



Commonwealth Director of Public Prosecutions

Annual Report 1996 - 97

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Commonwealth Director of Public Prosecutions

Annual Report 1996 - 97

Letter of Transmittal

The Hon. Darryl Williams AM QC 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 1997, in accordance with section 33(1) of the Director of Public Prosecutions Act 1983.

Yours faithfully,

BRIAN MARTIN QC

Director of Public Prosecutions

1 September 1997





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 the Requirements for Departmental Annual Reports.

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;*
- *Guidelines for Dealings between Commonwealth Investigators and the Commonwealth Director of Public Prosecutions; and*
- *Program Performance Statement for the Attorney-General's Portfolio.*

The DPP also has a homepage on the Internet. It can be accessed at www.nla.gov.au/dpp/dpphp.html. The homepage carries the most recent Annual Report, copies of speeches and some general information about the DPP.

The DPP has also produced an information video entitled *Prosecuting in the Public Interest*, which outlines the work of the Office. Copies of the documents or the video can be obtained by writing to the DPP at any of the addresses that appear at the start of this Report.





Director's overview

This is my first Annual Report. In March 1997 I was privileged to be appointed as the fourth Commonwealth Director of Public Prosecutions.

During the first few months of my five year term I was quickly made aware of the complexities involved in the running of an organisation that is, in essence, a national legal practice. Notwithstanding those complexities, it was readily apparent that this is a well organised and professional Office with a highly capable and conscientious staff.

The credit for the current healthy state of the Office rests with all the staff and, in particular, my predecessor, Michael Rozenes QC and the previous Associate Director, Ed Lorkin. They served the Office with distinction and will be missed.

The past year produced a number of challenges and difficulties. Budgetary constraints in recent years have resulted in a loss of 81 staff since the end of 1993. This has necessarily increased the workload of all officers.

In an endeavour to continue to improve the efficiency of our operations, we recently brought into operation the Best Practice Review Committee with the object of reviewing the practices and procedures within all offices of the DPP. The Committee has commenced its work in Sydney, which is our largest office. I am confident improved efficiencies will result from the review and it will assist in ensuring that, after making due allowances for different State procedures, an appropriate degree of consistency is achieved between our offices.

The efficiency of our operations will also be assisted by the assessment of the entire practice against formal performance indicators. This year we are reporting the performance of the Office against those indicators for the first time.

It has not been a simple task to develop performance indicators for the DPP. We cover a wide range of activities and very little of what we do involves straightforward processes. The present set of indicators represents our first attempt to produce a single set extracted from information systems in order to provide a useful measure of performance across our diverse functions. They should be viewed in that context as undoubtedly modifications will be necessary over the next few years.

The challenge of efficiency of operations extends to the conduct of trials. The difficulties associated with the shortage of legal aid funds are readily apparent and we have a number of major cases across the country in which those difficulties have or may prevent trials for serious offences proceeding.

The problem of legal aid is not just a problem for governments. Everyone involved in the criminal justice process must accept a degree of responsibility and work toward a less expensive system in which trials are shortened.

For our part, the DPP is acutely aware of the need to restrict the number of charges to those reasonably necessary in order to adequately reflect the criminality of the conduct alleged. In some trials, however, a large number of charges are required. In addition, those conducting our prosecutions are always endeavouring to identify the real issues in dispute and to avoid the calling of unnecessary evidence by reaching agreement as to facts with accused persons. There remains, however, a reluctance on the part of many defence counsel to cooperate fully in this process.

In the course of the year the Government rejected the recommendation contained in the June 1996 report of the National

Commission of Audit that the existing role of the DPP prior to and subsequent to the decision to prosecute should be made contestable and contracted out. That recommendation had the potential to undermine the independence of the prosecution process without offering any identifiable benefits to the Australian community.

The independence and impartiality of the DPP is an important feature of our work with other agencies involved in the law enforcement process. The DPP's role with those agencies in providing advice during investigations and in assisting with the training of investigators continues to develop.

The DPP has put substantial effort not only into building good relations with the Commonwealth's investigative agencies but with giving them support and assistance to perform their work. I am pleased to report that we are close to completing an investigation manual for officers of the new Commonwealth Service Delivery Agency.

That document will provide practical guidance to the officers of the CSDA who investigate alleged offences against programs administered by that agency. The manual will stand alongside the Guidelines for Dealings between Commonwealth Investigators and the DPP which were distributed in late 1996, the Best practice guidelines for document handling and the DPP Search Warrants Manual.

I place on record my gratitude to the Attorney-General, the Honourable Daryl Williams AM QC MP, for his assistance. While the DPP must maintain its independence, common understandings and goals between the DPP and the Attorney-General in respect of law enforcement are obviously of great benefit. I am fortunate to enjoy a good working relationship with the Attorney-General at a personal level.

I and the staff of the DPP look forward to the coming year with optimism. The complex and diverse nature of our operations are demonstrated in this Report. We are conscious of the need to provide competent and efficient service to the various client agencies and are confident that we can continue to improve in many areas of our operation. I thank all staff for the warmth of our welcome to me and look forward to an enjoyable and successful year.

Brian Martin QC





Chapter 1 - Office of the DPP

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, Brian Martin QC, was appointed from the South Australian Bar for a period of five years commencing on 10 March 1997. He replaced Michael Rozenes QC, whose term in office came to an end on 31 January 1997. There is provision under section 18 of the DPP Act for the Director to be appointed subject to terms and conditions. No terms or conditions were specified in the case of the present Director.

The Associate Director, Edwin J. Lorkin, completed his term of appointment on 3 July 1997. The position of Associate Director is currently filled on an acting basis by Peter Walshe, whose substantive position is First Deputy Director.

The DPP is within the portfolio of the Commonwealth Attorney-General, but the Office operates independently of the political process. Under section 8 of the DPP Act the Attorney-General has power to issue guidelines and directions to the DPP. 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.

There was one direction under section 8 during 1996-97. That direction set out a procedure to be followed by the DPP in cases where Parliament or a Parliamentary Committee seeks access to information held by the DPP. The direction was signed by the Attorney-General on 20 October 1996 and was published in Gazette number GN44 on 6 November 1996.

Corporate plan

In the course of the year the DPP revised and re-issued its Corporate Plan. A copy of the new plan appears at Appendix 2. The new Corporate Plan will cover the period 1997 to 2000.

The DPP's vision, as set out in the Corporate Plan, is to provide a prosecution service to the Commonwealth and the people of Australia which is fair, independent, accountable, effective and efficient in order to advance social justice by deterring and discouraging breaches of Commonwealth law and ensuring that serious offenders are brought to justice.

Social justice and equity

The DPP endeavours to advance social justice and equity by enforcing the criminal law and by ensuring that all alleged offenders are treated equally.

Role

The primary role of the DPP is to prosecute offences against Commonwealth law, including the 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 arrangement with the DPP. State authorities also conduct some Commonwealth prosecutions, again for reasons of convenience. The DPP is also responsible for the conduct of 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 role is to ensure that Commonwealth offenders who have derived financial benefits from crime, 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 prosecute when there has been an investigation by the Australian Federal Police or another investigative agency. However, the DPP regularly provides 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 and the DPP receives briefs of evidence from, and provides legal advice to, a wide range of different agencies.

In December 1996 the DPP published a document entitled *Guidelines for Dealings between Commonwealth Investigators and the Commonwealth Director of Public Prosecutions*. As the title suggests, the document sets out the principles which govern the relationship between the DPP and officers who investigate offences against Commonwealth law. It also gives practical guidance on how a range of issues should be resolved.

The present document applies only to dealings between the DPP and investigators who are not police officers. The DPP has commenced discussions with the Australian Federal Police with a view to developing a similar document that will apply to dealings between the DPP and police officers.

Prosecution policy

All decisions made in the course of the prosecution process are regulated by published guidelines that are set out in the *Prosecution Policy of the Commonwealth*. That document has been tabled in Parliament and is available from any DPP office listed at the front of this Report.

The threshold issue in any criminal case is whether charges should be laid, or continued, against the alleged offender. The criteria for that decision are set out in Part 2 of the Prosecution Policy.

In general terms, there is a two stage test that must be satisfied:

- there must be sufficient evidence to prosecute the case (which requires not just that there be a prima facie case but that there also be reasonable prospects of conviction); and
- it must be clear from the facts of the case, and all the surrounding circumstances, that prosecution would be in the public interest.

It should be noted that it is not the DPP's role to decide whether a person has committed a criminal offence or to press for conviction at all costs. The prosecutor's role is to present all relevant admissible evidence to the jury, or other tribunal of fact, so that it can determine, after considering any additional evidence that may be presented by the defence, whether it is satisfied beyond reasonable doubt that the defendant is guilty as charged.

Other topics addressed in the Prosecution Policy include:

- indemnities;
- mode of trial;
- charge bargaining;
- declining to proceed after committal;
- ex-officio indictments; and

- prosecution appeals.

Functions and powers

The DPP is created by statute and 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 like the *Proceeds of Crime Act 1987*.

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

- to prosecute indictable offences against State law where, with the consent of the Attorney-General, he holds an authority 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 the 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. To date there has only been one instrument signed under section 6(1)(g) which has general application. That instrument was signed on 3 July 1985 and, among other things, it ensures that the DPP has power to conduct all prosecutions under taxation laws.

The DPP does not normally conduct prosecutions under the *Customs Act 1901*, except in the case of narcotics offences. The responsibility for prosecuting non-narcotic matters, which are enforceable by quasi-criminal proceedings, rests with the Australian Government Solicitor.

The Director 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 currently conducted on behalf of the DPP by the Australian Government Solicitor pursuant to an arrangement under section 32 of the DPP Act.

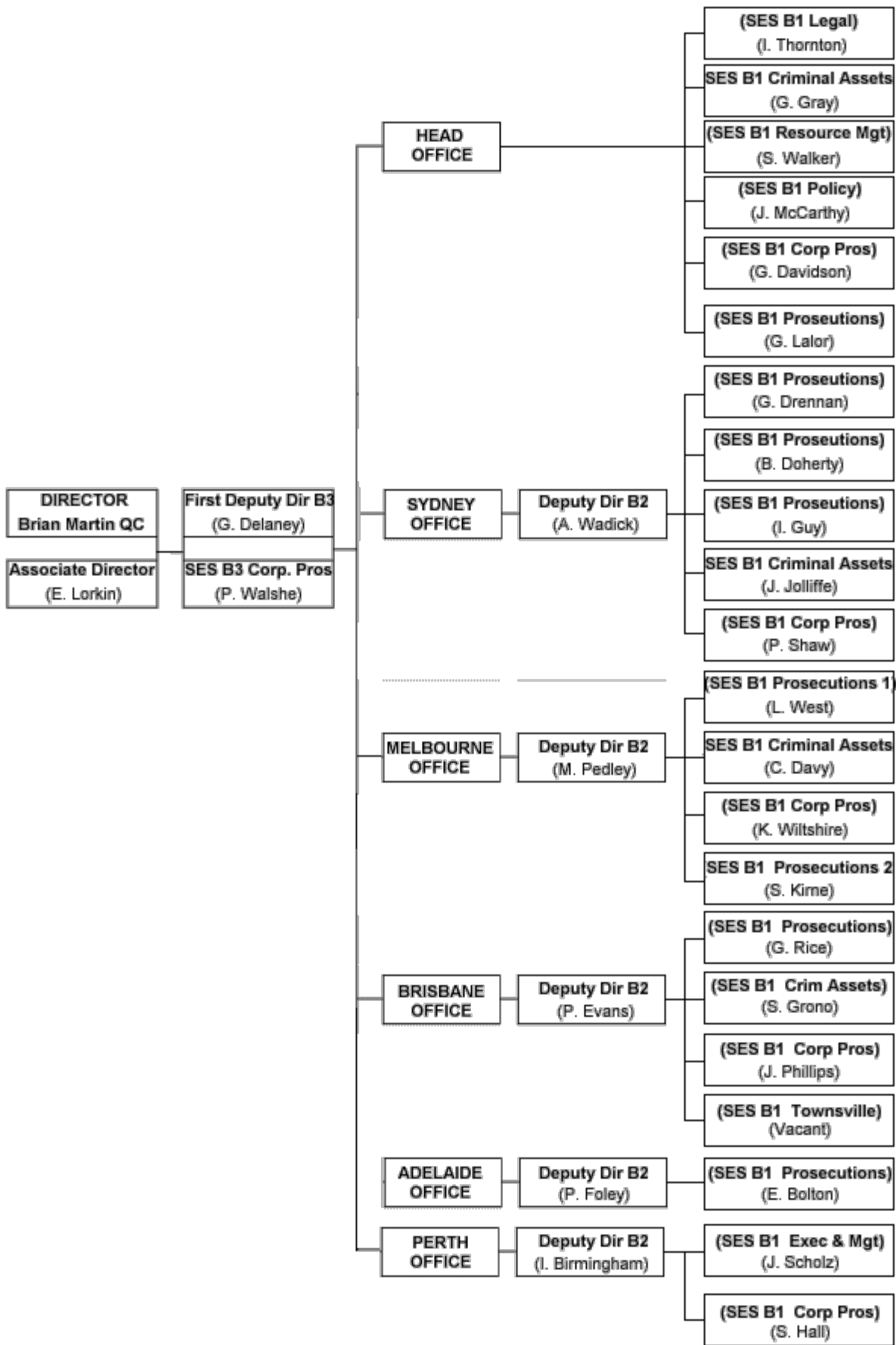
Head Office provides policy and legal advice to the Director, coordinates activities across Australia, liaises at national level with other agencies and provides administrative support to the Director. Head Office is also responsible for conducting prosecutions for Commonwealth offences in the ACT and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

Head Office is made up of six branches: Litigation, Corporations, Criminal Assets, Policy, ACT Prosecutions and Resource Management.

The DPP regional offices are responsible for conducting prosecutions and civil recovery action in the relevant region. Each office is divided into at least four branches: General Prosecutions, Corporate Prosecutions, Criminal Assets and Resource Management. The Sydney office has two additional General Prosecutions branches and the Melbourne office has one additional General Prosecutions Branch. The sub-office in Townsville is not divided into units.

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

SENIOR MANAGEMENT CHART





Chapter 2 - Exercise of statutory powers

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. In addition, the Director may decide, after charges have been laid and a prosecution commenced in a summary matter, not to prosecute.

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 47 no bill applications received from defendants or their representatives. Of these, 12 were granted and 35 refused. A further 12 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 24. A breakdown of these statistics appears in Table 1 at the end of this chapter.

Under the Prosecution policy of the Commonwealth, the decision to prosecute requires that there be reasonable prospects of conviction and that the public interest requires a prosecution. Of the matters discontinued prior to trial, the sufficiency of evidence was the main factor in 14 cases. In the remaining 10 cases, public interest factors were the main reason for discontinuing. These factors include the defendant's health, circumstances surrounding the offence and general humanitarian grounds. A breakdown of these statistics appears in Table 2 at the end of this chapter.

Appeals

The Director has the 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 appealing. The Office only appeals in cases where there is a clear public interest in seeking review of a decision. The policy is to institute appeals only where there are strong prospects for success. 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 Table 3 at the end of this chapter. Statistics on the outcome of appeals by the DPP in cases decided during the 1996-97 are set out in the Prosecution Tables that appear later in 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.

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

In the past year the Director or the Associate Director signed a total of 45 undertakings under sections 9(6), 9(6B) and 9(6D) in 22 matters. In some cases, indemnities were given to more than one witness in the same case. A breakdown of the figures for 1996-97 appears in Tables 4 and 5 at the end of this chapter.

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 NCA 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. The DPP gave one undertaking under that Act in 1996-97.

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. This power was exercised in six matters during 1996-97. In all six cases, the Director took over and discontinued the prosecution.

Ex-officio indictments

The Director has power under section 6(2D) of the DPP Act to file an indictment against a person for charges in respect of which they have not been committed for trial. The Director exercised the power, which cannot be delegated, nine times in 1996-97. On four occasions the ex-officio indictment was filed with the defendant's consent. Details are at Table 6 at the end of this chapter.

Consent to conspiracy proceedings

Amendments to the Crimes Act, which came into force in September 1995, provide that conspiracy proceedings must not be commenced without the consent of the Director of Public Prosecutions. The legislation does not expressly require the Director to consent to conspiracy prosecutions under Acts other than the Crimes Act. However, as a matter of policy the DPP has decided that the Director should consider all proposed conspiracy charges and should review all current conspiracy cases. In 1996-97 the Director's gave consent in relation to 53 defendants who were being prosecuted in respect of 23 alleged conspiracies. A breakdown of these statistics appears in Table 7 at the end of this chapter.

Table 1: No bill matters

State	Applications by defence Granted	Applications by defence Refused	Action by DPP	Total discontinued
NSW	5	17	5	10
Vic	4	3	1	5
Qld	2	6	1	3
WA		5	5	5

SA		2		
Tas	1			1
NT				
ACT		2		
Total	12	35	12	24

Table 2: Reasons for discontinuing prior to trial

State	Evidentiary Reasons	Public Interest Reasons	Total
NSW	8	2	10
Vic		5	5
Qld	3		3
WA	3	2	5
SA			
Tas		1	1
NT			
ACT			
Total	14	10	24

Table 3: DPP appeals

State	Drugs	Fraud	Corp.	Other	Total
NSW	4	6	2	1	13
Vic	1	2			3
Qld					
WA			2	1	3
SA		2		1	3
Tas				1	1
NT		1			1
ACT		1			1
Total	5	12	4	4	25

Table 4: Indemnities - numbers

State	s.9(6)	s.9(6B)	s.9(6D)	Total indemnities	No. of Matters
NSW	23		1	24	13
Vic	1		1	2	2
Qld	7	3	2	12	3
WA	1		1	2	1
SA	2			2	1
Tas	1			1	1
NT			2	2	1
ACT					
Total	35	3	7	45	22

Table 5: Indemnities - types of case (i)

State	Drugs	Fraud	Money Launder	Corp	Other	Total
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NSW	4	8		1	11#	24
Vic	1				1	2
Qld	1			4	7*	12
WA		2				2
SA	2					2
Tas				1		1
NT					2	2
ACT						
Total	8	10		6	21	45

Table 6: Ex officio indictments

State	Drugs	Fraud	Corp	Other	Total	With defendant's consent	Without Defendant's consent
NSW	1	1			2	1	1
Vic		1		1	2		2
Qld			1		1	1	
WA			1		1		1
SA			1		1		1
Tas							
NT		1		1	2	2	
ACT							
Total	1	3	3	2	9	4	5

Table 7: Consent to conspiracy proceedings

State	Drugs	Fraud	Corp	Other	Total defendants	No. of conspiracies prosecuted
NSW	19	4		4	27	13
Vic	3	13			16	5
Qld	2				2	1
WA	1	3			4	2
SA	3				3	1
Tas						
NT						
ACT		1			1	1
Total	28	21	0	4	53	23





Chapter 3 - General prosecutions

Practice

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 overseas, although officers from other branches also do work in those areas.

The conduct of litigation is the most obvious part of the work of the General Prosecutions branches. However, there is also 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 normally 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. The DPP does so acting on instructions from the foreign country transmitted through the Attorney-General's Department. There were 14 such cases in 1996-97. In the same period, Australia sought extradition from a foreign country in 11 Commonwealth cases, involving a total of 18 defendants.

The Commonwealth does not have its own criminal courts. The DPP prosecutes mainly in State and Territory courts, which are vested with jurisdiction to deal with Commonwealth matters under section 68 of the Judiciary Act 1903. The result is that DPP prosecutors operate under different procedures, and sometimes different rules 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 if 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 are given in the Prosecution Tables that appear later in this Report. The case reports which follow give some indication of the range of cases dealt with by the DPP during the past year.

Case reports

Boian Nursing Home Group

This case arose out of an AFP investigation into falsified claims that were presented to the Department of Human Services and Health in respect of five nursing homes in the Boian Nursing Home Group. The total value of the fraud was over \$1.7 million. This is the largest fraud of this type yet detected in Australia.

The fraud involved the nursing homes presenting claims for funding which inflated salary costs at the nursing homes. In some cases the nursing homes misstated the capacity in which people were employed. In other cases, the nursing homes claimed to employ people who did not work for them at all. In order to support the claims, the Boian Nursing Home

Group maintained false employment records in its central office. There was evidence that the fraud continued after it was detected and while the police investigation was in progress.

Boian was the principal offender and the main beneficiary of the fraud. Following an eight week trial, a jury found him guilty on 13 counts of defrauding the Commonwealth and nine counts of making false statements under the National Health Act 1953. After that trial the DPP presented a second indictment relating to offences committed at the time of the AFP investigation. Boian pleaded guilty to five counts of defrauding the Commonwealth. He was sentenced to a total sentence of six years imprisonment with a minimum term of three and a half years.

Carter was Boian's office manager. She gained little, if anything, from the fraud. However, her role was central to the fraud. She pleaded guilty shortly before Boian's trial. She was convicted of five counts of defrauding the Commonwealth and three counts of making false statements under the National Health Act. She was sentenced to two years imprisonment with an order that she be released on a recognisance after six months.

The DPP has appealed against both sentences. Boian has cross-appealed against his sentence.

Duval

The defendant was employed in the Citizenship Branch of the Department of Immigration. He played a role in a large scale immigration fraud through which foreign nationals obtained Australian passports using citizenship certificates to which they not entitled. The defendant inserted false data into a Commonwealth computer, created false applications for citizenship and misappropriated duplicate certificates which were sold through a chain of people to the ultimate passport applicant.

The scam involved a hierarchy of people, through whom certificates were sold and information was passed. The foreign nationals paid between \$40 000 to \$80 000 for a citizenship certificate. The DPP has prosecuted 17 offenders with a number of offenders giving evidence against people higher up in the scheme.

This particular defendant was convicted and sentenced to three years and four months imprisonment with non-parole period of two years and six months. He was also ordered to pay a pecuniary penalty of \$80 000. He has appealed against conviction.

Ren

Between May 1993 and August 1993 over US\$15 million was paid into the defendant's bank accounts in Sydney in the form of 18 telegraphic transfers from China. The defendant then transferred the majority of the money to the USA. US dollars are a commodity under strict government control in China. Under Chinese law a person must get government approval for any transfer of US dollars out of China. In this case, the transfers to Australia were made under cover of forged banking documents which purported to give permission for them to take place.

It appeared that the money was the profits from a scheme under which certain people arranged to get US dollars for companies in China. The organisers were able to get the currency for less than they sold it to the Chinese companies. They kept the difference as their profit, remitting it to the US via Australia using forged banking documents.

The defendant pleaded guilty to 19 offences under section 82 of the Proceeds of Crime Act 1987 of receiving money reasonably suspected of being proceeds of crime. He was sentenced to 18 months periodic detention. Action was subsequently taken by US authorities to recover the majority of the money remitted to that country.

Champain

The defendant was an officer of the Department of Social Security who defrauded the Department of \$180 000. She arranged for four sets of fraudulent benefits to be paid into one bank account. The case against her was largely circumstantial and included charts prepared by the AFP which showed her location, and the location of 13 other

people who worked in the relevant area, at the times on which each of 660 withdrawals were made from the account. This material showed that the defendant was the only person who could conceivably have committed the crime.

There was also corroborative evidence, including evidence that the defendant had not withdrawn any money from her own bank account during the period of the fraud. The defendant was convicted following a six week trial. She was sentenced to four years imprisonment with a non-parole period of two and a half years. She has appealed against conviction.

Nationwide News Pty Limited

In July 1994 the defendant, which operated a newspaper, entered into an arrangement with another company to run a promotion in the newspaper. The promotion offered readers the opportunity to get a mobile telephone for "free". It turned out that any reader who took up the offer would have to enter an agreement with the second company under which they would have to pay a connection fee of \$65, a delivery charge of \$19.95, a security deposit of \$260 and \$130 per month in advance for a minimum of 15 months.

The defendant was charged under section 79 of the Trade Practices Act 1974 for making false or misleading representations in relation to the mobile phones. The second company was charged with aiding and abetting some of those offences.

The defendant was convicted of six offences against section 79 and fined \$120 000. The trial judge found that the emphasis on the word free in the advertisements would convey the impression that there would be no conditions relating to charges or payment. The defendant appealed unsuccessfully against conviction and penalty.

The judge dismissed the charges against the second company. That was because the first company was not convicted of the offences which the second company was alleged to have aided and abetted.

Messaoui

In January 1996 the defendant presented a consignment of oranges to a quarantine inspector, and applied for an export permit and other certificates to permit shipment to New Caledonia. The packaging did not comply with the requirements of the Export Control Act 1982 and the inspector rejected the oranges. Later that day the defendant took most of the rejected oranges and packed them, together with other oranges and a quantity of carrots, into a sea container which, through his company, he sent to New Caledonia. This consignment had no export permit or certificate.

The next day the defendant presented another consignment of oranges and carrots to the quarantine inspector. When asked what happened to the previous consignment he said he had sent it to Melbourne at a financial loss. The new consignment was satisfactory, so the inspector issued the export permit and necessary certificate. The defendant forwarded those documents to Noumea to cover the original consignment.

The defendant's activities were discovered. The authorities in Noumea were alerted and the consignment was rejected on arrival in New Caledonia. The defendant was charged with being knowingly concerned in the commission of an offence against the Export Control Act by his company.

The defendant refused to consent to a summary hearing and was committed for trial. He subsequently pleaded guilty before the District Court of NSW. The sentencing judge found that the defendant acted on a carefully contrived and conscious decision to export without the appropriate documents and took deliberate actions to deceive the authorities. The judge noted that the defendant's actions posed a danger to Australia's export trade. He released the defendant on a recognisance to be of good behaviour and imposed a fine.

Overseas diversion of pharmaceutical benefits

This case arose from an investigation into allegations that a significant amount of prescription medication that is dispensed in Australia, at rates subsidised by the Australian taxpayer, is exported and sold on the black market overseas.

In November 1994 officers of the AFP and ACS selected an aircraft bound for Lebanon and searched the hold and hand luggage of all passengers on the plane. The officers recovered a large quantity of prescription medication in the possession of people other than those for whom it had been prescribed.

A total of 25 people were charged with offences, although only 17 cases proceeded. In a number of cases the label showing the patient's name and the dispensing pharmacy had been removed from the medication and it was not possible to show, beyond reasonable doubt, that the medication had not been prescribed for the person who held it. In each of the 17 cases it was alleged that the defendant was carrying medication for a person overseas, because it was cheaper for family members in Australia to get the drugs than for the person who was actually ill to get them. In many cases the person in Australia who got the prescription was on social security benefits and did not have to pay anything for the drugs.

In one case the defendant was acquitted after a hearing. In all other cases, the defendant was found guilty. The defendants were required to enter good behaviour bonds, either with or without a conviction being recorded.

Purdon

Between 1985 and 1993 the defendant obtained a sole parent's pension while she was married and living with her husband. She was convicted of defrauding the Department of Social Security of \$86 000. She was released on a good behaviour bond and ordered to pay a pecuniary penalty of \$86 000. She repaid only \$5 279.

The defendant had four dependant children and was suffering from an anxiety disorder, but there were no other mitigating factors. The DPP appealed against the sentence. The NSW Court of Criminal Appeal upheld the appeal, on the basis that a custodial sentence should be imposed in a case like the present unless very special circumstances exist. That rule applies whether an offence was motivated by need or greed, although if an offence was motivated by greed the sentence should normally be longer. The court found that there were no special circumstances in this case and ordered that the defendant serve nine months imprisonment by way of periodic detention.

Private prosecution of bank officers

In this case a private citizen named Zemanek brought charges under the Commonwealth Crimes Act against five officers of the Commonwealth Bank. The charges alleged that the officers committed a wide range of offences against that Act including forgery, uttering, giving false testimony and conspiring to defeat the course of justice in connection with the judicial power of the Commonwealth. The charges related to conduct allegedly committed by the bank officers in the course of their dealings with the complainant and his company. There were also civil proceedings on foot by Zemanek against the Commonwealth Bank.

The DPP received representations in the matter from the Commonwealth Bank. The DPP obtained a report from Zemanek under section 12 of the DPP Act. After considering the report the Director decided to take the matter over and discontinue the prosecution. It was clear that there was no nexus between the conduct alleged against the bank officers and Commonwealth law and that, as a matter of law, the charges could not succeed. The Director made no finding in relation to the merits of the case or the complainant's motives in bringing the proceedings. P>

Dongas

The defendant was charged with defrauding the Australian Taxation Office by claiming in tax returns that various companies were entitled to tax refunds when in fact they were not. The defendant received almost \$615 000 to which he was not entitled and would have received a further \$2.9 million if all the attempted frauds had been successful.

The first frauds were committed in relation to the year ending 30 June 1993. When he received the tax refund cheques, the defendant flew to Greece and negotiated them through a bank account in Greece. The defendant used some of the money to purchase a home unit in Greece. In the following tax year, the defendant received some tax refund cheques and travelled to Greece to negotiate them. He was in the process of doing so when the fraud was detected.

The defendant voluntarily returned from Greece knowing that his affairs were under investigation. He pleaded guilty at the earliest opportunity. He was sentenced to four years imprisonment with a non-parole period of two and a half years. P>

Herrera

This defendant received social security benefits in three different names over seven years. She was convicted and sentenced to imprisonment for two years and three months to be released after 15 months upon entering a recognisance to be of good behaviour. She appealed against sentence, arguing that she should not go to jail because she had a young child for whom she was the sole carer. There was medical evidence to show that the boy experienced behavioural problems and suffered from depression while she was in jail.

The NSW Court of Criminal Appeal dismissed the appeal. It referred to earlier decisions to the effect that a person who commits a serious social security fraud should go to jail except in special circumstances. The court found that the effect of the defendant's imprisonment on her son did not amount to a special circumstance. Section 16A(2)(p) of the Crimes Act requires a sentencing judge to take into account the probable effect that a sentence will have upon the defendant's family or dependents. The Court found that this provision does no more than reflect the common law and that the potential hardship to a defendant's family is only relevant where that hardship will be extreme, going beyond the sort of hardship which is inevitable when a parent is imprisoned.

Van Oostendorp and Vasilevski

In this case the Commonwealth was defrauded of \$173 000 by Van Oostendorp who ran a company that provided tax and financial advice. The defendant got the company registered as a tax agent by falsely claiming that he was registered tax agent when he was not. He then used the company to obtain money from ATO by putting fictitious information into tax returns prepared for clients. The scheme resulted in ATO paying to the defendant \$173 000 that the clients were not entitled to.

The defendants used spotters, who brought clients to the company by telling them the company could obtain large tax refunds for them. Clients were gathered from a range of industries including the hospitality and waterside industries as well as council employees. One such spotter, Vasilevski, was charged with being knowingly concerned in Van Oostendorp's fraudulent activities.

Van Oostendorp pleaded guilty to defrauding the Commonwealth and obtaining a benefit by a false pretence. He was sentenced to three years imprisonment to be released after 12 months. Vasilevski was convicted after a trial of being knowingly concerned in defrauding the Commonwealth. He was sentenced to nine months imprisonment to be served by way of periodic detention.

Assange, Carter and Dedio

This prosecution involved three computer hackers who gained illegal access to a large number of computer sites in academic institutions and telecommunications companies in Australia and Canada. The hackers made use of a technique known as "phreaking" under which they played a series of tone dials down the telephone to drop into disconnected telephone lines. This was designed to prevent their activities being detected and to avoid paying costs for using telephone lines.

The AFP used telephone intercepts to monitor conversations and computer transmissions. After a lengthy investigation, the defendants were charged with a variety of offences against Part VIA of the Crimes Act.

Two defendants, Carter and Dedio, pleaded guilty. One received a non conviction bond and the other a bond with conviction to be of good behaviour for 3 years.

The remaining defendant, Assange, pleaded guilty to a number of charges but pleaded not guilty to six counts of

intentionally and without authority obtaining access to data contrary to section 76D of the Crimes Act. At the trial, a question arose as to the meaning of the phrase "obtain access". The judge stated a case to the Full Court of the Supreme Court of Victoria. The Full Court declined to entertain the case and remitted the matter back to the judge.

In December 1996 Assange pleaded guilty to the remaining counts. He was convicted and released on a bond to be of good behaviour for three years.

Gelbak

The defendant was a Commonwealth officer who defrauded Comcare of over \$98 000. He obtained sick leave payments in respect of a number of work related injuries, including an injury to his left knee, a duodenal ulcer and stress. While he was receiving sick pay he also worked as a taxi driver and an interpreter. He did not disclose this income to Comcare or his employer.

The matter came to light when the defendant applied for a lump sum payment claiming that he had been rendered more than 10% permanently incapacitated due to work related injuries. The claim was rejected and he appealed to the Administrative Appeals Tribunal. The full story emerged in the course of those proceedings. The defendant also gave false evidence about his medical condition in the course of the appeal.

The defendant pleaded guilty to charges of defrauding the Commonwealth and giving false evidence. He was sentenced to 20 months imprisonment to be released after serving 12 months and was ordered to pay reparation to Comcare in the sum of \$98 090.

Rayner

In July 1992 the defendant and another person travelled to the Philippines and arranged for the importation of cannabis hidden in bags of marble chips. The amount of drugs involved was between 60 and 80 kg. The cannabis was imported and left at the docks in Melbourne where the defendant worked as a labourer. The defendant became aware that ACS planned to search the container so he stole it, using a truck. The cannabis was later sold for \$240 000. The police located the truck which the defendant used to steal the container. They found the defendant's fingerprint on the truck.

After the success of the first importation the defendant and others decided to import another load of cannabis from the Philippines. The plan involved attaching a steel box filled with cannabis to the side of a ship in Manila harbour and unbolting the box from the ship when it arrived in Australia. A steel box was built and shipped to the Philippines. However, the conspirators fell out and the importation did not proceed.

The defendant was charged in respect of both the actual importation and the planned importation. At a first trial, the jury was unable to reach a verdict. At the second trial, the defendant was convicted of being knowingly concerned in the importation into Australia of a trafficable quantity of cannabis and conspiring to import a trafficable quantity of cannabis. He was sentenced to four years imprisonment with a non-parole period of two and a half years.

Watson and Stevenson

These defendants were sisters who were involved in the importation of Eden, a drug similar to Ecstasy, which was sent to them by their brother in Northern Ireland. In November 1995, five parcels containing Eden tablets were detected at the International Mail exchange in South Melbourne. The AFP carried out a controlled delivery of two of the parcels and arrested the defendants. After the arrest, police found a further nine parcels from Northern Ireland containing 10 000 tablets of Eden.

There was evidence that the defendants had transferred large sums of money to bank accounts overseas, all in amounts of less than \$10 000. Many of the transfers were conducted using false names. The defendants had large amounts of cash on them when they were arrested.

At trial, Stevenson pleaded guilty to one count under section 31 of the Financial Transactions Reports Act 1988, of structuring transactions to avoid the reporting requirements under the Act, but denied all knowledge of the drugs and denied knowing that the money she sent overseas was derived from the sale of drugs. Watson did not deny that she helped organise the importations, but gave evidence that she thought she was dealing with steroids and not narcotics.

Watson was convicted on 14 counts of being knowingly concerned in the importation of narcotics contrary to section 233B of the Customs Act and Stevenson was convicted on 12 of the 14 counts against her. They were both sentenced to two years imprisonment on the Customs Act charges and Stevenson was sentenced to eight months imprisonment on the FTR Act offence.

At sentence, the judge took into account the fact that the defendants' brother had been sentenced to two years imprisonment on drug offences. The judge accepted that the brother was the organising force behind the scheme and was the only one to receive any real profit.

Chan

The defendant was a clothing manufacturer whose business affairs were investigated by the AFP and ATO as part of Operation Puritan. This was a joint investigation into widespread tax avoidance in the Melbourne clothing industry involving the laundering and discounting of cheques. Under the scheme, clothing manufacturers avoided paying income tax by not declaring some of the income they received in the form of cheques. Instead of banking the cheques, they cashed them with a cheque launderer to whom they paid a commission. In addition, they were given false invoices by the launderer for work supposedly performed by the launderer. They could use the invoices to claim tax deductions for business expenses.

The evidence showed that the defendant acted as a launderer and discounter for other clothing manufacturers. Over three years he laundered over \$4.7 million worth of cheques. He charged a commission of between three and eight percent of the face value of each cheque. He did not declare this commission as income in his tax returns and did not declare his personal salary in his tax returns.

The defendant pleaded guilty to three counts of defrauding the Commonwealth contrary to section 29D of the Crimes Act. He was convicted and sentenced to 18 months imprisonment to be released on a recognisance after serving nine months.

Grollo, Flanagan and Howard

Melbourne property developer Bruno Grollo was charged along with one of his employees, Robert Howard, and a security consultant, John Flanagan, with conspiring to pervert the course of justice and conspiring to bribe an AFP officer. It was alleged that the defendants wished to stop an AFP investigation into alleged tax fraud by the Grollo group of companies. It was alleged that the defendants conspired to achieve that result by bribing an AFP officer to provide confidential information about the investigation, including whether there was scope to bribe someone to destroy the original police brief of evidence.

Flanagan met with the police officer, who was an old Army mate, on several occasions between April and August 1993. The officer pretended to be corrupt but wore a listening device. At one of meetings Flanagan gave the officer \$7 000 in exchange for information.

The trial in the County Court of Victoria commenced with 76 days of mentions and preliminary hearings. It ended 222 days after the opening address for the prosecution. The jury found all three defendants not guilty.

Pearce

The defendant was a 76 year old Australian man who propositioned a 14 year old boy in the street. Police searched his home and found photographs of the defendant engaged in an indecent act with an Asian female aged between 11 and 14

years and sexually explicit photographs of Asian boys.

The defendant admitted to police that the photographs with the girl were taken on a recent trip to Thailand and that he had paid the girl about \$10. He also admitted to engaging in an indecent act with an Asian boy for which he paid about \$5 on another trip to Thailand. He said that he had been diagnosed as HIV positive prior to committing the indecent acts and said that he contracted the illness from a Thai prostitute. He told police that he purchased the other indecent photographs at a club in Thailand and smuggled them into Australia.

The defendant was charged with two offences under the child sex tourism provisions of the Crimes Act for committing acts of indecency on a person under the age of 16 outside Australia, and with a number of offences under Queensland law for possessing the photographs. In May 1997 he pleaded guilty to all charges. He was sentenced to eight years imprisonment with a non-parole period of four years on the indecency counts and a concurrent sentence of nine months imprisonment for possessing the photographs. He was also sentenced to nine years imprisonment for a number of related offences against Queensland law that he committed between 1969 and 1990.

Dr Ditton

The defendant was a specialist psychiatrist who bulk billed Medicare for her consultations. The Medicare rebates for psychiatric consultations are based on the amount of time spent with each patient. The Health Insurance Commission analysed Dr Ditton's billing practices and concluded that she routinely overstated the amount of time she spent with her patients, in order to increase the Medicare payments made to her.

HIC officers placed the defendant under surveillance for one week in August 1995. In that week she consulted with patients for 49 hours but billed Medicare for 89 hours.

The DPP planned to indict the defendant on 572 breaches of section 128B of the Health Insurance Act 1973. However the trial judge would only allow the DPP to put 40 counts in the indictment. After a seven day trial, the jury found Dr Ditton guilty on those counts. She was sentenced to 30 months imprisonment to be released on a recognisance after six months. The court ordered her to pay a pecuniary penalty of \$34 769.

The DPP has presented a second indictment against Dr Ditton alleging 101 counts under section 128B. The second trial is listed to commence in September 1997. The criminal assets side of this case is reported in Chapter 5.

Ferriera, Salles and Filho

In June 1996 a watchman at a coal loading facility near Mackay alerted Customs authorities to three Brazilian crewmen who appeared to be acting suspiciously. Customs officers searched the crewmen and found 14kg of cocaine in bags in their possession. It transpired that the defendant Ferriera had planned to carry the cocaine to Japan. However, the vessel bypassed Japan and Ferriera had to find an alternative destination for the drugs. The defendant Salles provided him with a contact in the Mackay region. Ferriera recruited the third defendant, Filho, to help pack the cocaine into bags and carry it ashore.

In July 1997 Ferriera and Filho pleaded guilty to importing cocaine. Ferriera was sentenced to 19 years with a non-parole period of nine and a half years. Filho, who agreed to give evidence against Salles, was sentenced to 15 years with a non-parole period of seven and a half years.

In November 1996 Salles pleaded guilty to a charge of importing of cocaine and was sentenced to 20 years imprisonment with a non-parole period of ten years. He appealed unsuccessfully against the severity of the sentence.

Priddy

In this case the defendant and his wife were negotiating a property settlement under the Family Law Act 1974. One of the defendant's main assets was a fishing boat. The defendant devised a scheme to keep the boat away from his wife. Under the scheme it would appear that he had sold the boat for \$210 000 and lost the proceeds in gambling.

The defendant formed a company with a colleague as director. He purported to sell the fishing boat to the company for \$210 000. The defendant financed the transaction by secretly paying \$70 000 of his own money into the company's bank account in a series of deposits of less than \$10 000. The director of the company then paid the \$70 000 back to the defendant, supposedly as part payment for the boat. The defendant banked the cheque and repeated the procedure. Eventually it was made to appear on paper that the company had paid the defendant \$210 000 for the boat.

The defendant then declared himself bankrupt. He swore in documents filed in the Family Court that he had been paid \$210 000 for the vessel but had lost the money. He also applied for benefits under the Social Security Act 1991.

The defendant was charged with offences of imposition in relation to the bankruptcy proceedings and the claim for Social Security benefits, structuring offences under the Financial Transaction Reports Act, and attempting to pervert the course of justice in relation to the proceedings before the Family Court. In February 1997 he pleaded guilty to the charges. He was sentenced to two years imprisonment, to be released on a bond after eight months, on the charge of attempting to pervert the course of justice and to three months imprisonment on the other charges.

Hack

The defendant was a long-term pethidine addict who used stolen Medicare and health care cards and false Medicare numbers to obtain pethidine injections and prescriptions for pethidine. Her activities spanned six States.

The defendant used a combination of stolen Medicare cards and fictitious Medicare numbers to get consultations with doctors at which she obtained either an injection of pethidine or a prescription for pethidine. She used stolen health care cards to fill her prescriptions for pethidine at a discounted price. She admitted to obtaining a minimum of four shots of pethidine per day and an average of seven. The monetary value of services and drugs she obtained using other person's identities was over \$10 000.

Hack pleaded guilty in June 1997 to 15 counts of imposition and five counts of stealing Commonwealth property. A further 504 offences of imposition were taken into account on sentence. She was sentenced to three years imprisonment for the stealing offences and two years imprisonment for the imposition offences. The court ordered that she be released after serving 18 months on condition that she enter a good behaviour bond, that she receive supervision from a probation officer for two years, and that she undergo counselling and treatment for her pethidine addiction.

Dr Ting

The defendant was a general practitioner. On more than 400 occasions over 14 months he forged patients' signatures on Medicare assignment forms and bulk billed Medicare for services which he had not provided. The total amount involved was over \$11 000. The defendant pleaded guilty to one count of defrauding the Commonwealth contrary to section 29D of the Crimes Act. He was sentenced to 12 months imprisonment to be released after two months on a recognisance to be of good behaviour.

Dr Lui

The defendant in this case was an optometrist who billed Medicare for services provided in assessing patients and fitting contact lenses. Usually only one Medicare rebate can be claimed where an optometrist assesses a patient and fits contact lenses. However a further rebate can be claimed for a second consultation if the patient's degree of myopia is greater than -4. On 81 occasions over 30 months the defendant falsely claimed that a patient's myopia was greater than -4 in order to claim a second rebate. As a result he defrauded the Medicare system of \$8 700. In August 1996 the defendant pleaded guilty to one count of defrauding the Commonwealth contrary to section 29D of the Crimes Act. He was sentenced to 12 months imprisonment to be released after two months on a recognisance to be of good behaviour for three years.

Edwards

The defendant was a pyrotechnician who shipped 250kgs of fireworks on board a passenger aircraft flying from Coolangatta to Perth. He also carried fireworks on board the plane. Expert evidence showed there was an extreme risk of the fireworks igniting or exploding, which could have caused the loss of the aircraft and the lives of the people on board it.

The defendant was charged with two offences against section 23 of the Civil Aviation Act 1988. He pleaded guilty and was sentenced to three years imprisonment to be released after six months. The sentencing judge noted that a licensed pyrotechnician should know better than to endanger the lives of passengers on board an aircraft.

Kenny

The defendant was a farmer who was in financial difficulties. He obtained \$158 000 in diesel fuel rebates to which he was not entitled under a scheme administered by the Australian Customs Service. He made 47 false claims under the scheme. ACS became suspicious when the defendant failed to respond to a questionnaire delivered to participants in the scheme. A search warrant on the defendant's bank produced evidence to show that a number of invoices he presented to ACS were false and a large number of cheques and butts were false and misleading. He pleaded guilty to two charges of defrauding the Commonwealth and was sentenced to three and a half years imprisonment with a non-parole period of fourteen months.

Beaver

The defendants, a father and son, were the managing director and the export/coldstores manager of a company which exported meat and meat products. The defendants organised the export of seventeen shipments of tripe and tendons to Taiwan over an eleven month period. The exports were in breach of an inter-government arrangement between Australia and Taiwan under which Australia had agreed not to export tripe and tendons to Taiwan. The defendants packed the shipping containers in such a way as to hide the tripe and tendons and they made false statements in documents submitted to the Australian Quarantine and Inspection Service.

One defendant was convicted of 17 counts of applying a false trade description to goods intended for export contrary to section 15 of the Export Control Act 1982. The other was convicted of being knowingly concerned in the 17 offences. Both defendants were sentenced to 18 months imprisonment, to be released on good behaviour bonds. They were also ordered to pay pecuniary penalties of \$8 000 each. The court noted that offences of this kind are serious because of the potential to harm Australia's trade relations. P>

Kainhofer

Kainhofer was an Austrian citizen living in Australia who was charged with fraud in Austria. The Austrian government sought her extradition from Australia. This case demonstrates how such proceedings can become drawn out and complicated.

In November 1993 a magistrate found that Kainhofer was eligible for extradition. She appealed to the Supreme Court of Queensland, which upheld the magistrate's order. She then appealed to the full court of the Federal Court. In September 1994 the Federal Court set aside the magistrate's order on the basis that Kainhofer was not an accused person within the meaning of the Extradition Act. That argument was not run before either the magistrate or the Supreme Court.

The DPP, representing the government of Austria, applied for special leave from the High Court to appeal against the decision of the Federal Court. The High Court granted special leave. In November 1995 the High Court allowed the appeal, ruling that it is not part of the duty of the magistrate, or an appeal court, to decide whether a fugitive is an extraditable person. The High Court remitted the matter to the Federal Court so that other points raised by Kainhofer on her appeal could be resolved. In September 1996 the Federal Court ruled against Kainhofer on those other points, dismissed her appeal and found that she was eligible for extradition.

In August 1996 Kainhofer commenced fresh proceedings under section 39B of the Judiciary Act 1903 challenging the

initial decision by the Attorney-General to issue the notice under section 16 of the Extradition Act which commenced the extradition proceedings. However, she subsequently discontinued that action and was extradited to Austria.

Cooper

The defendant was a computer hacker who was arrested by members of the AFP at the computer laboratory at Queensland University of Technology in the early hours of 22 June 1996. The evidence showed that he had hacked into government and university computers on a large number of occasions using his home computer or a computer at the computer laboratory. It seems that his main purpose was simply to get into the computers. However he altered data on the computers and inserted data into some of them in order to conceal his presence from the system operators. That had the potential to cause damage and cost to the organisations whose computers were affected.

Among the organisations affected by the defendant's actions were the Australian Electoral Commission, Deakin University, the University of Queensland, the Collaborative Information Technology Research Institute in Victoria and the Queensland University of Technology.

Cooper pleaded guilty to 23 counts of computer hacking contrary to section 76E(a) of the Crimes Act. At sentence the court took into account a further 13 hacking offences involving the University of Melbourne and other organisations. The defendant was sentenced to three years imprisonment to be released upon a good behaviour bond. The judge also made a reparation order in the amount of \$5 000 and ordered the forfeiture of the defendant's personal computers and three modems.

Klau

The defendant was a postal manager at a large post office. Between September 1995 and October 1996 she made 33 false computer entries which enabled her to take \$68 550 from her cash advance. She failed to remit documentation to Australia Post head office which would have disclosed her misconduct.

Klau pleaded guilty to one count of defrauding the Commonwealth under section 29D of the Crimes Act. She was sentenced to three years imprisonment to be released on a good behaviour bond after six months.

Mitchell

This defendant was the owner of a brothel and escort agency. Following a tip off, AFP and ATO officers executed search warrants on her business and residential premises. They found two sets of financial records, one set which accurately recorded the cash income of the business and another set which she kept for tax purposes.

ATO analysed the books and other financial records and found that between 1984 and 1993 the defendant failed to declare approximately \$2 million in cash income. This represented about half of the total income of the brothel.

The defendant was charged with defrauding the Commonwealth by evading between \$500 000 and \$798 000 in income tax. She pleaded guilty and was sentenced to three years and six months imprisonment with a non-parole period of 15 months. ATO recovered an amount equivalent to the primary tax evaded.

Holland

This case involved a practising chartered accountant who defrauded ATO by altering clients' tax returns without their knowledge, forging income tax returns for his clients and submitting tax returns in fictitious names. In each case the conduct was designed to result in ATO paying tax refunds which were not payable or at a higher rate than was payable. The defendant kept most of the money for himself. The total amount paid out by ATO was in excess of \$130 000. The defendant was also charged with attempting to defraud the Commonwealth of over \$14 000.

Holland pleaded guilty to offences against sections 29A and 29D of the Crimes Act. He was sentenced to 42 months

imprisonment with a non-parole period of 24 months. The court also made a reparation order for \$129 092.

Pinkstone

This case relates to the importation into Australia of three tonnes of cannabis resin in August 1992. Harold Salisbury, Joseph Lazaro III and Mark Pinkstone were charged with importing the drugs whilst Barry Pinkstone, Anthony Pinkstone and Wendy Teese were charged with being involved in the importation. Mark Pinkstone and Joseph Lazaro III were acquitted after raising the defence of duress. Harold Salisbury, Anthony Pinkstone and Wendy Teese pleaded guilty. That left Barry Pinkstone before the court.

Barry Pinkstone was tried in June 1994 but the jury was unable to reach a verdict and was discharged. The matter was listed for retrial in January 1995 and the defendant was released on bail. The retrial did not proceed in January 1995 because of a problem with the jury. The retrial was relisted for May 1996 but the defendant's counsel died and the retrial was adjourned.

The defendant was eventually tried in March 1997 and was convicted. He was sentenced to nine years imprisonment with a minimum term of four years and two months. He has appealed against conviction and sentence.

Vaughan, Bennett & Madden

In this case the defendants collected and exported protected fossils contrary to the Protection of Moveable Cultural Heritage Act 1986. They were the first people to be prosecuted under that Act. Initially all the defendants pleaded not guilty.

In the first of three planned trials Vaughan and Bennett stood trial on two counts conspiracy, one to export Permian Crinoids the other to export Devonian fish fossils. After a two week trial they were both convicted of the offence relating to the crinoids and acquitted on the other count.

The principal defendant, Vaughan, then entered pleas of guilty to four counts of exporting fossils (involving a seapen, a cyclomedusa, and two opalised bivalve slabs), and of attempting to export opalised crinoids. His co-defendant, Madden, pleaded guilty to one count of being knowingly concerned in the export of the seapen fossil.

Vaughan was sentenced to three years imprisonment to be suspended upon his entering into a good behaviour bond and paying pecuniary penalties of \$35 000 and a fine of \$15 000. Bennett was fined \$10 000. Madden was sentenced to 12 months imprisonment to be suspended upon his entering into good behaviour bond and paying costs of \$1 000.

Vaughan and Bennett have appealed against their convictions. The DPP has appealed against the sentence imposed on Vaughan.

Markovina

The defendant, together with a co-offender named Holmes, was involved in a major enterprise to import and distribute amphetamines and heroin in WA. He was arrested in November 1992 and charged with 18 counts of possessing amphetamines and one count of possessing heroin. Holmes pleaded guilty to cocaine offences and agreed to give evidence against Markovina.

In October 1993 the defendant was tried and convicted of possessing heroin and amphetamines. He was sentenced to 11 years and ten months imprisonment with a minimum term of five years and three months. The DPP appealed against the sentence. In November 1994 the sentence was increased to 15 years and ten months imprisonment with a minimum term of seven years.

The defendant, in turn, appealed against his conviction. The appeal was upheld and the convictions were quashed. The DPP decided that the defendant should be tried a second time. In November 1996 the trial judge severed the amphetamine counts from the heroin count and set the matter down for two trials. The judge also excluded some of the

evidence called in the first trial.

In December 1996 the defendant was tried on the amphetamine count and was acquitted. In January 1997 he was convicted on the heroin count. He was sentenced to five years imprisonment with a minimum term of three years. The defendant appealed his conviction and sentence. The appeals were heard in July 1997 and the Court of Criminal Appeal reserved its decision.

Sheedy

The defendant was a director of a company which ran a personnel recruitment agency which placed workers in the oil and gas industry. The company made two applications for export market development grants to Austrade. Export market development grants could only be claimed for expenses incurred in placing Australian workers in overseas employment. The claims in this case were false because the costs claimed were either not incurred or were incurred in placing foreign workers in employment with overseas oil and gas companies. The company claimed \$250 000 in grants to which it was not entitled.

The defendant was charged with offences under the Export Market Development Grants Act 1974 of being knowingly concerned in obtaining a grant that was not payable and being knowingly concerned in an attempt to obtain a grant that was not payable. The defendant had a high standard of living but claimed she was impecunious. She attempted unsuccessfully to have the trial stayed or delayed on that basis. She was convicted and sentenced to four and a half years imprisonment with a non-parole period of two years and three months.

The defendant appealed against both her conviction and sentence and again claimed that she was impecunious. Because of this, the appeal against sentence was heard first. In March 1997 the Court of Criminal Appeal allowed her appeal against sentence and reduced her sentence to three years with a non-parole period of 14 months. The defendant has since claimed she is not able to proceed with her appeal against conviction due to lack of funds to pay counsel.

Ridgeway

The defendant asked an acquaintance named Lee to purchase heroin in Malaysia and import it into Australia. The defendant did not know that Lee was a registered informant of the Malaysian police. Lee told police about the defendant's plans. The Malaysian police, the AFP and ACS cooperated to bring heroin to Australia and arrange for a controlled delivery to the defendant. The defendant was arrested in possession of heroin. In 1992 he was convicted of possessing a trafficable quantity of heroin that had been imported in contravention of the Customs Act and was sentenced to 12 years imprisonment with a non-parole period of eight years.

The defendant appealed successfully to the High Court against his conviction. The High Court held that the evidence that the drugs had been imported should have been excluded at trial because the actions of the police and customs officers who allowed the heroin to enter Australia were illegal. The High Court noted, however, that the defendant could be prosecuted for offences of possession under State law if the appropriate authorities decided to institute proceedings.

In July 1995 the DPP laid an ex-officio indictment against the defendant for an offence against South Australian law of possessing heroin for sale contrary to section 32(1)(e) of the Controlled Substances Act 1989 (SA). The defendant argued that the indictment was invalid on the principle of *autrefois acquit* and because it was said that the State DPP did not have authority to delegate the power to lay an ex-officio indictment to the Commonwealth DPP. In order to put the second issue beyond doubt, the DPP obtained a fresh indictment signed personally by the State DPP. The trial judge ruled that the indictment was valid.

The defendant then took advantage of recent amendments to the Criminal Law Consolidation Act 1935 (SA) which give defendants a right, if given leave, to appeal against a pre-trial ruling. The defence argued that the proceedings should be stayed permanently for a number of reasons, including unlawful action on the part of police, the principle of *autrefois acquit*, double jeopardy and delay. He also argued that a discretion should be exercised to exclude all the proposed prosecution evidence. The judge ruled that the trial should proceed and declined to exercise a discretion to exclude the prosecution's evidence.

The defendant was tried May 1997. Lee, the Malaysian informant, gave evidence at the trial. The defendant was convicted and sentenced to nine years and two months imprisonment with a non-parole period of six years and two months. It is possible that he will appeal.

Australian National Railways Commission

In October 1993 an employee of the ANRC died in a shunting accident at Pt Pirie in South Australia. The man was employed as a rail operator and suffered fatal injuries when he was run over by a loose shunted rail wagon that he had been directed to stop. ANRC was charged with offences against the Occupational Health and Safety (Commonwealth Employment) Act 1991 which places an obligation on employers to secure the health, safety and welfare of Commonwealth employees.

In August 1996 ANRC was convicted of three summary offences against section 16(1) of the Occupational Health and Safety Act. ANRC defended the charges and the trial ran for six weeks. However, the magistrate found that ANRC had exposed the dead worker to some unnecessary risks. ANRC was fined \$50 000 and ordered to pay costs of \$101 596. This was the second prosecution of this kind brought in Australia, and was the first successful prosecution.

Bayly

The defendant was a principal in the importation of five kg of cocaine in April 1993. The drugs were found by officers of the ACS hidden inside a coffee table which had been imported into Adelaide from the USA. Others involved in the importation were Bagalini, who collected the table after it was imported, and Bryant and Gibson, who were arrested after the AFP arranged a controlled delivery of the cocaine. Bagalini, Bryant and Gibson all pleaded guilty to the charges against them.

Bayly was only identified as a result of cooperation between the AFP, the US Drug Enforcement Agency and the US Customs Service. A US resident called Sterling was identified as the US end of the cocaine importation. Sterling was arrested by the US authorities. He admitted his involvement in the matter and agreed to assist the authorities. He told the authorities that he arranged the shipment at Bayly's request. He agreed to allow the authorities to tape his telephone conversations with Bayly. The resulting tapes provided the basis for the case against Bayly.

Bayly was arrested in September 1993 but he did not stand trial until November 1996. The defence made a series of applications in the District Court, the Federal Court and the SA Supreme Court trying to stay the proceedings. One of the issues that arose was whether the committal proceedings had been run fairly. Eventually the Supreme Court ordered a Basha inquiry. This is a procedure under which the defence is given an opportunity, in the absence of the jury, to examine witnesses who were not called at the committal.

The DPP obtained a restraining order in this case over property worth about \$500 000. Most of that money was subsequently used by Bayly to pay legal expenses.

When the matter finally went to trial, the defendant was found guilty. On 29 August 1997 he was sentenced to ten years imprisonment with a non-parole period of seven years. Bayly has lodged an appeal. He is also facing prosecution in Victoria on other charges against Commonwealth law.

The case could not have proceeded without assistance from the authorities of the USA. The US authorities cooperated to make Sterling and a US Customs Officer available to give evidence at the Basha inquiry and at the trial. The US authorities also provided evidence for the trial in response to a mutual assistance request from Australia.

Munn v Agus

In December 1995 the vessel Sadar Jaya was apprehended inside the Australian Fishing Zone near Ashmore Reef. The master of the vessel admitted that the purpose of the trip was to fish for trepang in circumstances which were clearly in breach of the Fisheries Management Act 1991. The vessel and its crew were escorted to Darwin and the master was

charged with offences against sections 100 and 101 of the Fisheries Management Act.

The offences in question are indictable offences but they can be heard before a court of summary jurisdiction if the prosecutor and the defendant consent and the court considers that it is appropriate to deal with the case summarily. In January 1996 the defendant appeared before the Court of Summary Jurisdiction in Darwin and gave consent for the charges to be dealt with before that court.

On 20 January 1996 the defendant left Australia, leaving his boat in the custody of the Australian Fisheries Management Authority. The prosecution sought leave to have the matter dealt with ex parte in the absence of the defendant. The defendant was represented before the court by a solicitor. She told the court that she had instructions to appear on sentence, in the event that the defendant was convicted, but that she did not have instructions to enter a plea. After considering the position, the magistrate ruled that the matter could not be dealt with ex parte since the defendant was represented. The DPP appealed against that ruling by way of a case stated to the NT Supreme Court.

At the hearing of the stated case the Supreme Court upheld the ruling made by the magistrate. However it did so on the basis that a court which is established under the NT Justices Act is not a court of summary jurisdiction within the meaning of section 26(d) of the Commonwealth Acts Interpretation Act 1901 and hence such courts have no jurisdiction to deal summarily with any indictable offence against Commonwealth law. The decision had significant implications for the conduct of Commonwealth prosecutions in the NT. The DPP appealed against the decision.

The Court of Appeal upheld the DPP's appeal and remitted the matter to the Supreme Court judge. The effect of the Court of Appeal's decision is that the NT Court of Summary Jurisdiction can again deal summarily with indictable offences against Commonwealth law, if both sides give consent.

On the second occasion that the matter came before the NT Supreme Court, the Supreme Court upheld the magistrate's decision on the same grounds as the magistrate.

Rutu

The DPP has prosecuted a number of Indonesian fisherman in the NT for bringing foreign nationals to Australia without visas and passports. In each case the Indonesians took the foreign nationals to Ashmore and Cartier Islands, which form a reef which is under water at high tide. The scheme only worked because Aurelia IV, a vessel belonging to the Australian Nature Conservation Agency, is stationed at the Islands. The Indonesian fishermen depended on the crew of the Aurelia IV to pick up people deposited at the Islands and arrange for them to be shipped to Australia.

A number of Indonesian boats were intercepted by vessels of the Australian navy and brought to Australia. In each case the master of the boat was prosecuted for attempting to bring to Australia a non-citizen in circumstances where it was clear that the non-citizen intended to enter Australia in contravention of the Migration Act 1958. Most of the cases were dealt with quickly, but one of them went as far as the Supreme Court of the NT. The issue was whether the Migration Act has extra-territorial application. Ashmore and Cartier Islands are Australian territory, but are not part of Australia for the purpose of the Migration Act, and the Indonesian defendants did not commit any relevant act in Australia. The question was whether that meant that they had not committed any offence under Australian law. The DPP argued successfully that the offence provisions in the Migration Act can have extraterritorial application and that it was not relevant that the defendants did not actually bring their passengers as far as Australia.

The most serious case involved a master by the name of Rutu. He has been convicted twice for the same offence. On the second occasion he was sentenced to seven months imprisonment in addition to time already spent in custody. His boat was ordered to be forfeited under the PoC Act.

Benton

The defendant was employed by the Child Support Agency, which is part of ATO. She had control of the production and distribution of a kit for schools, which set out a description of the agency's responsibilities and workings. The kit was produced by a graphic designer and was launched in July 1993.

It was alleged that the defendant and the graphic designer defrauded the Commonwealth by lodging, and processing, inflated claims for payment.

The defendant and the graphic designer were both charged with defrauding the Commonwealth. The graphic designer pleaded guilty to six counts of fraud. He was sentenced to 26 periods of periodic detention with a recognisance to be of good behaviour for two years and was ordered to pay \$22 614 to the Commonwealth.

The graphic designer gave evidence at the defendant's trial. He said that the defendant approached him and suggested that he inflate his claims for payment and that they share the profits. As his work was approximately 90% for the ATO he agreed to the proposal.

The graphic designer either inflated accounts or lodged fictitious accounts in connection with kit. He kept one third of the profits, paid the defendant one third and kept one third to pay income tax. The total amount covered by the charges was over \$67 000. Following a trial lasting five days, the defendant was convicted on six counts of defrauding the Commonwealth. She was sentenced to three years imprisonment with a direction that she be released on a good behaviour bond after 18 months.

The defendant was charged with further offences relating to conduct involving other graphic designers. She pleaded guilty to 11 counts of receiving secret commissions and one count of defrauding the Commonwealth. On 29 August 1997 she was sentenced to a further two years imprisonment with a non-parole period of one year.





Chapter 4 - Corporate Prosecutions

PRACTICE

The DPP is responsible for prosecuting offences against the Corporations Law and the old Cooperative Scheme laws. 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. The cases are prosecuted by lawyers working in specialist Corporate Prosecutions branches.

The responsibility for investigating breaches of the corporations laws rests with the Australian Securities Commission. The ASC prosecutes minor regulatory matters itself but when an investigation discloses the commission of a serious criminal offence, the ASC will refer the matter to the DPP for prosecution.

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

The ASC and DPP have developed guidelines for the investigation and prosecution of corporate crime. Among other things, the guidelines set out the DPP's role at the investigation stage. The DPP will provide 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 best utilising the finite resources of the investigator by avoiding those areas that are unlikely to result in a prosecution. There is regular liaison between the ASC and the DPP at head of agency, management and operational levels.

One of the features of the work in this area is the number of defendants and potential defendants who are located off-shore. It appears to be a relatively common occurrence that a person who has committed offences against the corporations laws will leave to Australia at some time between the conduct coming to light and criminal charges being laid in the matter. At the time of writing there are at least eight cases where extradition proceedings are in progress, or about to commence, against a person who is alleged to have committed offences against Australia's corporations laws.

The experience is that it requires considerable work to prepare an extradition request in a corporation matter, especially when dealing with a country that requires a full brief of evidence in support of a request, and that it can be a drawn out process to get a defendant back to Australia. However, the DPP is committed to pursuing these cases.

Corporate offences are often committed by people who have a high level of mobility. It is important to ensure that people in that position are not able to avoid the consequences of their actions simply by leaving Australia and setting up business elsewhere. There is a clear public interest in showing that a person who abuses the position of trust involved in managing a public company will be pursued.

Statistics on the number of cases prosecuted during the year by the Corporations branches are included in the Prosecution Tables that appear later in this report. The case reports which follow give some indication of the range of cases dealt with during the year.

CASE REPORTS

Bond

On 16 August 1996, following a five week trial, Alan Bond was found guilty on two charges of acting dishonestly as a director of Bond Corporation Holding Ltd with intent to defraud, contrary to section 229(1) of the Companies (WA) Code, and two charges of furnishing or permitting the furnishing of false information to the board of the company and its auditor, contrary to section 564(1) of that Code.

The charges related to an incident in 1988 when the Bond Corporation forwent an opportunity to acquire the painting La Promenade by Manet at a price substantially less than its market value. Bond Corporation was a public company with a large number of small shareholders. As a result of Bond's actions, the company passed over the opportunity to buy the painting and, instead, the painting was acquired by Dallhold Investments Pty Ltd, Bond's private family company.

On 20 August 1996 Bond was sentenced to an effective term of three years imprisonment in respect of these offences.

Bond, Oates and Mitchell

On 3 February 1997 Alan Bond pleaded guilty to two charges of acting dishonestly as a director of Freefold Pty Ltd (a subsidiary of Bell Resources Ltd) with intent to defraud, contrary to section 229(1) of the Companies (WA) Code. As a consequence of those pleas the prosecution decided not to proceed on a number of other charges.

On 28 April 1997 Peter Mitchell pleaded guilty to four charges of acting improperly as a director of Freefold Pty Ltd in order to gain a benefit for Bond Corporations Holding Ltd, contrary to section 229(4) of the Companies (WA) Code. Again, as a consequence of those pleas the prosecution decided not to proceed on a number of other charges.

The third defendant in these proceedings, Anthony Oates was arrested in Poland following a request for his extradition. The extradition proceedings are continuing.

The charges against all three defendants relate to the transfer of over \$400 million of liquid assets from Bell Resources Ltd to Bond Corporation between August 1988 and October 1989. Over \$50 million was also transferred to Bond's private company Dallhold Investments Pty Ltd. The transactions were concealed from the National Companies and Securities Commission by being replaced with a loan facility provided by a subsidiary of a related company. Further amounts flowed through this facility so that by late May 1989 the total amount removed from Bell Resources was over \$800 million. Some money was subsequently recovered but it is estimated that the total amount lost as a result of these offences exceeded \$400 million.

Bond and Mitchell were each sentenced to an effective term of four years imprisonment with Bond's term being cumulative on his sentence for the La Promenade convictions. Both the DPP and Bond appealed against the sentence in this matter, although Bond withdrew his appeal prior to the hearing. Mitchell also appealed against his sentence.

On 22 August 1997 the WA Court of Criminal Appeal increased Bond's sentence to seven years imprisonment.

Nationwide News Pty Ltd

On 10 April 1997 the Full Court of Western Australia found Nationwide News Pty Ltd guilty of contempt of court for publishing an article on the front page of The Australian newspaper on 15 July 1996.

The article bore the headline "Revealed: Bond's overseas treasures" and appeared on the first day on which evidence was to be called in Alan Bond's trial concerning the painting La Promenade. Newspaper hoardings bearing the headline were also placed at regular intervals along St George's Terrace in the vicinity of the court. The Full Court accepted that, as a matter of practical reality, the article had a real and definite tendency to prejudice the fair trial of the defendant. The article discussed the honesty of Alan Bond in his dealings with a painting, a portrait of Captain Cook, at a time when a District Court jury was being asked to consider his honesty in his dealings with another painting, La Promenade.

The court is yet to determine the appropriate penalty. P>

Fitzsimmons and Kovess

It was reported last year that on 13 June 1996 Paul Fitzsimmons was found guilty of being knowingly concerned in an offence against section 129 of the Companies (WA) Code and of failing to act honestly as a director with intent to deceive contrary to section 229(1)(b) of that Code.

The offences related to a failure to inform the board of Kia Ora Gold Corporation NL that the Duke group was experiencing financial problems at the time that he and other directors of Kia Ora approved the payment of \$67 million for assets of the Duke group. Fitzsimmons was sentenced to a total of two years imprisonment with eligibility for parole.

Fitzsimmons appealed against his conviction and sentence to the WA Court of Criminal Appeal. On 12 March 1997 the appeal was dismissed. The Court examined the conflict Fitzsimmons faced as a director of both Kia Ora and the Duke group of companies. It considered that he could have avoided the difficulty by refusing appointment to the Kia Ora board. At the very least he should have disclosed to the Kia Ora board that he had a conflict of interest and should not have participated in either the deliberations or the vote. However, the court cautioned that even this may not necessarily have satisfied the duty of honesty imposed on Fitzsimmons under section 229(1)(b).

It was also reported last year that a jury was unable to reach a verdict in relation to charges against Charles Kovess alleging that he was knowingly concerned in the offences committed by Fitzsimmons. The DPP decided not to proceed further against Kovess following a ruling by the Federal Court that the indictment against him was defective. P>

Wittensleger

In July 1996 Arden Wittensleger was charged with 46 offences against the WA Criminal Code of stealing money received by him subject to a direction.

Wittensleger was a financial consultant and licensed investment adviser trading through Astute Financial Group Pty Ltd. Wittensleger offered investment opportunities to clients, principally by offering to place their money in reputable investment funds. The money relevant to this case came from three clients, all of whom gave Wittensleger clear directions as to how and where their funds should be placed. Contrary to his clients' directions, Wittensleger applied the money for personal uses, for expenses associated with Astute and to repay money owed to other clients. The total amount stolen from the three clients was approximately \$220 000.

On 20 September 1996 Wittensleger pleaded guilty to all 46 offences. He was sentenced to imprisonment for four years with eligibility for parole. The sentencing judge commented that these types of offences erode public confidence in the investment industry and impair the system under which the industry works.

Williams

In July 1997 Murray Williams pleaded guilty to one count of insider trading in the shares of Australis Media Ltd, contrary to section 1002G of the Corporations Law. On 4 October 1996 he was sentenced to 18 months imprisonment to be served by way of periodic detention and was fined \$50 000.

This was the first conviction recorded for insider trading in Australia since the enactment of the insider trading provisions contained in Part 7.11 of the Corporations Law.

Corner

On 13 January 1997 John Corner pleaded guilty to two offences against section 229(4) of the Companies (NSW) Code and one offence against section 564(1) of that Code. The charges related to Corner's abuse of position as an officer of Bisley Investment Corporation Limited and Triton Investment Limited and arose out of the investigation into Spedley Securities Limited and associated companies.

On 11 April 1997 Corner was sentenced to a total of 18 months imprisonment to be served by way of periodic detention and a fine of \$23 000. The DPP had lodged an appeal against the sentence.

Ansett and Hamley

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

The prospectus, which was issued on 21 November 1988, offered 12.5 million ordinary shares in Budget Corporation for public subscription a price of \$1 per share. It is alleged that the prospectus contained an untrue statement contrary to section 108 of the Companies (NSW) Code. At the time in question, Ansett and Hamley were directors of Budget Corporation. It is alleged that they authorised the issue of the prospectus.

The trial of Ansett and Hamley commenced in the Supreme Court of NSW on 7 July 1997. On 7 August 1997 the jury was discharged after it failed to reach a verdict. P>

O'Halloran

James O'Halloran has been charged with one offence of market manipulation under section 998 of the Corporations Law. This matter is awaiting a date for a committal hearing.

O'Halloran was a former director of Jeffries Industries Limited. The charge relates to an order placed by O'Halloran on 28 April 1995 to sell 170 000 ordinary shares in Jeffries down to 13 cents per share. It is alleged that O'Halloran's purpose in selling the shares was to manipulate the price of Jeffries' shares on the Australian Stock Exchange so that his company would receive more ordinary shares upon conversion of its convertible preference shares than if the manipulation had not occurred.

Jeffries took civil action to exclude the trading undertaken by O'Halloran from the conversion formula and was successful in excluding some of the trades.

Goward

On 4 March 1994 Russel Goward, the former chairman and managing director of Westmex Limited, was charged with one offence against section 125 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 was to the effect that over the two months prior to 6 December 1989 no director of Westmex had sold Westmex shares. It is alleged that in November 1989 Goward authorised the sale of approximately 733 800 Westmex shares held by a private company controlled by him. The sale yielded approximately \$720 000.

At the time of the press announcement the private company in question 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. On 27 February 1995 Goward was committed for trial. His trial was listed to commence on 24 November 1997.

In March 1997, Goward absconded in breach of bail. A warrant for his arrest was issued. Goward was arrested on 22 June 1997 and was remanded in custody. The trial date was vacated when Goward absconded and a new trial date has yet to be fixed. It is expected that the trial will now take place in 1998.

Goward is also awaiting trial in relation to two charges under the Crimes Act 1914 relating to his bankruptcy.

Hannes

Simon Hannes has been charged with one offence of insider trading contrary to section 1002G of the Corporations Law and two offences of conducting transactions so as to avoid the reporting requirements under the Financial Transaction Reports Act 1988. Hannes is an executive director of Macquarie Corporate Finance Limited, a company associated with the Macquarie Bank. He was committed to stand trial on 10 June 1997.

The charges relate to trading in TNT call options at a time when Macquarie Corporate Finance was acting for TNT in relation to a proposed takeover of TNT by a Dutch company. The announcement of the takeover offer was made to the market on 2 October 1996 and resulted in a substantial increase in the price of TNT shares and options.

It is alleged that Hannes, either alone or in concert with others, purchased a large number of TNT call options prior to the takeover offer being announced and structured the financing to avoid detection. It is alleged that the profit from the trading was approximately \$2 million. A trial date has not yet been set.

Hyland

On 20 September 1996 Gavin Hyland pleaded guilty in the Brisbane District Court to one count of misappropriation contrary to section 408C of the Queensland Criminal Code and one count of altering a book contrary to section 67(1) of the Australian Securities Commission Act 1989. Both the offences were committed while Hyland was on bail in respect of unrelated charges involving false pretences.

Hyland acted as an investment adviser through a company called Consolidated Capital Markets (Australia) Ltd. During August and September 1995 Hyland misappropriated approximately \$30 500 from a client of the company. He deposited the funds in a futures account of the company to cover marginal calls on the purchase of ten year treasury bonds contracts. During the course of the investigation by the ASC Hyland endeavoured to arrange for company records to be altered to hide his actions.

Hyland was sentenced to serve a further nine months imprisonment cumulative on the sentence that was imposed in relation to the false pretences charges.

Foster

In 1992, over a three month period, Peter Foster managed a company called Trade-Ex Corporation Ltd. At the time he was an insolvent under administration. The ASC commenced an investigation into the matter and summonsed witnesses to attend compulsory examinations. Foster attempted to induce witnesses to give false evidence at the examinations.

In 1997 Foster pleaded guilty to one charge under section 229(1) of the Corporations Law, of managing a corporation whilst an insolvent under administration, and three charges of attempting to induce witnesses to give false testimony contrary to section 37(b) of the Crimes Act 1914. He was eventually fined \$4 000 in respect of the first offence and sentenced to eighteen months imprisonment, to be released on a bond after five months, on the remaining charges.

Foster left Australia while the matter was in progress. When he came back he entered the country in a false name using a falsified UK passport. When he arrived he presented a false incoming passenger card. He was charged with, and pleaded guilty to, one charge under section 9A(f)(i) of the Passport Act 1938 and two charges of imposition under section 29B of the Crimes Act. He was sentenced to imprisonment for two months on each count to be served concurrently with the sentence imposed in relation to the other offences.

Foster is currently the subject of an extradition application by the UK in relation to other matters.

Woods and MacKenzie-Forbes

On 19 November 1996, following an eight week trial, Marguerite and John Woods were convicted of obtaining \$1.07 million by false pretences under section 427(1) of the Queensland Criminal Code. They were each sentenced to four years imprisonment, John Woods without a recommendation for parole and Marguerite Woods with a recommendation for parole after serving four months.

Neil MacKenzie-Forbes pleaded guilty at the start of the trial and was sentenced to four years imprisonment with a nine month parole recommendation. He later gave evidence against the Woods.

The Woods devised a scheme under which they pretended that one company they controlled had agreed to lease computer and business equipment from Softcomp Technologies Pty Ltd, a computer supplier operated by MacKenzie-Forbes. During a 15 month period they managed to trick 11 different financial institutions on 34 separate occasions to finance a supposed lease arrangement. MacKenzie-Forbes prepared false invoices to induce the financiers to pay for the equipment. In most cases the goods did not exist and therefore were not supplied. MacKenzie-Forbes kept \$185 000 and passed \$885 000 to the Woods.

Fan

Peter Fan pleaded guilty in the Brisbane Magistrates Court to one count of knowingly and dishonestly contravening section 232(6) of the Corporations Law in that he improperly used his position as an officer of a company to gain an advantage.

Peter Fan and his brother Phillip induced a person named Lau to join them in the purchase of real estate through a company called Thorlon Pty Ltd. The Fans, using another company, managed to buy the property in question for \$750 000. They did not disclose this to Lau. The Fan's then sold the property to Thorlon Pty Ltd for \$950 000. The \$200 000 profit was pocketed by Phillip Fan.

Peter Fan was sentenced to nine months imprisonment to be released on a good behaviour bond after three months. He was further ordered to pay compensation in the sum of \$100 000. He had already voluntarily paid an amount of \$100 000.

Endresz

On 11 June 1993 Allan Endresz was convicted in the Melbourne Magistrates Court on one charge of creating a false or misleading appearance of active trading in a company, one charge of making a false statement to the Australian Stock Exchange, and six charges of being knowingly concerned in the contravention by a company of the Companies (Acquisition of Shares) (Vic) Code. The first two charges were brought under the Securities Industry (Vic) Code. The Magistrate imposed fines totalling \$13 500.

It was alleged that Endresz was knowingly concerned in the acquisition by a company of the shares of Emu Hill Gold Mines NL (now known as CTC Resources Ltd) within six months of becoming entitled to more than 20 per cent of the shares in that company and that he engaged in activities designed to create an appearance of active trading in the shares of Emu Hills Gold Mines. It was also alleged that Endresz, as chairman of Emu Hill Gold Mines, gave false and misleading information to the Australian Stock Exchange regarding the reasons for the movement in the company's share price.

Endresz appealed to the Supreme Court of Victoria from the magistrate's decision. The appeal was dismissed in June 1994. In May 1997 Endresz made a further appeal to the Victorian Court of Appeal, after being granted leave to appeal out of time. On 27 June 1997 the Court of Appeal dismissed the appeal. Endresz has now lodged an application for special leave to appeal to the High Court.

Johnson, Fuller and Cummings

Malcolm Johnson, Michael Fuller and Joseph Cummings have each been charged with offences of misapplying company funds under the Criminal Law Consolidation Act 1935 (SA) and offences of improper use of position under the Companies (SA) Code. Johnson has also been charged with conspiracy to defraud in respect of the same conduct.

The charges relate to a scheme whereby Beach Petroleum NL, a public company, acquired rights in the Burbank Oil Fields in Okalahoma USA at a price of US\$28 million from companies controlled by Johnson. It is alleged that the price

was grossly inflated and that Johnson's companies only paid \$US3.7 million for the rights. The purpose of the alleged scheme was to transfer US\$24.3 million of assets from Beach Petroleum to companies controlled by Johnson.

Fuller and Cummings were committed for trial in June 1995. They then made applications for a stay of prosecution on the basis that they could not afford legal representation. The applications were based on the High Court's decision in Dietrich. The applications were dismissed in February 1997, the judge ruling that there were exceptional circumstances in that the defendants were capable of defending themselves. Fuller and Cummings appealed against that decision. The appeals have been heard and judgment was reserved.

Johnson had left Australia by the time charges were laid. Extradition proceedings commenced in the United Kingdom in June 1996 and are still in progress.

PROSECUTION MORE THAN FIVE YEARS AFTER OFFENCE

As a result of the government's response to the Report of the Parliamentary Joint Committee on Corporations and Securities on the application of section 1316 of the Corporations Law, the DPP is required to report on the number of cases referred to the DPP by the ASC where proceedings (whether under the Corporations Law or State Law) have been instituted more than five years after the alleged offence, with an indication of the reason for delay in instituting proceedings.

In 1996-97 only one prosecution was instituted for offences which were more than five years old. The case involved the theft of ten cheques by a solicitor from a trust company. The offences were committed between November 1990 and April 1995 but the crime was only detected in January 1996. In September 1996 the defendant was charged with ten offences of theft under the Tasmanian Criminal Code. Two of the charges related to conduct which occurred more than five years before the charges were laid.





Chapter 5 - Criminal Assets

PRACTICE

The DPP has been involved in recovering criminal assets since the Office was established. In the early days the work consisted mainly of enforcing traditional civil remedies using the DPP's civil remedies function. The work was given a boost when the Proceeds of Crime Act was enacted in 1987. Each DPP office has a dedicated Criminal Assets branch which has lawyers who specialise in assets work and which includes, or has access to, the services of financial analysts.

The work of the Criminal Assets branches forms an adjunct to the prosecution process. It is designed to ensure that offenders are not only prosecuted for their crimes but are also stripped of the profits they have made. The work consistently returns more than it costs. However, it is important to note that the primary purpose is to punish and deter offenders, not to return a profit. There is as much need in this area as in prosecutions to ensure that alleged offenders are treated fairly and consistently and that action is, and is seen to be, independent of political considerations. There is also a need to ensure that recovery action is coordinated with the related prosecution.

The DPP's effectiveness depends on support from the Australian Federal Police, the National Crime Authority and the other agencies which do the investigative work. The DPP has good working relations with all agencies involved in this area.

The total amount recovered under the criminal assets initiative for 1996-97 was \$5 707 995. As at 30 June 1997, the total value of property that was subject to restraining orders was \$21.1 million. Full details of the work performed by the Criminal Assets branches are given in the Criminal Assets Tables that appear in Chapter 6.

Policy

The DPP does not take recovery action in every case where a person has obtained money as a result of committing a Commonwealth offence. In some cases, there is nothing the DPP can usefully add to normal debt recovery processes. In other cases there is no money available to recover.

The factors that the DPP looks at in deciding whether to take action in a particular case include whether there is a basis for recovery if the DPP does not get involved, the size of the debt, whether the offender holds assets offshore or in a false name, and whether the offender appears likely to resist recovery action.

The DPP has three main avenues open to pursue the proceeds of Commonwealth crime. They are:

Proceeds of Crime Act

The PoC Act provides a scheme to trace, freeze and confiscate criminal assets. The Act is conviction based, which means that no final orders can be made unless a person has been convicted of an indictable offence against Commonwealth law. However, there are provisions which allow the courts to make restraining orders to ensure that property is not dissipated while the criminal proceedings run their course.

There are also provisions in the PoC Act which enable the courts to look behind the corporate veil. The courts are entitled to look at whether the defendant has effective control over property even if he or she has no legal title to it.

The PoC Act applies to all indictable offences against Commonwealth law, although it is used mainly in relation to drug offences and serious fraud against the Commonwealth.

Customs Act

Division 3 of Part XIII of the Customs Act contains a scheme which is similar to that under the PoC Act. However, the scheme applies only to drug offences and it is not conviction based.

The Customs Act provisions are used less frequently than the PoC Act, generally if there are no Commonwealth charges or there is some other reason why action cannot be taken under the PoC Act.

Civil remedies

The DPP is given a civil remedies function under sections 6(1)(fa) and 6(1)(h) of the DPP Act. The function is to take, or coordinate or supervise the taking of, civil remedies in matters connected with an actual or proposed prosecution. The function does not involve any new powers of recovery. What it does is enable the DPP to enforce, or coordinate the enforcement of, traditional civil remedies where the money at stake represents the proceeds of crime.

The civil remedies function can only be exercised to recover unpaid taxes and in matters or classes of matter that have been specified in an instrument signed by the Attorney-General. However, on 23 October 1995 the then Attorney-General signed an instrument which gives the DPP power to exercise the civil remedies function in any matter which gives rise to a civil liability towards the Commonwealth or an authority of the Commonwealth, provided that the matter is connected to an actual or proposed prosecution.

Management

There is a Criminal Assets branch in each DPP regional office. There is also a Criminal Assets branch in Head Office which coordinates the work in this area and conducts case work in the ACT. There are no Criminal Assets branches in the Australian Government Solicitor's offices in Hobart and Darwin. Criminal assets work in Hobart is currently run from Melbourne. Criminal assets work in Darwin is conducted as part of the general work of the office.

The DPP maintains a computerised Criminal Assets Recording System to keep track of cases in the criminal assets area. CARS has proven invaluable for managing casework and for maintaining accurate records of restraining orders and when they need to be renewed.

CONFISCATED ASSETS TRUST FUND

All money recovered under the PoC Act and Division 3 of Part XIII of the Customs Act is paid into the Criminal Assets Trust Fund. Up until this year, money paid into the fund was available to finance law enforcement projects selected by the Attorney-General and drug rehabilitation programs selected by the Minister for Health.

In the course of the year the relevant provisions of the PoC Act were amended. The changes came into effect in March 1997. The changes have not abolished the CAT Fund. The Fund still exists to enable money to be held until it becomes distributable and to provide a basis for equitable sharing and for payment to Government Business Enterprises. The amendments change what happens to the money that is left over when all that has been done. It must now be paid into consolidated revenue.

SUPERANNUATION ORDERS

The Criminal Assets branches also conduct proceedings under the Crimes (Superannuation Benefits) Act 1989 and Part VA of the Australian Federal Police Act 1979. Under the Crimes (Superannuation Benefits) Act a Commonwealth

employee who has been convicted of a corruption offence, and has been sentenced to more than 12 months imprisonment, can lose the government funded component of their superannuation benefits. There are similar provisions in the AFP Act, although members of the AFP can also lose their government funded superannuation if found guilty of some types of disciplinary offence.

The mechanism involves the Attorney-General issuing an authorisation to the DPP to apply for a superannuation order. The court that hears the application must make an order if it is satisfied that the preconditions have been met. The effect of a superannuation order is that the defendant loses all rights to employer paid benefits under the relevant superannuation scheme, but is entitled to be paid an amount equal to his or her own contributions plus interest.

In the course of the year the Supreme Court of South Australia rejected a challenge to the validity of the superannuation forfeiture provisions in the AFP Act (*Pirone v DPP* (1997) 143 ALR 369). The court found that the provisions are valid either under the Commonwealth's power to legislate with respect to a Commonwealth police force or under a general power to punish conduct inimical to the existence and powers of the Commonwealth government. It also found that the provisions can apply to superannuation benefits that accrued before the provisions came into operation.

The DPP obtained one superannuation order in 1996-97. The order was made in Queensland in the matter of Chapman.

Chapman was a member of the AFP who was convicted of conspiring to import cannabis into Australia. He also stole cannabis which was being held as evidence at a police station. He sold the stolen cannabis for \$10 000, which he intended to use to fund the importation. On 15 June 1993 he was sentenced to ten years imprisonment with a two year non-parole period. The court also ordered forfeiture of \$10 000 on the basis that it was tainted property. On 21 November 1996 the Supreme Court of Queensland made a superannuation order against the defendant.

CASE REPORTS

The Criminal Assets branches are involved in most major drug and fraud cases prosecuted by the DPP. Few of those cases do not have a financial aspect and at least a potential for recovery action. Reports on some of those cases appear in Chapter 3. reports on some of the other cases conducted by the Criminal Assets branches appear below.

Spink

Victor Spink was the principal suspect in an investigation which resulted in the AFP arresting a number of people and charging them with conspiring to import a boat load of cannabis resin. The drugs were worth \$75 million.

In August 1994, at the time of the initial arrests, the DPP obtained a restraining order over all of Spink's property, although some of the property was subsequently released to allow Spink to meet his legal expenses. Spink pleaded guilty to a charge of conspiring to import the drugs and was sentenced in the District Court of NSW on 11 March 1996. The conviction involved a serious offence for the purpose of the PoC Act and all the property which remained subject to the restraining order was liable to be forfeited to the Commonwealth six months after conviction.

Spink brought proceedings under section 48(4) of the PoC Act seeking to exclude his property from the restraining order, and a number of third parties brought proceedings claiming interests in various pieces of property. Spink argued, among other things, that he derived a substantial income from gambling and that much of his property was purchased from that source.

The case was settled by negotiation a short time before the various applications came on for hearing. The Commonwealth ended up recovering property worth over \$2 million.

Stafrace

Stafrace was charged with two counts of possessing cocaine. He pleaded guilty to the charges and was sentenced to a term of imprisonment. The charges related to a total of two kg of cocaine that was found in a bank deposit box that

belonged to Stafrace. There was no information about where the cocaine came from.

Stafrace held a considerable amount of property in Australia and overseas, including jewellery, \$53 000 in cash that was found at the time of arrest, money in a bank account, an interest in a restaurant and a joint interest with his wife in three condominiums in Hawaii. The total value of his property was of the order of \$500 000. There were clear grounds to suspect that some or all of the property represented the proceeds of previous crime, but there was no hard evidence to that effect.

The DPP obtained a restraining order over Stafrace's property. Stafrace faced losing the property by operation of section 30 of the PoC Act unless he could show that it came from a lawful source. Stafrace had lived in Japan for many years and was married to a Japanese woman. He claimed that he derived income from various sources in Japan and claimed that he and his wife had received substantial gifts from his wife's family.

In the end the case was settled by agreement, after one day of evidence. Stafrace agreed to forfeit the \$53 000 cash and his interest in the restaurant. He and his wife also agreed to transfer title to one of the Hawaiian condominiums to the Australian government. In return, the DPP agreed to lift the restraining order against the remaining property so that it would not be affected by section 30.

The successful outcome in this case owed much to cooperation provided by US and Japanese authorities, particularly the US Customs Service and the District Attorney's office in Honolulu.

McCauley

This case has had a lengthy history but is now close to completion. The case arose from the conviction of Bruce McCauley, in April 1994, on serious narcotic offences against the Customs Act. Civil proceedings and assets recovery action have been underway since then.

One aspect of the litigation involves an action in the Family Court to have a 1990 property settlement set aside on the basis that it involved fraud. The property settlement was entered by McCauley and his then wife in 1990 at a time when his affairs were under investigation by ATO. It is alleged that the settlement was an attempt to place assets beyond the reach of ATO. Those proceedings were brought by the DPP acting as solicitor for ATO under the DPP's civil remedies function.

That action became the subject of separate proceedings before the Federal Court when it was argued that, because McCauley was a bankrupt, the Family Court action could not proceed unless the Federal Court gave leave under section 58(3) of the Bankruptcy Act 1966. That provision is designed to protect the creditors of a bankrupt's estate by preventing action being brought against the estate for debts that should be proved in the bankruptcy. The DPP argued that the provision has no application in a case like the present. The DPP won on this issue before a single judge of the Federal Court, who also noted that if leave was required under section 58(3) he would give it. The respondent, the former Mrs McCauley, appealed to the full court of the Federal Court and again lost. She then filed an application for special leave to appeal to the High Court.

The respondent also challenged the DPP's right to use documents in the Family Court proceedings that were initially obtained by way of a production order under the PoC Act. On 7 June 1995 Cohen J of the Family Court ruled in favour of ATO and DPP on this issue. The respondent appealed against that ruling to the full bench of the Family Court. The appeal has been heard, but judgment has not yet been delivered.

A separate limb of the case involves \$1.9 million that was once held by a company controlled by McCauley and which is now under restraint in Hong Kong as a result of action taken under a mutual assistance request made by Australia. The money in question was forfeited to the Commonwealth by operation of section 30 back in 1994 but two companies have brought proceedings under section 31 of the PoC Act. That provision gives the courts power to return property to a third party if that party can show that they had an interest in the property and that the interest was lawfully acquired.

The litigation is now close to completion. The parties have agreed on terms of settlement which will result in an

appropriate distribution of the property involved in this case.

Allen

Allen was convicted in the Melbourne County Court on one count of conspiring to import heroin and two counts of conspiring to prevent or defeat a law of the Commonwealth. He committed the offences while employed as a Customs officer. He was sentenced to 11 years and three months imprisonment with a non-parole period of eight years and three months.

On 13 June 1996 the Attorney-General signed an authorisation for the DPP to apply for a superannuation order under the Crimes (Superannuation Benefits) Act. The effect of the order would be to forfeit Allen's rights to employer funded superannuation benefits. The application came on for hearing in the County Court on 15 November 1996 but was adjourned for one week on application by Allen. Allen and his wife then sought and obtained a consent order from a Registrar of the Family Court registering a property settlement under the Family Law Act 1974.

The order, which was made on 21 November 1996, required Allen to do whatever was necessary to cause his wife to be paid 70% of his superannuation entitlements. The DPP was not given notice of the application. There was a reference in the wife's statement of financial affairs to her husband having a "potential liability to the Director of Public Prosecutions in relation to his appropriate share of the superannuation fund". However, there was no reference to the fact that an application for a superannuation order was pending in the County Court.

The DPP was given leave to intervene in the proceedings before the Family Court. The DPP argued that the order made by the Registrar should be set aside on grounds that it was affected by fraud, and because Allen could not lawfully transfer his superannuation entitlements to his wife. On 8 August 1997 the Family Court set aside the property settlement on the basis that the DPP should have been given notice of the application. The proceedings in the County Court will now be relisted.

Ditton

Dr. Ditton is a psychiatrist. As noted in Chapter 3, investigations by the Health Insurance Commission led to her being charged with lodging false claims on Medicare.

At an early stage the defendant indicated that she wished to voluntarily repay to HIC the amount she had improperly obtained. The DPP acted for the HIC in the settlement negotiations, using the DPP's civil remedies function. There were extensive negotiations, but they were not fruitful. When it became apparent that the matter could not be settled by negotiation, the DPP discontinued the discussions and applied for a restraining order under the PoC Act with a view to obtaining a pecuniary penalty order at the time of sentence.

A restraining order was made over all the defendant's property other than certain specified items of property and the defendant's earnings from what continued to be a busy psychiatric practice. The earnings from the practice were left unrestrained so that the defendant could pay her living and legal expenses. The restrained property included the house the defendant lived in and three rental properties. All the real estate was heavily mortgaged and the order allowed for rent from the rental properties to be used to meet mortgage repayments.

In April 1997 the defendant stood trial on 40 charges for offences against section 128B of the Health Insurance Act 1973. Shortly before the trial was due to commence the defendant applied to the Supreme Court of Queensland for variation of the restraining order so that she could sell a property to get more money for legal expenses. The DPP opposed the application on the basis that the defendant had not explained how the proceeds from her practice had been used. In the course of the application the defendant realised that anything she got from selling the restrained property would be used first to pay out existing mortgages on the property and would not be available to pay her legal expenses. She did not proceed with the application.

The defendant was convicted on the 40 charges against her. At sentence, she was ordered to pay a pecuniary penalty of \$34 769.60. This was the figure calculated, with some precision, by the DPP and the HIC as the minimum amount

related to the 40 charges. The order provides that the Official Trustee shall pay as much of the pecuniary penalty order as possible out of the restrained property.

A further 110 charges have been listed for trial in September 1997. The term of the restraining order has been extended because there are still charges before the court.

Baker

Baker was a chartered accountant who acted as a tax consultant for some of his clients. He amassed a large sum of money by setting up tax minimisation schemes for clients and charging for his services. ATO took the view that the money he earned from this work represented personal income, not income of the companies and trusts he controlled. ATO issued assessments against him for over \$2 million. Baker's main asset was an art collection worth between \$2 million and \$3 million which he claimed was owned by a trust called the Modern Art Trust. The DPP exercised the civil remedies function to supervise the recovery of the tax owed by Baker. The litigation was conducted by the Australian Government Solicitor.

Baker challenged the assessments issued against him, but lost at first instance and before the full court of the Federal Court. Baker then filed a bankruptcy petition, claiming that his debts exceeded his assets. ATO, as principal creditor of the estate, indemnified the Official Trustee in respect of legal costs so that the Official Trustee could bring proceedings to recover the art collection. At first instance, the Federal Court ruled in favour of ATO, finding that the Modern Art Trust never existed, that the art collection belonged to Baker, and that the collection vested in the Official Trustee at the date of the bankruptcy. Baker appealed against that decision to the full court of the Federal Court. The full court dismissed the appeal, except in a relatively minor respect.

The Official Trustee obtained an injunction at the start of the proceedings to prevent Baker from dissipating the art collection while the court proceedings ran their course. However, part of the collection had to be sold to pay Baker's legal expenses and to provide for maintenance of the collection. The Official Trustee engaged Christies to sell the remaining works of art. The resulting auction raised \$590 000. The Official Trustee recovered a further \$88 000 that Baker's art rental business had earned during the course of the legal proceedings. After all expenses had been paid, including the costs of the Official Trustee, legal expenses and auctioneers charges, a little under \$65 000 was left to be paid off the tax debt.

To and Do

The defendants in this case were charged with offences against section 29D of the Crimes Act in relation to frauds on ATO, the Department of Social Security and the Department of Education, Employment and Training. The DPP exercised the civil remedies function to coordinate recovery action.

In the course of the matter the defendants sold their house. The DPP applied for, and obtained, a *mareva* injunction over the proceeds of sale. However, on the morning that the injunction was issued, a number of mortgages were lodged over the title in favour of relatives of the defendants. At settlement, all the proceeds of the sale went to the mortgagees. The defendants then declared themselves bankrupt, stating that they had no assets.

The DPP assisted the Official Trustee in Bankruptcy to conduct an examination of the defendants and the mortgagees under section 81 of the Bankruptcy Act 1966. As a result of that action, the mortgages were overturned and the mortgagees were required to pay the money they had received into the defendants' estates.

Portplan Pty Ltd

On 7 September 1993 Grant McCleary and others were charged with importing a commercial quantity of cannabis into Australia. The DPP obtained a restraining order under the PoC Act over the known assets of the defendant and his family company, Portplan Pty Ltd. Those assets included a partly completed aluminium fishing boat. In accordance with usual practice, the DPP gave an undertaking as to damages.

On 28 March 1994 the restraining order was varied to enable Westpac to exercise its power under a bill of sale that it held over the boat. The boat was subsequently sold and the bulk of the money went to pay debts owed to the bank.

On 31 August 1994 a jury returned verdicts of not guilty against McCleary and his co-defendants. On 1 September 1995 Portplan commenced proceedings to recover damages under the undertaking given by the DPP. The company claimed to have suffered losses of over \$18 million through being prevented from completing the fishing boat and putting it into operation. The claim includes the total profits the company claims it would have earned from fishing over the next 20 years. The DPP is defending the proceedings, both on grounds of causation and quantum.

In October 1996 the matter came before the Supreme Court of WA for a determination on preliminary questions of law. On 25 March 1997 Wallwork J made the following rulings:

- evidence given at the criminal trial cannot be led as evidence on the application for damages unless, at least, the relevant witnesses are made available for cross-examination;
- despite the acquittal, it is open to the DPP to call evidence to show, on the balance of probabilities, that McCleary was involved in criminal conduct in order to show that it would be inequitable for his company to recover damages; and
- the DPP cannot lead evidence obtained by the AFP from telephone intercepts which was ruled inadmissible at the criminal trial.

The matter will proceed to hearing.

La Rosa

On 3 April 1996 La Rosa was convicted of three offences arising from the importation of a trafficable quantity of heroin into WA. He was sentenced to seven years imprisonment with a non-parole period which was cumulative on a sentence he was serving for drug offences against State law.

The DPP obtained a restraining order under the PoC Act over a number of pieces of property, including the defendant's matrimonial home which was worth \$350 000. A few days before the property became forfeited by operation of section 30 of the PoC Act, La Rosa lodged an application under section 48(4) seeking a declaration to exclude his property from the operation of section 30. As the Act then stood, it was necessary not only for that application to be made within six months from the date of conviction, but for a court to hear the application and make a ruling before the six month period expired.

The matter was set down for hearing but was settled by agreement on the basis that La Rosa got to keep his matrimonial home. The home was purchased many years before the present offences, at a time when La Rosa may have had legitimate sources of income. There were, accordingly, good prospects that a court would make a section 48(4) declaration in respect of it. The settlement resulted in the DPP recovering \$135 000 in money, a house worth approximately \$170 000 and other assets worth about \$100 000.

FTR Act Cases

There were a number of cases during the year in which the DPP applied for a forfeiture order against a person who brought cash into Australia, or attempted to take it out of Australia, without furnishing a report under the Financial Transactions Reports Act 1987. The courts have accepted that the money used in connection with such offences is tainted property for the purpose of the PoC Act and is liable to forfeiture under section 19 of that Act. However the courts have a discretion under section 19 about whether to make a forfeiture order and, if so, about how much of the money should be forfeited. Details of some of the cases dealt with in 1996-97 follow.

Man

On 5 April 1996 Man was at Sydney airport with her nine year old son. Both were travelling to Hong Kong. Customs

officers searched their baggage and found that Man was carrying A\$305 000 and HK\$4 160 in cash which she had not declared. The cash was inside a box in Man's baggage. She was charged with one offence against section 15(1) of the FTR Act. Man claimed that the cash represented money saved by herself and her husband and winnings by her husband from gambling. However, she gave no clear explanation about what amounts came from where.

Man was convicted of the offence in the Local Court of NSW. In addition to penalty, the magistrate made a forfeiture order in the sum of A\$230 000 and HK\$4 160. The magistrate found, on the material placed before the court, that at most the defendant could have saved was \$25 000 per annum. The magistrate did not accept that the remainder of the money was the result of the husband's gambling. In fact she described the claim as "almost unbelievable". Nonetheless, the effect of the order was that \$75 000 was returned to the defendant.

The defendant appealed against the forfeiture order to the District Court of NSW. The court found that there was no proper basis for a forfeiture order with respect to the HK\$4 160, and ordered that that money be returned to the defendant. The court confirmed the forfeiture order in relation to the A\$230 000.

Chen

The defendant was apprehended at Sydney Airport on 26 June 1996 after arriving on a flight from China. Customs officers found US\$63 000 in his possession which had not been declared. He was charged with an offence against section 15(1) of the FTR Act.

The DPP decided not to pursue a forfeiture order in this case. There was reason to believe that the defendant made a genuine error about his reporting obligations and there was material to support the defendant's claims that he had obtained the money from legitimate sources in China and that he intended to use it for legitimate purposes in Australia. In the circumstances, it was unlikely that a court would make a forfeiture order.

Kwok

The defendant was apprehended at Sydney Airport carrying A\$491 040 and HK\$3 000 out of Australia that he had not declared. He told the AFP that the cash was the proceeds from the sale of diamonds that he brought into Australia in the previous year. The defendant said that he was aware of the legal requirements when transferring money in and out of Australia. His excuses for not complying with those requirements included problems in understanding English, problems in understanding the forms, and problems in understanding what money Customs officers were referring to when they asked him whether he was carrying any cash. He also said it was too much trouble to fill in the forms.

In April 1996 the defendant pleaded guilty in the Local Court of NSW and was committed for sentence. The defence sought to settle the forfeiture application by negotiation. By that stage, ATO had raised an assessment against the defendant in the sum of \$157 000 for unpaid sales tax. The defence offered to agree to forfeiture of a further 25% of the money seized. After some consideration, this offer was rejected.

On 7 June the District Court convicted the defendant and imposed a fine of \$5 000. The court ordered forfeiture of A\$122 975 and the defendant's airline ticket.

Choy

The defendant was apprehended at Sydney Airport, en route to Hong Kong, with approximately \$450 000 in his luggage. He pleaded guilty to a charge under section 15(1) of the FTR Act.

The defendant claimed that he got the money from various sources including selling a car, mortgaging an investment unit, gambling and saving. He also claimed that he found \$200 000 in a park at Matraville, although he later admitted that this was a fabrication. The defendant claimed that he intended to use the money in a joint business venture in China. However, he was not able to produce any evidence to support the claim.

The defendant was convicted and fined \$4 000. The court ordered that he forfeit A\$355 895 and HK\$2 000. The rest of

the money went in paying the defendant's living and legal expenses and in paying the defendant's tax debts. The defendant lodged an appeal to the NSW Court of Criminal Appeal but subsequently withdrew it.

Tay

This defendant attempted to take \$505 050 out of Australia without lodging a declaration. The cash was distributed throughout his and his wife's suitcases. His wife was also carrying \$4 660 in her handbag.

The defendant claimed that the money was the result of illegal gambling in New Zealand over the previous two and a half years. He claimed that he brought the money to Australia in small amounts of New Zealand currency and said that he intended to use the money for a gambling spree in Hong Kong.

The defendant was convicted on one charge under section 15(1) of the FTR Act. On 30 August 1996 the court ordered forfeiture of \$165 000. The balance of the money was returned to the defendant.

Ma

This defendant was detected at Sydney airport, bound for Hong Kong, carrying \$200 000 in cash that he did not report. The money was hidden inside two Weet-Bix boxes. Ma claimed that he won the money at casinos in Australia. He was only in Australia for 38 days but claimed that he won between \$5 000 and \$7 000 every time he went to a casino. He was charged with one offence against section 15(1) of the FTR Act. Ma pleaded not guilty to the charge, but was convicted after a three day summary hearing.

The DPP sought forfeiture of the cash. On 17 September 1996 the magistrate ordered that the full \$200 000 be forfeited to the Commonwealth. Ma did not give evidence at the forfeiture hearing, indeed he had left Australia by then. The magistrate did not accept the claim that Ma won the money from gambling. He found that there was a deliberate effort to smuggle the money out of Australia, there was no explanation about where it came from or what it was going to be used for, and there was no evidence that Ma would suffer hardship if the money was forfeited. Ma did not appeal against the order.

Gluyas

Gluyas brought 160 000 Deutschmarks, worth approximately A\$111 000, into Australia from Fiji. He was an Australian citizen who had travelled overseas on previous occasions. He was an undischarged bankrupt at the time of the offence.

When he was interviewed, Gluyas admitted that he made an untrue statement in his Customs form but declined to give any information about the source of the Deutschmarks or what he intended to do with them. His solicitor later claimed that the money was meant to be used to purchase three glass bottom boats for use in a resort in Fiji. Police inquiries established that Gluyas had once made inquiries about the possibility of buying some boats but had not placed an order. Subsequently, a firm of solicitors contacted the DPP and said that the money belonged to a client of theirs in Europe. They would not reveal the client's identity and they did not take any further action in relation to the money.

Gluyas pleaded guilty to an offence against the FTR Act and the DPP applied for a forfeiture order. The defence initially opposed the application, and claimed that \$15 000 of the money belonged to Gluyas from work done in Fiji. However, the defence subsequently withdrew its opposition and an order was made that the money be forfeited to the Commonwealth.

Tam

This defendant attempted to take \$50 000 in cash to China without declaring it. He claimed that the money was partly his earnings from work in Australia and partly money he had brought to Australia when he immigrated. A financial analysis, based on information that Tam provided, showed that it was impossible for him to have saved the money from his earnings. The court ordered forfeiture of \$10 000.

AUDIT OF THE RECOVERY OF THE PROCEEDS OF CRIME

In the course of the year the Australian National Audit Office conducted a performance audit into the Recovery of the Proceeds of Crime. The report of the audit was presented to Parliament in December 1996: Audit Report No. 23 of 1996-97.

The audit examined the activities of all Commonwealth agencies involved in this area and reviewed a number of completed cases. The auditors were not able to review performance in cases which were still in progress. Nonetheless, the report provides a timely review of practices in this area and makes some useful recommendations for improvements in those practices.

The three main points that emerge from the report are:

- the investigative agencies must take primary responsibility for financial investigations;
- financial investigations needs to be integrated into criminal investigations; and
- there is a need for the DPP to be available to provide advice, assistance and support at the investigation stage.

The report made six recommendations. The recommendations, and the DPP's responses to them, are as follows:

1. The ANAO recommends:
 - that the AFP and DPP allocate higher priority to developing up-to-date corporate plans; and
 - agencies develop a full range of performance indicators relevant to the objectives and strategies identified in their corporate plans for internal and external use and report fully against them as part of their accountability, particularly for outcomes.

DPP response: The DPP has reviewed and updated its Corporate Plan (see Appendix 2). A report against performance indicators appears in Chapter 6.

2. The ANAO recommends that operational plans within agencies fully reflect directions and strategies identified within agency corporate plans relating to the recovery of the proceeds of crime to encourage a better focus on outcomes.

DPP response: The DPP supports the recommendation. Current practices comply with the recommendation.

3. The ANAO recommends that the AFP, NCA, DPP, and CLEB collaborate to develop an effective Case Management System that provides, inter alia, for the efficient, effective and economical investigation and recovery of proceeds of crime.

DPP response: The primary responsibility for this recommendation rests with the investigative agencies. The DPP is ready to provide assistance.

4. The ANAO recommends that the agencies establish a suitable case management information system for better decision making.

DPP response: The primary responsibility for this recommendation rests with the investigative agencies. The DPP is ready to provide assistance.

5. The ANAO recommends that the AFP, consistent with its emerging organisational philosophy, give adequate consideration to the cost efficiency of maintaining and enhancing specialised groups with the necessary expertise and experience for the recovery of the proceeds of crime.

DPP response: The responsibility for this recommendation rests with the AFP.

6. The ANAO recommends that the AFP and the NCA accept prime responsibility, with assistance from DPP at a strategic level, for collection and analysis of financial data involving the proceeds of crime and this be reflected in a revised protocol involving all parties.

DPP response: The DPP supports the recommendation. The DPP has already negotiated an appropriate amendment to its Memorandum of Understanding with the NCA. The DPP has opened discussions with the AFP with a view to settling an updated Memorandum of Understanding with that agency. This issue will be addressed in that exercise.





Chapter 7 Law reform and Other Issues

ROLE

One of the objectives of the DPP is to provide 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 operating experience. This chapter outlines some of the areas in which the DPP was active in 1996-97.

MODEL CRIMINAL CODE

In 1996-97 the Model Criminal Code Officers Committee released three discussion papers and one final report as part of the project to develop a Model Criminal Code. The three discussion papers dealt with non-fatal offences against the person, sexual offences against the person, and serious drug offences. The DPP has provided comments on the first of those discussion papers and at the time of writing is preparing its submission on the third.

EVIDENCE ACT 1995

The DPP has made a number of submissions to the Attorney-General's Department concerning the operation of the Evidence Act 1995 which applies in Commonwealth prosecutions in the ACT. Mirror legislation applies in NSW.

In particular, the DPP has expressed concerns in relation to section 138, which deals with the admissibility of improperly or illegally obtained evidence. Section 138 has altered the common law position by placing on the party seeking to have such evidence admitted the onus of satisfying the court that it should admit the evidence. The matter of *Truong* (1996) 86 ACrimR 188 would suggest that in practice section 138 represents a significant departure from the position at common law, and that the fact that evidence was obtained in good faith based on professional, but mistaken, legal advice may not be sufficient to secure its admission.

The DPP has also raised the issue of the workability of section 104 of the Act in a criminal trial. That section is concerned with the cross-examination of a defendant about a matter relevant only to credibility. In a recent prosecution the court ruled that, where the requirements of section 104 are otherwise satisfied and the prosecution seeks leave to question the defendant, that leave must be sought in relation to each question relating to credibility.

The DPP has also expressed concerns regarding section 123 of the Act which provides that legal professional privilege (called client legal privilege in the Act) cannot be claimed in respect of evidence adduced by a defendant, other than by a person who is an associated defendant within the meaning of the Act. The effect of this section is that the prosecution, and prosecution witnesses, cannot claim legal professional privilege for communications that passed between the DPP, investigating and regulatory agencies and government departments, or for any other communication or document, if it is adduced as evidence by the defendant in criminal proceedings. Such documents and communications are still subject to the test of relevance, and to claims of public interest immunity where applicable, but some communications and documents which were privileged at the time of the communication or the creation of the document will lose that privilege because of the operation of section 123.

Ironically, shortly after the Evidence Act was enacted the High Court handed down judgment in *Carter v The Managing*

Partner, Northmore Hale Davy and Leake and Others [1995] 183 CLR 121, in which the Court restated the rationale for legal professional privilege and held that there was no basis for an exemption of the kind now granted by section 123.

SENTENCING OF FEDERAL OFFENDERS

During 1996-97 the DPP raised with the Attorney-General's Department one new issue relating to the provisions of Part 1B of the Crimes Act. The problem concerns the operation in NSW of section 19AQ(5) of that Act in conjunction with section 19AA(2). Put shortly, in the circumstances where no provision has been made in Part 1B for revocation of a parole order or licence to date from the commission of the offence which lead to the revocation, in calculating the balance of the original sentence that remains to be served the period between the commission of the offence and the imposition of a sentence in respect of that offence will count as street time. This may have the result that when an offender is sentenced in respect of an offence committed during the parole or licence period that offender will not in fact be liable to serve any portion of his or her original sentence.

INVESTIGATION OF COMMONWEALTH OFFENCES

In the course of the year the DPP made a number of recommendations to the Attorney-General's Department for amendments to Part 1C of the Crimes Act. One of those recommendations concerned the provision made in section 23C(7) for "dead time" in calculating the initial investigation period.

Section 23D(1) provides that an investigating official may apply for an extension of an investigation period at or before the end of the period in question. Section 23C(7)(g) provides that the time that is reasonably required to make and deal with an application for an extension is to count as dead time. However, this period of dead time will only start to run when the investigating official appears before a magistrate. Accordingly, the time spent in travelling to court and waiting for a magistrate to become available cannot count as dead time. As a consequence, whenever there is likely to be a need for an extension under section 23D, the police will have to suspend questioning at some stage during the initial investigation period, of four or two hours as the case may be, in order to allow themselves sufficient time to make an application prior to the expiration of that period.

The DPP considers that section 23C(7)(g) should be amended so that once questioning has been suspended for the purpose of enabling the police to make an application under section 23D, all the time that is reasonably required in connection with the making and disposal of an application under section 23D should count as dead time.

PARENTAL CHILD ABDUCTION

In April 1997 the DPP provided comments to the Family Law Council of Australia on a discussion paper entitled Parental Child Abduction.

One of the issues raised in the discussion paper was whether, if parental child abduction is criminalised, there should be a requirement for consent from either the Attorney-General or the Director of Public Prosecutions before there can be a prosecution. The discussion paper noted that the US offence of parental child abduction does not require the consent of any public official before there can be a prosecution. The Council had apparently received advice that the US provision has sometimes been used "oppressively".

It is the view of the DPP that the potential risk of a private prosecution being instituted in inappropriate circumstances provides no real justification for any offence that may be enacted being subject to a consent provision. However, if such an offence is made subject to a consent provision, it is preferable that the provision requires consent from the Director rather than the Attorney-General.

Another question raised by the discussion paper was whether the Prosecution Policy of the Commonwealth should apply to the prosecution of an offence of parental child abduction, or whether a specific prosecution policy should be developed. In the view of the DPP there is no justification for the prosecution of an offence of parental child abduction

to be subject to separate prosecution policy. It is also quite unclear how such a specific policy could co-exist with the Prosecution Policy of the Commonwealth.

PRESUMPTION OF MARITAL COERCION

At common law there is a rebuttable presumption that a crime committed by a woman in the presence of her husband was coerced by her husband, and that she is therefore entitled to be excused from criminal liability.

The presumption of marital coercion is clearly an anachronism. However, one of the consequences of amendments made to section 4 of the Crimes Act by the Crimes Amendment Act 1995 is that the presumption, which previously was applicable only in relation to offences under the Crimes Act, is now applicable to all offences against Commonwealth law. In the DPP's view, marital coercion should only be considered in the context of the general defence of duress.

The common law presumption has not been reproduced in the Criminal Code Act 1995. However, it will be some time before the abrogation effected by the Criminal Code Act will become fully effective. Indeed, the presumption will continue to apply to all non-Criminal Code offences until March 2000 when Chapter 2 of the Criminal Code will apply to all offences against Commonwealth law.

The DPP has recommended that section 4 of the Crimes Act be amended now to abrogate the presumption rather than wait for the relevant provisions of the Criminal Code Act to take effect. The DPP has also recommended that, if a decision is made to abrogate the presumption, the opportunity should also be taken to abrogate spousal immunity in relation to the offence of conspiracy.





Chapter 8 Resource management

STRUCTURE

Resource management in the DPP is the responsibility of Resource Management branches, both in Head Office and the regional offices, under the overall direction of the Senior Executive Officer, Resource Management. Head Office plays a coordinating role in areas of national importance, as well as providing media liaison and publishing services. Operational responsibility has been largely devolved to the regional offices.

The management of financial and human resource at a national level is undertaken by a single section. This section is headed by the Manager, Resources assisted by three team leaders who specialise in the various disciplines involved: finance, human resource management, and payroll. This merged arrangement will enable the DPP to coordinate the many reform projects currently underway in the Australian Public Service.

The Resource Management branch in each regional office is headed by an Executive Officer who works under the supervision of the Deputy Director for that State. The regional branches are responsible for personnel, information technology, library and accounting services as well as general administration.

HUMAN RESOURCES

OVERVIEW

Human resource management in the APS is undergoing fundamental change as a result of developments in a number of areas, including agency bargaining, changes under the *Workplace Relations Act 1996*, the review of the Public Service Act 1922 and the rationalisation of the personnel processes. The further devolution of management responsibilities to the DPP may result in significant changes to the responsibilities and workloads of the Director and the DPP's human resources officers.

The office has set up two work teams to implement reforms over the next year. The DPP will implement the SAP R/3 Human Resource management Information System to support the changing human resources management functions of the Office.

STAFFING

As at 30 June 1997 the number of operational staff was 412 (440 at 30 June 1996). A breakdown of this figure appears in Tables 1 to 4 at the end of this Chapter.

Average operational staffing for the year was 415 (443 for 1995-96).

The staff turnover for lawyers for this year remained relatively low at 13 percent (eight percent in 1995-96). This is in contrast to turnover rates in the late 1980's which were as high as 30 percent in some regions. The low rate reflects the fact that there are fewer opportunities at present for lawyers to transfer to the private sector. The turnover rate for non-legal staff was 21 percent (17 percent in 1995-96). There were 36 voluntary redundancies in 1996-97 (four in 1995-96). Exit questionnaires suggest that most departing employees left for personal reasons or to advance their careers

elsewhere.

There was limited staff movement in Senior Executive Service ranks during 1996-97, with one gain and two losses. None of the gains or losses involved intra-agency mobility.

The percentage of staff dedicated to Executive and Support was 23.8 percent (24.1 percent for 1995-96). This figure comprises executive management and staff not directly supporting legal activities. It includes staff working in the national and regional libraries and on information technology, as well as staff working in resource management and in administrative areas.

There were no requests during the year for post separation employment under chapter 13 of the *Guidelines on Official Conduct for Commonwealth Public Servants*.

TRAINING AND DEVELOPMENT

In the course of the year the DPP continued to work on refining individual training agreements and local training programs in accordance with the Office's national training plan. As noted above, the DPP will implement the SAP R/3 system during 1997-98. That will become the primary source of information for regional and national training. The DPP uses the Australian Training Register as a direct and up to date source of information on training services. The Office is reviewing training strategies to ensure that the emphasis is placed on competency based training and generic competency standards.

During the course of the year each DPP office conducted regular in-house legal training, usually on a monthly basis. This training is designed to ensure that legal skills remain current and that DPP lawyers comply with the continuing legal education requirements that apply to them. Each office also provided training on occupational health and safety issues, including courses on stress management and ergonomics.

The year saw considerable effort put into training on the new SAP R/3 financial system and into informing staff of the many human resource management changes that flow from the Workplace Relations Act and that are likely to flow from the review of the Public Service Act.

Direct expenditure on external training for the year was approximately \$221 500, which is 0.8 per cent of total salary expenditure (\$264 000 and 1.0 per cent in 1995-96). In addition, considerable in-house and on the job training was conducted during the year, although this is not costed.

STAFF INTERCHANGE

The DPP has an interchange program under which officers can be placed with local or overseas organisations if resources are available. Due to resource constraints, the DPP was not able to arrange any formal interchanges during 1996-97. However, a number of staff did transfer, on either a temporary or permanent basis, to other public sector agencies including the Australian Securities Commission, the Attorney-General's Department and the National Crime Authority.

OCCUPATIONAL HEALTH AND SAFETY

The DPP has an OH&S agreement with the Community and Public Sector Union which was signed in 1992. The agreement is due to be reviewed and that will be done when resources allow.

All states have trained OH&S representatives and deputies. There is a steady turnover of representatives which means that new representatives have to be selected and trained on a regular basis. There is at least one formal workplace inspection in each office during each year. No problems of major significance were found during 1996-97.

There are regular OH&S committee in each offices. The first priority is given to minimising potential problems that may result from the use of new technology, particularly soft tissue injuries from using computer equipment. If a problem

arises, the DPP's practice is to engage specialists with the skills needed to carry out inspections and develop strategies to overcome the problem.

During 1996-97 Comcare conducted a scheduled workplace investigation of the Sydney Office to assess compliance with the Occupational Health and Safety (Commonwealth Employment) Act 1991 and applicable codes of practice. The result was favourable, with only minor recommendations being made for improvement. Those recommendations are being addressed.

EQUAL EMPLOYMENT OPPORTUNITY

The DPP's current Employment Equity Plan was settled in 1994 and covers the years 1994 to 1997. Each State office has an officer responsible for the implementation of EEO under the direction of the Deputy Director. The Resource Management section within Head Office provides control, advice and coordination for the State offices and a member of Head Office is the designated EEO coordinator.

The DPP's EEO profile is shown in Table 5 at the end of this Chapter. The table shows that the DPP's employment rates for most target groups compare favourably with employment rates for the APS as a whole.

EEO is a regular topic of discussion at the bi-annual Executive Officers' Conference and at industrial democracy meetings. All staff with EEO responsibilities attend EEO network meetings as appropriate.

Major achievements since 1 July 1996 include:

- an Aboriginal legal cadet was appointed to the Sydney office at the start of the 1997 academic year;
- two aboriginal cadets were appointed in the Brisbane office; and
- work commenced on revision of the DPP's workplace harassment and sexual harassment policies.
- The major EEO priorities for 1997-98 will be:
- review of the Employment Equity Plan;
- completion of the revision of the DPP's workplace harassment and sexual harassment policies;
- completion of guidelines for home-based work and job sharing; and
- continuation of EEO awareness training.

Monitoring of exit questionnaires and interviews suggests that there is no general perception that the DPP discriminates against members of target groups.

PERFORMANCE PAY

Senior Officers in the DPP voted against a scheme for performance pay for high achievers. Accordingly there were no payments of performance based pay during 1996-97.

The Office's future remuneration packages will be negotiated through agency bargaining processes.

INDUSTRIAL DEMOCRACY

The DPP's current Industrial Democracy plan was settled with the CPSU in May 1993. There is a National Consultative Council meeting held annually, with the most recent meeting being held in Head Office in July 1996. The next meeting will be held later in 1997 when the impact of public sector reforms are better understood.

Regular ID meetings are held in each region. Issues raised during 1996-97 included office relocation, accommodation, the plateauing of senior lawyers, voluntary redundancies, part-time work, and problems related to new technology and manual handling. The ID forum gives staff an opportunity to be involved in the decisions that affect their working environment.

Industrial democracy is now integrated into the management methods of the DPP and there are no specific events to

report.

FINANCIAL MANAGEMENT

Financial management in the APS is undergoing fundamental reforms with the proposed replacement of the Audit Act 1901 by three new Acts, including the proposed Financial Management and Accountability Act. All agencies will be required to move to full accrual accounting and budgeting.

The office has set up a work team to implement the reforms over the next year. The SAP R/3 Financial Management Information system will be used to support the changing financial management functions of the Office.

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 four years, and the budget for 1996-97, are shown in Table 6 at the end of this Chapter.

Total expenditure for 1996-97 was \$54.241 million, against a budget of \$58.476 million (expenditure for 1995-96 was \$52.22 million, against a budget of \$58.27 million).

The increase in expenditure over 1995-96 was due primarily to increased costs resulting from wage increases and general price movements, costs relating to the relocation of Head Office and IT re-equipment, and the cost of running a number of major cases.

The underspending against budget resulted from the deferral of aspects of the IT re-equipment program while software is evaluated and the reservation of funds to meet spending commitments in 1997-98.

PROGRAM BUDGETING

The DPP has three sub-programs for the purposes of external reporting: Commonwealth Prosecutions (which includes Corporate prosecutions), Criminal Assets, and Executive and Support (which includes the IT

re-equipment project). Details of the activities carried out under each sub-program appear in the relevant chapters of this Report. The expenditure incurred in respect of each program appears in the financial statements at the end of this Report.

For further information on the DPP budget see also Attorney-General's Program Budget Measures Statements for 1996-97 and 1997-98. The relevant entries are under sub-program 6.7.

FINANCIAL REPORTING AND MANAGEMENT INFORMATION SYSTEMS

The DPP now operates three key management information systems, the SAP R/3 system, the Fines and Costs debtors system, and the NOMAD payroll system.

ACCOUNTING POLICY

The DPP Financial and Purchasing Handbooks will need to be amended to incorporate the effect of the proposed Financial Management and Accountability Act. The current handbooks will remain in force until that occurs.

During 1996-97 the DPP failed to gazette purchases in excess of \$2 000 within the required time-frame on a small number of occasions. All such purchases were gazetted, albeit outside the required reporting period.

ACCOUNTS PROCESSING

The Office is currently reviewing its accounts processing practices, and the degree of devolution of financial responsibility, as part of the move to an accrual accounting environment. The new system will require higher skill levels than the old and that may mean that some processes that have been decentralised will have to be re-centralised.

The DPP uses Australian Government credit cards wherever it is practicable to do so.

In 1996-97 the DPP processed 9 906 claims for payment nationally by cheque or credit card (11 044 in 1995-96). Ninety three percent were paid on the due date (96 per cent in 1995-96). In smaller offices it is more cost effective to process batches of claims at regular intervals rather than to process individual claims as they arise, and that sometimes means that claims are not paid strictly on the due date.

CLAIMS AND LOSSES

In 1996-97 the DPP had no claims or losses which individually resulted in net costs to the Commonwealth of \$50 000 or more.

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

CAPITAL WORKS MANAGEMENT

The DPP had no major capital works projects that cost \$6 million or more in 1996-97.

AGENCY EVALUATIONS

The DPP developed an evaluation plan in 1990-91. The plan provides for the evaluation of significant areas of the DPP's activity in a five-year cycle. In past years the criminal assets, fines and costs and IT functions have all been reviewed.

In addition, in 1992-93 the DPP was represented on a portfolio review of the Corporate Prosecutions function and in 1993-94 the DPP participated, with the Department of Finance and the Attorney-General's Department, in a tripartite review of the Office as a whole.

Accordingly, all major activities of the Office have been reviewed in recent years.

INFORMATION TECHNOLOGY

The DPP computer installation is made up of IBM-compatible personal computers, local and wide area networks and in-house applications running in a client-server environment. The wide area network provides gateways to external services and to some other Commonwealth agencies.

The Office uses two Wang minicomputers to run the financial and library management systems (FINEST and LIBMAN). Both of the minicomputers are likely to be decommissioned by the end of 1997 when the management systems are replaced with SAP/R3 and FIRST respectively.

In addition to FINEST and LIBMAN the DPP maintains the following in-house systems:

- Case Recording and Information Management System (CRIMS), which records details of prosecutions being handled by the DPP;
- Fines and Costs (FAC), which records and disperses fines and costs imposed by courts;
- Criminal Assets Recording System (CARS), which records and tracks action by the Criminal Assets branches; and
- File Registry System (FILE), which keeps a record of administration files.

The DPP has developed a computer court presentation system called CLARITY which assists with the preparation, management and presentation of evidence in complex cases. CLARITY has been widely used in cases ranging from money laundering to corporate prosecutions. The use of CLARITY has greatly accelerated the speed with which documents can be tendered and has assisted in simplifying complex matters.

In 1997-98 the DPP will move to upgrade its existing IT environment. The upgrade will include replacement of workstations, office automation system and various components of the DPP's network.

LIBRARIES

The DPP library network is responsible for providing a legal reference and information system to all DPP offices. Each library is staffed with at least one professional librarian. All have access to local and overseas online sources and provide legal staff with desk-top access to in-house and commercial databases on disc and CD-ROM.

The librarians meet regularly and jointly develop library policies and procedures for the network. The Head Office librarians also have a national role in maintaining in-house databases, producing a librarian's newsletter and a monthly legal information newsletter for lawyers. The systems/cataloguing librarian maintains the library management system and is responsible for network cataloguing.

In-house databases set up and maintained by the libraries include opinions, speeches, media reports, internal newsletters, documents and manuals, legal abstracts and legislation. Scanning equipment is used to add material that is not available in electronic form. The DPP uses the ISYS text retrieval system for most of its

in-house databases and for those commercial databases which do not have their own text retrieval system.

The Office has begun implementing a new library management system, FIRST, which is expected to go into full production during 1997-98. FIRST will give desktop access to material held by the libraries with links to full-text documents and databases.

ACCOMMODATION

In 1996-97 the DPP spent approximately \$6.0 million on accommodation and occupied a total of 17 020 square metres (\$4.8 million and 16 465 square metres in 1995-96). A breakdown of these figures appears in Table 7 at the end of this Chapter. The increase in expenditure was planned for and occurred because rent free periods expired on some leases.

In July 1996 the Head Office in Canberra relocated to 4 Marcus Clarke Street, Canberra City. Other offices are moving to rationalise accommodation, where possible, to reflect the general reduction in staff numbers.

CONSULTANCY SERVICES

Details of expenditure for 1996-97 under consultancy agreements are shown in Table 8 at the end of this Chapter.

Total expenditure for the year was \$670 204 (\$440 500 in 1995-96). A large part of the cost related to the relocation of Head Office, the salaries of in-house counsel, and IT implementations.

FRAUD CONTROL AND INTERNAL AUDIT

The DPP issued its current Fraud Control Plan in 1995. The plan will be reviewed in 1997-98.

There were no cases of internal fraud reported during the year and there were no relevant disciplinary proceedings under the Public Service Act 1922.

PUBLIC RELATIONS

All media inquiries are handled by an Executive Assistant who works in Head Office and can be contacted on (02) 62065606 during office hours. The DPP's policy is to provide accurate information on any matter which is on the public record. However, the DPP will generally not disclose information on cases that are yet to come before the courts.

The Executive Assistant also provides a daily media summary to each DPP officer via the computer network. The summary forms the basis of a database which can be used for research purposes.

A corporate video, Prosecuting in the Public Interest, explains and illustrates the work of the Office. Copies of the video can be obtained from any DPP office.

The DPP did not undertake any advertising campaigns or market research in 1996-97.

EXTERNAL SCRUTINY

The DPP was referred to in two reports by the Auditor-General in 1996-97.

The first report was Audit Report No. 19 of 1996-97: Results of 1995-96 Financial Statements Audit of Commonwealth Entities. The comments made in that report in respect of the DPP were that the audit report on the financial statements was unqualified and the result of the audit of the accounts and records was satisfactory.

The second report was Audit Report No. 23 of 1996-97: Recovery of the Proceeds of Crime. Details of that Report appear in Chapter 5.

The DPP was not referred to in any report by a Parliamentary Committee or by the Ombudsman. There were no adverse findings against the management practices of the DPP by a court or tribunal.

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 by doing its part to ensure that there is no discrimination against women in the criminal process.

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

It is DPP policy to make the most efficient use of resources. Energy saving methods are utilised where possible in office accommodation. Technology is used to minimise energy use, such as automatic switching off of equipment after a period of non use and similar energy saving devices. The Office gives preference to environmentally sound products and all office waste paper is recycled.

FREEDOM OF INFORMATION

The DPP had two outstanding requests under the Freedom of Information Act 1982 at the start of the year and received seven requests during the year. In four cases access was granted in part, in three cases access was refused, one request was withdrawn and one request was outstanding at the end of the year. Of the requests dealt with, four were dealt with

within thirty days, two within sixty days and one within ninety days.

BUSINESS REGULATION

The DPP has no role in business regulation other than to prosecute criminal offences in appropriate cases. The DPP's activities in Corporate Prosecutions are reported in Chapter 4.

PUBLIC COMMENT

The DPP has no formal arrangements for inviting complaints from the general public. However, any person is free to write to the Director or to any other DPP office at the addresses shown at the front of this Report.

Much of the correspondence received during the past 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.

PRIVACY

In 1996-97 there were no reports served on the DPP by the Privacy Commissioner under section 30 of the Privacy Act 1988.



	1996-97	1996-97
Prosecutions		285
Criminal Assets		35
Executive & Support		95
Total	430	415

Table 5: EEO profile as at 30

Classification	Male	Female	ATSI	PWD	NESB1	NESB2
Director	1					
Assoc Dir	1					
SES 3	2					
SES 2	5			1		
SES 1	18	11			1	1
Legal	75	77		3	5	13
SOG A/B/C & Equiv	14	14		2	2	4
ASO 1-6 & Equiv	51	120	3	7	7	19
Total	389	167	3	13	15	37

June 1997

Agency staff and inoperative 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.

Table 6: Revenue and expenses over past four years and budget for 1997-98

	1993/94	1994/95	1995/96	1996/97	1997/98(est.)
	(\$'000)	(\$'000)	(\$'000)	(\$'000)	(\$'000)
Receipts	1 170	3 344	2 086	2 285	2 962
Expenses					
Appropriation	52 372	49 598	58 279	58 476	54 074
Actual	46 974	43 370	52 220	54 241	

Table 7: Accommodation costs and usage

Program	Space occupied (m2)	Cost (\$m)

	1995-96 1996-97		1995-96 1996-97	
Prosecutions	6 074	6 727	1.796	2.315
Corporations	3 110	3 126	.984	1.206
Total Pros	9 184	9 853	2.780	3.521
Criminal Assets	1 789	1 720	.537	.592
Exec and Support	5 492	5 447	1.550	1.887
Total	16 465	17 020	4.867	6.000

Table 8: Consultancies for 1996-97

Consultant	Purpose	Cost	Period	Reason used
Head Office				
Commonwealth Rehabilitation Service	Workstations and OH&S assessment	\$1 282	Aug 1996	Specialist skills not available internally
D. Dixon*	Financial advice to	\$ 600	Aug 1996 to Dec 1996	Specialist skills not available internally
EASACT*	Counselling service	\$5 750	Nov 1996 to June 1997	Specialist skills not available internally
Ernst & Young	Internal Audit	\$40 702	Full year	Specialist skills not available internally
SAPAustralia	Implement SAP R/3	\$243 750	Feb 1997 to July 1997	Specialist skills not available internally
Software Consulting Services	SAP R/3 Basis support	\$16 250	Feb 1997 to July 1997	Specialist skills not available internally
Infoscan*	Advice on library software	\$400	Dec 1996	Specialist skills not available internally
WTPartnership	Quantity surveyor	\$750	From last year	Expert advice during fitout
Lindquist Johnson	Service consultancy	\$3 400	From last year	Expert advice during fitout
Murtagh Bond *	Structural engineering	\$330	From last year	Expert advice during fitout
AustralianProperty Group	Project coord. And financial management	\$28 500	From last year	Expert advice during fitout
Interiors Australia *	Contract administration	\$3 000	From last year	Expert advice during fitout
Sydney office				
M Ierace *	In house counsel	\$107 152	Full year	In-house counsel
Davidson Trahaire *	Employee assistance program	\$7 000	Full year	Specialist skills not available internally
D. Crossley *	Litigation support/court presentation	\$400	8 July 1996	Specialist skills not available internally
Henge Systems PtyLtd *	Litigation support/court presentation	\$70 000	Full year	Specialist skills not available internally
Melbourne office				
N. Robinson	In house counsel	\$115 702	Full year	In-house counsel
Global Consulting*	Word macros	\$15 000	Jan 1997	Specialist skills not available internally
Occupational Services of Aust	Stress management program	\$1 000	March 1997	Specialist skills not available internally
Occupational Services	Employee assistance	\$3 200	Jan 1997 to	Specialist skills not available

of Aust	program		Jan 1998	internally
Poison Human Resources*	Supervision workshop	\$4 500	April 1997	Specialist skills not available internally
Perth office				
K. Griffiths	Financial analytical services	\$1 154	March 1997	Specialist skills not available internally
J Lauri	Worksite evaluations	\$382.50	March 1997	Specialist skills not available internally

Consultancies marked * were not publicly advertised.





Appendix 1

Statement under the Freedom of Information Act

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:

(a) 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 this Report, but particularly in Chapters 1 and 2.

(b) 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.

People 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.

(c) 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 following categories of documents are made available (otherwise than under the Freedom of Information Act) upon request:

- DPP Annual Report;
- copies of the texts of addresses or speeches made by the Director and other senior officers;
- *The Prosecution Policy of the Commonwealth : Guidelines for the making of decisions in the prosecution process;* and
- *Guidelines for Dealings between Commonwealth Investigators and the Commonwealth Director of Public Prosecutions.*

(d) Particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain physical access to the documents of the agency.

Facilities for the inspection of documents, and preparation of copies if required, are provided at each DPP office. Copies of all documents are not held in each office and therefore some documents 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.

(e) Information that needs to be available to the public concerning particular procedures of the agency in relation to Part III, and particulars of the officer or officers to whom, and the place or places at which, initial inquiries concerning

access to documents may be directed.

There are no particular procedures that should be brought to the attention of the public. Initial inquiries concerning access to documents may be made at any of the addresses set out at the beginning of this Report.





Appendix 2

DPP Corporate Plan: 1997 to 2000

VISION

The DPP's vision is to provide a prosecution service to the Commonwealth and the people of Australia which is fair, independent, accountable, effective and efficient in order to advance social justice by deterring and discouraging breaches of Commonwealth law and ensuring that serious offenders are brought to justice.

This Corporate Plan is for the period 1997 to 2000.

BACKGROUND

DPP'S ROLE

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

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

The Director also has a number of other 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;
- conduct committal proceedings and summary prosecutions for offences against State law where a Commonwealth officer is the informant;
- assist coroners in inquests and inquiries under Commonwealth law;
- appear in extradition proceedings and proceedings under the Mutual Assistance in Criminal Matters Act 1987; and
- apply for superannuation forfeiture orders under Commonwealth law.

All decisions in the prosecution process are made in accordance with the guidelines laid down in the Prosecution Policy of the Commonwealth.

The DPP is not an investigative agency. It can prosecute only when there has been an investigation by the Australian Federal Police or another investigative agency. However, the DPP regularly provides advice and other assistance during the investigative stage, particularly in large and complex matters.

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.

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

ORGANISATION

The Commonwealth 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.

In Tasmania and the Northern Territory, Commonwealth prosecutions and related criminal assets work are currently 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 legal and administrative support to the Director in the exercise of his or her functions, coordinates activities across Australia and liaises at the national level with other agencies. It also conducts prosecutions for Commonwealth offences in the ACT. Head Office is made up of six branches: Legal, Corporate Prosecutions, Criminal Assets, Policy, ACT Prosecutions and Resource Management.

DPP REGIONAL OFFICES

The regional offices conduct prosecutions and criminal assets actions, provide advice and support to Commonwealth agencies investigating Commonwealth offences and liaise with Commonwealth agencies at the regional level. These offices also provide advice and support upon request to Commonwealth agencies on their investigations. Each office is divided into at least four branches: General Prosecutions, Corporate Prosecutions, Criminal Assets and Resource Management. Larger offices may have additional General Prosecutions Branches.

THE OBJECTIVES OF THE DPP

The DPP has four main objectives.

1 The first objective is to:

- i. prosecute alleged offences against Commonwealth law;
- ii. take criminal assets recovery; and
- iii. perform other prosecution related functions of the Director,

and to do so:

- a. fairly, justly and to a high ethical and professional standard;
- b. in a timely manner;
- c. in accordance with the *Prosecution Policy of the Commonwealth* and the Director's *Policy Guidelines for the use of the Proceeds of Crime Act 1987*; and
- d. having regard to the law enforcement strategies of the Commonwealth and its agencies.

2 The second objective is to assist and cooperate with other agencies in the Commonwealth's law enforcement activities;

3 The third objective is to preserve and enhance public confidence in the prosecution process and the Commonwealth's criminal justice system; and

4 The fourth objective is to ensure that resources are managed in such a way as to provide an accountable, efficient and

effective prosecution service.

OBJECTIVE 1

The DPP's first objective is to prosecute alleged Commonwealth offences, take criminal assets recovery action and perform other prosecution related functions of the Director:

- a. fairly, justly and to a high ethical and professional standard;
- b. in a timely manner;
- c. in accordance with the *Prosecution Policy of the Commonwealth* and, where appropriate, the Director's *Policy Guidelines for the use of the Proceeds of Crime Act 1987*; and
- d. having regard to the law enforcement strategies of the Commonwealth and its agencies.

The other prosecution related functions of the Director include to:

- appear in proceedings under the Extradition Act and the Mutual Assistance in Criminal Matters Act;
- act as counsel or solicitor for authorities of the Commonwealth, where appropriate, in cases that fall under section 9(11) of the DPP Act;
- apply for superannuation orders; and
- recover fines and costs on behalf of the Commonwealth.

STRATEGIES FOR OBJECTIVE 1

The strategies for ensuring that the DPP acts fairly and justly, to a high ethical and professional standard and in a timely manner are:

1.1 Key decisions in all cases are:

- made at an appropriately senior level;
- made in accordance with the *Prosecution Policy of the Commonwealth* and, where appropriate, the Director's *Policy Guidelines for the use of the Proceeds of Crime Act 1987*;
- recorded in writing with the reasons for them; and
- where appropriate, reviewed by another officer of the DPP at the same or more senior level.

Key decisions in the prosecution process include the decision to prosecute, to discontinue a prosecution, to appeal against a sentence imposed on an offender, to grant an indemnity against prosecution and to consent to the commencement of conspiracy proceedings.

Key decisions in criminal assets action include the decision to seek a restraining order and a forfeiture order under the *Proceeds of Crime Act 1987* and to take civil remedies under section 6(1)(fa) and section 6(1)(h) of the DPP Act.

Key decisions in the other functions of the Director include decisions concerning the overall direction and conduct of the case.

1.2 Recruit, retain, develop and promote lawyers who are:

- of a high ethical and professional standard;
- efficient and effective, or are likely to become so with training and experience;
- highly motivated; and
- hard working.

1.3 DPP lawyers:

- are assigned the numbers and complexities of prosecutions appropriate to their abilities, experience and level;

- are supervised by experienced and capable more senior lawyer managers;
- receive appropriately high levels of support within the DPP, including administrative, library and Information Technology; and
- receive appropriate training and development.

1.4 Maintain and disseminate guidelines and directions issued by the Director to assist prosecutors in applying the *Prosecution Policy of the Commonwealth*.

1.5 Inform prosecution witnesses about the prosecution process and minimise any inconvenience to them by their appearance in court.

1.6 Promote an effective working relationship between counsel and solicitors for the defence and the DPP.

1.7 Promote an effective working relationship between the courts and the DPP.

The strategies for ensuring that the DPP acts:

- in accordance with the Prosecution Policy of the Commonwealth, and where appropriate, the Director's Policy Guidelines for the use of the Proceeds of Crime Act 1987; and
- having regard to the enforcement strategies of the Commonwealth and its agencies;

are:

1.8 DPP prosecutors have ready access to:

- the *Prosecution Policy of the Commonwealth* and the Director's *Policy Guidelines for the use of the Proceeds of Crime Act 1987*; and
- all available documents which outline law enforcement strategies of the Commonwealth and its agencies.

1.9 To cooperate with law enforcement agencies in implementing agreed plans of action, strategies and policies including the Heads of Commonwealth Operational Law Enforcement Agencies agreed *Overarching principles for selecting cases for administrative, civil and criminal sanctions* in which the DPP undertook to prosecute on an appropriate charge all cases of serious crime where it is in the public interest to do so.

OBJECTIVE 2

The DPP's second objective is to assist and cooperate with other agencies in Commonwealth law enforcement.

Strategies for objective 2

2.1 Provide high quality timely advice and service to Commonwealth agencies.

2.2 Advise investigative agencies on individual cases, including prior to receiving a formal brief of evidence. Advise investigative agencies at the earliest possible stage on serious, difficult or large cases.

2.3 Liaise with referring Commonwealth agencies via regular liaison meetings and ad hoc meetings and discussions.

2.4 Comply with the DPP's obligations contained in specific memoranda of understanding between the DPP and individual agencies and in the *General Guidelines for Dealings Between Commonwealth Investigators and the Commonwealth Director of Public Prosecutions*.

2.5 Provide Commonwealth agencies with up to date publications about the DPP, the prosecution process and the DPP's criminal assets function including *the Prosecution Policy of the Commonwealth and the Guidelines for Dealings Between Commonwealth Investigators and the Commonwealth DPP*.

- 2.6 Provide quality speakers and training materials for training programs for Commonwealth officers.
- 2.7 Offer training to agencies in areas of the DPP's areas of expertise, such as recovery of criminal assets.
- 2.8 Participate actively in the deliberations and activities of Commonwealth Government law enforcement policy bodies including the Heads of Commonwealth Law Enforcement Agencies.

OBJECTIVE 3

The DPP's third objective is to preserve and enhance public confidence in the prosecution process and the Commonwealth's criminal justice system.

STRATEGIES FOR OBJECTIVE 3

- 3.1 Report on the activities of the DPP to relevant ministers and Parliament in a timely and informative manner by providing annual reports and other information.
- 3.2 Respond promptly to queries from relevant ministers and members of public with as much information as can properly be provided.
- 3.3 Encourage and assist DPP officers to attend and speak at seminars and conferences on issues relevant to the DPP's functions and reform of the Commonwealth criminal law and criminal assets law.
- 3.4 Participate actively in the process of Commonwealth criminal law and criminal assets law reform by:
 - identifying areas that need reform;
 - proposing possible reforms; and
 - commenting on existing proposals for reform.
- 3.5 Monitor developments in criminal law to identify and apply best practice in prosecution, criminal assets action and other functions of the Director.

OBJECTIVE 4

The DPP's fourth objective is to ensure that resources are managed so as to provide an accountable, efficient and effective prosecution service.

STRATEGIES FOR OBJECTIVE 4

- 4.1 Recruit, retain, develop and promote staff who are:
 - of high quality;
 - efficient and effective, or are likely to become so with training and experience;
 - highly motivated; and
 - hard working.
- 4.2 Ensure that staff are provided with:
 - training and development;
 - satisfying work; and
 - high quality supervision.
- 4.3 Negotiate with Government for the provision of adequate resources to provide an appropriate prosecution service.

- 4.4 Monitor the DPP's performance using appropriate performance indicators and use the information obtained to improve the DPP's performance.
- 4.5 Ensure that DPP resources are allocated to provide an appropriate mix of staff and infrastructure to undertake the prosecution function.
- 4.6 Provide high level computer, library and other services to support prosecutors appropriately.
- 4.7 Embrace equal employment opportunity, industrial democracy and other accepted good management practices.
- 4.8 Use, maintain and enhance the DPP's computerised legal support systems (including CRIMS, CARS and FINES & COSTS).
- 4.9 Provide a safe and secure working environment in accordance with the DPP's security management policies, practices and plan.





Glossary

AFP	Australian Federal Police
AGS	Australian Government Solicitor
ASC	Australian Securities Commission
ATO	Australian Taxation office
CARS	Criminal Assets Recording System
CPSU	Community and Public Sector Union
CRIMS	Case Reporting and Information Management System
CSDA	Commonwealth Service Delivery Agency
EEO	Equal Employment Opportunity
FTR Act	Financial Transactions Reports Act
HOCLEA	Heads of Commonwealth Law Enforcement Agencies
MCCOC	Model Criminal Code Officers Committee
NCA	National Crime Authority
PoC Act	Proceeds of Crime Act





Compliance Index

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INDEPENDENT AUDIT REPORT

To the Attorney-General

Scope

I have audited the financial statements of the Office of The Director of Public Prosecutions for the Year ended 30 June 1997. The financial statements comprise:

- Statement by the Director and Acting Senior Executive, Resource Management
- Departmental and Administered statements of:
 - Revenues and Expenses
 - Assets and Liabilities
 - Revenues and Expenses by Program
 - Assets and Liabilities by Program
 - Cash Flows
- Schedule of Commitments
- Schedule of Contingencies
- Transactions by Fund, and
- Notes to and forming part of the Financial Statements

The Director and the Acting Senior Executive, Resource Management are responsible for the preparation and presentation of the financial statements and the information they contain. I have conducted an independent audit of the financial statements in order to express an opinion on them to you the Attorney-General.

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 statements

are free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with Australian Accounting Standards, other mandatory reporting requirements (Urgent Issues Group Consensus View) and statutory requirements so as to present a view of the department which is consistent with my understanding of its financial position, its operation and its cash flows.

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 in my opinion, the financial statements:

- are in agreement with the accounts and records kept in accordance with section 40 of the Act;
- are in accordance with the Guidelines for Financial Statements of Commonwealth Departments;
and
- present fairly in accordance with applicable Accounting Standards and other mandatory professional reporting requirements, the information required by the Guidelines, including the results of departmental and administered financial operations and cash flows for the year ended 30 June 1997 and Departmental and administered liabilities as at that date.

Australian National Audit Office

David C McKean Executive Director

for the Auditor General

Canberra

30 September 1997





OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1996-97

STATEMENT BY THE DIRECTOR AND PRINCIPAL ACCOUNTING OFFICER

CERTIFICATION

We certify that the financial statements for the year ended 30 June 1997 are in agreement with the accounts and records of the Office of the Director of Public Prosecutions and, in our opinion, the statements present fairly the information required by the *Guidelines for Financial Statements of Commonwealth Departments*, issued by the Minister for Finance in June 1997.

sgd Brian Martin
BRIAN MARTIN QC
Director

Dated:30/11/97

sgd P Browning
Peter Browning
A/g Senior Executive
Resource Management

Dated:30/11/97

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

DEPARTMENTAL REVENUES AND EXPENSES

for the year ended 30 June 1997

	Note	1996-97 \$'000	1995-96 \$'000
NET COST OF SERVICES			
Expenses			
Employees	3	27,051	26,996

Suppliers	4	23,748	27,871
Depreciation and amortisation	5	1,839	1,919
Net losses from sales of assets	6	152	8
Other costs of providing goods and services	7	766	Nil
Total expenses		53,556	56,794
Revenues from independent sources			
Other revenues from independent sources	8	1,510	893
Total revenues from independent sources		1,510	893
Net cost of services		52,046	55,901
REVENUES FROM GOVERNMENT			
Appropriations used for:			
Ordinary annual services (net appropriations)	33	58,283	52,118
Resources received free of charge	9	2,031	2,042
PACING=1 CELLPADDING=1 >			
Total revenues from government		60,314	54,160
		>	
Operating surplus/deficit		8,268	(1,741)
Accumulated results at 1 July		(6,411)	(4,670)
Change in accounting policy	10	962	Nil
Accumulated results at 30 June		2,819	(6,411)

The Departmental Revenues and Expenses Statement should be read in conjunction with the accompanying notes.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS ADMINISTERED REVENUES AND EXPENSES

for the year ended 30 June 1997

	Note	1996-97	1995-96
		\$'000	\$'000
REVENUES	11, 2(r)		

Fines and costs revenues		2,126	3,874
Miscellaneous revenues		215	401
Total revenues		2,341	4,275
EXPENSES	2(r)		
Net write-down of assets	12	1,139	386
Fines and costs expenses	13	Nil	2,345
Total expenses		1,139	2,731
Net contribution to government		1,202	1,544
TRANSFERS			
Cash to Commonwealth Public Account		(2,114)	n/a
Net change in administered assets		(912)	n/a
Accumulated results at 1 July		5,028	n/a
Accumulated results at 30 June		4,116	5,028

The Administered Revenues and Expenses Statement should be read in conjunction with the accompanying notes.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS DEPARTMENTAL ASSETS AND LIABILITIES

as at 30 June 1997

	Note	1996-97 \$'000	1995-96 \$'000
DEBT			
Other	15	5,143	5,128
Total debt		5,143	5,128
PROVISIONS AND PAYABLES			
Employees	16	7,205	7,286

Suppliers	17	2,111	3,950
Total provisions and payables		9,316	11,236
EQUITY			
Accumulated results	18	2,819	(6,411)
Total equity		2,819	(6,411)
Total liabilities and equity		17,278	9,953
FINANCIAL ASSETS			
Cash	19	268	177
Receivables	20	5,712	8
Other	21	1,765	2,269
Total financial assets		7,745	2,454
NON-FINANCIAL ASSETS			
Infrastructure, plant and equipment	22	8,735	6,962
Intangibles	23	798	537
Total non-financial assets		9,533	7,499
Total assets		17,278	9,953
Current liabilities		5,176	6,507
Non-current liabilities		9,283	9,857
Current assets		7,745	2,454
Non-current assets		9,533	7,499

The Departmental Assets and Liabilities Statement should be read in conjunction with the accompanying notes.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

ADMINISTERED ASSETS AND LIABILITIES

as at 30 June 1997

	Note	1996-97	1995-96
		\$'000	\$'000
PROVISIONS AND PAYABLES	2(r)		
Other - fines and costs	25	Nil	1,952
Total provisions and payables		Nil	1,952
EQUITY			
Accumulated results	26	4,116	5,028
Total equity		4,116	5,028
Total liabilities and equity		4,116	6,980
FINANCIAL ASSETS	2(r)		
Cash	27	71	66
Receivables - fines and costs	28	4,045	6,914
Total financial assets		4,116	6,980
Total assets		4,116	6,980
Current liabilities		Nil	1,952
Non-current liabilities		Nil	Nil
Current assets		3,908	6,606
Non-current assets		208	374

The Administered Assets and Liabilities Statement should be read in conjunction with the accompanying notes.





OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS NOTES TO THE FINANCIAL STATEMENTS

NOTE 1 OBJECTIVES

The objectives of the Office of the Director of Public Prosecutions are as follows:

- 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 criminal justice system generally.
- To preserve and enhance public confidence in the prosecution process and criminal justice system.
- To manage resources efficiently and provide an effective service to the Commonwealth.

The program objectives for the Prosecutions, Criminal Assets and Executive and Support Programs are detailed within Appendix 2 the Office of the Director of Public Prosecutions Corporate Plan.

NOTE 2 STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

- a. Basis of Accounting** - The financial statements have been prepared in accordance with the Guidelines titled Financial Statements of Commonwealth Departments, issued by the Minister for Finance in June 1997 (the 'Guidelines'). The Guidelines require compliance with the Australian Accounting Standards and Accounting Guidance Releases issued by the Australian Accounting Research Foundation and have regard to Australian Statements of Accounting Concepts and Urgent Issues Group consensus views.
 - i. The financial statements have been prepared on an accrual basis.
 - 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.
 - iii. The continued existence of the Office in its present form, and with its present sub programs, is dependent on Government policy and on continuing appropriations by parliament for the Office's sub programs.

- b. **Comparative Figures** - Where necessary, comparative figures have been adjusted to conform with changes in presentation in these financial statements.
- c. **Rounding** - Subject to the exceptions referred to in the following paragraphs, amounts shown in the financial statements (excluding the notes) have been rounded-off as follows :
- amounts of \$500 or more have been rounded up to the next \$1,000; and
 - amounts less than \$500 have been rounded down to zero.

The rules governing rounding, referred to on the previous page, do not apply to the following items which are rounded to the nearest dollar :

- Transactions by Fund (and related notes);
 - Act of Grace Payments, Waivers and Amounts written-Off
 - Analysis of Equity
 - Analysis of Administered Equity; and
 - Executive's Remuneration.
- d. **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.
- e. **Insurance** - In accordance with government policy, assets are not insured and losses are expensed as they are incurred.
- f. **Taxation** - The Office is exempt from all forms of taxation except fringe benefits tax.
- g. **Measurement Of Assets** - Assets are recorded at cost on acquisition except as stated. The cost of acquisition includes the fair value of assets transferred in and liabilities undertaken.

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.

- h. **Asset Capitalisation Threshold** - The asset capitalisation threshold was decreased from \$2,000 to \$300 for all assets except for intangibles which decreased from \$500 to \$300 on 30 June 1997. From 1 July 1997 all infrastructure, plant and equipment and intangible assets with a historical cost equal to or in excess of \$300 will be capitalised in the year of acquisition and included on the Office's Asset Register. The value of all such assets on the Asset Register is included in the financial statements. The financial effect of the decrease in the asset threshold is to increase infrastructure, plant and equipment at cost by \$1,779,042, increase accumulated depreciation of infrastructure, plant and equipment by \$827,239, increase intangible assets at cost by \$34,233 and increase accumulated depreciation of intangible assets by \$23,286. Assets with a historical cost under \$300 are expensed in the year of acquisition with the exception of:
- Library holdings were valued by an expert valuer at second hand replacement value. The \$300 threshold was not applied to library holdings. Only Law Reports are capitalised and all other library acquisitions are expensed in the year of acquisition. Library holdings are not depreciable and will be re-valued each three years; and
 - The \$300 threshold is not applied to Artworks. Artwork capitalised consists of originals, limited edition prints and prints. Artwork holdings are not depreciable and will be re-valued each three years.
- i. **Depreciation and Amortisation of Non-Current Assets** - All depreciable non-financial assets are written off over their estimated useful lives. Depreciation is calculated using the straight-line method. Expected scrap value and useful life are estimated by officers of the DPP.

All fitouts are amortised on a straight line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease. Expected scrap value and useful life are estimated by officers of the DPP.

- j. **Leases and Lease Incentives** - Operating lease payments are charged to the Operating Statement on a basis which is representative of the pattern of benefits derived from the leased assets.

Lease incentives taking the form of 'free' leasehold improvements and rent 'free' holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and the reduction of the liability.

- k. **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 the end of the reporting period. Amounts have been provided for Recreation Leave, Long Service Leave, outstanding Leave Bonus and Performance Pay, but not for Superannuation entitlements. Long Service Leave provisions have been included for officers who have accumulated more than three and a half years of service. Provisions have been apportioned between current and non-current based on previous histories of payments and known payments due.

An analysis of non-vesting sick leave taken during the last 5 years determined that it was inappropriate to create a provision for non-vesting sick leave.

- l. **Cash** - Cash includes notes and coins held, deposits held at call with a bank or financial institution and balances of commercial trust accounts held in the Commonwealth Public Account (CPA).

m. **Departmental and Administered Items**

Departmental

Departmental assets, liabilities, revenues and expenses are those items that are controlled by the Office including:

- Computers, software, plant and equipment used in providing goods and services;
- Liabilities for employees entitlements;
- Revenues from running costs appropriations and from proceeds deemed appropriated under section 35 of the Audit Act 1901; and
- Employees expenses and other administrative expenses (including contracting out) incurred in providing goods and services.

Administered

The Office administers, but does not control, certain resources on behalf of the Commonwealth. It is accountable for the transactions involving those administered resources, but does not have the discretion to deploy the resources for achievement of the Office's objectives. Transactions and balances relating to administered activities are disclosed separately in the various statements.

Items classified as Administered include -

- Administered fines and costs receivables awarded to the Commonwealth;
- Administered fines and costs revenue and expenses;
- Miscellaneous revenue collected and deposited into the CRF.

The purpose of the separation of administered and departmental items is to enable the assessment of administrative efficiency of the Office in providing goods and services.

The basis of accounting described in Note 2(a) applies to both departmental and administered items.

The 1997 Guidelines require that, from 1 July 1996, administered transactions be accounted for on a double entry basis. The effect of this requirement is that transfers of cash to and from the Commonwealth Public Account (CPA) will be reported on the face of the Statement of Administered Revenues and Expenses where operating

transactions are involved, and that, where transactions involving financial assets and liabilities not arising from operations are involved, receivables from and payables to the Public Account will be recognised in the Statement of Assets and Liabilities.

Administered items are distinguished from departmental items in the financial statements by shading.

- n. **Administered Bad and Doubtful Debts** - 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. Bad debts are written off during the year in which they are identified. A provision for doubtful debts has been made based on historical trend from past years data. The provision and its basis is reassessed annually.
- o. **Allocation of Costs and Revenues, Assets and Liabilities to Office Sub Programs** - The Office reports under three sub programs - Prosecutions (which includes Corporate Prosecutions), Criminal Assets and Executive and Support (which includes Library and Information Technology services).

Direct costs have been allocated against the sub program which incurred these costs where possible. Common costs and/or services are charged to a "Common" sub program during the financial year and were apportioned amongst sub programs at the end of the financial year based on average staffing levels or accommodation occupied for each sub program.

SUB PROGRAM	Average Staffing levels 1996-97	Average Staffing levels 1995/96	Square Metres occupied 1996-97	Square Metres occupied 1995-96
Prosecutions	60.8%	59.6%	48.4%	45.5%
Criminal Assets	10.7%	10.6%	12.4%	13.4%
Executive and Support	28.5%	29.8%	39.2%	41.1%
Total	100.0%	100.0%	100.0%	100.0%

(This apportionment does not include Corporate Prosecutions, as these costs are charged directly to Corporations, not Common.)

Due to the small size of the Office and the common use of most significant assets, this Office prepares only a single Balance Sheet. Therefore, the sub program dissection of items included in the Departmental and Administered Assets and Liabilities by Program has been apportioned based on the estimated usage of resources of the Office as indicated by the proportion of staffing resources used by a program or accommodation occupied. This apportionment does include Corporate Prosecutions, due to the common use of Assets.

SUB PROGRAM	Average Staffing levels 1996-97	Average Staffing levels 1995/96	Square Metres occupied 1996-97	Square Metres occupied 1995-96
Prosecutions	68.7%	67.4%	57.9%	55.8%
Criminal Assets	8.5%	8.5%	10.1%	10.9%
Executive and Support	22.8%	24.1%	32%	33.4%
Total	100.0%	100.0%	100.0%	100.0%

- p. **Superannuation** - Staff contribute to the Commonwealth Superannuation Scheme and Public Sector Superannuation Scheme. Employer contributions amounting to \$3,123,444 (1995-96 \$3,042,160) in relation to

these schemes have been expensed in these Financial Statements.

No liability is shown for superannuation in the Statement of Assets and Liabilities as the employer contributions fully extinguish the accruing liability which is assumed by the Commonwealth.

Employer Superannuation Productivity Benefit contributions totalled \$507,249 (1995-96 \$496,548).

- q. **Resources received free of charge** - Resources received free of charge are recognised in the Statement of Revenues and Expenses as revenue where the amounts can be reliably measured. Use of those resources is recognised as part of the Net Cost of Services.
- r. **Changes in Accounting Policy**

1997 Guidelines for Financial Statements of Commonwealth Departments A number of the changes in the 1997 Guidelines involve changes to accounting policies. These changes are identified in this Note.

Administered Receivables Previously DPP recorded as administered receivables those amounts ordered to be paid by way of reparation which no other agency had yet taken responsibility for collection of the debt. DPP also recognised a payable for the amount of the reparation which another agency would ultimately collect. DPP has changed its recognition criteria of administered receivables and now only records as administered receivables those fines and costs awarded to the DPP. The change in recognition criteria of administered receivables is due to DPP not having responsibility for these reparation amounts but effectively only acting as an agent for other agencies. An amount of \$1,952,204 was written back against the opening balances of administered receivables and administered payables. This change in accounting policy results in a decrease of administered receivables of \$708,852 and a decrease of administered payables of \$708,852 for the year ended 30 June 1997.

NOTE 3 EMPLOYEE EXPENSES :

	1996-97	1995-96
	\$	\$
Remuneration (for services provided)	19,915,275	20,552,361
Separation and redundancy payments	1,137,412	121,012
Superannuation	3,630,694	3,538,708
Provision for employee entitlements	2,367,159	2,783,670
Total employee expenses	27,050,540	26,995,751

NOTE 4 SUPPLIERS EXPENSES :

	1996-97	1995-96
	\$	\$
Operating lease expenses	4,496,354	5,536,235
Compensation and legal prosecutions costs	12,799,173	15,616,433
Computer expenses	884,906	820,029
Library expenses	1,040,912	1,138,176
Other expenses	3,556,590	3,876,368
Property operating expenses	970,175	883,192
Total suppliers expenses	23,748,110	27,870,433

NOTE 5 DEPRECIATION AND AMORTISATION :

	1996-97	1995-96
	\$	\$
Provision for depreciation - infrastructure, plant and equipment	1,216,305	1,373,789
Provision for amortisation - intangibles	247,284	242,927
Provision for amortisation - leasehold improvements	375,402	302,563
Total depreciation and amortisation	1,838,991	1,919,279

NOTE 6 NET LOSSES FROM SALES OF ASSETS :

	1996-97	1995-96
	\$	\$
Non-financial assets - infrastructure, plant and equipment	150,479	6,959
- intangibles	1,189	835
Total net losses from sales of assets	151,668	7,794

NOTE 7 OTHER COSTS OF PROVIDING GOODS AND SERVICES :

	1996-97	1995-96
	\$	\$
Abnormal expense due to:		
- Adjustment to duplicate recording of computer equipment	608,153	Nil
- Adjustment to duplicate recording of software	158,536	Nil
Total other costs of providing goods and services	766,689	Nil

NOTE 8 OTHER REVENUES FROM INDEPENDENT SOURCES :

The DPP does not charge users of the services it provides.

Other revenue from independent sources is made up of Section 35 monies received which relate to receivables of the financial year and abnormal revenue.

	1996-97	1995-96
	\$	\$
Other Section 35 monies for receivables for the financial year	37,568	31,364
Abnormal revenue	37,568	31,364
- Adjustment to increase lease incentive liability	486,456	Nil

not previously recorded

- Accumulated depreciation written back on the reassessment of useful life of assets*	521,622	607,992
- Accumulated depreciation written back on the duplicated computer assets	350,612	Nil
- Accumulated depreciation written back on the duplicated software assets	113,709	Nil
- Adjustment to computer asset holding reported previously	Nil	219,870
- Capitalisation of software not previously reported	Nil	3,780
- Capitalisation of artwork not previously reported	Nil	30,122
Total abnormal revenue	1,472,399	861,764
Total other revenues from independent sources	1,509,967	893,128

* Accumulated depreciation written back upon reassessment of useful lives can be split between the following asset categories : Furniture \$77,906 and Plant and Equipment \$443,716 (in 1995-96 Computers \$306,771, Furniture \$ 85,560 and Plant and Equipment \$ 215,661).

NOTE 9 RESOURCES RECEIVED FREE OF CHARGE :

The resources received free of charge which have been recognised in the Departmental Revenues and Expenses are:

	1996-97	1995-96
	\$	\$
- Department of Finance		
Provision of accounting and payroll services	8,826	8,957
- Attorney Generals Department		
Provision of prosecutions and related services in Tasmania and the Northern Territory, by AGS	1,932,479	1,942,705
- Australian National Audit Office		
Audit of the 1996-97 financial statements	90,000	90,000
Total resources received free of charge	2,031,305	2,041,662

Services received free of charge but not recognised are:

- **Melbourne Magistrates Court** - Provision of offices and furniture
- **Australian Archives** - Storage and disposal facilities
- **State Prosecutors** - Conduct of minor prosecutions on behalf of the DPP in remote locations.

NOTE 10 CHANGE IN ACCOUNTING POLICY :

	1996-97	1995-96
	\$	\$
- Capitalisation of infrastructure, plant and equipment due to change in the asset threshold	1,779,042	Nil
- Capitalisation of intangible assets due to change in the asset threshold	34,233	Nil
- Accumulated depreciation of infrastructure, plant and equipment capitalised due to the lowering of the asset threshold	(827,239)	Nil
- Accumulated amortisation of intangible assets capitalised due to the lowering of the asset threshold	(23,286)	Nil
Total change in accounting policy	962,750	Nil

NOTE 11

ADMINISTERED REVENUE :

	1996-97	1995-96
	\$	\$
Fines and costs revenue	2,126,339	3,874,280
Proceeds of crime	Nil	4,522
Miscellaneous revenue:		
- Rental rebate *	Nil	311,012
- Other	215,010	84,988

Total administered revenue	2,341,349	4,274,802

* This amount reflects rental rebate received in respect of a property lease.

NOTE 12

ADMINISTERED NET WRITE-DOWN OF ASSETS :

	1996-97	1995-96
	\$	\$
Financial assets		
Receivables - fines and costs		
- bad and doubtful debts	1,138,598	386,578
Total net write-down of assets	1,138,598	386,578

NOTE 13

ADMINISTERED FINES AND COSTS EXPENSES :

	1996-97	1995-96
	\$	\$
Fines and costs		
- Payments to agencies	Nil	2,344,794
Total administered expenses	Nil	2,344,794

NOTE 14

ACT OF GRACE PAYMENTS, WAIVERS AND AMOUNTS

WRITTEN-OFF :

The following details are furnished in relation to amounts written off by the Office during the financial year 1996-97 under sub-section 70C(1) of the *Audit Act 1901* (43 amounts totalling \$16,248 were written off in 1995-96).

In respect of departmental items :

	Number	\$
(i) Losses or deficiencies of public moneys	Nil	Nil
(ii) Irrecoverable amounts of revenue	Nil	Nil
(iii) Irrecoverable debts and overpayments	Nil	Nil
(iv) Amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Minister, be uneconomical	Nil	
(v) The value of lost, deficient, condemned, unserviceable or obsolete stores	510	131,525
Total	510	131,525

In respect of administered items :

	Number	\$
(ii) Irrecoverable amounts of revenue	276	253,987
(iii) Irrecoverable debts and overpayments	325	53,548
(iv) Amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Minister, be uneconomical	29	688
Total	630	308,223

No payments were made during the financial year 1996-97 pursuant to authorisations given under Section 34A(1) of the *Audit Act 1901* (Nil in 1995-96).

Two waivers of \$885 due to the Commonwealth were made during the financial year 1996-97 pursuant to subsection 70C(2) of the *Audit Act 1901* (3 amounts totalling \$965 was waived in 1995-96), these waivers relate to Administered Fines and Costs.

Losses and Deficiencies in Public Moneys and Other Property

During 1996-97 this office had no cases involving the loss of moneys.

During 1995-96 this office had two cases involving the loss of moneys. No relief was provided or sought under Part XIAA of the *Audit Act 1901*. The amount of \$210.80 was not recovered by this Office.

NOTE 15 OTHER DEBT :

	1996-97	1995-96
	\$	\$
Current other debt :		
Lease incentives	703,389	Nil
Non-current other debt :		
Lease incentives	4,439,396	5,127,881
Total other debt	5,142,785	5,127,881

NOTE 16 EMPLOYEE PROVISIONS AND PAYABLES :

	1996-97	1995-96
	\$	\$
Current employee provisions and payables :		
Salaries and wages accrual	275,399	192,592
Recreation leave provision	1,823,671	1,800,000
Long service leave provision	263,089	289,847
Performance pay	Nil	275,041
Total current employee provisions and payables	2,362,159	2,557,480
Non-current employee provisions and payables :		
Recreation leave provision	667,387	788,656
Long service leave provision	4,175,493	3,939,906
Total non-current employee provisions and payables	4,842,880	4,728,562
Total employee provisions and payables	7,205,039	7,286,042



**NOTE 29****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.

	1996-97	1995-96
	\$	\$
Opening balance 1 July - Cash	66,465	42,352
Receipts	2,275,699	2,057,256
Expenditure	2,271,164	2,033,143
Closing balance 30 June - Cash	71,000	66,465

NOTE 30 CASH FLOW RECONCILIATION :

	1996-97	1995-96
	\$	\$
Net cost of services	52,046,031	56,761,892
Revenue from Government	(60,313,939)	(55,021,568)
Depreciation/amortisation	(1,838,991)	(1,919,279)
Loss on sale of non-financial assets	(151,668)	(7,794)
Adjustment for duplicate recording of assets	(766,689)	Nil
Accumulated depreciation written back upon re-assessment of useful lives	521,622	607,992
Accumulated depreciation written back on duplicated assets	464,321	Nil
Capitalisation of non-financial assets not previously reported	Nil	30,351
Adjustment to non-financial assets previously reported	Nil	223,420
Increase in receivables	5,598,962	5,281

Increase/(decrease) in other assets	(504,138)	486,671
Decrease/(increase) in supplier payables	1,839,212	(2,180,649)
Decrease/(increase) in provisions	81,003	(25,209)
(Increase) in other liabilities	(14,904)	(1,872,386)
Net cash provided by operating activities	(3,039,178)	(2,911,278)

NOTE 31

ADMINISTERED CASH FLOW RECONCILIATION :

	1996-97	1995-96
	\$	\$
Net contribution to government	1,202,751	n/a
Cash to Commonwealth Public Account from operations	(2,114,214)	n/a
Net change in administered assets -	(911,463)	n/a
Decrease in receivables	2,868,202	n/a
(Decrease) in creditors	(1,952,204)	n/a
Net cash provided by operating activities	4,535	n/a

NOTE 32 RECEIPTS TO THE CONSOLIDATED REVENUE FUND :

	Receipts	Refunds	Net Receipts
	\$	\$	\$
Receipts offset against outlays			
- Section 35 of the <i>Audit Act 1901</i>	200,647	188	200,459
- Miscellaneous	215,064	54	215,010
Administered receipts			
- Fines and costs	1,902,863	3,839	1,899,024

Total Receipts	2,318,574	4,081	2,314,493
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NOTE 33 DETAILS OF EXPENDITURE FROM ANNUAL APPROPRIATIONS :

	1997-98 Budget	1996-97 Actual	1996-97 Appropriation
	\$	\$	\$
APPROPRIATION ACT No's. 1 and 3			
Division 133 - Director of Public Prosecutions			
1. Running Costs - Annotated Appropriation	53,666,000	53,977,772	58,276,000
	53,666,000	53,977,772(i)	58,276,000

RUNNING COSTS (ANNOTATED APPROPRIATION DIVISION 133)

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 133	Section 35 Receipts	Total Appropriation	Expenditure
	\$	\$	\$	\$
1996-97	58,276,000	200,459	58,476,459	53,977,772(ii)
1995-96	58,216,000	63,169	58,279,169	52,219,971

Explanation of Material Variances:

(i) The underspending against the 1996-97 budget resulted from the deferral of aspects of the IT re-equipment program while software is evaluated and the reservation of funds to meet spending commitments in 1997-98.

(ii) The increase in expenditure over 1995-96 was due primarily to increased costs resulting from wage increases and general price movements, costs relating to the relocation of Head Office and IT re-equipment, and the cost of running a number of major cases.

NOTE 34 TRUST FUND :

DPP services, other government and non-departmental bodies

Legal Authority - *Audit Act 1901*, Section 60.

Purpose - payment of costs in connection with services performed on behalf of other governments and non-departmental bodies (COMCARE expenses).

	1996-97	1996-97	1995-96
	Actual	Budget	Actual
	\$	\$	\$
Receipts and Expenditure-			
Opening balance 1 July	19,737		24,951
Receipts	17,557	114,000	45,611
Expenditure	10,152	114,000	50,825
Closing balance 30 June	27,142		19,737

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 \$27,142 as at 30 June 1997 (\$19,737 as at 30 June 1996) for the Trust Account is the total of amounts received from COMCARE to be paid to claimants in accordance with determinations.

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*.

	1996-97	1996-97	1995-96
	Actual	Budget	Actual
	\$	\$	\$
Receipts and Expenditure -			
Opening balance 1 July	12,267		50,926
Receipts	Nil	8,000	Nil

Expenditure	Nil	20,000	38,659
Closing balance 30 June (Note 19)	12,267		12,267

NOTE 35 EXECUTIVE REMUNERATION :

In relation to the \$10,000 band of fixed remuneration that commences at \$100,000 and each successive \$10,000 band, the number of executive officers whose total fixed remuneration in connection with the management of the affairs of the Office of the Director of Public Prosecutions for the reporting period are as follows:

	1996-97 Number	1995-96 Number
Fixed remuneration		
\$100,000 to \$110,000	17	24
\$110,001 to \$120,000	15	1
\$120,001 to \$130,000	Nil	3
\$130,001 to \$140,000	2	1
\$140,001 to \$150,000	Nil	Nil
\$150,001 to \$160,000	1	1
\$160,001 to \$170,000	1	Nil
\$170,001 to \$180,000	Nil	1
\$180,001 to \$190,000	Nil	Nil
\$190,001 to \$200,000	1	Nil
\$200,001 to \$210,000	Nil	Nil
\$210,001 to \$220,000	1	1

The aggregate fixed remuneration of the executives identified above is \$4,478,536, (\$3,735,199 in 1995-96).

The aggregate performance pay earned by the executives identified above is \$ Nil (\$162,385 in 1995-96).

NOTE 36 SERVICES PROVIDED BY THE AUDITOR-GENERAL :

The notional fee for services provided by the Australian National Audit Office in relation to the audit of the 1996-97 financial statements is estimated at \$90,000 (\$90,000 was the notional cost for the audit of the 1995-96 financial statements).

The ANAO is recorded in Note 9 as having provided resources free of charge to the DPP in 1996-97. No other benefits were received from the Australian National Audit Office.

NOTE 37 EVENTS OCCURRING AFTER BALANCE DATE :

No significant events effecting the Office of the Director of Public Prosecutions have occurred since 30 June 1997 requiring additional disclosure.

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.

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 expected to be repealed with effect from late 1997 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.

COMMITMENTS: Obligations or undertakings to make future payments to other entities that exist at the end of the reporting period and have not been recognised as liabilities in either the Departmental or Administered Assets and Liabilities Statement. Obligations include those arising under agreements equally proportionately unperformed. Undertakings are unconditional promises that are expected to create future liabilities.

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).

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.

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.

CONTINGENCIES: Conditions, situations, or circumstances that exist at the end of the reporting period, create uncertainty as to possible gain or loss to DPP and will be confirmed only on the occurrence or non-occurrence of one or more uncertain future events.

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 'Appropriation'. Every expenditure item is classified to one of the economic concepts of outlays, revenue (ie offset within revenue) or financing transactions.

FINANCIAL ASSET: Any asset that is cash, a contractual right to receive cash or another financial asset from another entity, a contractual right to exchange financial instruments with another entity under conditions that are potentially favourable or an equity instrument of another entity.

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, as a result of past transactions or other past events. 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 'Appropriation'; 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.

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 raising's (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.



