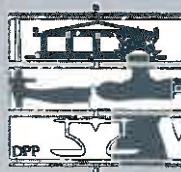




Commonwealth
Director of Public Prosecutions

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ANNUAL
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REPORT
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**Commonwealth Director of Public
Prosecutions**

Annual Report 1993-94

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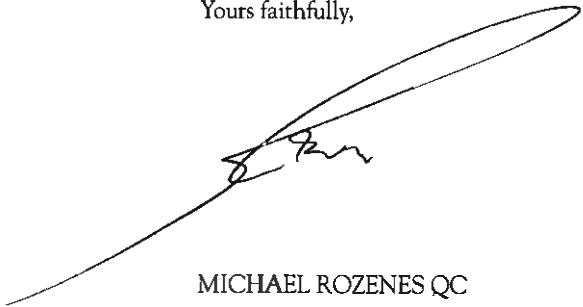
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The Hon. Michael Lavarch MP
Attorney-General
Parliament House
CANBERRA ACT 2600

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 1994, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. Rozenes', is written over a long, thin, horizontal line that extends from the left margin towards the center of the page.

MICHAEL ROZENES QC
Director
19 August 1994

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COMPLIANCE STATEMENT

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

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

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

The report has been prepared in accordance with guidelines for the preparation of annual reports that were tabled in the House of Representatives on 10 April 1991 and in the Senate on 11 April 1991.

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

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

- *Prosecution Policy of the Commonwealth*;
- *DPP Corporate Plan*;
- *DPP Information Booklet*;
- *the Program Performance Statement for the Attorney-General's Portfolio*; and
- *the Report of the Review of the Office of the Commonwealth DPP*.

The DPP has also produced a short information video entitled *Prosecuting in the Public Interest*, which outlines the work of the Office.

Copies of the documents can be obtained by writing to the DPP at any of the addresses that appear at the beginning of this report. Copies of the video are also available from any of these offices.

Any questions or comments about this report may be directed to the DPP Journalist at the DPP Head Office who may be contacted during business hours by telephoning (06) 270 5672.

Director's overview



Michael Rozenes QC,
Commonwealth Director
of Public Prosecutions.

On 5 March this year the Office of the Commonwealth DPP celebrated its tenth anniversary. Throughout its first 10 years the Office has, in my opinion, made a significant contribution to the criminal justice system and will continue to do so in the future.

The key to its success has been, and will continue to be, professionalism and integrity. I am fortunate to have a highly committed and hard-working legal and administrative staff. I thank them all for their dedicated effort. It is precisely these qualities that every prosecuting agency must have in abundance in dealing with the challenges presented by the complexities of modern litigation.

The last 12 months has seen two substantial reviews undertaken of the Commonwealth's law enforcement activities. The Law Enforcement Arrangements Review (LEAR) has resulted in significant changes to some of our principal agencies, in particular, the Australian Federal Police and the National Crime Authority. Additionally, the Government has established the Commonwealth Law Enforcement Board which will oversee the Commonwealth's law enforcement effort and ensure that the Commonwealth's resources are used to best advantage in the fight against crime.

The second review was of this Office. The DPP Review was conducted by officers of the Attorney-General's Department, the Department of Finance and the DPP. The review examined the present role and functions of the DPP as well as its operating environment and performance. The report of the review is extensive and I do not propose to detail its recommendations here, although I will outline a few of the more significant findings. Further details appear at chapter 3 and copies of the report are available on request from Head Office.

The review concluded that the role and functions of the DPP were appropriately defined subject to final decisions being made on the DPP's role in relation to incoming extradition requests, Customs prosecutions and the recommendations of LEAR with respect to relationships between the DPP and some of the smaller investigative agencies. The review also concluded that there was no basis for altering the DPP's present operating structure.

The report found that the DPP is presently complying with all available performance standards but that there was scope for further developing those standards. Accordingly it recommended that the DPP, in conjunction with the Department of Finance, review the DPP's performance indicators with a view to developing indicators which will give a better picture of the Office's practice. At the time of writing, that task is well under way. The report noted that the DPP policy is to conduct as much advocacy work in-house as is reasonably appropriate and practicable. The DPP is taking steps to further develop its in-house advocacy capacity.

I was particularly pleased that the DPP Review recommended that the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) be amended. We have seen in recent times that the well-heeled defendant has been able to use this process of collateral review to fragment and divert the criminal justice process causing inordinate delay and bringing

the system into disrepute. The Government has indicated that it will seek to amend the ADJR Act to remove committal proceedings from its operation and will also give consideration to the feasibility of removing other decisions in the criminal process from its operation. If this were to be achieved a substantial streamlining of the criminal process will have been accomplished.

Another significant development over the last 12 months will streamline criminal trials and especially complex fraud trials. The DPP, in conjunction with the Australian Securities Commission and other Commonwealth law enforcement agencies, has developed computer technology for document imaging, document/exhibit handling and court presentation.

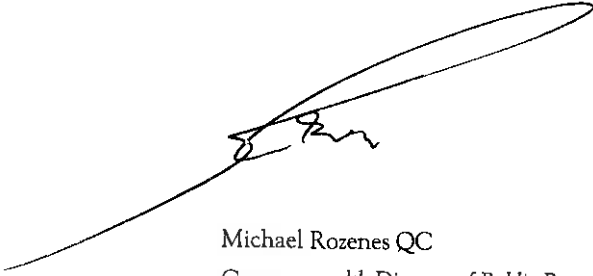
This new technology has now been used in a number of cases and has demonstrated that court time can be dramatically cut and the seemingly incomprehensible made understandable. Although still in its early developmental stages it has won the support of judges and legal practitioners in all jurisdictions and represents an exciting and important breakthrough in trial preparation and management.

Last year saw what I perceive to be the close of the final chapter in the saga of war crime trials in Australia. In 1989 the DPP undertook an examination of those cases investigated by the Special Investigations Unit which the SIU considered may result in a prosecution. Ultimately three cases, Polyukhovich, Berezovsky and Wagner were considered capable of successful prosecution. As it transpired, no convictions were obtained. Polyukhovich was acquitted by a jury, Berezovsky was discharged by the magistrate at committal proceedings and in the case of Wagner, I discontinued his further prosecution when it was established that his health was such that there was an unacceptable risk that he would die in the course of the trial process. Critics of the war crimes initiative of the Government are quick to point out that a great deal of money was expended without a conviction being obtained. The success of any law enforcement initiative is not always measured by conviction rates. I believe that the DPP conducted itself consistently with great principle in what were most difficult cases.

It is particularly pleasing to note that Mr Graham Blewitt, the Director of the SIU, and Mr Grant Niemann, the Deputy Director in charge of our Adelaide Office (who personally appeared in each of the cases), have been seconded onto the United Nations International War Crimes Tribunal in The Hague. It is a great honour for the Office that Grant's experience in this area will be put to use in prosecuting war criminals from the conflict in the states of the former Yugoslavia.

If the first 10 years are any indication, the next decade promises to be extremely busy and productive for the Office of the Commonwealth DPP. The development of appropriate performance indicators will aid the Office to better deploy its finite resources in order to meet the challenges ahead.

I take this opportunity to thank my State counterparts for their cooperation and the heads of the various investigative agencies with whom I have regular contact and who work tirelessly to promote the Commonwealth's law enforcement effort.

A handwritten signature in black ink, appearing to read 'M. Rozenes', is written over a long, thin, horizontal line that extends from the left margin towards the center of the page.

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 conditions. No 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.

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

Under section 8 of the DPP Act the Attorney-General has power to issue guidelines and directions to the DPP. However, that can only be done after there has been consultation between the Attorney-General and the Director. In addition, any direction or guideline must be in writing and a copy must be published in the *Gazette* and laid before each House of Parliament within 15 sitting days. No guidelines or directions were issued during the last year.

VISION AND CORPORATE PLAN

The DPP's vision is to provide a fair, effective and efficient prosecution service to the Commonwealth and the people of Australia.

The corporate plan identifies the following objectives:

- 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 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.

The corporate plan is designed to advance social justice by deterring and discouraging breaches of Commonwealth law.

The corporate plan identifies strategies to achieve the objectives, and sets criteria by which the performance of the Office can be judged. As noted in chapter 3, the DPP's performance indicators are currently under review.

ROLE

The primary role of the DPP is to prosecute offences against Commonwealth law, including Corporations Law, and to recover the proceeds of Commonwealth crime.

The majority of Commonwealth prosecutions, other than the occasional private prosecution, are conducted by the DPP. The remaining cases consist mainly of high volume matters which, for reasons of convenience, are conducted by other agencies under arrangements agreed with the DPP. State authorities also conduct some Commonwealth prosecutions, again for reasons of convenience.

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

The DPP's practice in relation to the recovery of criminal assets is described later in this report. 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 when there has been an investigation by the Australian Federal Police or another investigative agency. However, the DPP often provides legal advice and other assistance during the investigative stage, particularly in large and complex matters.

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 administrative function and 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.

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 mentioned. The Director also has a number of miscellaneous functions including:

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

- to appear in extradition proceedings and proceedings under the *Mutual Assistance in Criminal Matters Act 1987*; and
- to apply for superannuation forfeiture orders under Commonwealth law.

The Director also has a function under section 6(1)(g) of the DPP Act to recover pecuniary penalties in matters specified in an instrument 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 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, among other things, it ensures that the DPP has the 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, presently rests with the Australian Government Solicitor.

The Director is given a number of specific powers under the DPP Act. These include the 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;
- discontinue proceedings being conducted by the DPP;
- take over proceedings commenced by another and either carry them on or discontinue them;
- 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. However, current arrangements ensure that 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.

At present 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.

Head Office

Head Office provides policy and legal advice to the Director, controls and coordinates activities across Australia, liaises at national level with

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 1994, Head Office consisted of six branches: Litigation, Corporations, Criminal Assets, Policy, ACT Prosecutions, and Administrative Support.

DPP regional offices

The regional offices are responsible for conducting prosecutions and civil recovery action.

Each office is divided into at least four branches: General Prosecutions, Corporate Prosecutions, Criminal Assets and Administrative Support. Sydney has two additional General Prosecutions Branches and Melbourne and Adelaide each have one additional General Prosecutions Branch.

The sub-office in Townsville is not divided into functional units.

Hobart and Darwin

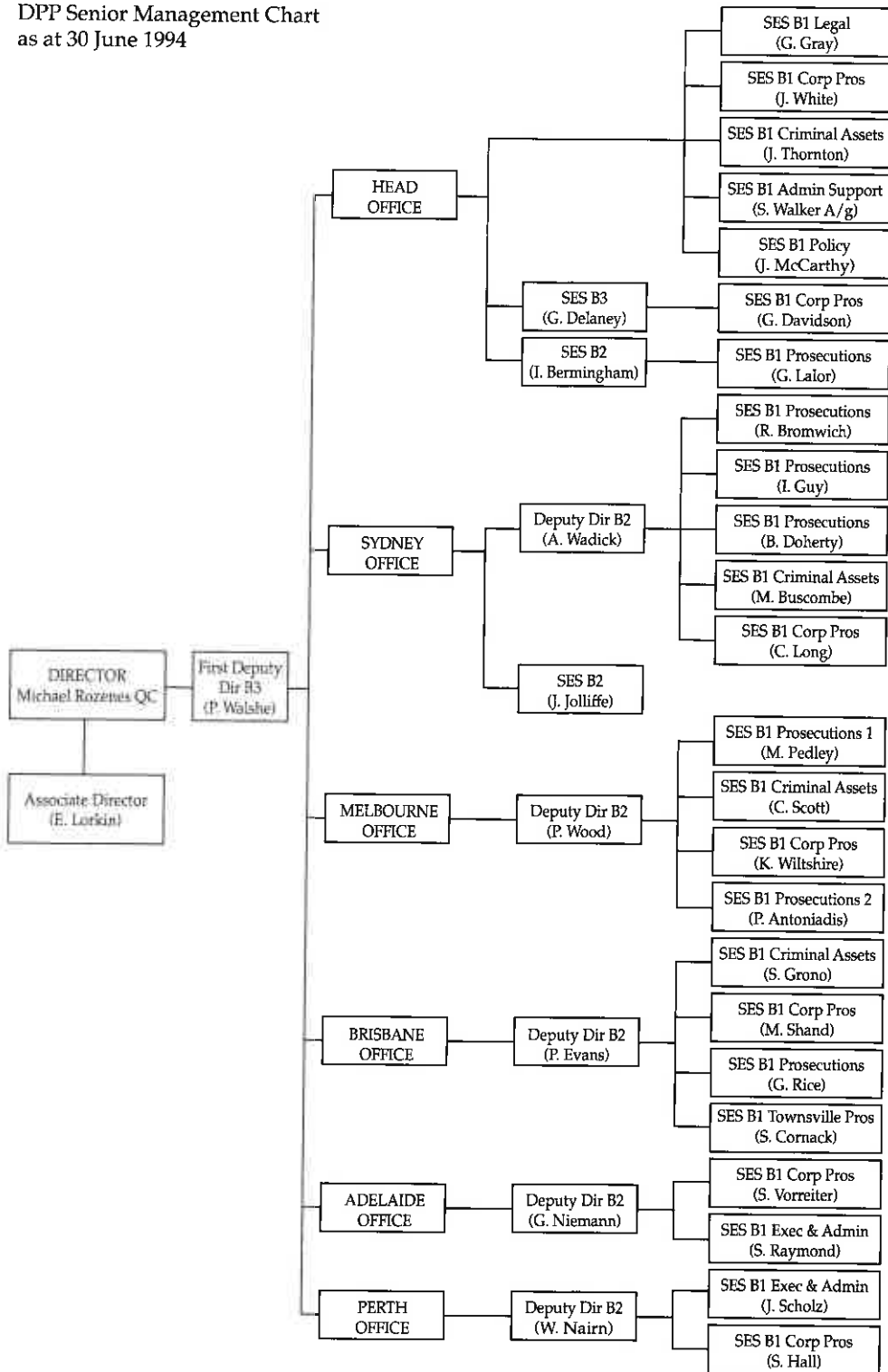
In Tasmania and the Northern Territory, prosecutions and criminal assets work is carried out by the Australian Government Solicitor as part of the general work of the office.

Senior management

A senior management chart follows.

Senior Management Chart

DPP Senior Management Chart
as at 30 June 1994



CHAPTER 2

Exercise of statutory powers

This chapter deals with the exercise of the statutory powers which have not been delegated beyond Head Office.

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 from a defendant, 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 past year there were 30 no bill applications received from defendants or their representatives. Of these, six were granted and 24 refused. A further 24 prosecutions were discontinued on the basis of a recommendation from a regional office without prior representations from the defendant. The total number of cases discontinued was 30, which is the same number as in 1992–93. A breakdown of these statistics appears in table 1.

Table 1: No bill matters

State	Applications by defence			Action by DPP	Total discontinued
	Granted	Refused	Total		
NSW	2	13	15	7	9
Vic.	1	8	9	2	3
Qld		2	2	6	6
WA	2	1	3	4	6
SA	1		1	1	2
Tas.				1	1
NT				1	1
ACT				2	2
Total	6	24	30	24	30

Of the 30 matters discontinued prior to trial, the sufficiency of evidence was the main factor in 23 cases. In two cases the defendant's mental or physical health was the main reason for discontinuing, in three cases the defendant had already been dealt with on other charges, in one case the defendant had died, and in the remaining case delay was the main reason the case did not proceed. A breakdown of these statistics appears in table 2.

Table 2: Reasons for discontinuing prior to trial

State	Reasons			Other	Total
	Evidence	Health of defendant	Convicted on other charges		
NSW	7		1	1	9
Vic.	1	1		1	3
Qld	6				6
WA	4		2		6
SA	1	1			2
Tas.	1				1
NT	1				1
ACT	2				2
Total	23	2	3	2	30

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 seek review of a ruling by a magistrate on a point of law, and to appeal against a grant of bail.

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, the DPP can seek review of points of law that arise at trial and can generally 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) enables the Director to give a similar undertaking to a potential witness in State proceedings where there is a risk of the witness disclosing the commission of offences against 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 40 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 25 cases.

In 1992–93 70 indemnities were granted. However, the number of cases in which indemnities were granted was 26, which was only one more than the number of cases this year.

A breakdown of the figures for 1993–94 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	17	19		3	22
Vic.	2	2		1	3
Qld	4	12			12
WA					
SA	1	2			2
Tas.					
NT					
ACT	1		1		1
Total	25	35	1	4	40

Table 4: Indemnities—types of case (i)

State	Drugs	Fraud	Citizen- ship	Non- criminal	Corp.	Other	Total
NSW	4(5)	5(8)	1(1)	1(1)	4(5)	2(2)	17(22)
Vic.			1(2)		1(1)		2(3)
Qld		2(4)			1(1)	1(7)	4(12)
WA							
SA	1(2)						1(2)
Tas.							
NT							
ACT						1(1)	1(1)
Total	5(7)	7(12)	2(3)	1(1)	6(7)	4(10)	25(40)

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

The Director also has power under section 30(5) of the *National Crime Authority Act 1984* to give an undertaking to a person who has been summonsed to appear before the Authority that any evidence they may give, and anything derived from that evidence, will not be used in a prosecution for an offence against Commonwealth law, other than perjury. That power was exercised twice in 1993–94.

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 1993–94.

EX-OFFICIO INDICTMENTS

The Director has power under section 6(2D) of the DPP Act to file an indictment against a person for charges for which they have not been committed for trial. The power, which cannot be delegated, was exercised once in 1993–94. This does not include cases where the counts in the indictment were different from those on which a committal order was made.

In the case in question the magistrate declined to make a committal order because, in his view, the evidence did not disclose any offence against Commonwealth law. He considered that if any offence had been committed it was one against State law. The Director disagreed and signed an ex officio indictment. However, the trial judge agreed with the magistrate. The case was eventually referred to the State authorities for prosecution.

CHAPTER 3

Review of the DPP

On 17 August 1993 the Federal Government announced that there would be a review of the DPP for the purpose of assessing the role, functions and performance of the Office after 10 years operation.

The terms of reference were:

- to ensure that the role and function of the DPP are appropriately defined having regard to the conclusions of the Law Enforcement Arrangements Review, including the appropriateness and the adequacy of the underlying legislation;
- the appropriate structure and operating arrangements for the DPP in the future, taking into account;
 - (i) the efficiency and effectiveness of the DPP's performance of its work to date; and
 - (ii) the performance of the DPP to date in relation to its financial and resource management.

The review was conducted by a steering committee comprising representatives of the DPP, the Attorney-General's Department and the Department of Finance. Working parties were formed as needed and comprised officers of the DPP and the Attorney-General's Department.

The major issues addressed by the review were the operating structure of the DPP, its role, functions and resource management. However, the review was also able to examine areas where external factors affect the operational efficiency of the Office and to make recommendations for reform.

The steering committee presented its report in March 1994. The report provides a detailed analysis of the work of the DPP. It includes statistics and other information on the work of the Office over the past 10 years.

The report endorsed the DPP's current operating structure and functions, finding them to be the most appropriate model for a prosecuting agency operating in a federal system. It also found that the DPP was complying with all applicable performance indicators. However, it recommended that the DPP's formal performance indicators be reviewed, in consultation with the Department of Finance, with a view to developing enhanced indicators for future operations.

The report noted that the steering committee had not been able to take account of the findings of the Law Enforcement Arrangements Review, because those findings were not published in time for it to do so. It also noted that the steering committee was not able to predict the outcome of the proposed review of the DPP's performance indicators. Accordingly the report recommended that the steering committee reconvene on or before 30 November 1994 to enable it to report further to Ministers on those issues.

The other recommendations made in the report were that:

- the Attorney-General's Department consider the feasibility of amending the Corporations Law to address concerns raised by the DPP in relation to the offence provisions of the *Corporate Law Reform Act 1992* and to enact a Commonwealth offence of defrauding a company, its shareholders or its creditors;

- the Attorney-General's Department examine the scope for the Commonwealth to enter arrangements under section 77 of the Corporations (Name of State) Acts with State governments;
- the DPP be given standing power to exercise the civil remedies function in any case that is connected with an actual or proposed prosecution;
- the Attorney-General's Department review the operation of the Confiscated Assets Trust Fund to consider whether there is scope for widening the range of projects that can be funded;
- the *Customs Act 1901* be amended to provide for the recovery of maintenance costs in respect of drug-related seizures;
- the International Branch of the Attorney-General's Department develop a proposal for the future conduct of extradition work;
- the Attorney-General's Department continue to give high priority to maintaining the *Mutual Assistance Manual* as a current practical guide to law and procedure;
- the DPP and the Attorney-General's Department enter a formal memorandum of understanding on operational matters;
- the conduct of non-narcotic prosecutions under the *Customs Act 1901* remain with the Australian Government Solicitor pending the Government's response to recent reports on the Customs Act and administration;
- the DPP continue to develop its in-house advocacy capacity, especially in Melbourne, but not to the exclusion of briefing private counsel in appropriate cases;
- the Government support any measures that would remove State restrictions on the appearance rights of DPP lawyers;
- the *Administrative Decisions (Judicial Review Act) 1977* be amended to remove decisions made in the committal process from the operation of the Act;
- the Attorney-General's Department consider the feasibility of removing all decisions in the investigation and prosecution process from the operation of the ADJR Act;
- the Attorney-General's Department review Commonwealth sentencing law with a view to simplification;
- the Attorney-General's Department, in conjunction with the DPP, review consent provisions in Commonwealth law with a view to reducing their number; and
- the Attorney-General's Department consider legislative action to address issues raised by *Rogers v Moore*.

The steering committee was not able to reach agreement on future arrangements for the conduct of Commonwealth prosecutions in Tasmania and the Northern Territory, and the report made no recommendation on that issue.

On 26 April 1994 the Government accepted all recommendations made in the report, although it decided that the review of the Criminal Assets Trust Fund should be conducted by the newly-established Commonwealth Law Enforcement Board in conjunction with the Attorney-General's Department.

CHAPTER 4

General prosecutions

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

The conduct of litigation is the most obvious part of the work of the branches. However, there is also considerable work involved in preparing cases for hearing; providing advice and other assistance to investigators; drafting charges; and settling applications for search warrants, listening devices and telephone intercepts. DPP officers are also involved in training investigators. The DPP does not run training courses, but it regularly participates in courses run by other agencies addressing topics within its area of expertise.

In extradition matters the DPP conducts litigation in Australia when a foreign country has sought the return of a person found in Australia. DPP officers also appear in court where evidence is 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 have the 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 or resources which are 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 later in this report.

WAR CRIMES

As at 1 July 1993, charges were outstanding against one person under the *War Crimes Act 1945*.

Heinrich Wagner was committed for trial on three charges in November 1992. The prosecution presented an indictment in the Supreme Court of South Australia in December 1992, although one of the counts was withdrawn in June 1993.

The trial did not proceed due to the defendant's medical condition. The medical evidence was that the defendant was suffering from a serious heart condition and that there was a genuine risk to his life if he was exposed to the stress of a trial. There was no realistic prospect of the defendant's health improving and the Director decided to discontinue the proceedings.

The prosecutions in this area have been some of the largest and most complex conducted by the DPP. It was a major exercise to bring them before the courts. It could not have been done without continued

cooperation between prosecutors and investigators and consistent support from numerous foreign governments, in particular the government of the Ukraine.

The cases depended almost entirely on evidence from overseas. The events occurred overseas and the evidence was found to be widely dispersed. International cooperation was essential to preparing and presenting the cases. Special mention must be made of the assistance provided by foreign officials and the courage shown by the many witnesses who travelled to Australia to give evidence. For many of them, this was the first time they had travelled outside their region, let alone overseas, and the first time they had appeared in a criminal court. It took a great deal of courage to travel to an unknown country and to recount the terrible events of the Second World War in an unfamiliar environment.

The cases broke new ground in the methods used to obtain evidence from overseas. While many witnesses travelled to Australia, a large number were examined in their own country. In the Wagner case the Commonwealth DPP made use of video conferencing technology which enables evidence to be given by video link-up. Witnesses were examined in the USA and Germany and their evidence was transmitted directly to the court in Australia by commercial satellite link. The witnesses were examined and cross-examined in accordance with normal procedures without having to travel to Australia. Other evidence was taken on commission in a number of foreign countries. In all cases it was video-taped for presentation in Australia.

The prosecutions produced considerable case law on using overseas evidence as well as on the principles of war crimes and the admissibility of evidence.

During the year \$903 100 was spent on war crimes prosecutions as follows:

Salaries	\$253 100
Administration	\$86 600
Property	\$52 500
Legal expenses	\$510 900
Total	\$903 100

Staffing resources were as follows:

SES	1.0 ASL
Non-SES	6.5 ASL

FISHERIES OFFENCES IN TORRES STRAIT

The past year has seen growing cooperation between Australia and Papua New Guinea in protecting fishing zones in Torres Strait. The zones are adjacent and there is regular movement of vessels between them. The enforcement arrangements which have been devised are novel but effective.

Pursuant to a treaty between Australia and PNG, each country has made it an offence for one of its nationals to breach the fisheries laws of the other country. Subject to a number of provisos, if a national of one

country is detected committing an offence in the fishing zone of the other country he or she is returned to the country of origin and dealt with there. That avoids the need to keep foreign nationals in the jurisdiction while criminal proceedings run their course.

Over the past two years, a number of PNG nationals have been detected committing offences in Australian waters, mainly the illegal taking of beche-de-mer (sea slugs) and tropical rock lobster. The practice that has developed is for Australian officials to interview the alleged offender in a manner that complies with both PNG and Australian requirements. Often the interviews are conducted in Pidgin by officers with Islander heritage. The offender is then directed to deliver up their vessel to the PNG authorities and allowed to leave Australian waters. The fish are normally returned to the sea.

The tape of the interview is transcribed and a copy is forwarded to the Townsville Office of the DPP. If there is sufficient evidence to prove a breach of Australian law, the DPP refers the matter to the PNG Solicitor-General for prosecution. The DPP assists by collating evidence and by providing copies of Australian legislation and case precedents. However, the prosecutions are run by the PNG authorities.

In August 1993, 25 PNG nationals pleaded guilty in PNG to breaches of Queensland fisheries law and were fined. All boats and equipment were forfeited to the PNG government. On 4 May 1994 a further five defendants were convicted. In a number of other cases, defendants have been placed on good behaviour bonds in PNG.

In some cases it has not been possible to prosecute in PNG because of time limits under local law. However, the level of cooperation has been good and, by and large, the arrangements are working well.

CASE REPORTS

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

New South Wales

Chun and Bipati Pty Ltd

In this case it was alleged that the defendant and the company she controlled laundered \$16.5 million which was the proceeds of heroin dealings in the USA by her husband, Law Kit Man. Law is currently awaiting trial on drug charges in the USA.

It was alleged that Law laundered his drug money through Hong Kong using 250 bank accounts in 100 different names. The total amount that passed through the accounts exceeded \$200 million. Of that sum, about \$23 million found its way to Australia, although charges were not available in respect of the full amount. The defendant used the money to buy real estate in Australia.

The defendant pleaded guilty to nine offences against section 82 of the *Proceeds of Crime Act 1987* of receiving money reasonably suspected of being the proceeds of crime. The company pleaded guilty to six offences against that provision.

The preparation of the case involved a major operation by the National Crime Authority and the DPP to obtain and collate admissible evidence of Law's drug dealings in the USA and his money-laundering activities in Hong Kong. If the case had proceeded to trial, the DPP would have been in a position to prove, by documentary evidence, expert reports and computer display, each of the thousands of individual transactions that were involved in the movement of money from the USA, through the financial web Law had set up in Hong Kong, and on to Australia. In the event, that did not prove necessary.

The defendant and her company were fined a total of \$98 000. As reported in Chapter 5, Chun was also stripped of all the property other than the residential home where she lived with her three children.

Condon

This defendant was convicted on five counts of defrauding the Commonwealth. The first four related to unemployment training programs funded under the Jobtrain funding scheme. The fifth count related to the evasion of sales tax on computer equipment which the defendant purported to buy for a community youth scheme. In fact, the computer was used in a solicitor's office where the defendant worked part-time as a law clerk.

The defendant was employed as a senior project officer by Charlestown Skillshare, a private body funded by the Commonwealth to provide training for the unemployed. The defendant was responsible for four training programs which received total Commonwealth funding of \$205 000. It was alleged that a large part of the money was used for purposes other than those for which it was advanced. It was also alleged that the defendant deceived the Commonwealth about how the money had been spent, relying upon the poor audit procedures that were then in place to cover his tracks.

The evidence showed that the defendant personally received over \$100 000. He used the money for a variety of purposes including paying for a kitchen, leasing a car, paying personal accounts, paying himself double or triple for the same work, sending fellow employees on a holiday to Thailand, and maintaining an account which he described in his own working papers as 'slush money'.

The matter only came to trial after an extensive investigation by the AFP and involved a long and complex reconstruction of money trails to show how the funds had been used. The trial itself ran for over six weeks and involved 69 witnesses. The jury deliberated for over five hours before finding the defendant guilty on all charges.

The defendant was sentenced to 18 months jail. See chapter 5 for proceedings under the Proceeds of Crime Act.

The case disclosed fundamental deficiencies in the administration of the Jobtrain program and led to a review of the audit procedures.

Evans and Curtis

The defendants in this case were two Customs agents who defrauded the Commonwealth of \$450 000 in unpaid duties. The defendants used a forged stamp to obtain the clearance of goods that had been imported by their clients. They kept the money that had been given to them by the clients to pay customs duties on the goods.

Following a sentence indication hearing, the defendants each pleaded guilty to a charge of defrauding the Commonwealth

Curtis was sentenced to 18 months imprisonment and Evans to 12 months imprisonment. The difference in penalty reflected the fact that Evans had made an effort to repay the outstanding debt.

Ladocki and Sundar

This case involved a scheme to sell forged certificates of Australian citizenship to members of the Fijian Indian community who wanted to remain permanently in Australia.

Sundar was a migration consultant who operated his own business in a Sydney suburb. Ladocki, who initiated the scheme, provided the forged certificates to Sundar at prices ranging from \$5 000 to \$30 000. Sundar sold the certificates to his clients. According to evidence at Sundar's trial, the minimum he charged for a certificate was \$82 000.

Ladocki was charged with being knowingly concerned in the forgery of 56 certificates and being knowingly concerned in the uttering of three of them. He pleaded guilty. He was sentenced to three years imprisonment by way of periodic detention on the first count and was released on a bond on the second. The judge noted that he would have imposed a sentence of four years and eight months, with a minimum term of three and a half years, but for the extensive assistance Ladocki provided to the authorities after his arrest.

Sundar was convicted on 15 counts of uttering forged certificates after a two-week trial. He was sentenced to four years imprisonment with a non-parole period of three years. He has appealed against conviction and sentence.

Sundar's wife was also charged in the matter but was acquitted by the jury.

McCauley

The defendant in this case was arrested by the AFP in February 1992 while driving his Mercedes Benz in the Sydney suburb of Drummoyne. The police found 14.3 kilograms of heroin in the back of the car. They charged him with possession of a commercial quantity of heroin reasonably suspected of having been imported into Australia.

The AFP subsequently arrested three other men who were travelling in a van in the nearby suburb of Glebe. They found a further 21.5 kilograms of heroin. It was alleged that McCauley had received his heroin from the other three and that both quantities seized were part of a larger shipment that entered Australia through Queensland.

During the committal proceedings, McCauley's co-defendants all decided to plead guilty and agreed to give evidence against him.

McCauley was committed for trial. However he changed his plea to guilty following a sentence indication hearing. He was sentenced to 14 years imprisonment with a non-parole period of nine years. Given the time already spent in custody, the effective non-parole period was 10 years.

Charges have been laid against another two people, who are alleged to have been involved in the original importation of the heroin. Those charges are still before courts.

Proceedings against McCauley under the Proceeds of Crime Act are also still before the court.

Operation Rustic

This case arose from a joint operation between the AFP and the NSW Drug Enforcement Agency after a prisoner informed the AFP of a plan by two other prisoners, Savvas and Postiglione, to import heroin into Australia. Both Savvas and Postiglione were in prison for earlier offences involving the importation of heroin.

The police placed listening devices in the visitors section at Long Bay Jail and recorded a number of conversations between the prisoners and their contacts on the outside. They also used an undercover officer, posing as a person with connections in the heroin trade, to obtain additional evidence against some of the defendants.

It emerged that there were two separate conspiracies, one to import up to 20 kilograms of cocaine from South America and one to import up to 40 kilograms of heroin from Thailand. In both cases the defendants planned to make use of a contact which Savvas had in the Australian Customs Service and to import the drugs inside unaccompanied baggage. That was the same method Savvas used in the importation for which he was in prison. In the event no drugs were imported, apparently due to a problem with Savvas' contact in ACS.

The people charged in respect of the first conspiracy were Savvas, Postiglione, Kapeliotis, Mari and Dufek. Those charged for the second were Savvas, Postiglione, Kapeliotis, Nuchimov, Lamont and Bird.

In August 1993, Lamont and Bird pleaded guilty for their role in the second conspiracy. They had contributed \$70 000 towards the purchase of cocaine. They did not get the money back when the plan fell through. By the time they were sentenced, both Lamont and Bird were already in prison, serving seven year sentences for importing heroin. It appears that they imported the heroin to try to make up for the money lost on the cocaine conspiracy. They were each sentenced to eight years and nine months imprisonment with a non-parole period of four years and six months.

A few days before committal proceedings were due to begin, Postiglione pleaded guilty to two counts of conspiracy, one for each planned importation. He was sentenced to 18 years imprisonment with a non-parole period of 13 years 11 months. That effectively added 11 years to the sentence he was already serving. An appeal by him against sentence was dismissed.

Savvas, Kapeliotis, Mari and Nuchimov were all committed for trial. However, Nuchimov escaped from custody while being taken to visit a dentist and he did not stand trial. At that stage Nuchimov had already been convicted in respect of other drug offences and was awaiting sentence on those matters.

The trial of Savvas, Kapeliotis and Mari began in February 1994 and ran for a month. Postiglione gave evidence for the prosecution as did two other prisoners. The three defendants all made dock statements. Savvas claimed that the importations were all Postiglione's idea and that he played along because he thought it would be a good way of exposing corrupt police, whom he said were behind his earlier convictions. Kapeliotis said he thought everyone was talking about diamonds, not drugs. Mari said he never intended to import cocaine and was just playing along with Postiglione.

The jury convicted all three defendants.

The final defendant, Dufek, was arrested in Chile in May 1993. The Australian government requested her extradition but the proceedings were ultimately unsuccessful. There is no extradition treaty with Chile and the Chilean courts were not prepared to make an extradition order on the basis of the evidence presented to them. The main problem seems to have been that evidence obtained by listening devices is not admissible in a prosecution in Chile.

Sinsamboon and Pukdeekul

This matter arose when Sinsamboon opened a keycard account at the Commonwealth Bank. Due to an error by the Bank, Sinsamboon was assigned the account number for an existing account. That account was used by a company to hold its superannuation savings funds. The error also meant that statements on the account were sent to Sinsamboon, which meant that the original account holder was unaware of what subsequently transpired.

Sinsamboon made only one deposit into the account, in the sum of \$500. Despite that, over a 13 month period Sinsamboon and Pukdeekul, and others who were not identified, made a total of 244 separate withdrawals from the account using Sinsamboon's keycard. The total amount withdrawn was over \$90 000.

At the time of the offences, fraud against the Commonwealth Bank was an offence against the Crimes Act and the defendants were charged with breaches of that Act.

Sinsamboon pleaded guilty to the charge against him after a sentence indication hearing. Pukdeekul pleaded guilty on the day he was due to stand trial.

Sinsamboon, who was 17 for most of the offence period, was ordered to perform 250 hours of community service and to enter a bond to be of good behaviour for a period of five years. The court also made an order under the Proceeds of Crime Act that he forfeit the sum of \$2 490 that was found in his possession when the AFP executed a search warrant at his home. Sinsamboon's father had already repaid \$50 000 to the Commonwealth Bank on his behalf.

Pukdeekul was ordered to perform 500 hours of community service, which is the maximum that can be imposed in NSW, and to enter a bond to be of good behaviour for three years. He was also ordered to pay reparation of \$18 000 and agreed to forfeit a motor vehicle purchased with the proceeds of the crime.

Sopher

This defendant pleaded guilty to improperly obtaining \$400 000 in social security benefits by lodging claims for payment in five false names. The offences continued for 17 years and only came to light because the defendant complained when he was refused benefits in a further false name and his actions aroused suspicion. The defendant used the money to invest in real estate and the debt he owed was recovered by action under the Proceeds of Crime Act (as reported in 1992–93).

At first instance the defendant was sentenced to four years imprisonment with a non-parole period of 18 months. The leniency of the sentence reflected the fact that he was 70 and in fairly poor health. The DPP appealed against the sentence on the grounds that it was manifestly inadequate given the serious and continued nature of the offences.

In December 1993 the Court of Criminal Appeal upheld the appeal and increased the sentence to five years with a non-parole period of three years.

The court accepted that the health and age of a defendant are relevant to sentence but found that the sentencing judge had given undue weight to those factors in the present case. The case provides useful guidance on the approach courts should take when sentencing aged offenders.

Vasilopoulos

This case involved a husband and wife who were charged in respect of three separate acts of fraud and deceit.

It was alleged that the husband failed to declare \$248 000 in income when he lodged ten outstanding income tax returns, that both the husband and wife improperly obtained tax file numbers to enable them to evade future tax, and that both improperly obtained social security benefits to which they were not entitled, totalling \$56 000 in the case of the husband and \$50 000 in the case of the wife.

The defendants pleaded guilty to all charges following a sentence indication hearing.

The husband was sentenced to three years imprisonment with a minimum term of 18 months. The wife was released on a bond. Her husband gave evidence in the proceedings in which he accepted primary responsibility for the offences.

The defendants were also ordered to pay reparation to the Australian Taxation Office and the Department of Social Security, although most of the debt owed to the latter agency had been recovered prior to sentence through the sale of property.

One issue raised in the sentence proceedings was whether social security fraud should be treated as a more serious offence than the tax fraud. The sentencing judge accepted the DPP's submission that both offences should be regarded as equally serious.

In this case ATO waived the recovery of penalty tax, so there was no suggestion that the husband had been already partly penalised in respect of his tax fraud.

Victoria

Operation Aladin

This case involved the importation of 12 kilograms of heroin from Malaysia in June 1992. The heroin was hidden in the false sides of suitcases carried into Australia by four of the six defendants. One of the other defendants organised the importation and the sixth acted as overseer for the couriers.

Five of the defendants were Japanese and one was Malaysian. The five Japanese travelled from Tokyo to Kuala Lumpur, where they collected the heroin, and then on to Australia. The drugs were detected in Australia by Customs officers and five defendants were arrested at the airport.

The sixth defendant was only identified several days later. He travelled to Australia on the same flight as the other five, but travelled separately from them and proceeded through Customs without incident. His connection with the group was discovered when he attempted to take possession of the drugs in a controlled delivery organised by the AFP.

One of the Japanese defendants is known to be a member of the Japanese crime organisation, the Yakuza.

All six defendants pleaded not guilty, but they were all convicted after a trial that lasted for two months. They were sentenced to the following terms of imprisonment:

- Yoshio Katsuno: 25 years with a non-parole period of 20 years;
- Fong Huat Su: 20 years with a non-parole period of 14 years;
- Masaharu Katsuno: 15 years with a non-parole period of 10 years and six months;
- Mitsuo Katsuno: 15 years with a non-parole period of 10 years and six months;
- Kichiro Asami: 15 years with a non-parole period of 10 years and six months; and
- Chika Honda: 15 years with a non parole period of 10 years and six months.

Baker

Baker was a tobacco wholesaler whose business included buying cigarettes in Queensland for sale in Victoria. In the course of his business he made cash payments into a bank account in Queensland. On a number of occasions he made a large number of separate deposits into the account on the same day, all under \$10 000. Baker was charged with seven counts of structuring deposits in order to avoid the reporting requirements under the *Cash Transactions Reports Act 1988*. The total involved in the charges was \$136 000.

The defendant pleaded not guilty, but was convicted on all counts. He was fined a total of \$35 000.

Bowman

In this case it was alleged that the defendant improperly obtained \$78 000 by claiming the invalid pension in two names. She was indicted on two counts under the Crimes Act. However, the trial did not proceed because the defendant was found to be unfit to stand trial.

The issue of fitness was raised by the defence and was considered by a judge of the County Court in the absence of a jury. The defendant was examined by psychiatrists selected by the prosecution and the defence. The psychiatrists agreed that she was unfit to plead. The court then applied the provisions of Division 6 of Part 1B of the Crimes Act.

The court found that there was a prima facie case against the defendant but that she was unfit to stand trial. It also found, on a balance of probabilities, that the defendant was unlikely to become fit to plead within 12 months.

In February 1994, the defendant was released from custody on a number of conditions, including that she receive psychiatric treatment as directed by her treating psychiatrist.

The DPP commenced recovery action against the defendant under the Proceeds of Crime Act. However, that action could not proceed because a pecuniary penalty order can only be made against a person who has been convicted of a criminal offence. Further action to recover the overpayment rests with the Department of Social Security.

Burd

In this case three defendants were charged with Commonwealth offences relating to an importation of heroin. Two of them were also charged with offences against the Victorian law of trafficking in a drug of dependence.

The significance of the case is that the defendants brought proceedings in the High Court to challenge the prosecution on legal grounds. The defendants argued that the Victorian procedures for jury selection are not valid and that a joint indictment alleging both State and Commonwealth counts cannot stand in Victoria, or any jurisdiction where there is provision for majority verdicts, in light of the ruling in *Cheatle* (1993) 177 CLR 541 that majority verdicts are not available in Commonwealth cases.

The challenge to the jury selection procedures centred on the prosecution's right to challenge potential jurors and the practice in Victoria under which the police vet jury lists to determine whether any of those named on them are disqualified or otherwise unsuitable to act as jurors. The defendants argued that these measures offend section 80 of the Constitution, which requires trial by jury in indictable Commonwealth matters, because it is a fundamental feature of trial by jury that a jury be randomly selected.

The second challenge was based on the claim that it is unfair to a defendant to proceed on joint counts where some counts can be dealt with by majority verdict and some cannot, because of the potential to confuse the jury.

In March 1994, Dawson J dismissed the High Court proceedings. He stated that

this court has repeatedly indicated that the fragmentation of a criminal trial by proceedings to contest the rulings of a trial judge, by way of either leave to appeal or prerogative relief, is highly undesirable and will only be allowed in exceptional circumstances.

There were no exceptional circumstances in this case. He noted that if the defendants were convicted, they could pursue their normal appeal rights and any issues they still wished to raise could be considered in a factual setting rather than in the abstract.

In the result, one of the defendants stood trial and was acquitted and the other two pleaded guilty to an amended indictment which contained only a Commonwealth count.

Even-Chaim, Woodcock and Jones

These defendants were arrested in 1990 and charged with computer hacking offences under Part VIA of the Crimes Act. They were known in computer circles as 'Phoenix', 'Nom' and 'Electron', respectively, and formed part of a group of hackers known as 'The Realm'.

It was alleged that each defendant broke into various overseas and domestic computer sites, including the CSIRO, Melbourne University, NASA and various universities, companies and government bodies in the USA. They were apparently driven by a desire to conquer computer systems to which they had no legitimate access. Having gained access, they were generally content to explore the system, although they also copied and downloaded information which would assist them in hacking into other systems and changed some material to assist them to gain superuser or root access on computer systems. A computer user with root access has total control of the system.

It appears that the damage they caused to the systems was unintentional rather than deliberate. However, they did, for example, delete the entire inventory of assets of a US company.

Even-Chaim's activities were detected when he gained access to the NASA computer system. This led to the NASA system being disconnected from all external communication for 24 hours while it was checked. The resulting investigation led back to the three defendants.

The defendants gained access to the various victim sites by using telephone modems attached to their home computers. The modems linked them to the Telecom/OTC network and from there to Internet, which is a worldwide network of computers. They displayed considerable technical skill in their activities.

All three defendants pleaded guilty to the charges against them, although in two cases that was only after a trial judge ruled that the relevant provisions of the Crimes Act have extraterritorial application. The defendants were released on combinations of suspended sentences and community-based orders. Their computer equipment was forfeited.

Gleeson and Fenelon

These defendants both pleaded guilty to 16 counts of defrauding the Commonwealth. The defendants had worked together in the ATO. After Gleeson left, he and Fenelon devised a plan to obtain inflated

refund cheques for taxpayers whose returns were prepared by Gleeson. The defendants shared the proceeds of the scheme with the taxpayers concerned.

Gleeson prepared the income tax returns correctly and then gave them to Fenelon, who processed them in a way which led to inflated refunds being issued. The scheme involved a total loss to the Commonwealth of \$87 000. Gleeson's share was \$18 000 and Fenelon's was \$5 000.

Each defendant was sentenced to two and a half years imprisonment with a minimum term of one year. An appeal against sentence by Gleeson was dismissed.

Grant

The defendant in this case was arrested by the AFP after a search of his home disclosed forged Australian and US banknotes with a face value of \$169 000 at various stages of completion. Police also found enough plain paper for the defendant to produce \$2 million of counterfeit \$100 banknotes and various items of forging equipment.

Grant pleaded guilty to charges of making counterfeit currency and uttering counterfeit notes. He was sentenced to an effective term of seven years imprisonment with a minimum term of five years. The judge described the banknotes as probably the best imitation of genuine banknotes ever seen in Australia.

Grant appealed against his sentence. The Court of Criminal Appeal reduced the sentence to an effective term of five and a half years imprisonment with a minimum term of four years. They found that there was no evidence that Grant was a part of a larger operation, although it was clear that he had intended to proceed for some time unless detected.

Lucietto

This defendant worked at the Newport office of the Department of Social Security. In early 1993 it came to the Department's attention that he was accessing the computer files of individual beneficiaries in cases where he had no apparent reason to do so.

The Department monitored the defendant's computer and analysed all activity over a one month period. The results showed that the defendant accessed 66 different files for no justifiable reason. The information he obtained generally included the beneficiary's address, date of birth and marital status as well as details of bank accounts, benefit payments and DSS payment history.

The people concerned were all either DSS employees, friends and relatives of the defendant's former fiancée, or people connected with the defendant's work as a part-time crowd controller.

It was not clear why the defendant accessed the relevant files. However, it was not tenable that he had done so for any reason connected with his employment. He was charged with 12 offences of unlawfully obtaining protected information contrary to section 1312A of the *Social Security Act 1991*.

The defendant pleaded guilty to the charges. He was convicted and fined \$500 on each charge—a total of \$6 000 in fines. The magistrate commented that even though there was no evidence that the defendant

had passed on the information, or made any other use of it, he had abused a position of trust which involved the handling of private information. The magistrate noted that in an age where the authorities hold extensive data banks of personal information it is more important than ever that people feel their privacy is being protected.

Mitri

This case involved the importation of 11 kilograms of cocaine from Colombia. The drugs were imported in three wooden crates shipped by air via Germany. The crates contained antique weapons, which included 22 medieval shields. The cocaine was hidden inside the shields. The drugs were detected by sniffer dogs at Melbourne Airport.

The AFP arranged a controlled delivery of a sample of the drugs. They also obtained material from telephone intercepts and listening devices.

The material showed that the main parties in the importation were Diana Mitri and her sister-in-law, who lived in Perth. It appears that the sister-in-law was the contact for the Colombian supplier and that Mitri was responsible for clearing the goods from Customs. There were numerous telephone calls between them in Spanish concerning the crates. There were also telephone calls between Mitri and various customs agents and officials. Mitri's husband was also involved in the operation, although the only direct evidence against him was that he helped prepare some of the false documents delivered to Customs and he helped unload the crates after the controlled delivery.

Diana Mitri pleaded guilty to one charge of being knowingly concerned in the importation of a commercial quantity of cocaine. She was sentenced to six and a half years imprisonment with a non-parole period of three and a half years. The judge noted that if it had not been for the cooperation she had provided, and promise of future cooperation, the sentence would have been nine years with a non-parole period of six years.

Dominic Mitri pleaded guilty to a similar offence and was sentenced to six years and nine months imprisonment with a non-parole period of three years.

Pacific Dunlop

This company was charged with two offences against the *Trade Practices Act 1974* involving the misdescription of socks. It was alleged that the company labelled some socks as 'made in Australia' when they had been made in China, and labelled other socks as 'pure cotton' when they were only 80 per cent cotton. Each charge was based on a representative sample of transactions over a six-month period and involved a substantial number of socks under a range of different brand names.

The mislabelling occurred despite a warning to a senior officer of the company to seek clarification of the term 'pure cotton' before applying the description to socks.

The company pleaded guilty to both charges. It was fined \$10 000 in relation to the misdescription of the country of origin and \$25 000 in relation to the misdescription of the composition of the socks.

Song

This prosecution was the last and most significant case arising from Operation Sharkfin, which involved a joint investigation into the abalone industry by the Australian Quarantine Inspection Service, the AFP, NSW and Victorian fisheries authorities, and the NSW Police into illegal activities in the abalone industry.

Song was a middleman who bought abalone from unlicensed divers in Victoria and sold it to various processing companies. In order to cover his tracks, Song forged, or improperly acquired, documents known as Fish Transfer Certificates, which he was able to use to make it appear both that the abalone had been caught by properly licensed divers and that all subsequent movement had been carried out in accordance with the requirements of the *Export Control Act 1982*.

Song was charged with forging 13 false certificates and uttering a further 28 certificates. The proceeds of his illegal trade in abalone amounted to \$387 000.

In May 1994 Song pleaded guilty to two counts of forging documents deliverable to the Commonwealth Department of Primary Industries and Energy and one count of uttering documents deliverable to that Department. He was sentenced to two years imprisonment with a minimum term of 15 months. He was also ordered to pay a pecuniary penalty in the sum of \$387 000.

Walsh

This defendant pleaded guilty in the County Court at Melbourne to a Social Security fraud involving \$37 000. He was sentenced to 26 months imprisonment to be released after 15 months upon entering a bond to be of good behaviour for three years. He appealed against the sentence.

One of the issues raised on the appeal was whether the term of the good behaviour bond could extend beyond the period covered by the head sentence. In *Selimoski* the WA Court of Criminal Appeal ruled that, due to the wording of the Crimes Act, a person in the defendant's position cannot be released on a bond which will run for longer than the head sentence. That ruling was in conflict with an earlier decision by the Victorian Court of Criminal Appeal in *O'Brien* (1991)57 A Crim R 80.

In the present case, the court reviewed the earlier decisions. It concluded that the ruling in *O'Brien* was right and the ruling in *Selimoski* was not. The result is that there are now directly conflicting authorities on this issue from the Courts of Criminal Appeal in Victoria and WA.

Wickham and Bahrin

This matter arose from the removal of two children from Australia by their father in breach of orders made by the Family Court of Australia. The father was a member of the royal family of Malaysia.

The children were born in Malaysia but were brought to Australia by their mother in 1985. The mother was awarded custody of the children by the Family Court. It was alleged that the father took the children during an access visit and that he was assisted in the operation by Wickham, and possibly by others.

It was alleged that Wickham purchased a boat in Perth and towed it to Weipa on the Gulf of Carpentaria. He then drove to Cairns, from where he flew to Melbourne. Wickham and the father drove the children from Melbourne to Weipa. They travelled by boat to Irian Jaya and they completed the trip to Malaysia by air.

Arrest warrants were issued against both Wickham and the father alleging offences against section 70A of the *Family Law Act 1975*. That provision makes it an offence for a person to take a child who is the subject of a custody, guardianship or access order out of Australia without the written consent of every person who is entitled to custody, guardianship or access under that order.

Wickham was tracked down in Florida, having travelled via Barcelona, Amsterdam and Northern Ireland. He agreed to be extradited to Australia and pleaded guilty to one charge under section 70A of the Family Law Act. He was sentenced to 18 months imprisonment with a minimum term of nine months.

In December 1993, the Malaysian Government refused an extradition request in respect of the husband, apparently on the basis that there is no offence under Malaysian Law equivalent to section 70A of the Family Law Act.

Zabenko

The defendant in this case pleaded guilty to charges of defrauding and attempting to defraud the Commonwealth. It was alleged that he presented false information to the Australian Trade Commission in support of applications for export market development grants. The defendant falsely claimed that he had spent half a million dollars trying to establish a market in the Philippines for Australian wine and a special wine cask that he had designed. He obtained \$329 000 that he was not entitled to receive.

Zabenko was sentenced to two and a half years imprisonment with a minimum term of 15 months. Recovery action was taken under the Proceeds of Crime Act.

Queensland

Chedid

This defendant was arrested at Brisbane airport after arriving on a flight from Geneva. During a routine search, Customs officers found a towel and bathrobe at the bottom of the defendant's bag which had an acidic smell and were rough to touch. The smell was disguised by aftershave which had been spilled on items at the top of the bag. The towel and bathrobe were found to be impregnated with 372.4 grams of heroin.

The defendant denied any knowledge of the heroin. He said he had been given the items in Geneva by a friend who had asked him to deliver them to an address in Sydney. He said that the friend's baggage was overweight. He also said that he had been given the items in a wet condition.

The defendant was convicted on one count of importing a trafficable quantity of heroin after a seven-day trial. He was sentenced to 14 years and four months imprisonment, with a non-parole period of seven years.

Chedid appealed against conviction and sentence but the appeals were dismissed. The Court of Criminal Appeal found that the sentence was towards the higher end of the appropriate range but was not outside it.

Earwaker

This case arose out of a chance conversation between the defendant and a part-time taxi driver at a fish and chip shop in Townsville. The defendant, who was dressed in a RAAF uniform, told the driver that he was a military policeman. The driver happened to be the Sergeant in charge of the Military Police in Townsville. He did not recognise the defendant as one of his officers and reported the matter.

The defendant was subsequently charged with three offences against section 83(1) of the *Defence Act 1903*, of wearing a defence emblem whilst not a member of the defence force. It emerged that he had worn military uniform on more than one occasion.

The defendant pleaded guilty to the charges. His solicitor told the Court that the defendant was a stripper who had been on his way to a job. The uniform was said to be part of his act. The defendant was convicted and fined \$300.

Hoong

Hoong was intercepted at Brisbane Airport after arriving on a flight from Singapore as part of a tour group. Customs officers became suspicious because he appeared to be nervous and agitated. A search of his baggage disclosed that there was a false bottom to his carry bag which contained a large quantity of heroin. The gross amount was almost three and a half kilograms, and the heroin was 77 per cent pure. The street value was about \$7.4 million.

When he was questioned, Hoong denied any knowledge of the heroin. His story at trial was that he agreed to carry the bag to Australia on behalf of a workmate at the shipyard in Singapore where he was employed. In return he received a holiday on the Gold Coast plus \$1 300 spending money. Hoong said that he was given the bag at the airport in Singapore. He noted that it felt heavy but assumed that it contained machinery parts. He claimed that it never occurred to him that the bag might contain drugs.

Hoong was convicted by a jury on one count of importing a commercial quantity of heroin. He was sentenced to 14 years imprisonment with a non-parole period of seven years.

Lanham

Lanham conducted an air charter business from Horn Island in the Torres Straits. In September 1992, after landing his twin engine aircraft at Horn Island, the defendant located two pieces of loose metal in the cowls of one engine. The defendant sought advice from an engineer on the island who advised that he probably needed an engine change.

Two days later Lanham flew the aircraft from Horn Island to Cairns without making any repairs to the aircraft. Shortly after take-off he shut down the faulty engine and flew on one engine. He did not notify Cairns

control tower of the aircraft's condition until he was approaching Cairns. When the aircraft was repaired it was discovered that there was a hole in the crankshaft of the engine measuring 50mm by 35mm.

Lanham was charged with offences against the Civil Aviation Regulations of commencing a flight without ensuring his aircraft was safe for flight, failing to notify the Civil Aviation Authority immediately of defects in the aircraft, and failing to complete the appropriate report form.

In August 1993, after a two-day trial in Cairns Magistrates Court, Lanham was found guilty of a breach of regulation 51A in that he had failed to notify CAA immediately of the defect in his aircraft. He was acquitted of the other charges on the basis that he had received advice from his father regarding the condition of the aircraft and had believed the aircraft was safe to fly. At the conclusion of the trial Lanham pleaded guilty to further offences of flying without a current medical certificate and of approaching the aerodrome at Horn Island without joining the pattern of traffic in use at that time.

In relation to each offence Lanham was released on a bond to be of good behaviour for a period of two years.

McNamara

McNamara was the State Director of the Department of Employment, Education and Training. He was a member of the Senior Executive Service and DEET's most senior officer in Queensland.

The matter came to light as the result of an internal review of travel allowance payments. It emerged that that McNamara had obtained \$19 123 in excess of his entitlements over a two-and-a-half year period.

McNamara routinely obtained travel allowance in advance. He also routinely failed to refund money in cases where he cancelled his travel, returned early, or had his accommodation and meals paid for by the Department.

McNamara pleaded guilty in the District Court in Brisbane to one count of defrauding the Commonwealth. He was sentenced to three years imprisonment with a minimum term of eight months. At the time of sentence, McNamara had repaid all money owing to DEET.

Ritchie

In this case a husband and wife defrauded the Department of Social Security of \$612 916 by claiming pensions and other benefits in a series of false names.

The wife was employed in the Toowoomba office of DSS. She used her position and her inside knowledge to ensure that the documentation they prepared was accepted and that payments were made. The defendants opened bank accounts and rented post office boxes in the false names in order to implement the scheme.

The fraud continued for a period of six-and-a-half years, during which time the defendants created a total of 25 false identities. At one stage the defendants were receiving payments in 16 false names, although they subsequently 'killed off' some of the names, informing the Department that the relevant claimant had died. When they were arrested in July

1993 the defendants were receiving payments in ten false names. At the height of the fraud the defendants were receiving something like \$4 800 per fortnight.

The matter initially came to light as a result of a routine data matching exercise undertaken by DSS. The exercise showed that a significant number of people being paid benefits from the Toowoomba office were not known to other Commonwealth agencies. That led to further inquiries, which eventually uncovered the fraud.

The defendants each pleaded guilty to one charge of engaging in organised fraud contrary to the Proceeds of Crime Act. The wife was sentenced to seven years imprisonment with a non-parole period of three and a half years. The husband was sentenced to five years imprisonment with a non-parole period of two years.

The proceeds of the fraud are being pursued by the Criminal Assets Branch of Brisbane Office.

Scotpark Pty Ltd

This company operated a rigging and crane hire service from 1986 until November 1989 when it went into receivership. At that stage the company owed over \$1 million in unpaid group tax.

The company records showed that it had made regular deductions of group tax for an average of 45 employees. However, for over three years the company failed to forward the money to the ATO. It appears that the money was used to finance capital acquisitions such as cranes.

Charges were laid against two directors of the company, Laurence Phillips and Michael Van Brederode, in respect of the failure to remit group tax deductions. Phillips pleaded guilty to 34 charges and Van Brederode to 30.

Phillips had been director of another company which had gone into receivership owing unpaid group tax to ATO. He was sentenced to 10 months imprisonment, with a minimum term of four months, and was ordered to pay reparation in the sum of more than \$1 million. Van Brederode was sentenced to six months imprisonment, with a minimum term of one month, and was ordered to pay reparation of \$986 000.

Tacey

Tacey was a director of a company which carried on a business of making and selling curtains and curtain accessories. It operated 11 retail outlets, some of which had clearance centres which sold remnants, offcuts and unwanted curtains on a cash basis. It was alleged that Tacey failed to disclose the cash takings in the company's income tax returns. The fraud was discovered when a former employee reported the matter to the ATO.

Tacey was charged with six counts of defrauding the Commonwealth. She eventually pleaded guilty to three charges, covering a three-year period. Those charges involved total cash receipts of \$298 000 and a tax evasion of \$114 000.

Tacey was initially fined a total of \$6 666. The DPP appealed against the sentence on the basis that a custodial sentence was warranted.

The Court of Appeal accepted that, on their face, the offences called for a term of imprisonment. It rejected an argument that tax fraud should be treated more leniently than social security fraud. However, it found that Tacey was in poor health and could suffer a stroke if sent to jail. The Court stated that, but for the medical condition, it would have imposed a sentence of 18 months imprisonment with a minimum term of three months. In the event, the Court imposed a fine of \$35 000 in respect of each offence, a total of \$105 000.

Wright

This case involved income tax evasion by a partner in a business which produced and sold vegetables. Over a two-year period the defendant and his partner lodged income tax returns which claimed deductions of \$211 000 which should have been disclosed as income.

The defendant entered into an arrangement with the principal customer of the business under which part of the purchase price for the vegetables was paid in cash. The customer, which was a Queensland government agency, agreed to withhold one dollar from the purchase price of each case of vegetables and pay it into a suspense account. At regular intervals, the money was paid to the defendant in cash. The deductions were described as a handling fee in the transaction records, and the defendant claimed them as a business expense in his and his partners tax returns. The sole purpose of the arrangement was to enable the defendant to conceal the true income of the business from the ATO in order to evade tax.

The matter came to light as a result of inquiries conducted by the Queensland Auditor-General in relation to the activities of the purchasing agency. The Auditor-General queried why the agency had made cash payments to the defendant. The agency told the Auditor-General that the payments were for the purchase of vegetables. At the insistence of the Auditor-General, the agency obtained receipts from the defendant. The Auditor-General published details of the case in a report which was tabled in Queensland Parliament and was subsequently read by an officer of ATO.

The defendant initially denied having received cash payments from the purchaser. However, he eventually pleaded guilty to four counts of imposition, two in relation to income tax returns he had lodged and two in relation to returns lodged by his partner.

As events transpired, the defendant had not managed to evade a great deal of tax. That was because his accountant had made errors in preparing the tax returns and had included a number of capital items as income. However, the court accepted that the defendant should be sentenced in respect of what he had set out to do, not what he had achieved.

At first instance the defendant was sentenced to a suspended sentence of 12 months imprisonment and was fined a total of \$20 000.

On appeal, the Supreme Court of Queensland substituted a sentence of 18 months imprisonment, with a minimum term of three months, and fines of \$20 000.

The Court of Appeal reviewed a number of cases dealing with the sentencing of social security, medifraud and tax offenders. It criticised cases where tax offenders convicted of large scale evasion had received suspended sentences. It concluded that where a calculated and systematic tax fraud involves a substantial sum of money the offender should usually be required to serve a term of imprisonment, particularly where it is not an isolated act but is persisted in for some time.

Western Australia

Evans

This defendant was an officer of the Commonwealth Employment Service. His duties involved interviewing and counselling job seekers, particularly the long-term unemployed and other disadvantaged people. He was also responsible for arranging for placements under the Training for Aboriginals and Jobstart programs.

Under those programs, an employer who accepted a placement was entitled to a subsidy of the worker's wages, which could be as high as 100 per cent depending on the length of the placement and when it occurred. Subsidies under the Training for Aboriginals Program could also be obtained in advance in some circumstances.

It was alleged that Evans induced, or attempted to induce, a number of employers to make claims on the programs in respect of employees who never existed or who had left their employment. Evans and the employer concerned shared the proceeds. In all, Evans set up, or attempted to set up nine false claims. The total overpayment was \$148 000, of which Evans' share was \$79 000.

Evans pleaded guilty to 24 counts of being knowingly concerned in imposition and five counts of making false entries as a Commonwealth officer. A further nine counts of imposition were taken into account on sentence. He was sentenced to four-and-a-half years imprisonment with a minimum term of 21 months.

Seven of the employers were also prosecuted. Three of them were dealt with summarily and received non-custodial sentences. The remaining four employers, who obtained larger sums of money, were sentenced to periods of imprisonment.

Markovina

This defendant was convicted after a trial in the District Court in Perth on one count of possessing a trafficable quantity of methylamphetamine which was reasonably suspected of having been imported into Australia and one count of possessing heroin that was also reasonably suspected of having been imported.

The first charge related to 17.5 kilograms of methylamphetamine that was recovered by the AFP from an emu farm in WA. The drug had been buried along with \$465 000 in cash. This was by far the largest known seizure of methylamphetamine in Australia. A further \$58 000 was found buried at the house of the defendant's brother. The heroin charge involved 100 to 130 grams of heroin.

The case against Markovina was based, in part, on evidence from a co-offender who had originally led police to the drug cache.

Markovina was sentenced to 10 years imprisonment on the first charge and a further four years on the second charge with an effective minimum term, on top of time already spent in custody, of five years and three months.

Mutual assistance request

In this case the United Kingdom sought assistance from Australia in the investigation of the suspected murder of an Australian businessman in the UK. The businessman had been reported missing in suspicious circumstances. Although a body was never found, the man's business partner, Colin James, was charged with murder.

Evidence was taken before a Magistrate in Perth and transmitted to the UK. The evidence, which comprised banking records and testimony from a bank employee, showed that the businessman had not communicated with the bank, and had not conducted any financial transactions, since his disappearance. This evidence was part of the proof that the businessman was dead.

Colin James was ultimately convicted of murder.

Oliveiro

Oliveiro, a passenger from Singapore, was arrested at Perth airport in possession of 1 307 forged travellers cheques. The cheques were in US dollars and pounds sterling. They had a face value of approximately A\$280 000.

Oliveiro pleaded guilty to one charge under section 82 of the Proceeds of Crime Act of bringing property into Australia reasonably suspected of being the proceeds of crime. He was sentenced to 34 weeks imprisonment with a minimum term of 20 weeks. The forged cheques were forfeited.

The cheques were identified as being from the same source as counterfeits that have been passed in Canada, Europe, the Middle East and Asia. They are believed to have originated in Kuala Lumpur. This is the first time they have been detected in Australia.

Wilson

Wilson commenced casual employment with the Department of Education, Employment and Training in April 1984. She became a permanent employee in November 1987.

She applied for, and obtained, unemployment benefits in October 1985. She continued to receive those benefits, with a short break, until September 1990, when she transferred to special benefit and subsequently to the age pension. That pension was paid until February 1993 when the matter came to light. At no stage did Wilson advise the Department of Social Security of her employment with DEET. As a result she obtained \$48 000 to which she was not entitled.

Wilson pleaded guilty to one count of defrauding the Commonwealth. She was sentenced to two years imprisonment with a minimum term of five months. She had made some repayments of the debt and consented to a reparation order being made in the amount of \$44 000. She also authorised the Commissioner for Superannuation to apply her superannuation entitlements towards repaying the debt.

South Australia

Aslander

Aslander was a pensions review officer in the Department of Social Security. Between April 1988 and September 1993 he created six fictitious beneficiaries and arranged for their benefits to be paid into a bank account that he controlled. He managed to defraud the Commonwealth of \$96 000.

Aslander initially pleaded not guilty but changed his plea prior to trial. He was convicted of six counts of defrauding the Commonwealth. He was sentenced to four years imprisonment with a non-parole period of one year and nine months.

Aslander was sentenced on the basis that he had made full restitution of the money improperly obtained. At that stage his house was on the market and the sale was expected to realise enough to clear the debt.

Courtidis

The defendant was a director of a company, Omega Picture Framing Pty Ltd, which operated a picture framing and print sales business in Adelaide. Following complaints by local retailers, the AFP obtained and executed search warrants on the defendant's business premises. They found copies of eight prints which were the subject of copyright.

The defendant had been selling the prints, which he had obtained from a dealer in Adelaide and from a print company in Thailand. He was charged with 1 310 counts of possessing for sale infringing copies of works contrary to section 132 of the *Copyright Act 1968*.

In order to prove the case it was necessary to obtain affidavits from the overseas owners of the copyright, to show that copyright subsisted in the original works, and statements from expert witnesses to prove that the prints were infringing copies of those works.

The defendant pleaded guilty to 45 counts under section 132 and the remaining matters were taken into account on sentence. The defendant was convicted and fined \$3 500.

Hammond

Hammond was employed as a clerk by the Department of Veterans' Affairs. During 1993 he created two fictitious veterans and claimed benefits for them and their equally fictitious wives.

The defendant managed to induce two women to open bank accounts by telling them that he wanted to conceal money earned from part-time lawn-mowing from his wife and the ATO. The women allowed Hammond to operate the accounts which he used as repositories for the benefits. He managed to obtain \$23 000 from the scheme.

The matter came to light when a bank statement was sent in error to one of the women. She noticed that a veteran's pension was being paid into her account and her solicitor contacted the AFP.

When interviewed, Hammond admitted setting up the scheme and receiving the money. He said he was a serious gambler. He pleaded guilty to four counts of defrauding the Commonwealth. He was sentenced to

20 months imprisonment but was released on a two-year good behaviour bond, the conditions of which included that he perform 120 hours of community service.

The DPP has appealed against the sentence. The defendant has repaid the money he improperly obtained.

Huebl

The defendant was a prominent Adelaide dentist. It was alleged that he claimed rebates from Medibank for services not provided to his patients and that he used incorrect item numbers to pad his invoices. The intention was to maximise rebates paid by Medibank in order to reduce the amount patients were required to pay out of their own pockets. The total amount alleged to have been improperly obtained was substantial, although the offences were committed by small increments rather than by large individual sums.

The case was complicated because the defendant's records did not show the precise nature of the treatment he provided to his patients. In order to establish what services he had in fact provided, and thus show that the claims were false, it was necessary for another dentist to examine the teeth of the patients concerned and compare them with the records. Only a few of the patients were prepared to have their teeth examined and even fewer were prepared to have them x-rayed.

Charges were laid in respect of 12 patients. However, after an adverse ruling by the trial judge in relation to the admissibility of records relied on by the prosecution, the DPP accepted a guilty plea to seven counts of imposition, involving three patients. The defendant was released on a bond under section 19B of the Crimes Act without the formal recording of a conviction.

Rogers

Between 1991 and 1993 Rogers worked as a receptionist for a psychiatrist. She used the opportunity to lodge fabricated claims with Medicare for services supposedly provided by her employer. She used genuine claim forms and forged supporting documents. When questioned by the AFP, she admitted to having lodged 299 false claims in her name, 177 in her daughter's name and 114 in her son's name. She received Medicare rebates totalling \$65 000.

Rogers pleaded guilty to three counts of defrauding the Commonwealth. She was sentenced to 37 months imprisonment with a non-parole period of nine months. She was also ordered to pay reparation of \$65 000. However, she has no ascertainable assets.

Sutherland

In August 1993 Sutherland was charged with 43 counts of defrauding the Commonwealth while he was an employee of the Commonwealth Employment Service in Adelaide. Sutherland fraudulently caused \$104 000 in Jobstart payments to be paid into a bank account controlled by him. The payments were made in respect of fictitious job seekers.

In December 1993 Sutherland pleaded guilty to all counts in the District Court in Adelaide. In the course of the sentencing submissions the defence stated that Sutherland was suffering from AIDS, that he was in

the terminal stages of the disease, and that he had only six to nine months left to live. It was submitted that, in view of his condition, any prison sentence should be suspended to allow him to die in dignity at home. The defence tendered medical reports from Sydney doctors to confirm the dire state of Sutherland's health.

The sentencing judge accepted the submission. Sutherland was sentenced to 40 months imprisonment with an 18 months non-parole period plus a \$10 000 fine. The judge ordered that he be released forthwith upon entering a two-year good behaviour bond and paying \$5 000 towards prosecution costs.

The following day the DPP became aware that the medical reports that had been tendered on behalf of the defendant were altered originals and, in some cases, complete fabrications. The reports had the effect of making Sutherland's condition appear more serious than it was. The DPP brought the matter back before the court.

Sutherland was recalled to court. He was remanded in custody for re-sentencing by another judge. In February 1994 he pleaded guilty to four further charges of knowingly making use of fabricated evidence. He was eventually sentenced to four years imprisonment for the fraud offences and two years imprisonment for the false evidence offences, to be served cumulatively, with a non-parole period of two years. He was also ordered to pay reparation of \$54 500, being the balance outstanding from the offences.

Tobin

This defendant was charged in 1981 with conspiring to import cannabis resin. She fled Australia later in that year while on bail and subsequent attempts to find her were unsuccessful. She was tracked as far as the Netherlands but the indications were that she had gone missing in suspicious circumstances and was possibly dead.

In April 1994 Tobin approached the Australian Embassy in Bonn and stated that she wanted to return to Australia. A few days later she flew back to Australia. She subsequently pleaded guilty to the charge outstanding against her and was sentenced to six years imprisonment with a minimum term of six months.

The case arose from a plan developed in 1980 to bring cannabis resin to Australia from India hidden inside cassette recorders. The plan involved choosing a plane that flew from India to Australia and then to New Zealand. The cassette recorders were left on board the plane until it reached New Zealand. They were then removed and brought back to Australia. Different couriers were used for each leg of the trip. The idea was that Customs officers in New Zealand would pay less attention to passengers arriving from Australia than they would to passengers arriving from India and that the Customs office in Australia would similarly pay little attention to passengers arriving from New Zealand.

The group made five successful trips, involving nine cassette players and 40 kilograms of cannabis resin, before they were detected. Tobin, who had a close relationship with one of the principals, acted as a courier on several trips.

A total of nine people were arrested and charged in the matter. All but two were dealt with in the early 1980's. Tobin and a co-offender fled Australia on false passports while they were on bail. They were subsequently arrested on drug charges in India, but again absconded. In 1984 the co-offender was arrested on drug charges in Sri Lanka. He was extradited to Australia in 1987. Tobin successfully evaded capture until her approach to the embassy in Bonn.

Australian Capital Territory

Bayliss

This defendant obtained a job with the Australian Trade Commission as a Senior Trade Commissioner/Consul-General in Auckland on the basis of a curriculum vitae in which he claimed to hold a Bachelor of Commerce degree and a Master of Business Administration. In fact he held neither qualification. He also provided a number of false documents, and an incorrect birth date, to ensure that he obtained the security clearance needed for the job.

Bayliss was charged with one count of forgery, for changes he made to the birth date shown on his citizenship certificate, two counts of making false statements for the purpose of obtaining a passport, and two counts of imposing on the Commonwealth with a view to obtaining employment.

The defendant pleaded guilty to the charges. He was given a six-month suspended sentence and fined a total of \$600.

Calderton Corporation and Zarew

Calderton Corporation, a company trading as Stereo Warehouse, was charged with two offences against the *Trade Practices Act 1974*; one against section 79 of offering prizes in a promotional contest without intending to provide the prizes, and one against section 155 of failing to comply with a notice under the Act. Peter Zarew, a director of the company was charged with being knowingly concerned in the first offence.

The charges arose out of complaints received by the Trade Practices Commission in relation to a contest run by the company between June and September 1991. The company offered prizes to the ten contestants who spent most money at the store during the contest period. In fact the company created fictitious contestants and ensured that they filled the first ten positions and hence 'won' the competition.

Both defendants pleaded guilty to the charges against them. The company was fined a total of \$6 500. Zarew was fined \$4 500.

Hadba

The defendants in this matter were a husband and wife who operated two takeaways and a restaurant. Their financial affairs were investigated by the ATO and the AFP after questions were raised concerning the source of the funds used to purchase the businesses. The investigation disclosed that the defendants had sent \$212 000 offshore to avoid income tax.

The defendants were each charged with three counts of defrauding the Commonwealth by failing to fully declare income in their tax returns for the years 1989–90, 1990–91 and 1991–92. The amount involved totalled approximately \$162 000 in each case, with unpaid tax, in each case, of \$68 000.

The defendants pleaded guilty. The husband was sentenced to 18 months imprisonment with a minimum term of three months. The wife was given a suspended sentence of nine months imprisonment. The DPP has appealed against both sentences.

Hogarth and Markotany

Hogarth was employed in the accounts section of the Department of Veterans' Affairs. It was alleged that she improperly caused 13 cheques to be paid to her co-offender Markotany. The total value of the cheques was \$98 000. It was alleged that Hogarth was the principal offender and that Markotany acted at her direction.

Hogarth was charged with 13 counts of defrauding the Commonwealth. She pleaded guilty but disputed that her role was as major as the prosecution alleged. After hearing the evidence, the court accepted the prosecution case. Hogarth was sentenced to two and a half years imprisonment with a minimum term of 12 months.

Three other people were charged in the matter. Markotany, who opened the bank accounts in which the cheques were deposited, pleaded guilty to two counts of being knowingly concerned in the fraud. She was released on a bond to be of good behaviour for three years. Murfet, who assisted Markotany to open at least one of the accounts, pleaded guilty to one count of being knowingly concerned in the fraud. He was also released on a good behaviour bond. The final defendant has yet to be dealt with.

Iranian Embassy

On 6 April 1992 a group of demonstrators attacked the Embassy of the Islamic Republic of Iran causing considerable damage to the building and its contents, and to vehicles at the embassy. At least one embassy official was also attacked. The Special Broadcasting Service was pre-warned of the demonstration and a film crew filmed most of the incident.

Thirteen people were charged with offences against the *Crimes (Internationally Protected Persons) Act 1976*, for attacking the official, the premises and the vehicles, and against the *Public Order (Protection of Persons and Property) Act 1971*, for damaging the contents of the building. Two of the defendants subsequently pleaded guilty to trespass charges and the remaining charges against them were withdrawn. They were both convicted and fined.

The remaining 11 defendants were tried together in the ACT Supreme Court in November and December 1993. The case was based largely on the SBS film. The jury found ten of the defendants guilty, although they could not reach a verdict in relation to one of the charges against one of them. They were also unable to reach a verdict in relation to the charges against the final defendant.

Three of those convicted received custodial sentences. The remainder received suspended terms of imprisonment. Two of the first group have appealed against sentence.

There will be a further trial in relation to the charges on which the jury could not agree.

Northern Territory

Raggatt

This defendant was a pilot employed by Skywest. In July 1992 he started a flight from Goulburn Island to Darwin, with seven passengers on board, without ensuring that he had sufficient fuel to complete the trip. The defendant had to make an emergency landing part-way through the flight.

The defendant was charged with three offences against the Civil Aviation Regulations, including one of flying an aircraft in a negligent manner so as to endanger life, contrary to regulation 29. The defendant pleaded not guilty, and the matter was heard over a four-day period in the Darwin Court of Petty Sessions. The defendant was convicted on one charge, being the offence against regulation 29. He was released on a good behaviour bond.

Syaid

The defendant in this case was the master of an Indonesian fishing vessel that was spotted by a Coastwatch flight moored off the coast of Australia. The defendant initially told immigration officials that the boat had been disabled while headed to fishing grounds in the Timor Sea and had drifted to Australia. When the officials announced that they intended to board the vessel Syaid stated that he had four passengers on board. He said he had found five people drifting in mid-ocean and had rescued them, although one was eaten by a shark. There was no commercial fishing equipment on the boat and no sign of storm damage. The master, his crew and the passengers were taken to Darwin.

It was subsequently determined that the passengers were Bangladesh nationals who had boarded the vessel in Indonesia and paid to be taken to Australia. Syaid originally took the passengers to Ashmore Reef, but they refused to go ashore because they believed they would die if he left them there. Syaid agreed to take them to the Australian mainland, for the payment of an additional 20 million rupiahs.

Syaid and his crew were charged with offences against the *Migration Act 1958*. Syaid was convicted and sentenced to eight months imprisonment.

CHAPTER 5

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 been with State Corporate Affairs Offices and State prosecution authorities.

The Australian Securities Commission has responsibility for investigating offences against the Cooperative Scheme Laws and Corporations Law. With the exception of minor regulatory matters, the ASC refers completed investigations to the DPP for prosecution.

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*.

RELATIONS WITH THE ASC

In December 1992 the ASC and the DPP developed guidelines dealing with the working arrangements for the investigation and prosecution of serious corporate wrongdoing.

The guidelines clarify the role of the DPP in the criminal investigative process. In essence, the DPP provides early advice to the ASC in the investigation of suspected offences. This is important in corporate fraud cases where an investigation can be time-consuming and resource-intensive. Early involvement of the prosecutor can assist in better using the finite resources of the investigator by avoiding those areas which are unlikely to result in a prosecution.

The Chairman of the ASC and the Director have an effective working relationship. There is regular liaison between the ASC and the DPP at management and organisational levels and both organisations have a clear understanding of each other's respective roles and responsibilities.

Communication between the ASC and the DPP has been enhanced by regular liaison meetings at both the regional and national levels together with the exchange of reports on cases by both organisations. This formal liaison is in addition to case level liaison between officers of the ASC and the DPP.

The strengthening of the relationship between the ASC and the DPP is an ongoing process. Both organisations recognise the need to continue developing a cooperative approach to the investigation and prosecution of suspected corporate crime.

CASE LOADS

During the year there was a steady flow of referrals to the DPP for both advice and prosecution. Additionally, the DPP's workload per matter increased due to its greater involvement with the ASC during the investigative phase.

As indicated in the 1992–93 Annual Report, the DPP had 195 matters on hand at the start of the year. During 1993–94 the ASC referred 40 matters for advice and 71 matters for hearing or prosecution. It should be noted that some of the matters referred for advice eventually lead to prosecution. During the year 106 matters were completed as follows:

Plea guilty	20
Found guilty	12
Acquitted	2
Advice provided	55
Other	17

As at 30 June 1994 the DPP had 200 matters on hand that had been referred by the ASC. As well, the DPP had four matters on hand relating to corporate misconduct which 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 and/or interesting cases dealt with during the year provide a greater appreciation of the work involved.

IMPORTANT CASES

New South Wales

Growth Industries

The Growth Industries group of companies was established in 1987 to promote and manage tax-driven horticultural and viticultural investment schemes. The schemes 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.

In December 1993 Towey was committed to stand trial in the District Court on 24 charges. Flude's committal hearing was adjourned until July 1994 when he was committed to stand trial on four charges.

Spedley Securities Ltd

Charges have been laid against Brian Yuill, James Craven and John Corner arising from the investigation of the collapse of Spedley Securities Limited and related companies.

Following a five-week trial, Brian Yuill was convicted in November 1993 on each of the seven counts in the indictment presented in respect of the 'Triton' proceedings. On 29 June 1994 the conviction was quashed and a retrial ordered by the Court of Criminal Appeal on the basis that the trial judge's charge to the jury was not in conformity with the High Court's decision in *Black* (1993) 118 ALR 209. The decision in *Black* was delivered after the jury had returned its verdict in the 'Triton' proceedings. A date for the retrial has yet to be fixed.

A second trial, involving the 'Nodrogan' proceedings is listed to commence against Yuill in August 1994. A third matter, 'Chelsea Property' proceedings, has not yet been set down for trial.

In April 1994, Brian Yuill was committed for trial in relation to a fourth group of charges, the '1988 Accounts' proceedings. A trial date has not yet been set.

In January 1994 James Craven was committed for trial on charges under sections 229(1) and 299(4) of the Companies (NSW) Code relating to the 'Bisley Rights' issue. A date for the trial has yet to be fixed.

Craven was a prosecution witness in the 'Triton' trial of Yuill referred to above. Despite receiving an undertaking under section 9(6) of the DPP Act, Craven refused to answer most of the questions asked in examination in chief and in cross-examination. At the conclusion of the trial he was referred by the trial judge to the Court of Appeal to be dealt with for a possible contempt. Proceedings for contempt of court are being conducted by the NSW Crown Solicitor against Craven. The contempt proceedings are to be heard in August 1994.

In October 1993 John Corner was committed for trial for offences under section 229(4) and section 564(1) of the Companies (NSW) Code in relation to his activities while managing director of Bisley Investment Corporation Limited and Triton Investment Corporation Limited. A date for the trial has not yet been set.

Budget Corporation Limited

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

The prospectus, which was issued on 21 November 1988, offered 12.5 million 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 Hamley were directors of Budget Corporation Limited. It is alleged that Smithers and Stevenson, respectively the accountant and the solicitor to the prospectus, were knowingly concerned in the issue of the allegedly false prospectus.

The committal proceedings began on 2 May 1994.

General Investments Australia Limited

On 15 June 1993 Robert 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 Kitson, a former director of GIAL, in relation to 32 offences against section 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.

On 30 August 1993 further charges were laid against both defendants for offences under section 229(4) of the Code for five additional payments made by GIAL to companies controlled by Hodge. Further charges were also laid against Kitson for offences against section 563(2) of the Code.

The prosecution is proceeding against each defendant on 26 charges for offences under section 229(4) of the Code and 10 charges for offences under section 563(2) of the Code. The offences relate to payments amounting to \$5 926 092 made by GIAL between 19 March 1987 and 14 November 1989.

A committal hearing in the matter has been set down to begin on 8 August 1994.

Entity Group Limited

In the 1992–93 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 the Supreme Court under the *Supreme Court (Summary Jurisdiction) Act 1967* against David Reynolds and Desmond Crane. Charges were brought against Reynolds and Crane for offences against sections 125 and 129 of the Securities Industry (NSW) Code and section 178BB of the *Crimes Act 1900* (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 accountant'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.

The proceedings against Reynolds and Crane have been set down for a three to four week hearing commencing on 29 August 1994.

Direct Acceptance Corporation Limited

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

On 12 November 1993, three informations were issued against Lord alleging that together with John Riordan, he made improper use of his position as an officer of Direct Acceptance Corporation Limited contrary to section 229(4) of the Companies (NSW) Code. At the relevant time, Lord was the managing director of DAC and Riordan was a director of

the company. It is alleged that Lord improperly used his position as an officer of DAC by authorising the company's entry into various agreements, including a loan agreement, and variation thereto, with companies in which the directors of DAC were interested. Lord was also charged with aiding and abetting the commission of an offence by Riordan, this being the improper use by Riordan of his position as an officer of DAC.

Five informations were also issued against Riordan on 12 November 1993, charging him, with offences against section 229(4) of the Companies (NSW) Code, for making improper use of his position as an officer of DAC.

The committal hearing for three charges laid against Lord under section 564 of the Companies (NSW) Code was originally set down for three days, commencing on 8 December 1993. Following the laying of the section 229(4) charges against Lord and Riordan, the committal hearing for both Lord and Riordan was listed for three weeks, commencing on 12 September 1994.

Aust-Wide Management Limited

On 21 March 1994 Ronald Kerr appeared at the St James Local Court charged with one offence under section 229(4) of the Companies (NSW) Code.

The charge relates to the redemption of units in the Aust-Wide Trust by Kerr's private company immediately before the commencement of a general suspension of the redemption of units in that trust.

It is alleged that Kerr, then a director of the unit trust management company Aust-Wide Management Limited, made improper use of his position by ordering the expedited redemption of units in the sum of \$161 000 held by his private company in the Trust.

The matter is listed for committal hearing for one month commencing on 30 January 1995.

Westmex Limited

On 4 March 1994 Russell Goward, the former Chairman and Managing Director of Westmex Limited, was charged with one offence against sections 125 and 129 of the Securities Industry (NSW) Code.

It is alleged that on 6 December 1989 Goward made a statement in a press announcement which was likely to induce the purchase of Westmex shares and which he ought to have known was false or misleading. The statement represented that over the two months prior to 6 December 1989 no director of Westmex had sold Westmex shares. The statement was subsequently reported in the press on 7 December 1989.

It is alleged that in November 1989 Goward had given instructions to a stockbroker for the sale of about 733 800 Westmex shares held by a private company controlled by him. The sale yielded approximately \$719 700.

At the time of the press announcement, a Goward private company was the single largest shareholder in Westmex and the share price of Westmex shares had been falling. Westmex was placed into liquidation in February 1990.

Victoria

Endresz

On 11 June 1993 Allan Endresz was convicted at the Melbourne Magistrates Court of 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 and Industry (Victoria) Code and one offence of making a 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 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.

Endresz appealed to the Supreme Court of Victoria by way of an application pursuant to section 92 of the *Magistrates' Court Act 1989*.

On 30 June 1994 Hansen J dismissed the appeal holding that the Magistrate had not erred at law and that it was open to the Magistrate to find the charges proved.

One aspect of the case related to the sale and purchase of four million shares in Emu held by CTC Nominees Pty Ltd. It was alleged that on 8 February 1990 Endresz instructed a broker at Roach and Co to sell four million shares held in EMU by CTC. At about the same time Endresz instructed a broker at ANZ, McCaughan, to purchase four million shares in EMU at 14 cents per share. Endresz did not tell either broker that CTC was on both sides of the transaction. On 14 February 1990 the broker from ANZ agreed with the broker at Roach to purchase the parcel of shares at 14 cents per share (a total of \$560 000) plus stamp duty and brokerage on the condition that the purchase price was not payable until three months after the date of the contract. At the time of the bid the price of the EMU stock was nine to ten cents per share. As a result of the transaction the price of EMU went to 14 cents per share.

Endresz gave evidence that the transaction was a device whereby a short term loan was obtained from Roach and Co. Evidence given by Roach employees was that payment of funds by Roach to Endresz was a mistake and that the payment should not have been made in respect of a deferred settlement. The Supreme Court held that the magistrate had been correct in finding that an offence of market manipulation had been committed.

This case was referred to the Melbourne office of the DPP by the Canberra office of the ASC. The Adelaide office of the DPP assisted in the prosecution and one of their senior lawyers appeared as counsel in the Magistrates Court.

Pedersen and James

On 28 April 1994 Dale Pedersen, a director of SVO Limousines Pty Ltd, pleaded guilty to a presentment containing three counts of obtaining property by deception contrary to section 81(1) of the *Crimes Act 1958* (Vic), one count of falsifying books and records contrary to section

560(1) of the Companies (Victoria) Code, and one count of failing to act honestly as a director of a company contrary to section 229(1) of the Companies (Victoria) Code.

On 11 May 1994 Pedersen was sentenced to 18 months jail on each of the counts of obtaining property by deception, to be served concurrently; six months jail on the count of falsifying books and records, and 12 months jail on the count of failing to act honestly as a director. The total overall effective head sentence was two years with a non-parole period of 12 months.

The essence of the allegations relating to the *Crimes Act 1958* (Vic) offences was that Pedersen arranged for false invoices in respect of equipment used in the company's business of converting motor vehicles into stretch limousines to be supplied to finance companies for the purpose of obtaining finance. The Companies (Victoria) Code offences related to the making of false entries in books of account and the provision of false information in order to deceive prospective lenders to the company.

In sentencing Pedersen, Crossley J noted that many people suffered financially as a result of Pedersen's conduct, that there was dishonesty and considerable breach of trust, and that Pedersen unfairly pressured others into criminal activity to suit his own ends. However, his Honour also stated that he fixed a lower minimum term than might otherwise be appropriate because of the prospects of rehabilitation.

The case is of interest also because it was one where an order pursuant to the new section 360A of the *Crimes Act 1958* (Vic) was obtained from the judge.

The matter had been delayed by the accused who obtained several adjournments between October 1992 and June 1993 by claiming that he was unable to privately fund his trial. The Legal Aid Commission of Victoria refused to provide funds other than for a plea of guilty and Pedersen therefore was seeking a stay of the proceedings.

On 3 September 1993, the Crown sought and obtained an order by a judge that the Legal Aid Commission fund the trial of the accused pursuant to section 360A of the *Crimes Act 1958* [which was introduced by the *Crimes (Criminal Trials) Act 1994* Vic.]. The judge also made orders in respect of the time for filing the prosecution case statement and the defence response, both of which were filed prior to the accused indicating he would plead guilty.

Trayler

Brian Trayler was charged under section 63(3) of the ASC Law with failing to assist the ASC when requested to under section 49(3) of the ASC Law. The defendant had told lies to investigators from the ASC concerning the whereabouts of a person under investigation. He pleaded guilty in the Melbourne Magistrates' Court and was released pursuant to section 19B of the *Crimes Act 1914* upon entering into a recognisance of \$500 to be of good behaviour for 12 months. The case is of interest in that it was one of the first prosecutions for an offence of this kind.

Peter Schneider

On 16 February 1994 Peter Schneider, a former accountant with AP Consolidated Pty Ltd, pleaded guilty at committal in the Melbourne Magistrates Court to two counts of falsification of records contrary to section 1307 of the Corporations Law, five counts of obtaining a financial advantage contrary to section 82 of the *Crimes Act 1958* (Vic) and 335 counts of theft contrary to section 74 of that Act.

Schneider was sentenced in the County Court on 10 June 1994 to terms totalling four years with a minimum of two years. It was alleged that Schneider dishonestly obtained in excess of \$2.1 million. The money had been used in acquiring real estate, shares, motor cars and maintaining a comfortable lifestyle.

Estate Mortgage

On 3 November 1993, after a trial lasting nearly three months, Reuben Lew and his son Richard Lew were each found guilty of three counts of improperly using their positions as officers of Estate Mortgage Managers Ltd contrary to section 229(4) of the Companies (Victoria) Code. On 4 November 1993 Reuben Lew was sentenced to a total of three years jail with a two-year minimum term. Richard Lew was sentenced to two years with a nine-month minimum term. An appeal by Richard Lew against the severity of his sentence was dismissed on 17 February 1994.

Reuben Lew was the person principally responsible for establishing the Estate Mortgage Trusts. These trusts solicited funds from the public pursuant to prospectuses that were lodged with the Corporate Affairs Office in Victoria. The business of the EMT was to lend money on first mortgage security over real estate. No loan was to exceed two-thirds of the sworn valuation. The manager of the EMT was EMM, a company controlled by the Lew family. The trustee was Burns Philp Trustee Co Ltd.

Though not formally a director of EMM, Reuben Lew exercised a great degree of control over the manner in which that company carried out its duties as manager of the EMT. Several members of the Lew family, including people related by marriage to the Lews, were employed at EMM. Richard Lew joined the company and soon became a director. He subsequently became managing director of EMM.

The trust deeds executed by the trustee and manager contained provisions regulating the relationship between the trustee and the manager. Pursuant to the deeds it was the sole prerogative of the manager to introduce and recommend prospective investments to the trustee. In the event that the EMT had funds available, the valuation was in order and the solicitor to the trustee certified that the security documents were in order, the trustee invariably accepted any investment proposal recommended by the manager. The solicitor for the trustee was instructed by EMM on behalf of the trustee.

The trust deeds prohibited lending to persons or entities associated with the trustee or the manager.

In mid-1985, EMM was approached by a property developer seeking finance for the development of a shopping centre at Southport, Queensland. The developer had optioned all the land required for the

centre and obtained all the necessary town-planning approvals. The developer was not in a position to offer any funds towards the development and required 100 per cent finance on a cost-to-complete basis.

Reuben Lew offered to arrange finance from the EMT on condition that the developer transfer half its interest in the company that would own the centre to a private company controlled by Reuben Lew himself. Further, Reuben Lew required that the developer enter into an agreement that half the profits upon the sale of the centre be paid to Lew's private company. These arrangements were secured by second mortgage over the relevant properties. The valuations upon the properties were such that the EMT were able to provide 100 per cent of the finance necessary to complete the project.

Subsequently, the centre was extended and further finance was required. That was provided by the EMT on similar conditions to the earlier finance.

The developer identified another shopping centre development opportunity at Fairfield, Queensland, and approached Reuben Lew about finance for that project. Once again, 100 per cent of the funds necessary to complete that project were supplied by the EMT. A condition agreed to by the developer was that half the shares in the company developing that project and half the profits upon the sale of the project be made available to a private Lew company.

At the time the various profit sharing arrangements were entered into, the valuations upon the projects were such that the Lew interests were worth about \$10 million. Richard Lew had full knowledge of these arrangements and acted to further and facilitate them.

Both the Lews took active steps to conceal the basis of the profit sharing arrangements from the trustee.

Both developments subsequently failed and the total shortfall to the EMT was in excess of \$30 million.

At the same time as Reuben Lew was sentenced on the matters noted above, he also pleaded guilty to a further section 229(4) count in respect of another EMT related matter. That matter arose out of an application for finance for the proposed purchase and refurbishment of property at Fortitude Valley, Brisbane.

The essence of Lew's criminality in that matter was that as a condition of supporting an application for increased borrowings Lew required that \$500 000 of the funds advanced by the EMT be paid to a private Lew company. The initial arrangement whereby the developers agreed to pay Lew \$500 000 as a profit share on the project was facilitated by Anthony Arnold agreeing for a company controlled by he and his wife to hold title to the relevant property.

Arnold was a valuer by occupation and had supplied about 90 per cent of all valuations required for EMT loans. Arnold was aware that Reuben Lew had a profit share agreement and that \$500 000 of the funds to be supplied by the EMT were to be paid to a Lew controlled company.

Lew received a prison sentence on this matter that was totally concurrent with the other sentence. In addition he was ordered to pay \$500 000 to the new trustees of the EMT (now the Meridian Investment Trusts).

Arnold pleaded guilty to one section 229(4) count in that he aided and abetted Lew. He was sentenced on 30 March 1994 to 12 months imprisonment which was wholly suspended.

Queensland

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 229(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. He was then in Majorca, Spain, and claimed to be unable to travel to Australia due to the state of his health.

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

On 29 April 1993, medical reports were tendered to the court from both Skase's medical advisers as well as an independent medical practitioner engaged by the DPP. On the basis of these reports, Skase's counsel sought and was granted an adjournment of the trial date set for 23 August 1993. A new trial date of 14 March 1994 was allocated.

On 24 November 1993, warrants were issued for Skase's arrest in relation to seven offences against section 267 of the *Bankruptcy Act 1966*. In relation to these offences it is alleged that Skase omitted material particulars in his statement of affairs filed in his bankruptcy.

On 15 December 1993, an application was made by Skase's counsel for a further adjournment of the trial date on the Companies (Queensland) Code offences on the basis of additional reports from Skase's medical advisers. The application was refused.

In January 1994 the DPP made an application for the issue of a warrant of arrest for Skase. Specialist medical witnesses engaged by the DPP testified that Skase could travel safely to Australia under specialist medical care. A former confidante of Skase, Lawrence Van Der Plaats, testified that Skase had told him he had no intention of returning to Australia to face trial and that Skase had indicated that, if other strategies to avoid returning to Australia failed, he would flee Spain.

On 25 January 1994, the Court found that Skase was a fugitive and ordered that a warrant be issued for his arrest.

On 31 January 1994, Skase was arrested in Majorca, Spain. He was admitted as a prisoner to the General Hospital of Palma De Mallorca.

On 10 February 1994, an appeal by Skase against the order for his arrest was dismissed.

On 3 March 1994, an extradition request was delivered to the Spanish Ministry of Foreign Affairs in relation to both the Companies (Queensland) Code and the Bankruptcy Act offences. The extradition hearing is set to commence before the Audiencia Nacional Court in Mallorca, Spain, on 19 July 1994.

Donald

Ian Donald was convicted of one count of making improper use of his position as a director of Ardina Electrical (Queensland) Pty Ltd to gain an advantage for Kayam Constructions Pty Ltd. Donald had originally been indicted on 47 counts of contravening the Companies (Queensland) Code; however, the trial judge had directed that he be acquitted on 46 of the counts. As reported last year, the Court of Appeal indicated the trial judge erred in directing Donald's acquittal on these counts. The quantum of the advantage on the only remaining count was \$13 800.

Donald was the managing director of Ardina. He was also the director of Kayam, his family company. The jury found that Donald had made improper use of his position as a director of Ardina by submitting a Kayam invoice to Ardina which he knew to be false. Further, he subsequently authorised payment of that invoice in circumstances where he had not only known of its falsity, but also had not disclosed to the other directors of Ardina his interest in Kayam.

The trial judge in sentencing Donald ordered that he be placed on a \$3 000 bond to be of good behaviour for three years. A conviction was recorded. The trial judge considered a term of imprisonment inappropriate on the basis that this was a one-off event which did not involve a course of conduct. The trial judge also took into account other matters such as the previous good behaviour of the defendant and his present poor health.

In passing sentence the trial judge refused to order compensation because the defendant's assets had been frozen by the ASC pending the outcome of further civil action.

Foster

On 1 October 1992, Peter Foster was charged with three offences against section 37(b) of the *Crimes Act 1914*. It is alleged that Foster attempted to induce Cyril Bishop, June Bishop and Gregory Riley to give false testimony at an ASC examination.

Peter Foster was an undischarged bankrupt and as such was prevented from taking part in the management of a company. Trade-Ex Limited is a public company.

It is alleged that Foster arranged for three acquaintances to be directors of Trade-Ex in name only while Foster made all the decisions, dealt with creditors and staff and arranged for cheques to be signed by one of the directors.

The ASC began an investigation when it came to their attention that Foster may have been involved in the management of Trade-Ex. It is alleged that Foster prepared a six-page document indicating to the

directors that they should answer any questions in accordance with the information in that document so as to disguise Foster's involvement in the management of Trade-Ex.

Foster was committed on all charges in October 1993. The matter is yet to be listed for trial.

As a result of this investigation, Foster has also been charged pursuant to section 229(1) of the Corporations Law that he did, without leave of the court while being an insolvent under administration, manage a corporation. This matter, being a summary matter, has been adjourned to be determined at the completion of the indictable matter.

Foster has also been charged with six counts involving breaches of section 64(1)(b) of the Australian Securities Commission Law in that he made statements during the course of an examination which were false in a material particular.

The basis for the charges is that certain handwriting on documents lodged with the ASC relating to Larkhall Australia Pty Limited were in fact written by Foster.

At the examination, Foster was asked questions as to the authorship of the handwriting on each of the forms. He denied knowing who the author was, or that it was his signature.

This matter is listed for committal at the Southport Magistrates Court on 5 July 1993.

Hyland

On 9 February 1994, Gavin Hyland was committed for trial on a total of 17 charges under both the Queensland Criminal Code and the Futures Industry (Queensland) Code. The charges relate to a total of over \$200 000 received by Hyland from investors in his capacity as a financial adviser. It is alleged that the investors instructed Hyland to invest money on their behalf. It is alleged that, contrary to the instructions, Hyland used the money to trade on the futures exchange or the stock market in the name of Hyland Investment Corporation Pty Ltd, a company of which he was a director and the major shareholder.

In the alternative, he is charged with dealing in futures contracts on behalf of investors without the appropriate licence. The trial has been set down to commence on 17 October 1994 and is expected to last between three and four weeks.

Pivot Group Limited

On 3 May 1994, Peter Laurance appeared in the Brisbane Magistrates Court on 13 charges under section 129 and 13 charges under section 229(4) of the Companies (Queensland) Code. Peter Searson and Graham McHugh were also summonsed to appear in court on similar charges.

The prosecution centres around an attempt by Q-West Pty Ltd to take over and subsequently privatise Pivot Group Limited. The Pivot Group was primarily responsible for the management of Seaworld Aquatic Park and was a majority unit holder in the Seaworld Property Trust which owned the park.

Laurance was the executive director of PGL and chairman of the Board. He was also a director of Pivot Projects Pty Ltd, the operating arm of the Pivot Group through which all the group's funding was sourced. Pivot Projects was a wholly owned subsidiary of PGL.

Q-West (Laurance's private company) was a trust company for the Pivot Group Trust, the main asset of the trust being the shares in Pivot Group Limited. Unit holders under the trust were members of Laurance's family and other associates. Laurance was a director of Q-West.

Searson was a director and secretary of PGL and Pivot Projects. He was secretary of Q-West from 1981 to 15 January 1989. He was also managing director of the Pivot Group.

McHugh was a secretary of PGL and Pivot Projects. His position within the Pivot Group was financial controller.

It is alleged that Q-West was provided with a number of facilities by Tricontinental Corporation for the purpose of financing the purchase of PGL shares. It is alleged that interest payments on these facilities were made to Tricontinental by either Pivot Projects or PGL and recorded as loans to Q-West contrary to section 129 of the Companies (Queensland) Code.

Each of the co-accused is also charged with improperly using his position as a director under section 229(4) of the Companies (Queensland) Code in relation to these payments.

The matter is to be mentioned on 29 July 1994 when it is expected a committal date will be set.

Mackie and Mackie

Gilheasboig (Gil) Mackie was charged with one count involving a breach of section 232(6) of the Corporations Law. Rachel Mackie was charged with being knowingly concerned in the commission of Gil Mackie's offence.

On 15 October 1993, both Gil and Rachel Mackie pleaded guilty before the District Court in Brisbane and were convicted. Gil Mackie also had one count taken into account alleging a breach of section 229(1) of the Corporations Law (managing a corporation while insolvent). Both the accused contested the facts relied upon by the prosecution. A three-day contested-facts hearing was held in December 1993.

The charges arose out of the stripping of assets from Chemex Chemicals Pty Ltd (Chemex), of which both Mackies were directors, and the transfer of the assets to Ferngroup Pty Ltd. It was alleged that Ferngroup was effectively managed by Gil Mackie although he was not a director. The directors of Ferngroup were Rachel Mackie's daughter and son-in-law. The assets of Chemex were transferred to Ferngroup in sham transactions for minimal consideration. There were debts of approximately \$210 000 owed by Chemex at the time of liquidation. Personal guarantees and mortgages had been given by the Mackies; however, by the time of the liquidation of Chemex both were bankrupt and the mortgages securing the loans did not realise sufficient to pay off the debts.

On 10 December 1993 Hoath J sentenced Gil Mackie to six months imprisonment to be released after two months. Rachel Mackie was sentenced to six months imprisonment to be released immediately upon entering into a recognisance to be of good behaviour for three years and to perform 160 hours community service.

Both prisoners appealed to the Queensland Court of Appeal against the severity of the sentences. Their appeals were heard on 10 March 1994 and subsequently dismissed.

In dismissing the appeal, McPherson J said that whilst breaches of section 232(6) do not need an element of dishonesty, in this present case the prisoners: '... clearly did commit this offence with a dishonest purpose in mind'; and that, '... The case was one of a serious breach of trust by company directors'. After stating that in the view of the court the sentences were not excessive his Honour said:

. . . Indeed, on one view it might be possible to say that, comparatively speaking, in relation to sentences imposed by Courts upon individuals who commit offences of dishonesty otherwise than through the medium of a corporation, the sentences in this case were really quite lenient.

Western Australia

Bond

As reported last year, 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 by Dallhold Investments Pty Ltd, Bond's private company, of the painting *La Promenade* by the French impressionist painter Edouard Manet.

On 12 August 1993, Bond elected to have a preliminary hearing which was set down to commence in January 1994. On 6 December 1993, Bond's counsel applied for an adjournment of the preliminary hearing on the ground that Bond could not prepare for the hearing or instruct his counsel for health reasons. The adjournment was granted and the hearing re-listed to commence on 18 July 1994. On 26 May 1994, Bond's counsel made a further adjournment application on the basis that Bond had suffered brain damage as a side effect of heart surgery in early 1993 which had affected both his memory and his ability to concentrate. Also, it was said that Bond was suffering from a depressive condition.

The application for a further adjournment was opposed by the DPP. The application continued over nine hearing days. On 24 June 1994 the magistrate delivered his decision refusing the adjournment. The preliminary hearing commenced in the Perth Court of Petty Sessions on 18 July 1994.

Greenburg

Robin Sarah Greenburg had been charged with in excess of 50 offences under the Criminal Code (Western Australia) and the Companies (Western Australia) Code. As reported last year, Greenburg appealed against her total head sentence of 17 years imprisonment to the Court of Criminal Appeal. The appeal was heard on 13 May 1993 with the court reserving its decision. The court delivered its decision on 26 November 1993 and allowed the appeal in part, reducing the total head sentence to 14 years.

The Duke Group Ltd

As reported last year, charges were laid against Harold Abbot, Peter Reid, Paul Fitzsimmons and Charles Kovess in relation to transactions whereby it is alleged that Kia Ora Gold Corporation NL provided for the acquisition of its own shares contrary to section 129 of the Companies (Western Australia) Code. On 18 October 1993 the defendants elected to have a preliminary hearing which was set down for four weeks commencing on 7 June 1994. The matter concluded after twelve hearing days with the magistrate reserving his decision.

The matter was originally listed to continue for four weeks. The prosecution used a computerised litigation support system in the presentation of the evidence and it is believed that this is one of the factors that enabled the hearing to conclude ahead of schedule.

Independent Resources

Charges under section 229(4) of the Companies (Western Australia) Code were laid against Michael Fuller, Joseph Cummings and Richard Webb. It was alleged the defendants authorised the use of assets of companies within the Independent Resources Group for purposes other than for the benefit of those companies. Fuller and Cummings elected to have a preliminary hearing which commenced on 6 September 1993. Both defendants were committed for trial on all counts and the trial has been set down to commence in February 1995 for six weeks.

Webb was 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. He pleaded guilty in the Perth Court of Petty Sessions on 29 April 1994 and was fined \$1 700.

Charges were also preferred against Fuller and Cummings in relation to a transaction involving the acquisition of interests in a mine in the Philippines. On 6 September 1993 the defendants elected to have a preliminary hearing which was set down to be heard on 2 May 1994. The matter was adjourned on that date to 15 June 1994 when an application was made to adjourn the preliminary hearing on the basis that the same defendants had been granted an adjournment by a South Australian judge in relation to other charges involving Independent Resources on the basis on an alleged inability to obtain counsel and the application of the High Court's decision in *Dietrich* (1992) 177 CLR 292. As noted elsewhere in this chapter, on 3 June 1994 the South Australian Supreme Court held that the decision in *Dietrich* does not apply to preliminary hearings. The preliminary hearing in this matter has been set down to commence on 7 November 1994.

Parry Corporation

A re-trial of Kevin Parry on one offence against section 229(4) of the Companies (Western Australian) Code was due to commence in April 1994. The defendant sought an adjournment on the basis that a defence witness was then out of the jurisdiction and was not due to return for some months. The re-trial is scheduled to be heard in November 1994.

Sunmark

Sun Sovereign Limited was a company within what has been termed the Sunmark group of companies. This group comprised a complex web of companies in Australia and overseas and was controlled by Chor Kian Yap. Sun Sovereign was a money market dealer in the unofficial money market and was registered as a financial corporation under the *Financial Corporations Act 1974*.

Following the liquidation of a number of companies in the Sunmark group, including Sun Sovereign, in 1989, and a special investigation directed by the Ministerial Council for Companies and Securities as well as an investigation by the Australian Securities Commission, charges were brought against previous officers of Sun Sovereign relating to various transactions involving that company.

Several charges in respect of a number of transactions have been brought against Yap pursuant to section 229(4) and 229(1) of the Companies (Western Australia) Code. It has not been possible to locate Yap.

On 17 September 1993 Oliver George Douglas, a director and general manager of Sun Sovereign, was charged with two offences against section 229(4), and two offences against section 229(2), of the Companies Code. He was jointly charged with Desmond Hurley Matthews, a director and treasury manager of Sun Sovereign, in respect of one of the section 229(4) charges. The joint charges against both Douglas and Matthews relate to a payment by Sun Sovereign to another company within the group as an unsecured loan out of monies deposited with Sun Sovereign for the purpose of investment in money market securities. The joint charge was dismissed in the Perth Court of Petty Sessions in March 1994. The DPP has lodged an appeal against this decision and it is expected the appeal will be heard in late 1994.

Douglas was convicted of one of the section 229(2) charges in June 1994. The hearing in respect of the remaining section 229(2) charge is due to take place in August 1994. The remaining section 229(4) charge against Douglas has proceeded on indictment to the District Court and the trial is expected to take place in 1995.

South Australia

Fuller, Johnson and Cummings

Following an investigation by the National Crime Authority, charges were laid against Michael Fuller, Malcolm Johnson and Joseph Cummings for conspiracy to defraud. The charges relate to an alleged scheme whereby Beach Petroleum NL acquired interests in the Burbank Oilfields in Okalahoma at a grossly inflated price of US\$28 million. It is also alleged that the same interests had been purchased by entities controlled by Johnson for about \$US3.7 million. Further charges under the *Criminal Law Consolidation Act 1935* and the Companies (South Australia) Code were also laid against Fuller, Cummings and Johnson.

The committal proceedings against Fuller and Cummings were listed to commence on 11 April 1994. At the commencement of the proceedings the defendants applied for an adjournment on the basis of the principles expounded by the High Court in *Dietrich* (1992) 177 CLR 292.

Essentially it was argued that the proceedings ought to be adjourned as Fuller and Cummings had been denied legal aid for the committal proceedings. The magistrate refused the application holding that *Dietrich* did not extend to committal proceedings in South Australia.

On 12 April 1994, the defendants successfully requested a single judge of the Supreme Court to adjourn the proceedings and remit the matter to the Full Court of the Supreme Court of South Australia to determine the question raised before the magistrate. On 3 June 1994, the Full Court rejected the application.

An application by the defendants to the High Court for the matter to be stayed was rejected on 20 June 1994. The defendants have applied to the High Court for special leave to appeal against the decision of the Full Court.

The committal proceedings against Fuller and Cummings are proceeding. Johnson is currently facing charges brought by the Serious Fraud Office in the United Kingdom.

Byrnes and Hopwood

On 3 August 1993, the trial judge found both Timothy Hopwood and Martin Byrnes guilty of charges under section 229(4) of the Companies (South Australia) Code. It had been alleged that both Byrnes and Hopwood had acted improperly as directors of Magnacrete Ltd in that they acted in circumstances where they had a clear conflict of interest and had implemented a scheme that was not in the interests of the company of which they were directors. Byrnes had also been charged with two counts of furnishing misleading information contrary to section 564(1) of the Code.

Both Byrnes and Hopwood appealed to the Court of Criminal Appeal which on 21 April 1994 quashed the convictions and entered verdicts of acquittal in relation to the section 229(4) offences and one of the section 564 offences. In relation to the section 229(4) offences the court indicated that once conduct which is objectively improper has been proved beyond reasonable doubt it was necessary to consider the intention of the actor to determine if the civil impropriety is translated into criminal impropriety.

The DPP has filed an application to the High Court for special leave to appeal against the decision of the Court of Appeal.

Wigney

Bruce Wigney was prosecuted on indictment for 12 offences against the *Criminal Law Consolidation Act 1935*. Eight counts were for fraudulent conversion under section 184 and four counts were for fraudulent application of company property.

The trial commenced in the Supreme Court of South Australia on 2 August 1993 and Wigney was convicted on 10 counts by unanimous verdict and acquitted by majority on the last two counts. On 1 September 1993 Wigney was sentenced to five years imprisonment with a minimum of three years. An appeal to the South Australian Court of Criminal Appeal against the severity of the sentence was unsuccessful.

The charges related to the use of funds belonging to the South Australian Peagrowers Cooperative Ltd. Wigney operated a farm advisory service and later an accounting practice in the mid-north of South Australia and was secretary to the Cooperative. Notwithstanding that the Cooperative had resolved to the contrary, Wigney endorsed cheques payable to the Cooperative for payment to a trust account operated by him. The funds were then used for purposes other than those of the Cooperative.

Tasmania

Fairlie

John Fairlie was the managing director of an unlisted public company, Farmers Limited, which operated a chain of supermarkets and a wholesale warehouse. The company was eventually placed in receivership and there was a substantial loss to unsecured creditors. It was alleged that the company's accounts were seriously deficient and that this was known to Fairlie. An attempt was made by the company to change the method of keeping its accounting records from a manual to a computerised system but without success. The accounting records were in such a poor state when ASC began investigating the affairs of the company that it was extremely difficult if not impossible to determine the financial state of the company.

Fairlie was charged with, inter alia, three counts of breaching section 555 of the Companies (Tasmania) Code for failing to keep adequate and proper accounting records and one count each of failing to ensure that the company's profit and loss accounts, balance sheets and group accounts were true and fair by bringing into the accounts a future income tax benefit (FITB), in breach of section 269 of the Companies (Tasmania) Code.

The case is of interest in that it was the first time a charge had been brought for a breach of section 269 and it was also the first time that the issue of the question of whether accounting standards were the measure of truth and fairness was also raised.

After a lengthy hearing on 27 August 1992 the magistrate dismissed all counts relating to the breaches of section 555 on the basis that Fairlie had discharged his duties concerning the accounting records by engaging a succession of persons to attend to the records and the three counts dealing with breaches of section 269 on the basis that Fairlie had an honest and reasonable but mistaken belief that the company would make a profit from which the FITB could be offset.

The DPP appealed to the Supreme Court from that decision in relation to the six counts and on 25 June 1993 that appeal was upheld by Zeeman J, who held that objectively Fairlie had not taken all necessary steps to discharge his duty. Simply engaging a succession of staff in these circumstances was not enough. Secondly, he held that Fairlie could not have had a reasonable belief that the company would go on to make a profit from which the benefit of the FITB could be offset.

The decision has been referred to in academic texts and other like publications. In addition, there was a general acceptance, both by the magistrate and Zeeman J, that the accounting standards concerning the FITB was the appropriate test of truth and fairness.

The matter was referred back to the magistrate to determine according to the law. On 21 March 1994, the magistrate, in accordance with the orders of the Supreme Court, found the charges proven but proceeded to dismiss the counts without recording a conviction pursuant to section 7 of the *Probation of Offenders Act 1973* (Tas).

An appeal against that decision was lodged on 31 March 1994 and argued in June 1994.

Australian Capital Territory

Crowl

On 24 June 1994, James Crowl was committed for trial at the District Court in Wagga on 7 charges of cheating and defrauding as a director contrary to section 176A of the *Crimes Act 1900* (NSW), 13 charges of fraudulently omitting to account contrary to section 178BA of the Act, 12 offences of obtaining a financial advantage by deception contrary to section 178BA, and 55 offences of acting improperly as a director contrary to section 229(4) of the *Companies (NSW) Code*.

It is alleged that between May 1987 and December 1989 that the defendant received approximately \$1 million from a number of local and interstate clients for the purposes of investment. The prosecution case is that most of that money was misappropriated and that, when asked by his clients to account for the funds, the defendant failed to do so.

White Constructions Ltd

In November 1991 charges were laid under section 108 of the *Companies Act 1981* and section 125 of the *Securities Industry Act 1980* 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 ASC applied to the Federal Court of Australia to review the decision of the magistrate under the *Administrative Decisions (Judicial Review) Act 1978*. The matter was heard by Neaves J who, on 18 June 1993, reserved his decision.

On 7 July 1994, Neaves J dismissed the application indicating that it was not established to his satisfaction that the magistrate had committed any errors of law. Neaves J also found that the Magistrate had rightly dismissed the charges against Geoffrey Clark holding that section 125 of the *Security Industry Act 1980* had no application to the issue of a prospectus.

COURT PRESENTATION SYSTEM

In 1992–93 the DPP successfully trialed a computerised litigation support system in NSW. During the year the DPP extended this technology to other regional offices to aid in the presentation of complex corporate

cases. The computer system, developed in conjunction with the ASC, has the ability to aid the prosecutor in the organisation of the case as well as its presentation in court. During the year the system was successfully used in a number of large cases including Duke (WA) and Crowl (ACT).

The DPP has invested substantial resources in this technology in the firm belief that it is incumbent upon prosecutors to make complex cases both understandable and presentable to juries. The system has also proved to be extremely useful to both the court and the defence in identifying the issues and quickly accessing critical evidence. The computer system assists in presentation by simultaneously displaying imaged documents on computer monitors to the court, witnesses and counsel and aids comprehension by the use of flow charts, diagrams and photographs.

During the year the DPP displayed the system to representatives of Commonwealth agencies, other prosecuting authorities and members of private law firms. The system was well received with a clear recognition of its potential to be useful in civil as well as criminal cases.

CRIMINAL ASSETS CONFISCATED

In 1993–94 the DPP recovered approximately \$22.8 million in criminal assets in conjunction with other Commonwealth agencies. The DPP recovered \$19 million under the *Proceeds of Crime Act 1987*, \$540 157 under the *Customs Act 1901* and \$3.2 million under its civil remedies power.

The large recoveries under the PoC Act were largely the result of final orders against three defendants: Chun, Bipati Ltd and Ian Saxon. Under these orders the DPP recovered \$16.2 million. These cases are the biggest recoveries under the PoC Act since it was enacted in 1987.

As a result of the three cases, \$15.5 million was paid into the Confiscated Assets Trust Fund and law enforcement agencies have received substantial grants to fight crime. The AFP, for example, received \$2.3 million for 11 law enforcement projects from the Confiscated Assets Trust Fund and the DPP received \$239 179 for three law enforcement projects. Further details of these three cases and of payments into and out of the CAT Fund are given later in the chapter.

Proceeds of Crime Act

In 1993–94 about \$19 million was recovered under the Proceeds of Crime Act. As at 30 June 1994 a further \$12.4 million in orders or forfeitures was outstanding.

In 1993–94 the DPP obtained restraining orders under the PoC Act over approximately \$10.3 million worth of property. Including property restrained in previous years, at 30 June 1994 \$19.6 million worth of property was restrained under the PoC Act.

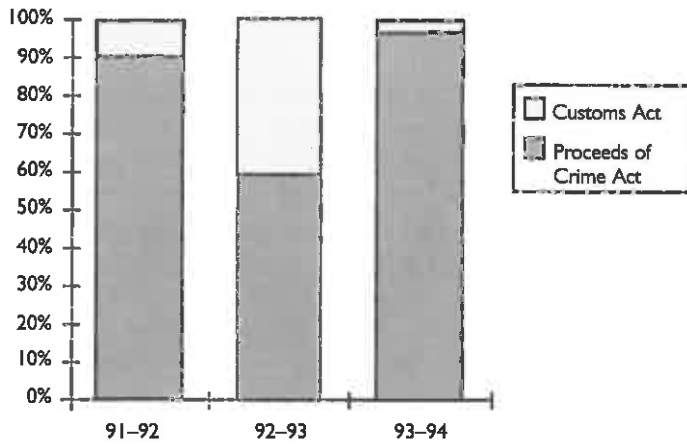
Customs Act

In 1993–94 the DPP recovered \$540 157 under the narcotics provisions of the *Customs Act 1901*. As at 30 June 1994, \$714 410 in seized property had yet to be condemned and \$471 137 in condemned property had yet to be realised.

During 1993–94 \$548 735 in property was seized in cases referred to the DPP and \$485 772 in property was condemned in cases referred to the DPP.

As at 30 June 1994 \$682 917 in property was restrained and \$699 968 in pecuniary penalty orders remained unpaid.

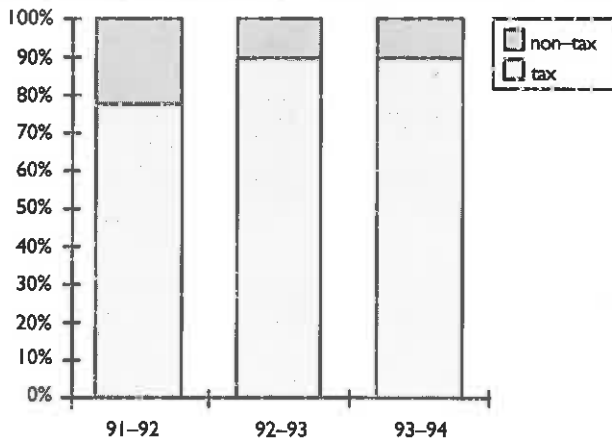
Recoveries under the Proceeds of Crime Act and the Customs Act by year



Civil remedies

In 1993-94 a total of \$3.2 million was recovered under the DPP's civil remedies power. In the year \$2.8 million was recovered in taxation matters and \$380 396 was recovered by civil remedies in non-taxation matters. At 30 June 1994 \$8.4 million in property was secured by injunction or by other means and \$17.3 million in judgment debts was outstanding.

Tax-related and non-tax-related civil remedies recoveries



Proceeds of Crime Act--size of orders and recoveries

In 1993-94 the DPP obtained 66 restraining orders each of which restrained, on average, an estimated \$155 718 in property.

It also obtained a total of 35 pecuniary penalty orders worth \$83.7 million. The average value of the orders was \$2.4 million. These orders included one for \$69.2 million in the matter of Saxon in which the DPP does not expect to make a significant recovery (the defendant escaped from jail while on remand and is still at large).

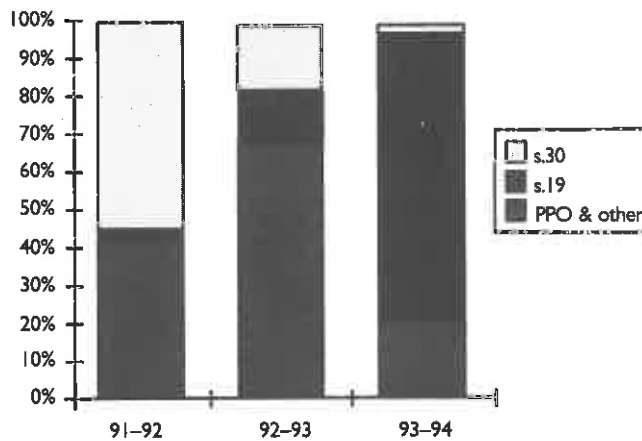
Thirteen section 30 automatic forfeitures occurred with an estimated total value of \$1 028 261. The estimated average value of the section 30 forfeitures was thus \$79 097. There were 14 forfeitures of tainted property totalling an estimated \$13.5 million ordered under section 19. There was an estimated average forfeiture of tainted property of about \$969 821.

In 1993–94 the DPP recovered \$4.5 million in 27 pecuniary penalty orders. The average value of the recovery was \$168 303. \$13.6 million was recovered in 13 cases under the forfeiture of tainted property section 19 provision resulting in an average forfeiture of \$1 million. The DPP recovered \$16.2 million in the Chun, Bipati Ltd and Ian Saxon cases under pecuniary penalty and section 19 forfeiture orders.

A total of \$707 904 was recovered under the automatic forfeiture provisions of section 30 in six cases resulting in an average recovery of \$117 984.

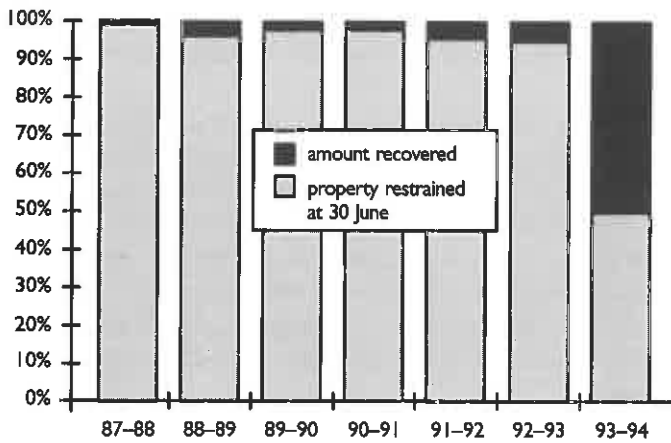
The following chart demonstrates the proportions of the different types of recoveries in 1993–94 and compares them with the proportions of recoveries in 1991–92 and 1992–93.

Proportions of recoveries by type of order under the Proceeds of Crime Act 1991–92, 1992–93 and 1993–94



It should also be noted that recoveries under the POC Act in 1993–94 were much greater than in any other year. The following chart compares the amount of restrained property at 30 June of each year since 1988 with the amount recovered in that year.

Proportions of amounts restrained at 30 June of each year and amounts recovered in each financial year.



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 and other government departments, mainly the Department of Social Security.

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, the legislation 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 pose 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 still leave an 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.

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

The Criminal Assets Branches also seek orders under the *Crimes (Superannuation Benefits) Act 1989* and Part VA of the *Australian Federal Police Act 1979*. These Acts provide for the loss of employer-funded superannuation in certain corruption cases.

ORGANISATIONAL ARRANGEMENTS

The DPP has a Criminal Assets Branch in each regional office. These branches are responsible for bringing confiscation proceedings in their region and work 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 or Minister for Justice. 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.

Chun & Bipati Pty Limited

As noted in Chapter 4, the defendant was convicted of nine offences against section 82 of the PoC Act for receiving \$16 415 504 reasonably suspected of being the proceeds of crime. Chun was a director and shareholder of the defendant company. The company was also convicted of six offences against section 82 of the PoC Act in relation to the receipt of \$14 135 504. These monies were remitted to Australia from Hong Kong by telegraphic transfer between December 1987 and September 1989.

The monies were the proceeds of heroin trafficking in the United States by Law Kin Man, the defendant's husband. (He is currently facing charges in the United States for conspiracy to import heroin.) At the direction of Law, Chun used the monies to invest in real estate in Sydney both in her own name and in the name of Bipati Pty Limited. She acquired more than 20 properties including three substantial commercial properties.

The defendant pleaded guilty and the DPP obtained forfeiture orders under section 19 in relation to \$1 440 025 in cash and real property valued at \$4 050 000. In addition, the DPP obtained a pecuniary penalty order against the defendant for \$4 283 006 and against the defendant company for \$6 662 730. Fines totalling \$98 000 were also imposed on the defendant and the defendant company.

The forfeited real estate has been sold and the proceeds, together with the forfeited cash, paid into the CAT Fund after deduction of the Official Trustee's remuneration and charges.

In 1993–94, \$1 015 668 was recovered under a pecuniary penalty order against Chun and \$2 132 012 under a pecuniary penalty against Bipati Pty Limited. The Official Trustee is in the process of realising the remaining restrained property to meet the amount outstanding under the pecuniary penalty orders.

The DPP has so far recovered \$8.6 million in this case and as at 30 June 1994 \$8.9 million had been paid into the Confiscated Assets Trust Fund. This is the largest recovery under the PoC Act so far.

Saxon

In January 1989 Ian Saxon arranged with others for the importation of 10 tonnes of cannabis resin into Australia aboard a boat, the *Rolling Thunder*, owned by another. This came to light out of several AFP and NCA investigations.

On 31 January 1990 the DPP obtained an ex parte restraining order over all of the defendant's property on the basis that he would be charged with a serious Customs Act offence within 48 hours. The defendant was charged and placed in custody.

On 2 March 1993 the defendant escaped from Long Bay Gaol and has not been re-captured. The Attorney-General has offered a \$250 000 reward for his arrest. Section 17 of the PoC Act provides that where a defendant has absconded, a court may order the confiscation of his restrained property if satisfied the defendant has absconded and that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence charged.

On 28 October 1993 the DPP obtained confiscation of the defendant's restrained property on the basis that he had absconded and that a jury could lawfully find him guilty. The DPP obtained a pecuniary penalty order for \$69.2 million which represents the profit he is believed to have made. In 1993-94 \$60 000 was paid under the pecuniary penalty order but the DPP does not expect to recover any further significant amounts under this order. The DPP also obtained a forfeiture order under section 19 over tainted property worth \$7.5 million which was restrained and has now been paid into the Confiscated Assets Trust Fund. This makes this case the second biggest recovery under the PoC Act since its enactment.

Van Splunter

On 6 September 1993 the defendant arrived at Melbourne airport from the Netherlands and stated that she would stay in Australia for seven days. She said she had travelled by herself and had no friends in Australia. She was searched and Customs officers found less than \$5 000 in Australian currency in her possession.

Seven days later she attempted to fly out of Sydney. She was again searched and was found to have \$339 850 in Australian currency hidden in chocolate and biscuit boxes. The defendant had not declared this money as required by the Financial Transaction Reports Act.

The defendant was charged and pleaded guilty to breaching the Financial Transaction Reports Act. She was convicted and fined \$2 500. The DPP sought and obtained forfeiture under section 19 of the PoC Act of the \$339 850 in Australian currency.

Siu

The defendants, a husband and wife, were apprehended at Brisbane Airport waiting to board a plane to Hong Kong. They were each wearing a body pack containing \$80 000 in Australian currency and were carrying a further \$129 000 in Australian currency in their hand luggage. Neither of them had declared this money as required by the Financial Transaction Reports Act.

They were charged and convicted of offences under section 16 of the FTR Act. They gave various explanations for their intended use of the money, including that it was to be used to purchase goods for their seafood business, to buy property in Hong Kong and that it was

undeclared income. The Australian Tax Office issued amended assessments for both of them and served section 218 notices in respect of approximately \$90 000 in income tax and \$50 000 in penalties.

The magistrate fined each of the defendants \$3 000. He noted that a large amount of the money was to be paid to the Deputy Commissioner of Taxation through the section 218 notices. He ordered that the defendants each forfeit the sum of \$7 500 under section 19 of the PoC Act.

Serious offences (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.

Ritchie

As reported in Chapter 4, the defendants in this case were a husband and wife who defrauded the Department of Social Security of \$612 916 by claiming benefits in a series of false names.

They pleaded guilty and were convicted of organised fraud, contrary to section 83 of the PoC Act. The DPP obtained restraining orders over all the defendants' property, which included four pieces of land with a total value, after discharge of mortgages, of \$130 000. Two properties were later sold. The Insolvency and Trustee Service has custody and control of all the restrained property, with the exception of minor household items. The defendants obtained a court order allowing them access to up to \$20 000 from the restrained property for their legal expenses.

The DPP plans to apply for pecuniary penalty orders against the defendants which, if granted, will be made after automatic forfeiture takes effect. This is to make up the balance between the amount the Commonwealth will recover from the forfeited property and the benefit the defendants obtained from the fraud.

Section 48(4)

Under section 48(4) a defendant may apply to have property removed from the scope of a restraining order so that it will not be forfeited under section 30 of the PoC Act. A defendant must have their application

under section 48(4) heard and decided within six months of the date on which they were convicted. The DPP has experienced difficulties with the six-month time limit in a number of cases. In 1993 Abadee J of the NSW Supreme Court raised his concerns with section 48(4) as presently enacted.

He expressed his criticisms of section 48(4) in the context of the listing of two NSW cases, Kiely and Eyles. In both cases he heard applications for expedited hearings in attempts by defendants to avoid automatic forfeiture under section 30 of the PoC Act six months after they were convicted. The DPP has advised the Secretary of the Attorney-General's Department of the concerns raised by Abadee J. The department is responsible for the policy and the statutory provisions of the PoC Act.

Kiely

The defendant was convicted of a serious offence on 27 October 1993. The six-month period after conviction expired on 27 April 1994. The DPP had restrained the defendant's interest in land near Cooma. The DPP applied for an order under section 19 for forfeiture of the whole of that land free of any unregistered encumbrance. A third party sought orders excluding her interest as an unregistered mortgagee. The DPP opposed the application because the third party advanced the money for the unregistered mortgage knowing that it would be used to fund the defendant's drug importation.

Abadee J heard the application for an expedited hearing on 2 December 1993. He ordered that the matter be listed prior to 27 April 1994. His Honour criticised the PoC Act as creating a quite intolerable situation which has the effect of unsettling the court procedure and unsettling the court lists. He also seemed concerned that it would push other litigants, who had waited longer, further down the hearing list. He concluded:

If what you say is correct, then the statutory provision needs to be amended so that the court can conduct its business in an orderly manner.

The applications by the DPP and the unregistered mortgagee were heard and on 16 March 1994 the application of the unregistered mortgagee was dismissed. The judge found that the third party applicant had failed to discharge the onus required in application under section 21(1) and (6). The unregistered mortgagee and her de facto husband had given evidence of a substantial involvement with the defendant in the purchase from him of heroin.

On 24 March 1994, by the consent of the defendant and his wife who owned the land jointly, the court ordered that the whole of the property, including any unregistered interests and free of any unregistered encumbrance, be forfeited.

Eyles

The defendant was convicted on 21 September 1993 of a serious offence and the six month period expired on 21 March 1994. A third party filed an application under section 48 on 27 January 1994 which was returnable on 3 February 1994. Again Abadee J set an early hearing date, in this case 10 February 1994. He referred to his earlier remarks on the six months provisions and asked for a written report from the DPP.

Klaic

On 22 July 1993 the defendant was charged with three offences of importing three kilograms of cocaine contrary to the Customs Act. The DPP obtained a restraining order over all of the defendant's property, which included two properties held jointly with his wife and a property owned by the family company. The defendant later entered a plea of guilty to the charges and was sentenced. The six-month period after conviction expired in April 1994.

On 22 February 1994 the defendant filed a notice of motion seeking to exclude all of the property from the restraining order. He claimed that the money for the purchase of the properties had come from Peru where he had been successful in selling some land, and from his father who had made a loan to him.

The defendant had earned no steady income since arriving in Australia in 1987 and had made regular trips to the United States. He maintained bank accounts with American and Hong Kong banks. Search warrants executed on his house and interviews with the defendant's accountant revealed three versions for the source of his funds. However, the DPP was not able to obtain evidence from Peru due to time constraints imposed by the looming forfeiture date and the Supreme Court's tight calendar.

On 24 March 1994 the matter was settled, with the restraining order being varied to cover the whole of one property and half of another property. Together these properties had a value of approximately \$170 000. The remainder of the property was removed from the restraining order and on 21 April 1994 the restrained property was forfeited to the Commonwealth.

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.

Bracken

The defendant was the manager of the Revesby Regional Office of the Department of Social Security. Over a period of almost 12 years he created numerous false identities to which he arranged payments of social security benefits. The offences came to light through a random data matching exercise by the department.

He was charged with 11 offences of defrauding the Commonwealth contrary to section 29D of the Crimes Act and five offences of imposition upon the Commonwealth contrary to section 29B of the Crimes Act. The offences related to him fraudulently obtaining payments of social security benefits and overtime payments.

On 26 November 1993 the DPP obtained a restraining order over the defendant's large residential property and various bank accounts.

The defendant pleaded guilty and was sentenced to one year and eight months imprisonment on the section 29B charges and five years on the section 29D charges. At the same time, the DPP obtained a pecuniary penalty order under section 26 of the PoC Act for \$846 210 with the defendant's consent. That amount comprised the total amount of the fraud plus a component for the decline in the purchasing power of money between the time the defendant obtained the money and the time the pecuniary penalty order was made. The defendant has appealed against the severity of his sentence.

Conaty

The defendant was an employee of the Department of Social Security. Over three-and-a-half years she created false identities on the department's computer records and manipulated those records to achieve benefit payments of \$269 598.

The DPP obtained restraining orders over all her property including a share in a house, a boat and trailer, a caravan, shares, bank accounts, a four-wheel-drive vehicle, furniture and cash. From the restrained assets, \$14 262 was paid to her solicitors as legal fees.

She pleaded guilty to nine charges under section 29D of the Crimes Act and was sentenced to imprisonment for a term of four years with a non-parole period of two years and three months.

The DPP obtained a pecuniary penalty of \$275 801 which included a calculation for the decline in the purchasing power of money from the time she obtained the overpayments and the time the pecuniary penalty order was ordered. The Department recovered \$6 897 and a further \$132 560 was recovered under the pecuniary penalty order. The total

amount recovered was \$139 457. The sum of \$107 788 has been transferred to the CAT Fund. The DPP expects to obtain a further \$12 500 from the defendant's superannuation fund.

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 under way. 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.

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 the DPP will agree to the sale of restrained property provided the proceeds of the sale, or sufficient of them 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.

Toro–Martinez

The defendant sought to challenge the legality of restraining orders made over his property. The challenge was based on the assertion that the restraining order provisions purported to vest federal judicial power in a police officer and non-judicial power in a State court and were therefore beyond the legislative power of the Commonwealth. He also argued that the power to authorise restraining orders was not reasonably incidental to a valid law of the Federal Parliament.

The NSW Court of Appeal upheld the restraining orders and the provisions under which they were made. It held that the court must determine whether the statutory conditions for making a restraining order have been satisfied. The existence or not of reasonable grounds, as outlined in a police officer's affidavit, raised a justiciable issue. The court held that the provisions of the PoC Act allowing a court to make a restraining order over property under a defendant's effective control were valid. Finally, the court held that examination orders were incidental to provisions authorising restraining orders and were also valid.

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, or 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.

Case report

The defendant was charged with a number of offences under section 29D of the Crimes Act and one offence of organised fraud under section 83 of the PoC Act. It was alleged that he unlawfully obtained payments of up to \$1.4 million by accessing the Australian Customs Service's computerised diesel rebate payments system. The defendant was working as a computer consultant on an enhancement to the system at the time of the alleged offences.

In March 1994, the DPP obtained restraining orders over property with a net value of about \$1.4 million. Of that property, the defendant owned approximately \$145 000 worth with the balance restrained on the basis that it was subject to his effective control. The bulk of the restrained property has been placed under the custody and control of the Official Trustee.

Zabenko

As noted in Chapter 4 this defendant fraudulently obtained \$329 159 in grants from the Australian Trade Commission. The DPP obtained a restraining order over property effectively controlled by the defendant and registered in the name of a company. The defendant pleaded guilty to fraud offences and consented to a pecuniary penalty order in the amount of \$329 000. One of the terms of the order was that the restrained house belonging to the company was sold and used to pay \$185 000 towards the pecuniary penalty order. A further \$53 000 of the defrauded money has been traced into three buses belonging to the company. Proceedings have been commenced to restrain the buses and, if necessary, to forfeit them. Attempts are being made to recover the remainder of the penalty by negotiation with the current proprietors of the company.

Eliades

The defendant was charged with one offence against section 86A of the Crimes Act of conspiring with another to defraud the Department of Defence. The defendant had obtained cheques totalling \$600 086. The defendant negotiated cheques through various accounts in various banks. On 6 May 1991 the DPP obtained a restraining order over all of the defendant's property. The restrained property totalled \$218 688 and consisted of bank drafts, cash, travellers cheques, the balance of a savings account held in the joint names of the defendant and his wife and \$125 000 remitted from Cyprus to Australia.

The Department of Defence brought a civil action against the ANZ Bank in relation to cheques which were cashed through two of their branches. Eventually the bank agreed to pay the Department \$680 000 which was the amount of the cheques cashed plus interest. The ANZ Bank joined Eliades as a cross-defendant to those proceedings and filed a notice of motion claiming that Eliades was a joint tort-feasor in the conversion or that he obtained the value of the cheques through fraud or received the money value of the cheques as a mistake of fact.

The ANZ Bank also joined the DPP as a second cross-defendant and sought a declaration of trust in relation to the money held under the restraining order. O'Keefe CJ 'joined' the PoC Act proceedings to the Commercial Division proceedings. In July 1993 O'Keefe CJ found that the defendant owed the ANZ Bank \$558 000.

In October 1993 O'Keefe CJ found that all monies restrained under the PoC Act were from the fraud on the Commonwealth and were therefore held on trust for the ANZ Bank. He ordered that all restrained property be paid to the ANZ Bank and that the DPP should do all things necessary to effect payment of the restrained money to the Bank. The restraining order would then be vacated and the PoC Act proceedings dismissed. The monies paid to the ANZ Bank should be applied against the judgment obtained in July 1993.

At this time the restrained property totalled \$216 000 and the defendant's debt to the ANZ Bank was \$558 000. The defendant had no other property and accordingly the DPP did not bring fresh PoC Act proceedings. In November 1993 the defendant pleaded guilty and was sentenced to four years and six months imprisonment with a three year non-parole period.

The Department of Defence has now instituted civil action against another bank to recover the proceeds of the cheques negotiated through its account.

Interaction between PoC Act and Family Law Act

In the following case the Family Court considered the conflict between the PoC Act and the Family Law Act.

Modica

The defendant was charged with organised fraud under section 83 of the PoC Act in November 1992. It was alleged he held himself out to be a customs agent and fraudulently stamped importation documents. The DPP obtained a restraining order over all the defendant's property in December 1992. The primary piece of property was a family home owned jointly by the defendant and his wife. The restraining order prevented the defendant from disposing of this property.

The defendant and his wife had separated in February 1992 and in April 1993 the defendant's wife brought proceedings under the Family Law Act and obtained an order by consent under which she would pay the defendant \$30 000 and he would transfer his interest in the house to her. The Registrar who made the order was aware of the existing restraining order which prevented the defendant from dealing with the property.

The DPP applied to the Family Court in November 1993 for leave to intervene in the Family Court proceedings between the defendant and his wife, to set aside the consent property orders and to stay the Family court proceedings or to transfer them to the NSW Supreme Court.

Renaud J found that the DPP was a 'person affected' by consent orders made in the Family Court. She found that the making of the consent orders involved a 'miscarriage of justice' within the meaning of section 79A of the Family Law Act because the Registrar knew the property was subject to a restraining order and that the DPP did not consent to the making of the orders.

Renaud J set aside the Family Court consent orders and ordered that the Family Court proceedings be stayed rather than cross-vested to the Supreme Court.

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, and as noted in Chapter 3, the issue was also addressed in the DPP Review.

OVERSEAS CONNECTION

As crime becomes increasingly international, so crime detection and enforcement must also have an international focus. In the past year, Australia received and acted on its first request under the *Mutual Assistance in Criminal Matters Act 1987* to register another country's restraining order.

Case report

The defendant had been charged with committing a series of burglaries in New Zealand. He was believed to have obtained approximately \$200 000 from them. Under the *Mutual Assistance in Criminal Matters Act 1987*, New Zealand requested that Australia restrain Australian bank accounts held by the defendant. The DPP obtained registration of the restraining order made by the New Zealand High Court.

Webber

The defendant was found to be carrying a large amount of cocaine which was secreted on her body. She was charged and subsequently convicted of a serious narcotics offence.

An AFP investigation showed that the only property of value owned by the defendant was a share in a residential property in New Zealand. The DPP obtained a global restraining order under the PoC Act. It made an application to New Zealand under the *Mutual Assistance in Criminal Matters Act* for New Zealand to enforce the restraining order. However, the defendant and the co-owners of the New Zealand property agreed to sell the property and forward her share of the proceeds to Australia. It was therefore not necessary to proceed with the mutual assistance request.

In December 1993 the Commonwealth Government transferred to the WA Police ownership of the Beechcraft aircraft under the Commonwealth's Equitable Sharing Scheme. The aircraft was given to the WA Police in recognition of the support and assistance provided to Commonwealth authorities at the time of the narcotics investigation. The aircraft is worth approximately \$150 000.

The vessel used to carry out the importation of the cannabis resin, the *Santa Barbara*, was condemned as forfeited to the Commonwealth pursuant to the Customs Act in December 1993. The Criminal Assets Branch successfully defended a claim for the return of the vessel. The total value of recoveries in this matter is likely to exceed \$500 000.

CIVIL REMEDIES

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

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.

Non-tax recovery

In non-tax matters, 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.

Coroneos

The defendant was a medical practitioner and a specialist neurosurgeon. He was charged with defrauding the Health Insurance Commission by a number of methods, including billing some patients for surgical procedures not carried out and billing for more complex procedures than those actually performed. Thirty-seven patient records were selected for the purposes of prosecution.

The defendant pleaded guilty to one count under section 29D of the Crimes Act of defrauding the Commonwealth. He was sentenced to imprisonment for three years and six months, with a non-parole period of three months.

The DPP exercised its civil remedies function to coordinate and supervise the recovery of monies owing.

Prior to conviction, the defendant entered into a deed drafted by the DPP for the repayment of \$200 000 in instalments. The defendant repaid the full \$200 000 under the deed by 12 November 1993. The overpayment covered by the charges was only \$38 000.

CONFISCATED ASSETS TRUST FUND

Money recovered under the PoC Act, the narcotic offence provisions in the Customs Act and section 9 of the Crimes Act is paid into the Confiscated Assets Trust Fund which is administered by the Insolvency and Trustee Service Australia.

A total of \$19 003 965 was paid into the Trust Fund during 1993–94. Of that amount, \$18 684 041 was classified as distributable funds and \$319 924 was classified as suspended funds. 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 1993–94 the DPP received the following grants from the Trust Fund:

Purpose	Amount
Joint DPP, AFP, ITSA National Conference on Proceeds of Crime	\$ 10 000
Two computer court presentation systems for complex criminal trials	\$159 564
Three graphic charting packages	\$ 69 615
Total	\$239 179

Details of grants to other law enforcement agencies and the percentages of the total amount to each agency are below. The precise details of some projects cannot be listed for security reasons.

Distribution of CAT Fund, 1994 funding round

Agency	Project	Amount of grant	% to agency	Total
ACS	Equipment	\$598 010	11.42	\$598 010
AUSTRAC	Communication system	\$414 347	7.92	\$414 347
AFP	Equipment	\$733 629		
AFP	Multinational Asian Organised Crime Conference.	\$84 000		
AFP/NCA	Equipment	\$240 000		
AFP	Scientific research	\$190 000		
AFP	Communication systems	\$452 000		
AFP	Criminal Activity Model	\$360 000		
AFP	Language training scholarships	\$276 176	44.66	\$2 335 805
A-G's	Thai Narcotics Control Board—upgrade of computer facility of on-line barrier system	\$530 000	10.13	\$530 000
AIC	Aust. Crime & Justice Full-text Database	\$307 000	5.87	\$307 000
ATO	Fraud invest. techniques training courses	\$76 000	1.45	\$76 000
DPP	National. Agencies Criminal Assets Conference	\$10 000		
DPP	Computer Presentation for Criminal Trials	\$159 564		
DPP	Graphic charting packages	\$69 615	4.57	\$239 179
NCA	Financial Action Task Force Asian Strategy	\$675 000	12.91	\$675 000
TPC	Tape recording & transcription equip.	\$54 659	1.05	\$54 659
Total		\$5 230 000	100.00	\$5 230 000

Distribution of CAT Fund, 1993 funding round

Agency	Project name	Amount of grant	% to agency
AFP	Language training	\$54 386	8.1
DPP	National Agencies Criminal Assets Conference	\$10 000	1.4
ACS	Equipment	\$512 000	76.2
NCA	Computer methodology research	\$96 000	14.3
Total		\$672 386	100

Distribution of CAT Fund, 1992 funding round

Agency	Project name	Amount of grant	% to agency
AFP	Equipment	\$215 000	91.5
DPP	National Agencies Criminal Assets Conference	\$10 000	4.25
NCA	Money laundering training course	\$10 000	4.25
Total		\$235 000	100

Government business enterprises

The CAT Fund may also be used to reimburse specified Government Business Enterprises 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 1993-94 \$62 700 was paid out of the CAT Fund to Australia Post and \$101 215 was paid to the Commonwealth Bank.

Equitable sharing program

Money paid into the CAT Fund is available for equitable sharing with a State or Territory which has participated in the matter which led 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. In 1993-94, \$159 600 was paid out of the Trust Fund to the Victorian Government and \$45 600 was paid to the WA Government in the matter of Malkoun. In addition, as already noted, the Commonwealth gave the WA Government a Beechcraft aircraft in the matter of Pinkstone.

Malkoun

In January 1988 a joint NCA/Victoria Police task force uncovered a large organised heroin smuggling operation. A total of 16 people were charged and eventually convicted. The WA Police were involved in the operation, particularly at the time of the arrests. The defendants were the two principals and pleaded guilty in 1989 to importing heroin in contravention of the Customs Act and were sentenced to 18 years imprisonment. The DPP sought and obtained restraining orders and later pecuniary penalty orders under the Customs Act over their property. The Commonwealth has recovered \$228 000 to date. A further sum of \$29 000 is expected to be paid into the CAT Fund shortly.

The Attorney-General determined that the recovery should be split as follows:

Victoria	70 per cent	\$159 600
Western Australia	20 per cent	\$45 600
Commonwealth	10 per cent	\$22 800
Total	100 per cent	\$228 000

1993 NATIONAL AGENCIES CRIMINAL ASSETS CONFERENCE

In November 1993 the DPP, in cooperation with the AFP and ITSA, organised the National Agencies Criminal Assets Conference. The DPP received a \$10 000 grant from the CAT Fund in 1992 to help finance the 1993 conference. The theme of the conference was 'Practical Approaches to Financial Analysis'. The conference was designed to examine in a practical way techniques and issues concerning financial analysis at the detection, investigation, prosecution and confiscation stages.

The Minister for Justice opened the conference. Papers and practical presentations were delivered by speakers from Australia and Hong Kong. The conference organisers deliberately restricted the number of delegates to 88 for two reasons. It was thought the smaller numbers would make the conference more informal and practical. Also, the organisers designed the conference to be quite different from the large Proceeds of Crime Conference the NCA had held in mid-1993.

The conference attracted delegates from 11 Commonwealth, nine State and four overseas agencies. They included the AFP, ATO, AUSTRAC, ACS, ICAC, DP Qld, NSW Crime Commission, SA Police Department, Victoria Police (Corporate Crime Group), Royal Hong Kong Police Narcotics Bureau and the NZ Police.

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, may be 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.

The DPP must apply for a superannuation order against a person once an authorisation has been issued by the Attorney-General. 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 AFP 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 obtained four superannuation orders under the CSB Act and one under the Australian Federal Police Act.

Delaney

The defendant was one of three persons who were involved in a scheme to defraud the Department of Social Security by creating 'ghost' applicants for Social Security benefits. The defendant devised the fraud and facilitated the processing of the applications.

On 6 May 1992 the defendant pleaded guilty to 22 counts of defrauding the Commonwealth. On the same day the DPP obtained a pecuniary penalty order of \$74 519. He was sentenced to five-and-a-half years imprisonment with a non-parole period of three-and-a-half years.

The Attorney-General authorised the DPP to obtain a superannuation order. The DPP obtained the order on 6 April 1994. The effect of the superannuation order was to cancel the Commonwealth's obligation to provide superannuation benefits to the defendant. Those benefits were valued at approximately \$40 000.

The defendant also agreed to pay his own superannuation contributions, totalling \$13 000, towards his pecuniary penalty order.

Gallagher

The defendant was a Lance Corporal at the Land Warfare Centre at Canungra where he worked as a clerk and had access to the keys to the armoury. He gave information about the armoury and lists of weapons in the armoury to people of whom one was, unknown to him, an undercover police officer. He later handed to the undercover officer three key impressions relating to an army store, the armoury and the alarm system. He did this in exchange for a promise that his de-facto's exhusband be injured and permanently incapacitated.

The defendant was convicted of an offence under section 83A of the Crimes Act and was sentenced to five years imprisonment. The defendant had committed a corruption offence and the Minister for Justice authorised the DPP to obtain a superannuation order. The DPP obtained an order on 6 May 1994.

Backo

The defendant was employed by the Department of Employment, Education and Training. His duties included making recommendations about applications for funding under various schemes administered by the Department such as an enterprise managerial training scheme and a homework assistance and tutorial scheme to assist Aboriginal and Torres Strait Islander peoples.

He used his position to make recommendations for DEET funding to a tutorial business conducted by his wife and a partner and another business which was conducted under the name of a company of which he was a director. He did not disclose his interest in the business to his supervisors. Subsequently it was found that services for which grants had been made had not been supplied and that he had submitted claim forms falsely claiming payment for work which, in fact, had not been done. The scheme was well thought out and set up. He received \$25 513 as a result of his fraud.

He was convicted of two charges of defrauding the Commonwealth contrary to the Crimes Act and sentenced to two-and-a-half years imprisonment on each charge to be released after serving six months. The court also order a pecuniary penalty of \$25 513.

The Minister for Justice authorised the DPP to seek a superannuation order and on 24 May 1994 the DPP obtained a superannuation order.

Dowde

The defendant was employed as a foreman mechanic by Telecom and was responsible for ordering and purchasing tyres for Telecom's fleet. He used Telecom purchase orders to buy more tyres than Telecom needed and used Telecom vehicles to collect the tyres from the point of sale. He then sold the tyres to truck or car owners or other tyre dealers. These offences were corruption offences.

He was convicted of 79 charges of stealing under section 71(1) of the Crimes Act and sentenced to serve five years imprisonment. The Minister for Justice authorised the DPP to seek a superannuation order and on 16 May 1994 the DPP obtained a superannuation order.

Wallace

The defendant was the Deputy Drug Registrar in the AFP. In his position he had access to drugs seized by the AFP. He took heroin, cocaine and cannabis resin from the AFP after they had been audited for destruction or while they were in his custody before auditing.

On 2 April 1990 he pleaded guilty to three counts of possession of trafficable quantities of heroin, cocaine and cannabis resin contrary to the Customs Act. He was sentenced to 16 years imprisonment.

The DPP obtained a restraining order over the defendant's property on 28 September 1989 under the PoC Act. On 28 May 1990 \$243 010 was forfeited as tainted under section 19 of the PoC Act. The forfeited money had been seized from the defendant's and his brother's homes and was the proceeds of the sale of the stolen drugs. On 30 June 1992 the remainder of the defendant's property was forfeited under section 30 of the PoC Act. This property included a Toyota Land Cruiser, a Suzuki motorcycle and a quantity of jewellery and firearms.

The Attorney-General authorised the DPP to apply for a superannuation order under the AFP Act. On 28 October 1993 the DPP obtained a superannuation order by consent.

CRIMINAL ASSETS RECORDING SYSTEM

In 1991 the DPP developed an in-house computer system to record all criminal assets matters. The system, known as the Criminal Assets Recording System (CARS), recorded details of all matters under the POC Act, the Customs Act, the DPP's civil remedies power, the CSB Act and Part VA of the AFP Act.

In 1994 the DPP upgraded CARS to function in a Windows environment and to become more 'user friendly'. The upgrade involved re-thinking some fundamental aspects of CARS and was carried out by consultants working closely with an experienced lawyer in the DPP's Head Office. The lawyer and the consultants liaised regularly and closely

with officers in all regional criminal assets branches to ensure that the new system answered their requirements for a quick and easy system of recording matters and obtaining reports.

TRAINING

Lawyers and financial analysts working in the DPP's criminal assets branches provide considerable training, both in-house and to other agencies, particularly to the AFP, ATO and DSS.

TABLES

The following tables give details of work done and money recovered in 1993–94 and the situation as at 30 June 1994.

Table 1A: POC Act: work done by DPP criminal assets branches in 1993-94—including work done on cases opened prior to July 1993*

	NSW	Vic.	SA	WA	Qld	ACT	Total
No. of new matters	312	38	9	26	81	7	473
Estimated value (net) of restraining orders	\$4 008 077	\$2 864 980	\$394 578	\$1 073 000	\$544 262	\$1 392 540	\$10 277 437
No. of restraining orders obtained	21	16	4	14	9	2	66
Total amount of PPOs ordered	\$82 042 503	\$1 258 367		\$79 302	\$340 149		\$83 720 321
No. of PPOs obtained	18	6		2	9		35
Estimated value of s.19 forfeitures	\$13 475 899	\$85 500			\$16 096		\$13 577 495
No. of s.19 forfeitures	7	4			3		14
Estimated value of s.30 forfeitures	\$465 000	\$3 300	\$76 000	\$445 106	\$38 855		\$1 028 261
No. of s.30 forfeitures	8	1	1	2	1		13

* This gives an indication of the amount of work done in 1993-94 by Criminal Assets Branches by type of work.

Table 1B: POC Act—details and value of DPP criminal assets branches' cases outstanding as at 30 June 1994*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Estimated net value of current restraining orders	\$11 455 024	\$5 005 334	\$160 000	1 170 827	\$451 214	\$1 367 000	\$19 609 399
No. of current restraining orders	36	24	1	15	7	1	84
Estimated value of prop. forfeited under S.19 and not yet disposed of	\$80 000	\$85 900					\$165 900
No. of current S.19 Forfeiture Orders	1	5					6
Estimated value of property forfeited under s.30 and not yet disposed of	\$823 523	\$113 300	\$76 000	\$33 189	\$200		\$1 046 212
No. of current s.30 forfeitures	12	4	1	1	1		19
Total amount of current PPOs not yet paid	\$9 749 271(†)	\$1 167 023		\$79 302	\$212 124	\$15 000	\$11 222 720
No. of current PPOs not yet paid	19	7		2	8	1	37

* This table gives a picture of outstanding work at 30 June 1994 and an indication of future recoveries work.

(†) Does not include a \$69,212,002 pecuniary penalty order obtained in October 1993 in respect of which insignificant recovery is expected.

Table 1C: POC Act—money recovered during 1993-94*

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Amounts paid under PPOs	\$4 050 587	\$313 918			\$179 694		\$4 544 199
Number of PPOs	15	5			7		27
Amounts recovered from s.19 forfeitures	\$13 408 797	\$7850	\$500	\$148 000	\$16 096		\$13 581 243
Number of s.19 forfeitures	7	1	1	1	3		13
Amounts recovered from s.30 forfeitures	\$254 104	\$3028		\$411 917	\$38 855		\$707 904
Number of s.30 forfeitures	2	1		2	1		6
Amounts recovered from voluntary payments		\$24 924	\$109 697	\$50 000		\$7 500	\$192 121
Number of voluntary payments		1	3	1		1	6
Amounts recovered in someother way via POC Act							
Number of matters							
Total recovered	\$17 713 488	\$349 720	\$110 197	\$609 917	\$234 645	\$7 500	\$19 025 467

* 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 2A: Customs Act—work done by DPP criminal assets branches 1993–94—restraining orders and pecuniary penalty orders*

	NSW	Vic.	SA	WA	Qld	ACT	Total
No. of new matters		2					2
Value of property restrained							
No. of restraining orders							
Total amount of PPOs							
No. of PPOs							

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

Table 2B: Customs Act—work done 1993–94*—seized and condemned property

	NSW	Vic	SA	WA	Qld	ACT	Total
No. of new matters	13	4	5	1	4		27
Value of seized property	\$270 385	\$35 415	\$21 735	\$220 000	\$1 200		\$548 735
No. of cases where property seized	10	3	3	1	1		18
Value of condemned property	\$31 105	\$80 232	\$51 735	\$318 000	\$4 700		\$485 772
No. of condemnations	7	7	4	2	2		22

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

Table 2C: Customs Act—cases outstanding as at 30 June 1994—restraining orders and pecuniary penalty orders*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Value of current restraining orders	\$580 457	\$102 460					\$682 917
No. of restraining orders	3	3					6
Value of current PPOs not yet paid	\$91 218	\$608 750					\$699 968
No. of PPOs not yet paid	1	4					5

* This table gives a picture of outstanding work at 30 June 1994 and an indication of future recoveries work.

Table 2D: Customs Act—cases outstanding as at 30 June 1994—seized and condemned property*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Value of seized property not condemned	\$303 280	\$134 615	\$48 515	\$228 000			\$714 410
No. of cases	8	5	1	2			16
Value of condemned property not realised	\$31 105	\$66 582	\$8 750	\$363 500	\$1 200		\$471 137
No. of cases	7	6	1	5	1		20

* This table gives a picture of outstanding work at 30 June 1994 and gives an indication of future recovery work.

Table 2E: Customs Act—money recovered by DPP criminal assets branches 1993–94*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Amounts paid under PPOs	\$192 468	\$680					\$193 148
Number of PPOs	1	1					2
Amounts from disposal of condemned property		\$62 120	\$62 053	\$218 000	\$4 836		\$347 009
Number of disposals		6	4	2	2		14
Amounts received in some other way under Customs Act							
Number of matters							
Total amounts recovered	\$192 468	\$62 800	\$62 053	\$218 000	\$4 836		\$540 157

Table 2F: Total recoveries 1993-94

Proceeds of Crime Act PPO	\$4 544 199
Proceeds of Crime Act s.19 forfeiture	\$13 581 243
Proceeds of Crime Act s.30 forfeiture	\$707 904
Proceeds of Crime Act voluntary payment	\$192 121
Proceeds of Crime Act other	
Customs Act PPO	\$193 148
Customs Act forfeiture and condemnation	\$347 009
Customs Act other	
Total	\$19 565 624

Table 3A: Civil remedies—work done by DPP criminal assets branches 1993-94—tax cases

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
No. of new matters	19	2		3	24	4	52
Value of property secured by injunction or otherwise					\$252 607		\$252 607
No. of matters					4		4
Amount of judgments entered or leave to enter judgment granted	\$62 212				\$307 779		\$369 991
No. of matters	1				6		7

Table 3B: Civil remedies—work done by DPP criminal assets branches 1993-94—Non-tax cases

	NSW	Vic.	SA	WA	Qld	ACT	Total
No. of new matters	3	1	76		5		85
Value of property secured by injunction or otherwise				\$4 725			\$4 725
No. of cases				1			1
Amount of judgment entered or leave to enter judgment granted			\$156 847		\$32 430		\$189 277
No. of cases			9		2		11

Table 3C: Civil remedies—cases outstanding at 30 June 1994*

Type of case	NSW	Vic.	SA	WA	Qld	ACT	Total
Value of property in tax cases where property secured by injunction or otherwise	\$3 043 271(†)	\$343 146	\$1 087 689	\$2 900 000			\$7 374 106
No. of cases	3	1	4	2			10
Amount of judgments outstanding in tax cases	\$9 353 798		\$1 837 226	\$4 149 822			\$15 340 846
No. of judgments	5		4	9			18
Value of property in non-tax cases where property secured by injunction or otherwise		\$45 000	\$926 583	\$72 000			\$1 043 583
No. of cases		1	16	1			18
Amount of judgments outstanding in non-tax cases	\$960 397		\$1 016,616	\$28,839			\$2,005,852
No. of judgments	1		27	2			30

* This table gives a picture of outstanding work at 30 June 1994 and an indication of future recovery work.

(†) Includes property in amount of \$1.3m secured by an injunction which was vacated on 25 July 1994.

Table 3D: Civil remedies: recovery of money in cases in which the DPP exercised its civil remedies powers 1993-94*

	NSW	VIC	SA	WA	Qld	ACT	TOTAL
Payments under judgments in tax cases	\$250 000				\$362 999		\$612 999
No. of matters	2				3		5
Other payments in tax cases, e.g. settlement, bankruptcy	\$254 000	\$703 000	\$4 498		\$1 264 549		\$2 226 047
No. of matters	2	2	1		11		16
Payments under judgments in non-tax cases			\$19 939		\$3 591		\$23 530
No. of matters			3		1		4
Other payments in non-tax cases			\$266 391	\$4725	\$85 750		\$356 866
No. of matters			29	1	2		32
Total recovered	\$504 000	\$703 000	\$290 828	\$4 725	\$1 716 889		\$3 219 442

* 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 this table.

One of the objectives of the DPP is to provide sound, constructive and timely recommendations on 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 1993–94, and deals with a number of issues of general importance.

SENTENCING OF FEDERAL OFFENDERS

Previous annual reports have referred to problems which have been experienced in the operation of Part 1B of the *Crimes Act 1914*, which deals with the sentencing of federal offenders. During the year further problems were identified in the relevant provisions. Most concerned the provisions of Division 6 in Part 1B, which deal with the consequences of a finding that a defendant is unfit to be tried. The following recommendations for amendments to Division 6 were made to the Attorney-General's Department during the year under review:

- It should be made clear that the actual determination whether an accused in proceedings on indictment is fit to be tried is a matter which is regulated by the relevant provisions of State and Territory law which are picked and made applicable to federal proceedings by the *Judiciary Act 1903*.
- It should be made clear that an accused may only be found unfit to be tried by reason of a mental illness or condition.
- An amendment is necessary clarifying whether the determination of an accused's fitness to be tried which is raised in the context of committal proceedings is one for judge alone or jury.
- Greater guidance should be given to courts as to the conditions which may be imposed where a defendant is released pursuant to subsection 20BC(5).
- Provision should be made for the enforcement of an order made pursuant to subsection 20BC(5) for conditional release.

The provisions of Division 7 in Part 1B, which deal with the disposition of persons who are acquitted because of mental illness, also came under some criticism by the New South Wales Court of Criminal Appeal in *R v. Goodfellow* (1994) 120 ALR 657.

Upon the jury finding that Goodfellow was not guilty on the ground of his mental illness, the presiding judge had ordered, pursuant to subsection 20BJ(1) of the *Crimes Act 1914*, that Goodfellow be held in the care and custody of the medical superintendent of Long Bay Hospital for three years. Goodfellow appealed against, amongst other things, that order.

The main issues before the Court in relation to this aspect of Goodfellow's appeal was whether the length of the detention period under subsection 20BJ(1) should be fixed by reference to the sentence which would have been imposed if he had been found guilty, and whether a court in New South Wales in fixing the period of the detention order should take into account the absence of remissions in

New South Wales (which a court would have been required by section 16G to do if Goodfellow had been sentenced to an actual term of imprisonment). In answering both questions in the affirmative, Hunt CJ at CL (with whom Blanch J. agreed) observed:

The policy question which must first be decided is whether the intention of the legislature was that the length of the detention period should be fixed [as an estimate of the sentence which would have been imposed if the person had been found guilty]. If it was so intended then, it seems to me, the period fixed ought to take into account the absence of remissions in this State as a matter of discretion. No assistance as to the intention of the legislature can be gained from either the explanatory memorandum or either of the second reading speeches. The absence of any reference in the statute to some other criterion for fixing the length of the detention period suggests to me that the only logical approach available is to fix that period by reference to the sentence which would have been imposed if the person had been found guilty—and this notwithstanding the departure by the draftsman of section 20BJ in this regard from its apparent model in the State Act. Unfortunately, as the criticism of it from around Australia has demonstrated, the logic of the whole of Part 1B is so flawed that such an assumption must only be made with care, but in my view it is the assumption which should be made in relation to section 20BJ.

MODEL CRIMINAL CODE: THEFT AND FRAUD OFFENCES

In 1990 the Standing Committee of Attorneys-General (SCAG) established a committee of officers for the purpose of developing a uniform criminal code for all Australian jurisdictions. In December 1992 this Committee—the Model Criminal Code Officers Committee (MCCOC)—prepared a final report on the general principles of criminal liability which was released by SCAG for public comment in February 1993. A Bill to implement the recommendations of that report insofar as the Commonwealth is concerned was introduced in the Commonwealth Parliament in late June 1994.

In December 1993, MCCOC circulated for comment a discussion paper dealing with theft and fraud offences. Following is a summary of some of the matters raised by the DPP in commenting on the discussion paper.

MCCOC's recommendations are based substantially on the English Theft Act and the Victorian and ACT versions of that Act which swept away many of the technicalities and anomalies of the common law in this area. Nevertheless, subsequent case law in both England and Victoria has demonstrated that the 'Theft Act' model is not without its difficulties.

The pivotal concept in the offences of theft and fraud is that of 'dishonesty'. This element has not, however, been defined save that for the offence of theft three circumstances are specified where an appropriation of another's property will not be dishonest (e.g. where the person who appropriated the property believes that the owner cannot be found, or that the owner would have consented).

While the English and Victorian provisions are identical, there are considerable differences between the English and Victorian courts as to the meaning of dishonesty. The effect of English authority is that dishonesty has a residual meaning beyond the 'negative definition'

referred to above. It is a matter for the jury to determine whether the defendant's conduct was dishonest according 'to the current standards of ordinary decent people'. On the other hand, the apparent effect of Victorian authorities is that, for the purposes of the offence of theft for example, an appropriation will be dishonest unless one or other of the exceptions in the negative definition applies.

Despite the extensive academic criticism both in Australia and the United Kingdom of the English approach, MCCOC has proposed in the discussion paper that it be embedded in the model criminal code.

The view of the DPP is that it is only in relation to the 'borrowing' of fungibles that the Victorian approach of confining absence of dishonesty to the three exceptions in the negative definition may lead to unjust results. However, MCCOC has proposed that the anomalous position of fungibles in property offences be addressed by the inclusion of a provision based on subsection 97(4) of the *Crimes Act 1900* (ACT), but extending to all fungibles. Accordingly, in the view of the DPP absence of dishonesty should be confined to the three exceptions. To the extent that such an approach could theoretically lead to the conviction of a person for theft or fraud who in truth is not morally blameworthy (e.g. a person who steals another's property for some laudable motive) such a case, should it ever arise in practice, can be filtered out in the exercise of prosecutorial discretion.

The other key concept in the offence of theft and the fraud offence of obtaining property by deception is the appropriation or obtaining respectively of property 'with an intention to permanently deprive'. One of the issues raised in the discussion paper is whether the requirement of an intention to permanently deprive should be retained.

The DPP has agreed with the majority of MCCOC that the offences of theft and obtaining property by deception should be reserved for those cases where the offender intends the owner to suffer permanent loss. On the other hand, dishonest borrowings of all forms of property should be a separate offence, albeit punishable by a lesser penalty than that applicable for theft or obtaining property by deception. In this regard, MCCOC considers that a dishonest appropriation without an intention to permanently deprive should only constitute an offence if the property involved is a motor vehicle or, curiously, an aircraft.

The DPP disagreed with the majority of MCCOC that the model criminal code should not contain a separate offence of handling stolen property. While it may well be that all cases of handling can be charged as theft, as MCCOC itself acknowledged 'to describe a receiver as a thief may be confusing to the person in the street'.

The DPP also disagreed with the proposal to abolish the summary offence of 'goods in custody', although it was agreed that if both handling and goods in custody are retained the prosecution should have to elect on which charge it is to proceed.

Finally, the DPP also disagreed with the recommendation that the model criminal code should not contain an organised fraud offence on the lines of section 83 of the *Proceeds of Crime Act 1987*, and that the Corporations Law should not contain a separate fraud offence.

COMMONWEALTH LEGISLATION

The DPP was involved in an extended period of consultation with the Attorney-General's Department in relation to the *Crimes (Search Warrants and Powers of Arrest) Amendment Bill 1994*, the *Crimes (Child Sex Tourism) Amendment Bill 1994* and the *Evidence Bill 1993*. All three Bills were referred to Parliamentary Committees, and officers of the DPP appeared before the Committees dealing with the *Crimes (Child Sex Tourism) Amendment Bill* and the *Evidence Bill*.

The *Crimes (Search Warrants and Powers of Arrest) Amendment Bill*, which has now been enacted and is likely to come into operation towards the end of 1994, is of particular importance as it represents the second stage in an exercise which will replace the quite unsatisfactory patchwork of Commonwealth law, common law and applied State and Territory law with a comprehensive set of Commonwealth provisions regulating the investigation of Commonwealth offences. The first stage was the enactment of Part 1C of the *Crimes Act 1914* (dealing with pre-charge detention) and the final stage will deal with the conduct of forensic procedures.

In contrast to the approach adopted in the development of the first two stages, a proposal for the development of uniform legislation relating to the conduct of forensic procedures is currently being conducted under the auspices of SCAG, and a draft of the *Model Forensic Procedures Bill* was released for public comment early in 1994. The DPP has provided comments on that *Model Bill*.

ALRC REFERENCE : COMPLIANCE WITH THE TRADE PRACTICES ACT

The Australian Law Reform Commission Discussion Paper, *Compliance with the Trade Practices Act 1974*, proposed a focus on civil penalties in the *Trade Practices Act* and amendments to Part V of the Act (the consumer protection provisions) to make both criminal and civil liability available for a contravention of that Part. The paper proposed that the *Trade Practices Commission* take the primary responsibility for the decision whether to pursue civil or criminal proceedings, and that the choice of civil or criminal liability depend upon the presence of a fault element.

The DPP submission to the Commission expressed the view that offences under the *Trade Practices Act* should be framed in accordance with general principles of criminal responsibility, consistent with other offences under Commonwealth criminal law, and that the decision to prosecute should be based on Commonwealth prosecution policy.

The ALRC report on this reference has not yet been finalised.

PRECEDENT APPEALS IN THE ACT

On 31 May 1994 the Full Federal Court in *R v. L* ruled that a reference appeal instituted by the ACT Director of Public Prosecutions in reliance on section 30A of the *Federal Court of Australia Act 1976* was incompetent. The Court held that the reference in section 30A to 'the Director of Public Prosecutions' could only be taken as a reference to the Commonwealth DPP.

The effect of the Full Federal Court's decision is that only the Commonwealth Attorney-General and the Commonwealth DPP may institute a reference appeal in respect of a question of law arising at or in connection with the trial of an offence against ACT law, although ACT authorities are now responsible for the prosecution of offences against ACT law.

Clearly a change in the law is required. In that regard, the simplest solution would seem to be to amend section 30A to confer on the ACT DPP (as well as, presumably, the ACT Attorney-General) the right to institute a reference appeal in the Federal Court in relation to matters of ACT concern.

In its reasons for decision the Court indicated that it would be open to either the Commonwealth Attorney-General or the Commonwealth DPP to institute a reference appeal in relation to a question of ACT law, and for Commonwealth and ACT authorities to agree that the latter would act on behalf of the Commonwealth in prosecuting the appeal. In that regard, one of the functions of the DPP under the Director of Public Prosecutions Act (ACT) is to represent or act as agent for the Commonwealth DPP. The DPP has indicated to both the ACT DPP and the Commonwealth Attorney-General's Department that it regards any such administrative arrangement which may be entered into as a stop gap measure only, and that the problem identified in the Federal Court case should be addressed by legislation as soon as possible.

THE REIMBURSEMENT OF LITIGATION COSTS IN THE ACT

In 1993 the ACT Attorney-General's Department issued a discussion paper, *The Reimbursement of Litigation Costs*, which, among other things, proposed a change to the rule that the Crown in proceedings on indictment neither pays nor receives costs. In late November 1993 the DPP provided what was in effect a joint response on behalf of the DPP and the Commonwealth Attorney-General's Department on that part of the discussion paper dealing with the reimbursement of costs in proceedings on indictment.

It was stated that from the standpoint of principle there was no justification for the position that, while a successful defendant in summary proceedings is entitled to recover costs, this right was denied to a successful defendant in indictable proceedings. Accordingly, the DPP supported the recommendation in the discussion paper for a scheme of reimbursement of costs in indictable matters.

Any statutory scheme should provide for the payment of costs to a successful defendant as a right but subject to the discretion of the Court to deny or limit that right in certain circumstances. In that regard, legislation could amplify or extend the principles set out by the High Court in *Latoudis v. Casey* (1990) 65 ALJR 151.

While agreeing that a court should have a discretion not to award costs or to award reduced costs, the DPP did not support legislation along the lines of the *Costs in Criminal Cases Act 1967* (NSW). Such legislation in a number of jurisdictions seems to provide for something less than an entitlement to costs as of right subject to the court's discretion.

Nor did the DPP favour a statutory ceiling on costs. Where an accused is acquitted following a very lengthy trial, and where the accused exercised restraint and discipline in the conduct of his or her case, the accused should be entitled to reimbursement of all costs properly incurred.

As a general rule the DPP supported the view expressed in the discussion paper that a government agency (including the DPP) should not be eligible for reimbursement of costs. On the other hand, the reimbursement of Crown costs is defensible in certain circumstances, particularly in the context of current efforts to reduce the complexity, duration and cost of trials and the frequency of collateral proceedings. In that regard, the package of reforms proposed by SCAG for the prosecution of complex fraud cases incorporates a cost sanction where there is a failure to comply with a provision of the proposed legislation or an order made by the court under the legislation. Accordingly, it was recommended that consideration be given to the inclusion of a provision on the lines of sections 19 and 19A of the *Prosecution of Offences Act 1985 (UK)*.

CHEATLE V. R

On 26 August 1993 the High Court delivered its reasons for decision in *Cheatle v. R*. The court held that the effect of section 80 of the Constitution is that provisions of State law allowing a majority verdict to be returned in a criminal trial are inapplicable to a trial on indictment for an offence against a law of the Commonwealth.

Following the High Court's decision a number of federal prisoners who had been previously convicted following a majority verdict successfully instituted appeals against their conviction.

At this stage it is unclear whether the High Court's decision will have any implications in relation to the conduct of a trial for both Commonwealth and State offences in those jurisdictions where State law provides for a majority verdict.

CHAPTER 8

Administrative support

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

While Head Office Administrative Support Branch plays a coordinating role in areas of national importance, as well as providing media liaison and publishing services, administrative responsibility has mostly been devolved to the regional offices.

Each regional Administrative Support Branch is headed by an Executive Officer who works under the supervision of the respective Deputy Director for that State. These branches are responsible for all personnel, information technology, library and accounting services as well as general administration.

HUMAN RESOURCES

The most significant development in this area in 1993–94 has been agency bargaining. The DPP approached this exercise jointly with the Community and Public Sector Union. Training sessions and consultation meetings were held in every office to identify productivity savings and initiatives suitable for inclusion in an agency agreement. Although a range of improved conditions and minor changes to operational arrangements were identified, it was not possible to find major productivity savings to fund a salary increase. A draft agreement based on improvements to conditions only, and not including an increase in salary, is currently under discussion between the DPP, the CPSU and coordinating agencies.

Significant policies developed and issued during the year included a new employment equity policy, a child care policy, a policy on senior executive staffing arrangements, and policies on elimination of workplace harassment and sexual harassment. These policies were developed in consultation with the CPSU and staff generally.

During the year, performance appraisals were completed for all eligible staff. The advent of performance pay significantly increased the importance of the appraisal process and highlighted the need to improve the operation of the DPP appraisal scheme. An evaluation of the scheme began during the year through a questionnaire to all participating staff. The results will form the basis of discussions to identify improvements. There was a 63 per cent response to the questionnaire. Overall the results of the survey indicate that, while the majority of affected staff are in favour of the DPP having an appraisal scheme, there are a number of issues that need to be addressed, particularly consistency of ratings.

During the year negotiations were concluded with the Attorney-General's Department for the transfer of national pay processing from their mainframe computer and NOMAD software to the Department of Administrative Services. The transfer was successful and the DPP is now a DAS, NOMAD bureau client. This was the last personnel function undertaken by Attorney-General's Department for the DPP.

A quality-management program was introduced to the National Personnel Services section in Head Office during the year. The program aims to increase the client focus of the section's work and improve

performance. Under this program, service agreements were negotiated with each State Office and records are maintained to assess the level of service actually provided. This initiative has already shown results, with improved understanding of the roles between Head Office and State Offices.

During the year, a review of information technology staffing strategies was completed. This review was necessary considering the substantial change in the DPP's information technology environment. The review recognised the considerable efforts of the IT staff in achieving the massive change required and recommended new staffing approaches based on the translation of staff to the Information Technology Officer employment category to support the new environment.

Staffing

Staffing at the end of June 1993 was 485 personnel. See the following tables 1–4.

Average staffing for the year increased from 468 in 1992–93 to 481 in 1993–94. The increase relates to the DPP continuing to increase staffing for corporate prosecutions, a function taken on in 1991–92. Maximum staffing levels, under current functional responsibility, have now been reached and staffing will reduce next year to approximately 470 staff years as a result of the closure of the war crimes unit in Adelaide.

The staff turnover for lawyers for this year remained at only 6 per cent. This is in stark contrast to turnover rates in the mid to late 80s which were as high as 30 per cent in some offices. The low rate is considered to be a product of decreased opportunities in the private sector and increased opportunities within the DPP coming from expanded functional responsibilities. The turnover rate for non-legal staff rose from 7 per cent to 13 per cent primarily as a result of an increase in Sydney, the largest office, from 11 per cent to 20 per cent. Analysis of exit questionnaires reveals that most staff left for personal reasons or to advance their careers, not because of any dissatisfaction with DPP employment conditions or policies.

There was considerable staff movement at SES level with six gains and six losses. This includes staff employed under the DPP Act on a contract basis. In fact, most of this movement is a result of expiry of fixed-term contracts and subsequent resource re-allocations. None of the gains or losses involved intra-agency mobility.

The percentage of staff dedicated to corporate support reduced slightly from 23.5 per cent in 1992–93 to 22.75 per cent. This figure includes all staff not directly supporting legal activities.

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

Table 1: Staff as at 30 June 1994

Classification	HO	NSW	Vic.	Qld	WA	SA
Director	1					
Associate Director	1					
SES Band 3	2					
Band 2	1	2	1	1	1	1
Band 1	8	9	5	6	3	3
Legal 2	9	31	18	7	8	12
Legal 1	3	33	20	16	8	3
SITO A	2					
SITO B	2		1			
SITO C	1	1	1			
ITO 2		1				
SPO B	2					
SPO C	1	1	1	1	1	1
PO 2	1	1				
PAO Grade 3	1					
SOG B	3	3	4	1	1	1
SOG C	1					
ASO 6	5	4	4	2	1	1
5	6	2		1		
4	4	22	10	4	4	
3	12	25	17	8	10	9
2	3	22	23	10	2	3
1	1	6	4	2		
Aboriginal Cadet Legal Agency	3	2	1		3	2
Sub-totals	73	165	110	59	42	36

Grand total 485 (unpaid inoperative staff are not included)

Legend

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

Staffing summary

Statutory office holders	2
Total staff employed under the PS Act	460
Total staff employed under the DPP Act	13
Agency Staff	10
Total	485

The total number of temporary staff included in this figure is 23

Key staffing performance indicators

The proportion of staff dedicated to corporate support (Library/IT/Administration) was 22.75 per cent.

Staff turnover rates	Legal	6 per cent
	Non-Legal	13 per cent

Table 2: Staff as at 30 June 1994 by gender and category

Category	Full-time		Part-time	
	Male	Female	Male	Female
Director	1			
Associate Director	1			
Senior Executive Service				
Band 3	2			
Band 2	7			
Band 1	24	10		
Legal	89	70		9
Senior Officer & Equiv	17	13		1
Administrative Service Officer & Equiv	60	157	3	10
Aboriginal Cadet Legal Agency		1		
	3	4		3
Grand total	485	204	255	3

Table 3: Staff usage by office

Office	Estimated Average Staffing 93-94	Actual Average Staffing 93-94	Estimated 94-95
Head Office	66	69	65
NSW	166	167	164
Vic.	114	112	112
QLD	54	55	54
WA	43	41	43
SA	39.5	37	32
Total	482.5	481	470

Table 4: Staff usage by program

Program	Estimate 1993-94	Actual 1993-94	Estimate 1994-95
Prosecutions			
General	215	214	211
Corporations	85	97	95
War Crimes	7.5	7	0
Total	307.5	318	306
Criminal Assets	51	48	47
Executive & Support	124	115	117
Total	482.5	481	470

Training and development

The further implementation of the National Training Policy and Plan has seen the preparation of individual training agreements during the year for all staff and local training programs established. Planned improvements to the training computer system (OMNI), including moving into the windows version and the implementation of the Australian Training Register (ATR), will further improve preparation of national and state annual training programs.

A National Training Conference will be held soon to better focus training. In the past year much of the administrative support training has been on new software applications, but training was also provided in areas such as accrual accounting, personal development, EEO and OH&S.

Each office conducts regular in-house legal training, usually on a monthly basis, to ensure legal skills remain current across all areas of the Office's practice and that lawyers complete the 20 hours training per year required by their award.

Net eligible expenditure on training for the year was \$656 562, which is 2.8 per cent of total salary expenditure. The total number of training days was 2 129 and 100 per cent of staff participated in training at an average of 4.6 days per person.

Staff interchange

The DPP Staff Interchange Program was finalised in consultation with relevant unions and implemented during the year. The program provides for one or two formal placements in any year subject to available resources. These placements can be with local or overseas organisations. The program operates on a reciprocal arrangement, but this is not an essential feature.

This year one DPP interchange placement was offered. Unfortunately, the economic climate of the participating organisation prevented them from considering a reciprocal arrangement. An overseas placement in the Ministry of the Attorney-General, Toronto, Canada, was advertised in December 1993 and June Phillips, a senior lawyer in the Brisbane Office was selected. The placement began on 28 March 1994 for a period of six months.

Occupational health and safety

The DPP has a current occupational health and safety agreement with the Community and Public Sector Union which was signed on 22 July 1992.

All states have trained representatives and deputies. Committee meetings are held regularly in all offices and issues are discussed that have been identified through the regular checks performed by the OH&S representatives. A common problem in most offices is soft tissue injuries from using equipment such as a computer mouse. Offices have engaged specialist people to carry out inspections and develop strategies to overcome these problems.

Investigations in various offices have examined radiation and microwave emissions and workstation ergonomics. No problems were reported that could not be easily rectified.

Equal employment opportunity

The third Employment Equity Plan covering the years 1994 to 1997 was submitted to the Public Service Commission and approved in April this year.

The plan was developed following consideration of the views of all DPP staff through a voluntary staff survey on EEO and an evaluation of the previous program. State offices and the Community and Public Sector Union were involved at each stage of development.

Statistics once again show that, with the exception of Aboriginal and Torres Strait Islander staff, members of the target groups at the DPP compare favourably with the rate at which these groups are employed in the Australian Public Service as a whole. The figure for women in SES positions has risen to 23 per cent (6 per cent in 1987), which is well above the APS rate of 13.1 per cent and above the APS target for the year 2000 which has been set at 20 per cent. It is planned to boost Aboriginal numbers through a specific Aboriginal and Torres Strait Islander Employment Plan encouraging recruitment through the cadetship program and base grade intake.

Each state office has an ASO6 officer responsible, part-time, for the implementation of EEO under the direction of the Deputy Director. The National Resources Centre, Head Office, provides control, advice and co-ordination for the state offices under the direction of the Senior Executive Administration who is responsible for Equal Employment Opportunity. An officer at ASO6 level in Head Office is designated as the DPP's EEO coordinator. It is expected that the staffing effort during the next financial year will be approximately the same as this year that is approximately 1.4 ASL nationally.

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 1993-94 included:

- Completion and adoption of the third Employment Equity Plan.
- Completion and distribution of :
 - Child Care Policy;
 - Elimination of Workplace Harassment Policy;
 - Elimination of Sexual Harassment Policy;
 - Equity Plan for Sydney office;
- EEO workshops and training conducted in State offices.

Major EEO priorities for 1993-94 will be:

- Completion of :
 - Disability Discrimination Policy;
 - Aboriginal and Torres Strait Islander Career Development Policy;
 - Return to Work Policy;

Guidelines for Homebased Work;

- Development of cadetship and traineeship programs for EEO target groups;
- Revision of state EEO equity plans.
- Continuation of EEO awareness training.

Through the completion of voluntary information, the computerised personnel system (NOMAD) has EEO details recorded on most staff. Also, training details are monitored by EEO target groups using the OMNI computer system. A summary of recorded EEO data appears at table 5.

No EEO grievances were lodged this year. Monitoring of exit questionnaires and interviews indicates no perception of discrimination against members of target groups.

Table 5: EEO profile of the DPP as at 30 June 1994

Classification	Male	Female	ATSI	PWD	NESB1	NESB2
Statutory office holders	2				1	
SES 3	2					
SES 2	7			1		
SES 1	24	10	1	1	1	3
Legal 2	53	33		1	3	10
Legal 1	37	46			1	6
SOG A/B/C & Equiv	17	14		2	2	4
ASO 1-6 & Equiv	62	167	1	8	13	26
Aboriginal Cadet Legal		1	1			
Total**	204	271	3	13	21	49

** 10 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.

Performance pay

The DPP made its first payments to SES staff and its second payments to other eligible non-SES staff during the year. Details in relation to this appear in tables 6, 7 and 8.

The performance pay process has started to bed down, but work still needs to be done on performance appraisal to ensure that consistency is applied throughout the various DPP offices. Improvements in this area are expected to flow from the performance appraisal evaluation process mentioned above.

To date, the DPP has received no formal grievances in relation to the operation of performance appraisal or performance pay.

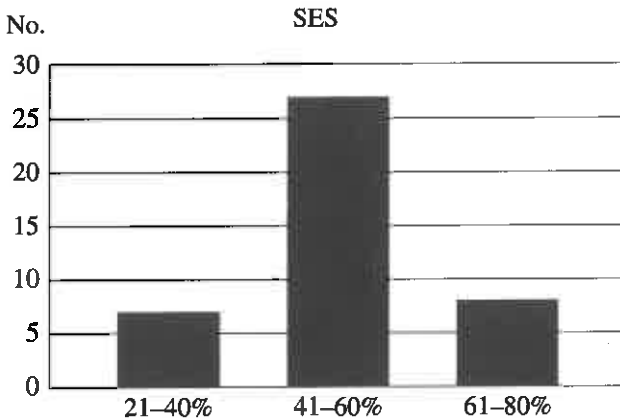
Table 6: Performance pay: Number of eligible staff and aggregate payments.

Staff Category	Number	Aggregate Payments
SES	43	\$216 500
Senior Officer A/B*	126	\$490 158
Senior Officer C*	26	\$29 168
Total	195	\$735 826**

* These categories include staff at equivalent levels.

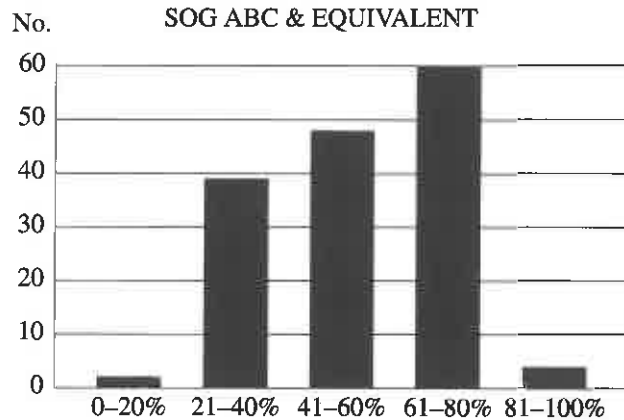
** An additional amount of \$88 747 was paid as employer superannuation contribution on behalf of those staff electing to contribute part of their performance pay to the Australian Government Employees Superannuation Trust.

Table 7: Distribution of performance pay for SES staff



Performance pay received as percentage of maximum permissible

Table 8: Distribution of performance pay for Senior Officer A, B and C and equivalents



Performance pay received as percentage of maximum permissible

Industrial democracy

The DPP's industrial Democracy plan was last revised and agreed with the CPSU in May 1993. It is working effectively and this has been recognised by both management and the union.

The DPP is committed to the principles of industrial democracy. A National Consultative Council meeting was held in Head Office on 30 March 1994 and the next meeting is scheduled for March 1995. Industrial democracy meetings in the State offices involved issues such as relocation, accommodation, overuse problems related to new technology and manual handling. Under the principles of industrial democracy, agency bargaining has provided an instrument for staff to be involved in major decisions affecting their working environment and practices.

The Senior Executive responsible for industrial democracy is the Senior Executive, Administration, Head Office. National coordination is via an ASO 6 in Head Office and an officer at the same level or higher has responsibility for this in each State office. Head Office staff jointly monitor Industrial Democracy with the union through the National Consultative Council and through copies of the minutes of State meetings.

Industrial democracy is now integrated in the management approach of the Office of the DPP and therefore no specific major events are reported.

INFORMATION TECHNOLOGY

Computer re-equipment

In 1993-94 the DPP completed its information technology replacement project which began in October 1992.

The project was divided into two stages. Stage 1 included the installation of IBM compatible PC local and wide area networks, as well as an analysis of existing corporate applications. Stage 2 replaced the applications that were 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, spread sheets, presentation software, text retrieval and simple database software. The local area networks in each office also provide access to corporate applications on the new hardware as well as to Wang VS minicomputers, the mainframe computers of Attorney General's Department and the Department of Administrative Services, facsimile, electronic mail and dialout facilities. The new technology has been favourably received by all DPP staff members.

Stage 2 began in October 1993 and included finalisation of work related to the preliminary analysis and design, selection and acquisition of a database and technical platform, and the redevelopment of corporate applications such as Case Matter Management (now Case Recording and Information Management System), Fines and Costs, and Criminal Assets Recording. Imaging and electronic mail links to other departments were also addressed. This stage was completed in July 1994.

Wang VS minicomputers

With the migration of all systems to a Client/Server environment all Wang VS minicomputers in regional offices have been decommissioned. Two Wang VS minicomputers have been retained in Head Office for the finance and library management systems. One of the minicomputers is expected to be decommissioned by the end of 1994–95 or early 1995–96 when the library system is replaced.

Corporate systems

Except for the financial management system (FINEST) and library management system (LIBMAN), the following corporate systems have been redeveloped using a client/server environment:

- Case Recording and Information Management System (CRIMS) (formerly Case Matter Management). This system records information and progress of cases being dealt with by the DPP.
- Fines and Costs (FAC). This system records and disperses fines and costs imposed by courts.
- Criminal Assets Recording System (CARS). This system records and tracks value of criminal assets.

During 1993–94 the DPP's pay and personnel system (NOMAD) was transferred from the Attorney-General's Department's mainframe to the Department of Administrative Services' mainframe.

Computer-based court presentation 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 need to be custom built.

The DPP has expanded its use of computer-based court presentation systems during 1993–94. The system has been successfully used in NSW, Victoria, WA and the ACT in cases ranging from money laundering to

corporate prosecutions. To date, it has only been used in committal proceedings. It is expected to be used in a jury trial in the next 12 months.

Each office has been provided with a basic system that includes a powerful PC, a scanner, 21-inch monitors and off-the-shelf PC software. The use of computer-based court presentation systems has greatly accelerated the speed with which documents are tendered and has assisted as well in simplifying complex matters. It provides the court with useful, clear diagrams showing complex transactions. The system, which is fully portable, has cut court time in the cases where it has been used.

The system has been accepted by the legal profession, judges and court administrators across Australia and has been shown to law enforcement agencies overseas. The DPP is now coordinating the development of uniform computer standards across all federal law enforcement agencies in a bid to streamline the investigation process through to the prosecution phase.

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 librarians perform national roles maintaining in-house databases and producing a weekly newsletter for librarians and a monthly legal information service for lawyers. The systems/cataloguing librarian maintains the library management system and is responsible for network cataloguing.

There are 13 in-house databases containing opinions, speeches, media reports, internal newsletters and documents, the library information service and legislation. Scanning equipment is used to add material no longer in electronic form and to attach images for forms etc. Access is provided via the LAN to nine commercial legal databases on disk and eight on CD-ROM. The ISYS text-retrieval system is used for most of the in-house databases and for those commercial databases which do not have their own text-retrieval system.

Last year's report foreshadowed the purchase of a new library management system. A request for proposal was advertised in the national press in November. Proposals have been evaluated and a short list of three chosen for benchmark testing.

PUBLIC RELATIONS

All media inquiries are answered by the DPP Journalist who works in Head Office, Canberra. These include inquiries about prosecutions conducted by State Offices.

The DPP has a policy of providing accurate information which is available on the public record. Information is not disclosed on cases yet to come before the courts, apart from confirming whether a matter is under consideration.

The DPP Journalist is responsible for providing media policy advice to the Director, senior management and individual prosecutors nationally, as well as being responsible for the Office's national publishing and information programs, including the maintenance of the corporate image of the Office. The Journalist also liaises with ministers' offices and client departments on media issues affecting the DPP.

Another service provided by the DPP Journalist is providing a daily media summary of items of interest to the Office which is delivered electronically to each officer every day. This summary is the basis of a database which can be searched retrospectively going back to January 1993.

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

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

The DPP did not undertake any advertising campaigns or market research in the reporting period.

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 1994-95 are:

Table 8: Revenue and expenses over past three years and budget for 1994-95

	1991-92	1992-93	1993-94	1994-95
	(\$'000)	(\$'000)	(\$'000)	(\$'000) (estimate)
Receipts	1 974	1 151	1 170	1 237
Expenses				
Budget	52 606	50 997	52 372	49 598
Actual	41 341	46 041	46 974	

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. No funds have been provided for war crimes prosecutions in 1994-95.

The underspendings against budget were 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.

Accounting for legal expenses, fines and costs

The Department of Finance has agreed that under the new reporting environment the DPP should account for all legal expenses and fines and costs related to matters previously reported by budget-funded agencies. Negotiations are continuing with non-budget-funded agencies. This change will be implemented during 1994–95, substantially simplifying administrative processes as other agencies will no longer be required to be involved in the accounting process. Further detail is included in note 1 of the Financial Statements at the end of this report.

Table 9: Actual expenditure v budget

Function		1991–92 (\$'000)	1992–93 (\$'000)	1993–94 (\$'000)	1994–95 (\$'000)
Base funding	Budget	34 922	35 756	37 680	37 382
	Actual	35 096	33 890	34 365	
IT re-equipment	Budget	1 400	4 390	1 306	268
	Actual	220	4 001	1 493	
Corporate prosecutions	Budget	7 107	4 500	11 150	11 948
	Actual	3 788	4 959	9 919	
War crimes	Budget	9 177	6 351	2 236	n/a
	Actual	2 237	3 191	1 197	n/a
Total expenses	Budget	52 606	50 997	52 372	49 598
	Actual	41 341	46 041	46 974	

Program budgeting

The DPP has three sub-programs for the purposes of external reporting: Commonwealth Prosecutions (which includes corporate prosecutions and war crimes 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 for 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 1993–94—Sub-program 6.6, and Attorney-General's Program Budget Measures Statements 1994–95—Sub-program 6.7.

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) was conducted of the work of the DPP during 1993–94. A full report can be found in chapter 3.

Following the tripartite review, a consultant has been engaged by the Office to assist in the development of enhanced performance indicators for the Office's programs. The Office is to report on the outcome of this exercise later this year.

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 has been replaced by a new system developed as part of the DPP's IT re-equipment program and now incorporates improved accounting and reporting functionality.

Accounting policy

A DPP Financial Handbook was formally issued in January 1993, incorporating the 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 1993–94 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. The Office is looking at modifications to accounting software to ensure such procedural breakdowns do not recur.

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.

Approximately 13 460 payments (12 400 in 1992–93) were processed nationally during 1993–94, by cheque or credit card, of which 96 per cent were paid on the due date (97 per cent in 1992–93). 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.

Claims and losses

The DPP had no claims or losses which individually resulted in net costs to the Commonwealth of \$50 000 or more during 1993–94.

The DPP had no claims which resulted in costs to the Commonwealth in aggregate in the range of \$10 000 to \$20 000 and \$20 000 to \$50 000.

CAPITAL WORKS MANAGEMENT

The DPP had no major capital works projects costing \$6 million or more in 1993–94.

CONSULTANCY SERVICES

During 1993–94 the DPP incurred expenditure under 17 consultancy agreements or systems integration contracts at a total cost of \$962 677.

Details appear below :

Table 10: Consultancy

Name	Purpose	Cost	Justification
ACT Office			
*C Corns	DPP Review	\$5 040	Independent advice
Ernst & Young	Internal audit	\$30 788	Specialist skills not available internally
BHP IT	IT re-equipment	\$779 358	Specialist skills not available internally
Infoscan	Library	\$9 000	Specialist skills not available internally
NSW Office			
*T Buddin	In-house counsel	\$115 000	Cost-effective use of counsel
*Showcase	Computer consultants for imaging and court presentation of documents	\$3 000	Specialist skills not available internally
* Davidson, Trahaire	Employee's assistance program consultants	\$8 625	Specialist skills not available internally
Victorian Office			
*HBA Health Management	Stress management survey & analysis	\$2 345	Specialist skills not available internally

Huston Consulting Group	Interviewing and staff selection training	\$2 400	Specialist skills not available internally
Communication Concepts Pty Limited	Prosecution work group consultancy	\$596	Specialist skills not available internally
*Department of Industrial Relations	ID awareness training	\$750	Specialist skills not available internally
*SD & EEO Secretariat	Assertion skills training	\$500	Specialist skills not available internally
*Drake Computer Training	Computer software training	\$775	Specialist skills not available internally
*Fed Community Legal Centres	In house training on legal systems	\$450	Specialist skills not available internally
*HBA Health Management	Stress management training	\$750	Specialist skills not available internally
*HBA Health Management	Communication skills training	\$3 000	Specialist skills not available internally
*LexTech	ISYS for windows training	\$300	Specialist skills not available internally

Consultancies marked * were not publicly advertised.

FRAUD CONTROL AND INTERNAL AUDIT

The DPP Fraud Control Plan, prepared in 1989, is to be replaced in 1994-95 by another drawn up under contract by Ernst and Young.

The DPP took over the internal audit function from the Attorney-General's Department from 1 July 1992. The DPP contracted Ernst and Young to perform its internal audit function for 1993-94. Under the contract Ernst and Young reviewed the DPP's Audit and Fraud Risk Assessments, and prepared an internal audit strategy and fraud control plan which will be implemented during 1994-95.

Ernst and Young also undertook internal audits of the DPP's Canberra, Perth and Brisbane offices and its information technology environment during 1993-94. The outcome of these audits were satisfactory and issues raised are being addressed in 1994-95.

REPORTS BY THE AUDITOR-GENERAL

The DPP was referred to in three reports by the Auditor-General.

Audit Report No. 18 1993-94—Aggregate and Departmental Financial Statements 1992-93

Comments made in that 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 1993.

The result of the audit of the DPP's accounts and records was satisfactory, with only a few minor matters referred for attention.

The DPP advised of appropriate remedial action taken or proposed. 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.

Audit Report No. 21 1993-94-- Efficiency Audit--Department of Finance--The Australian Government Credit Card--its Debits and Credits.

The DPP was specifically asked to comment on Recommendation No. 5, which makes a number of recommendations towards implementing relevant Risk Management Strategies across the AGCC System and within departments.

The DPP made the following comments to the Australian National Audit Office on the prosecution of AGCC Fraud:

This Office has no evidence to suggest 'that the current passive role of the Department of Finance and agencies to monitor AGCC misuse has been ineffective'. There have been a number of successful prosecutions for misuse of AGCCs. This Office is concerned if criminal misuse of credit cards, or any other fraudulent activity, is not identified by agencies or is not referred to the AFP or DPP because agencies perceive it is inconvenient, embarrassing, time consuming, etc. We certainly support recommendations that criminal misuse be referred promptly to the AFP or the DPP.

This Office has had difficulty with the wording of current regulations that require that all cases of misuse be referred to the AFP or DPP. This Office believes that only instances that involve suspected criminal conduct should be so referred. Misuse that involves no criminal conduct, but is a breach of local instructions or practices should be dealt with by agencies as normal disciplinary matters. This Office is of course happy to discuss any matter with an agency to help determine if criminal activity was involved.

Audit Report No. 41 1993-94-- Project Audit--Australian Government Credit Card--Some Aspects of its Use.

The DPP was asked for comments, particularly in respect to Recommendation No.4, as follows:

The ANAO recommends that Finance confer with the AFP, DPP, DIR and the PSC to examine alternative law enforcement strategies and select a more effectual and cost effective strategy, than those currently available to protect the integrity of the Commonwealth's AGCC system.

The DPP replied:

This Office has regular liaison with other law enforcement agencies and client departments to ensure the effectiveness of law enforcement activities and that it would be happy to be involved in a process to improve law enforcement in respect of offences perpetrated using the AGCC.

This Office is concerned if criminal misuse of credit cards, or any other fraudulent activity, is not identified by agencies or is not referred to the AFP or DPP because agencies perceive it is inconvenient, embarrassing or time consuming. The DPP supports recommendations that misuse involving criminality be referred promptly to the AFP or the DPP.

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 DPP used the services of the Centre of Environment Management, Department of Administrative Services, which conducted an Energy Management Audit in each DPP Office and developed an Energy Management Plan. The energy audits in some of the DPP Offices have shown that energy management savings are limited, largely because the offices are leased and due to the nature of the leases. Consequently, this limited property responsibility does not enable the DPP to meet general energy reduction targets.

Following the completion of the plan, energy matters are coordinated by the National Energy Manager in Head Office, who has overall responsibility for the day to day operation of the program. Each State office has appointed a Regional Energy Manager, responsible in their specific area.

Since the audit and the completion of the plan, energy saving measures and devices have been implemented, resulting in marginal savings. It is envisaged that extra savings can be expected in the future. Reports on the savings to date are available on request from Head Office.

FREEDOM OF INFORMATION

During the year nine requests were received under the Freedom of Information Act. One request remained outstanding at the end of the year. Three requests were granted partial access, four requests were refused and two were withdrawn. All were dealt with within 30 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 5 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 where representations were made after committal appear in chapter 2.

A large proportion of the remaining correspondence concerned alleged offences which, in the writer's opinion, should have been the subject of prosecution. Any case in which it appeared that there might be substance to an allegation was referred to the AFP or other appropriate agency for investigation.

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

PRIVACY

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

CHAPTER 9

Prosecution statistics and processing time

The following tables and graphs provide a picture of the prosecutions conducted by the DPP during the year in NSW, Victoria, Queensland, Western Australia, South Australia and the ACT. The 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.

Mention is made elsewhere in this Report of the Office's new CRIMS system. Due to the change over from the Office's former CMM system to CRIMS it has not been possible to provide statistics for the full financial year. Figures for NSW, Queensland, Western Australia and South Australia are based on matters recorded as completed during the period 1 July 1993 to 31 May 1994. Figures for Victoria and the Australian Capital Territory, where CRIMS went 'live' much earlier, are based on matters recorded as completed during the period 1 July 1993 to 28 February 1994.

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.

Table 1(a): Defendants dealt with summarily in 1993-94 (vi)

State	Defendants outstanding at 1.7.93	Defendants received during year	No. of defendants dealt with	Pleas of guilty to all charges (vii)	Outcome of summary trials					Defendants outstanding at 31.5.94
					No. of summary trials	No. of defendants convicted (i)	No. of defendants acquitted on all charges	Unresolved (ii)	Other (iii)	
NSW (iv)	304	1370	1216	1045	109	71	35	7	58	458
Vic.	247	880	740	662	37	31	6		41	387
Qld	94	733	703	640	28	21	9		33	124
WA	78	453	447	393	34	24	15		15	84
SA (viii)	478	852	930	521	323	312	10	1	86	400
ACT (v)	59	84	84	61	13	9	4		10	59
Total	1260	4372	4120	3322	544	468	79	8	243	1512

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.

(iii) 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 in the Jervis Bay Territory. Pursuant to an agreement with the ACT Director of Public Prosecutions, a number of 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) For the reasons stated in the introduction to these statistics, the figures for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

(vii) Includes cases where a defendant changed his or her plea to guilty during the course of the summary trial.

(viii) The Adelaide Office conducted 342 prosecutions in respect of failure to vote in the 1993 federal election. In the majority of cases the charge was found proven following an "ex parte" hearing. Matters dealt with "ex parte" have been recorded as a summary trial.

Table 1(b): Legislation: defendants dealt with summarily in 1993-94 (i), (iii)

Legislation	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Australian Citizenship Act			1	1			2
Australian Federal Police Act	1		3	1		1	6
Australian Securities Commission Act							
Bankruptcy Act	5	12	3	6	1		28
Census and Statistics Act		2				1	3
Civil Aviation Act		1	12	6	1		20
Commonwealth Electoral Act	5	1		2	342		350
Continental Shelf Act							
Copyright Act	3	1		1	1		6
Crimes Act	190	102	79	71	178	26	646
Crimes (Aviation) Act	2	2	1	1	1		7
Crimes (Currency) Act	11	3	3	1	3		21
Customs Act	15	22	25	16	5		83
Companies Code	1	2		6	1	2	12
Corporations Law		3	3	1	1		8
Export Control Act		2	6	2	4		14
Family Law Act		1					1
Federal Airports Corporation Act	1	13			25		39
Financial Transaction Reports Act	35	27	28	7	3	1	101
First Home Owners Act	1						1
Fisheries Act	1	2	5	39			47
Fisheries Management Act	2						2
Fishing Industry Act			55				55
Great Barrier Reef Marine Park Act			20				20
Health Insurance Act	3	7					10

Legislation	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Industrial Relations Act							
Marriage Act	3	1		11	1		16
Meat Inspection Act							
Migration Act	199	12	8				219
National Health Act							
Non-Commonwealth legislation (ii)	32	22	7	15	5		81
Passports Act	44	4	4	1		1	54
Public Order (Protection of Persons and Property) Act					1		1
Proceeds of Crime Act				1	1		2
Quarantine Act	4	2	2	1			9
Radio Communications Act	2	2	1	1			6
Social Security Act	503	432	346	214	222	27	1744
Statutory Declarations Act	1	1	1				3
Student Assistance Act	38	7	13	18	9	4	89
Taxation legislation	43	8	28	9	15	4	107
Telecommunications Act	2		1		2		5
Telecommunications (Interception) Act	1						1
Torres Strait Fisheries Act							
Trade Marks Act	4	3	2		4		13
Trade Practices Act	1	1			2		4
Wildlife Protection Act	2		1		1		4
Other	3	1	4		7	7	22
Total	1158	699	670	432	837	74	3870

Notes: (i) Cases recorded under 'Other' in table 1(a) have not been taken into account. Prosecutions for offences under subordinate legislation are recorded under the Principal Act.
(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
(iii) Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 January 1994.

Table 1(c): Crimes Act 1914: defendants dealt with summarily in 1993-94 (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
Incitement (s. 7A)							
Breach of recognisance etc. (ss.20A,20AC)	33	10	4	14	4	1	66
Damage property (s.29)			1	3	2		6
False pretences (s.29A)	5	3	1				9
Imposition (s.29B)	80	31	20	17	14	3	165
False statements (s.29C)							
Fraud (s.29D)	5	20	9	6	1	3	44
Seizing Commonwealth goods (s.30)		1			2		3
Offences relating to administration of justice (ss.32-50)	1	1		1			3
Forgery and related offences (ss.65-69)	11	11	24	12	8	2	68
Disclosure of information (s.70)							
Stealing or receiving (s.71)	14	6	2	3	9	3	37
Falsification of books (s.72)	3	1		1			5
Bribery (ss.73 & 73A)	3						3
False returns (s.74)							
Personating public officers (s. 75)	1			1			2
Resisting etc. public officers (s. 76)	2		2	1	1		6
Offences relating to computers (ss. 76B-76E)	2	1	2				5
Espionage and official secrets (ss. 77-85D)	1						1
Offences relating to postal services (ss. 85E-85ZA)	11	2	4	3	8		28
Offences relating to telecommunications services (ss. 85ZB-85ZKB)	12	11	8	5	30	10	76
Conspiracy (s.86)	3	1					4
Conspiracy to defraud (s.86A)							
Trespass on Commonwealth land (s.89)	1				96		97
Other (ii)	2	3	2	4	3	5	19
Total	190	102	79	71	178	27	647

Notes: (i) Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.
(ii) Usually charges laid in reliance on section 5 (attempt) or section 7 (complicity) where the principal offence has not been indicated.

Table 2(a): Defendants dealt with on indictment in 1993-94 (v)

State	Defendants outstanding at 1.7.93	Defendants received during year	Number of defendants dealt with	Pleas of guilty to all charges (vii)	Outcome of trials					Defendants outstanding at 31.5.94
					Number of trials (i)	Number of defendants convicted (ii)	Number of defendants acquitted on all charges	Unresolved (iii)	No bills (iv)	
NSW	175	254	257	200	43	30	17	5	5	172
Vic.	72	74	62	51	7	6	1		4	84
Qld	37	130	106	72	22	14	11		9	61
WA	19	56	40	20	18	13	5	1	1	35
SA	27	43	40	33	3	3		1	3	30
ACT (vi)	15	11	16	3	3	10	3			10
Total	345	568	521	379	96	76	37	7	22	392

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 does 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) Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

(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 2(b): Legislation: Defendants dealt with on indictment in 1993-94 (i)

Legislation	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Australian Federal Police Act							
Bankruptcy Act		1	2	1	1		5
Companies Code	1	2	1	4			8
Corporations Law			2				2
Crimes Act	124	35	51	12	19		241
Crimes (Currency) Act	5		6		2	6	19
Customs Act	101	12	15	22	10		160
Financial Transaction Reports Act	3		1				4
Health Insurance Act	1	1					2
Marriage Act							
Migration Act							
Non-Commonwealth (ii)	1	7	7	2	4		21
Passports Act	2						2
Proceeds of Crime Act	3		2				5
Social Security Act	3		4				7
Other (iii)	8		6	1	1	10	26
Total	252	58	97	42	37	16	502

Notes: (i) Cases recorded under 'unresolved' and 'no bills' in Table 2(a) have not been taken into account. Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

(ii) Other than Companies Code.

(iii) In the case of the ACT, the 10 matters all involved charges under the Crimes (Internationally Protected Persons) Act.

Table 2(c): Crimes Act 1914: Defendants dealt with on indictment in 1993-94 (i)

	NSW	Vic.	Qld	WA	SA	ACT	TOTAL
Incitement (s.7A)					3		3
Breach of recognisance etc. (ss.20A, 20AC)			3	1			4
Damage Property (s.29)	2	1					7
False pretences (s.29A)	4		2				6
Imposition (s.29B)	71	6	7	5	8		97
False statements (s.29C)							
Fraud (s.29D)	18	21	23	5	4	5	76
Offences relating to administration of justice (ss.32-50)	3		2	1			6
Forgery and related offences (ss.65-69)	4	1	2				7
Disclosure of information (s. 70)		1					1
Stealing or receiving (s.71)	6	1	6		2	1	16
Falsification of books (s.72)		1					1
Bribery (ss.73 and 73A)	2		1				3
False returns (s.74)							
Personating public officers (s.75)					1		1
Resisting etc. public officers (s.76)					1		1
Offences relating to computers (ss.76B-76E)		2					2
Espionage and official secrets (Part VII)							
Offences relating to postal services (ss.85E-85ZA)			1				1
Offences relating to telecommunications services (ss.85ZB-85 ZKB)							
Conspiracy (s.86)	12						12
Conspiracy to defraud (s.86(1)(e) or s.86A)	2						2
Other (ii)		1					1
Total	124	35	51	12	19	6	247

(i) Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

(ii) Usually charges laid in reliance on section 5 (attempt) or section 7 (complicity) where the principal offence has not been indicated.

Table 2(d): Duration of trials on indictment completed in 1993-94 (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	43	52	19	11	6	2	1	4	656	
Vic.	7	7	6	1					15	
Qld	22	25	17	3	1	1			104	
WA	18	19	14	4					48	
SA	3	4	2	1					12	
ACT	3	13	2					1	42	
Total	96	120	60	20	6	3	1	5	877	

Note: (i) Retrials completed in the same financial year have been aggregated. Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 3(a): Prosecution appeals against a sentence imposed by a court of summary jurisdiction in 1993-94 (i)

State	Number of Appeals dealt with	Type of matter			Outcome of appeal	
		Drugs	Social security	Other	Upheld	Dismissed
NSW						
Vic.	1		1		1	
Qld	1		1		1	
WA	1		1		1	
SA						
ACT						
Total	3		2	1	3	

Note: (i) Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 3(b): Prosecution appeals against a sentence imposed following a conviction on indictment in 1993-94 (i)

State	Number of Appeals dealt with	Type of matter			Outcome of appeal	
		Drugs	Social security	Other	Upheld	Dismissed
NSW	5	2	1	2	3	2
Vic.	2	2			1	1
Qld	3		1	2	3	
WA	2	2				2
SA	3	1	2		3	
ACT						
Total	15	7	4	4	10	5

Note: (i) Does not include appeals that were withdrawn. Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 4(a): Appeals against conviction and/or sentence by persons convicted by a court of summary jurisdiction in 1993-94 (i)

State	Number of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction and sentence
NSW	105	23	53	29
Vic.	24	5	18	1
Qld	9	3	6	
WA	4	1	2	1
SA	9	3	4	2
ACT	3	2	1	
Total	154	37	84	33

Note: (i) Does not include appeals that were withdrawn or abandoned. Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 4(b): Appeals against conviction and/or sentence by persons convicted on indictment in 1993-94 (i)

State	Number of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction and sentence
NSW	28	4	18	6
Vic.	11	1	10	
Qld	8		5	3
WA	9	2	7	
SA	2		2	
ACT				
Total	58	7	42	9

Note: (i) Does not include appeals that were withdrawn or abandoned. Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 5(a): Defendants dealt with in committal proceedings in 1993-94 (ii)

State	Defendants outstanding at 1.7.93	Defendants received during year	No. of defendants dealt with	No. of defendants committed for sentence	Outcome of defended committal proceedings						Other (i)	Defendants outstanding at 31.5.94
					No. of defended committal proceedings	No. of defendants committed for trial	No. of defendants charged on all charges	No. of defendants committed for trial	No. of defendants charged on all charges	No. of defendants committed for trial		
NSW	111	171	213	90	99	113	4	6	69			
Vic.	43	72	61	31	28	28		2	54			
Qld	32	85	89	9	57	79	1		28			
WA	21	47	67	11	43	56			1			
SA	14	39	42	6	33	33		3	11			
ACT	2	5	7	5	2	2			0			
Total	223	419	479	152	262	311	5	11	163			

Notes: (i) All charges withdrawn prior to hearing.

(ii) Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 5(b): Duration of defended committal proceedings completed in 1993-94 (i)

State	No. of defended committal proceedings	Up to 1	Number of hearing days										More than 30	Total No. of days
			2	3	4	5-10	11-15	16-20	21-25	26-30				
NSW	99	68	9	11	2	6	2	2	1					226
Vic.	28	19	6	2		1								43
Qld	57	42	7	3	3	2								90
WA	43	39	2	1		1								52
SA	33	32	1											34
ACT	2	2												2
Total	262	202	25	17	5	10	2	1	1	1	1	1	1	447

Note: (i) Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 6: Advice matters in 1993-94 (i) (iii)

State	Matters dealt with	Type of advice		
		Insufficient evidence	Prosecution not appropriate	Other (ii)
NSW	320	59	208	53
Vic.	388	65	278	45
Qld	227	68	112	47
WA	148	48	86	14
SA	112	56	30	26
ACT	44	15	21	8
Total	1239	311	735	193

- Notes:
- (i) An advice matter is a matter referred to the DPP for prosecution which does 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 DPP office in another jurisdiction or a State prosecution agency.
 - (iii) Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 7(a): Social security prosecutions: Defendants dealt with summarily in 1993-94 (1)

State	Defendants outstanding at 1.7.93	Defendants received during year	No. of defendants dealt with	Pleas of guilty to all charges	No. of summary trials	Outcome of summary trials				
						No. of defendants convicted	No. of defendants acquitted on all charges	Unresolved	Other	Defendants outstanding at 31.5.94
NSW	99	496	571	537	20	14	4	2	14	24
Vic.	124	405	484	453	15	11	4		16	45
Qld	54	407	391	377	4	3	1		10	70
WA	32	200	225	209	11	9	3		4	7
SA	168	238	269	235	9	4	4	1	25	137
ACT	11	31	32	32						10
Total	488	1777	1972	1843	59	41	16	3	69	293

Note: (i) See notes to Table 1(a)

Table 7(b): Social security prosecutions: Defendants dealt with on indictment in 1993-94 (i)

State	Defendants outstanding at 1.7.93	Defendants received during year	Number of defendants dealt with	Pleas of guilty to all charges	Outcome of trials				Defendants outstanding at 31.5.94
					Number of trials	Number of defendants convicted	Number of defendants acquitted on all charges	No bills	
NSW	27	91	80	74	5	4	2	38	
Vic.	2	20	18	16		2		4	
Qld	3	27	23	22	1	1		7	
WA		4	3	1				1	
SA	1	12	7	7				6	
ACT	1	2	1		1		1	2	
Total	34	156	132	122	7	5	3	2	58

Note: (i) See notes to Table 2(a).

Table 7(c): Social security prosecutions: Advice matters in 1993-94 (i)

State	Matters dealt with	Type of advice		
		Insufficient evidence	Prosecution not appropriate	Other
NSW	167	38	91	38
Vic.	184	16	146	22
Qld	53	15	16	22
WA	30	8	11	11
SA	61	38	11	12
ACT	14	3	4	7
Total	509	118	279	112

Note: (i) See notes to Table 6.

Table 7(d): Social security prosecutions: Defendants dealt with in 1993-94: Amount defrauded in charges found proved (ii)

Matters dealt with summarily (i)		NSW	Vic.	Qld	WA	SA	ACT	Total
No. of male defendants		345	306	268	146	163	23	1251
Amount defrauded		\$2 342 933	1 639 920	1 911 140	857 123	953 306	170 497	7 874 919
No. of female defendants		206	158	112	72	76	9	633
Amount defrauded		\$1 758 858	1 071 389	954 496	405 738	484 275	121 504	4 796 210
Total defendants		551	464	380	218	239	32	1884
Total amount defrauded		\$4 101 791	2 711 309	2 865 636	1 262 861	14 37 531	292 001	12 671 129
Matters dealt with on indictment								
No. of male defendants		37	8	12	2	5		64
Amount defrauded		\$1 974 161	318 313	270 466	95028	162 059		2 820 027
No. of female defendants		38	8	11	1	2		60
Amount defrauded		\$1 659 920	307 844	1 037 424	48771	74 254		3 128 213
Total defendants		75	16	23	3	7		124
Total amount defrauded		\$3 634081	626 157	1 307 890	143 799	236 313		5 948 240
Grand total								
Grand total defendants		626	480	403	221	246	32	2 008
Grand total amount defrauded		\$7 735 872	3 337 466	4 173 526	1 406 660	1 673 844	292 001	18 619 369

Note: (i) Includes amount defrauded where charges were laid under the Crimes Act 1914.

(ii) Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 8(a): Appearance work by DPP lawyers in 1993-94 (i)

	NSW (%)	Vic. (%)	Qld (%)	WA (%)	SA (%)	ACT (%)	National (%)
Defended summary hearing	95	97	96	94	100	100	98
Undefended summary hearing	83	99	87	82	97	61	89
Committal with a plea of guilty	84	77	100	89	100	67	84
Committal with a plea of not guilty	82	61	93	98	100	100	87
Trials on indictment	28	0	73	100	67	66	51
Sentencing proceedings in superior courts	81	76	86	100	90	100	83
Prosecution appeals	83	67	40	100	100	100	77
Defendant appeals	90	75	59	100	100	100	87

Note: (i) This table identifies the 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).

Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 8(b): Appearance work by non-DPP lawyers in 1993-94 (i)

	Senior Counsel (%)	Junior Counsel (%)	Other (ii) (%)
Defended summary hearing	0.19	0.56	1.12
Undefended summary hearing	0.06	0.25	10.87
Committal with a plea of guilty	1.46	3.65	10.95
Committal with a plea of not guilty	2.33	8.20	2.33
Trials on indictment	10.64	38.30	
Sentencing proceedings in superior courts	2.62	11.92	2.03
Prosecution appeals	16.67	6.67	
Defendant appeals	2.85	7.32	3.25

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 9(a): Defendants dealt with summarily in 1993-94 : Referring agencies (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Bureau of Statistics		2				1	3
Australian Customs Service	4	1	4	1	1		11
Australian Electoral Commission	5	1			342		349
Australian Federal Police	251	202	204	123	57	35	872
Australian Fisheries Management Authority							
Australian Postal Corporation	18	2	3	8	10	1	42
Australian Protective Service	3		1				4
Australian Quarantine and Inspection Service	3	3	6				12
Australian Securities Commission	1	6	3	7	2	2	21
Australian Taxation Office	45	8	30	2	14	3	102
Australian Telecommunications Authority	2				2		4
Australian and Overseas Telecommunications Corporation	5	2		1			8
Civil Aviation Authority		1	9	3	1		14
Dept of Community Services and Health	1						1
Dept of Employment, Education and Training	39	7	13	19	9	4	91
Dept of Immigration and Ethnic Affairs	202	9	13	11			235
Dept of Industrial Relations							
Dept of Primary Industries & Energy			1	2	4		7
Dept of Social Security	534	421	285	197	222	28	1687
Dept of Transport and Communications	2	1	1	1			5
Dept of Veterans' Affairs		1			1		2
Federal Airports Corporation		10			25		35

	NSW	Vic.	Qld	WA	SA	ACT	Total
Federal Bureau of Consumer Affairs					2		2
Health Insurance Commission	2	3					5
National Crime Authority							
Non-Commonwealth agencies (other than State police)	7	8	89	49	3		156
Official Receiver							
State police	31	6	4	4	142		187
Trade Practices Commission	1	1					2
Other	2	4	4	3			13
Total	1158	699	670	432	837	74	3870

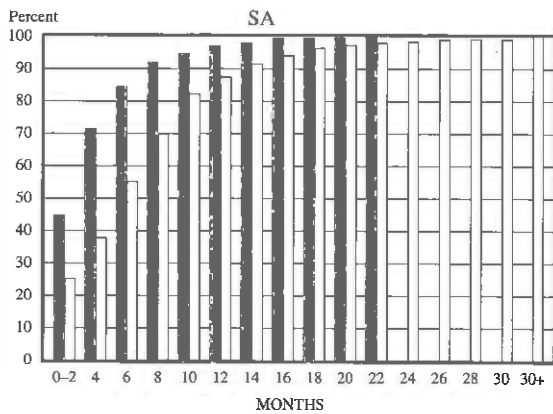
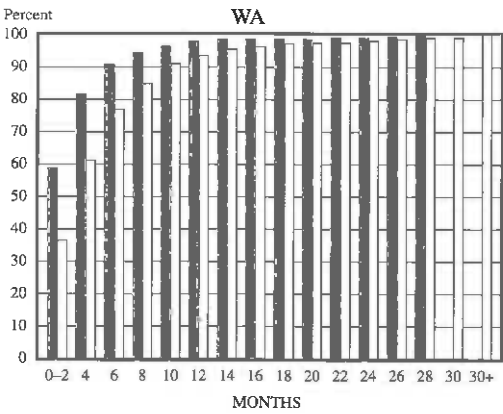
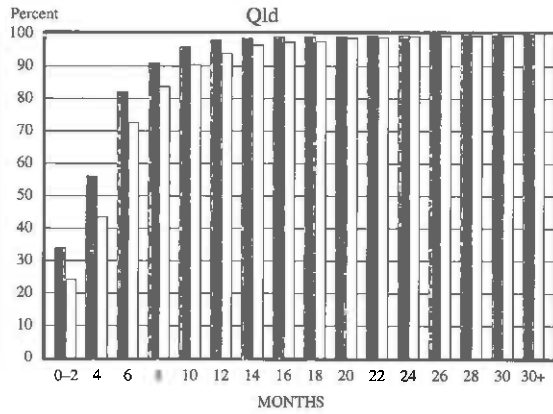
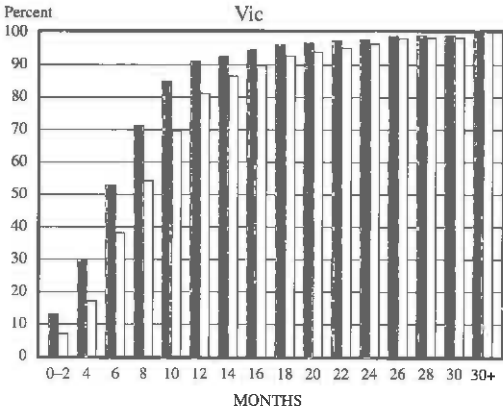
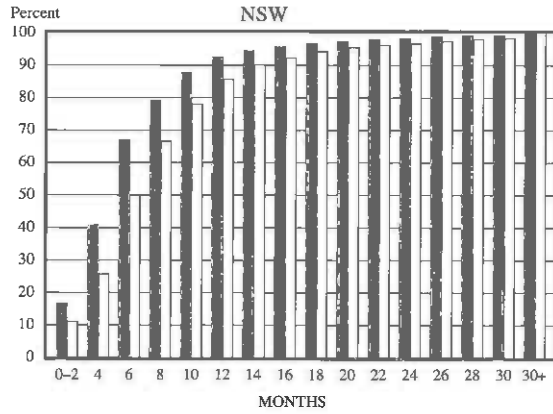
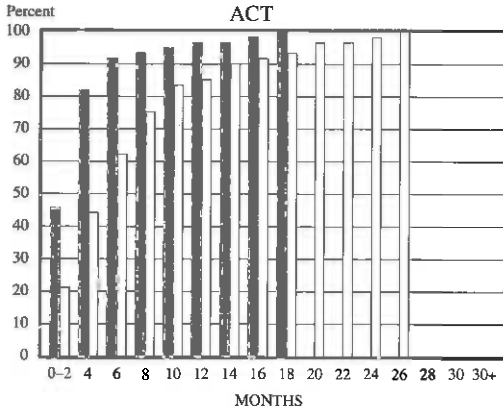
Note: (i) This table provides information as to those agencies that referred matters for prosecution to the DPP. These agencies would have carried out any necessary investigation prior to referral to the DPP. The figures supplied are by reference to matters dealt with summarily, although matters recorded under 'other' in table 1(a) have not been taken into account. Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

Table 9(b): Defendants dealt with on indictment in 1993-94: Referring agencies (i)

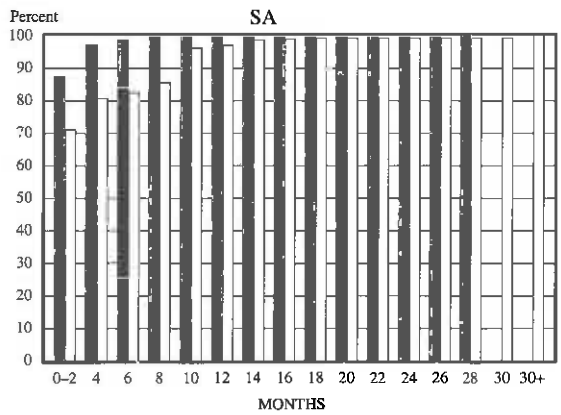
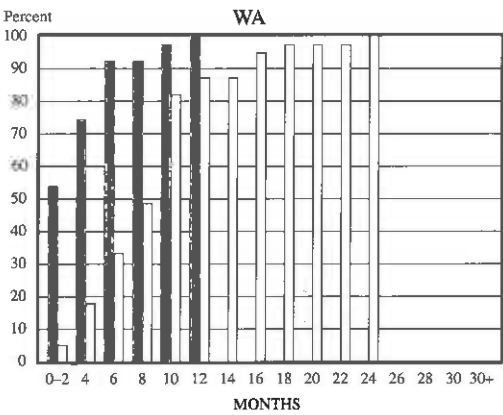
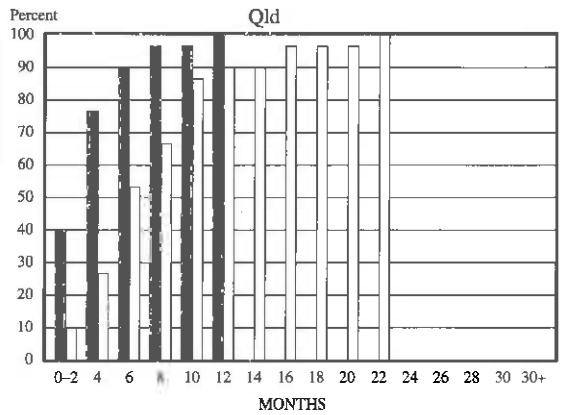
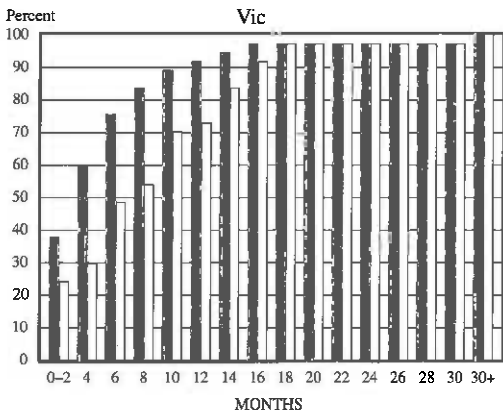
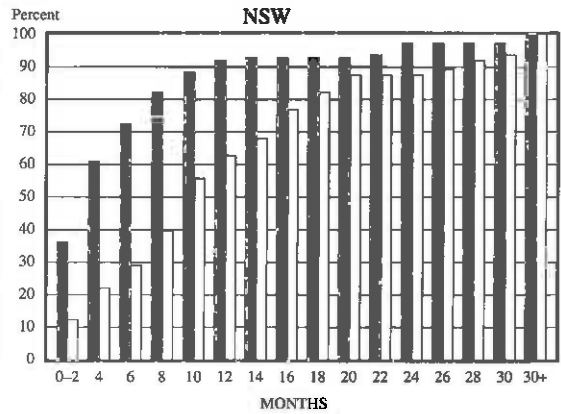
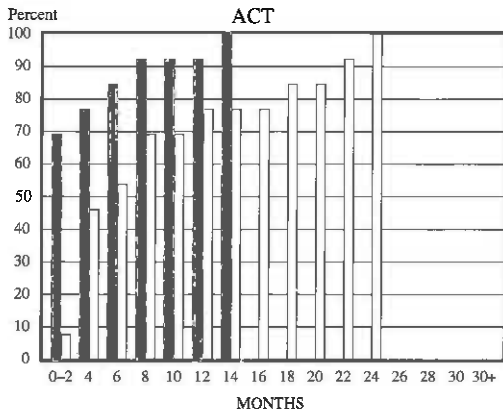
	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Customs Service	4			1	1		6
Australian Federal Police	154	43	65	34	27	14	337
Australian Postal Corporation		1	1		1		3
Australian Quarantine and Inspection Service			2				2
Australian Securities Commission	1	2	7	4			14
Australian Taxation Office	2	2				2	6
Australian Telecommunications Corporation			1		2		3
Civil Aviation Authority			1				1
Dept of Education, Employment and Training	1		1				2
Dept of Immigration and Ethnic Affairs	3						3
Dept of Primary Industries and Energy							
Dept of Social Security	68	8	5	2	6		89
Health Insurance Commission	2	1	1				4
National Crime Authority	5						5
Non-Commonwealth agencies (other than State police)	1		5	1			7
Official Receiver							
State police	11	1	8				20
Trade Practices Commission							
Other							
Total	252	58	97	42	37	16	502

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 2(a) have not been taken into account. Figures provided for Victoria and the ACT are by reference to matters completed in the period 1 July 1993 to 28 February 1994.

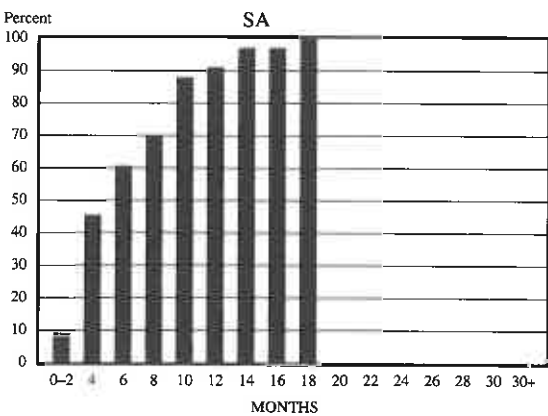
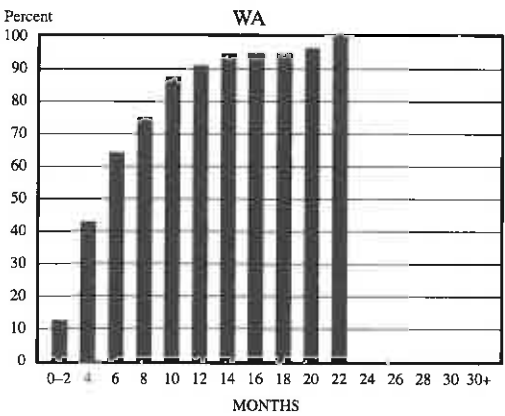
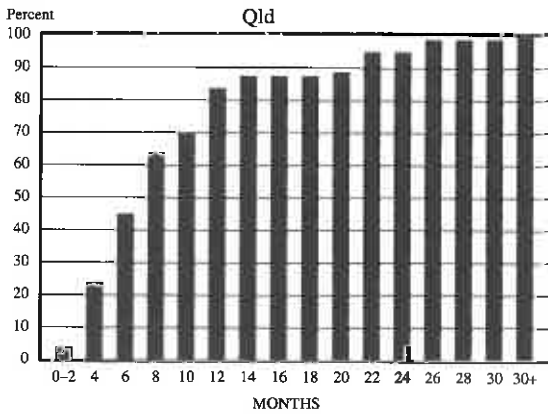
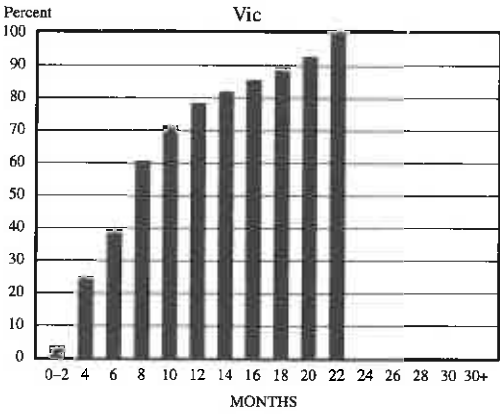
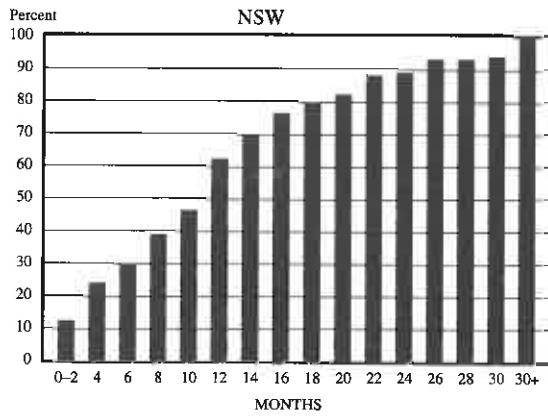
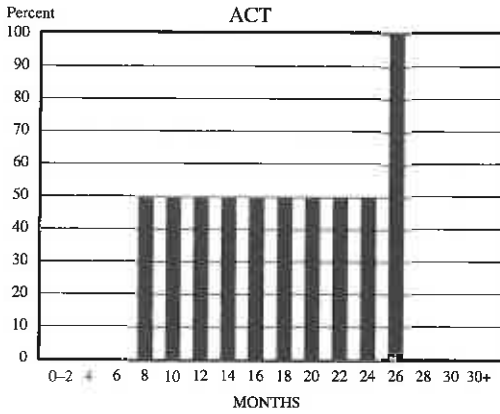
Processing times for undefended summary matters



Processing times for defended summary matters

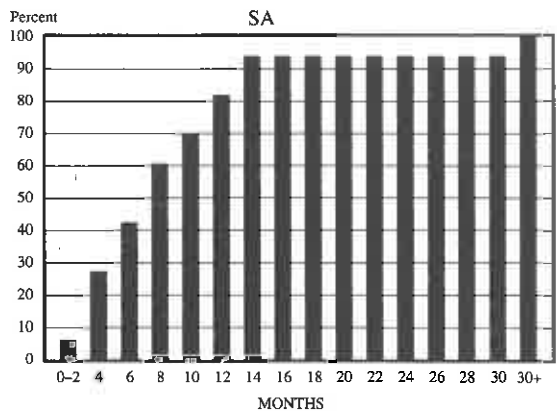
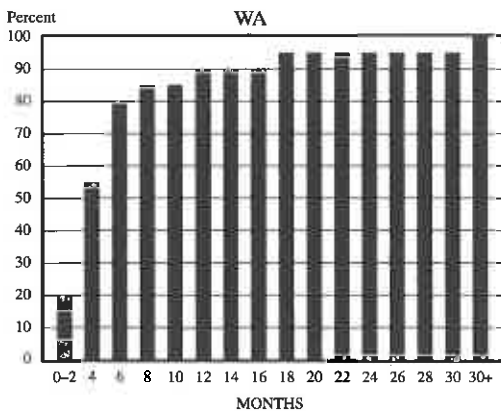
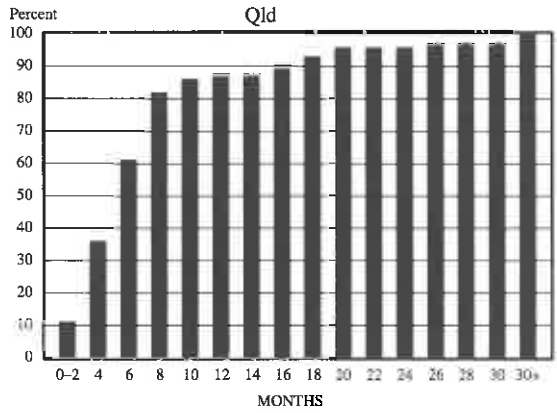
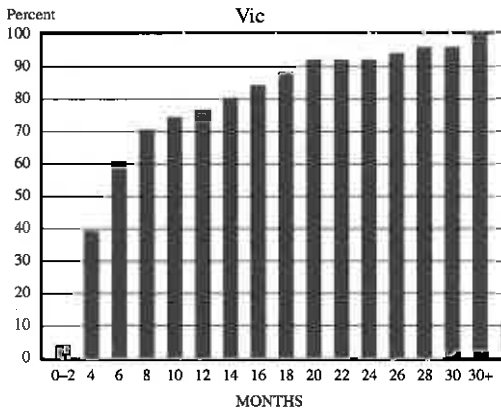
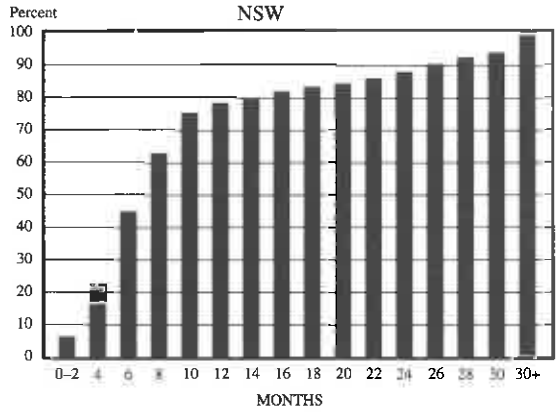
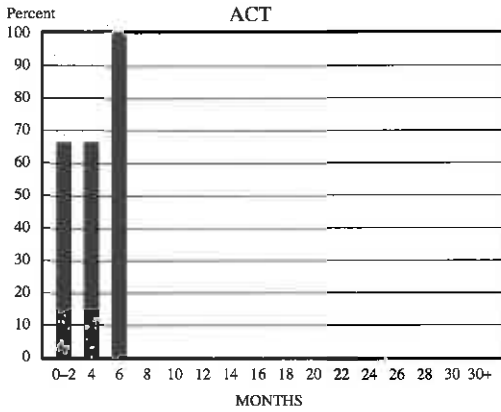


Processing times for defended committals



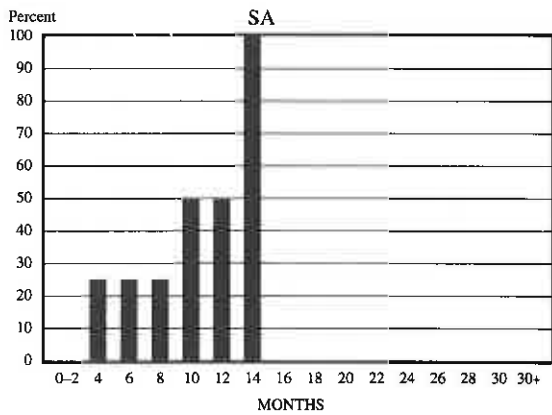
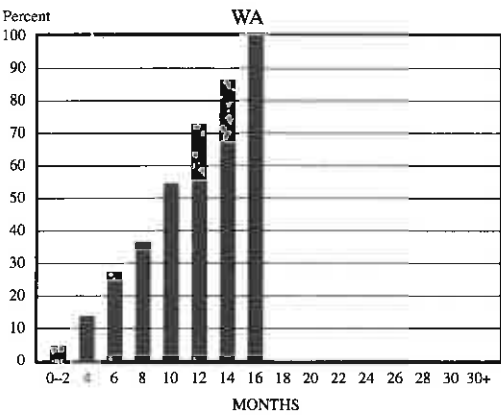
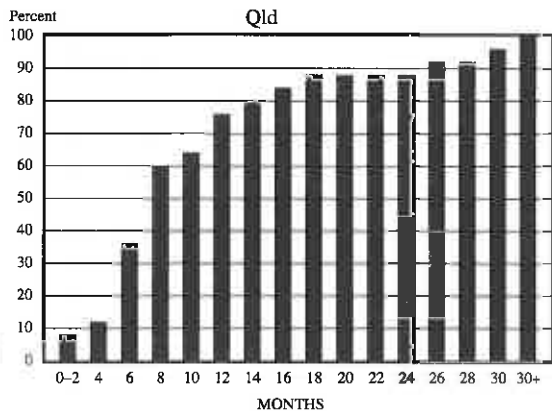
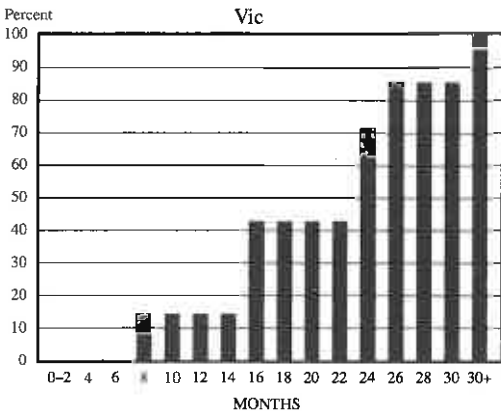
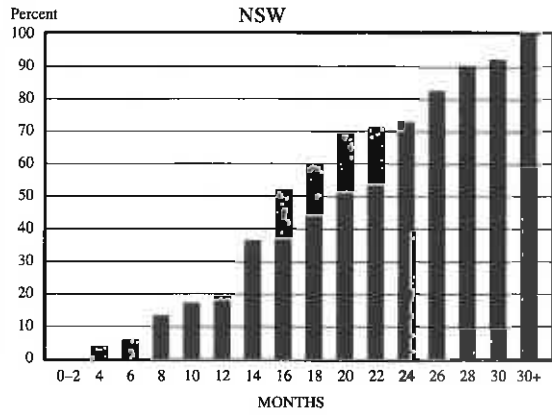
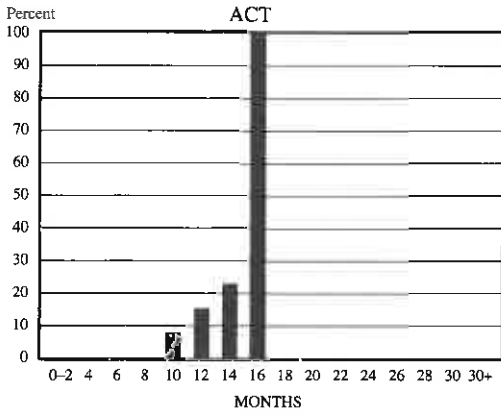
■ Receipt to committal for trial or discharge

Processing times for undefended indictable matters



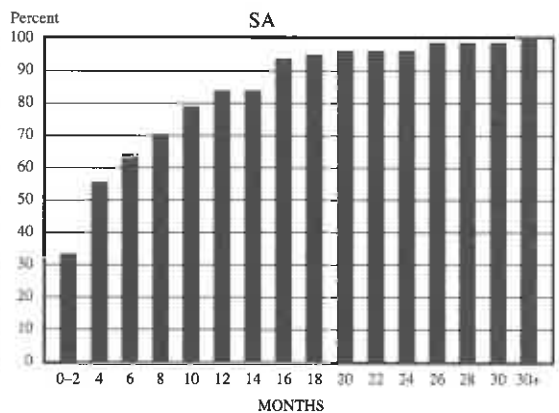
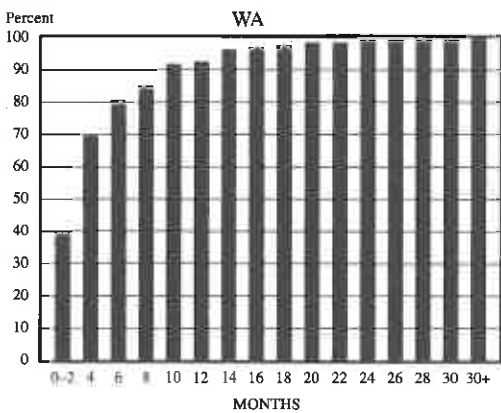
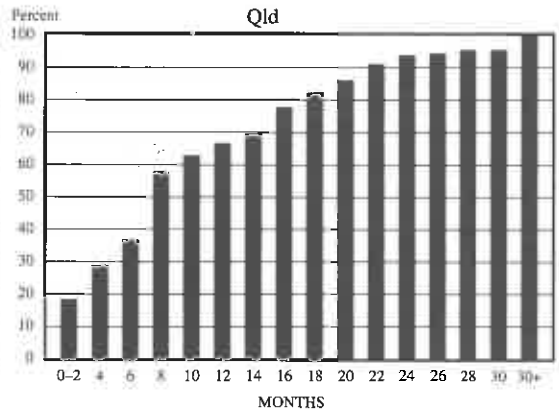
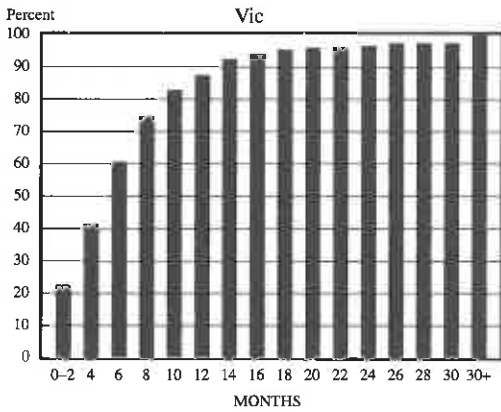
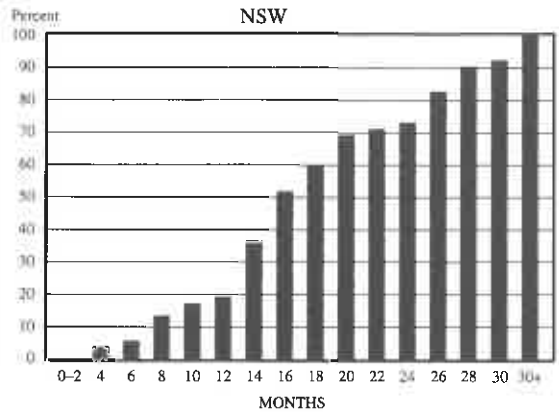
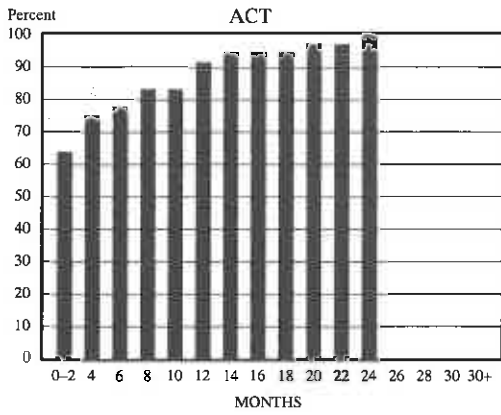
■ End committal to sentencing

Processing times for trials



■ End committal to sentencing/aquittal

Processing times for advices



■ Receipt to decision not to institute prosecution

APPENDIXES

Statement under section 6 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 counsels' briefs, court documents, witnesses' statements and documents provided by referring departments and agencies;
general correspondence including intra-office, ministerial and interdepartmental correspondence;
internal working papers, submissions and policy papers;
internal administration papers and records;
investigative material, a considerable amount of which is held on data base and in the form of tape recordings;
documents held pursuant to search warrants;
accounting and budgetary records including estimates; and
prosecution and civil remedies 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;

- DPP Bulletin*; and
Prosecution Policy of the Commonwealth : Guidelines for the making of decisions in the prosecution process.
- (iv) Particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain physical access to the documents of the agency.

Facilities for the inspection of documents, and preparation of copies 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.

FINANCIAL AND STAFFING RESOURCE SUMMARY

	1992-93 Actual \$'000	1993-94 Appropriation \$'000	1993-94 Actual \$'000
EXPENDITURE BY PROGRAM:			
1. Prosecutions	26,058	34,235	29,852
2. Criminal Assets	4,442	4,611	4,712
3. Executive and Support	15,541	13,672	12,410
Total expenditure from CRF	46,041	52,518	46,974
LESS RECEIPTS OFFSET WITHIN OUTLAYS			
3. Executive and Support	172	262	262
Total receipts offset within outlays	172	262	262
OUTLAYS:			
1. Prosecutions	26,058	34,235	29,852
2. Criminal Assets	4,442	4,611	4,712
3. Executive and Support	15,369	13,410	12,148
Total outlays	45,869	52,256	46,712
REVENUE			
1. Prosecutions	1,065	1,117	908
2. Criminal assets	2	Nil	Nil
Total revenue	1,067	1,117	908
STAFFING BY PROGRAM:			
	ASL	ASL	ASL
1. Prosecutions	285	307.5	317
2. Criminal Assets	54	51	48
3. Executive and Support	129	124	115
	468	482.5	481

RECONCILIATION OF PROGRAMS AND APPROPRIATION ELEMENTS FOR 1993-94

	Sub-program 1 Prosecutions \$	Sub-program 2 Criminal Assets \$	Sub-program 3 Executive and Support \$	Total all programs
Annual appropriations				
Appropriation Act No. 1	34,100,000	4,590,000	13,487,000	52,177,000
Appropriation Act No. 3	134,600	21,400	87,000	243,000
Appropriation under Section 35 of the <i>Audit Act 1901</i>			97,564	97,564
Total Expenditure from Annual Appropriations	34,234,600	4,611,400	13,671,564	52,517,564
Less Receipts offset within outlays				
Miscellaneous receipts			164,740	164,740
Appropriation under Section 35 of the <i>Audit Act 1901</i>			97,564	97,564
	34,234,600	4,611,400	13,409,260	52,255,260

RECEIPTS:	Sub-Program*	1992-93 Actual \$	1993-94 Budget \$	1993-94 Actual \$
Fines and Costs	1.	1,064,637	1,117,000	908,069
Proceeds of Crime Legislation	2.	1,616	Nil	Nil
Miscellaneous	3.	86,404	10,000	164,740
Section 35 of the <i>Audit Act 1901</i>	3.	86,356	195,000	97,564
TOTAL RECEIPTS		1,239,013	1,322,000	1,170,373

GLOSSARY

ACS	Australian Customs Service
AFP	Australian Federal Police
AGS	Australian Government Solicitor
ASC	Australian Securities Commission
ATO	Australian Taxation Office
CAT Fund	Criminal Assets Trust Fund
SCAG	Standing Committee of Attorneys-General
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
PPO	Pecuniary Penalty Order

COMPLIANCE INDEX

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	06	page 191
	07	page ix
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- social justice overview	09	page 1
- corporate structure	10—11	page 3
- portfolio legislation	12- 15	Not applicable to DPP
- statutory authorities	16—17	Not applicable to DPP
- non-statutory bodies	18—21	Not applicable to DPP
- government companies	22—24	Not applicable to DPP
- major documents	25	page ix
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- claims and losses	45—47	page 119
- purchasing	50—51	page 118
- consultancy services	52—57	page 119
- capital works	58	page 119
- laboratory services	59	Not applicable to DPP
External Scrutiny		
- Auditor-General	60—63	page 120
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- Ombudsman	67—69	page 120
▣ courts and tribunals	70—72	page 120
- FOI	73	page 122
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- status of women	84	page 122
- environmental matters and energy management	85—90	page 122



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 1994.

The statement comprises:

- Certificate by the Director and the Acting Senior Executive, Administration
- Aggregate Statement of Transactions by Fund
- Detailed Statement of Transactions by Fund
- Program Summary
- Program Statement
- Statement of Supplementary Financial Information, 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 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 1901*, 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 statements guidelines made by the Minister for Finance, and

presents fairly, in accordance with Statements of Accounting Concepts and applicable Accounting Standards and with the Financial Statement Guidelines for Departmental Secretaries (Modified Cash Reporting), the transactions of the Office for the year ended 30 June 1994 and certain assets and liabilities as at that date.



B.A. Kaufmann
Acting Executive Director

CANBERRA

30 September 1994

OFFICE OF
THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1993-94

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1993-94

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Certification of the Financial Statements

Aggregate Statement of Transactions by Fund

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Notes to the Financial Statements

Glossary of Terms

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1993-94

STATEMENT BY THE DIRECTOR

AND

PRINCIPAL ACCOUNTING OFFICER.

CERTIFICATION

We certify that the financial statements for the year ended 30 June 1994 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 January 1994.



Michael Rozenes
Director



S Walker
A/g Senior Executive,
Administration.

Signed
Dated

24/9/94

Signed
Dated

29/9/94

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
 AGGREGATE STATEMENT OF TRANSACTIONS BY FUND
 FOR THE YEAR ENDED 30 JUNE 1994

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.

	1992-93 Actual \$	1993-94 Budget \$	1993-94 Actual \$
CONSOLIDATED REVENUE FUND (CRF)			
Receipts (Note 3)	1,239,013	1,322,000	1,170,373
Total Receipts CRF	<u>1,239,013</u>	<u>1,322,000</u>	<u>1,170,373</u>
Expenditure from Annual Appropriations } Section 35 of the Audit Act 1901 (Note 2) }	46,041,063	52,372,000	46,974,171
Total Expenditure CRF	<u>46,041,063</u>	<u>52,372,000</u>	<u>46,974,171</u>
LOAN FUND			
Total Loan Fund	<u>Nil</u>		<u>Nil</u>
TRUST FUND			
Opening balance 1 July	4,156		12,080
Receipts	79,841	120,000	359,917
Expenditure	71,917	125,000	180,634
Closing balance 30 June	<u>12,080</u>		<u>191,363</u>
Represented by:			
Cash	12,080		191,363
Investments	Nil		Nil
Total Trust Fund	<u>12,080</u>		<u>191,363</u>

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 1994

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*	1992-93 Actual \$	1993-94 Budget \$	1993-94 Actual \$
Fines and Costs	1. (a)	1,064,637	1,117,000	908,069
Proceeds of Crime Legislation	2. (a)	1,616	Nil	Nil
Miscellaneous	3. (b)	86,404	10,000	164,740
Section 35 of the Audit Act 1901 (Note 2)	3. (b)	<u>86,356</u>	<u>195,000</u>	<u>97,564</u>
TOTAL RECEIPTS TO CRF (Note 3)		<u>1,239,013</u>	<u>1,322,000</u>	<u>1,170,373</u>

* Refer to Program Statement.

(a) - Revenue

(b) - Receipts offset within outlays

The attached notes form an integral part of these statements.

DETAILED STATEMENT OF TRANSACTIONS BY FUND
FOR THE YEAR ENDED 30 JUNE 1994

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 :

	1992-93 Actual \$	1993-94 Appropriation \$	1993-94 Actual \$
Annual Appropriations			
Appropriation Act No.1		52,177,000	
Appropriation Act No.3		243,000	
Appropriation under Section 35 of the Audit Act 1901	46,041,063	97,564	46,974,171
Total Expenditure from Annual Appropriations	46,041,063	52,517,564	46,974,171
TOTAL EXPENDITURE FROM CRF	46,041,063	52,517,564	46,974,171

DETAILS OF EXPENDITURE FROM ANNUAL APPROPRIATIONS

	1992-93 Actual \$	1993-94 Appropriation \$	1993-94 Actual \$
Sub-Program *			
APPROPRIATION ACT NO's. 1 and 3			
Division 148 - Director of Public Prosecutions			
1. Running Costs - Annotated Appropriation (Note 2)	# 46,041,063	52,517,564	46,974,171
	46,041,063	52,517,564	46,974,171

* 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 1994

TRUST FUND

	1992-93 Actual \$	1993-94 Budget \$	1992-94 Actual \$
DPP Services, Other Government and Non Department Bodies (Note 19)			
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 (COMCARE expenses).			
Receipts and Expenditure -			
Opening balance 1 July	4,156		6,989
Receipts	51,106	100,000	103,743
Expenditure	48,273	100,000	98,633
Closing balance 30 June (Note 19)	6,989		12,100

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	Nil		5,091
Receipts	28,735	20,000	256,174
Expenditure	23,644	25,000	82,001
Closing balance 30 June (Note 4)	5,091		179,264

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 1994

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'.

	1992-93 Actual \$'000	1993-94 Budget \$'000	1993-94 Actual \$'000
EXPENDITURE			
Outlays			
1. Prosecutions	26,058	34,100	29,852
2. Criminal Assets	4,442	4,590	4,712
3. Executive and Support	15,369	13,477	12,148
Total Outlays	45,869	52,167	46,712
Plus Receipts Offset Within Outlays			
3. Executive and Support	172	205	262
TOTAL EXPENDITURE FROM CRF	46,041	52,372	46,974
RECEIPTS			
Revenue			
1. Prosecutions	1,065	1,117	908
2. Criminal assets	2	Nil	Nil
Total revenue	1,067	1,117	908
Plus Receipts Offset Within Outlays			
3. Executive and Support	172	205	262
Total Receipts Offset within Outlays	172	205	262
TOTAL RECEIPTS TO CRF	1,239	1,332	1,170

The attached notes form an integral part of these statements.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

PROGRAM STATEMENT
FOR THE YEAR ENDED 30 JUNE 1994

This statement shows details of expenditure from annual appropriations for each sub-program administered by the DPP. Each 'annual' appropriation item contributing to a sub-program is identified by its description followed by an appropriation code in brackets. Partial allocations of appropriation items to sub-programs are indicated by '(p)' following the item. With respect to those sub-programs for which 'expenditure from appropriations' and 'outlays' differ, the Statement discloses information reconciling the amounts concerned. The DPP appeared as program 6.6 in the Attorney-General's Program Performance Statements for 1993-94 and now appears as Sub-program 6.7 in the Attorney-General's Program Budget Measures Statements for 1994-95.

A detailed explanation of each sub-program is provided elsewhere in this Report.

	1992-93 Actual \$'000	1993-94 Budget \$'000	1993-94 Actual \$'000
1. PROSECUTIONS			
Running Costs (148.1)(p)			
Salaries	13,069	15,698	15,273
Administrative Expenses	2,662	3,137	3,089
Legal Services provided by the Attorney-General's Department	Nil	Nil	7
Compensation and Legal Expenses	6,030	9,884	7,598
Property Operating Expenses - Current	3,942	4,266	3,644
Property Operating Expenses - Capital	355	1,115	241
Expenditure from Appropriations	<u>26,058</u>	<u>34,100</u>	<u>29,852</u>
Total Outlays	<u>26,058</u>	<u>34,100</u>	<u>29,852</u>
Revenue Fines and Costs	<u>1,065</u>	<u>1,117</u>	<u>908</u>

The attached notes form an integral part of these statements.

PROGRAM STATEMENT
FOR THE YEAR ENDED 30 JUNE 1994

	1992-93 Actual \$'000	1993-94 Budget \$'000	1993-94 Actual \$'000
2. CRIMINAL ASSETS			
Running Costs (148.1)(p)			
Salaries	2,450	2,493	2,828
Administrative Expenses	474	479	425
Legal Services provided by the Attorney-General's Department	Nil	Nil	1
Compensation and Legal Expenses	538	550	503
Property Operating Expenses - Current	948	995	948
Property Operating Expenses - Capital	32	73	7
Expenditure from Appropriations	<u>4,442</u>	<u>4,590</u>	<u>4,712</u>
Total Outlays	<u>4,442</u>	<u>4,590</u>	<u>4,712</u>
Revenue			
Proceeds of Crime Legislation	<u>2</u>	<u>Nil</u>	<u>Nil</u>
3. EXECUTIVE AND SUPPORT			
Running Costs (148.1)(p)			
Salaries	5,222	5,648	5,186
Administrative Expenses	7,696	4,818	4,828
Section 35 of the Audit Act 1901	n/a	195	97
Legal Services provided by the Attorney-General's Department	30	50	42
Property Operating Expenses - Current	2,510	2,782	2,241
Property Operating Expenses - Capital	<u>83</u>	<u>189</u>	<u>16</u>
Expenditure from Appropriations	<u>15,541</u>	<u>13,682</u>	<u>12,411</u>
Less Receipts Offset Within Outlays			
Section 35 of the Audit Act 1901 (Note 2)	86	195	97
Miscellaneous	<u>86</u>	<u>10</u>	<u>165</u>
Total Receipts offset Within Outlays	<u>172</u>	<u>205</u>	<u>262</u>
Total Outlays	<u>15,369</u>	<u>13,477</u>	<u>12,149</u>

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 1994

	Note	1992-93 \$	1993-94 \$
CURRENT ASSETS			
Cash	4	157,510	578,320
Receivables	5	1,889,494	1,669,282
Other	6	878,667	487,040
Sub-total		2,925,671	2,734,642
NON-CURRENT ASSETS			
Receivables	5	107,918	65,494
Property, Plant and Equipment	7	4,872,625	7,058,497
Sub-total		4,980,543	7,123,991
TOTAL ASSETS		<u>7,906,214</u>	<u>9,858,633</u>
CURRENT LIABILITIES			
Creditors and Accruals	8	921,995	2,010,030
Leases	9	112,452	nil
Other	10	60,229	34,392
Provisions	11	n/a	3,500,767
Sub-total		1,094,676	5,545,189
NON-CURRENT LIABILITIES			
Leases	9	209,866	nil
Provisions	11	n/a	3,368,830
Sub-total		209,866	3,368,830
TOTAL LIABILITIES		<u>1,304,542</u>	<u>8,914,019</u>

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 1994

NOTE 1

STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

- (a) **Base 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 January 1994.
- (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 library holdings which were valued by an expert valuer at second hand replacement value.
- (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 as receipts and receivables for 1992-93 and 1993-94.

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.

As from 1 July 1994 the DPP will take over responsibility for receivables previously due to other agencies. These amounts will be recorded as DPP Receipts from 1994-95 and will be recorded in the DPP's Statement of Assets and Liabilities.

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 and its basis will be reassessed in future years.

- (c) **Program Statement** - Common costs and services were 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 or accommodation occupied for each program. The Prosecutions Program includes the costs of War Crimes and Corporate Prosecutions.

Due to the small size of the Office and the common use of most significant assets, this Office operates only a single Statement of Assets and Liabilities. Therefore, a Program dissection of items included in the Statement of Supplementary Financial Information is not readily available. A fair estimate of the usage of resources of the Office is indicated by the proportion of staffing resources used by a program.

PROGRAM	Average Staffing levels	Square Metres occupied
Prosecutions	55.9 %	45.8 %
Criminal Assets	12.7 %	16.1 %
Executive and Support	31.4 %	38.1 %
Total	100.0 %	100.0 %

NOTE 1 - STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES (continued)

- (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** - 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. Depreciation is calculated by the straight-line method. Expected scrap value and useful life are estimated by officers of the DPP.

All assets, except for library holding are valued at historical cost. 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. Library holdings were valued by an expert valuer at second hand replacement value. Library holdings are not depreciable and will be re-valued each five years.

- (f) **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.
- (g) **Administrative Expenses** - Administrative Expenses include minor capital expenditure items (i.e. costing less than \$250,000) as they are considered part of ordinary annual services for the purposes of the Appropriation Acts.
- (h) **Creditors** - In 1992-93 this figure included 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. For 1993-94 accrued expenses are shown separately.
- (i) **Employee Entitlements** - Provisions have been made for vesting employee entitlements which Office employees have accumulated as a result of the rendering of their services to the Office up to 30 June 1994. Amounts have been provided for Recreation Leave, Long Service Leave, Leave Bonus and Performance Pay, but not for Superannuation entitlements. Long Service Leave provisions have been included for officers who have accumulated more than five years of service. Provisions have been apportioned between current and non-current based on previous histories of payments and known payments due.

NOTE 2**RUNNING COSTS (ANNOTATED APPROPRIATION DIVISION 148.1.00)**

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 148.1	Section 35 Receipts	Total Appropriation	Expenditure
\$	\$	\$	\$
52,420,000	97,564	52,517,564	46,974,171

NOTE 3**RECEIPTS**

(a) Receipts in 1993-94 were \$1,170,373 (\$1,239,013 in 1992-93). As from 1 July 1994 the DPP will take over responsibility for Receivables previously due to other agencies. These amounts will be recorded as DPP Fines and Costs Receipts from 1994-95 and will be recorded in the DPP's Financial Statements. This will have the effect of approximately doubling the DPP's reported Fines and Costs receipts.

(b) Receipts and Refunds

The CRF receipt figures in the Detailed Statement of Transactions by Fund are comprised of:

Description	Receipts \$	Refunds \$	Net Amount \$
Fines and Costs	909,493	1,425	908,069
Proceeds of Crime Legislation	Nil	Nil	Nil
Section 35 of the Audit Act 1901	97,564	Nil	97,564
Miscellaneous	162,392	(2,349)	164,740

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.

	1992-93 \$	1993-94 \$
<u>Cash at Bank -</u>		
Legal Advance accounts	39,883	42,312
Collectors Receipts Account	Nil	188,626
<u>Cash on Hand -</u>		
Legal Advance accounts	3,515	3,022
Other Advance accounts, cash floats	25,074	32,821
<u>Cash on Trust - Held outside Commonwealth Public Account</u>		
Fines and Costs (Note 18)	83,947	132,275
Sub-total held outside CPA	152,419	399,056
<u>Cash on Trust - Held in Commonwealth Public Account</u>		
DPP Law Enforcement Projects	5,091	179,264
Sub-total held in CPA	5,091	179,264
Total Cash at bank and on hand	157,510	578,320

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*. Money held in the account have been granted for the purchase of computer aided court presentation systems.

\$40,921 was held in DPP Australian Government Credit Card Settlement Accounts as at 30 June 1994 (\$134,599 as at 30 June 1993).

NOTE 5**RECEIVABLES****(a) Receivables - DPP**

	1992-93	1993-94
	\$	\$
Current :		
Fines and Costs	2,138,670	1,859,898
Less doubtful debts	<u>261,583</u>	<u>196,219</u>
	1,877,087	1,663,679
Other	15,394	5,603
Less doubtful debts	<u>2,987</u>	<u>Nil</u>
	12,407	5,603
Net Current receivables	<u>1,889,494</u>	<u>1,669,282</u>
Non-Current :		
Fines and Costs	122,957	73,219
Less doubtful debts	<u>15,039</u>	<u>7,725</u>
Net Non-Current Receivables	107,918	65,494
Total Net Receivables	<u>1,997,412</u>	<u>1,734,776</u>

(b) Age Analysis - Receivables DPP

	1992-93	1993-94
	\$	\$
Gross Receivables	<u>2,277,021</u>	<u>1,938,720</u>
Not overdue	840,021	239,689
Overdue less than 30 days	46,882	58,554
Overdue 30 to 60 days	30,537	27,982
Overdue more than 60 days	<u>1,359,581</u>	<u>1,612,495</u>
Total Receivables	<u>2,277,021</u>	<u>1,938,720</u>

NOTE 5 - RECEIVABLES - continued

(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)	1992-93 \$	1993-94 \$
Gross Receivables outstanding	4,979,561	4,557,020
Less doubtful debts	347,075	665,781
Net receivables outstanding	<u>4,632,486</u>	<u>3,891,239</u>
Non - Commonwealth Public Account Revenue (Non-DPP)		
Gross Receivables outstanding	404,862	352,793
Less doubtful debts	6,382	2,187
Net receivables outstanding	<u>398,480</u>	<u>350,606</u>

Total net receivables outstanding for all Commonwealth Agencies (including DPP) as at 30 June 1994 was \$5,976,621 (as at 30 June 1993 it was \$7,028,378).

(d) Write-offs 1993-94

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 1993-94 the following amounts were written out of the books:

Agency / Type	DPP	CPA	NON-CPA	TOTAL
Prison Sentence	69,936	188,391	406	258,733
Community Service	46,584	52,910	1,400	100,894
Irrecoverable	25,545	205,160	315	231,020
Total Write-offs	<u>142,065</u>	<u>446,461</u>	<u>2,121</u>	<u>590,647</u>

NOTE 6**OTHER CURRENT ASSETS - PREPAYMENTS:**

Prepayments represent amounts paid but for which goods or services have not yet been received at 30 June 1994.

	1992-93 \$	1993-94 \$
Administrative Expenses :		
Library	133,350	171,741
Computer	51,344	1,564
Other	113,908	135,886
Legal Expenses	3,649	26,284
Property Operating Expenses:		
Current	576,416	151,565
Total Prepayments	<u>878,667</u>	<u>487,040</u>

NOTE 7**PROPERTY, PLANT AND EQUIPMENT**

The implementation of a new computerised asset system was finalised in 1993-94 in the DPP. The information reported as at 30 June 1994 was validated by stocktakes conducted during the year.

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 :	1992-93	1993-94
1. Items at cost :		
Computers at cost	4,835,769	5,179,770
Less accumulated depreciation	<u>1,820,649</u>	<u>2,042,398</u>
	3,015,120	3,137,372
Furniture at cost	404,715	432,661
Less accumulated depreciation	<u>155,510</u>	<u>218,746</u>
	249,205	213,915
Plant and Equipment at cost	1,194,202	1,757,544
Less accumulated depreciation	<u>811,029</u>	<u>999,470</u>
	383,173	758,074
Fitout at cost	2,621,420	2,440,349
Less accumulated amortisation	<u>1,941,156</u>	<u>503,888</u>
	680,264	1,936,461
Sub-total Property, Plant and Equipment at cost	<u>9,056,106</u>	<u>9,810,324</u>
Less accumulated depreciation	<u>4,728,344</u>	<u>3,764,502</u>
Sub-total Net Property, Plant and Equipment	<u>4,327,762</u>	<u>6,045,822</u>
2. Items at valuation :		
Library Holdings at valuation	n/a	1,012,675
3. Finance Leases at cost:		
Plant and Equipment	544,863	Nil
Total Property, Plant and Equipment	9,600,969	10,822,999
Less accumulated depreciation	<u>4,728,344</u>	<u>3,764,502</u>
Net Property, Plant and Equipment	<u>4,872,625</u>	<u>7,058,497</u>

NOTE 8

CREDITORS AND ACCRUALS:

Creditors and Accruals at 30 June 1994 totalled \$2,010,030 , (\$921,995 in 1992-93). Of this total, creditors of \$127,464 were overdue (\$62,380 in 1992-93).

The 1992-93 figure includes Creditors and Accrued Expenses. These two categories have been dissected for 1993-94, but a comparative dissection is not available for 1992-93.

	<u>1992-93</u>		<u>1993-94</u>	
	Creditors plus Accruals	Creditors	Accrued Expenses	Creditors plus Accruals
	\$	\$	\$	\$
Salaries				
Salaries			82,333	32,333
Administrative Expenses :				
Library	31,625	49,674	4,692	54,366
Computer	16,051	62,178	32,744	94,922
Other	449,029	272,844	253,632	526,476
Legal Expenses	390,315	495,863	689,464	1,185,327
Property Operating Expenses:				
Current	34,975	39,323	27,283	66,606
Total Creditors	<u>921,995</u>	<u>919,882</u>	<u>1,090,148</u>	<u>2,010,030</u>
Age Analysis				
Less than 30 days	60,961	120,489	n/a	120,489
30 - 60 days	703	1,034	n/a	1,034
More than 60 days	716	5,942	n/a	5,942
Total	<u>62,380</u>	<u>127,464</u>	n/a	<u>127,464</u>

NOTE 9**LEASE LIABILITIES**

	1993 \$	1994 \$
Amounts contracted and provided for in the accounts:		
Current:	166,509	Nil
Non Current:		Nil
Due within 1-2 years	162,565	Nil
Due within 2-5 years	82,281	Nil
Greater than 5 years	Nil	Nil
	<hr/> 244,846	<hr/> Nil
 Total Lease Commitment	 411,355	 Nil
 Less future finance charges	 <hr/> 89,037	 <hr/> Nil
 Minimum lease payments	 <hr/> 322,318	 <hr/> Nil
 Current Lease Liability	 112,452	 Nil
Non-Current Lease Liability	209,866	Nil

Leases for photocopying equipment were paid out during 1993-94. No financing leases were in place at 30 June 1994

NOTE 10**OTHER CURRENT 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 Agencies for Acts administered by them (eg Federal Airports Corporation, Health Insurance Commission, etc).

The liability due to other agencies for 1993-94 from the Fines and Costs Trust Account balances as at 30 June 1994 is based on historical trends. The calculated liability for 1993-94 is \$34,392 (\$60,229 in 1992-93).

Under the new accounting arrangements (Note 1(b)) monies previously disbursed to budget funded departments and agencies will be banked to the credit of DPP revenue accounts from 1 July 1994.

NOTE 11**PROVISIONS :**

	1992-93 \$	1993-94 \$
CURRENT :		
Recreation Leave	n/a	2,611,760
Long Service Leave	n/a	277,076
Performance Pay	n/a	611,931
	<hr/>	
Total Current Provisions	n/a	3,500,767
NON-CURRENT :		
Long Service Leave	n/a	3,368,830
Total Non-current Provisions	n/a	3,368,830
	<hr/>	
TOTAL PROVISIONS	n/a	6,869,597

NOTE 12**CONTRACTED EXPENDITURE**

DPP has \$45,066,988 contracted liabilities which remain unperformed at 30 June 1994 (\$15,658,665 at 30 June 1993).

Item	Not later than one year	1 - 2 years	2 - 5 years	Later than 5 years	Total
Library	579	Nil	Nil	Nil	579
Other	2,601,573	3,464,105	16,342,797	22,597,434	45,005,909
Legal	60,500	Nil	Nil	Nil	60,500
	<hr/>				
Total	2,662,652	3,464,105	16,342,797	22,597,434	45,066,988

Other contracted expenditure largely relates to leases for accommodation. The increase on 1992-93 is due to three DPP offices renewing leases or negotiating new lease during 1993-94.

NOTE 13

ACT OF GRACE PAYMENTS, WAIVERS AND WRITE-OFFS

No payments were made during the financial year 1993-94 pursuant to authorisations given under Section 34A(1) of the *Audit Act 1901* (nil in 1992-93).

No payments were waived during the financial year 1993-94 under subsection 70C(2) of the *Audit Act 1901* (nil in 1992-93).

The following details are furnished in relation to amounts written off by the Office during the financial year 1993-94 under sub-section 70C(1) of the *Audit Act 1901* (167 amounts totalling \$74,585 were written off in 1992-93).

	Number	\$
(i) Irrecoverable amounts of revenue	7	5,170
(ii) Irrecoverable debts and overpayments	9	1,243
(iii) Amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Minister, be uneconomical	54	3,101
Total	<hr/> 70	<hr/> 9,514

The following details are furnished in relation to amounts written off that would otherwise have been disbursed to other agencies during the financial year 1993-94.

	Number	\$
(i) Irrecoverable amounts of revenue	22	197,681
(ii) Irrecoverable debts and overpayments	16	3,890
(iii) Amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Minister, be uneconomical	24	3,904
Total	<hr/> 62	<hr/> 205,475

NOTE 14

COMMITMENTS

The DPP has entered into commitments as at 30 June 1994 of \$11,187,606 (\$1,068,765 as at 30 June 1993) and are payable as follows:

Item	Not later than one year	1 - 2 years	Later than 2 years	Total
Library	123,702	Nil	Nil	123,702
Other	393,471	42,785	44,510	480,766
Legal	9,148,613	1,434,525	Nil	10,583,138
Total	9,665,786	1,477,310	44,510	11,187,606

NOTE 15

LOSSES AND DEFICIENCIES IN PUBLIC MONEYS AND OTHER PROPERTY

No action was taken during the financial year 1993-94 under Part XIA of the *Audit Act 1901*.

NOTE 16

LIABILITIES NOT RECOGNISED

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 these 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.

NOTE 17

AUDITOR'S REMUNERATION

Total remuneration paid, or due and payable to the Australian National Audit Office in relation to the audit of the 1993-94 Financial Statement is estimated at \$122,000 (\$122,000 for 1992-93).

No other benefits were received by the Australian National Audit Office.

NOTE 18

FINES and COSTS TRUST ACCOUNT

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. In 1993-94, moneys collected were 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).

As from 1 July 1994 the DPP took over responsibility for receivables previously due to other agencies. These amounts will be recorded as DPP Receipts from 1994-95 and will be recorded in the DPP's Statement of Assets and Liabilities.

	1992-93 \$	1993-94 \$
Opening Balance 1 July	36,304	83,947
Receipts	2,924,107	2,904,035
Expenditure	<u>2,876,464</u>	<u>2,855,707</u>
Closing Balance 30 June	<u>83,947</u>	<u>132,275</u>

This was represented by (see also Note 4):

	1992-93 \$	1993-94 \$
Cash at bank	83,662	130,956
Cash on hand	285	1,319
	<u>83,947</u>	<u>132,275</u>

NOTE 19

COMCARE TRUST ACCOUNT

The Trust Account operates for the purpose of receiving, from Comcare, amounts payable to employees under determinations in accordance with the *Safety, Rehabilitation and Compensation Act 1988*.

The DPP pays an annual premium to Comcare for workers compensation.

Until a determination is made by Comcare, this Office makes payments from the salary notional item to the employee. When Comcare makes a determination in respect of a case they pay monies into the Trust Account to meet the determined costs. Upon receiving a determination and funds from Comcare, the Office processes a journal to credit that amount back to salary expenditure and to debit the Trust Account.

The balance of \$12,100 as at 30 June 1994 (\$6,989 as at 30 June 1993) for the Trust Account is the total of amounts received from Comcare to be paid claimants in accordance with determinations.

This Trust Account does not form part of the disclosure requirements under cash in Note 4 or Creditors in Note 8.

NOTE 20

RESOURCES RECEIVED FREE OF CHARGE

During the 1993-94 financial year, a number of Commonwealth and state 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:

Attorney-General's Department

Prosecution and related services in Tasmania and the Northern Territory, where the DPP does not have offices, are provided by the Australian Government Solicitor.

The Office of the Commonwealth Director of Public Prosecutions took over the function of payroll processing for its own staff in September 1991 from the Attorney-General's Department. Payroll support was provided by Attorney-General's in the way of computer resources until February 1994, at which time the DPP transferred to a bureau service provided by the Department of Administrative Services on a fee for service basis.

Department of Finance

The provision of payroll and accounting services.

State Prosecutors

Conduct minor prosecutions on behalf of the DPP in remote locations.

NOTE 21

UNACQUITTED ADVANCES

As at 30 June 1994, the Department had no unacquitted advances.

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 all operational expenditure (excepting salaries), not just expenditure on office based activities. 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. The Audit Act is to be repealed with effect from 1 July 1995 and replaced with three new acts, including the Financial Management and Accountability Act which will define the accounting environment for this Office in future years.

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.

CONTINGENT LIABILITIES: obligations which will only become payable if a specific future event occurs (eg claims for damages and pending law suits).

COMPENSATION and LEGAL EXPENSES: Includes legal outgoings incurred in the course of a prosecution. It comprises largely payments to barristers and solicitors, but also includes case related costs such as transcript, interpreters, court fees, process serving, witness expenses and other legal outgoings.

COMMITMENTS: an intention to incur an obligation which will give rise to a future sacrifice of service potential or future economic benefits.

CONTRACTED EXPENDITURE: material liabilities contracted and which remain unperformed as at 30 June.

CURRENT: an asset or liability that, in the ordinary course of operations, would be consumed or converted into cash or be due and payable within 12 months after the end of the financial year

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.

FINES and COSTS: amounts awarded by the Courts as fines and costs penalties as a result of prosecutions under Commonwealth legislation. A significant amount of potential receipts may not be received, 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.

LIABILITY: an item that represents a future sacrifice of service potential or future economic benefits that the Office is presently obliged to make. Includes provisions for employee entitlements excluding superannuation.

OUTLAYS: An economic concept which shows the net extent to which resources are directed through the Budget to other sectors of the economy after offsetting recoveries and repayments against relevant expenditure items ie outlays consist of expenditure net of associated receipt items. The difference between outlays and revenue determines the Budget balance (ie surplus or deficit). See also 'Appropriations'; and 'Receipts offset within outlays'.

PREPAYMENTS: Prepayments include amounts paid by the Office in respect of goods or services (excluding approved grants) that have not been received as at 30 June. (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). See also 'Receipts'.

TRUST FUND: a cash based, non lapsing appropriation, used either as a working account for activities with a commercial orientation or to hold monies for specific purposes set out in legislation or under arrangements where the Commonwealth is a trustee for private monies.

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