



Commonwealth Director of Public Prosecutions

Annual Report 1998-99

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Compliance statement

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

Section 33(1) requires that the Director of Public Prosecutions shall, as soon as practicable after 30 June each year, prepare and furnish a report to the Attorney-General with regard to the operations of the Office during the year. Section 33(2) provides that the Attorney-General shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of receipt.

The Report has been prepared in accordance with 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.

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

- *Prosecution Policy of the Commonwealth*
- *DPP Corporate Plan*
- *Program Performance Statement for the Attorney-General's Portfolio*.

The DPP homepage can be accessed at www.nla.gov.au/dpp/dpphp.html.

Overview

This Report catalogues the work of the DPP over the past twelve months. The main developments for the year were the opening of a regional office in Darwin and the resignation of Brian Martin QC as Director to take up a position as a judge of the Supreme Court of South Australia.

The departure of Brian Martin QC was a significant event for the DPP. He is a lawyer of great talent with a strong commitment to public service. I am sure he will discharge his duties as a judge of the SA Supreme Court with distinction.

It has been announced that the next Director will be Damian Bugg QC, who is currently the Director of Public Prosecutions in Tasmania. He will take up his appointment on 2 August 1999. Mr Bugg has had an extensive career in criminal law and a proven track record as a DPP. I look forward to welcoming him to the Commonwealth DPP.

The opening of the Darwin Office on 1 December 1998 was also a significant event for the DPP because it means that we finally have an office of our own in each Australian jurisdiction. Prior to 1 December 1998 the DPP operated through the agency of the Australian Government Solicitor in Darwin. The AGS office served us well. However it is important that the DPP operates through its own offices.

I would like to thank the staff of AGS Darwin for their good work over the years and to formally welcome the staff of the Darwin regional office to the DPP.

We have also decided, for a trial period, to staff the office facility in Cairns on a full time basis. The DPP has maintained an office facility in Cairns for some years for use by visiting prosecutors but the case load in North Queensland has increased to the point where it may be appropriate to have a permanent presence in both Townsville and Cairns. The arrangement for Cairns will be reviewed at the end of the calendar year.

The year saw developments on a number of fronts in the process of simplifying and streamlining the conduct of complex criminal prosecutions. In particular, on 21 May 1999 the Attorney-General announced that the Standing Committee of Attorneys-General had established a working group to investigate and report on reforms to reduce delay and costs in the criminal trial process. The working group brings together a range of eminent jurists from across Australia.

Delay in the criminal process remains one of the major issues facing the DPP, and other prosecuting agencies. Our criminal justice system developed in a time when people were not prosecuted for the kind of complex commercial and corporate crimes which are now prosecuted on a regular basis. These cases place enormous demands on investigators, prosecutors, the courts, the juries and the legal aid system. Ultimately the community as a whole bears the cost. It is now generally accepted that the system needs to change. Fortunately it seems to be becoming more widely recognised that the changes must include some form of defence disclosure.

It remains to thank all staff of the DPP for their good work over the past year and to thank the Attorney-General, the Honourable Daryl Williams AM QC MP, for his continued interest and support for this Office.

I should also thank the officers of the Attorney-General's Department for their help and cooperation over the past year and the officers of the investigative agencies we deal with on a regular basis. We have continued to build good working relations with all the investigating agencies and their continued assistance is greatly appreciated.

Peter Walshe
Acting Director

CHAPTER 1

Office of the DPP

Establishment

The DPP was established under the Director of Public Prosecutions Act 1983. The Office is headed by a Director, appointed for a term of up to seven years.

Brian Martin QC was appointed as Director for five years commencing on 10 March 1997. He resigned on 11 February 1999 to take up a position as a judge of the Supreme Court of South Australia.

It has been announced that the next Director will be Damian Bugg QC, who is currently the Director of Public Prosecutions in Tasmania. He will take up his appointment on 2 August 1999. At the time of reporting, Peter Walshe is acting as Director. His 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. There were no directions under section 8 during 1998-99.

Corporate plan

The DPP's Corporate Plan was issued in 1996-97 and covers the period 1997 to 2000.

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.

Social justice and equity

The DPP advances social justice and equity by helping to enforce the criminal law for the benefit of all members of the community and by helping to ensure that all alleged offenders are treated equally.

Role

The primary role of the DPP is to prosecute offences against Commonwealth law and 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 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 provides advice and other assistance during the investigative stage, particularly in large and complex matters.

Under current administrative arrangements, a large number of Commonwealth agencies have an investigative role and the DPP receives briefs of evidence from, and provides legal advice to, a wide range of agencies.

Prosecution policy

All decisions made in the prosecution process are regulated by guidelines 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. 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 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;
- charge bargaining;
- declining to proceed after committal;
- ex-officio indictments; and
- prosecution appeals.

Functions and powers

The DPP is created by statute and has the functions and powers given to the Director by legislation. Those functions and powers are 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 are noted above. 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, the Director 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 appear in extradition proceedings and proceedings under the Mutual Assistance in Criminal Matters Act 1987; and
- to apply for superannuation forfeiture orders under Commonwealth law.

The Director also has a function under section 6(1)(g) of the DPP Act to recover pecuniary penalties in matters specified in an instrument signed by the

Attorney-General. On 3 July 1985 the then Attorney-General signed an instrument under section 6(1)(g) which has general application.

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.

Organisation

The DPP has a Head Office in Canberra and regional offices in Sydney, Melbourne, Brisbane, Perth, Adelaide, Hobart and Darwin. There is also a sub-office of the Brisbane Office in Townsville and an office facility in Cairns which will be staffed on a full time basis for a six month trial period commencing on 1 July 1999.

Head Office provides advice to the Director and coordinates activities across Australia. Head Office is also responsible for prosecutions for Commonwealth offences in the ACT and related criminal assets proceedings.

The DPP regional offices are responsible for conducting prosecutions and civil recovery action in the relevant region.

Best practice

The DPP is in the process of reviewing the operation of each DPP office through a Best Practice Review Committee, which has representatives from Head Office and regional level. The Committee has so far reviewed the Sydney, Brisbane and Adelaide offices. It will eventually review all offices.

As the name of the Committee suggests, the idea is to identify best practices within the DPP and allow all offices to benefit from experiences gained in other jurisdictions.

Senior management chart

(as at 30 June 1999)

Acting Director Peter Walshe	Head Office	Dep Dir B2 Legal and Prac. Mgt (J Thornton) SES B2 Commercial Pros. (Actg) (G Davidson) Dep Dir B2 Corp Mgt (S Walker)	SES B1 Crim Assets (G Gray) SES B1 Policy (J McCarthy) SES B1 Prosecutions (G Lalor)
	Sydney Office	Deputy Director B2 (J Jolliffe)	SES B1 Prosecutions (G Drennan) SES B1 Prosecutions (B Doherty) SES B1 Prosecutions (I Guy) SES B1 Crim Assets (C Murphy) SES B1 Commercial Pros (P Shaw)
	Melbourne Office	Deputy Director B2 (M Pedley)	SES B1 Prosecutions (L West) SES B1 Crim Assets (C Davy) SES B1 Commercial Pros (K Wiltshire) SES B1 Prosecutions (S Kirne)
Acting First Deputy Director (G Delaney)	Brisbane Office	Deputy Director B2 (P Evans)	SES B1 Prosecutions (D Adsett) SES B1 Crim Assets (S Grono) SES B1 Commercial Pros (J Phillips) SES B1 Townsville (G Davey)
	Perth Office	Deputy Director B2 (I Bermingham)	SES B1 Exec & Mgt (J Scholz) SES B1 Commercial Pros (S Hall)
	Adelaide Office	Deputy Director B2 (P Foley)	SES B1 Prosecutions (E Bolton)
	Hobart Office	Assistant Director Legal 2 (J Read)	
	Darwin Office	Assistant Director Legal 2 (M Bracks)	

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.

This power has 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. However, 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 First Deputy Director.

In the past year there were 31 no bill applications received from defendants or their representatives. Of these, 12 were granted and 19 refused. A further 25 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 37. A breakdown of these statistics appears in Table 1 at the end of this chapter.

Of the matters discontinued, the sufficiency of evidence was the main factor in 24 cases. A breakdown of this statistic 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 Office only appeals in cases where there is a clear public interest in seeking review of a decision. All proposed appeals must be referred for decision by the Director or the First Deputy Director unless the appeal period is about to expire, in which case a Deputy Director may file appeal papers and seek retrospective approval.

In 1998-99 the Director decided to appeal against 37 sentences. Twenty-four were sentences handed down in indictable matters and 13 were sentences imposed by courts of summary jurisdiction. There were 26 appeals against sentences in fraud prosecutions and 11 in prosecutions for drugs and other offences. Statistics on the number of appeals lodged by the DPP during the year appear in Tables 3 and 4 at the end of this chapter. Statistics on the outcome of appeals by the DPP in cases decided during 1998-99 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 he or she will not be prosecuted under Commonwealth law in respect of a specified offence or specified conduct.

In the past year the Director or First Deputy Director signed a total of 36 undertakings under sections 9(6), 9(6B) and 9(6D) in 24 matters. In some cases, indemnities were given to more than one witness. A breakdown of these figures appears in Table 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 four undertakings under that Act in relation to three matters in the past year.

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 person and either carry it on or bring it to an end. This power was exercised five times during 1998-99. In all 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 in relation to 13 defendants in 1998-99. Details are at Table 6 at the end of this chapter.

Consent to conspiracy proceedings

Conspiracy proceedings under Commonwealth law can only be commenced with the consent of the Director. In 1998-99 the Director gave consent to the commencement of conspiracy proceedings against 23 defendants. The Director consented to the commencement of proceedings in relation to 12 conspiracies. A breakdown of these statistics appears in Table 7 at the end of this chapter.

Corporate prosecutions more than five years after offence

In accordance with 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 ASIC where proceedings have been instituted more than five years after the alleged offence.

In 1998-99 prosecutions against two defendants in Queensland were instituted for offences which were more than five years old.

The prosecutions against the two defendants arise from the same matter. The ASIC commenced its investigation in February 1998 following a complaint from the alleged victim. The investigation revealed alleged criminal conduct that dates back to at least 1990. One defendant was charged in August 1998 and the other defendant, who had been living overseas, was charged in February 1999 after voluntarily returning to Australia.

Table 1: No bills granted in 1998-99

No bills sought by defendants	12 (out of 31*)
No bills sought by DPP regional offices	25
Total no bills granted	37

* There were a total of 31 no bill applications by defendants of which the DPP no billed 12.

Table 2: Reasons for no bills in 1998-99

Evidentiary reasons	24
Public interest reasons	11
Both	2
Total	37

Table 3: Sentence appeals filed in indictable matters in 1998-99

Drugs offences	8
Fraud offences	15
Commercial offences	-
Other offences	1
Total	24

Table 4: Sentence appeals filed in summary matters in 1998-99

Drugs offences	-
Fraud offences	11
Commercial offences	-
Other offences	2
Total	13

Table 5: Indemnities granted in 1998-99

Sections 9(6) and 9(6D) indemnities	35
Section 9(6B) indemnities	1
NCA Act indemnities	4
Total indemnities	40
No of matters	27

Table 6: Defendants against whom ex officio indictment signed in 1998-99

Defendants charged with drugs offences	3
Defendants charged with fraud offences	2
Defendants charged with money laundering offences	6
Defendants charged with other offences	2
Total defendants	13

Table 7: Conspiracy proceedings consented to in 1998-99

Drug conspiracies	8
Fraud conspiracies	2
Other conspiracies	2
Total conspiracies	12
Total defendants	23

CHAPTER 3

Prosecutions

Practice

Prosecuting is a core function of the DPP and the majority of DPP officers work in the General Prosecutions and Commercial Prosecutions branches.

The conduct of litigation is the most visible part of the prosecution function. However, there is considerable work involved in preparing cases for hearing, providing advice and other assistance to investigators, drafting charges, and settling applications for search and other warrants. Prosecution work also involves a high level of liaison with investigators and with investigative agencies generally. Liaison concerns individual cases and advice on more general prosecution issues. DPP officers also regularly participate in training courses for investigators.

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

Details on the number of prosecutions conducted during the course of the year appear in the tables at the end of this chapter. Performance indicators for the prosecuting function appear later in this chapter.

Commercial prosecutions

In the course of the year, the Corporate Prosecutions branches were renamed to reflect the fact that they now also conduct all large fraud prosecutions where there is a corporate element as well as prosecutions under the Trade Practices Act 1974. Prosecutions in those areas raise the same logistic problems as corporate prosecutions, and often raise similar legal and evidential issues.

The DPP has been responsible for prosecuting offences against the Corporations Law since 1991. The responsibility for investigating breaches of the Corporations Law rests with the Australian Securities and Investments Commission. The ASIC prosecutes minor regulatory matters itself but when an investigation discloses the commission of a serious criminal offence, the ASIC refers the matter to the DPP for prosecution.

The ASIC and DPP have settled guidelines for the investigation and prosecution of corporate crime. The DPP provides early advice to the ASIC in the investigation of suspected offences. This is particularly important in large fraud cases where investigations can be long and resource intensive. Early involvement by the DPP can help to direct the investigation to areas that are most likely to result in

prosecution. There is regular liaison between the ASIC and the DPP at head of agency, management and operational levels.

Commercial cases updates

Four of the commercial cases reported in the last Annual Report had not been completed at the time of that report. An update on those cases appears below. Reports on some of the other significant cases decided during the year appear in Chapter 7.

- ***Byrnes and Hopwood***

At the time of the last Annual Report, Byrnes and Hopwood had applied to the High Court for leave to appeal against the sentencing decision of the SA Court of Criminal Appeal. The CCA upheld a sentence appeal by the DPP, set aside the fines imposed at first instance and substituted sentences of imprisonment.

On 12 August 1999 the High Court ruled that the Commonwealth DPP had no power to appeal against sentence in the matter. The relevant offences are offences against State law, although they are prosecuted by the Commonwealth DPP under the national scheme. The High Court found that the provisions of the Corporations (South Australia) Act 1990 gave the DPP power to conduct the prosecution but did not give the Commonwealth DPP power to appeal against sentence. The High Court set aside the sentences imposed by the CCA and restored the penalties imposed by the trial judge.

- ***Heilbronn***

This case involved the use of a Phoenix company to evade the payment of sales tax. The defendant was convicted on one charge of improperly using his position as a director of a company with intent to defraud creditors and one charge of failing to deliver the books and records of a company to a liquidator. He was sentenced to two years imprisonment, to be released on a bond after nine months. The defendant appealed against conviction and sentence. The appeal was dismissed.

- ***Fuller, Cummings and Johnson,***

The defendants in this case have been charged with offences of misapplying company funds under the Criminal Law Consolidation Act 1935 (SA) and improper use of position under the Companies (SA) Code. Johnson has also been charged with conspiracy to defraud.

Last year it was reported that the trial of Fuller and Cummings had been adjourned pending the outcome of funding negotiations between the SA Legal Services Commission and the Commonwealth Attorney-General's Department. Those negotiations have still not been resolved and the trial still stands adjourned.

It was also reported that Johnson was resisting extradition from the UK and that he had commenced proceedings in Australia under the Administrative Decisions (Judicial Review) Act 1977 challenging the decision to lay the informations which underpin the extradition request. Johnson's application was dismissed, as was an appeal to the Full Federal Court. However, Johnson commenced fresh proceedings challenging a decision by the Attorney-General not to withdraw the extradition request. The application was dismissed at first instance but Johnson has again appealed to the Full Federal Court.

Johnson has also brought fresh proceedings in the UK seeking judicial review of a decision by the Secretary of State not to set aside an earlier decision that Johnson be surrendered to Australia. The earlier decision was the subject of its own judicial

review proceedings which Johnson took all the way to the House of Lords without success. The extradition request was made to the UK as long ago as 1994.

- **Reid**

A report on this case appears in Chapter 7.

Specialist units

The DPP has set up specialist Tax and Centrelink units in Sydney and Melbourne. This has proved to be an effective way of handling tax and Centrelink cases. The arrangement has allowed the DPP to develop expertise in these areas and to focus the prosecution effort. In particular, the arrangement has given the investigators a single point of contact with the DPP and a single source of advice. The feedback from the investigative agencies has been very positive.

It is not possible for the DPP to set up specialist units to deal with every area of its work. However, each office has appointed liaison officers to deal with the agencies that refer cases to the DPP. The liaison officers are the first point of contact with investigators from the relevant agency and they oversee the provision of legal advice and prosecution services to that agency.

Extradition

The Attorney-General's Department is the Central Authority for extradition for Australia. It processes all incoming and outgoing extradition requests, except requests to and from New Zealand where there is a simplified procedure. The DPP has an interest at two levels in the extradition process.

The first is that the DPP conducts court proceedings in Australia to determine eligibility for surrender in relation to incoming extradition proceedings. The DPP acts as solicitor on the record on the basis of instructions from the Attorney-General's Department. The DPP also prepares outgoing requests for extradition in cases where a person who has been charged with Commonwealth offences is found in a foreign country.

In the past year the DPP was instructed to conduct 18 new incoming extradition requests. In the same time, Australia made three requests for extradition in relation to prosecutions being conducted by the DPP.

The number of incoming requests was up from 13 in 1997-98 but the number of outgoing requests was down, from eight in 1997-98. The general trend in recent years has been for a steady increase in the number of both incoming and outgoing requests. It is too early to say whether the reduction in the number of outgoing requests in Commonwealth cases is cyclic or marks the start of a new trend.

The main issue in this area is the time that it can take to extradite a fugitive who fully exercises appeal and review rights. The extradition process has a number of steps designed to protect the rights of the fugitive. The problem is that there are opportunities to appeal and/or seek judicial review at each stage of the process. Any court proceedings take time to resolve and a fugitive who wants to delay extradition, and has sufficient resources, has ample opportunity to do so.

This is an international concern and delay is not confined to Australia. Extradition is a preliminary step designed to ensure that a person charged with serious criminal offences can be brought before the court which has the jurisdiction to hear the charges. However, that preliminary step can take six or seven years to achieve. It is difficult to see a solution other than to press the courts to deal with these cases expeditiously, to ensure that the judicial process cannot be misused to generate delay.

Performance indicators

The following table lists the DPP's performance indicators for the conduct of prosecutions for 1998-99 and compares them with the figures for the previous year.

Prosecution performance indicators for 1998-99

Description	Target	Outcome	Details (by no. of defs)
Prosecutions resulting in a conviction	90%	96%	4 829 (out of 5 018)
Figures for 1997-98	90%	96%	4 742 (out of 4 910)
Defended summary hearings resulting in conviction	60%	60%	214 (out of 356)
Figures for 1997-98	60%	67%	239 (out of 354)
Defended committals resulting in a committal order	80%	96%	319 (out of 324)
Figures for 1997-98	80%	96%	377 (out of 390)
Defended trials resulting in a conviction	60%	63%	81 (out of 128)
Figures for 1997-98	60%	64%	90 (out of 140)
Prosecution sentence appeals upheld in summary matters	60%	91%	10 (out of 11)
Figures for 1997-98	60%	82%	14 (out of 17)
Prosecution sentence appeals upheld after a trial	60%	61%	11 (out of 18)
Figures for 1997-98	60%	57%	12 (out of 21)

The indicators show that the DPP is meeting targets across the range of the prosecution function and is exceeding targets in some areas.

Prosecution statistics

In the course of the year the DPP completed criminal proceedings against 5 018 people involving a total of 7 048 charges. The DPP received cases from over 30 different agencies.

The tables which follow set out details of the prosecutions conducted in 1998-99.

Table 1: Outcomes of successful prosecution action by DPP 1998-99

No of defendants convicted of summary offences	4 414
No of defendants convicted of indictable offences	415
No of defendants committed for trial	472

Table 2: Summary prosecutions in 1998-99

Defendants convicted after a plea of guilty	4 200
Defendants convicted after a plea of not guilty	214
(Total defendants convicted	4 414)
Defendants acquitted after a plea of not guilty	142
Total	4 556

Table 3: Committals in 1998-99

Defendants committed after a plea of guilty	153
Defendants committed after a plea of not guilty	319
(Total defendants committed	472)
Defendants discharged after a plea of not guilty	15
Total	487

Table 4: Prosecutions on indictment in 1998-99

Defendants convicted after a plea of guilty	334
Defendants convicted after a plea of not guilty	81
(Total defendants convicted	415)
Defendants acquitted after a plea of not guilty	47
Total	462

Table 5: Prosecutions on indictment – duration of trials in 1998-99

1 – 5 days	26
6 – 10 days	40
11 – 15 days	22
16 – 20 days	9
21 – 25 days	4
26 – 30 days	4
Over 30 days	9
Total trials	114

Table 6: Prosecution appeals against sentence in 1998-99

	Summary	Indictable
Number of appeals upheld	10	11
Number of appeals dismissed	1	7
Total number of appeals	11	18
% of appeals upheld	90.9%	61.1%

Table 7: Defence appeals in 1998-99

	Summary	Indictable
Number of appeals against sentence upheld	41	30
Number of appeals against sentence dismissed	120	31
Number of appeals against conviction upheld	7	2
Number of appeals against conviction dismissed	20	3
Number of appeals against conviction & sentence upheld	12	3
Number of appeals against conviction & sentence dismissed	13	11
Total number of appeals	213	80

Table 8: Legislation: charges dealt with in 1998-99

	Summary	indictable
Agriculture & Veterinary Chemicals Act	9	
Air Navigation Act	4	
Australian Federal Police Act	14	2
Australian Postal Corporation Act	11	
Australian Securities & Investments Commission Act	2	
Bankruptcy Act	13	9
Census and Statistics Act	2	
Child Support (Registration & Collection) Act	3	
Childcare Rebate Act	8	
Civil Aviation Act & Regulations	62	3
Companies Code	4	2
Copyright Act	12	
Corporations Law	48	21
Crimes (Aviation) Act	32	
Crimes (Confiscation) Act	2	
Crimes (Currency) Act	37	6
Crimes (Foreign Incursions and Recruitment) Act		5
Crimes Act	679	277
Crimes at Sea Act	2	
Customs Act	92	254
Defence Act and Regulations	7	
Export Control Act & Orders	18	3
Financial Transaction Reports Act	128	35
Fisheries Management Act and related legislation	258	5
Great Barrier Reef Marine Park Act & Regulations	60	
Hazardous Waste (Reg. of Exports and Imports) Act	2	
Health Administration Act	4	
Health Insurance Act	43	2
Marriage Act	2	
Migration Act	179	13
National Health Act	16	
National Parks & Wildlife Regulations	18	
Navigation Act	8	
Non-Commonwealth legislation: Drugs	49	46
Non-Commonwealth legislation: Other	160	54
Occupation Health & Safety (Cth Employment) Act	3	
Passports Act	25	2
Proceeds of Crime Act		18
Protection of Moveable Cultural Heritage Act		2
Public Order (Protection of Persons & Property) Act	55	
Quarantine Act	18	2
Radiocommunications Act	12	
Social Security Act	3 638	
Statutory Declarations Act	4	
Student Assistance Act	143	
Taxation legislation	299	4
Telecommunications Act	5	
Therapeutic Goods Act	9	
Trade Marks Act	12	
Trade Practices Act	6	
Veterans Entitlements Act	18	2
Wildlife Protection (Regulation of Exports & Imports) Act	14	7
Other	10	15
Total	6 259	789

Table 9: Crimes Act 1914: charges dealt with in 1998-99

	Summary	Indictable
Incitement (s.7A)	2	
Breach of recognisance (ss.20A, 20AC)	5	
Damage property (s.29)	4	3
False pretences (s.29A)	7	
Imposition (s.29B)	150	87
False statements (s.29C)	5	1
Fraud (s.29D)	73	111
Seizing Commonwealth goods (s.30)	4	
Administration of justice (ss.32-50)	6	21
Forgery (ss.65-69)	52	14
Disclosure of information (s.70)	1	1
Stealing or receiving (s.71)	61	11
Falsification of books (s.72)	16	6
Bribery (ss.73 & 73A)	1	2
Personating public officers (s.75)	3	
Resisting public officers (s.76)	11	
Computer offences (ss.76A - 76E)	30	5
Espionage and official secrets (ss.77 - 85D)		
Postal offences (ss.85E - 85ZA)	71	1
Telecommunications offences (ss.85ZB - 85ZKB)	158	
Conspiracy (s.86)	2	14
Conspiracy to defraud (s.86A)		
Trespass on Commonwealth land (s.89)	6	
Other	11	
Total	679	277

Table 10: Defendants dealt with in 1998-99: referring agencies

	Summary	Indictable
Attorney-General's Department		1
Australian Bureau of Statistics	2	
Australian Communications Authority	3	
Australian Competition and Consumer Commission	2	
Australian Customs Service	18	7
Australian Electoral Commission	1	
Australian Federal Police	627	354
Australian Fisheries Management Authority	30	
Australian Maritime Safety Authority	2	
Australian Postal Corporation	110	4
Australian Quarantine and Inspection Service	18	4
Australian Securities & Investments Commission	35	29
Australian Taxation Office	225	14
Centrelink	3 278	50
Civil Aviation Safety Authority	31	2
Comcare	9	
Dept of Agriculture Fisheries and Forestry	11	
Dept of Defence	5	
Dept of Education Training and Youth Affairs	18	
Dept of Environment & Heritage	7	
Dept of Fisheries (WA state)	146	3
Dept of Foreign Affairs	3	
Dept of Health and Aged Care	2	
Dept of Immigration and Multicultural Affairs	45	4
Dept of Veterans Affairs	25	5
Federal Airports Corporation	1	
Health Insurance Commission	73	5
Insolvency & Trustee Service Australia	2	
National Crime Authority	6	14
National Registration Authority	4	
Non-Commonwealth agencies		
- State police	230	15
- Other	86	1
Therapeutic Goods Administration	6	1
Total	5 061	513

CHAPTER 4

Criminal assets

Practice

The recovery of criminal assets forms an adjunct to the prosecution work of the DPP. The work is performed by Criminal Assets branches which include, or have access to, the services of financial analysts.

The work is designed to ensure that offenders are not only prosecuted for their crimes but are also stripped of the profits. There is as much need in this area as in prosecutions to ensure that alleged offenders are treated fairly and consistently. 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 also works closely with the Insolvency and Trustee Service Australia which is responsible for securing, managing and realising property under the PoC Act.

The total amount recovered under the criminal assets initiative for 1998-99 was almost \$11 million. As at 30 June 1999, the total value of property that was subject to restraining orders was over \$22 million.

A breakdown of these numbers is given in the tables at the end of this chapter. Performance indicators for work in this area appear later in this chapter.

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 recovery action 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, whether the alleged offender appears likely to resist recovery action and whether there is a need to coordinate the recovery and prosecution actions.

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.

- **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.

- **Civil remedies function**

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 tax and in matters or classes of matter 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 to the Commonwealth, provided the matter is connected to an actual or proposed prosecution.

Review of the PoC Act

In the course of the year the Australian Law Reform Commission conducted a review of the Proceeds of Crime Act and related legislation. The Commission presented its Report to government in June 1999 (ALRC Report No 87: *Confiscation that Counts, a review of the Proceeds of Crime Act 1987*).

The Report makes a total of 93 recommendations which cover a wide range of issues under the legislation. The DPP is considering the Report and will provide its comments to government shortly. Many of the recommendations address practical issues which have caused problems at operational level. However the Report also raises some major policy issues.

The most significant single recommendation is number 9, which is that the PoC Act be amended to incorporate a non-conviction based regime to enable confiscation, on the basis of proof to the civil standard, of profits derived from prescribed unlawful conduct. If that recommendation is accepted it will have substantial implications for the way the DPP operates, and that will be the case irrespective of whether recommendation 92, which deals with functions under the Act, is also accepted.

Superannuation orders

The Criminal Assets branches conduct proceedings under the Crimes (Superannuation Benefits) Act 1989 and Part VA of the Australian Federal Police Act 1979. Under these provisions 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. Members of the AFP can also lose 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 their own contributions plus interest.

In 1998-99 the DPP obtained seven superannuation orders under the CSB Act. No orders were obtained under Part VA of the AFP Act. Details of the orders obtained under the CSB Act are set out in the following table.

Name	State	Date
Forbes	NSW	10 July 1998
Widodo	WA	14 July 1998
Koster	SA	9 October 1998
Klau	Qld	19 February 1999
Duroux	Qld	25 February 1999
Crowley	WA	21 April 1999
Wilcock	Vic	17 June 1999

National liaison

In the course of the year the DPP joined with other agencies involved in recovering the proceeds of crime to establish new national liaison arrangements. The other agencies involved are the AFP, the NCA, ITSA and the Attorney-General's Department.

The purpose is to provide a forum for the discussion of issues which have national implications and to provide a greater degree of inter-agency coordination than has been possible in the past. This development reflects an ongoing commitment by all agencies to build on experience and improve performance.

Performance indicators

The following table lists the DPP's performance indicators for criminal assets cases.

Criminal Assets performance indicators for 1998-99

Description	Target	Number	Outcome
Applications for restraining orders that succeeded	90%	25	100%
Figures for 1997-98	90%	28	100%
Applications for pecuniary penalty orders that succeeded	90%	9	100%
Figures for 1997-98	90%	8	88%
Applications for forfeiture orders that succeeded	90%	44	83%
Figures for 1997-98	90%	35	90%
Damages awarded against DPP under undertakings	--	Nil	--
Figures for 1997-98		Nil	
No of cases legal costs awarded against DPP (i)	--	2	--
Figures for 1997-98		Nil	

Amounts paid for costs awarded against DPP	--	\$16 550	--
Figures for 1997-98	--	\$9 559	

(i) Costs may not be paid in the year that they were awarded.

The DPP is operating at or above target in all areas except in relation to applications for forfeiture orders, where the results were slightly below target. There were 53 applications for forfeiture orders in the course of the year, of which 44 were successful.

The DPP can only apply for a forfeiture order under the PoC Act after a person has been convicted of an indictable offence and the court can only make an order if satisfied that the property in question is tainted property in respect of that offence. If those criteria are satisfied, the court still has a discretion about whether to make a forfeiture order and, if so, about how much of the property should be forfeited.

Most of the nine applications which were not successful failed because the court exercised its discretion against making a forfeiture order, rather than because the DPP failed to show that property was tainted. In most of those cases the property that was the subject of the application had been seized as evidence and was still held by the investigators at the end of the prosecution. The application for a forfeiture order added nothing to the cost or length of the criminal proceedings.

There will always be cases where a court will exercise its discretion against making a forfeiture order. When seen in context, the outcome for the year does not give cause for concern.

Criminal assets recovery tables

Table 1: PoC Act: orders made and forfeitures secured in 1998-99

No. of restraining orders obtained	24
Estimated net value of property restrained	\$9 549 202
No. of PPOs obtained	8
Value of PPOs	\$1 440 840
No. of s.19 forfeitures obtained	44
Estimated value of property forfeited under s.19	\$1 904 425
No. of s.30 forfeitures	11
Estimated value of property forfeited under s.30	\$8 101 953

Table 2: PoC Act: restraining orders in force as at 30 June 1999

No. of restraining orders in force	68
Estimated net value of property restrained	\$22 350 203

Table 3: PoC Act: money recovered in 1998-99

No. of PPOs paid	17
Amounts paid under PPOs	\$379 451
No. of s.19 forfeitures realised	31
Amounts recovered from s.19 forfeitures	\$864 664
No. of s.30 forfeitures realised	10
Amounts recovered from s.30 forfeitures	\$6 847 124
No. of cases where amounts recovered from settlements, etc.	3
Amounts recovered from settlements, voluntary payments etc	\$622 508
Total recovered	\$8 713 747

Table 4: Customs Act: orders made and forfeitures secured in 1998-99

No. of restraining orders obtained	1
Estimated value of property restrained	\$45 000
No. of PPOs obtained	1
Value of PPOs	\$45 000
No. of cases where property seized	2
Estimated value of seized property	\$100 350
No. of condemnations	3
Estimated value of condemned property	\$70 000

Table 5: Customs Act: restraining orders in force as at 30 June 1999

No. of restraining orders in force	2
Estimated net value of property restrained	\$375 170

Table 6: Customs Act: money recovered in 1998-99

No. of PPOs paid	2
Amounts paid under PPOs	\$16 500
No. of cases where condemned property realised	4
Amounts recovered from realisation of condemned property	\$130 750
No. of cases where amounts recovered from settlements, etc.	-
Amounts recovered from settlements, voluntary payments etc.	-
Total recovered	\$147 250

Table 7: Civil remedies: property secured, judgments and reparation orders obtained by DPP in 1998-99

No. of cases where property secured by injunction or otherwise	7
Estimated value of property secured by injunction or otherwise	\$975 107
No. of judgments and reparation orders obtained	4
Amount of judgments and reparation orders	\$951 820

Table 8: Civil remedies: money recovered in 1998-99

No. of judgments and reparation orders paid	-
Amounts paid under judgments and reparation orders	-
No. of cases where amounts recovered from settlements, etc.	16
Amounts recovered from settlements, bankruptcy etc.	\$1 952 527
Total recovered	\$1 952 527

Table 9: Criminal Assets: total recoveries for 1998-99

Proceeds of Crime Act ppo	\$379 451
Proceeds of Crime Act s.19 forfeiture	\$864 664
Proceeds of Crime Act s.30 forfeiture	\$6 847 124
Proceeds of Crime Act settlement and other payments	\$622 508
Proceeds of Crime Act total	\$8 713 747
Customs Act ppo	\$16 500
Customs Act condemnation	\$130 750
Customs Act total	\$147 250
Civil remedies judgments & reparations	-
Civil remedies settlements and other payments	\$1 952 527
Civil remedies total	\$1 952 527
Grand total	\$10 813 524

CHAPTER 5

Law reform

One of the objectives of the DPP is to provide recommendations on the laws or proposed laws of the Commonwealth relating to the criminal justice system. This chapter outlines some of the issues considered in 1998-99.

Criminal Code Act

The DPP has recommended that the Criminal Code Act be amended to include a provision along the lines of section 15D of the Crimes Act 1914. In general terms, section 15D casts on the defendant the burden of proving that something was done with lawful authority, lawful excuse or with permission. There are numerous offences under Commonwealth law which make it an offence to do something without lawful authority, lawful excuse or permission. In many instances such offences would become virtually unenforceable if the prosecution was required to establish beyond reasonable doubt that the act in question was done without authority, excuse or permission.

Model Forensic Procedures Bill and proposed national DNA database

In 1995 the Model Criminal Code Officers Committee developed a Model Forensic Procedures Bill. That Model Bill focused on the collection and use of forensic samples from suspects, and was implemented for the Commonwealth by the Crimes Amendment (Forensic Procedures) Act 1998.

The Commonwealth is currently establishing a national DNA law enforcement database, in cooperation with the States and Territories, as part of its *CrimTrac* initiative. The procedures which would be required to establish such a database were not addressed in the 1995 Model Bill, and those procedures are the subject of a Discussion Paper which has been issued by MCCOC. MCCOC has also taken the opportunity to revisit a number of the issues that were addressed in the 1995 Model Bill. One of those is the procedure for obtaining forensic samples from people who have been convicted of serious offences.

The relevant provisions in the 1995 Model Bill (and the equivalent Commonwealth provisions) are very restrictive. Forensic samples can only be taken under a court order, and when determining whether to make an order a court is required to take into account, among other things, whether there are reasonable grounds to believe that the convicted person may commit some other serious offence in the future. It would be extremely difficult for the applicant for an order to ever be able to satisfy a court that there are reasonable grounds to believe that a convicted person may commit some other serious offence in the future.

MCCOC has recognised that the provisions are unduly restrictive and has devised an amended procedure. However, in the view of the DPP the alternative procedure is still too restrictive. In the DPP's view, the taking of a forensic sample from a convicted person should be regarded as a consequence of the conviction and a court order should not be required. In the DPP's view, a forensic sample should be obtained as a matter of course from any person who has been convicted of an offence punishable by five years imprisonment or more.

Controlled operations

In the last Annual Report it was noted that the DPP had made a number of recommendations to the Attorney-General's Department for amendments to the controlled operations provisions of the Crimes Act 1914. Those recommendations were that:

- the protection afforded by a certificate under section 15M should be extended to a civilian who participates in a controlled operation by arrangement with a law enforcement agency; and
- the offences covered by a section 15M certificate should include State or Territory offences relating to the supply of narcotic goods.

The DPP made the same recommendations to the Parliamentary Joint Committee on the National Crime Authority, which is conducting an inquiry into the involvement of the NCA in controlled operations. The DPP also advised the Committee that it could see no reason why the ambit of the Commonwealth legislation in this area should be restricted to the investigation of Commonwealth drug offences.

The DPP's view is that the present approach in the Crimes Act should be abandoned in favour of the more open-ended approach which has been used in the Law Enforcement (Controlled Operations) Act 1997 of NSW. Under the NSW legislation there is provision for a controlled operation to be authorised whenever the purpose of the operation is to obtain evidence of any criminal activity which involves the commission of an offence by one or more people.

Amendment to the DPP regulations

In December 1998, regulations were made under section 34 of the DPP Act prescribing the following additional functions of the Director for the purpose of section 6(2)(b) of the Act:

- (f) to give, to an authority of the Commonwealth, legal advice on law enforcement or a matter relating to law enforcement, whether or not the advice is for the purposes of a particular investigation; and
- (g) to give, to a State or Territory authority, legal advice on the investigation or prosecution of an offence against a law of the Commonwealth or a matter relating to the investigation or prosecution of such an offence, whether or not the advice is for the purposes of a particular investigation.

The amendments were made following the decision in HIC v Freeman (unreported, 23 October 1998) in which the Full Federal Court ruled that before the DPP could give legal advice to a Commonwealth authority in reliance on its function in section 6(1)(n) of the DPP Act there had to be some nexus between the matter in respect of which the legal advice was sought and one or other of the Director's express statutory functions. In the absence of a nexus, the Full Federal Court found that the provision of the advice could not be said to be incidental or conducive to the performance of the Director's other functions for the purposes of section 6(1)(n).

The ruling in HIC v Freeman cast doubts on the DPP's power to provide legal advice to other agencies on law enforcement, investigation and prosecution issues. The new regulations resolve those doubts.

Section 19AC of the Crimes Act

In any case where a federal offender is sentenced to an effective sentence of between six months and three years imprisonment, section 19AC of the Crimes Act requires the sentencing court to make a recognisance release order unless, under section 19AC(4), the court considers that such an order would not be appropriate

“having regard to the nature and circumstances of the offence or offences concerned and to the antecedents of the offender”.

In the DPP’s view, the discretion conferred on a court under section 19AC(4) is unnecessarily restrictive given that there may be matters other than the circumstances of the offence or the offender’s antecedents which render the making of a recognisance release order inappropriate. For example, the court may have ordered that a sentence be served by way of periodic detention or home detention. In such cases it makes no sense for the court to make a recognisance release order. The DPP has recommended that section 19AC(4) be amended so that a sentencing court can decline to make a recognisance release order for any reason that the court considers sufficient.

CHAPTER 6

Resource management

Overview

Management

There is a resource management branch in each regional office, other than Hobart and Darwin, and a resource management section in Head Office. The regional offices work under the overall direction of the Deputy Director, Corporate Management. Head Office plays a coordinating role in areas of national importance and provides media liaison and publishing services. Operational responsibility has been largely devolved to the regional offices, except for Hobart and Darwin where resource management services are currently provided from Head Office.

The resource management section in Head Office is responsible for both financial and human resource management. The section is headed by a manager and has two team leaders who specialise in the different disciplines involved. This merged arrangement allows the DPP to coordinate the reforms currently underway in the Australian Public Service.

The resource management branches in the regional offices are headed by an Executive Officer who works under the supervision of the Deputy Director for that State.

Significant developments

Resource management in the DPP continues to undergo fundamental change with the implementation of a wide range of government initiatives. These include the introduction of accrual budgeting, new devolved banking arrangements which will operate from 1 July 1999, and the implementation of the DPP's Certified Agreement.

In the course of the year, the DPP issued a series of Director's Personnel Instructions and Explanatory Notes designed to clarify the intent of a number of clauses in the Certified Agreement and assist staff and management with the implementation of the agreement. A clause in the agreement gives authority to issue Director's Instructions in consultation with all parties to the agreement. The DPP also negotiated Workplace Agreements with all SES staff. These were approved by the Employment Advocate in December 1998.

Other significant developments included the issuing of a series of Director's Instructions to govern financial management in accordance with the requirements of the Financial Management and Accountability Act 1997 and reviewing a number of IT policies and plans including the Strategic Plan, Disaster Recovery Plan and IT Security Plan.

As reported last year the DPP recently implemented a new resource management information system, known as SAP R/3. Considerable resources continue to be used in bedding down the system to ensure that it is producing the desired benefits for the Office.

Human resources

Staffing

As at 30 June 1999 the number of operational staff was 410 (413 at 30 June 1998). A breakdown of this figure appears in Tables 1 to 4 at the end of this chapter. Average operational staffing for the year was 401.87 (397.2 for 1997-98).

There were no staff movements of permanent APS officers at the SES level although two positions were reclassified and filled by internal applicants.

Training and development

The Certified Agreement requires that all staff members enter into an annual personal development plan in May/June each year. The DPP has introduced a Performance Management Scheme for the 1999-2000 cycle, which includes provision for a skills development plan. Under the scheme, all employees will be assessed against goals and objectives agreed between the supervisor and employee. A skills development plan will be developed for each officer as part of the appraisal process. Individual skill development plans will be reviewed by each office in order to develop a coordinated response to training.

As part of the new Performance Management Scheme all staff will be provided with training on giving and receiving feedback.

A training committee has been set up in the Brisbane office to coordinate training events for that office, including office conferences and continuing legal education. The committee has also developed a standardised induction process and has conducted a survey of staff training needs.

During the year, considerable effort went into continued training on the new SAP R/3 system. The DPP also conducted regular in-house legal training. This training is designed to keep legal skills current and to ensure that DPP lawyers comply with any continuing legal education requirements that apply to them. Each office also provided training, as required, on occupational health and safety issues, including stress management and ergonomics.

Direct expenditure on external training for the year was approximately \$146 300, which is 0.5 per cent of total salary expenditure (\$314 400 and 1.2 per cent in 1997-98). In addition, considerable in-house and on the job training was conducted during the year which 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. A number of staff transferred, on either a temporary or permanent basis, to other public sector agencies in the course of the year. However, there were no formal placements under the interchange program.

Occupational health and safety

The DPP has an OH&S agreement with the Community and Public Sector Union. All offices have OH&S representatives and deputies. New representatives are selected and trained as the need arises. There is at least one formal workplace inspection in each office during each year. No problems of major significance were found during 1998-99.

There are OH&S committee meetings in each office. The first priority is given to minimising potential problems, especially those that may result from the introduction of new technology. If there is a problem, the DPP's practice is to engage specialists with the skills needed to carry out inspections and to develop strategies to overcome the problem.

In the course of the year the Brisbane office began work, in consultation with Comcare, on the development and implementation of a comprehensive OH&S prevention program, with a particular emphasis on stress management. The occupational stress section of the project involves engaging a firm of consulting psychologists to prepare an organisation health survey of all staff and present recommendations to management. The DPP is currently awaiting the final report.

Equal employment opportunity

Under the Managing Workplace Diversity Guidelines, which are issued by the Public Service and Merit Protection Commission, all Commonwealth agencies are required to develop and implement workplace diversity programs while maintaining the basic principles of EEO.

In line with those guidelines, in February 1999 the DPP launched the Workplace Diversity Plan 1999-2000. The aims of the of the plan are:

- provide a work environment which fully recognises, develops and uses the knowledge and skills of employees in an equitable way;
- ensure that merit selection and equal employment opportunity form the basis for recruitment and selection;
- provide a working environment free from discrimination and harassment; and
- ensure that human resource planning is supported by flexible people management policies, which encourage the best possible balance between family and work responsibilities.

The DPP is committed to workplace diversity through the Certified Agreement and Corporate Plan, and acknowledges that workplace diversity is an integral component of effective people management.

The DPP's EEO profile is shown in Table 4 at the end of this chapter. The table is based on information volunteered by staff and staff can choose not to disclose their EEO status. Accordingly, the information may not be complete.

The employment levels for EEO target groups have varied since last year. The number of women employed has increased by 4% (from 223 to 233) and the number of employees who have chosen to identify themselves as from a non-English speaking background has increased by 28% (from 56 to 72).

The DPP employs one Aboriginal legal cadet in Melbourne and two in Brisbane.

Performance pay

The DPP does not have a performance pay scheme for its officers. Accordingly there were no payments of performance pay during 1998-99.

Industrial democracy

The Certified Agreement provides for a Workplace Relations Committee to replace the former National Consultative Council.

Financial management

General

The DPP uses the SAP R/3 Financial Management Information system to comply with the requirements of the Financial Management and Accountability Act.

The DPP prepared its first accrual based budget for 1999-2000 as part of the first Commonwealth wide accrual budget. The DPP has made the arrangements needed to facilitate the introduction of devolved banking.

Financial statements

Audited financial statements are included at the end of this Report. Total net cash expenditure for 1998-99 was \$56.633 million, against a budget of \$58.660 million (in 1997-98 expenditure was \$52.598 million, against a budget of \$55.813 million).

The underspending against budget resulted mainly from the deferral of parts of the asset replacement and IT re-equipment programs. The increase in expenditure from 1997-98 resulted mainly from an increase in salary payments and an increase in legal costs awarded against the DPP.

Program budgeting

The DPP has two sub-programs for the purpose of external reporting: Commonwealth Prosecutions (which includes Commercial Prosecutions) and Criminal Assets. Executive and Support costs are apportioned between the two operational sub-programs. Details of activities under each sub-program appear in the relevant chapters of this Report. The expenditure incurred under each sub-program is set out in the financial statements at the end of this Report.

For further information on the DPP budget see *Attorney-General's Program Budget Measures Statements* for 1998-99 and 1999-2000. The relevant entries are under sub-program 6.7.

Financial reporting and management information systems

The DPP operates two key management information systems, the SAP R/3 Resource Management Information system and a Fines and Costs debtors system.

Accounting policy

The DPP's accounting policy is set out in a series of Director's (Chief Executive Officer's) Financial Instructions and related financial delegations. The instructions give effect to the DPP's obligations under the Financial Management and Accountability Act 1997 and comply with the requirements of that Act. The Financial Management and Accountability Act came into operation on 1 January 1998 and devolved the responsibility for financial management to the Chief Executive Officer of each Commonwealth agency. It also imposed additional responsibilities and workloads on agencies.

The financial statements at the end of this Report were prepared in accordance with Schedule 2 of the FMA Orders made by the Minister for Finance.

During 1998-99 the DPP gazetted all purchases in excess of \$2 000 within the required time-frame.

Accounts processing

The DPP uses Australian government credit cards wherever it is practicable to do so and is implementing electronic funds transfer where that provides a suitable method for paying accounts.

The DPP is reviewing its accounts processing practices, and the degree of devolution of financial responsibility, to identify what changes are required as a result of the move to accrual accounting. The DPP has also commenced a review of its banking procedures to determine what options are available to improve processes under the new devolved banking arrangements.

Asset management

During 1998-99 the DPP completed a revaluation of all property, plant, equipment and internally developed software. The revaluation updated the value of these assets to the current depreciated replacement cost. There was also a full stocktake of all assets.

Claims and losses

In 1998-99 the DPP had no claims or losses which individually resulted in net costs to the Commonwealth of \$50 000 or more, other than for legal costs awarded to defendants.

The DPP also had no claims or losses which resulted in aggregate costs to the Commonwealth in the ranges \$10 000 to \$20 000 and \$20 000 to \$50 000, other than for legal costs awarded to defendants.

Capital works management

The DPP had no major capital works projects that cost \$6 million or more in 1998-99. During 1998-99 the DPP commenced a major refit of the Brisbane Office with a total budget of approximately \$1.7 million.

Agency evaluations

As noted elsewhere in this Report, the DPP is in the process of reviewing the operation of each DPP office through the Best Practice Review Committee.

In 1993-94 the DPP participated, together with the Department of Finance and the Attorney-General's Department, in a tripartite review of the Office as a whole. The criminal assets function, the fines and costs activities, and the IT area were all reviewed separately prior to that. In addition, in 1992-93, the DPP was represented on a portfolio review of the Corporate Prosecutions function. Those reviews collectively covered all areas of the DPP's operations.

Other areas

Information technology

The DPP computer installation is largely made up of IBM-compatible personal computers, local and wide area networks and in-house applications running in a client-server environment. Windows 95 and Office 97 are the basic office administrative systems.

The DPP maintains the following in-house systems:

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

The DPP operates a SAP R/3 Resource Management Information System on Hewlett-Packard Unix minicomputers, using an Oracle database, for financial, payroll and human resource management. The Office also operates the FIRST library system utilising Windows NT and Oracle on file servers.

In the course of the year the DPP extended the Wide Area Network to include Darwin, when the DPP set up an office there, and the office facility in Cairns. The DPP also set up an Intranet to facilitate the internal dissemination of information. Considerable work has gone into placing material on the Intranet. In 1999-2000 the DPP will continue an ongoing program to upgrade the existing IT environment.

The DPP has identified IT systems that must be Y2K compliant. The DPP is finalising a Y2K strategy, and expects to complete its contingency plan well before the end of the calendar year.

Libraries

The DPP has a library in each office. The libraries operate as a cooperative network providing reference, current awareness and information services. All libraries have access to local and overseas on-line legal sources and provide legal staff with desk-top access to in-house and commercial databases on disc and CD-ROM.

Over the past twelve months the librarians have been involved in the development and testing of search and display templates for in-house databases in preparation for their transfer to the new DPP Intranet. The transfer is almost complete. ISYSWEB is being used as the search engine for the in-house material. The Intranet has also become a gateway to commercial databases on disc and CD-ROM.

The Head Office library has a national coordinating role and manages national services including DPP in-house databases, manuals, an information service, cataloguing and the library management system. The systems/cataloguing librarian is responsible for network cataloguing and the library management system, FIRST.

Regular librarians' meetings provide a venue for input from all offices into the development of library network policies and procedures.

Accommodation

In 1998-99 the DPP spent approximately \$7.3 million on accommodation and occupied a total of 16 805 square metres (\$6.8 million and 16 522 square metres in 1997-98). The increase in space is due to the DPP assuming space previously occupied by the Australian Government Solicitor's offices in Hobart and Darwin. The increase in expenditure is due to the cost of renting the additional space and to general rent increases.

During 1998-99 the DPP renegotiated the leases for the offices in Brisbane and Townsville and the office facility in Cairns. The renewal of the Brisbane lease was followed by a complete refit of that office.

Consultancy services

Details of expenditure for 1998-99 are shown in Table 5 at the end of this chapter.

Fraud control and internal audit

The DPP issued its current Fraud Control Plan in 1995. During 1998-99 the DPP hired a consultant to update its fraud risk assessment and the Fraud Control Plan and to prepare a three year internal audit program. The new Plan and the internal audit program will be implemented in early 1999-2000.

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

Public relations

All media inquiries are handled by an executive assistant in Head Office who can be contacted on (02)62065606 during office hours. The DPP will provide accurate information on any matter which is on the public record but will not disclose information on cases that are yet to come before the courts.

The executive assistant also provides a daily media summary to DPP officers via the computer network. The summary forms the basis of a database which can be used for research purposes.

The DPP did not undertake any advertising campaigns or market research in 1998-99.

External scrutiny

The DPP was referred to in one report by the Auditor-General in 1998-99. That was Audit Report No. 20 of 1998-99 entitled *Results of 1997-98 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 DPP was not referred to in any report by the Ombudsman and there were no adverse findings against the management practices of the DPP by a court or tribunal.

Status of women

The DPP works together with other agencies to ensure that there is no discrimination against women, or any other group of people, in the criminal process.

The DPP does not have a women's unit. The responsibility for ensuring that proper attention is paid to the status of women rests with the Deputy Directors.

Environmental matters and energy management

The DPP uses energy saving methods in its operations and endeavours to make the best use of resources. The DPP uses technology to minimise energy use, including automatic switch-off devices on electrical equipment. All waste paper is recycled and the DPP gives preference to environmentally sound products when purchasing office supplies.

Business regulation

The DPP has no role in business regulation other than to prosecute criminal offences in appropriate cases. The DPP's activities in Commercial Prosecutions are reported earlier in this Report.

Public comment

Any person is free to write to the DPP, at the addresses shown at the front of this Report, on any matter which concerns them.

Privacy

There were no reports served on the DPP by the Privacy Commissioner under section 30 of the Privacy Act in the past year.

Resource management tables

Table 1(a): Staff as at 30 June 1999

Classification	ACT	NSW	VIC	QLD	SA	WA	TAS	NT	TOTAL
Director	1								1
SES Band	2								2
Band 2	3	1	1	1	1	1			8
Band 1	3	8	5	6	1	3			26
PLO	8	23	24	13	7	7	2	1	85
SLO	2	15	9	7	2	7	2	1	45
LO 2		10	4	2	1		1		18
LO 1		11	2	4	1		1	1	20
EXEC 2	6	3	5	1	1	1			17
EXEC 1	5	3	1	1	1	1			12
APS 6	5	4	5	3	1	2			20
5	6	1	2	1					10
4	6	17	11	12	3	5		1	55
3	1	18	11	4	2	9	3	2	50
2		10	17	4	2	1			34
1		3	1						4
ABCAD			1	2					3
Totals	48	127	99	61	23	37	9	6	410

Note: Inoperative staff not included: 24

Legend:

SES	Senior Executive Service
PLO	Principal Legal Officer
SLO	Senior Legal Officer
LO	Legal Officer
EXEC	Executive Officer
APS	Australian Public Service Officer
ABCAD	Aboriginal legal cadet

Table 1(b): Staffing summary 1998-99

Statutory Office holders	1
Total staff employed under the PS Act	391
Total staff employed under the DPP Act	18
Total	410

The total number of temporary staff included in this table is 13.

Table 2: Staff as at 30 June 1999 by gender and category

Category	Full-time		Part-time	
	Male	Female	Male	Female
Director	1			
Senior Executive Service -				
Band 3	2			
Band 2	6	2		
Band 1	16	10		
Legal Officers	81	69		17
Executive Officers	17	9		3
APS & equivalent	53	110	1	13
Grand total	410	176	200	33

Table 3: Staff usage by office

Office	Actual Average Staffing 1998-99
Head Office	50.83
NSW	120.72
VIC	99.67
QLD	58.74
SA	24.76
WA	36.66
TAS	7.14
NT	3.33
Total	401.87

Table 4: EEO profile as at 30 June 1999

Classification	Male	Female	ATSI	PWD	NESB1	NESB2
Director	1					
SES 3	2					
SES 2	6	2				1
SES 1	16	10				1
Legal Officers	81	86	2	7	7	19
Executive Officers	17	12		1	3	3
APS & Equiv	54	123	2	9	14	24
Total	410	177	4	17	24	48

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 (arrived in Australia after age five and first language not English).

NESB2: Non-English Speaking Background, second generation (arrived in Australia before age five or born in Australia but with one or more parents who are of non-English speaking background).

Note: The above categories, other than male or female, only include officers who have voluntarily identified themselves as belonging to a particular group and therefore may be incomplete.

Table 5: Consultancies for 1998-99

Consultant	Purpose	Cost	Period	Reason used
Head office				
DWR&SB *	Certification of Agency Agreement & AWA's	\$2 875	Feb-Mar 1999	Expertise not available in office
Ernst & Young *	Business impact Assessment	\$6 750	Nov 1998	Expertise not available in office
Brisbane office				
Project Insight *	Evaluation of tenders for office refurbishment	\$5 015	Feb-Mar 1999	Expertise not available in office
Hassell Pty Ltd	Architectural services for office refurbishment	\$82 000	May-Dec 1999	Expertise not available in office
Hobart and Darwin offices				
Norman Disney & Young *	Engineering inspection & report on offices	\$4 503	June 1999	Expertise not available in office

Consultancies marked * were not publicly advertised.

CHAPTER 7

Significant cases

This chapter outlines some of the cases dealt with in the past year which have significance going beyond the facts of the particular case. That is generally because they set a legal precedent or illustrate a point of general relevance.

General prosecutions

Argibay-Perez

This case involved illegal fishing for Patagonian toothfish in the sub-Antarctic waters of the Australian fishing zone around Heard Island. The defendant was the master of an unlicensed boat that was detected in the zone by an Australian naval vessel. Fishery officers found freshly caught fish on board the boat and records which showed that it had made a previous trip to Australian waters. The total value of illegally caught fish was of the order of \$900 000.

The boat was released to its owners after they lodged a bond of \$1.7 million, which covered potential fines as well as the value of the boat, its catch and equipment. The master subsequently pleaded guilty to charges under sections 100 and 101 of the Fisheries Management Act. He was fined \$100 000 and the court ordered forfeiture of the boat, its catch and equipment. The net result was that \$1.5 million of the bond money was forfeited to the Commonwealth.

The master has appealed against the fine imposed on him, on the basis that the court should have had regard to his capacity to pay, not the capacity of the owners of the boat. The DPP argued that the scheme of the Fisheries Management Act shows that the sentencing court is entitled to have regard to both matters. The WA Court of Criminal Appeal has heard argument but has not yet delivered judgment.

Aruli, La Bau and La Nunu

The defendants in this case were Indonesian fishermen who were detected fishing unlawfully inside Australian waters off WA. The defendants were all convicted of offences against the Fisheries Management Act and fined amounts ranging from \$12 500 to \$20 000. The courts also ordered forfeiture of the fishing boats. These were serious offences, involving deliberate breaches of Australian law for commercial gain. One of the defendants had prior convictions for similar conduct. However imprisonment is not an available sentencing option under the Fisheries Management Act if an offence involves a foreign fishing vessel. That reflects the provisions of the United Nations Convention on the Law of the Sea.

The defendants appealed against penalty. They argued that the fines were too high for them to pay and, accordingly, they would be required to serve time in default. They argued that the default provisions in WA law are inconsistent with the UN Convention and are invalid. The Supreme Court of WA rejected the argument. The Court noted that the UN Convention has only been adopted into Australian law for limited purposes and that, in any event, the defendants had not been sentenced to imprisonment as a penalty for fishing offences. They had been fined. The default provisions were only part of the process for enforcing the fines and did not conflict with the relevant provisions of the Convention.

Australia Post agents

This case involved the prosecution of two people on charges under section 72(b) of the Crimes Act 1914 of being a Commonwealth officer who fraudulently and in breach of duty omits to make an entry in a document. The defendants ran a post office under licence from Australia Post. The defendants failed to enter details of transactions on the appropriate accounting form and, it was alleged, retained money that should have been passed on to Australia Post.

The defendants were discharged when the trial judge directed verdicts of acquittal on the basis that the defendants did not owe a duty to Australia Post for the purpose of the Crimes Act. The DPP brought a reference appeal which, since this was an ACT case, went to the Full Federal Court.

The DPP submitted two questions to the Full Federal Court. The main one was whether the defendants owed a duty to Australia Post for the purpose of section 72 of the Crimes Act. The Full Court declined to answer this question directly. However the court referred to authority which supports the proposition that a contractual obligation can be sufficient to constitute a duty for the purpose of the Crimes Act. The Full Court held that the trial judge had not been correct in finding that the evidence was incapable of establishing the existence of a duty to make the relevant entries.

Bourke

The defendant in this matter was charged with offences under the Social Security Act of knowingly obtaining a benefit that was not payable. It was alleged that he obtained \$17 000 in excess of entitlements over a two year period by working part-time and not declaring his income. Over that period the defendant filed 70 income statement forms. It was alleged that, on each occasion, the form contained a false statement about income earned.

The prosecution was not able to produce the original forms. They had been destroyed under normal document destruction arrangements. The case relied on secondary evidence to show that benefits were paid to the defendant over the relevant period and that they would not have been paid if the forms had told the truth. When the matter came on for hearing the defence applied for a stay of the prosecution on the basis that it would be an abuse of process to proceed in the absence of the forms. The magistrate upheld the application.

The DPP appealed. The DPP argued that, in all the circumstances of this case, the secondary evidence of what was on the forms was reliable and that there was nothing unjust or oppressive with prosecuting on the basis of that evidence. The SA Supreme Court dismissed the appeal. The court found that Bourke was entitled to run a defence to the effect that he had filled in his forms correctly and that the Department may have made a mistake, or 70 separate mistakes, in paying money to him that he was not entitled to receive. The court found that the forms were the only evidence which had the potential to support that defence and that it would be abuse of process for the case to proceed without them.

The decision turned on the facts of the case. Nonetheless, the case shows the value to the prosecution of being able to produce original documentary evidence and signposts the problems the DPP may run into as agencies move away from paper records to electronic recording systems.

Frugniet

This case involved a conspiracy between a husband and wife to produce \$2.8 million worth of counterfeit travellers cheques. The case was investigated by the AFP, but charges were laid under the Victorian Crimes Act on the basis that charges under that Act properly reflected the alleged criminality. Both defendants were convicted.

Brian Frugtniet was sentenced to five and a half years imprisonment with a non-parole period of three and a half years. Suzanne Frugtniet was sentenced to two years imprisonment with a non-parole period of 12 months.

The defendants applied for leave to appeal but the applications were dismissed. The main issue in the application was whether the trial judge should have excluded a record of interview with Brian Frugtniet that was conducted by an AFP officer. That turned on whether the AFP officer had power to question the defendant after arrest or whether that power can only be exercised, in relation to a Victorian offence, by an officer of the Victoria Police. The Supreme Court found that the AFP officer did have power to question Brian Frugtniet after arrest on the basis that he was an "investigating official" for the purpose of Part 30A of the Victorian Crimes Act.

In reaching that conclusion, the Supreme Court considered section 9(1)(c)(iv) of the Australian Federal Police Act 1979 which provides that when a member of the AFP is performing functions in relation to "the safeguarding of Commonwealth interests" the member has the same powers and duties as a State police officer of equivalent rank. The relevant question was whether it fell within the phrase "safeguarding of Commonwealth interests" for an AFP officer to investigate a conspiracy to counterfeit travellers cheques. The Supreme Court found that it did, on the basis that the Commonwealth has a legitimate interest in controlling the use and abuse of foreign currency. The Court rejected an argument that the concept of safeguarding Commonwealth interests should be read as limited to protecting people like judges, witnesses and ministers of the Crown.

The Court also took the opportunity to comment on delay in the criminal process and to criticise the adjournments, collateral litigation and preliminary applications that were a feature of the case.

Katsuno

This case involved the importation of a commercial quantity of heroin contrary to section 233B(1)(b) of the Customs Act 1901. The defendant, a Japanese national, was one of six people who arrived in Melbourne on a flight from Malaysia on 17 June 1992. Four members of the group were found to be carrying heroin in their suitcases, concealed in false bottoms. The suitcases contained a total of 8.4 kilograms of pure heroin with a street value of \$31 million. Katsuno was alleged to have been party to the importation. He was convicted by a jury and was sentenced to 20 years imprisonment with a non-parole period of 14 years.

The trial was heard by a jury empanelled under the Victorian Juries Act. It is the normal practice in Victoria that before the jury is empanelled the prosecution is given a list by the Victoria Police setting out details of the criminal history of the potential jurors, including details of any minor convictions which do not disqualify them for jury service. That practice was followed in this case. In accordance with the normal practice, the defence was not given a copy of the list. The practice is designed to protect the integrity of the jury system while protecting the privacy of potential jurors. The prosecution takes on a responsibility to act impartially in the process of jury selection.

The defendant appealed against conviction on the basis, among other things, that the jury selection process was flawed and was in breach of section 80 of the Constitution. On 23 December 1997 the Victorian Court of Criminal Appeal dismissed the appeal. On 11 September 1998 the High Court granted special leave to appeal to argue this point. The case was heard in Canberra in March 1999. The Court reserved its judgment.

Lee

This case is one of the first involving offences against the child sex tourism provisions in the Crimes Act 1914. The defendant was convicted on nine counts of sex tourism and 15 counts under WA law of possessing obscene material. He was sentenced to 14 years in jail with a non-parole period of six years and eight months. He has appealed against sentence.

In 1997 the defendant returned to Australia from a holiday in Cambodia bringing photographs which showed him engaged in sexual acts with young women. He brought the photos into Australia hidden in an album underneath innocuous photographs, but he subsequently showed some of the photos to workmates. The matter was reported to the WA Police who conducted an investigation with cooperation from the AFP.

The case posed a challenge to the investigators because they were not able to identify any of the young women in the photos and because the defendant's face did not appear in them. They were able to establish where the offences were committed by locating the hotel rooms shown in the photographs. The prosecution relied on the photographs and on expert evidence from a paediatric endocrinologist to establish that the women in the photos were under-age. The prosecution also relied on evidence from a forensic pathologist to establish that limbs and other body parts shown in the photographs belonged to the defendant. The investigators were also able to blow up a photograph which showed the defendant's fingers and obtain fingerprint details using computer enhancement techniques.

MacPherson

The issue in this case was whether a person acquitted in a tax prosecution was entitled to claim costs under the Queensland Justices Act 1898 or under the Taxation Administration Act 1953. The question was relevant because the Justices Act places limits on the power to award costs which do not appear in the Commonwealth Act. The magistrate in the present cases dismissed charges under the Taxation Administration Act but refused to award costs purporting to apply the Justices Act provisions. The defendant appealed.

The Court of Appeal found that the costs provisions in the Taxation Administration Act prevail over those in the Justices Act on the normal Constitutional principle that a valid Commonwealth law overrides an inconsistent State law. The Court went on to determine how the costs provisions in the Taxation Administration Act operate. Those provisions give a court a discretionary power to award costs but give no guidance on how the discretion should be exercised.

The Court of Appeal found that the provisions pick up common law principles on how a discretion of this kind should operate. The Court found that, under those principles, the defendant in this case was not entitled to recover costs.

Mafileo

The defendant was charged with conspiring to import cocaine. He was a Tongan national who ran the Australian end of a cocaine smuggling ring operating out of Hawaii. Mafileo organised a number of importations of cocaine from Hawaii through Fiji into Australia. He also arranged for the proceeds of the importations to be converted into US dollars and transported back to Hawaii.

Mafileo organised couriers through both Brisbane and Sydney. When he came under police notice in Sydney he moved his operation to Canberra. The defendant was convicted after a trial and was sentenced to fifteen years imprisonment with a ten year non-parole period.

There were several complicating features to the case, including problems involved in getting intercepted telephone calls translated from Tongan and in having DNA tests

carried out on hair samples taken from a Tongan. It turned out that people of Tongan extraction are under-represented in DNA databases. However, the main problem was the wide ranging nature of Mafileo's conduct. He was involved in organising importations in Queensland, NSW and the ACT and he committed substantive offences in all three places. Eventually he was charged with one count of conspiring to import cocaine and was successfully prosecuted on that charge in the ACT.

Parliamentarians

In the course of the year criminal proceedings were completed against three former members of the Australian Parliament.

Michael Cobb, a former member of the House of Representatives, was charged with eight offences of imposing on the Commonwealth and defrauding the Commonwealth. The charges related to the receipt of allowances payable to Cobb as a Member of Parliament. It was alleged that he obtained a total of \$5 625 in excess of entitlements. On 30 October 1998 the defendant was convicted on six charges and acquitted on two. He was sentenced to a suspended sentence of two years imprisonment and fines totalling \$14 000. The DPP appealed against sentence on the grounds that it was manifestly inadequate. On 26 February 1999 the Federal Court dismissed the appeal.

Robert Woods pleaded guilty to six counts of imposing on the Commonwealth and asked that another 28 offences be taken into account at sentence. The offences related to claims for travel allowance and private vehicle allowance made while he was a member of the Senate. The total amount improperly obtained was \$10 708. On 17 June 1999 the defendant was sentenced to an effective term of 18 months imprisonment which was wholly suspended.

Malcolm Colston, a member of the Senate until 30 June 1999, was charged with 28 counts of defrauding the Commonwealth. The charges related to alleged misuse of travel and other entitlements. On 18 May 1998 the defendant was committed to stand trial on the charges. On 5 July 1999 the DPP filed a notice declining to proceed in the prosecution. The decision to discontinue the prosecution was made on the basis of medical evidence which showed that the defendant was not fit to stand trial and that there was no prospect that he would become fit to stand trial.

Taib

This defendant was charged with one offence under section 15 of the Financial Transaction Reports Act 1988 of failing to report a transfer of currency in excess of \$5 000. The defendant attempted to take currency worth over \$1 million out of Australia without filing the report required under the FTR Act. He was acquitted by a jury following a ruling by the trial judge that, in effect, the prosecution bore the onus of proving beyond reasonable doubt that the defendant not only knew that he was carrying currency worth more than \$5 000 but that he knew that he had an obligation to file a report under the FTR Act.

The ruling had the effect that ignorance of the law can be a defence to a charge under section 15 of the FTR Act. The DPP brought a precedent appeal to the Queensland Court of Appeal to test that ruling. The Court of Appeal upheld the appeal, finding that there was no onus on the prosecution to prove that the defendant knew there was an obligation to report the transfer. The finding did not affect the acquittal and there is no basis for further proceedings against the defendant.

Tax sentences

There were a number of cases during the course of the year which indicate that the courts may be taking a firmer line when imposing sentences for tax fraud. Those cases include the following:

- **Baunach**

The defendant was a tax agent who defrauded the Commonwealth of over \$800 000 by lodging false returns which understated the amount of tax owed by his clients. He then converted to his own use cheques which clients had given him to pay their tax debts.

At first instance, before the Queensland District Court, the defendant was sentenced to six years imprisonment with a non-parole period of 12 months. On appeal, the non-parole period was increased from one to two years. The Court of Appeal reaffirmed its position that white collar fraud involving breaches of trust will be dealt with severely.

- **Kazacos**

The defendant pleaded guilty to defrauding the Commonwealth by evading income tax of \$600 000 over a three year period. He also pleaded guilty to offences against the Financial Transaction Reports Act 1988 and one charge of possessing a false passport. The defendant and his son ran an escort service. They did not declare income earned from the business and, indeed, they used offshore bank accounts and structured transactions to keep the income hidden.

At first instance the defendant was sentenced to four years imprisonment with a non-parole period of four months. The DPP appealed against the sentence. On appeal, the Queensland Court of Appeal increased the non-parole period to 15 months.

The defendant was 62 and had no previous convictions. His explanation for the offences was that he acted at the behest of his son who he had difficulty refusing. The defendant had paid all outstanding tax and penalties by the time the case came on for sentence and had also paid tax due by his son and a company. Nonetheless, the court found that the original non-parole period was inadequate. The defendant has applied for special leave to appeal to the High Court.

- **Ruggiero**

The defendants in this matter were a husband and wife who operated a catering service in Adelaide. They each pleaded guilty to three charges of imposing on the Commonwealth, one charge in respect of each of the years ending 30 June 1990, 1991 and 1992. It was alleged that they failed to declare almost half the income earned by their business. The total tax evaded was of the order of \$144 000.

At first instance the defendants were each fined \$25 000. The DPP appealed against penalty. On 1 December 1998 the SA Supreme Court set aside the fines and imposed a sentence on each defendant of two years imprisonment with a minimum term of six months. The defendants applied to the High Court for special leave to appeal. The application was refused.

Commercial prosecutions

Boskovitz

This case relates to the activities of the Linter Group, which owned a number of textile manufacturing businesses in Australia until the late 1980's. It was alleged that in 1989 the principals of the group arranged a round-robin transaction of \$220 million which produced temporary entries in the financial records of a key company and gave a false impression of the financial viability of the group as a whole. It was alleged that Boskovitz made false statements to three banks concerning the \$220 million transaction. She was charged with offences against the NSW Crimes Act 1900. A second defendant, Abraham Goldberg, moved to Poland before charges were laid. He is a Polish citizen and cannot be extradited from Poland.

The prosecution of Katy Boskovitz has had a complex history. At one stage she pleaded guilty to the charges against her but was subsequently given leave to withdraw the plea and contest the charges. The trial finally commenced on 31 August 1998. On 1 October 1998 the jury convicted her on three counts under section 178BB of NSW Crimes Act. On 23 October 1998 she was sentenced to a minimum term of three years imprisonment, with an additional term of two years. She lodged an appeal against conviction and sentence. The NSW Court of Criminal Appeal heard the appeal over two days in April and May 1999 and reserved its decision.

Clarke

In Clarke v Commonwealth DPP [1999]ACTSC42 the ACT Supreme Court confirmed earlier authority to the effect that the Dietrich principle does not apply to committal proceedings.

This case involves the prosecution of a person who has been extradited from the USA to stand trial on fraud charges in Australia. The defendant has been charged with a total of 95 offences against Commonwealth and ACT law. It is alleged that he stole or otherwise misapplied over \$4 million that he held on trust as manager of a trustee company. He was denied legal aid funding for the committal proceedings.

The defendant brought proceedings seeking a stay of the committal on a number of bases, including his status as an unrepresented defendant. After reviewing recent authorities, Higgins J dismissed the application.

Oates

The defendant in this case is a former associate of Alan Bond. He has been charged with one offence against the WA Criminal Code and 16 offences against the Companies (Western Australia) Code. The charges relate to the channelling of \$1 billion to Bond Corporations Holdings Ltd after it took over Bell Resources in 1988.

The charges were laid in 1995, after Oates left Australia and moved to Poland. Australia made an extradition request to Poland in 1996 and Oates has been resisting extradition since then. The request is being processed under a 1932 extradition treaty between Britain and Poland to which Australia has succeeded.

Oates brought administrative review proceedings in Australia challenging features of the charges against him. One of the issues he raised related to section 1316 of the Corporations Law. That section provides that, despite anything in any other law, proceedings for an offence against the Corporations Law may be instituted within five years of the commission of the offence or, with the Minister's consent, at any later time. The charges against Oates under the Companies (WA) Code were laid after five years with consent from the Attorney-General. Oates argued that the consent was invalid because natural justice required that he be given a chance to be heard before the Attorney-General decided whether to give the consent.

On 6 July 1998 the Full Court of the Federal Court upheld that argument and declared that the consent was invalid. The Attorney-General applied to the High Court for special leave to appeal. On 12 October 1998 the High Court granted leave to appeal. On 17 June 1999 the High Court upheld the appeal and set aside the Federal Court decision. The Court published its reasons on 5 August 1999.

The High Court found that, as a matter of construction, section 1316 does not impose a time limit on prosecutions under the Corporations Law. What it does is override any time limit provision that would otherwise apply under general law. As there was no such provision relevant to the present case, there was no time limit on the prosecution and there was no legal need for the Attorney-General to consent to the prosecution. It followed that there was no need for the Attorney-General to give the

defendant an opportunity to be heard. There are now no obstacles in Australia to the extradition request proceeding.

Reid

This case was reported in the last Annual Report. At that stage the defendant had been convicted on 23 counts under the Victorian Crimes Act and the Corporations Law relating to the theft of \$11 million from Southern Cross Airlines Holdings Limited. The defendant had appealed against conviction.

This was the first criminal case in Victoria where the prosecution used a computerised court presentation system to present documentary evidence at trial and the first case where the jury was allowed to have a computer in the jury room. When it heard the appeal, the Court of Appeal also used the court presentation system, which operated on laptop computers. This eliminated the need to give hard copies of the exhibits to each judge. The appeal book gave reference numbers for the exhibits and the judges were able to call up an electronic copy of any document they wanted to see.

The main issue raised in the appeal related to the use of evidence from overseas. The evidence against Reid included testimony obtained from witnesses in the USA pursuant to a Mutual Assistance request from Australia. The US witnesses were not cross-examined when they gave evidence. That was because the defendant was not represented in the US proceedings. The DPP offered financial assistance to the defence to meet the cost of sending counsel to the USA but the defendant rejected the offer on the basis that the amount offered was less than his counsel would charge for the trip. At trial, the judge found that the amount offered by the DPP was reasonable and that the failure to cross-examine was the defendant's own fault.

On appeal, the defendant argued that the US material should not have been admitted into evidence on discretionary grounds under section 25 of the Foreign Evidence Act 1994 and also argued that section 20 of the Foreign Evidence Act is unconstitutional to the extent that it applies to a State court hearing criminal charges under State law.

The Victorian Court of Appeal ruled that section 20(2) of the Foreign Evidence Act is within the legislative power of the Commonwealth Parliament. The Act does no more than modify the hearsay rule in an area within a head of Commonwealth power, being the external affairs power. The Court also ruled that the US material was properly admitted into evidence on the basis that the absence of cross-examination was due to a deliberate decision by the defendant. The Court found the relevant question was not whether the US witnesses were cross-examined, but whether an adequate opportunity was provided to procure their cross-examination. The Court agreed with the trial judge that the financial offer made by the DPP was reasonable.

The Court also reviewed the principles that apply when sentencing a person of advanced years. The Court found that the sentence of ten years imprisonment with a minimum term of eight years was excessive given that the defendant was in his sixties. The Court reduced the sentence to eight years imprisonment with a minimum term of six years.

Reid has applied for special leave to appeal to the High Court on the Constitutional issue relating to section 20(2) of the Foreign Evidence Act.

Appendix

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 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 who are the subject of criminal assets proceedings, may make representations to the Director 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; and
- *The Prosecution Policy of the Commonwealth : Guidelines for the making of decisions in the prosecution process.*

- (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.

Glossary

AFP	Australian Federal Police
AFP Act	Australian Federal Police Act 1979
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CSB Act	Crimes (Superannuation Benefits) Act 1989
DPP	Director of Public Prosecutions
DWR&SB	Department of Workplace Relations and Small Business
EEO	Equal Employment Opportunity
FTR Act	Financial Transaction Reports Act 1988
ID	Industrial Democracy
MCCOC	Model Criminal Code Officers Committee
NCA	National Crime Authority
OH&S	Occupational Health and Safety
PoC Act	Proceeds of Crime Act 1987
SES	Senior Executive Service

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**OFFICE OF THE COMMONWEALTH DIRECTOR
OF PUBLIC PROSECUTIONS INDEPENDENT
AUDIT REPORT**

LETTER FROM AUDIT OFFICE GOES HERE (NB: The letter should go on two facing pages)

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