's role and responsibilities and this together with the ASC–DPP guidelines, has established an appropriate basis for an ongoing productive relationship.

Caseloads

At the time it began its operations the ASC announced that it was allocating investigative priority to 16 major corporate matters.

Of the 16 matters originally nominated, charges have been laid on the advice of the DPP in 12 matters. Further consideration is being given to one matter, while prosecution will not go ahead in two matters. The remaining matter is that of Rothwells which is being prosecuted by the Western Australian Director of Public Prosecutions.

While most of the investigative work on the majority of these 16 matters has been completed, these cases will require considerable time and resources to prosecute to finality. In respect of those matters where the investigation is not yet complete it is possible that further charges may be laid.

During the year the number of matters referred for criminal prosecution continued to increase. In addition to a quantitative increase in the overall number of matters, the DPP's workload per matter increased significantly due to its greater involvement with the ASC during the investigative phase.

During 1992–93 the ASC referred 61 matters for advice. Also, during the year the ASC referred 91 matters for prosecution. It should be noted that some of the matters referred for advice

were also eventually referred for prosecution. During the year 70 matters were completed as follows:

Plea guilty	30
Found guilty	10
Acquitted	3
Advice provided	19
Other	8

As at 30 June 1993 the DPP had 195 matters on hand that had been referred by the ASC.

Additionally, the DPP had four matters on hand relating to corporate misconduct that had been referred by the NCA.

As with most statistics, the figures do not tell a complete story. The following descriptions of some of the more important or interesting cases dealt with during the year provide a greater appreciation of the work involved.

Important cases

New South Wales

Growth Industries

It was noted in the 1991–92 Annual Report that on 18 June 1992 David Towey and Peter Flude were arrested and charged with 26 offences and four offences respectively.

The Growth Industry group of companies was established in 1987 to promote and manage tax driven horticultural and viticultural investments schemes. The scheme raised approximately $140 million from 6 500 investors. A provisional liquidator was appointed to the group in July 1990.

It is alleged that Towey, then a director of Growth Industries Pty Ltd, 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. Towey was also charged in relation to misusing 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 a creditor contrary to the interests of the company issuing the units. It is also alleged that Towey failed to act honestly in the exercise of his powers and the discharge of his duties in that he applied Growth funds for his own benefit with an intent to defraud companies in the Growth group.

The charges against Flude allege that he misled the auditor of ATA Services Ltd, a company which provided agricultural technology services to companies in the group, in relation to a payment received by ATA Services Ltd from a Growth Industries group company. It is also alleged that Flude was involved in the authorisation by Towey of the issuing of units in the unit trust referred to above.

The committal hearing against Towey and Flude commenced in April 1993. At the committal hearing one charge against Towey was withdrawn. In May 1993 the Magistrate found that there was a prima facie case on the 25 remaining counts against Towey and four counts against Flude. The matter was adjourned to December 1993 for further hearing.

The committal hearing was notable for the successful pilot of a new computerised litigation support system. This system enabled the recording, storage and display in Court of witness statements, exhibits, transcript and diagrams. Approximately 2 700 pages of exhibits, 100 witness statements, 300 pages of transcript and 11 complex schematic diagrams showing the money flow were stored on the system. The committal hearing ran for 16 days. The DPP estimates that up to five days in Court time was saved as a result of using the system. Clearly there is great potential for substantial time and cost

savings to both the parties and the court. The system also enabled the case to be presented in a clearer and understandable way and was the subject of favourable publicity in a number of newspapers and journals. It is proposed to extend the use of the litigation support system to other appropriate complex documentary cases.

Spedley Securities Ltd

As indicated in the 1991–92 Annual Report, Brian Yuill was charged with various offences relating to certain alleged events while managing director of Spedley Securities Ltd. The trial of the matter referred to as the 'Triton Matter' has been set down to commence on 18 October 1993.

In other matters referred to as 'Chelsea Property and Nodrogan' Brian Yuill was committed for trial in March 1993. A trial date for these matters has not yet been set.

In March 1993 James Craven was charged with offences under section 229(1) and section 229(4) of the Companies (NSW) Code relating to the 'Bisley Rights' issue. The committal hearing has been set down for January 1994.

Also in March 1993 John Corner was charged with offences under section 229(4) and section 564(1) of the Companies (NSW) Code in relation to certain alleged activity while managing director of Bisley investment Corporation Limited and Triton Investment Corporation Limited. The committal hearing has been set down for October 1993.

Budget Corporation Limited

On 25 November 1992, charges were laid against Robert Graham Ansett, Stanley Albert Hanley, David Wellsford Smithers and Andrew Wentworth Stevenson in relation to a prospectus for the issue of shares in Budget Corporation Limited.

Ansett and Hanley have each been charged with an offence against section 108(1) of the Companies (NSW) Code. It is alleged that they caused the issue of a prospectus which contained untrue statements and non-disclosures relating to the success of the Budget group of companies, the purpose of the float and the dependence of Budget Corporation Limited on Budget Rent-A-Car System Pty Limited.

Smithers and Stevenson have each been charged with being knowingly concerned in the offences committed by Ansett and Hanley.

The prospectus, which was issued on 21 November 1988, offered 12 500 000 ordinary shares in Budget Corporation Limited for public subscription at an issue price of $1 per share. At the time of the issue of the prospectus, Ansett and Hanley were directors of Budget Corporation Limited. It is alleged that Smithers, a partner of Coopers & Lybrand, Chartered Accountants, signed the Investigating Accountant's Report and the Vendor Consideration Report while Stevenson, a partner of the law firm then known as Westgarth Baldick, signed the Solicitor's Report, all of which were included the prospectus.

The DPP was initially provided with documents relating to this matter by the ASC in mid-1991. Since that time, the DPP has worked closely with the ASC in the development of a brief of evidence. A committal hearing in the matter has been set down to begin on 2 May 1994.

General Investments Australia Limited

On 15 June 1993 Robert Allan Hodge, a former director of General Investment Australia Limited, was

charged with 32 offences against section 229(4) and five offences against section 563(2) of the Companies (NSW) Code. Also on that date, informations were laid against Bruce Douglas Meredith Kitson, a former director of General Investments Australia Limited, in relation to 32 offences against 229(4) of the Code. The offences relate to payments amounting to $5 792 122 made by GIAL between 27 September 1988 and 14 November 1989 to the detriment of GIAL and for the benefit of Hodge and companies which were controlled by Hodge.

Entity Group Limited

In the 1991–92 Annual Report, mention was made of the proceedings against Garry Carter, Christopher Blaxland and Dennis Vickery. A trial date for that matter has not yet been set.

In June 1993, proceedings were instituted in Supreme Court pursuant to the *Supreme Court (Summary Jurisdiction) Act 1967* against David Reynolds and Desmond Crane. Charges were brought against Reynolds and Crane for offences against section 125 of the Securities Industry Code and section 178BB of the Crimes Act (NSW). It is alleged that Reynolds and Crane who, during 1988, were partners of the accounting firm Pannell Kerr Forster, were the authors and signatories to an Independent Account's Report dated 27 June 1988 which was sent to the shareholders of Entity Group Limited. The report concerned a proposed acquisition by Entity Group Limited of 53 per cent of the shares in APA Holdings Limited for approximately $32 million. It is alleged that the report was false or misleading in a number of particulars.

Raymond Lord

On 8 April 1993, Raymond Lord was charged with three offences against section 564(1)(d) and (e) of the Companies (NSW) Code.

It is alleged that Lord, then managing director of Direct Acceptance Corporation Limited, made a number of misleading statements to the trustees for debenture holders following service upon Direct Acceptance Corporation Limited of five notices detailing breaches of the Debenture Trust Deed. The notices, dated 20 July 1989, were served following an investigation by Ernst & Whinney, Chartered Accountants, into Direct Acceptance Corporation Limited's corporate loan portfolio. It is alleged that the misleading statements relate to the nature of the company's involvement in a number of the transactions.

On 25 May 1993, the committal proceedings were listed for a three-day hearing on 8, 9 and 10 December 1993. Lord, ordinarily resident in Turkey since the time of Direct Acceptance Corporation Limited's collapse, has been granted bail on the condition that he surrender his passport to the ASC.

Equiticorp House Ltd

On 24 June 1993 two warrants for the arrest of Allan Robert Hawkins were issued following the laying of four charges for offences against section 229(1) and section 229(4) of the Companies (NSW) Code. The charges relate to the payment of $7.6 million from Equiticorp House Ltd to a New Zealand company, Ararimu Investments 4 Ltd, for options to buy shares in Ararimu Investments on or about 30 June 1988.

Hawkins is currently serving a custodial sentence in New Zealand following his conviction on several charges of conspiracy to defraud and using a document to defraud Equiticorp companies.

Linter Group

On 30 April 1992, members of the Australian Federal Police attached to the Australian Securities Commission

arrested and charged Katy Rachelle Boskovitz with breaches of the Companies (NSW) Code. Further charges alleging breaches of the Code and section 178BA of the NSW Crimes Act were laid on 21 May 1992.

The charges arise out of alleged actions by Boskovitz while an officer of Entrad Ltd and Linter Group Ltd. The Code charges concern allegations as to the preparation of false and misleading accounts (section 276), the furnishing of false information to auditors and others (sections 563(2) and 564(1)), the falsification of company books (section 560), being knowingly concerned in transactions entered into for a fraudulent purpose (section 556(5)), and improper use of her position as a director (section 229(4)). The Crimes Act charges concern allegations as to the obtaining of a financial advantage by deception. The financial advantage alleged is the securing and continuation of finance facilities extended by various banks.

The committal hearing against Boskovitz is due to commence on 13 September 1993.

Also, on 30 April 1992, Abraham Goldberg was charged with offences against sections 229(1), 229(4), 556(5), 563(2) and 276(1) of the Companies (NSW) Code. A further charge against section 229(1) of the Code was laid on 21 May 1992. Ten of the charges arise out of allegations that Goldberg, a director of Entrad Corporation Ltd, was involved in a 'window dressing' transaction designed to promote a false view of the assets and liabilities of the company. It is alleged that by virtue of this transaction another company within the Goldberg group of companies suffered a detriment in order to benefit Entrad Corporation and that the purpose of the transaction was to defraud the creditors of Entrad Corporation. The remaining count under section 229(1) relates to the alleged activities of Goldberg to secure the continuation of finance facilities shortly prior to the Goldberg group of companies being placed in receivership.

This matter is being prosecuted by the DPP's Melbourne Office.

Victoria

Allan Paul Endresz

On 20 November 1992, Allan Paul Endresz was charged with six offences relating to breaches of section 11(2) of the Companies (Acquisition of Shares)(Victoria) Code, one offence of stock market manipulation contrary to section 124(1) of the Securities Industry (Victoria) Code and one offence of making false statement to the Australian Stock Exchange contrary to section 12 of the Securities Industry (Victoria) Code.

It was alleged that Endresz was knowingly concerned in the acquisition of the shares of Emu Hill Gold Mines NL (now known as CTC Resources Ltd) within six months of becoming entitled to more than 20 per cent of shares in the company and had engaged in activities designed to create an appearance of active trading in the shares of Emu Hill Gold Mines NL.

On 11 June 1993 Endresz was convicted on all charges and fined a total of $13 500. Endresz was also ordered to pay costs of $5 000.

The matter was first brought to the ASC's attention by the Australian Stock Exchange as a result of its surveillance program.

Graham Arthur James

On 21 June 1993, Graham Arthur James pleaded guilty in the County Court to two counts of improperly using his position as an officer of The Trailer Factory Pty Limited to gain directly or indirectly an advantage for Special

Vehicle Operations Pty Limited contrary to section 229(4) of the Companies (Victoria) Code. The charges related to obtaining finance of $142 000 from Leasefin Corporation Limited and $71 000 from Custom Credit Corporation Limited in 1989. The finance was obtained by use of false invoices issued by The Trailer Factory Pty Limited for the use of Special Vehicle Operations Pty Limited, a company of which James was not an officer. His Honour, Hart J, sentenced James to eight months imprisonment on each count, with four months of the second sentence being cumulative, making a total effective sentence of 12 months. The sentence was fully suspended.

Strach International Limited

On 14 October 1991 and 30 April 1992, Bruno George Gatska and fellow director, Frank Paul Soldo, were charged with a number of offences committed while officers of the company, Strach International Limited. At the committal proceedings, both Gatska and Soldo entered pleas of guilty to one charge of obtaining financial advantage by deception contrary to section 82(1) of the Crimes Act (Victoria) and three charges of furnishing false and misleading information to the Australian Stock Exchange in relation to the accounts and the financial affairs of the company contrary to section 564 of the Companies (Victoria) Code. In addition, Gatska pleaded guilty to one charge of making improper use of his position to gain financial advantage for himself, contrary to section 229(4) of the Companies (Victoria) Code.

The plea was heard before the County Court between 5 and 16 October 1992. The offence against section 82 related to a representation to a lender that the company had assets available as security which, at the time of the representations, it did not have. While this was clearly an offence, there was no default on the loan in question.

The offences against section 564 of the Companies (Victoria) Code related to the misrepresentation of revenue figures in the company's accounts. This was designed to manipulate or 'window dress' the accounts in order to show the company's profit as being greater than it was. The offence against section 229(4) related to the unauthorised granting of a loan from Strach International Limited to a company controlled by Gatska.

On 16 October 1992 Gatska was convicted and sentenced to 15 months imprisonment, the sentence to be fully suspended, and in addition he was fined $21 000. Soldo was fined $19 000 with no conviction being recorded.

Queensland

David Paul Howe, Nigel Peter Smith and John Keith Campbell

As indicated in the 1991–92 Annual Report on 13 March 1992, David Howe, Nigel Smith and John Campbell were each committed for trial in respect of offences against section 229(4) of the Companies (Queensland) Code. Smith was alleged to have been knowingly concerned in Howe's offence.

The charges arose 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. Howe and Campbell were directors of Farndale Limited at the relevant time.

In September 1987, Howe Corporation Pty Ltd (Howe Corporation), the private company of 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. Smith was a 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. Waracoil Pty Ltd was a company under the control of Smith. This arrangement, 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 for the sum of $4.57 million. Later that 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.

The charges against Howe and Campbell related to breaches of their fiduciary duties to Farndale Limited.

The trial of these matters was listed for 26 October 1992. Following legal argument at the commencement of the trial, Howe, Smith and Campbell all pleaded guilty to their respective offences. Howe and Campbell were sentenced on 19 November 1992. Howe was fined $20 000 and ordered to perform 240 hours community service; Campbell was fined $17 500 and ordered to perform 240 hours community service. Smith was sentenced on 23 December 1992 and was sentenced to 18 months imprisonment with a recommendation for release on parole after three months. Appeals against the adequacy of the sentences imposed upon Howe and Smith were initiated by the DPP; Smith lodged a cross appeal against the severity of the sentence imposed on him.

On 15 March 1993, the Court of Appeal of Queensland allowed the prosecution appeals and dismissed Smith's appeal. Howe was sentenced to two years imprisonment with a recommendation for release on parole after serving eight months of that sentence. Smith was sentenced to two years imprisonment with a recommendation for release on parole after serving nine months.

Following the Court of Appeal's decision, Howe lodged an application for special leave to appeal to the High Court of Australia. That application was subsequently abandoned.

In May 1993, Howe was allowed compassionate leave from the correctional centre at which he was being held following the death of his father. Howe absconded while on compassionate leave and a warrant for his arrest is currently in force.

Christopher Charles Skase

On 31 August 1992 two ex-officio indictments were presented in the Brisbane District Court charging Christopher Skase with one offence against section 229(1) of the Companies (Queensland) Code, 29 offences against section 299(4) of the Companies (Queensland) Code and two offences against section 129 of the Companies (Queensland) Code. Skase was not present at the presentation of the indictments due to his medical condition.

On 26 November 1992 the Brisbane District Court listed the charges for trial to commence on 23 August 1993.

On 29 April 1993, medical reports from both Skase's medical advisers as well as an independent medical practitioner engaged by the DPP were tendered to the court. On the basis of these reports Skase's counsel sought and was granted an adjournment of the trial date of 23 August 1993. A new trial date of 14 March 1994 was allocated. The charges against Skase are to be mentioned again on 30 November 1993.

Ian Robert Donald

As indicated in the 1991–92 Annual Report Ian Donald was committed for trial in the Brisbane District Court on 52 counts under section 229(4) of the Companies (Queensland) Code for improperly using his position as a director of Ardina Electrical (Queensland) Pty Ltd ('Ardina'), to gain an advantage for two companies of which he and his wife were the directors and shareholders.

During the period 1986 to 1989, half of Ardina's issued share capital was held by Donald and the other half by Mr and Mrs Sheather. Donald and Mr and Mrs Sheather were directors of the company which was managed by Donald. Mr and Mrs Sheather took no part in the day-to-day running of the business.

It was alleged that in 1986 and 1988, Donald and his wife acquired all of the shareholding of Kayam Constructions Pty Ltd ('Kayam') and Locus Electrical (Townsville) Pty Ltd ('Locus') and were the only directors of both companies. Without the knowledge of Mr and Mrs Sheather, Kayam hired equipment to Ardina and Locus subcontracted work from Ardina. Invoices from these companies were paid by Donald and were not subject to the same processing and checking procedures that applied to invoices from other creditors of Ardina.

On 15 October 1992, Donald was indicted on 47 counts of contravening section 229(4) of the Companies (Queensland) Code. At the direction of the trial judge, Donald was acquitted on 46 counts of making improper use of his position as a director to gain an advantage for Kayam and Locus. The trial judge ruled that, where a person receiving payment by way of a cheque may have been at least entitled to part of the proceeds of the cheque, the person making the payment 'cannot have intended to have conferred an advantage in the sum of all the proceeds of' the cheque within the meaning of section 229(4) of the Companies (Queensland) Code. At the instigation of the DPP, that ruling was subsequently referred to the Court of Appeal under section 669A of the Criminal Code, Queensland.

The Court of Appeal held that the trial judge had erred in making the ruling. The court indicated that even if the companies were owed the money it was an advantage to be paid. If the companies had not been paid they were likely to have sustained a loss on the transactions and even if they had received only enough to meet or offset their losses, that would be capable of amounting to gaining an advantage. The Court of Appeal held it was open to the jury to conclude that in authorising or procuring payment to be made, Donald intended that the two companies should gain an advantage from his authorising those payments, indicating:

> That was so because payment was effected under such circumstances as to ensure that the relevant claims were met without any form of processing or checking of the kind that was applied to claims forwarded by other creditors of Ardina. This was an advantage that it was open to the jury to find the respondent intended and was able to bring about because his position as managing director meant that his actions were not likely to be scrutinised or challenged by other employees or directors of the company.

Donald was convicted on the one remaining count in early September 1993. At the time of writing this report he had not been sentenced.

Western Australia

Alan Bond

On 3 June 1993 Alan Bond was charged with offences alleging contraventions of section 229(1) and 564(1) of the Companies (Western Australia) Code.

The charges relate to the acquisition of the painting *La Promenade* by the French impressionist painter Edouard Manet by Dallhold Investments Pty Ltd, Bond's private company.

Bond is alleged to have acted dishonestly as a director of Bond Corporation Holdings Ltd in not informing that company of the opportunity to purchase the painting for substantially less than its market value and for subsequently causing that company to forgo that opportunity. It is alleged that the offences were committed with intent to deceive or defraud Bond Corporation Holdings Ltd. Bond is also alleged to have furnished false information to the Board of Bond Corporation Holdings Ltd and to have permitted the furnishing of false information to an auditor of that company.

Bond appeared in Perth Court of Petty Sessions on 17 June 1993 and was bailed to appear again on 12 August 1993. On that date he elected to have a preliminary hearing which was set down to commence in January 1994.

Robin Sarah Greenburg

This matter was mentioned in the 1991–92 Annual Report.

On 8 September 1992 Greenburg was sentenced to a total head sentence of 17 years imprisonment for 54 offences involving stealing, contrary to section 378(9) of the Criminal Code (Western Australia), improper use of position as a director, contrary to section 229(4) of the Companies (Western Australia) Code and section 232(6) of the Corporations Law, concealment and destruction of company records, contrary to the *Australian Securities Commission Act 1989* and the Corporations Law and starting a bushfire contrary to the Bushfires Act (WA). The total amount misappropriated was in excess of $4 million. His Honour Judge Viol commented:

> The scheme you devised, the corporate structure and the way in which you ran it demonstrated a complete disregard for all the rules and conventions which apply to the running of a business and/or corporation whether statutory based or otherwise. You marketed the business on the basis that it was for ethical investments and said it was ethically run. Nothing could have been further from the truth. The facts show you were guilty of dishonesty in the extreme.

Greenburg appealed against her sentence to the Court of Criminal Appeal. The appeal was heard on 13 May 1993, with the court reserving its decision.

The Duke Group Limited

On 11 June 1993 charges were laid against Harold Abbot, Peter Alexander Lang Reid and Paul Ferguson Fitzsimmons, former directors of Kia Ora Gold Corporation NL ('Kia Ora'), for breaches of the Companies (Western Australia) Code.

The charges arise out of transactions entered into between Kia Ora and various members of the Duke Group and between certain Kia Ora shareholders and Duke Holdings Limited ('DHL'). It is alleged that those transactions resulted in Kia Ora providing the finance for the acquisition by DHL of Kia Ora shares, contrary to section 129 of the Companies (Western Australia) Code.

Also on 11 June 1993 charges were laid against Charles Bela Kovess, a solicitor involved in the preparation and settlement of the transactions. He was charged with being knowingly concerned in the alleged offences of Abbot, Reid and Fitzsimmons.

On the same day, charges were laid against Reid and Fitzsimmons for breaches of section 229(1)(b) of the

Companies (Western Australia) Code. It is alleged that as directors of Kia Ora, they approved the implementation of the transactions referred to above whilst knowing that they were not for the benefit of Kia Ora.

All of the defendants have been summoned to appear in the Perth Court of Petty Sessions on 16 August 1993.

Independent Resources

As reported in the 1991–92 Annual Report, in February 1992 charges under section 229(4) of the Companies (Western Australia) Code were laid against Michael Fuller, Joseph Cummings and Richard Webb. It is alleged that the defendants authorised the use of assets of companies within the Independent Resources Group for purposes other than for the benefit of those companies.

Webb was also charged with an offence against section 229(2) of the Companies (Western Australia) Code alleging that he failed to exercise a reasonable degree of care and diligence.

Further charges against section 229(4) of the Companies (Western Australia) Code were laid against Cummings in July 1993 in relation to the same transactions.

The preliminary hearing is to be held from 6 September 1993. The delay to date has been caused by civil proceedings in which the defendants have been involved and in steps taken by the parties to define the issues and to rationalise the evidence to be presented at the preliminary hearing.

It is proposed that the charges against Webb be dealt with summarily after the preliminary hearing.

In May 1993, as a result of an investigation conducted by the National Crime Authority in Perth, charges were laid against Fuller and Cummings in relation to a transaction involving IRL, Spargos Mining NL and Benguet Exploration Inc. It is alleged that the transaction involved the acquisition of interests in a mine in the Philippines at inflated prices. In May 1993, Fuller was charged with offences against sections 229(4) and 229(1) of the Companies (Western Australia) Code. Cummings was charged with being knowingly concerned in the 229(4) offence. A Statement of Material Facts will be served before 6 September 1993 when a date will be set for the defendants to elect whether they wish to have a preliminary hearing.

Parry Corporation

As indicated in the 1991–92 Annual Report, Kevin Parry was charged with two offences against section 229(4) of the Companies Code which arose as a result of companies of which he was a director committing assets in support of another company within the 'Parry Group'.

In May 1992, Parry was committed for trial in the District Court. The trial began in March 1993. The jury was unable to come to a unanimous verdict on either count. By a majority, they found Parry not guilty on one count and were unable to reach a verdict on the other. A retrial on the outstanding count has been set down for April 1994.

South Australia

Michael Joseph Veigli (Investors Equity Group Ltd)

In November 1992, Michael Veigli was arraigned on 27 offences against the former section 96 of the Companies (SA) Code for issuing to the public forms of application for shares without having a registered prospectus attached to the form.

It was alleged that Veigli ran an investment advisory business which he wished to float on the Stock Exchange.

Veigli lodged a number of re-drafts of the prospectus with the former Corporate Affairs Commission for registration. The CAC did not register the prospectus and the application for registration was withdrawn. It was alleged that Veigli approached the clients of his advisory business directly and offered them shares for subscription. He raised $460 200 from 27 investors. The company went into liquidation 12 months later and there will be no return to the shareholders.

In June 1993, Veigli pleaded guilty to the charges shortly before the trial was due to start but contended that he had received legal advice authorising him to approach his clients. The prosecution did not accept this submission and called witnesses to establish that this was not the case. After a hearing lasting five days the Court found that Veigli had not received such advice.

On June 1993, Veigli was sentenced to two years imprisonment with a non-parole period of 16 months. The sentence was suspended upon Veigli entering good behaviour bond for two years in the sum of $1 000. This was the first case under section 96 to be prosecuted on indictment.

Jacob Rubenstein (aka Jack Newman)

This matter concerned an ASC investigation in relation to alleged hawking of shares in a medical research company, Sy-Quest International Ltd. It was believed that over a period of two years, Jacob Rubenstein, the managing director of Sy-Quest, had sold in excess of $2 million worth of shares in Sy-Quest, these shares having previously been allotted to him at a significant discount.

During the course of the investigation the ASC discovered that Rubenstein was wanted in the United States of America in respect of securities fraud offences. The ASC contacted the American authorities who almost immediately initiated an extradition request. Rubenstein was arrested at the end of the annual general meeting of Sy-Quest in Adelaide on 7 April 1993 pursuant to an Extradition Act warrant.

In consultation with the DPP, the ASC completed the investigation with a view to finalising any prosecution before Rubenstein's surrender to the United States of America.

In June 1993, Rubenstein was charged with 10 counts of section 1018 of the Corporations Law, representing approximately $600 000 worth of share purchases. He pleaded guilty and on 25 June 1993 was given a 12 months suspended sentence. Rubenstein was subsequently deported to the United States of America.

Fuller, Johnson and Cummings (Beach Petroleum N.L.)

Following an investigation by the National Crime Authority charges were laid on 25 June 1993 against Michael Fuller, Malcolm Johnson and Joseph Cummings for conspiracy to defraud in connection with an alleged scheme whereby Beach Petroleum NL acquired interests in the Burbank Oilfields in Okalahoma at a grossly inflated price of $US28 million. It is further alleged that the same interests had been purchased by entities controlled by Johnson for about $US3.7 million.

Byrnes and Hopwood (Magnacrete Ltd)

Martin Byrnes and Timothy Hopwood were charged in March 1991 with breaching their duty as directors of Magnacrete Ltd under section 229(4) of the Companies (South Australia) Code.

The basis of the alleged improper use of position was twofold. First, it was alleged that as directors of Magnacrete Ltd and Jeffcott Investments Ltd, in circumstances where they had a clear conflict of interest, they orchestrated a scheme whereby $1.7 million of Magnacrete's funds were used to

purchase a shortfall in subscriptions to an issue of convertible notes by Jeffcott knowing that Jeffcott was in need of funds to re-finance its debt. Secondly, it was alleged that in implementing the scheme they did not properly consider the interests of Magnacrete and that as a matter of fact the scheme was not in Magnacrete's interests.

The trial commenced at the beginning of April 1993 before a judge and jury of the District Court. After three weeks the jury was discharged for a number of reasons, one of which was that a woman juror claimed she was ill through stress at having to sit day after day listening to the evidence and not understanding it. The accused agreed to continue the trial in the absence of the jury which is permitted under South Australian law. The trial went for 42 sitting days, at the end of which the trial judge reserved his verdict. On 3 August 1993 the trial judge found both Byrnes and Hopwood guilty of the offences charged.

Australian Capital Territory

White Constructions Ltd

As indicated in the 1991–92 Annual Report, in November 1991 charges were laid under section 108 of the *Companies Act 1981* and section 125 of the Securities Industry Act against four directors, one former director and the auditor of White Constructions Ltd in relation to a prospectus issued in 1987.

On 30 October 1992, the charges against Geoffrey White, John Spinks, Alan Wells, Travers Duncan, Frank McAlery and Geoffrey Clarke were dismissed in the ACT Magistrates Court.

On 26 November 1992 the Australian Securities Commission applied to the Federal Court of Australia to review the decision of the magistrate under the provisions of the Administrative Decisions (Judicial Review) Act. The matter was heard by Neaves J who, on 18 June 1993 reserved his decision.

R & G Shelley Pty Ltd

On 1 December 1992, Graeme Shelley and Robert Shelley, former directors of the failed construction company, R & G Shelley Pty Ltd, were summoned to appear in the Canberra Magistrates Court for breaches of section 229(4) and section 556(1) of the *Companies Act 1981*. Further charges against both defendants for breaches of sections 556(1) of the *Companies Act 1981* were laid on 10 March 1993.

A total of 10 counts of contravening section 229(4) and 18 counts of contravening section 556(1) have been laid against Graeme Shelley. Robert Shelley has been charged with a total of three counts under section 229(4) and 18 counts under section 556(1).

It is alleged that both Robert and Graeme Shelley used their positions as directors of R & G Shelley Pty Ltd to ensure that particular creditors were paid in preference to others. The favoured creditors included their wives and some employees. It is also alleged that the company incurred debts to trade creditors and the National Australia Bank when there were reasonable grounds to expect that the company would not be able to pay its debts as and when they fell due.

The summary hearing of the matter commenced on 9 August 1993. On 24 August 1993, after the Magistrate had found a prima facie case on all charges, the defendants entered pleas of guilty, in the case of Graeme Shelley, to four counts under section 229(4) and 12 counts under section 556(1), and in the case of Robert Shelley. to three counts under section 229(4) and 10 counts under section 556(1). Graeme Shelley was given a 12 months suspended gaol sentence, and Robert

Shelley an eight-month suspended gaol sentence. Both men were also ordered to perform community service.

Tasmania

David Malcolm McQuestin

On 9 December 1991 David Malcolm McQuestin was charged by complaint with one count of failing to exercise reasonable care, skill and diligence in the exercise of his powers and the discharge of his duties as a director of ENT Limited, contrary to section 229(2) of the Companies (Tasmania) Code.

ENT Limited was a medium-sized company listed on the Australian Stock Exchange. It had a reasonably wide spread of shareholders and its main business was newspaper and television interests. Over a number of years, the company had expanded and diversified primarily under the control and guidance of the then titled Sir Edmund Rouse, who was managing director until 1986 when McQuestin took over. On McQuestin becoming managing director Rouse continued to be involved in the company's affairs as its chairman.

On 13 June 1989, Rouse asked McQuestin to obtain $10 000 in either used or random notes. At the time Rouse asked for the money, he did not tell McQuestin what he intended to use it for, nor did McQuestin make any inquires to find out what was to happen with that money. McQuestin then asked the company's financial director, Mr Clark, to get the money for him. Mr Clark obtained the money from a safety deposit box which the company had with its banker and which contained cash that had been accumulated from unaccounted sources.

McQuestin then handed the money to Rouse, again without inquiring what Rouse was going to do with it. It was alleged that Rouse used the money in an attempt to bribe a Labor MP, Mr Jim Cox, to cross the floor of Parliament in order to bring down the recently elected State Labor Government.

At all times, McQuestin maintained that he did not know what Rouse intended to use the $10 000 for and had no reason to distrust him or question his honesty.

On 15 May 1992, McQuestin appeared in the Court of Petty Sessions Launceston before Magistrate Sam Mollard Esq and pleaded guilty to the charge. The statement of facts and plea in mitigation took two days, after which sentencing was adjourned to enable the prosecution and counsel for McQuestin to prepare and exchange written submissions in relation to the appropriation disposition of the matter.

On 23 December 1992, the magistrate handed down written reasons why he was not going to deal with McQuestin under the State equivalent of section 19B of the *Crimes Act 1914* and that he was going to proceed to conviction and fine him $1 250. The actual imposition of the sentence was deferred to 28 January 1993 to enable McQuestin to seek a stay of orders and lodge an appeal. The appeal is yet to be determined.

Northern Territory

Arafura finance

During the period 1987 to 1989, Kevin McCarthy and Roman Solczaniuk were the directors of Arafura Finance Corporation Pty Limited (AFC) and a number of associated companies. AFC, which operated from Darwin, provided financial services (principally debt factoring) to its customers. AFC in turn had a factoring arrangement, dating back to 1985, with a Sydney-based finance company called Heller Financial Services Limited.

On 30 September 1992, McCarthy and Solczaniuk were charged with a number of offences against both the Companies (Northern Territory) Code and the Northern Territory Criminal Code. Further charges were laid in June 1993.

McCarthy is charged with three offences of failing to act honestly as a director with intent to defraud a creditor contrary to section 229(1) of the Companies (Northern Territory) Code, three offences of making improper use of his position as a director to gain an advantage contrary to section 229(4) of the Companies (Northern Territory) Code, 20 offences of being knowingly concerned in a fraudulent act by a company to which a receiver was later appointed contrary to section 556(5) of the Companies (Northern Territory) Code, 21 offences of obtaining money by deception from Heller contrary to section 227(1) of the Northern Territory Criminal Code, four offences of uttering forged documents contrary to section 260 of the Northern Territory Criminal Code and three charges of stealing contrary to section 210 of the Northern Territory Criminal Code.

Solczaniuk is charged with one offence of failing to act honestly as a director with intent to defraud a creditor contrary to section 229(1) of the Companies (Northern Territory) Code, one offence of being knowingly concerned in the offence of McCarthy in making improper use of his position as a director to gain an advantage contrary to section 229(4) of the Companies (Northern Territory) Code, 20 offences of being knowingly concerned in a fraudulent act by a company to which a receiver was later appointed contrary to section 556(5) of the Companies (Northern Territory) Code, 37 offences of obtaining money by deception from Heller contrary to section 227(1) of the Northern Territory Criminal Code, and one offence of stealing contrary to section 210 of the Northern Territory Criminal Code.

It is alleged that McCarthy and Solczaniuk engaged in a number of dishonest transactions of which Heller was the victim.

Basically the charges relate to six separate types of alleged transactions:

1. AFC's dealings with Heller in relation to a factoring customer called Northern Territory Souvenirs Pty Ltd in which AFC submitted dummy invoices to Heller representing them as genuine and thereby obtained about $500 000.
2. AFC's dealings with Heller in relation to a company which traded under the name of Darwin Hyundai in which AFC falsely represented to Heller that it had a debt for that company and thereby obtained about $85 000.
3. AFC's dealings with Heller in relation to a factoring customer called Housemaster Developments Pty Limited in which AFC submitted false invoices to Heller representing them as genuine and thereby obtained about $500 000.
4. The issue of a share certificate in a company called Arafura Frontier Holidays Limited to Arafura Finance Group Limited with the intention of defrauding Heller by in effect placing assets valued at about $1 million belonging to companies over Heller had a charge, beyond the reach of Heller.
5. The uttering of forged documents to effect the transfer of investors funds from AFC in order to avoid payment of a charge over the assets of that company held by Heller.
6. The misappropriation of moneys ($86 000) owing to AFC or related companies by a company called

Cesco Pty Limited at a time when AFC and those related companies were in receivership at the instance of Heller.

The matter is set for a two-week committal hearing beginning 13 December 1993.

Review of corporate prosecutions funding

During the year, officers from the DPP together with representatives of the Attorney-General's Department and the Department of Finance undertook an extensive review of the caseloads and anticipated workloads in relation to Corporate Prosecutions. The review encompassed matters on hand, the expected course of those matters and matters likely to be referred by the Australian Securities Commission.

The conclusions reached in the course of the review were forwarded to the Attorney-General and the Minister for Finance and form the basis for future funding.

Section 77 arrangements

Section 77 of the various States' and Northern Territory Corporations Acts enables arrangements to be made which will confer State and Commonwealth functions and powers on Commonwealth and State officers and authorities respectively.

Negotiations in relation to these arrangements are continuing between the Departments of the Commonwealth and State Attorneys-General.

Corporate law reform

The Commonwealth and State Governments, through the Standing Committee of Attorneys-General, have been working towards the development of a uniform Australian Criminal Code.

The Office of the DPP will continue to participate in that process and, in the context of Corporate Crime, supports an approach which will rationalise the present system under which corporate misconduct may be prosecuted under the Corporations Law and/or State legislation. Ideally, corporate misconduct should be capable of being prosecuted under identical offence provisions regardless of where that misconduct occurs.

The Office of the DPP has provided its views to the Attorney-General's Department in relation to aspects of the offence provisions in the Corporations Law and looks forward to participating in the process of review of the Corporations Law announced by the Attorney-General.

Chapter 5 Criminal assets

Criminal assets confiscated

In 1992–93 the DPP recovered approximately $8.3 million in criminal assets in conjunction with other Commonwealth agencies. Details follow.

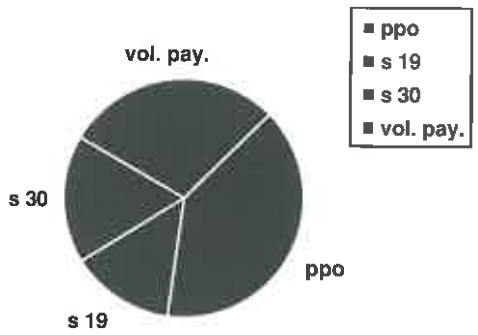
Proceeds of Crime Act (PoC Act)

$2.3 million was confiscated under the PoC Act. At 30 June 1993 a further $1.3 million in property was forfeited but not disposed of.

In 1992–93 the DPP obtained restraining orders over approximately $7.7 million worth of property. Including property restrained in previous years, at 30 June 1993 $38.8 million worth of property was restrained under the PoC Act at 30 June 1993.

The following chart shows the proportions of the different forms of recovery to the overall recovery under the PoC Act:

Figure 1: Proportions of different forms of recovery under the Proceeds of Crime Act 1992–93



Customs Act

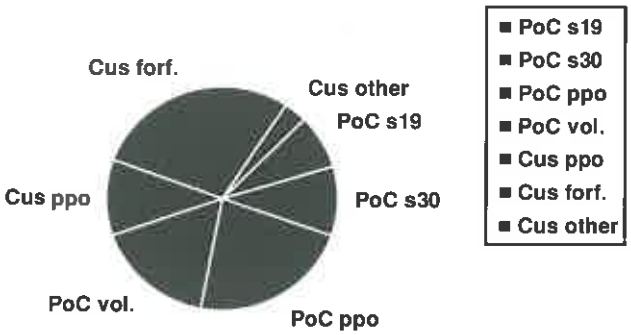
In 1992–93 the DPP recovered $1.7 million under the narcotics provisions of the *Customs Act 1901* made up of $444 554 in pecuniary penalty orders, $1.2 million from the disposal of forfeited and condemned property and $132 000 recovered in other ways.

During the same year approximately $972 500 in property was seized in cases referred to the DPP and approximately $564 186 in property was condemned in cases referred to the DPP.

On 30 June 1993 approximately $2.7 million in property was restrained and $616 582 in pecuniary penalty orders remained unpaid.

In 1992–93 the Australian Federal Police seized forfeited property under the Customs Act which was condemned and disposed of without involvement by the DPP. Approximately $300 000 was paid into the Confiscated Assets Trust Fund from this source.

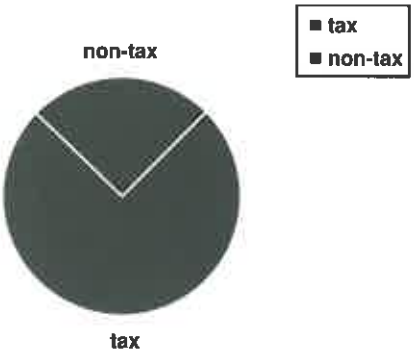
Figure 2: Comparison of Proceeds of Crime Act recovery and Customs Act recovery



Civil remedies

In 1992–93 a total of $4.3 million was recovered by civil remedies, $3.2 million was recovered by civil remedies in taxation matters and $1.1 million was recovered by civil remedies in non-taxation matters. At 30 June 1993 $7.1 million in property was secured by injunction or otherwise and $12.3 million in judgment debts was outstanding.

Figure 3: Proportion of tax civil remedies to non-tax civil remedies carried out by DPP in 1992–93



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

Developments and trends

In 1992–93 the DPP recovered a total of $8.3 million, compared with $5.2 million in 1991–92 and $7.2 million in 1990–91.

In 1992–93 the amount recovered by the DPP under the PoC Act was $2.3 million. In 1991–92 the DPP recovered a total of $2.2 million and, 1990–91, $1.1 million. Much greater recoveries are expected in 1993–94 when a number of large matters should be completed. The quantum of work remained steady. In the case of restraining orders, for example, the DPP obtained 49 in 1992–93, as opposed to 44 in 1991–92. The DPP obtained 15, 18 and 18 pecuniary penalty orders in 1992–93, 1991–92 and 1990–91 respectively.

In the Customs area there was a large increase in the amount recovered by the DPP. In 1992–93 $1.7 million was recovered, while in 1991–92 $238 867 was recovered. The increases were in both pecuniary penalty orders and

forfeitures and condemnations. Customs Act work continues to be an important area for recovery. The DPP uses the pecuniary penalty order provisions of the Customs Act less because of the existence of the equivalent provisions in the PoC Act. The Customs Act forfeiture and condemnation provisions are very effective in their area of operation and are used often by the DPP.

The civil remedies area continues to play an important in role in removing proceeds from offenders. Recoveries are significantly up on 1991–92 where $2 778 737 with $4 329 138 recovered in 1992–93.

Size of matters

Details of the size of orders and recoveries under the Proceeds of Crime Act are:

Orders

In 1992–93 the DPP obtained a total of 49 restraining orders which, on average, restrained an estimated $158 167 in property.

In 1992–93 the DPP obtained a total of 15 pecuniary penalty orders worth a total of $1 995 839. The average value of the orders was $133 055. A total of three section 30 automatic forfeitures occurred with an estimated total value of $65 232. The estimated average value of the section 30 forfeitures was thus $21 744. There were ten forfeitures ordered under section 19 which concerns forfeiture of tainted property. The estimated value of the forfeited property in nine of the cases was $340 707 which results in an estimated average forfeiture of tainted property of about $37 856. The other forfeiture was for approximately $1.6 million.

Recoveries

Recoveries reveal the same pattern of substantial amounts. In 1992–93 the DPP recovered $922 433 in a total of 18 pecuniary penalty orders. The average value of the recovery was $51 246. A total of $401 150 was recovered under the automatic forfeiture provisions of section 30 in five cases resulting in an average recovery of $80 230. A further $319 959 was recovered under the forfeiture of tainted property section 19 provision resulting in an average forfeiture of $26 663.

Types of matters

The DPP's Customs Act forfeiture and condemnation cases all relate to narcotic drugs. In the case of the PoC Act, confiscation cases involve prosecutions for either fraud and similar offences on government departments such as the Department of Social Security, drugs offences under the Customs Act, breaches of the Financial Transaction Reports Act or money-laundering. Civil remedies cases involve fraud on the Australian Taxation Office or other government departments.

Rationale for criminal assets initiative

Australia and many other countries have in recent years introduced legislation aimed at confiscating the proceeds of crime.

The rationale for recovering criminal assets is to deprive criminals of the profits they make from crime. This is because it is unconscionable for criminals to retain their ill-gotten gains. Secondly, it is designed to discourage criminals from 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. The loss of profits together with imprisonment poses a far greater deterrence. Thirdly, it is aimed at attacking organised crime. In organised crime, the arrest and removal

of participants, even ring leaders, can leave the organisation intact. The organisation can replace those imprisoned or criminals may 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 Australia a series of Royal Commissions in the 1970s and 1980s called for action to counter drug dealing and its huge profits. 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 three main avenues for recovering the proceeds of crime:

- the PoC Act;
- in narcotics cases, the forfeiture and pecuniary penalty provisions of the Customs Act; and
- the civil remedies function.

Finally, the *Crimes (Superannuation Benefits) Act 1989* and Part VA of the *Australian Federal Police Act 1979* provide for the loss of employer-funded superannuation in certain corruption cases.

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.

Proceeds of Crime 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 the following cases tainted property was forfeited under section 19.

Karim

The defendant arrived in Australia as a member of a commercial airlines air crew and attempted to leave Australia three days later. At the airport he handed a departure card to the Australian Customs Service in which he indicated that he was not in possession of any currency having a value in excess of $5 000. Under the *Financial Transaction Reports Act 1988* he was required to disclose amounts in excess of $5 000. A Customs drug sniffing dog reacted to a bag the defendant was carrying. The bag was subsequently searched and found to contain $A99 000, Yen955 000 and $Singapore76.

The defendant was charged with transferring this currency into and out of Australia without making a report, contrary to the Financial Transaction Reports Act. He pleaded guilty to these charges and was fined $2 000. He consented to the currency being forfeited to the Commonwealth as tainted under section 19 of the PoC Act. When this money was converted into Australian currency it was worth $110 208.

Chapman

The defendant was a member of the Australian Federal Police. He was convicted of conspiring with others to import cannabis into Australia. He also stole from an AFP station cannabis which was being held as evidence. He sold the cannabis and received approximately $10 000 which he intended to use to fund that importation.

The defendant was convicted and sentenced to 10 years imprisonment with a two-year non-parole period. The DPP applied successfully for forfeiture of the $10 000 under section 19 on the basis that it was tainted property.

Case note

The defendant pleaded guilty to being knowingly concerned in the importation of 2.96 tonnes of cannabis resin. After he pleaded guilty he consented to forfeiture orders over a plane and boat used in connection with the importation of the drugs. The plane is worth approximately $140 000 and the boat is worth approximately $35 000.

Williams

The defendant pleaded guilty to one count of possessing $890 498 which was reasonably suspected of being the proceeds of crime contrary to section 82 of the PoC Act. On 25 February 1993 she was convicted and ordered to perform 120 hours of community service.

Her former husband, Grover, pleaded guilty on 14 August 1989 to 10 charges relating to the possession or disposal of property that may reasonably be

suspected of being proceeds of crime contrary to section 82 of the PoC Act. He was sentenced to a total of four-and-a-half years imprisonment with a minimum term of three years. The money was the proceeds of canabis trafficking in the United States. The proceeds were placed in bank accounts in Australia, used to purchase properties and vehicles. The major part of the funds was subsequently transferred to Vanuatu. On 29 November 1990 Grover was extradited to the United States of America in connection with offences involving canabis.

Prior to her sentence Williams consented to forfeiture orders being made over property that had been previously restrained in Australia and in Vanuatu. Under these orders property worth approximately $130 000 in Australia and approximately $1.5 million held in trusts in Vanuatu were forfeited.

The Vanuatu authorities are assisting in enforcing the forfeiture orders in Vanuatu. At this stage it is not clear whether the funds will be retained by the Vanuatu authorities or repatriated to Australia.

Serious offence (section 30)

- There are special provisions in relation to serious offences. Serious offences are:
- narcotics offences involving more than a trafficable 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 and 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.

Last year's annual report contained a report on the leading case on section 48(4), *DPP v Jeffrey*, (1992) 58 A Crim R 310, which has been appealed by Jeffrey and the Commonwealth. In the following case the court followed the ruling in Jeffrey.

Connors

The defendant was convicted of a serious narcotics offence. A number of items of his property were restrained, including a house occupied by his wife and child, a vacant block of land, two cars, a motorcycle, a motorboat, cash and some trade tools and equipment. All this property would have been forfeited under section 30 six months after the date of his conviction.

The defendant made an application under section 48(4) to have the property unrestrained. This application was rejected by the court which applied the decision in *DPP v Jeffery*. The Court held that the defendant had failed to show he had acquired the property lawfully, particularly in view of the fact that he had not paid income tax during his working life and that the funds made available by this tax evasion had been used to acquire the items of property.

The defendant also made an application under section 48(3)(g) which provides that a court may unrestrain property if it is satisfied that it is in the public interest to do so. The

court ordered that the house and the tools should not be forfeited on the basis that their forfeiture would cause the defendant's family unjustifiable hardship.

Pecuniary penalty orders

Where a person has obtained a benefit 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 decline in the purchasing power of money from the time of the offence to the time of the order;
- 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.

Sopher

The defendant pleaded guilty to five charges under section 29A of the *Crimes Act 1914* and 10 charges under section 29D of the Crimes Act. Over a period of 17 years the defendant had used multiple false names to systematically defraud the Department of Social Security.

The Department of Social Security had overpaid the defendant $400 591. When the decline in the purchasing power of money was taken into account, this became a benefit of more than $635 000. Prior to sentencing the defendant paid the Department of Social Security $299 995. He was later ordered to pay a pecuniary penalty of $336 973. On 27 August 1993 the defendant repaid all money outstanding on his pecuniary penalty order and interest on the pecuniary penalty order.

The defendant was sentenced to four years imprisonment with a non-parole period of 18 months. The Crown has appealed against this sentence on the ground that it is manifestly inadequate and the defendant has appealed against his sentence.

Shalhoub

The defendant was convicted in the District Court of one offence against section 86A of the Crimes Act of conspiring with other persons to defraud the Commonwealth and one offence against section 29D of the Crimes Act of obtaining a benefit by deceit. He was sentenced to a total of four years imprisonment with a non-parole period of two years.

The defendant and another conspirator were employees of the Department of Social Security. They devised a system for the lodgment of false unemployment and sickness benefit forms. The defendant would enter into the DSS computer claims for benefits made in fictitious names. Another defendant arranged addresses of associates to which the DSS forms were to be sent, collected and completed those forms and opened bank accounts into which the monies were paid. Another conspirator had the dual role of opening false bank accounts and endorsing claim forms to the effect that the claimant was registered at the Commonwealth Employment Service. Different conspirators operated various false names and received the benefits obtained in those names. The roles of the conspirators tended to be fluid, particularly in respect of who operated the false name accounts and who received the monies.

The difficulty was in working out the benefits derived by the defendant. He claimed he received a little over $60 000. The judge found that the DPP could not be expected to trace how all the monies falsely claimed were distributed or precisely what the defendant obtained from his participation in the criminal activity. The court looked at the value of the defendant's property before, during and after the commission of the offences. It looked at the defendant's living expenses during the period and took into account his expenditure on 'the good life' which he claimed to be the $60 000 that he obtained from the offences.

The court concluded that during the relevant period the defendant had a net increase in real estate amounting to $122 000, spent $15 000 on motor vehicles, $69 393 on living expenses and $40 000 on 'the good life'. This gave a total of $246 393. The court then examined his and his wife's income from lawful sources and found that they amounted to $152 299. The difference between the two figures was $94 094 and the court rounded this off to order a pecuniary penalty in the sum of $94 000.

The DPP has obtained recovery of the total amount outstanding including the DPP's costs and the Official Trustee's charges.

Strauss

The defendant pleaded guilty to six counts of defrauding the Commonwealth. He had made false claims for a Commonwealth subsidy for six private nursing homes operated by companies under his control.

A hearing took place to determine, for sentencing purposes, the amount by which the defendant or his companies had benefited from the commission of the offences. The Commonwealth claimed that the total amount defrauded amounted to approximately $2.2 million. The defendant's plea was limited to the amounts defrauded by means of the practice of ghosting which comprised only $300 000. Ultimately the court found that the quantum of the fraud was $882 000. The defendant was sentenced to five years imprisonment with a non-parole period of two years and six months.

DPP then applied for a pecuniary penalty order equal to the benefit derived from the commission of these offences. The Commonwealth's claim against the defendant was eventually compromised. In accordance with this agreement a pecuniary penalty order in the sum of $1 400 000 was made against the defendant by consent. This amount is being repaid over time in accordance with the terms of the agreement.

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 he made voluntary repayment will usually count to his 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.

Sopher

As mentioned earlier the defendant had obtained a benefit of approximately $635 000. Prior to sentence he repaid $299 995.

Leeds

The defendant was charged with defrauding the Commonwealth of $210 457. He was a director of a company which had an agreement with the Department of Industry, Technology and Commerce. He provided false documentation to the Department to mislead it into believing that monies advanced by it pursuant to the agreement had been disbursed in accordance with the terms of the agreement.

The defendant was charged and the DPP obtained a restraining order over the defendant's interest in his home. The defendant pleaded guilty over a year later. Prior to his entering his plea the defendant caused full restitution in the sum of $210 457 to be paid to the Commonwealth.

The defendant was fined $10 000 and released on his own recognisance to be of good behaviour for a period of two years.

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.

Effective control

Section 9A of the PoC Act provides that property or an interest in property may be subject to the effective control of a person whether or not the person has a legal or equitable interest in the property or has a right, power or privilege in connection with the property. Section 9A also provides that in determining whether or not property is subject to a person's effective control, regard may be had to share holdings in, debentures over or directorships of a company that has an interest in the property, a trust that has a relationship to the property and family, domestic and business relationships between persons having an interest in property.

Under the PoC Act the DPP may restrain property not owned by a person but under that person's effective control. That property can be forfeited or used to pay a pecuniary penalty order made against that person. The effective control provisions are one of the most powerful tools in the PoC Act.

Sopher

The defendant had defrauded the Department of Social Security and received an overpayment of $400 591. The DPP obtained a restraining order over all of the defendant's property shortly after his arrest. The DPP obtained production orders requiring the production of property tracking documents held by the defendant's solicitors and banks. The information obtained from the production orders led the DPP to believe that at least three residential properties registered in the names of two of the defendant's adult children were under his effective control. That evidence included the fact that the children had executed powers of attorney in favour of the defendant in relation to the property. The defendant had also given instructions to his solicitors for the purchase of the property and had been involved in the collection of rent on and maintenance of the properties. One of the children who owned one of the properties lived overseas.

The DPP obtained restraining orders over three properties registered in the name of the defendant's children on the basis that the defendant effectively controlled them.

The defendant pleaded guilty and made restitution of $299 995 prior to sentence. At sentence a pecuniary penalty order was made in the sum of $336 973. The restraining orders were then varied to allow the sale of one restrained property and the mortgage of another to pay the pecuniary penalty order.

Corporations Law

In many corporate offences, benefits gained by offenders result in corresponding losses to company shareholders and/or creditors. These shareholders and creditors may have civil remedies against an offender to recover such losses. There may also be receivers or liquidators who are in a position to take recovery action against offenders. The ASC has, under its legislation and the Corporations Law, a wide array of powers to preserve and recover assets or to intervene to protect interests.

Recoveries under the PoC Act are paid into the Confiscated Assets Trust Fund. Action under the PoC Act to

recover benefits from an offender may have the effect of removing property that would otherwise be available to recompense those suffering losses as a result of the actions of the offender.

It is appropriate that, where possible, any available property be used to compensate those suffering losses. The overriding consideration is to ensure that offenders are deprived of the proceeds and benefits derived from the commission of offences. This objective may be achieved by effective civil action by shareholders or creditors or the ASC under its statutory powers. Such civil action should usually take priority over potential PoC action.

In some cases, shareholders, creditors or the ASC may be unwilling or unable to take effective civil action. The PoC Act may allow recovery against property that is not available to satisfy any civil recovery such as property under a defendant's effective control. In these cases it is appropriate that, subject to the normal guidelines for the use of the PoC Act, the DPP take action under the PoC Act. Where such action is to be taken there should normally be consultation with the ASC and other relevant parties.

In 1992-93 the DPP obtained its first restraining order over the property of the person charged under the Corporations Law.

Crowley

The defendant, a builder, pleaded guilty to obtaining credit of about $193 000 by fraud. He had used corporate and trust structures to put the assets of his trading company beyond the creditors' reach. The defendant's creditors had commenced an action against the defendant's company which was in liquidation but it was unclear whether the liquidators would be able to recover against the property held by the family trust. The DPP decided to take action under the PoC Act to recover the benefit derived from the offences, after consultation with the creditors and the ASC. The DPP sought and obtained a restraining order over a house in which the defendant lived. The house was not held in the defendant's name but in the name of a family trust from which the defendant had distanced himself. The DPP believed that the property was under the defendant's effective control.

After the defendant pleaded guilty the family trust volunteered to make restitution to the defendant's creditors. The liquidators intend to use the restrained property as security for loans to repay the creditors. The DPP consented to this course.

Legal costs

Section 43(3) of the PoC Act provides that a restraining order over a person's property may make provision for meeting out of the restrained property the person's reasonable expenses in defending a criminal charge.

In the 1991–92 Annual Report there was a detailed examination of these provisions and their impact on the proceeds initiative. These provisions continue to be a problem.

Customs Act

Pecuniary penalty orders

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

There are several differences between the two Acts. Proceedings under the Customs Act are not conviction based. The Customs Act provisions apply if a person has engaged in a prescribed narcotics dealing and do not require that a person be convicted of an offence. Applications for pecuniary penalty orders are heard in the Federal Court.

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.

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.

Forfeiture

The Customs Act provides 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 only when action is taken by, for example, the defendant, to seek recovery of seized goods.

Cheung

The AFP seized under the Customs Act two Mercedes Benz 230E sedans and one Nissan 300ZX coupe owned by Cheung and his wife. The cars were seized in the course of an investigation into Cheung's activities. Cheung had been implicated in the importation of approximately half a kilo of heroin by a courier.

The DPP analysed Cheung's financial affairs and discovered a disparity between his assets and his known legitimate sources of income. On the basis of this the AFP considered that there were reasonable grounds for believing that the motor vehicles owned by Cheung and his wife had come into their possession or control by reason of Cheung's selling or otherwise dealing in

narcotic goods imported into Australia in contravention of the Customs Act. Accordingly the AFP considered the cars were forfeited to the Commonwealth.

Ultimately Cheung made admissions concerning the source of funds used to purchase two of the vehicles. Cheung's wife then made a claim for return of two of the vehicles. These proceedings were not brought within the time specified in the Customs Act and accordingly the cars were all condemned as forfeited to the Commonwealth.

The three vehicles were sold and the proceeds of the sale amounting to approximately $126 000 was paid to the Confiscated Assets Trust Fund.

Case note

The defendant was charged with importing cocaine and all his property was restrained under the PoC Act including property he effectively controlled. One month later he showed the AFP where $525 000 was buried at several locations. The defendant admitted that the money was the proceeds of drug dealings. The money was forfeited and condemned under the Customs Act and paid into the Confiscated Assets Trust Fund.

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 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.

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.

Garcia

The defendants were investigated for structuring offences under the Financial Transaction Reports Act 1988 and tax fraud as a result of information provided by AUSTRAC. The DPP exercised its civil remedies function.

The Australian Taxation Office issued amended assessments for in excess of $300 000. By that time one defendant had left Australia for Spain and failed to return on the expected date. His wife

was unable to provide ATO with an address in Spain. The DPP issued writs on behalf of the ATO and obtained an order for substituted service. Applications for summary judgment were filed and a notice was issued pursuant to section 218 of the *Income Tax Assessment Act 1936*. The defendants then paid all outstanding tax penalties and legal costs.

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.

Price

The defendant pleaded guilty to eight charges under section 29A and eight under section 29D of the Crimes Act. The offences had occurred over 21 years and involved the use of 10 false names resulting in the Department of Social Security and the Department of Veterans' Affairs being defrauded of $599 718. The defendant was sentenced to six years imprisonment with a non-parole period of two years.

The DPP and DSS identified a number of the defendant's assets including four properties at Ballina on the New South Wales north coast which had a total estimated value of $750 000.

The DPP had the option of taking action under the PoC Act but decided in consultation with DSS to take civil recovery instead. This was because of the defendant's ill health, her advanced age and her solicitor's advice that she intended to repay the money. The DPP exercised its civil remedies function to coordinate and supervise an action taken by the Australian Government Solicitor for the recovery of the monies. The defendant agreed to a judgment being entered against her in the sum of $1 195 327 which included an interest component calculated on the moneys defrauded. In addition the defendant signed an agreement to execute mortgages over the four properties in favour of the Commonwealth and to sell all but one. The fourth property she owns jointly with her de facto husband. Subsequently mortgages were executed in favour of the Commonwealth over all four properties.

Three of the properties have now been sold and the proceeds paid to the Commonwealth. DSS has garnisheed the defendant's bank accounts and along with DVA is withholding a proportion of her current benefits entitlements. From these recovery methods, a total of $484 011 has been repaid to the Commonwealth. It is unlikely that the Commonwealth will recover the total amount of the fraud, some $1.2 million.

Confiscation and taxation recoveries

Defendants in PoC Act cases rarely pay tax on their illegal income. The raising and enforcement of default assessments can therefore be an effective way of removing some or all of the proceeds from an offender. The Australian Taxation Office has responsibility to collect tax on all income.

The DPP can also have a role in a taxation recovery through its civil remedies function. The DPP is also responsible for the enforcement of the PoC Act. Each form of recovery has its advantages and limitations. The approach taken by the DPP is to consider each case and to chose the most effective way to remove all ill-gotten gains from a defendant while

ensuring that powers under the PoC Act are not used for the purpose of assisting in a taxation recovery.

In some matters there is potential for competition for available assets between a PoC action and a taxation recovery.

On one view, where proceeds are derived from criminal activity and there are proceedings in place to recover those proceeds under legislation specifically designed to remove criminal proceeds, then these proceedings should take priority. Criminal activity is the gravamen of the matter and the legislation has the specific purpose and aim of combating such criminal activity. Persons should not get to keep any criminal proceeds. On this view, where tax is assessed on the basis of illegal income or illegally obtained property and that income or property is confiscated, then any tax should be reassessed taking into account the confiscation.

Another view is that tax is payable on all forms of income, including illegally obtained income, and the tax liability should remain whether or not the illegal income is confiscated.

Good cooperation between the DPP and the ATO has meant that most difficulties in this area have been satisfactorily resolved on a case-by-case basis. Ongoing liaison between the two agencies should ensure that this cooperative approach is maintained. In the longer term it may be that legislative amendments will be needed to resolve priorities between the PoC Act and ATO recovery action in cases where they are competing for the same pool of ill-gotten assets.

Confiscated Assets Trust Fund

Money recovered under the PoC Act, the narcotic offences provisions in the Customs Act and the Crimes Act is paid into the Trust Fund. The Insolvency and Trustee Service Australia (ITSA) administers the Trust Fund.

A total of $3 297 560 was paid into the Trust Fund during 1992–93 which was its first full year of operation.

$3 026 701 was classified as distributable in 1992–93. Half of the distributable funds 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.

In 1992–93 the DPP received $10 000 from the Trust Fund to assist in the running of a joint DPP, Australian Federal Police and ITSA national conference on Proceeds of Crime in 1992. The theme of the conference was Practical Approaches to the Enforcement of Anti-money-laundering Legislation. It concentrated on the practical aspects of criminal assets recovery, incorporating discussion of implications for particular agencies such as the Australian Customs Service and Australian Taxation Office, with more broadly applicable strategies of investigation and litigation relevant to the identification and confiscation of assets. The conference attracted 119 delegates from 11 Commonwealth, 12 State and three overseas agencies.

The Trust Fund may also be used to reimburse specified 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 is possible to reimburse Australia Post, to the extent of the amount recovered.

In 1992–93 $41 401 was paid out of the Trust Fund to Australia Post. No other GBEs received money from the Trust Fund.

Amounts recovered pursuant to the civil remedies function and amounts paid voluntarily by a defendant without an order under the PoC Act are returned to the agency defrauded rather than being paid into the Trust Fund. Amounts recovered by way of a taxation recovery 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. No money was paid out of the Trust Fund in 1992–93 under the equitable sharing program.

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 12 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.

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 1992–93 the DPP was authorised to seek two superannuation orders under the CSB Act and one under the AFP Act.

Ashauer

The defendant pleaded guilty in 1991 to defrauding the Commonwealth of $344 205 and was sentenced to six years imprisonment with a non-parole period of two years. He received a pecuniary penalty order of $344 205 under the PoC Act which he has since paid to the Commonwealth.

The defendant acted corruptly in abusing his position as an employee of the Australian Customs Service. His job was to conduct office and field audits, investigate diesel fuel rebate claims and record the results in the ACS computer. Using knowledge obtained through his employment he successfully made two false claims for diesel fuel rebates worth $344 205.

On 15 October 1992 Brisbane DPP obtained a superannuation order. As a result the defendant lost a Commonwealth superannuation benefit of around $63 000.

Woodward

On 24 April 1991 the defendant was convicted of defrauding the Commonwealth contrary to section 29D of the Crimes Act and of defrauding the Australian Capital Territory contrary to the *Crimes (Offences Against the Territory) Act 1989*. He was sentenced to two years imprisonment to be released upon recognisance after fifteen months.

At the time he committed the offences he was employed by the Commonwealth in various Government Departments. In the course of his employment he used the FISCLE computer system to process a number of transactions in his wife's name and to pay money into a joint bank account which he held with his wife.

The defendant was ordered to pay a pecuniary penalty of $71 041. He was later paid $30 184 being his employee contributions under his superannuation scheme. He paid this amount to the Commonwealth in partial satisfaction of the pecuniary penalty order.

On 31 March 1993 the DPP obtained a superannuation order against him which had the effect that he lost all his rights to employer-funded superannuation.

Training

Lawyers and financial analysts working in the DPP's criminal assets branches provide considerable training, both in-house and to other agencies, particularly the AFP, ATO and DSS. The main recipients for training have been the Department of Social Security (52 hours training given), the Australian Federal Police (41 hours) and the Australian Taxation Office (38 hours).

Table 5: DPP criminal assets branch training statistics

Agency trained	Number of hours	Subject of training	Number of people trained
AFP	36	PoC, Customs Act	135+
AFP	5	Part VA AFP Act	30
DSS	52	PoC Act, civil remedies	112+
DPP	30	PoC, Customs Act	61
ATO	38	PoC Act, civil remedies	353
ACS	4	PoC Act	120

DVA	5	PoC Act, civil remedies	28
DILGEA	5	PoC Act	15

In addition, DPP officers adressed a number of large conferences on the PoC Act in which officers of the above departments and organisations participated, including the NCA Conference on Proceeds of Crime.

NCA conference and working party on proceeds of crime

In 1992–93 the NCA held a national public conference on proceeds of crime. The DPP provided three speakers for the conference. In addition, another officer was a member of a working party set up to consider confiscation legislation around Australia. The working party produced a lengthy and detailed review of confiscation legislation and its use throughout Australia. The DPP contributed significantly to the working party report.

Tables

The following tables give details of work done and money recovered in 1992–93 and the situation as at 30 June 1993.

Table 6A: POC Act: Work done by DPP criminal assets branches in 1992–93—including work done on cases opened prior to July 1992*

	NSW	Vic.	SA	WA	QLD	ACT	Total
No. of new matters	76	52	3	25	44	9	209
Estimated value (net) of Restraining Orders#	$3 482 000	$2 973 190	$290 000	$995 000	$10 000		$7 750 190
No. of Restraining Orders obtained#	26	12	2	8	1		49
Total amount of PPOs ordered	$489 158	$1 331 981		$2 000	$172 700		$1 995 839
No. of PPOs obtained	6	6		1	2		15
Estimated value of s.19 forfeitures	$1 657 549	$132 400		$140 690	$10 068		$1 940 707
No. of s.19 forfeitures	3	3		3	1		9
Estimated value of s.30 forfeitures		$60 000		$5 232			$65 232
No. of s.30 forfeitures	0	2	0	1	0	0	3

* This gives an indication of the amount of work done in 1992–93 by Criminal Assets Branches by type of work.

This records only those restraining orders which were both obtained and discharged in 1992-93. The other restraining orders which were obtained in 1992-93 and which were still current at 30 June 1993 are recorded on Table 6B.

Table 6B: POC Act—Details and value of DPP Criminal Assets Branches' cases outstanding as at 30 June 1993*

	NSW	Vic.	SA	WA	QLD	ACT	Total
Estimated net value of current Restraining Orders	$34 333 208	$2 791 977	$290 000	$1 170 000	$235 000		$38 820 185
No. of current Restraining Orders	57	18	2	10	4		91
Estimated value of prop. forfeited under s.19 and not yet disposed of	$1 730 780#	$20 400	$500	$140 000	$10 068		$1 901 748
No. of current s.19 Forfeiture Orders	7	2	1	1	1		12
Estimated value of prop. forfeited under s.30 and not yet disposedof	$947 280	$135 700					$1 082 980
No. of current s.30 Forfeiture Orders	4	4	0	0	0	0	8
Total amount of current PPOs not yet paid	$813 679	$1 098 785	$32 085	0	$744 769	$227 407	$2 916 725
No. of current PPOs not yet paid	11	11	1	0	9	3	35

* This table gives a picture of outstanding work at 30 June 1993 and gives an indication of future recoveries work.

This figure includes $1.5 million in property in Vanuatu, forfeited but which the DPP is not sure will be returned to Australia.

Table 6C: POC Act—Money recovered during 1992–93*

	NSW	Vic.	SA	WA	QLD	ACT	Total
Amounts paid under PPOs	$362 171	$494 462		$2 000	$63 800		$922 433
Number of PPOs	7	8		1	2		18
Amounts recovered from s.19 forfeitures	$194 173	$115 028		$690	$10 068		$319 959
Number of s.19 forfeitures	6	3		2	1		12
Amounts recovered from s.30 forfeitures	$395 918			$5 232			$401 150
Number of s.30 forfeitures	4			1			5
Amounts recovered from voluntary payments	$379 151	$163 357	$63 800			$67 550	$673 858
Number of voluntary payments	3	3	1			1	8
Amounts recovered in some other way via POC Act							
Number of matters							
Total recovered	**$1 331 413**	**$772 847**	**$63 800**	**$7 922**	**$73 868**	**$67 550**	**$2 317 400**

* Note – not all the amounts recovered will have been paid into the Confiscated Assets Trust Fund. Money recovered under voluntary payments and some other way (lines 7–10) will not have been paid into the Trust Fund.

Table 7A: Customs Act—Work done by DPP Criminal Assets Branches 1992–93—restraining orders and pecuniary penalty orders*

	NSW	Vic.	SA	WA	QLD	ACT	Total
No. of new matters	6				2		8
Value of property restrained							
No. of Restraining Orders							
Total amount of PPOs		$25 000	$20 390				$45 390
No. of PPOs		1	1				2

* This gives an indication of the amount of work done in the DPP's Criminal Assets Branches.

Table 7B: Customs Act—Work done 1992–93*—seized and condemned property

	NSW	Vic.	SA	WA	QLD	ACT	Sub-total	Recovered without DPP#	Total
Value of seized property		$111 500	$30 000	$831 000			$972 500		$972 500
No. of cases where property seized		3	1	4			8		8
Value of condemned property		$27 436	$10 750	$525 000	$1 000		$564 186		$564 186
No. of condemnations		6	4	2	1		13		13
Amount recovered from disposals			$88 550	$275 850			$364 400	$297 668	$662 068
No. of disposals			5	1			6		30

* This table out details of work done by the DPP Criminal Assets Branches in relation to forfeited property seized and condemned under the Customs Act.

These figures concern cases where the DPP was not involved in the condemnation proceedings. They are based on figures provided by Official Trustee for payments into the Co nfiscated Assets Trust Fund.

Table 7C: Customs Act—Cases outstanding as at 30 June 1993—restraining orders and pecuniary penalty orders*

	NSW	Vic.	SA	WA	QLD	ACT	Total
Value of current Restraining Orders	$2 100 457	$612 148					$2 712 605
No. of Restraining Orders	3	6					9
Value of current PPOs not yet paid	$6 900 000#	$608 750	$7 832				$7 516 582
No. of PPOs not yet paid	1	4	1				6

* This table gives a picture of outstanding work at 30 June 1993 and gives an indication of future recoveries work.
# The DPP does not anticipate recovering the total amount of the pecuniary penalty order as the defendant is now bankrupt.

Table 7D: Customs Act—cases outstanding as at 30 June 1993—seized and condemned property*

	NSW	Vic.	SA	WA	QLD	ACT	Total
Value of seized property	$100 000	$148 640	$78 515	$566 788	$18 100		$912 043
No. of cases	6	6	2	6	5		25
Value of condemned property	$205 900	$16 000	$27 858	$249 150	$14 500		$513 408
No. of cases	1	1	1	2	4		9

* This table gives a picture of outstanding work at 30 June 1993 and gives an indication of future recovery work.

Table 7E: Customs Act—money recovered by DPP Criminal Assets Branches 1992–93*

	NSW	Vic.	SA	WA	QLD	ACT	Total
Amounts paid under PPOs	$188 094	$234 970	$20 390		$1 100		$444 554
Number of PPOs	1	4			1		6
Amounts from disposal of condemned property	$206 000	$582 141	$88 550	$275 850			$1 152 541
Number of disposals	1	9	5	1			16
Amounts received in some other way under Customs Act	$132 000						$132 000
Number of matters	1						1
Total amounts recovered	**$526 094**	**$817 111**	**$108 940**	**$275 850**	**$1 100**		**$1 729 095**

* In addition a further $297 668 was recovered in 1992–93 from narcotic drugs under the provisions of the Customs Act in cases not referred to the DPP.

Table 7F: Total recoveries 1992–93

Proceeds of Crime Act ppo	922 433
Proceeds of Crime Act s.19 forfeiture	319 959
Proceeds of Crime Act s.30 forfeiture	401 150
Proceeds of Crime Act other Customs Act ppo	444 554
Customs Act forfeiture and condemnation	1 152 541
Customs Act other	132 000
Total	3 372 637

Table 8A: Civil remedies—work done by DPP criminal assets branches 1992–93—tax cases

	NSW	Vic.	SA	WA	QLD	ACT	Total
No. of new matters	6			6	21	4	37
Value of property secured by injunction or otherwise	$1 561 963	$343 146			$284 326	$170 000	$2 359 435
No. of matters	2	1			1	1	5
Amount of judgments entered or leave to enter judgment granted	$8 000 000				$1 524 506		$9 524 506
No. of matters	1				6		7

Table 8B: civil remedies—work done by DPP criminal assets branches 1992–93—Non–tax cases

	NSW	Vic.	SA	WA	QLD	ACT	Total
No. of new matters	3	8	78	1	8	1	99
Value of property secured by injunction or otherwise					$81 098		$81 098
No. of cases					1		1
Amount of judgment entered or leave to enter judgment granted	$1 200 000		$110 086	$40 000	$41 291		$1 391 377
No. of cases	1		5	1	1		8

Table 8C: Civil remedies—cases outstanding at 30 June 1993*

Type of case	NSW	Vic.	SA	WA	QLD	ACT	Total
Value of property in tax cases where property secured by injunction or otherwise	$5 078 750	$343 146			$49 179		$5 471 075
No. of cases	5	1			2		8
Amount of judgments outstanding in tax cases	$8 478 315		$2 717 955				$11 196 270
No. of judgments	2		4				6
Value of property in non-tax cases where property secured by injunction or otherwise	$20 000		$1 400 447		$121 898		$1 542 345
No. of cases	1		25		2		28
Amount of judgments outstanding in non-tax cases	$960 397		$85 909	$40 000			$1 086 306
No. of judgments	1		8	1			10

* This table gives a picture of outstanding work at 30 June 1993 and gives an indication of future recovery work.

Table 8D: Civil remedies—recovery of money in cases in which the DPP exercised its civil remedies powers 1992–1993*

	NSW	VIC	SA	WA	QLD	ACT	Total
Payments under judgments in tax cases	$565 000						$565 000
No. of matters	1						1
Other payments in tax cases eg. settlement, bankruptcy		$441 922			$1 153 164	$1 078 748	$2 673 834
No. of matters		5			10	3	18
Payments under judgments in non-tax cases	$250 103		$10 000				$260 103
No. of payments	2		1				3
Other payments in non-tax cases		$119 560	$529 494		$181 147		$830 201
No. of payments		3	62		3		68
Total recovered	**$815 103**	**$561 482**	**$539 494**		**$1 334 311**	**$1 078 748**	**$4 329 138**

* There are also civil recoveries in prosecutions in cases involving the Australian Tax Office and other departments in which DPP is not involved and which are not recorded in his table.

Chapter 6 Law reform and other issues

One of the objectives of the DPP is to provide sound, constructive and timely recommendations with respect to the laws or proposed laws of the Commonwealth relating to the criminal justice system. The DPP is uniquely placed to identify deficiencies in the application of existing laws, as well as to assess proposals for law reform in the light of operational experience. This chapter outlines some of the areas in which the DPP was active in 1992–93, as well as dealing with a number of issues of general importance.

Delays in the ACT Magistrates Court

This Office has experienced extraordinary delays in finalising a number of prosecutions in the ACT Magistrates Court. Two long-running prosecutions were eventually finalised in 1992, one of which may well have the unfortunate distinction of being the longest criminal prosecution in ACT legal history. A third prosecution, which relates to a charge laid nearly eight years ago, has yet to be finalised at the time of writing. The following is a necessarily truncated chronology of these three cases.

Case A

This prosecution began with the arrest of the defendant on 19 January 1988 on charges which related to events which had occurred earlier that month. In October 1988 an objection to jurisdiction was dismissed, and the hearing commenced on 10 May 1989. While all prosecution evidence was taken on that day, the case was not completed and it was adjourned for further hearing to a date to be fixed. The hearing resumed on 21 December 1989, when it was again adjourned to a date to be fixed. The hearing did not in fact resume until 29 April 1992, over two years later, although in the meantime the court considered, and dismissed, an application by the defence to stay the prosecution as an abuse of process.

On 30 April 1992 the court adjourned the case for decision, which was in fact handed down on 23 July 1992 when the presiding magistrate dismissed all three charges.

Case B

In this matter summonses were served on the defendant in July 1983 and, following a number of mentions of the matter, the committal proceedings commenced on 15 October 1984. The prosecution case occupied 13 hearing days between 15 October 1984 and 16 March 1988, although the case also came before the court on a number of occasions during 1987 in connection with a defence application to stay the prosecution as an abuse of process. On 25 November 1987 the presiding magistrate ruled that he was not prepared to grant the application for a stay at that stage, although he would permit the defence to renew its application at the close of the prosecution case.

Following the close of the prosecution case on 16 March 1988, the matter was adjourned for decision on

whether the prosecution had established a prima facie case, as well as for a decision on the renewed application for a stay of the prosecution. In that regard, the defence was required to file certain submissions with the court, which was in fact done on 24 November 1989. On 17 January 1992, nearly four years after the prosecution had closed its case, the presiding magistrate ruled that a prima facie case had been established and refused the defence application for a stay. The matter was then adjourned for further hearing. However, that further hearing did not in fact take place. After considering representations from the defence the Director decided, in view of the inordinate delay, that the prosecution should be discontinued and the Magistrates Court was so informed on 1 April 1992.

Case C

This defendant was arrested and charged on 28 November 1985 with one offence against sub-section 73(3) of the *Crimes Act 1914* that on 28 November 1985 he gave a Commonwealth officer $10 000 in order to influence or affect him in the exercise of his duty as a Commonwealth officer. While another person was also charged in relation to this matter, on 4 April 1990 the charges against him were withdrawn on the grounds of ill health.

On 4 September 1986 the defence made an application to stay the prosecution as an abuse of process. This application was rejected by the presiding magistrate on 4 November 1986. That decision was then the subject of an unsuccessful application to the Federal Court under the Administrative Decisions (Judicial Review) Act, and an unsuccessful appeal to the Full Federal Court. On 13 November 1987 the High Court refused an application by the defence for special leave to appeal from the decision of the Full Federal Court.

The prosecution had been adjourned pending the outcome of the appeals, and following the refusal by the High Court of special leave to appeal the prosecution commenced substantively on 11 April 1988. The charge proceeded as a committal hearing until 21 October 1991 when the presiding magistrate decided that it should be dealt with summarily.

Between 11 April 1988 and 22 June 1992 when the proceedings were adjourned for decision the case had come before the Court on some 28 separate occasions, involving a total of 104 hearing days. On the majority of those occasions the hearing was for just one or two days.

In late September 1993 the Office was informed that the decision in this case would be handed down on 4 November 1993.

Dietrich v R

In this case the defendant Dietrich sought special leave to appeal to the High Court on the ground that he should not have been required to stand trial on serious drug charges without legal representation. The prosecution was conducted by the Melbourne Office of the DPP.

Prior to the trial Dietrich had applied to the Victorian Legal Aid Commission for legal assistance to defend the charges. That application was refused, although the Legal Aid Commission was prepared to grant representation for the purposes of a plea of guilty. An application to review the refusal of legal assistance for the purposes of a plea of not guilty was also unsuccessful. As Dietrich was without the necessary means to secure representation he appeared at his trial unrepresented, and was found guilty on a charge of importing heroin. He was

acquitted on another charge relating to the alleged possession of a quantity of heroin which was not the subject of the importation charge.

In a decision handed down on 13 November 1992 the High Court unanimously concluded that an accused person who is indigent does not have the right, either at common law or under statute, to be provided with legal representation at public expense, even for the purposes of the trial of a serious criminal offence. On the other hand, an accused person does have the right to a fair trial, and it was on the basis of this principle that a majority of the Court concluded that the conviction should be quashed and a new trial ordered.

Although there were differences in the reasoning of the members of the Court who constituted the majority in the case, Mason CJ and McHugh J, in their joint judgment, identified:

> . . . what the majority considers to be the approach which should be adopted by a trial judge who is faced with an application for an adjournment or a stay by an indigent accused charged with a serious offence who, through no fault on his or her part, is unable to obtain legal representation. In that situation, in the absence of exceptional circumstances, the trial in such a case should be adjourned, postponed or stayed until legal representation is available. If, in those circumstances, an application that the trial be delayed is refused and, by reason of the lack of representation of the accused, the resulting trial is not a fair one, any conviction of the accused must be quashed by an appellate court for the reason that there has been a miscarriage of justice and that the accused has been convicted without a fair trial.

While the decision of the High Court clearly has significant ramifications, not only for the provision of legal aid but also for the administration of justice generally, the ambit of the principle enunciated by the Court is somewhat unclear. For example, it is unclear what will be a serious criminal offence for the purposes of the 'Dietrich principle'. Should an offence be regarded as serious by reason of the nature of the offence itself, the circumstances in which the offence was committed (indicated by the likely penalty in the event of a conviction) or both? Must there be a real threat of loss of liberty in the event of a conviction, or would the prospect of, for example, a significant fine or the loss of the defendant's livelihood suffice? Again, little guidance was provided in the majority judgments as to what will constitute such 'exceptional circumstances' as to render the trial a fair one despite the lack of legal representation. The application of the Dietrich principle to other criminal proceedings, such as appeals and summary hearings, is also unclear.

While the impact of the High Court's decision cannot be accurately predicted, one thing that is clear is that without additional funding for legal aid in criminal matters, proceedings against some defendants, which previously would have proceeded with the defendants unrepresented, will now be adjourned or stayed pending the availability of legal representation. In some of these cases the defendants may never ultimately be brought to trial. There has already been a number of prosecutions where defendants facing serious charges have been granted a stay of their prosecution on the basis of a refusal of legal aid.

There is also potential for defendants relying on the High Court's decision for tactical reasons. Although legal aid may have been refused on the basis that the defence is assessed to be without merit and accordingly legal aid will only be made available for a plea of guilty, nevertheless some defendants may be

prepared to maintain a plea of not guilty in the hope of obtaining a potentially indefinite stay of the proceedings.

Following the High Court's decision the Standing Committee of Attorneys-General (SCAG) agreed to the establishment of a working party with a view to the working party reporting to SCAG on action to be taken in light of the decision. The working party met in Melbourne on 22 April 1993 and its report was considered by SCAG at its meeting in late June. The Commonwealth DPP was represented on the working party as an observer.

One of the main recommendations of the working party was that each jurisdiction should enact legislation which would have the effect of equating the relevant Legal Aid Commission's assessment as to means with the concept of indigence for the purposes of the Dietrich principle. Since the High Court's decision, the majority of matters in which defendants have sought an adjournment or stay of their prosecution based on the High Court's decision have turned on whether or not the defendant is 'indigent' despite the fact that they were refused legal aid on the basis that they did not satisfy the relevant means test. In this regard, while it is not clear from the various judgments of the majority what is meant by 'indigence', at present it would seem open to a court to rule that a defendant is indigent for the purposes of the Dietrich principle although he or she has been refused legal aid on the basis of means.

The enactment of such legislation will not, however, provide a comprehensive answer to the concerns raised by the High Court's decision. Although a defendant satisfies the relevant means test, and thus would be regarded as indigent for the purposes of the Dietrich principle, he or she may still be refused legal aid in those jurisdictions which apply a merit test. In that event, unless 'exceptional circumstances' exist which would justify the trial proceeding despite the fact that the defendant is not legally represented, such cases are likely to be adjourned or stayed until legal representation is made available.

Alternatively, legal aid may be refused because of the application of expensive cases guidelines. These guidelines have been adopted in some jurisdictions to avoid legal aid funds being significantly depleted by just a few very large cases. These cases are likely to involve major drug and fraud matters, the non-prosecution of which would have a significant and adverse impact on law enforcement.

Rogers v Moore and Dibb: search warrants and the shield of the Crown

In the course of a major investigation being conducted by the AFP in conjunction with the Australian Taxation Office, the AFP executed a number of search warrants on premises occupied by the WA Fisheries Department. The investigation relates to an allegation that a number of crayfishermen at and around Geraldton in Western Australia had failed to declare their true income from the sale of crayfish to processing companies. It is considered that income of $45 million was not declared in the years 1987 to 1989. The search warrants were executed to obtain records lodged with the Fisheries Department by crayfishermen relating to the number of crayfish caught which it was considered would provide evidence that certain fishermen had understated their income from crayfishing.

The issue and execution of those search warrants were the subject of a challenge by the Director of the

Fisheries Department. That challenge was unsuccessful at first instance, whereupon the Director of the Fisheries Department appealed to the Full Federal Court.

Before the Full Federal Court the central question was whether section 10 of the *Crimes Act 1914* empowers the issue of a search warrant authorising a constable to enter the premises of the Crown in the right of a State and to seize things found there. This question had not been raised at first instance. On 16 July 1993 the Full Federal Court unanimously held that section 10 does not bind the Crown in the right of either the Commonwealth or a State, and accordingly the search warrants were invalid.

The Full Federal Court's decision has significant ramifications for law enforcement. It is, of course, not a common practice for the AFP to obtain a warrant to search government premises. Usually it will be possible to obtain documents or other things held by a government agency by agreement, and needless to say the AFP prefer to follow that course whenever it is possible to do so. However, in some cases the AFP will be unable to reach agreement with the government agency concerned, or there will be some legal impediment to obtaining documents etc. held by a government agency without a warrant. For example, search warrants have frequently been obtained to search post office boxes at premises occupied by Australia Post, usually for the purpose of investigating the alleged importation of narcotic goods by post. Search warrants have also been obtained to search baggage handling facilities at international and domestic airports owned by the Commonwealth, again usually in the context of an investigation of the alleged importation of narcotic goods.

Search warrants have also been frequently used to obtain financial records held by banks and other financial institutions owned by the Commonwealth or a State. While it is usually the case that such institutions are willing to provide such records, they are unable to do so voluntarily in the absence of a legal requirement having regard to the duty of confidentiality owed to their clients. Search warrants have also been used to obtain documents from a government agency which are subject to a statutory secrecy provision. Again, it will often be the case that the agency concerned is not opposed to the relevant material being made available to the police, but it will be precluded by the secrecy provision from doing so in the absence of a search warrant.

In some cases search warrants have been used to obtain documents held in circumstances where the person in control of those premises is suspected of committing criminal offences, and accordingly is unlikely to hand the relevant documents over voluntarily. In some cases search warrants have been obtained where it is unclear whether the head of the relevant government agency can authorise the police to search without warrant inside receptacles such as a locker which are provided by the agency for the personal use of employees.

Although the DPP has filed an application for special leave to appeal to the High Court from the Full Federal Court's decision, at the time of writing it is unclear whether the appeal can be determined before 1995, and of course there can be no guarantee that the appeal will be successful. Accordingly, the Director has strongly recommended that the matter be addressed by legislation as soon as possible.

Commonwealth sentencing legislation

In late 1992 the Director wrote to the former Attorney-General recommending that substantial changes be made to the Commonwealth's sentencing legislation in Part IB of the *Crimes Act 1914*.

The Director's primary recommendation was that the policy reflected in Part IB should be abandoned in favour of a policy which essentially relies almost exclusively on State and Territory laws for the sentencing of federal offenders.

Consistent with the Commonwealth's heavy reliance on the State and Territory criminal justice systems, until the 1989 amendments to the Crimes Act it had been generally accepted by the Commonwealth that there were practical limits on the extent to which it could make its own separate provision with respect to the prosecution and sentencing of federal offenders. Most State and Territory courts will be called upon to deal with a federal offender only very infrequently, and it was considered to be unreasonable to expect them to apply a separate body of law when dealing with a federal offender. Despite this, the 1989 amendments established what is essentially a separate regime for the sentencing of federal offenders. Only in a few areas has reliance on State sentencing laws been continued.

The Director acknowledged the difficulties confronting the Commonwealth in constructing a framework for the sentencing of federal offenders which is both principled and workable. There is obvious force in the argument that the prosecution and punishment of federal offenders should be subject to the one set of laws no matter where the offender is dealt with. However, one cannot escape the limitations inherent in the Commonwealth's heavy reliance on the State and Territory courts for the prosecution of federal offenders. The Director stated that his Office's experience in operating under the provisions of Part IB had demonstrated that it is unrealistic to expect a State or Territory court to be familiar with and consistently apply a separate body of law when sentencing a federal offender, a body of law which may be quite different from that ordinarily applied by that court. The Director stated that all too frequently sentencing courts have either misapplied the Commonwealth provisions, or simply not applied them at all; that is, sentenced the offender as if he or she was a State or Territory offender.

The Director also pointed out that it is commonplace for courts to indicate their displeasure with the Commonwealth provisions when sentencing federal offenders. Apart from criticising the unnecessarily complicated and opaque nature of the legislation, a common theme running through the judicial criticism of the provisions is the considerable amount of court time which is now required to sentence federal offenders, as well as the amount of time which must now be devoted by appellate courts to deal with issues relating to the proper construction of the provisions.

While Commonwealth sentencing law had been in a most unsatisfactory state prior to the 1989 amendments, the Director expressed the view that with the 1989 amendments the Commonwealth had simply traded one set of problems for another. Indeed, in his opinion Commonwealth sentencing law is now in a far worse state than at any time prior to the 1989 amendments.

If, however, the DPP's primary recommendation was not acceptable, the Director recommended that at the very least the provisions of Part IB should be substantially amended to rectify various

defects in the provisions. To that end, a paper was provided which detailed a number of amendments which were considered necessary.

In particular, the Director pointed out that the provisions relating to partially suspended sentences and the taking of breach proceedings under section 20A were now practically unworkable. Section 20A provides for the taking of breach proceedings where there has been a failure to comply with an order made under sub-section 19B(1), which relates to the discharge of offenders without proceeding to conviction, and sub-section 20(1), which relates to conditional release of offenders after conviction.

One of the changes to section 20A effected by the 1989 amendments was to require proceedings for a breach of an order made under either sub-section 19B(1) or sub-section 20(1) to be instituted prior to the expiration of the good behaviour bond or, in the case of a suspended sentence under paragraph 20(1)(b), prior to the completion of the sentence. In the explanatory memorandum to the 1989 amendments it was stated that the change to section 20A:

> . . . clarifies that action for a breach of a recognisance (whether under section 19B or section 20 of the Principal Act) may only be taken during the period of the order and in the case of suspended sentences under paragraph 20(1)(b) of the Principal Act, breach action may also only be taken before completion of the sentence.

However, prior to the amendment to section 20A it was quite clear that breach action could be commenced either before or after the expiration of the bond. It is therefore unclear what 'clarification' the 1989 amendments to section 20A sought to achieve.

The usual reason for taking breach proceedings is the commission of a further offence during the period of the recognisance. However, having regard to the length of the recognisance period and when the conduct constituting the alleged breach took place, it simply may not be possible to take breach action prior to the expiration of the bond, bearing in mind that until there is a conviction for the subsequent offence breach proceedings cannot be instituted. Even if the alleged involvement of the person in a further offence comes to the attention of the authorities relatively quickly, it will still have to be investigated. Consideration of the matter by the prosecuting authority, which may not be the Commonwealth DPP, and the actual institution of a prosecution will also eat up time. However, of particular concern is that the offender will now have a powerful incentive to delay being finally dealt with for the further offence in the hope that any conviction imposed will be after the bond has expired.

It was therefore recommended that sub-section 20A(1) be amended to permit breach action to be taken in respect of an order made under sub-section 19B(1) or paragraph 20(1)(a) at any time, at least where the breach is constituted by the commission of a further offence during the period of the bond.

Another difficulty with these provisions is that there is conflicting authority as to the 'cut off' point for taking breach action in relation to a suspended sentence under paragraph 20(1)(b). Viewed in isolation the relevant provisions appear to permit a court, in suspending a sentence either in whole or in part, to specify that the offender's release on a recognisance may be for a period which will exceed the sentence. However, as a result of the 1989 amendments, sub-section 20A(1) now provides that proceedings for breach of a condition attaching to an order made under sub-section 19B(1) or sub-section 20(1) must be commenced:

> . . . before the end of the period specified in the order in accordance with sub-paragraph 19(1)(d)(i) or 20(1)(a)(i) or before the completion of the sentence or last to be served of the sentences imposed under paragraph 20(1)(b), ...

It is the view of the Office of the DPP that only in the case of a suspended sentence under paragraph 20(1)(b) must breach proceedings be commenced before the completion of the sentence, whereas breach proceedings in the case of an order made under sub-section 19B(1) or paragraph 20(1)(a) must be commenced before the expiration of the period of the bond. This construction accords with the explanatory memorandum to the 1989 Bill.

However, in *O'Brien* (1991) 57A. Crim. R. 80 the Victorian Court of Criminal Appeal held that breach proceedings could be commenced in respect of a suspended sentence 'so long as the proceedings were taken either before the end of the period of good behaviour specified or before the completion of the sentence' (at page 98). While the court's attention was drawn to the relevant passage in the explanatory memorandum, the court considered that, as it regarded the words of sub-section 20A(1) as unambiguous, they could not be given a meaning other than their ordinary meaning, and accordingly the passage in the explanatory memorandum was erroneous!

On the other hand, in *Selimoski v. Picknoll* (unreported, 9 October 1992) the Full Supreme Court of Western Australia declined to follow *O'Brien*, and held that breach proceedings in relation to an order made under paragraph 20(1)(b) must be commenced prior to the expiration of the sentence. The Court in *Selimoski v. Picknoll* also held that the maximum period of the recognisance for the purposes of a suspended sentence was limited to the period of the statutory capacity to enforce it. There is probably little difference in practical terms between this construction of the relevant provisions and that unsuccessfully advanced by the prosecution in *O'Brien*, namely that while it is open to a court to specify a recognisance period which would extend beyond the end of the sentence, once the sentence has expired the recognisance is not enforceable. On either view, the recognisance release period, or at least that part of it which will be enforceable, will in most cases be ludicrously short, and in many cases will often only be for a period of a few months.

Apart from rectifying various defects in the provisions of Part IB that have been identified, the Director also expressed the view that there was much that could be done to improve the actual drafting of the provisions. In such an important area as sentencing, the Commonwealth should ensure that its legislation is expressed in clear and unambiguous terms.

Since the Director's submission to the former Attorney-General it has also been recommended to the Attorney-General's Department that section 20AB be amended in its application to federal offenders in Victoria. Generally speaking, that section provides for additional sentencing options such as community service orders that may be imposed under State law on State offenders to be available in the sentencing of a federal offender.

Under the *Sentencing Act 1991* (Vic.) the maximum number of hours for which a State offender may be required to perform unpaid community work under a community-based order is determined by reference to the maximum term of imprisonment or fine that can be imposed. Where an offence is punishable by both imprisonment and a fine, the Victorian legislation provides that it is the lesser number of hours which is applicable. However, in the case of most offences against Victorian law it is not necessary to have regard to

this particular provision of the Victorian legislation for, in conjunction with the enactment of the Victorian Sentencing Act, there was a realignment of the penalties that could be imposed for offences against Victorian law. This had the effect that for almost all offences under Victorian law punishable by imprisonment and a fine, the maximum amount of unpaid community service that can be ordered is the same whether regard is had to the maximum term of imprisonment or the maximum fine.

However, where a Commonwealth offence is punishable by a fine as well as imprisonment, generally speaking the maximum fine which may be imposed is considerably less than that available for a Victorian offence punishable by the same term of imprisonment. As a result, Victorian courts may be less disposed to make a community-based order in the case of a federal offender given that the maximum number of hours of unpaid community work which can be ordered will be considerably less than that available in the case of an offence against Victorian law punishable by the same term of imprisonment. In some cases this could result in a court imposing a custodial sentence where a community-based order would otherwise have been appropriate.

If community-based orders are to continue to be a viable sentencing option for federal offenders sentenced in Victoria, it is considered necessary to amend section 20AB so as to modify the application of the relevant Victorian provisions by providing that, where a federal offender is convicted in Victoria of an offence punishable by both a term of imprisonment and a fine, the maximum amount of unpaid community work which may be ordered is to be determined by reference to that applicable under the Victorian legislation with respect to the maximum term of imprisonment.

Reducing the length and cost of fraud trials

In last year's annual report reference was made (at page 119) to the paper presented by the Director at the National Complex White Collar Crime conference in June 1992 in which he argued for a number of changes to our procedural and evidentiary rules if we are to reduce the excessive length and cost of fraud trials. A series of resolutions passed at that conference was subsequently considered at a special meeting of SCAG held in Melbourne on 7 August 1992.

It is an indication of the concern of government as to the devastating effect that these trials are having on our criminal justice system that the Commonwealth, States and Territories have been able to reach broad agreement in a relatively short period on a package of legislative and administrative measures designed to deal with the problems of complex criminal trials in general, and complex fraud trials in particular (although at the time of writing only one State, Victoria, has actually passed legislation containing its version of the package).

While the package of reforms is wide ranging, the centrepiece is the introduction of a 'directions hearing' procedure which essentially provides for a limited form of criminal pleading.

In a number of jurisdictions the courts have attempted to make not just fraud but all trials more manageable by establishing a system of pre-trial reviews. However, whereas a pre-trial review occurs outside the trial, the proposed directions hearing procedure will be part of the trial, although the jury will not be empanelled until it is completed. The purposes of the directions hearing are essentially to identify the issues which

are likely to be material to the verdict of the jury prior to the empanelment of the jury, to expedite the proceedings in front of the jury and aid its comprehension of the issues, and to assist in the judge's management of the trial generally. The trial judge will be able to determine any disputed questions of law or fact which would otherwise be determined in a voir dire in the trial proper.

For the purposes of the directions hearing procedure the prosecution will be required to provide full and timely disclosure of its case. While that obligation should represent no great change from existing best practice, such disclosure will now be made under the supervision of the court. The prosecution will be required to file with the court and serve on the defendant a 'case statement' within the time frame set by the court at the directions hearing. This prosecution case statement must contain a concise account of the facts and inferences on which the prosecution case is based, together with any other material the prosecution is ordered by the court to provide. The case statement will also include witness statements, an exhibit list, a statement of any propositions of law which the prosecution proposes to rely on and the statements of expert witnesses.

However, the radical change which will be effected by the directions hearing procedure is that it provides for a complementary system of defence disclosure. Following service of the prosecution case statement the defendant will be required to serve a response to that statement which indicates the facts and inferences in the prosecution case statement with which issue is taken. The defence response must include the statement of any expert witness whom the defence intends to call at the trial, a reply to any propositions of law stated in the prosecution case statement and any propositions of law on which the defence proposes to rely. The Victorian legislation further provides that once the indictment has been filed the defendant must indicate which of the elements of the offence charged are admitted.

The proposed directions hearing procedure is not a novel one in that it is largely based on the preparatory hearing procedure provided for in the UK Criminal Justice Act of 1987. However, despite the optimism with which the Criminal Justice Act was received in the UK, it would seem that the new procedures have done little to result in shorter and less expensive trials overall. While that part of the trial after the jury has been empanelled has proved to be a little shorter and less prone to interruption, the UK experience would suggest that any savings gained may be lost by a protracted preparatory hearing.

The new procedures which have been proposed for Australia are unlikely to prove effective in achieving greater efficiencies in the trial process unless they are enforceable. An obligation to identify the issues genuinely in dispute without an effective means of enforcing that obligation is in truth no obligation at all.

In so far as disclosure by the prosecution is concerned, the appropriate remedy for non-compliance is, of course, to grant a stay of the prosecution. The real question is how to ensure the defence complies with its obligations to identify those issues which are genuinely in dispute. If we can learn anything from the recent UK experience it is that unless the defence is provided with real incentives, in the form of carrots and sticks, it is unlikely to comply with the spirit of the new procedures.

While the 'SCAG package' contained a number of measures designed to ensure that the defence complies with its obligations under the

new procedures, in the view of the Office of the DPP they do not go far enough.

The SCAG package provides, for example, for a sentencing court to take into account the fact that the defendant has cooperated in the trial process, including the directions hearing. However, merely to provide that a cooperative defendant is entitled to a discount at sentence if convicted does not, in the view of this Office, go far enough. Given that the defendant will have maintained his or her plea of not guilty throughout the prosecution, in reality there will be little a court can offer by way of a discount on sentence in return for the defendant's cooperation in identifying the real issues in the case. There will be little incentive to cooperate if the worst the defendant can expect if convicted is some slight increase in the sentence which would otherwise have been imposed if he or she had cooperated. While it is agreed that a cooperative defendant should have that factor taken into account at sentence, on the other hand unreasonable lack of cooperation on the part of the defendant should be a circumstance of aggravation warranting a more severe penalty than would otherwise have been appropriate.

Investigation of Commonwealth offences

Last year's annual report referred (at pages 123–128) to a number of recommendations that had been made to the Attorney-General's Department for amendments to Part IC of the *Crimes Act 1914*. During the year under review one further recommendation was made for an amendment to that legislation.

While Part IC has now provided police with a statutory right to detain an arrested person for investigation for a reasonable period as defined before being required to take that person before a magistrate, the police may be effectively denied the opportunity to exercise that right if the person is first arrested under the provisions of the *Service and Execution of Process Act 1992*. If, for example, the AFP is conducting the relevant investigation but the suspect is arrested by a State police force which is not otherwise involved in the investigation, the State police who effected the arrest will often not be in a position to conduct any meaningful investigations involving the person, and the investigating police from the AFP would often not be in a position to do so until after the investigation period has expired.

Accordingly, it has been recommended that the police be permitted to, in effect, defer exercising their rights under Part IC to question a person who has been arrested under the provisions of the Service and Execution of Process Act until that person has been taken to the place of issue of the warrant.

Crimes Act 1914, section 4J

It has been recommended to the Attorney-General's Department that section 4J of the *Crimes Act 1914* be amended to make specific provision for indictable offences which are punishable by a pecuniary penalty only to be dealt with summarily. While sub-section 4J(1) provides for summary disposition of an indictable 'offence punishable by imprisonment for a period not exceeding 10 years', it is doubtful whether an indictable offence punishable by a pecuniary penalty only can be categorised as such an offence.

If section 4J is so amended it would seem necessary for the amending legislation to provide a formula for determining the maximum fine that may be imposed on summary disposition in view of the considerable variation in the

maximum fine that can be imposed if such offences are dealt with on indictment. A fixed maximum fine in the order of $6 000–$12 000 currently provided for in sub-section 4J(3) would seem to be inadequate in the case of an offence punishable by a fine of, say, $250 000.

Administrative Decisions (Judicial Review) Act

Previous annual reports have referred to the problems that have been caused by an accused person resorting to the Administrative Decisions (Judicial Review) Act (ADJR Act).

The main concern of this Office has been the effect of such applications on the conduct of prosecutions. The range of decisions which are subject to review under the ADJR Act has provided fertile ground for defendants to delay, to their advantage, criminal proceedings against them. In advice provided to the Attorney-General in 1985 the Administrative Review Council recommended that decisions of a magistrate in committal proceedings should not be subject to judicial review under the ADJR Act, and that recommendation was repeated in the Council's 1989 Report which reviewed the ambit of the ADJR Act.

A recent development is the resort by suspects to the ADJR Act to delay and frustrate the actual investigation of offences. In one matter the investigation into serious allegations of criminal conduct has been effectively stalled for over a year pending the determination of a series of challenges to search warrants and applications to enjoin various persons from making statements to the police.

The law relating to judicial review of administrative action should have no role in the investigation and prosecution of offences. The procedures and processes associated with the conduct of a criminal prosecution necessarily provide an adequate review of decisions made during an investigation and ensuing prosecution. For example, should investigators exceed their powers in obtaining evidence, the courts have ample power to exclude such evidence from the criminal proceedings in the exercise of their discretion.

Chapter 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

The past year has seen the successful development of several significant personnel management policies, including a national human resource development program, a staff interchange program, a revised industrial democracy plan, cessation and exit procedures, and the development and refinement of performance management programs for SES and senior officer and equivalent staff.

In conjunction with this and the normal operation levels of personnel administration, two significant APS-wide policy changes have had great impact, namely the introduction of performance-based pay and the move away from central wage fixing to agency bargaining. This later move in particular will have a substantial impact on personnel management at the agency level, moving many of the industrial relations issues previously dealt with by central agencies to agency personnel management staff.

Staffing

Total staff at 30 June 1993 was 503. Breakdowns for this appear in the following tables 9–12.

Average staffing for the year was 468, an increase of 35 over the 1991–92 average of 433. The increase stems from the DPP accepting responsibility for corporate prosecutions during 1991–92. Corporate prosecutions staffing has reached 81 at 30 June 1993 and is expected to stabilise at a level of 92 during 1993–94.

The use of in-house counsel to undertake legal work which would otherwise be briefed to the private bar continued at the same levels as reported last year. The effectiveness of this initiative was further assessed during the year under review and it is clear that this is a very cost-effective approach. Reports on the effectiveness of these positions have been given to the Department of Finance. It is expected that the in-house counsel positions will now continue indefinitely. Given state government initiatives, particularly in New South Wales, to break down restrictive arrangements in the legal profession, it is likely that extension of this concept will gain further momentum during 1993–94.

Staff turnover rates remained low this year at only 6 per cent for lawyers and 7 per cent of non-legal staff. The availability of opportunities within the Office, an apparent high level of staff satisfaction, and decreased opportunities in the private sector have all contributed to these low turnover levels.

The percentage of staff dedicated to administrative support increased slightly from 23 per cent in 1992–93 to 23.5 per cent in the current year. This increase is attributable to the information technology re-equipment program which has required additional staff during implementation. It is expected that this need will decline during 1993–94 and the percentage of administrative support staff will fall.

There were no requests for post separation employment received under chapter 13 of the *Guidelines on Official Conduct of Commonwealth Public Servants*. This chapter applies to officers who propose to accept business appointments on retirement or resignation from the Australian Public Service.

Table 9: Staff as at 30 June 1993

Classification	HO	NSW	Vic.	Qld	SA	WA
Director	2*					
Associate Director	1					
SES Band 3	2					
Band 2	2	2	1	1	1	1
Band 1	7	9	5	4	4	3
Legal 2	7	34	17	7	8	8
Legal 1	2	36	21	16	9	8
SITO A	1					
SITO B	2		1			
SITO C	4	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 B	3	3	5	1	1	1
SOG C	1					
ASO 6	3	4	4	2	1	1
5	4	2		1		
4	5	23	8	5		2
3	12	20	13	8	9	12
2	3	34	20	11	4	2
1	2	5	11	3		1
PAAB			1			
Office trainee			3			
Agency	1	2	2		2	1
Sub-totals	**70**	**177**	**114**	**60**	**40**	**42**

Grand total 503 (unpaid inoperative staff are not included)

* Includes Acting Director at 30 June 1993 during the Director's absence overseas.

Legend

SES	Senior Executive Service
SITO	Senior Information Technology Officer
SPO	Senior Professional Officer
SOG	Senior Officer Grade
ASO	Administrative Service Officer
PAAB	Professional Aboriginal Assistant
PAO	Public Affairs Officer

Staffing summary

Statutory office holders	2
Total staff employed under the PS Act 1922	478
Total staff employed under the DPP Act 1983	15
Agency Staff	8
Total	**503**

The total number of temporary staff included in this figure is 37.
Senior Executive Staff gains 2 and losses 2

Key staffing performance indicators

The proportion of staff dedicated to corporate support (Library/IT/Administration) was 23.5 per cent.

Staff turnover rates	Legal	6 per cent
	Non-legal	7 per cent

Table 10: Staff as at 30 June 1993 by gender and category

	Full Time		Part Time	
Category	**Male**	**Female**	**Male**	**Female**
Director	2*			
Associate Director	1			
Senior Executive Service				
Band 3	2			
Band 2	8			
Band 1	25	6		1
Legal	87	78		7
Senior Officer & Equiv.	17	14		1
Administrative Service Officer & Equiv.	60	170	4	8
PAAB		1		
Office trainee	2	1		
Agency	3	3		2
Grand total 503	**207**	**273**	**4**	**19**

* Includes Acting Director at 30 June 1993 while the Director was overseas

Table 11: Staff usage by office

Office	Estimated average staffing 92–93	Actual average staffing 92–93	Estimated 93–94
Head Office	65	66	66
NSW	151	159	166
Vic.	108	112	114
QLD	46	52	54
SA	39	40	39.5
WA	38	39	43
Unallocated	20		
Total	**467**	**468**	**482.5**

Table 12: Staff usage by program

Program	Estimate 1992–93	Actual 1992–93	Estimate 1993–94
Prosecutions			
General	231	214	215
Corporations	58	64	85
War Crimes	10	7	7.5
Total	299	285	307.5
Criminal Assets	48	54	51
Executive & Support	120	129	124
Total	**467**	**468**	**482.5**

Training and development

The National Training Policy and Plan was finalised in consultation with relevant unions and implemented during the year. The plan now brings all staff of the DPP under one policy and procedure with the main focus being the preparation of annual training agreements for all staff.

These annual training agreements are closely related to skills and competencies required by staff to undertake their duties and for their immediate career path. The agreements, when collected for each DPP office, provide a basis for developing annual training programs. To assist in the collation and analysis of this information a computerised training and

development system (OMNI) is being used in each office. This information system also provides critical data related to the training and development function.

Future training programs developed under the umbrella of the national human resource development policy will focus on the skills needed for DPP staff to undertake their duties, flowing on to increased productivity.

In accordance with the *Training Guarantee Act 1990*, the DPP was required to spend the equivalent of 1.5 per cent of total salary expenditure on eligible staff training during the year. Actual expenditure on eligible training exceeded this amount with total expenditure equalling approximately 6 per cent of total salary expenditure. The average number of training days per staff is estimated as 4.5 and approximately 90 per cent of staff have participated in training.

A total of $34 695 was spent by the DPP under the Government's Middle Management Development Program. These funds were used primarily for the development of supervision, leadership and negotiation skills for lawyers who make up the vast majority of middle management staff. For example, the funds were used in the Melbourne Office to develop a three-day workshop for legal supervisors which was attended by 15 lawyers. It is hoped to continue and extend initiatives in this area from within the DPP's normal resources now that the MMDP funding has ceased.

In addition to the normal levels of training, the IT Re-Equipment Program required all staff to receive specific training in using new equipment and software packages. All staff had access to this training which has been largely completed in all offices.

There were no staff interchanges approved during the year.

Equal Employment Opportunity

The DPP's revised Employment Equity Plan, approved by the Public Service Commission in May 1991, was evaluated this year to assess the progress made in Equal Employment Opportunity (EEO) strategies since that time. This evaluation will be used as the basis for revising the Employment Equity Plan early next financial year.

The evaluation showed that DPP EEO strategies have been successful in relation to women and people from a non-English-speaking background and target group numbers compare very favourably to statistics available on these groups in the APS as a whole. The new plan will contain strategies to further improve employment opportunities for Aboriginal people and people with disabilities.

EEO initiatives are being achieved at the office level in all regions of the DPP and are a standard feature of office management.

Resources are dedicated to EEO within each office and coordinated in Head Office by an ASO Class 6. This position has a 50 per cent responsibility for EEO. It is estimated that the combined effort across the DPP dedicated to EEO equates to approximately 1.4 staff years. 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.

A voluntary survey of all staff on EEO issues was completed during the year. Approximately 50 per cent of staff responded and the comments and issues raised will also be highlighted in the revised Employment Equity Plan. Generally the survey indicates that staff believe that target groups are not discriminated against, but that more staff awareness training is required.

EEO is a standard topic of discussion at the biannual Executive Officers' Conference and at industrial democracy meetings. Staff with EEO responsibilities attend EEO network meetings as appropriate.

Major achievements in 1992–93 included:

- the evaluation of the Employment Equity Plan;
- the completion of a national survey of all staff;
- an increase in the number of women in senior legal positions;
- the preparation of a draft child care policy;
- the completion of the gathering of EEO data onto the NOMAD Personnel system;
- the completion of quarterly reports from all offices to highlight initiatives and achievements in EEO practices;
- EEO workshops and awareness sessions conducted in some offices; and
- all staff in the ASO Class 1–6 levels and equivalents have training agreements in place to identify needs in training and staff development. All other staff are covered by performance appraisal agreements.

The major EEO priorities for 1993–94 will be:

- the completion of a revised Employment Equity Plan for the next three years;
- the completion of other policies such as:
  - sexual harassment (revised)
  - workplace harassment
  - Aboriginal employment strategies
  - disability discrimination
  - child care

  in line with EEO principles and practices
- the completion of staff selection guidelines and training to staff in workshops;
- EEO workshops to be arranged in relevant offices and all staff encouraged to attend; and
- completion of a revised induction package and staff booklet on conditions of service to ensure staff are fully informed of their rights and responsibilities.

Information gathered from the quarterly reports from all offices over the past year indicates that 75 per cent of all appointments, transfers and promotions made during that time are from a designated group.

Through the completion of voluntary information, the computerised personnel system (NOMAD) has EEO details recorded on 70 per cent of staff. This will continue to be a major focus of EEO next year.

No EEO-related grievances were lodged this year.

Table 13: EEO profile of the DPP as at 30 June 1993

Classification	Male	Female	ATSI	PWD	NESB1	NESB2
Director	2*					
Assoc Dir.	1					
SES 3	2					
SES 2	8			1		
SES 1	25	7	1		2	2
Legal 2	47	34		3	2	9
Legal 1	40	51			2	6
SOG A/B/C & Equiv	17	15		1	2	5
ASO 1–6 & Equiv.	65	177		11	14	30
Aboriginal Professional Assistant		1	1			
Office Trainee	2	1				
Total**	**209**	**286**	**2**	**16**	**22**	**52**

* Includes Acting Director at 30 June 1993 while the Director was absent overseas
** 8 agency staff are not included in the above figures.

Legend

ATSI	Aboriginal and Torres Strait Islanders
PWD	People with Disabilities
NESB1	Non-English-Speaking Background (first generation, born overseas and whose first language was not English)
NESB2	Non-English-Speaking Background (second generation, arrived in Australia before age five along with Australian-born people with parents of NESB)
Note:	The above categories, other than male or female, only include officers who have voluntarily identified themselves as belonging to a particular group. The figures in the above table may accordingly be incomplete.

Occupational health and safety

The Occupational Health and Safety agreement between the DPP and the Public Sector Union was signed on 22 July 1992.

Occupational Health and Safety committees exist in all offices and meet regularly to discuss issues of local concern. All representatives and delegates on these committees have received the required accredited training.

Performance pay

In accordance with the APS section 134C agreement and in line with office performance appraisal schemes, the DPP paid performance pay to all eligible senior officers during the year. Statistical details appear in the tables below. SES staff became eligible for payment of performance pay from 1 July 1993 and therefore no payment was made to SES staff this year.

The implementation of performance pay in the DPP presented special complexities that did not exist in agencies outside the Attorney-General's portfolio. These complexities stemmed

from the requirement to translate the lawyers' performance appraisal arrangements which provided for three separate cycles during a particular year, into one cycle combined with senior officer staff. As lawyers have their incremental advancement determined via performance appraisal, it was particularly important to ensure that staff were not disadvantaged in terms of their annual increments by translation to one cycle. To achieve the translation, considerable consultation was required with staff and representatives of the Public Section Union who were instrumental in the development of translation arrangements which were ultimately acceptable to all staff.

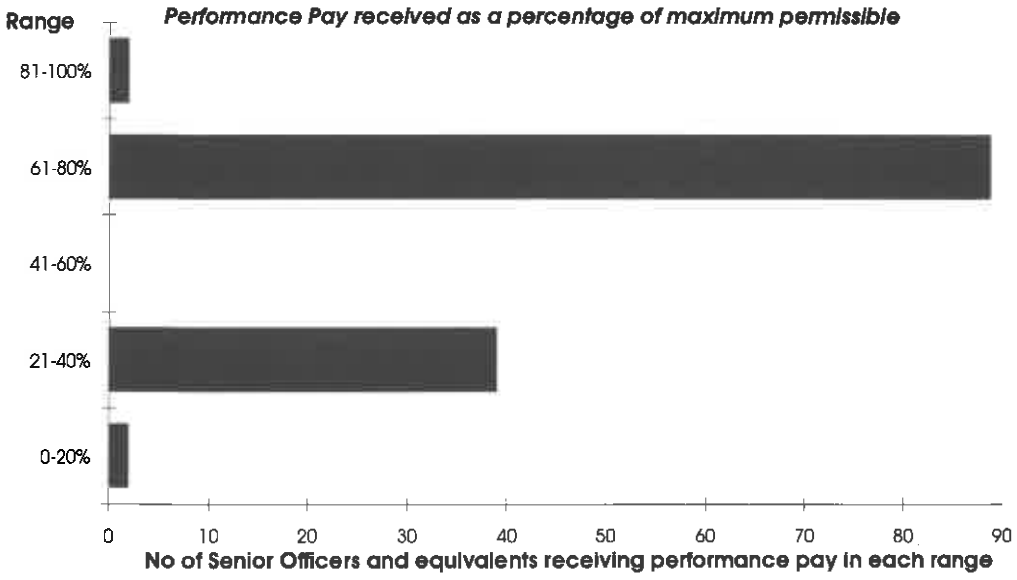
The primary concern in implementing performance-based pay within the DPP was that it should be a positive initiative that rewarded staff who contributed at a good standard to the DPP and that the treatment of staff across the board be fair and equitable so as not to create potential for disharmony. The implementation proceeded very successfully with no staff lodging formal objections and, indeed, very little informal query was raised regarding the distribution of performance pay. Several regions have reported a significant improvement in morale as a result of these payments which should further improve productivity.

Table 14: Performance pay: Number of eligible staff and aggregate payments

Staff category	Number	Aggregate payments
Senior Officer A/B*	114	$461 543
Senior Officer C*	19	$30 400
Total	**133**	**$491 943**

* These categories include staff at equivalent levels.

Figure 4: Distribution of performance pay



Industrial democracy

The DPP reviewed and revised its Industrial Democracy Plan during the year and this was agreed with the Public Sector Union in May 1993. The revised plan consists of an ID policy, ID action plan, ID agreement and a union access, representation and membership policy.

The new ID policy is linked to the DPP's Equity Plan, Occupational Health and Safety Agreement, and Human Resource Development Program. The plan reaffirms the role of the National Industrial Democracy Committee and the need for consultation on a formal and regular basis at all levels within the DPP. The plan promotes the use of participative management approaches and the role of the unions as a single channel for staff representation.

A national Industrial Democracy Committee meeting was held in Head Office on 9 December 1992 and the next meeting is scheduled for December 1993. Industrial Democracy within each office continues to be achieved by specific ID meetings, or meetings of all staff in smaller offices as appropriate. While Industrial Democracy is coordinated through Head Office, implementation is the responsibility of each region. Resources dedicated to ID are estimated to equate approximately one staff year throughout the DPP.

Monitoring, review and evaluation of Industrial Democracy is achieved via monitoring of action plans and by consideration at the annual National ID Committee meeting.

As Industrial Democracy and its inherent participative management approach has become part of normal office procedure, no major events other than the development of the new plan are reported in 1992–93. It is worthy of note with regard to priorities and expected achievements for the next reporting period, that agency bargaining will be a significant further vehicle for staff to be involved in major decisions affecting the DPP and this is consistent with our Industrial Democracy approach.

Privacy

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

Information technology

A description of the major projects undertaken by the Information Technology Sections in the 1992–93 financial year follows.

Re-equipment

Following the issue of a request for tender in the previous financial year, BHP Information Technology was selected as the prime contractor to install systems to replace and enhance the DPP's existing Wang VS systems.

The project was divided into two stages. Stage 1 included the installation of IBM compatible PC local and wide area networks, as well as analysis of existing corporate applications. Stage 2 will complete the replacement of the applications currently running on Wang VS minicomputers.

Stage 1 began in Head Office in October 1992 and was completed in May 1993. This stage resulted in the installation of over 500 personal computers incorporated in six PC local area networks linked by a wide area network, providing PC applications of word processing, spreadsheets, presentation software, text retrieval and simple database software. The local area networks in each office also provide access to current corporate applications on the Wang VS minicomputers, the

Attorney-General's mainframe computer, facsimile, electronic mail and dialout / X25 facilities.

The new technology has been overwhelmingly accepted by all DPP staff members.

Stage 2, due to begin shortly, will include finalisation of work related to the preliminary analysis and design, selection and acquisition of a database and technical platform for the redevelopment of corporate applications of Case Matter Management, Fines & Costs and Criminal Assets Recording. Imaging and electronic mail links to other departments will also be addressed.

This stage is expected to begin in July 1993, with completion due in February 1994.

Wang VS minicomputers

With the migration of Wang VS applications not expected to be completed for another year, in order to reduce the support IT load in the State offices and reduce maintenance costs on the old Wang equipment, a project is currently under way to centralise the Wang processing onto two Wang VS minicomputers located in Canberra and close down the Wang VS minicomputers in the other offices.

Wang VS applications

Enhancements were completed for the following corporate applications:

- **Case Matter Management** included modifications, as well as addition of a Comparative Sentencing module;
- **Fines and Costs** included modifications, as well as providing reports for the Audit Office; and
- **Finest**—the finance management system— underwent upgrades through the year adding additional functionality.

Litigation support systems

PC software is currently used to assist with the preparation, management and presentation of evidence in complex cases run by the DPP. These may vary from the use of spreadsheets and text retrieval software to the use of databases, which may be required to be custom-built.

A successful computer-based imaging system was recently piloted in a complex fraud committal hearing in Sydney. The system stored and displayed images of statements, exhibits, transcript and diagrams in the court on six 20-inch monitors. This system greatly accelerated the speed with which documents could be tendered as well as providing the court with useful, clear diagrams showing complex financial transactions.

Libraries

The DPP libraries operate as a network providing legal material and a reference and information service to the Office. All libraries have access to local and overseas databases. The introduction of Local Area Networks has enabled the librarians to provide desktop access to internal databases and a number of legal applications on disc and CD-ROM.

Each office is staffed with at least one professional librarian. The librarians meet regularly and provide input to network policies and procedures. The Head Office library performs a national role, coordinating the network,

producing a weekly newsletter and a monthly legal information service, cataloguing for the network and maintaining the library management system and ORACLE, the DPP's opinion database.

Last year's report included details on implementation of the library management system, LIBMAN. The system has been further modified to create a number of new information types including in-house materials. Unfortunately, due to WANG's withdrawal of LIBMAN from the market and new government guidelines on open systems, the network must find a new system. To this end, a consultant has been employed, in conjunction with two other government libraries which also use LIBMAN, to draw up a RFI for a new system.

Public relations

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

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

The DPP Journalist is also responsible for the Office's national publishing and information programs.

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

The DPP Journalist can be contacted on 06 2705 672 during office hours.

Financial management

Financial statements

Audited financial statements for the DPP are included at the end of this report. The DPP's total revenue and expenses over the last three years, and budget for 1993–94 are:

Table 15: Revenue and expenses over past three years and budget for 1993–94

		1990–91 ($'000)	1991–92 ($'000)	1992–93 ($'000)	1993–94 ($'000) (estimate)
Receipts		6 252	1 974	1 239	1 127
Expenses	**Budget**	46 794	52 606	51 042	52 372
	Actual	37 656	41 341	46 041	

The reduction in receipts is due to the transfer of the ACT prosecution function to the ACT Government and the creation of the Criminal Assets Trust Fund into which Proceeds of Crime receipts are now banked and which this Office does not control.

The increase in expenditure over the four years has been partly due to salary and price movements, but is primarily due to the progressive impact of the war crimes and corporate prosecution functions and the Information Technology re-equipment program presently underway.

The underspendings against budget are due to the numbers of war crimes matters proceeding to committal and trial being less than originally anticipated and funds being carried forward to meet scheduled commitments.

Table 16: Actual expenditure v budget

Function		1990–91 ($'000)	1991–92 ($'000)	1992–93 ($'000)	1993–94 ($'000)
Base funding	**Budget**	36 194	34 922	32 801	37 680
	Actual	36 028	35 096	33 890	
IT re-equipment	**Budget**	n/a	1 400	4 390	1 306
	Actual	n/a	220	4 001	
Corporate prosecutions	**Budget**	2 000	7 107	4 500	11 150
	Actual	1 301	3 788	4 959	
War crimes	**Budget**	9 500	9 177	6 351	2 236
	Actual	327	2 237	3 191	
Total expenses	**Budget**	46 794	52 606	51 042	52 372
	Actual	37 656	41 341	46 041	

Program budgeting

The DPP has three sub-programs for the purposes of external reporting : Commonwealth Prosecutions (which includes war crimes and corporate prosecutions), Criminal Assets and Executive and Support (which includes the IT re-equipment project). Details of the activities carried out under each sub-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.

For further information on DPP budgets refer also to the Attorney-General's Program Performance Statements for 1992–93 and 1993–94—Sub-program 6.6.

Agency evaluations

A DPP Evaluation Plan was developed during 1990–91, which provided for the evaluation of significant DPP activities within a five-year cycle. The criminal assets, fines and costs and information technology functions have been reviewed in past years.

During 1992–93 the DPP was represented on a portfolio review of the corporate prosecutions function which established an ongoing funding base for corporate prosecutions from 1993–94 onwards.

A tripartite review (DPP, Department of Finance and the Attorney-General's Department) is to be conducted of the prosecution function of the DPP during 1993–94.

Accounting policy and processes

Financial reporting and management information systems

The past year saw the continued expansion of external reporting requirements with the decision that all agencies are to report on an accrual basis by 30 June 1995. This will require a significant retraining of staff and redevelopment of systems to enable the new requirements to be implemented in an efficient and timely manner. Given the considerable work and costs involved the DPP has decided not to move to full accrual reporting until 1994–95.

The DPP operates two key financial systems: the FINEST financial management information system and an in-house developed Fines and Costs management system.

FINEST will continue to be upgraded to meet the requirements of the new Department of Finance accounting system (FIRM) and to enhance accrual accounting functionality.

The Fines and Costs system is to be replaced by a new system to be developed as part of the DPP's IT re-equipment program and will incorporate improved accounting and reporting functionality.

Accounting policy

A DPP Financial Handbook was formally issued in January 1993, incorporating the re-written Director's Supplementary Instructions. Further work on accounting policy is awaiting the new financial legislation in preparation by the Department of Finance.

Purchasing

A DPP Purchasing Handbook was formally issued in September 1992, incorporating the DPP Purchasing Reform Plan which remains in force pending the new financial legislation under preparation.

During 1992–93 the DPP failed to gazette purchases in excess of $2 000 within the required time frame in several instances due to breakdowns in office procedures. Such purchases were gazetted later in the financial year.

Accounts processing

The DPP will be reviewing accounts processing practices and the degree of devolution desirable in light of the requirement to move to an accrual accounting environment. Higher skill levels required may mean that some processes previously decentralised may have to be re-centralised to reduce the training overhead required.

Australian Government Credit Cards are continuing to be used where practicable, and are proving to be an efficient alternative.

Approximately 7 100 claims for payment were processed nationally during 1992–93, of which 95 per cent were paid on the due date. In smaller offices it is cost effective to process batches at regular intervals, rather than processing small numbers of claims strictly on the due date. Approximately 5 300 further transactions were processed by credit card.

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 one claim of $11 600 to repair fire damage which resulted in costs to the Commonwealth in aggregate in the range of $10 000 to $50 000.

Capital works management

The DPP had no major capital works projects costing not less than $6 million in 1992–93.

Consultancy services

During 1992–93 the DPP incurred expenditure under 14 consultancy agreements or systems integration contracts at a total cost of $1 224 550. Details appear in table 17.

Table 17: Consultancy services

Name	Purpose	Cost	Justification
1. T. Buddin *	In-house counsel, Sydney	$119 967	Cost-effective means of obtaining experienced counsel
2. DPXEL *	Consult on purchase of computer system as member of IT Acquisition Council	$285	Independent external representative
3. Noble Lowndes Cullen Egan and Dell Ltd *	Review nominated SES positions	$6 626	Specialist advice not available internally
4. P. Flaton & Associates *	Accrual accounting training	$1 600	Specialist skills not available internally
5. Fraud Management *	Legal consultants	$30 949	Specialist advice not available internally
6. LMCS *	Computer consultants for imaging and court presentation of documents	$16 353	Specialist skills not available internally
7. HBA Health Management *	Employee health and fitness testing	$4 124	Specialist skills not available internally
8. W.E. Norton & Associates *	Training courses—customer services and consulting skills	$4 750	Specialist skills not available internally
9. Council of Adult Education	In-house training courses	$2 400	Specialist skills not available internally
10. Drake Computer Training	In-house training courses	$5 010	Specialist skills not available internally
11. F. Hannan *	Process documents/exhibits	$2 500	Specialist skills not available internally
12. Capital Resource Consulting *	Stress management workshop	$3 160	Specialist skills not available internally
13. Pollak Partners *	Computer training	$10 800	Specialist skills not available internally
14. BHP-IT	Systems integrator and training for IT re-equipment project	$1 016 026	Specialist skills not available internally

Consultancies marked * were not publicly advertised.

Fraud control

The DPP prepared a Fraud Control Plan in 1989 which is still in force.

The DPP took over the internal audit function from the Attorney-General's department from 1 July 1992. The DPP has contracted Ernst and Young to perform it's internal auditor function for 1993–94. Under the contract Ernst and Young will review the DPP's Audit and Fraud Risk Assessment, prepare an updated Fraud Management plan and prepare an audit strategy for the office. As part of this process Ernst and Young will undertake selected internal audits during 1993–94.

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*.

Reports by the Auditor-General

The DPP was referred to in two reports by the Auditor-General:

Audit Report No. 29 1992–93— Aggregate and Departmental Financial Statements 1991–92

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

An unqualified audit report was submitted to the Attorney-General in respect of the office's financial statements for the year ended 30 June 1992.

This was the first year the DPP produced a financial statement which contained audited supplementary financial information, including non-current assets and creditors. The result of the audit of the DPP's accounts and records was satisfactory except for the following matters :

- there was a lack of segregation of duties in the expenditure function;
- DPP did not notify other departments/agencies of their fines and costs receivables as at 30 June for reporting by those departments/agencies. Legal expenses accrued as at 30 June which were also payable by other departments/agencies were not notified; and
- there was a lack of expertise in the preparation of accrual data for inclusion in the DPP's financial statement for 1991–92.

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

The DPP advised of appropriate remedial action taken or proposed.

The revised Director's Supplementary Instructions issued early this year and enhancements to financial systems in progress address the issues raised by audit.

As previously noted, the continued expansion of external reporting requirements with the decision that all agencies are to report on an accrual basis will require a significant retraining of staff and redevelopment of systems. The DPP is evaluating the best processes to achieve the required outcome, by a mix of retraining staff, recruiting more qualified staff and substantially redeveloping systems.

The Department of Finance has taken the decision that under the new reporting environment the DPP should account for all Legal Expenses and Fines and Costs related to matters that it controls. This change will be

implemented during 1993–94, substantially simplifying administrative processes as other agencies will no longer be required to be involved in the accounting process.

Audit Report No. 37 1992–93—Review of a Financial Management System

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

The operation of the FINEST financial management system in the period examined was effective in supporting the financial management of the DPP and maintaining the completeness, accuracy and validity of its accounting records. The implementation was undertaken in a controlled manner with effective and well-documented controls. The ANAO, however, considers that the DPP needs to strengthen controls relating to:

- segregation of duties;
- quality assurance processes; and
- granting and monitoring access to the financial management system.

Those recommendations have been and will continue to be taken into account in the IT re-equipment project and in the continuing development of accounting systems and policies and audit and control mechanisms.

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 women in the criminal process. This includes ensuring that all relevant matters are placed before judges and magistrates called upon to sentence female offenders.

The DPP does not have a women's unit. The responsibility for ensuring that proper consideration is paid to the status of women rests on the Deputy Directors.

Environmental matters and energy management

During the year under review the Office engaged the services of the Centre for Environmental Management of the Department of Administrative Services to undertake an energy management audit and to prepare an energy management plan. When complete, this plan and the necessary administrative framework will be implemented in the coming year.

To date the DPP has not put into place any specific energy saving measures as the capacity to do so is limited due to the fact that the DPP occupies leased premises and runs a fleet of vehicles leased 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. Preference is given to environmentally-sound products and office waste is recycled wherever practicable.

Freedom of Information

During the year five requests were received under the Freedom of Information Act. One request remained outstanding at the end of the year. Two requests were granted partial access and two requests were refused. Three were dealt with within 30 days and one was dealt with within 90 days.

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 corporate prosecutions are reported in chapter 4 of this report.

Public comments

The DPP has no formal arrangements for inviting complaints from the general public. However, any person is free to write to the Director, care of Head Office, Canberra.

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 were 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.

Chapter 8 Prosecution statistics and processing time

The following tables and graphs provide a picture of the prosecutions conducted by the DPP during the year in New South Wales, Victoria, Queensland, Western Australia, South Australia and the ACT.

Some caution should 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. Court backlogs will also have an impact on the effort required to deal with matters. A case may be listed for trial on a number of occasions before it actually begins. However, the 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.

The tables indicate that there was an 8.6 per cent increase in matters dealt with summarily in 1992–93 compared with 1991–92. For the most part this was the result of an increase in social security prosecutions, although it is noteworthy that there was also a 64.7 per cent increase in prosecutions for offences against the Financial Transaction Reports Act. There was a slight increase (1.8 per cent) in committal proceedings conducted by the Office, and a slight decrease (.9per cent) in matters dealt with on indictment. There was also an increase from seven to 12 in the number of trials on indictment taking more than 30 hearing days to complete. One of the trials completed in 1992–93 ran for 160 hearing days.

As noted above, there was an increase in the number of social security prosecutions completed by the Office compared with the figures for 1991–92. Although this increase was only small for matters dealt with on indictment (3.2 per cent), there was a 22.6 per cent increase in social security matters dealt with summarily. In this regard, as noted in the 1990–91 Report (at page 135) the Department of Social Security no longer filters out those cases it considers do not warrant prosecution on public interest grounds; rather the decision whether a prosecution is warranted in the public interest is now made by the DPP. This change was made with the objective of achieving a greater measure of consistency in charging practice in this area. This has resulted in an increase in the number of cases in which the Office decided that a prosecution would not be warranted in the public interest. In 1990–91 there were 119 cases where the DPP decided not to institute a prosecution on public interest grounds. In 1991–92 this had risen to 193 and in 1992–93 the figure was 293, an increase of 146 per cent on the 1990–91 figure. Over the same three year period there was also a 133 per cent increase in the number of cases where it was considered that the available evidence was insufficient to justify a prosecution having regard to the test of evidential sufficiency in the *Prosecution Policy of the Commonwealth.*

The following graphs provide information on the time taken to complete summary, committal, indictable and advice matters. In each graph the information is provided in the form of a cumulative percentage.

Table 18A: Matters dealt with summarily in 1992–93 (vi)

State	Defendants outstanding at 1.7.92	Matters received during year	No. of defendants dealt with	Outcome of trials: Pleas of guilty to all charges (vii)	Outcome of trials: No. of summary trials	Outcome of trials: No. of defendants convicted (i)	Outcome of trials: No. of defendants acquitted on all charges	Outcome of trials: Unresolved (ii)	Outcome of trials: Other (iii)	Defendants outstanding at 30.6.93
NSW(iv)	279	1214	1091	903	115	85	41	4	58	402
Vic.	312	1119	1081	925	102	81	21		54	350
Qld	119	737	757	633	60	42	27		55	99
WA	132	632	624	528	75	53	23	2	18	140
SA	311	801	633	483	58	56	3	2	89	479
ACT (v)	137	320	389	253	75	42	32	1	61	68
Total	1290	4823	4575	3725	485	359	147	9	335	1538

Notes: (i) i.e. where a defendant was convicted on at least one charge, or at least one charge was found proven

(ii) e.g. defendant died prior to completion of hearing but before sentence

(iii) e.g. all charges against a defendant withdrawn or no evidence offered by the prosecution in respect of any charge. Also includes cases where, although the prosecution was discontinued, this was for the purpose of instituting fresh proceedings in another jurisdiction

(iv) Does not include certain prosecutions conducted in south–eastern NSW by DPP Head Office (Canberra).

(v) includes certain prosecutions conducted in south–eastern NSW and 15 prosecutions conducted in the Jervis Bay Territory. Pursuant to an agreement with the ACT Director of Public Prosecutions, a further 113 matters were referred to his Office for prosecution if appropriate. They involved matters which were essentially of ACT rather than Commonwealth concern, and for the most part arose out of the exercise by the AFP of its community policing function in the ACT.

(vi) In summary prosecutions conducted by AGS Darwin, 110 defendants were convicted and two defendants were acquitted on all charges. A total of 237 defendants were dealt with summarily by AGS Hobart.

(vii) Includes cases where a defendant changed his or her plea to guilty during the course of the summary trial

Table 18B: Legislation: matters dealt with summarily in 1992–93 (i)

Legislation	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Citizenship Act	2	1			1		4
Australian Federal Police Act	1	1	6	4	1	94	107
Australian Securities Commission Act		1		1			2
Civil Aviation Act	3	5	15	8	2		33
Bankruptcy Act	9	16	6	8			39
Census and Statistics Act	2	21	9	3	12		47
Commonwealth Electoral Act						27	27
Continental Shelf Act							
Copyright Act	6	3	2	1		2	14
Crimes Act	263	247	106	80	139	78	913
Crimes (Aviation) Act	1	1	2	1			5
Crimes (Currency) Act	7	10	1	8	2		28
Customs Act	28	44	50	12	14	3	151
Companies Code	3	5	2	6	6	6	28
Corporations Law	1		2		2		5
Export Control Act			9		1		10
Federal Airports Corporation Act		9			37		46
Financial Transaction Reports Act	32	57	17	30	5		141
First Home Owners Act		2					2
Fisheries Act	6	2		5	1		14

Legislation	NSW	Vic.	Qld	WA	SA	ACT	Total
Fisheries Management Act			1				1
Great Barrier Reef Marine Park Act			44				44
Health Insurance Act	4	6			2		12
Industrial Relations Act				2			2
Marriage Act	1		3		1		5
Meat Inspection Act		2					2
Migration Act	176	7	11	21			215
National Health Act		1		2			3
Non–Commonwealth legislation (ii)	42	54	14	29	3	15	157
Passports Act	35	11	3	2		1	52
Public Order (Protection of Persons and Property) Act	9	1	6	1		46	63
Proceeds of Crime Act							
Quarantine Act	2	2	4				8
Radio Communications Act	2	8	5	3			18
Social Security Act	280	476	333	291	268	39	1687
Statutory Declarations Act	6					1	7
Student Assistance Act	42	11	12	31	10	2	108
Taxation legislation	42	10	28	44	20	9	153
Telecommunications Act			2	5			7
Telecommunications (Interception) Act	1	1					2
Trade Marks Act	8	6		4	3	1	22

Legislation	NSW	Vic.	Qld	WA	SA	ACT	Total
Trade Practices Act	4	1					5
Wildlife Protection Act	2		2	1			5
Other	12	5	7	3	14	4	45
Total	**1032**	**1027**	**702**	**606**	**544**	**328**	**4239**

Notes: (i) Cases recorded under 'Other' in table 18A 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. In the case of the ACT, it also includes offences against the laws of the Jervis Bay Territory prosecuted by DPP Head Office.

Table 18C: *Crimes Act 1914*: matters dealt with summarily in 1992–93

Legislation	NSW	Vic.	Qld	WA	SA	ACT	Total
Incitment (s. 7A)					1	1	2
Breach of recognisance etc. (ss. 20A, 20AC)	54	14	6	9	7		90
Damage property (s. 29)			1	1	7	13	22
False pretences (s. 29A)	6		5	2	2	23	38
Imposition (s. 29B)	99	91	25	23	20		258
False statements (s. 29C)	2			1	1		4
Fraud (s. 29D)	2	30	4	3	3	4	46
Seizing Commonwealth goods (s. 30)	1	1	1		2		5
Offences relating to administration of justice (ss. 32–50)	1	1		2			4
Forgery and related offences (ss. 65–69)	35	32	26	8	13	2	116
Disclosure of information (s. 70)		3	1		1		5
Stealing or receiving (s. 71)	23	18	4	6	11	24	86
Falsification of books (s. 72)	3	2		2	2		9
Bribery (ss. 73 & 73A)	2			2			4
False returns (s. 74)	1	1					2
Personating public officers (s. 75)	1	2	2				5
Resisting etc. public officers (s. 76)	1	3	1	1	1	1	8

Legislation	NSW	Vic.	Qld	WA	SA	ACT	Total
Offences relating to computers (ss 76B—76E)	2	2			3	1	8
Espionage and official secrets (ss. 77–85D)							
Offences relating to postal services (ss. 85E—85ZA)	17	14	23	4	13	1	72
Offences relating to telecommunications services (ss. 85ZB–85ZKB)	8	14	5	11	20	2	60
Conspiracy (s. 86)	3	10	2			2	17
Conspiracy to defraud (s. 86A)							
Trespass on Commonwealth land (s. 89)		1			28	1	30
Other	2	8		5	4	3	22
Total	**263**	**247**	**106**	**80**	**139**	**78**	**913**

Table 19A: Matters dealt with on indictment in 1992–93 (v)

State	Defendants outstanding at 1.7.92	Matters received during year	Number of defendants dealt with	Pleas of guilty to all charges (vii)	Outcome of trials: Number of trials (i)	Number of defendants convicted (i)	Number of defendants acquitted on all charges	Unresolved (ii)	Other (iii)	Defendants outstanding at 30.6.93
NSW	222	208	221	165	44	35	9	6	6	209
Vic.	81	130	127	104	11	11	2		10	84
Qld	38	104	101	77	14	7	6	1	10	41
WA	20	51	50	29	14	17	1		3	21
SA	20	48	41	31	7	2	6		2	27
ACT (vi)	6	20	10	4	6	2	4			16
Total	387	561	550	410	96	74	28	7	31	398

Notes: (i) Any retrial completed in the same financial year is counted only once.
(ii) i.e. where a defendant was convicted on at least one charge
(iii) e.g. jury unable to agree on verdict or trial aborted after it had commenced (and any retrial not completed in the year under review), accused found unfit to plead, indictment quashed, defendant died prior to completion of hearing but before sentence
(iv) See chapter 2 for details of no bills entered during the financial year. The number of no bills do not include those cases where the power under section 9(4) of the DPP Act was exercised, but the prosecution proceeded on State charges.
(v) The Australian Government Solicitor, Hobart, dealt with four defendants on indictment. The Australian Government Solicitor, Darwin, dealt with three defendants on indictment, two of whom pleaded guilty to all charges. The third defendant was convicted following a trial.
(vi) may include certain prosecutions conducted in south-eastern NSW or the Jervis Bay Territory by DPP Head Office, Canberra
(vii) includes cases where a defendant changed his or her plea to guilty during the course of the trial.

Table 19B: Legislation: matters dealt with on indictment in 1992–93 (i)

Legislation	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Federal Police Act	1					3	4
Bankruptcy Act	1		2				3
Companies Code		1	5	3	1		10
Corporations Law				1			1
Crimes Act	112	57	57	15	24	6	271
Crimes (Currency) Act	2	1	3	1	1		8
Customs Act	94	38	15	18	9		174
Financial Transaction Reports Act	1	1		2		1	5
Health Insurance Act				4			4
Marriage Act		1					1
Migration Act	1	2	1				4
Non-Commonwealth (ii)	2	9	5	1	1		18
Passports Act	1	3					4
Proceeds of Crime Act	1						1
Social Security Act			1	1	2		4
Other	2	4	2	1	1		10
Total	**218**	**117**	**81**	**47**	**39**	**10**	**522**

Notes: (i) Cases recorded under 'unresolved' and 'no bills' in table 19A have not been taken into account.
(ii) other than Companies Code

Table 19C: *Crimes Act 1914*: matters dealt with on indictment in 1992–93

	NSW	Vic.	Qld	WA	SA	ACT	Total
Breach of recognizance etc. (ss. 20A, 20AC)		2	2				4
Damage property (s. 29)	1		1				1
False pretences (s. 29A)	9	1	1				11
Imposition (s. 29B)	63	14	11	8	13	1	110
False statements (s. 29C)	1		1		2		4
Fraud (s. 29D)	13	20	15	4	1	3	56
Offences relating to administration of justice (ss. 32–50)		3	1				4
Forgery and related offences (ss. 65–69)	6	3	8	1			18
Disclosure of information (s. 70)	1						1
Stealing or receiving (s. 71)	5	3	11	1	3		23
Falsification of books (s. 72)	2			1		1	4
Bribery (ss. 73 and 73A)							
False returns (s. 74)							
Resisting etc. public officers (s. 76)	2				1		3
Offences relating to computers (ss. 76B–76E)		1					1

	NSW	Vic.	Qld	WA	SA	ACT	Total
Espionage and official secrets (Part VII)			1				1
Offences relating to postal services (ss. 85E–85ZA)			3				3
Offences relating to telecommunications services (ss. 85ZB–85 ZKB)							
Conspiracy (s. 86)	7	5					12
Conspiracy to defraud (s. 86(1)(e) or s. 86A)	2	2	2		4		10
Other		3				1	4
Total	**112**	**57**	**57**	**15**	**24**	**6**	**271**

Table 19D: Duration of trials on indictment completed in 1992–93 (i)

State	Number of trials	Total number of defendants dealt with	Number of hearing days							Total hearing days
			Less than 5	5–10	11–15	16–20	21–25	26–30	More than 30	
NSW	44	50	21	10	6	1			6	574
Vic.	11	13	4	2	1				4	408
Qld	14	14	12	2						36
WA	13	18	9	4						42
SA	7	8	1	4					2	98
ACT	6	6	6							11
Total	**95**	**103**	**53**	**22**	**7**	**1**			**12**	**1169**

Note: (i) Retrials completed in the same financial year have been aggregated.

Table 20A: Prosecution appeals against a sentence imposed by a court of summary jurisdiction in 1992–93

State	Number of appeals dealt with	Type of matter			Outcome of appeal	
		Drugs	Social Security	Other	Upheld	Dismissed
NSW						
Vic.	1	1			1	
Qld	3	1	2		1	
WA	1	1		2	1	2
SA						
ACT						
Total	5	3	2	2	3	2

Table 20B: Prosecution appeals against a sentence imposed by a court of summary jurisdiction in 1992–93(i)

State	Number of appeals dealt with	Type of matter			Outcome of appeal	
		Drugs	Social Security	Other	Upheld	Dismissed
NSW	2	1		1	2	
Vic.	5	3	1	1		5
Qld	4	1		3	3	1
WA	3	2		1	3	
SA						
ACT	1			1		1
Total	**15**	**7**	**1**	**7**	**8**	**7**

Note: (i) does not include appeals that were withdrawn

Table 20C: Other prosecution appeals in 1992–93

State	Number of appeals dealt with	Decision appealed from			Outcome of appeal	
		Fail,ure to convict or commit	Grant of bail	Other	Upheld	Dismissed
NSW						
Vic.						
Qld	2	1		1	1	1
WA	3	2		1	2	1
SA						
ACT	1			1	1	
Total	6	3		3	4	2

Table 21A : Appeals against conviction and/or sentence by persons convicted by a court of summary jurisdiction in 1992–93 (i)

State	Number of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction and sentence
NSW	74	15	38	21
Vic.	41	6	21	14
NSW	74	15	38	21
Vic.	41	6	21	14
Qld	16	5	8	3
WA	15	3	11	1
SA	12		10	2
ACT	4	3	1	
Total	**162**	**32**	**89**	**41**

Note: (i) does not include appeals that were withdrawn or abandoned

Table 21B: Appeals against conviction and/or sentence by persons convicted on indictment in 1992–93 (i)

State	Number of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction and sentence
NSW	45	8	21	16
Vic.	12	1	8	3
Qld	7	2	4	1
WA	6		5	1
SA	3		1	2
ACT	1		1	
Total	**74**	**11**	**40**	**23**

Note: (i) does not include appeals that were withdrawn or abandoned

Table 22A: Matters dealt with in committal proceedings in 1992–93

State	Defendants outstanding at 1.7.92	Matters received during year	No. of defendants dealt with	No. of defendants committed for sentence	Outcome of defended committal proceedings: No. of defended committal proceedings	Outcome of defended committal proceedings: No. of defendants committed for trial	Outcome of defended committal proceedings: No. of defendants discharged on all charges	Other(i)	Defendants outstanding at 30.6.93
NSW	86	242	232	119	88	112	1		96
Vic.	54	98	128	49	76	75	1	3	24
Qld	30	77	71	1	58	66	4		36
WA	17	34	50	4	38	46			1
SA	33	33	54	6	37	41	2	5	12
ACT	14	8	22	3	7	19			0
Total	**234**	**492**	**557**	**182**	**304**	**359**	**8**	**8**	**169**

Note: (i) all charges withdrawn prior to hearing

Table 22B: Duration of defended committal proceedings completed in 1992–93

State	No. of defended committal proceedings	Number of hearing days										Total no. of days
		Up to1	2	3	4	5–10	11–15	16–20	21–25	26–30	More than 30	
NSW	88	60	6	9	1	6	2	4				257
Vic.	76	53	4		1	9	9					244
Qld	58	45	8	1	2	1	1					89
WA	38	36		2								42
SA	37	33		1		2		1				72
ACT	7	5					1	1				33
Total	304	232	18	13	4	8	13	6				737

Table 23: Advice matters in 1992–93 (i)

State	Matters dealt with	Type of advice			
		General	Insufficient vidence	Prosecution not appropriate	Other (ii)
NSW	366	14	43	224	85
Vic.	533	81	68	298	86
Qld	260	60	55	89	56
WA	200	15	57	98	30
SA	244	12	38	25	169
ACT(iii)	88	24	10	24	30
Total	**1 691**	**206**	**271**	**758**	**456**

Notes: (i) This table only includes advice matters recorded on the Case Matter Management system. A file may not be created where the advice related to a relatively minor matter and was conveyed orally. Other advice matters may be located on running files, i.e. the file will relate to more than one matter. Still other advice matters are not recorded on the system for security reasons.
An advice matter falls into two broad categories—either the provision of general advice (recorded under 'general' above) or matters referred to the DPP for prosecution which do not proceed beyond the advice stage. It may be decided that there is insufficient evidence to justify a prosecution, or that a prosecution would not be appropriate on public interest grounds. Alternatively, although a summons was issued for some reason, it was not served.

(ii) e.g. where the 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 24A: Social security prosecutions: matters dealt with summarily in 1992–93 (i)

State	Defendants outstanding at 1.7.92	Matters received during year	No. of defendants dealt with	Pleas of guilty to all charges	Outcome of summary trials					Defendants outstanding at 30.6.93
					No. of summary trials	No. of defendants convicted	No. of defendants acquitted on all charges	Unresolved	Other	
NSW	68	321	342	312	14	8	7	1	14	47
Vic.	134	527	559	521	24	21	3		14	102
Qld	46	378	370	353	6	3	3		11	54
WA	52	254	301	272	26	21	5	1	2	5
SA	149	334	331	287	7	6	1		37	152
ACT	22	35	47	42	3	1	1	1	2	10
Total	**471**	**1849**	**1950**	**1787**	**80**	**60**	**20**	**3**	**80**	**370**

Note: (i) see notes to table 18A

Table 24B: Social security prosecutions: matters dealt with on indictment in 1992–93 (i)

State	Defendants outstanding at 1.7.92	Matters received during year	Number of defendants dealt with	Pleas of guilty to all charges	Outcome of trials				Defendants outstanding at 30.6.93
					Number of trials	Number of defendants convicted	Number of defendants acquitted on all charges	No bills	
NSW	48	54	66	61	5	4	1		36
Vic.	7	25	23	23					9
Qld	4	16	17	13	3	3		1	3
WA	1	1	2	1	1	1			0
SA	3	16	18	18					1
ACT	0	2	2	2					0
Total	**63**	**114**	**128**	**118**	**9**	**8**	**1**	**1**	**49**

Note: (i) see notes to table 19A

Table 24C: Social Security prosecutions: advice matters in 1992–93 (i)

State	Matters dealt with	Type of advice			
		General	Insufficient evidence	Prosecution not appropriate	Other
NSW	162	1	21	115	25
Vic.	196	2	25	127	42
Qld	71	3	18	18	32
WA	55		23	21	11
SA	44	2	20	9	13
ACT	19		5	3	11
Total	**547**	**8**	**112**	**293**	**134**

Note: (i) see notes to table 23

Table 24D: Social Security prosecutions: matters dealt with in 1992–93: amount defrauded in charges found proved (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
Matters dealt with summarily							
No. of male defendants	196	343	267	187	198	33	1224
Amount defrauded	$1 551 573	1 918 431	1 782 155	776 896	1 013 127	282 304	7 324 486
No. of female defendants	124	199	89	106	95	10	623
Amount defrauded	$1 161 318	1 710 731	905 868	541 175	642 174	95 664	5 056 930
Total defendants	320	542	356	293	293	43	1847
Total amount defrauded	$2 712 891	3 629 162	2 688 023	1 318 071	1 655 301	377 968	12 381 416
Matters dealt with on indictment							
No. of male defendants	35	13	8	1	8		65
Amount defrauded	$2 019 353	535 747	136 903	1695	197 603		2 891 301
Amount defrauded	$2 191 407	504 969	311 651	55 544	563 103	131 978	3 758 652
Total defendants	65	23	16	2	18	2	126
Total amount defrauded	$4 210 760	1 040 716	448 554	57 239	760 706	131 978	6 649 953
Grand total							
Grand total defendants	385	565	372	295	311	45	1973
Grand total amount defrauded	$6 923 651	4 669 878	3 136 577	1 375 310	2 416 007	509 946	19 031 369

Note: (i) includes amount defrauded where charges were laid under the *Crimes Act 1914*

Table 25A: Appearance work by DPP lawyers in 1992–93(i)

	NSW (%)	Vic. (%)	Qld (%)	WA (%)	SA (%)	ACT (%)	National (%)
Defended summary hearing	86	95	97	92	98	91	92
Undefended summary hearing	81	98	88	82	97	86	89
Committal with a plea of guilty	90	96	0	100	100	33	91
Committal with a plea of not guilty	78	55	98	100	89	86	81
Trials on indictment	29	0	93	69	43	100	45
Sentencing proceedings in superior courts	87	71	91	96	96	100	85
Prosecution appeals	100	17	70	100	–	100	73
Defendant appeals	84	82	96	100	93	50	86

Note: (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.
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 may also be briefed to appear for the DPP in certain proceedings in the superior courts (e.g. sentencing).

Table 25B: Appearance work by non-DPP lawyers in 1992/93 (i)

	Senior counsel (%)	Junior counsel (%)	Other (ii) (%)
Defended summary hearing	1.9	3.1	2.7
Undefended summary hearing	0.36	0.22	10.0
Committal with a plea of guilty		1.2	6.6
Committal with a plea of not guilty	11.9	5.3	2.0
Trials on indictment	22.2	30.3	2.0
Sentencing proceedings in superior courts	5.3	8.7	0.5
Prosecution appeals	20.0	6.7	
Defendant appeals	6.2	4.7	3.3

Notes: (i) This table identifies the number of matters in which persons or bodies other than DPP lawyers appeared as counsel, expressed as a percentage of the total matters in a particular category.
(ii) e.g. police prosecutor, private firm of solicitors

Table 26A: Matters dealt with summarily in 1992–93 : referring agencies (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Bureau of Statistics	2	21	9	3	12		47
Australian Customs Service	1		8	4	1		14
Australian Electoral Commission						27	27
Australian Federal Police	319	415	233	202	74	222	1465
Australian Fisheries Management Authority	2			5	1		8
Australian Postal Corporation	32	25	4	12	8	9	90
Australian Securities Commission	4	5	4	6	8	7	34
Australian Taxation Office	47	11	24	7	23	12	124
Australian Telecommunications Authority				1	2		3
Australian Telecommunications Corporation	24	14		2			40
Civil Aviation Authority	2	4	12	7	2		27
Dept of Community Services and Health	1		1				2
Dept of Employment, Education and Training	41	12	13	32	11	3	112
Dept of Immigration and Ethnic Affairs	196	6	9	17	1		229
Dept of Industrial Relations				2			2
Dept of Primary Industries & Energy				1	4		5
Dept of Social Security	298	464	298	277	271	43	1651

	NSW	Vic.	Qld	WA	SA	ACT	Total
Dept of Transport and Communications	2	8	4	3			17
Federal Airports Corporation		9			37		46
Health Insurance Commission	9	2			1		12
National Crime Authority						0	
Non–Commonwealth agencies (other than State police)	10	10	54	14	2	3	93
Official Receiver	1			1			2
State police	32	6	15	9	84		146
Trade Practices Commission	3						3
Other	6	15	14	1	2	2	40
Total	**1 032**	**1 027**	**702**	**606**	**544**	**328**	**4 239**

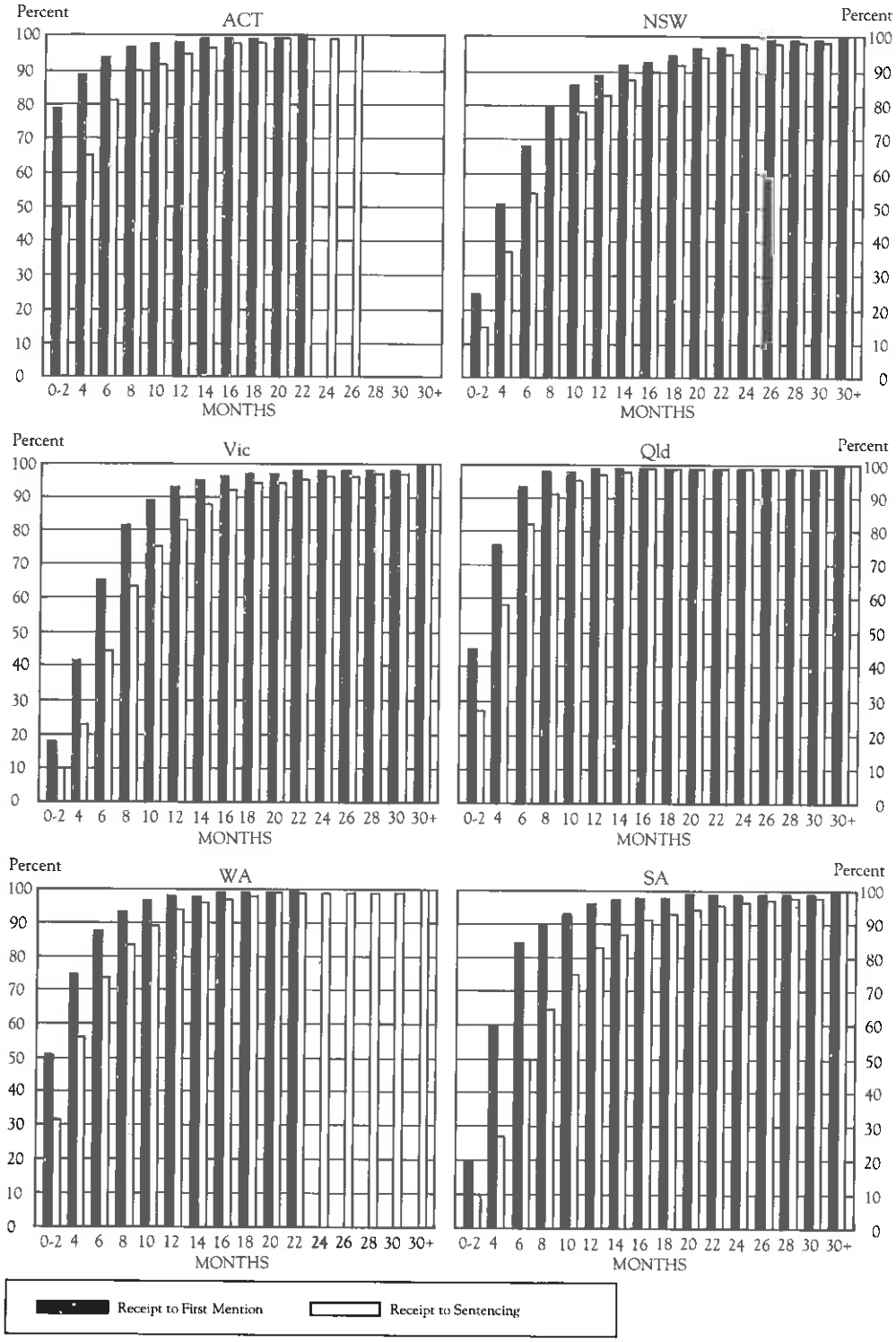
Note: (i) This table provides information as to those agencies that referred matters for prosecution to the DPP. These agencies would have carried out any necessary investigation prior to referral to the DPP. The figures supplied are by reference to matters dealt with summarily, although matters recorded under 'other' in table 18A have not been taken into account.

Table 26B: Matters dealt with on indictment in 1992–93: referring agencies (i)

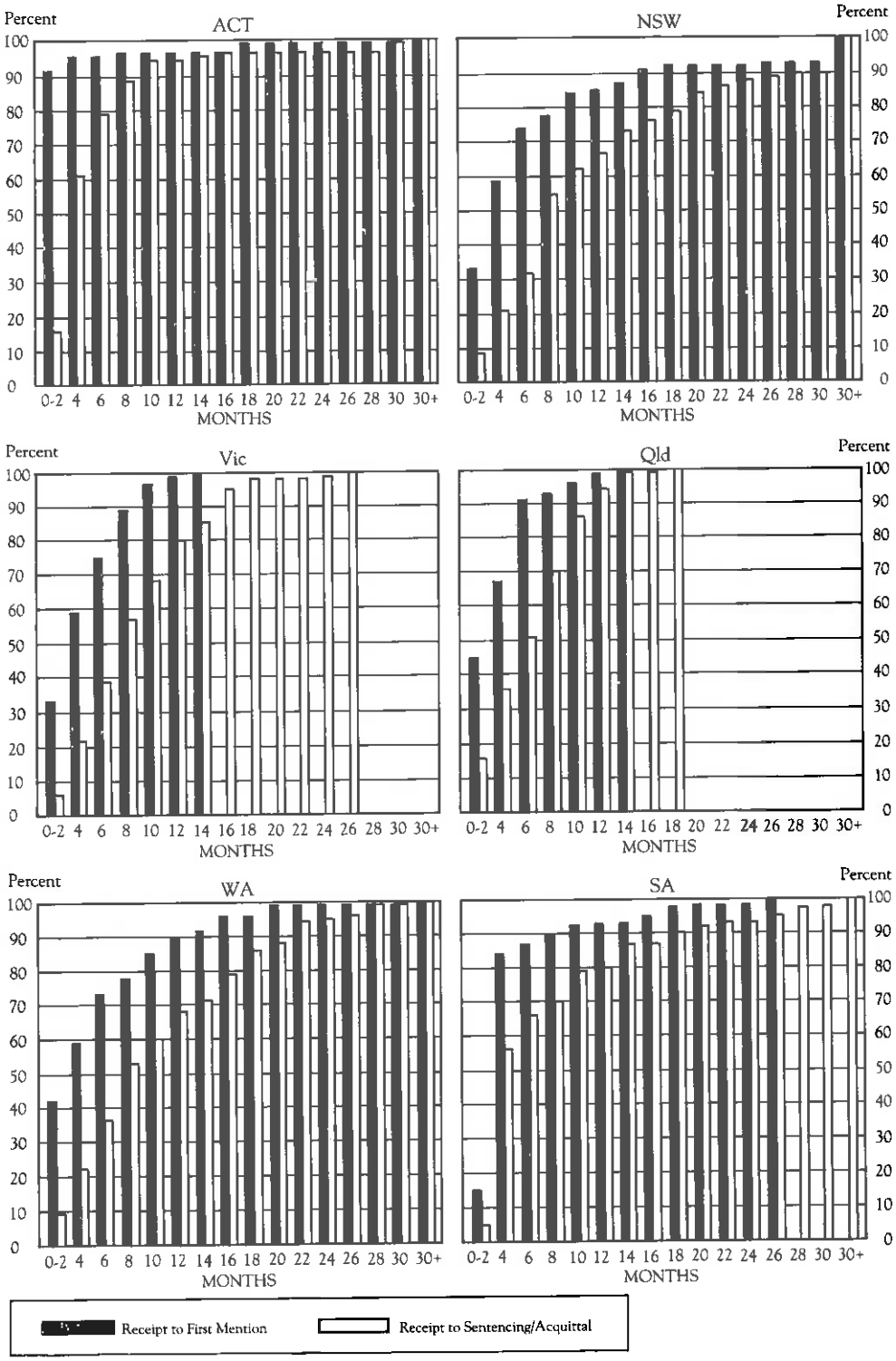
	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Customs Service	2			1			3
Australian Federal Police	148	96	66	37	25	6	378
Australian Postal Corporation	1		2	1		1	5
Australian Securities Commission		1	5	5	2		13
Australian Taxation Office	5					1	6
Australian Telecommunications Corporation	1	1					2
Civil Aviation Authority							0
Dept of Education, Employment and Training							0
Dept of Immigration and Ethnic Affairs	2						2
Dept of Primary Industries and Energy							0
Dept of Social Security	49	9		2	10	2	72
Health Insurance Commission				1			1
National Crime Authority	2						2
Non–Commonwealth agencies (other than State police)	1	2	3				6
Official Receiver							0
State police	7	7	14		1		29
Trade Practices Commission			1				1
Other		1			1		2
Total	218	117	91	47	39	10	522

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, although matters recorded under 'no bill' in table 19A have not been taken into account.

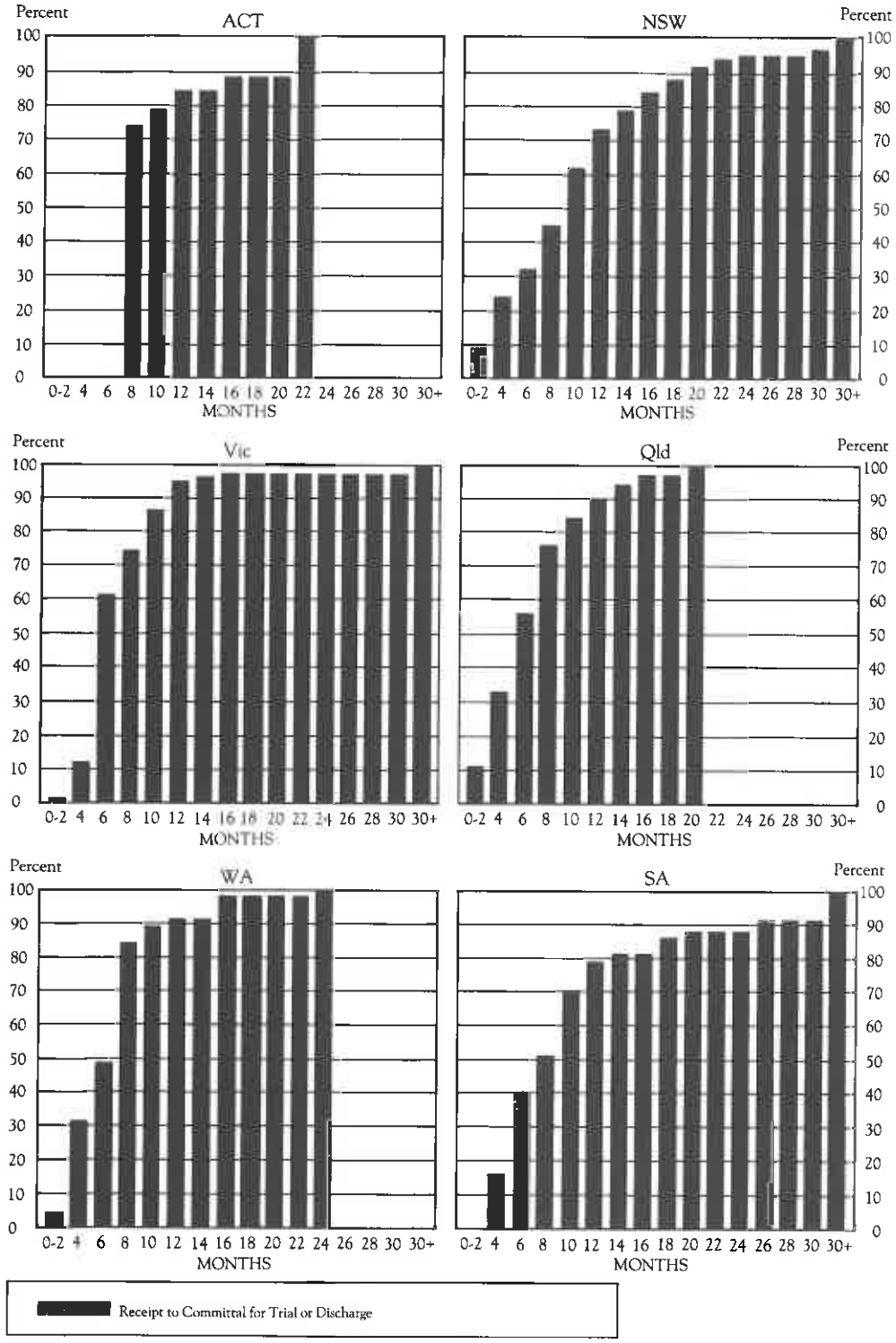
Processing times for undefended summary matters



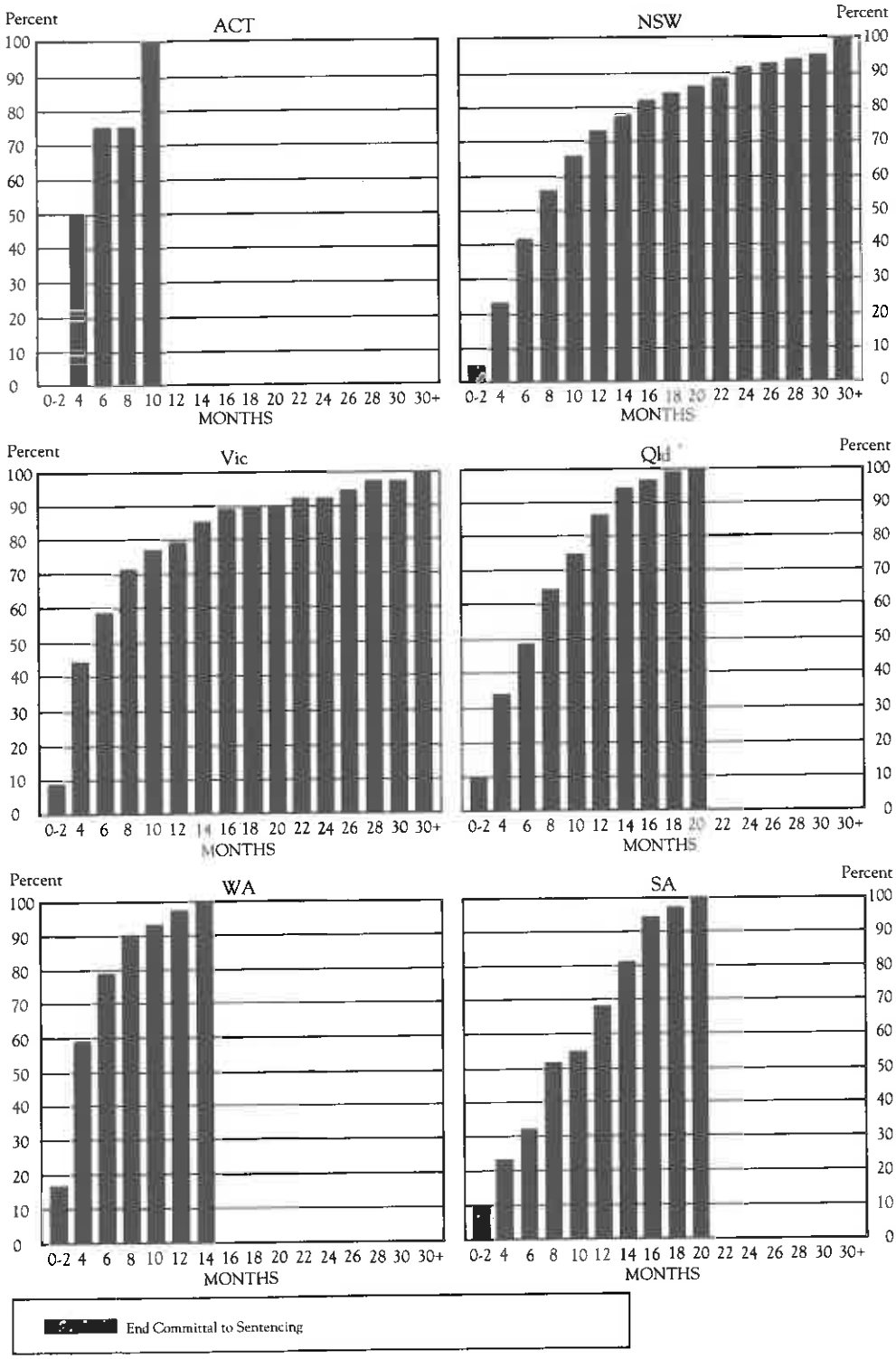
Processing times for defended summary matters



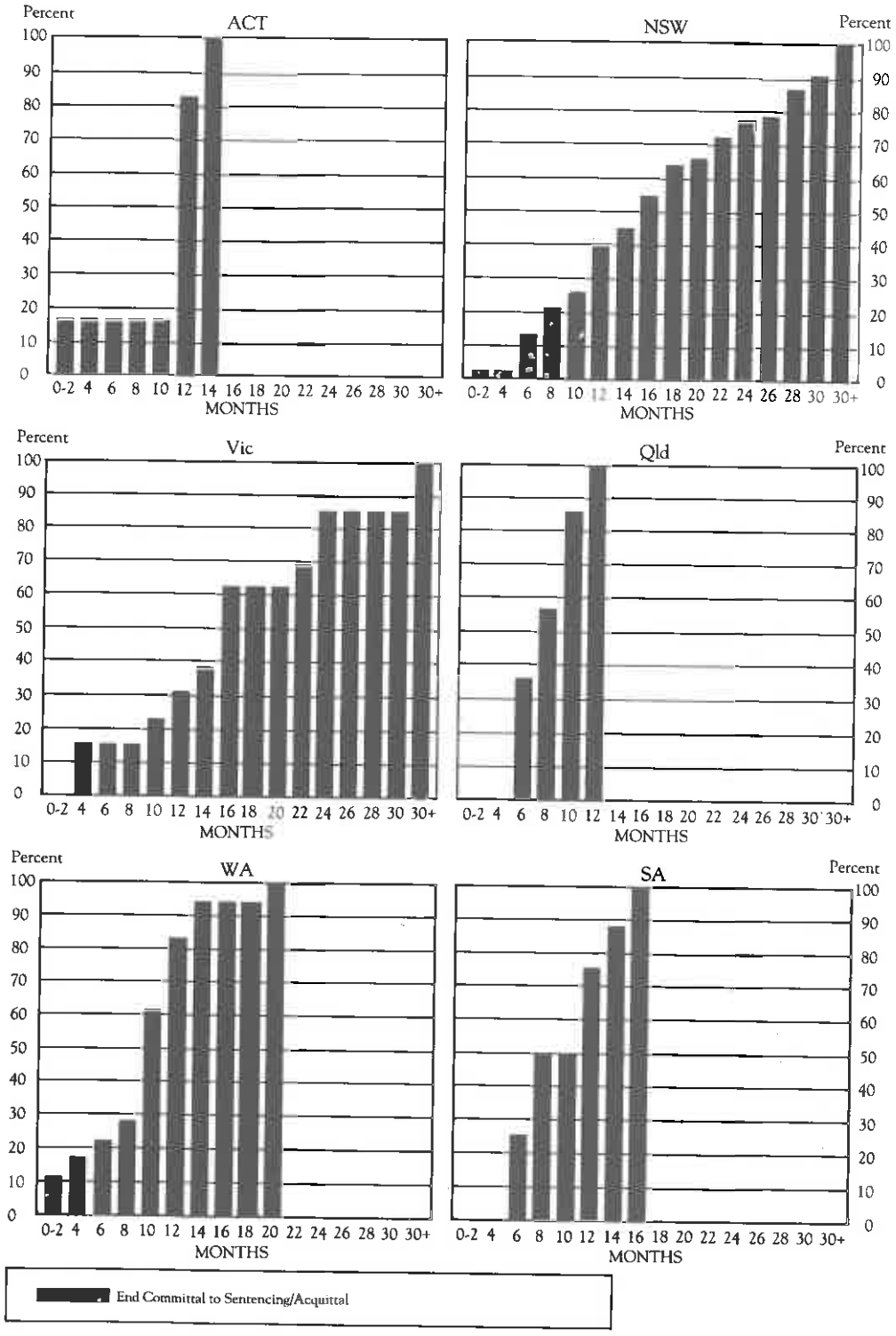
Processing times for defended committals



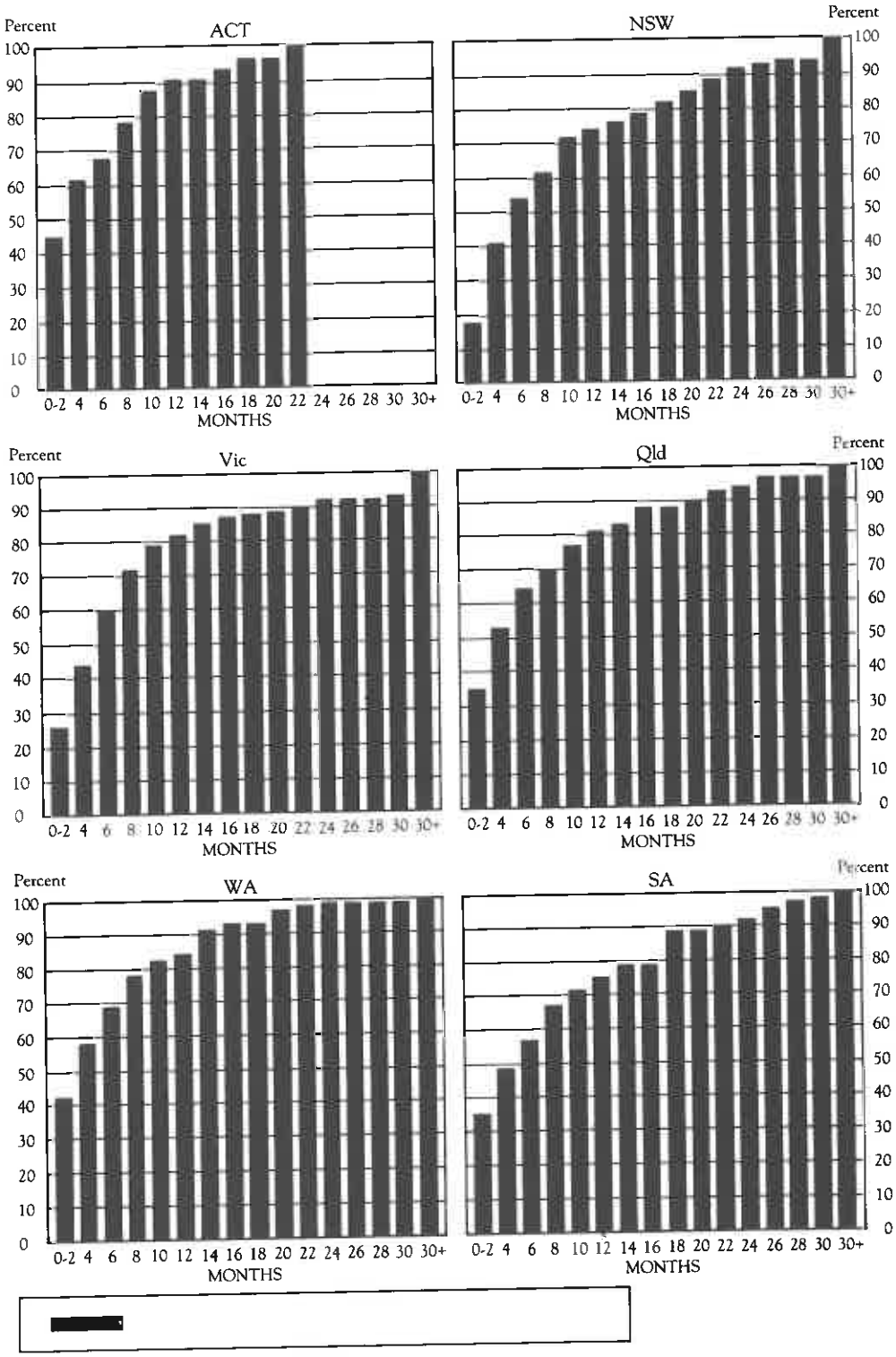
Processing times for undefended indictable matters



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 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 counsel's 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 manual.

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;
- *DDP Bulletin*; and
- *Prosection 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 of required, are provided at each DPP office. Copies of all documents are not held in each office and therefore some documents cannot 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	Australian Government Solicitor
ASC	Australian Securities Commission
ATO	Australian Taxation Office
DEET	Department of Employment, Education and Training
DILGEA	Department of Immigration, Local Government and Ethnic Affairs
DSS	Department of Social Security
DVA	Department of Veterans' Affairs
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
SCAG	Standing Committee of Attorneys-General
SES	Senior Executive Service

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AUSTRALIAN NATIONAL AUDIT OFFICE

Centenary House
19 National Crt
Barton ACT 2600

our ref;

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
INDEPENDENT AUDIT REPORT

Scope

I have audited the financial statement of the Office of the Director of Public Prosecutions for the year ended 30 June 1993.

The statement comprises:

- Aggregate Statement of Transactions by Fund
- Detailed Statement of Transactions by Fund
- Program Summary
- Program Statement
- Statement of Supplementary Financial Information
- Certificate by the Director and the Acting Senior Executive, Administration, and
- Notes to and forming part of the Financial Statement.

The Director and the Acting Senior Executive, Administration are responsible for the preparation and presentation of the financial statement and the information contained therein. I have conducted an independent audit of the financial statement in order to express an opinion on it.

The Office employs the accounting policies described in Note 1 to the financial statement.

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

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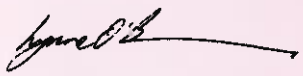
basis, of evidence supporting the amounts and other disclosures in the financial statement, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion whether, in all material respects, the financial statement is presented fairly in accordance with Australian accounting concepts and standards applicable to public sector reporting entities employing a cash basis of accounting, and statutory requirements, so as to present a view which is consistent with my understanding of the Office's operations and certain assets and liabilities.

The audit opinion expressed in this report has been formed on the above basis.

Audit Opinion

In accordance with sub-section 51(1) of the Audit Act, I now report that the financial statement, in my opinion:

- is in agreement with the accounts and records kept in accordance with section 40 of the Act
- is in accordance with the financial statement guidelines made by the Minister for Finance, and
- presents fairly, in accordance with Statements of Accounting Concepts and applicable Accounting Standards and with the Guidelines, the transactions of the Office for the year ended 30 June 1993 and certain assets and liabilities as at that date.



Lynne O'Brien
Acting Executive Director

Canberra

5 November 1993

OFFICE OF

THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1992-93

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1992-93

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OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1992-93

STATEMENT BY THE DIRECTOR

AND

PRINCIPAL ACCOUNTING OFFICER

CERTIFICATION

We certify that the financial statements for the year ended 30 June 1993 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 (Modified Cash Reporting) issued in April 1993.

Michael Rozenes
Director

Signed
Dated 4.11.93

S Walker
A/g Senior Executive,
Administration.

Signed
Dated 4/11/93

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

AGGREGATE STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1993

This Statement shows aggregate cash transactions, for which the DPP is responsible, for each of the three funds comprising the Commonwealth Public Account (CPA). DPP does not administer funding under Special Appropriations.

	1991-92 Actual $	1992-93 Budget $	1992-93 Actual $
CONSOLIDATED REVENUE FUND (CRF)			
Receipts (Note 3)	1,974,076	1,324,000	1,239,013
Total Receipts CRF	1,974,076	1,324,000	1,239,013
Expenditure from Annual Appropriations }	41,341,185	50,807,000	46,041,063
Section 35 of the Audit Act 1901 (Note 2) }		235,000	
Total Expenditure CRF	41,341,185	51,042,000	46,041,063
LOAN FUND			
Total Loan Fund	0		0
TRUST FUND			
Opening balance 1 July	0		4,156
Receipts	42,090		79,841
Expenditure	37,934		71,917
Closing balance 30 June	4,156		12,080
Represented by:			
Cash	4,156		12,080
Investments	0		0
Total Trust Fund (Note 16)	4,156		12,080

The attached notes form an integral part of these Statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

DETAILED STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1993

This statement shows details of cash transactions, for which the Office is responsible, for the Consolidated Revenue Fund and the Trust Fund (The Office was not responsible for any transactions of the Loan Fund).

CONSOLIDATED REVENUE FUND (CRF)

RECEIPTS TO CRF

The CRF is the main working fund of the Commonwealth and consists of all current moneys received by the Commonwealth (excluding loan raisings and moneys received by the Trust Fund).

The DPP is responsible for the following receipt items :

	Sub-Program*	1991-92 Actual $	1992-93 Budget $	1992-93 Actual $
Fines and Costs	1. (a)	944,114	1,079,000	1,064,637
Proceeds of Crime Legislation	2. (a)	892,089	0	1,616
Miscellaneous	#. (b)	77,873	10,000	86,404
Section 35 of the Audit Act 1901 (Note 2)	3. (b)	60,000	235,000	86,356
TOTAL RECEIPTS TO CRF (Note 3)		1,974,076	1,324,000	1,239,013

* Refer to Program Statement.

(a) - Revenue

(b) - Receipts offset within outlays

- allocated to various sub-programs

The attached notes form an integral part of these statements.

DETAILED STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1993

EXPENDITURE FROM CRF

The Constitution requires that an appropriation of moneys by the Parliament is required before any expenditure can be made from the CRF.

The DPP is responsible for the following expenditure items :

	1991-92 Actual $	1992-93 Appropriation $	1992-93 Actual $
Annual Appropriations			
Appropriation Act No.1 }		50,807,000	
Appropriation Act No.5 }		1,528,000	
Appropriation under Section 35 of the Audit Act 1901 }	41,341,185	86,356	46,041,063
Total Expenditure from Annual Appropriations	41,341,185	52,421,356	46,041,063
TOTAL EXPENDITURE FROM CRF	41,341,185	52,421,356	46,041,063

DETAILS OF EXPENDITURE FROM ANNUAL APPROPRIATIONS

	Sub-Program *	1991-92 Actual $	1992-93 Appropriation $	1992-93 Actual $
APPROPRIATION ACT NO's. 1 and 5				
Division 178 - Director of Public Prosecutions				
1. Running Costs - Annotated Appropriation (Note 2)	#	33,857,007	41,325,356	39,473,270
3. Other Services - 01 Legal Expenses	#	7,484,179	11,096,000	6,567,793
		41,341,186	52,421,356	46,041,063

* Refer to Program Statement.

Allocated to various sub-programs.

The attached notes form an integral part of these statements.

DETAILED STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1993

TRUST FUND

	1991-92 Actual $	1992-93 Actual $
DPP Services, Other Government and Non Department 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.		
Receipts and Expenditure -		
Opening balance 1 July	0	4,156
Receipts	42,090	51,106
Expenditure	37,934	48,273
Closing balance 30 June (Note 16)	4,156	6,989

DPP Law Enforcement Projects

. Legal Authority - Audit Act 1901, Section 62 A
. Purpose - for the expenditure of moneys on law enforcement projects selected for the purpose of section 34D of the Proceeds of Crime Act 1987.

Receipts and Expenditure -

Opening balance 1 July	n/a	0
Receipts	n/a	28,735
Expenditure	n/a	23,644
Closing balance 30 June	n/a	5,091

Note: Trust Account was established on 25 March 1993 and therefore no comparative figures are available for 1991-92.

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 1993

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'.

	1991-92 Actual $'000	1992-93 Budget $'000	1992-93 Actual $'000
EXPENDITURE			
Outlays			
1. Prosecutions	26,298	32,276	26,058
2. Criminal Assets	3,836	3,950	4,442
3. Executive and Support	11,069	14,571	15,369
Total Outlays	41,203	50,797	45,869
Plus Receipts Offset Within Outlays			
3. Executive and Support	138	245	172
TOTAL EXPENDITURE FROM CRF	41,341	51,042	46,041
RECEIPTS			
Revenue			
1. Prosecutions	944	1079	1065
2. Criminal assets	892	0	2
Total revenue	1,836	1,079	1,067
Plus Receipts Offset Within Outlays			
3. Executive and Support	138	245	172
Total Receipts Offset within Outlays	138	245	172
TOTAL RECEIPTS TO CRF	1,974	1,324	1,239

The attached notes form an integral part of these statements.

PROGRAM STATEMENT
FOR THE YEAR ENDED 30 JUNE 1993

	1991-92 Actual $'000	1992-93 Budget $'000	1992-93 Actual $'000
2. CRIMINAL ASSETS			
Running Costs (178.1)(p)			
Salaries	1,914	1,950	2,450
Administrative Expenses	554	560	474
Property Operating Expenses - Current	933	1,020	948
Property Operating Expenses - Capital	55	0	32
Compensation and Legal Expenses (178.3)(p)	380	420	538
Expenditure from Appropriations	3,836	3,950	4,442
Total Outlays	3,836	3,950	4,442
Revenue Proceeds of Crime Legislation	892	0	2
3. EXECUTIVE AND SUPPORT			
Running Costs (178.1)(p)			
Salaries	4,864	4,633	5,222
Administrative Expenses	4,109	7,410	7,696
Section 35 of the Audit Act 1901	n/a	235	n/a
Legal Services provided by the Attorney General's Department	0	8	30
Property Operating Expenses - Current	2,109	2302	2,510
Property Operating Expenses - Capital	125	228	83
Expenditure from Appropriations	11,207	14,816	15,541
Less Receipts offset Within Outlays			
Section 35 of the Audit Act 1901 (Note 2)	60	235	86
Miscellaneous	78	10	86
Total Receipts offset Within Outlays	138	245	172
Total Outlays	11,069	14,571	15,369

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 1993

	Note	1991-92 $	1992-93 $
CURRENT ASSETS			
Cash	4	123,702	157,510
Receivables	5	1,337,508	1,889,494
Other	17	1,034,606	878,667
Sub-Total		2,495,816	2,925,671
NON-CURRENT ASSETS			
Receivables	5	114,609	107,918
Property, Plant and Equipment	6	6,793,739	9,600,970
Sub Total		6,908,348	9,708,888
TOTAL ASSETS		9,404,164	12,634,559
CURRENT LIABILITIES			
Creditors and Accruals	7	877,795	921,995
Lease	9	94,456	112,452
Other	20	35,025	60,229
Sub-Total		1,007,276	1,094,676
NON-CURRENT LIABILITIES			
Lease	9	293,986	209,866
Sub-Total		293,986	209,866
TOTAL LIABILITIES		1,301,262	1,304,542

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 1993

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' (Modified Cash Reporting) approved by the Minister for Finance in April 1993.

(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 or based on the cost of similar item of similar age.

(b) **Receivables** - 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 recorded in receivables.

Fines and Costs awarded under other legislation (not administered by DPP) and due to other agencies are recorded separately in the receivables note but are not recorded 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 figure has been made based on historical trend from past years data. The estimate will be reassessed and refined in future years.

(c) **Program Statement** - Common costs and services are charged to a "common" program during the financial year and were apportioned amongst programs at the end of the financial year based on estimated average staffing levels for each program. 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 and relevant notes 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) **Property, Plant and, Equipment** - Land and buildings, fixtures and fittings not paid for by the DPP, and minor assets, having a unit cost less than $2,000 have not been accounted for in the Statement of Supplementary 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** -This figure includes estimates of goods and services, including legal services provided, received prior to 30 June 1993 as well as claims on hand at 30 June 1993.

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
41,239,000	86,356	41,325,356	39,473,270

NOTE 3

RECEIPTS

(a) Receipts in 1992-93 of $1,239,013 are substantially lower than 1991-92 ($1,974,075). This is due to the following:

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 Trustees Service Australia which is part of the Attorney-General's Department. Only $1,616.00 was collected through DPP accounts in 1992-93.

(b) **Receipts and Refunds**

The CRF receipt figures in the Detailed Statement of Transactions by Fund are comprised of:

Description	Receipts $	Refund $	Net Amount $
Fines and Costs	1,068,897	4,260	1,064,637
Proceeds of Crime Legislation	1,616	0	1,616
Section 35 of the Audit Act 1901	86,375	19	86,356
Miscellaneous	86,404	0	86,404

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.

	1991-92 $	1992-93 $
Cash at Bank -		
Legal Advance accounts	41,053	39,883
Cash on Hand -		
Legal Advance accounts	473	3,515
Other Advance accounts	35,120	25,074
Cash on Trust -		
Fines and Costs	42,900	83,947
DPP Law Enforcement Projects	n/a	5,091
Comcare Trust Account	4,156	n/a
Total Cash at bank and on hand	123,702	157,510

Moneys held in Fines and Costs bank accounts include amounts to be disbursed to DPP revenue accounts for matters under the Crimes Act or to other Departments or Agencies for Acts administered by them (eg Taxation, Social Security etc).

DPP Law Enforcement Project Trust Account was established on 25 March 1993. Monies in this Trust Account are to be expended on law enforcement and drug rehabilitation and education projects for the purpose of Section 34D of the Proceeds of Crime Act 1987.

For 1992-93 the balances of Trust Accounts not administered or controlled by the DPP have been excluded as required by the Minister for Finance, Financial Statement Guidelines.

* An Adjustment has been made to the 1991-92 Cash figure, as a transposition error existed between the Detailed Statement of Transactions by Fund and the Cash Note.

In addition $134,599 was held in DPP Australian Government Credit Card Settlement Accounts as at 30 June 1993.

NOTE 5

RECEIVABLES

(a) Receivables - DPP

	1991-92 $	1992-93 $
Current :		
Fines and Costs	1,467,934	2.138,670
Less doubtful debts	180,281	261,583
	1,287,653	1,877,087
Other	49,855	15,394
Less doubtful debts	nil	2,987
	49,855	12,407
Net receivables	1,337,508	1,889,494
Non-Current :		
Fines and Costs	141,329	122,957
Less doubtful debts	17,357	15,039
Net Receivables	123,972	107,918
Total Net Receivables	1,461,480	1,997,412

(b) Age Analysis - Receivables DPP

	1991-92 $	1992-93 $
Gross Receivables	1,659,118	2,277,021
Not overdue	803,028	840,021
Overdue less than 30 days	36,836	46,882
Overdue 30 to 60 days	26,944	30.537
Overdue more than 60 days	792,310	1,359,581
Total Receivables	1,659,118	2,277,021

(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:

Commonwealth Public Account Revenue (Non-DPP)	**1991-92 $**	**1992-93 $**
Gross Receivables outstanding	6,695,364	4,979,561
Less doubtful debts	1,090,739	347,075
Net receivables outstanding	5,604,625	4,632,486
Non - Commonwealth Public Account Revenue (Non-DPP)		
Gross Receivables outstanding	644,122	404,862
Less doubtful debts	19,893	6,382
Net receivables outstanding	624,229	398,480

Total net receivables outstanding for all Commonwealth Agencies (including DPP) as at 30 June 1993 was $7,028,378 ($7,690,334 as at 30 June 1992).

(d) Write-Offs 1992-93

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 irrecoverable. During 1992-93 the following amounts were written out of the books:

Agency / Type	**DPP**	**CPA**	**NON-CPA**	**TOTAL**
Prison Sentence	29,723	36,447	926	67,096
Community Service	54,726	97,459	1,550	153,735
Irrecoverable	74,585	62,760	1,374	138,719
Total Write-Off	159,034	196,666	3,850	359,550

NOTE 6

PROPERTY, PLANT AND EQUIPMENT

A new computerised asset system was implemented in 1992-93 in the DPP. The information reported as at 30 June 1993 was validated by stocktakes conducted during the year.

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 was valued by DPP staff (Officer's valuation) based on the cost of a similar item of similar age.

The DPP is undertaking an IT Asset replacement program and all Wang VS and associated equipment is expected to be disposed of within 12 months. The reported value of such equipment is shown at expected sale price based on estimates obtained during contract negotiations.

Fitout represents improvements to buildings leased by the DPP since the DPP took over responsibility for funding such items on 1 July 1989.

	$	$
Closing Balance 30 June :	**1991-92**	**1992-93**
1. **Items at cost :**		
Computers	2,669,594	4,835,769
Furniture	253,696	404,715
Plant and Equipment	1,073,718	1,194,202
Fitout	2,224,868	2,621,421
Sub-Total	6,221,876	9,056,107
2. **Items at Lease Valuation :**		
Plant and Equipment	571,863	544,863
Total Property, Plant and Equipment	6,793,739	9,600,970

NOTE 7

CREDITORS AND ACCRUALS

Creditors and Accruals at 30 June 1993 totalled $921,995, ($877,795 in 1991-92). Of this total, creditors of $62,380 were overdue ($3,839 in 1991-92).

	1991-92 $	1992-93 $
Administrative Expenses :		
Library	29,150	31,625
Computer	15,746	16,051
Other	212,423	449,029
Legal Expenses	448,752	390,315
Property Operating Expenses:		
Current	99,224	34,975
Capital	72,500	0
Total Creditors	877,795	921,995
Age Analysis		
Less than 30 days	3,839	60,961
30 - 60 days	0	703
More than 60 days	0	716
Total	3,839	62,380

NOTE 8

CONTRACTED EXPENDITURE

DPP has $15,658,665 contracted liabilities which remain unperformed at 30 June 1993.

NOTE 9

LEASE LIABILITIES

	1992 $	1993 $
Amounts contracted and provided for in the accounts:		
Current:	172,976	166,509
Non Current:		
Due within 1-2 years	168,132	162,565
Due within 2-5 years	220,891	82,281
Greater than 5 years	0	0
	389,023	244,846
Total Lease Commitment	561,999	411,355
Less future finance charges	173,557	89,037
Minimum lease payments	388,442	322,318
Current Lease Liability	94,456	112,452
Non-Current Lease Liability	293,986	209,866

NOTE 10

COMMITMENTS

The DPP has entered into commitments as at 30 June 1993 of $1,068,765 and are payable as follows:

Item	Not later than one year	1 - 2 years	Later than 2 years	Total
Library	15,677	0	0	15,677
Other	42,950	0	0	42,950
Legal	1,010,138	0	0	1,010,138
Total	1,068,765	0	0	1,068,765

NOTE 11

ACT OF GRACE PAYMENTS, WAIVERS AND WRITE-OFFS

No payments were made during the financial year 1992-93 pursuant to authorisations given under Section 34A(1) of the Audit Act 1901 (Nil in 1991-92).

No payments were waived during the financial year 1992-93 under subsection 70C(2) of the Audit Act 1901 (Nil in 1991-92).

The following details are furnished in relation to amounts written off during the financial year 1992-93 under sub-section 70C(1) of the Audit Act 1901 (430 amounts totalling $36,501 were written off in 1991-92).

	No	$
(i) Irrecoverable amounts of revenue	66	68,100
(ii) Irrecoverable debts and overpayments	39	3,952
(iii) Amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Minister, be uneconomical	62	2,533

NOTE 12

LOSSES AND DEFICIENCIES IN PUBLIC MONEYS AND OTHER PROPERTY

No action was taken during the financial year 1992-93 under Part XIIA of the Audit Act 1901.

NOTE 13

CONTINGENT LIABILITIES

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 14

RESOURCES RECEIVED FREE OF CHARGE

During the 1992-93 financial year, a number of Commonwealth departments and agencies provided services to the DPP without charge. Expenditure for those services were met from those Department's appropriations. The major services received include :

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 payroll 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

The provision of payroll and accounting services. (The cost of which, was not practical to value for services received this financial year or in the past financial year.)

Department of Arts and Administrative Services

Contract negotiation services for computer hardware and software. The Department of Arts and 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 15

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 Account - The purpose of the account 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).

	1991-92 $	1992-93 $
Opening Balance 1 July	157,062	36,304
Receipts	3,073,340	2,923,822
Expenditure	3,194,098	2,876,464
Closing Balance 30 June	36,304	83,662

NOTE 15 CON'T

This was represented by (see also Note 4):

	1991-92 $	1992-93 $
Cash at bank	36,304	83,662
Cash on hand	6,596	285
	42,900	83,947

NOTE 16

COMCARE TRUST ACCOUNT

The Trust Account operates for the purpose of receiving from Comcare amounts payable to employees under a determination in accordance with the Safety, Rehabilitation and Compensation Act 1988. Until a determination is made by Comcare, the Department makes payments from the salary notional item to the employee and, upon receiving a determination and funds from Comcare, a journal is raised to recredit that amount back to salary expenditure and debit the Trust Account.

The balance of $6,989 as at 30 June 1993 ($4,156 as at 30 June 1992) for the Trust Account is the total of amounts received from Comcare for payment to claimants.

For the 1992-93 financial year, this Trust Account does not form part of the disclosure requirements under cash in Note 4 or Creditors in Note 7.

NOTE 17

OTHER CURRENT ASSETS - PREPAYMENTS:

Prepayments represent amounts paid but for which goods or services have not yet been received at 30 June 1993.

	1991-92 $	1992-93 $
Administrative Expenses :		
Library	144,581	133,350
Computer	34,262	51,344
Other	236,853	113,908
Legal Expenses	0	3,649
Property Operating Expenses:		
Current	448,910	576,416
Capital	170,000	0
Total Prepayments	1,034,606	878,667

NOTE 18

UNACQUITTED ADVANCES

As at 30 June 1993, the Department had no unaquitted advances.

NOTE 19

AUDITORS' REMUNERATION

Total remuneration paid, or due and payable to the Australian National Audit Office in relation to the audit of the 1992-93 Financial Statement was estimated at $122,000 ($172,000 for 1991-92).

No other benefits were received by the Australian National Audit Office.

NOTE 20

OTHER LIABILITIES

Moneys held in Fines and Costs bank accounts include amounts to be disbursed to DPP revenue accounts for matters under the Crimes Act or to other Departments or Agencies for Acts Administered by them (eg Taxation, Social Security etc).

The liability due to other Departments or Agencies for 1992-93 from the Fines and Costs Trust Accounts balance as at 30 June 1993 is based on historical trends. The calculated liability for 1992-93 is $60,229 ($35,025 in 1991-92).

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).

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.

COMMITMENTS: Means intention to incur liabilities.

CONTRACTED EXPENDITURE: Means material liabilities contracted for which remain unperformed as at 30 June 1993.

OUTLAYS: An economic concept which shows the net extent to which resources are directed through the Budget to other sectors of the economy after offsetting recoveries and repayments against relevant expenditure items ie outlays consist of expenditure net of associated receipt items. The difference between outlays and revenue determines the Budget balance (ie surplus or defecit). See also 'Appropriations'; and 'Receipts offset within outlays'.

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 Office, 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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