



# DPP

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Commonwealth Director  
of Public Prosecutions

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Annual Report 2002 – 2003

Commonwealth of Australia 2003

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# DPP

## Commonwealth Director of Public Prosecutions

20 September 2003

Attorney-General  
Parliament House  
Canberra

My Dear Attorney

I have the honour to submit my report on the operations of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2003, in accordance with section 33(1) of the Director of Public Prosecutions Act 1983.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Damian Bugg'.

DAMIAN BUGG, QC  
Director of Public Prosecutions

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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 and an alphabetical index.

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

- Prosecution Policy of the Commonwealth
- DPP Corporate Plan
- Portfolio Budget Statements for the Attorney-General's Portfolio.

The DPP homepage can be accessed at [www.cdpp.gov.au](http://www.cdpp.gov.au) and the email address is [inquiries@cdpp.gov.au](mailto:inquiries@cdpp.gov.au).

For further inquiries contact the media contact officer, DPP Head Office, on (02) 62065606.

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# Overview

I am pleased to present my fourth Annual Report as Commonwealth Director of Public Prosecutions.

In April the Office commenced its 20th year of operation. The completed 20th anniversary of the Office will be the subject of a detailed review in my next Report.

Last year the Office faced the usual challenges associated with prosecuting offences throughout Australia. The year also saw the introduction of additional responsibilities for the Office.

In January the Proceeds of Crime Act 2002 was implemented. This Act introduced into Commonwealth law a comprehensive regime for confiscating the proceeds of crime by civil proceedings. The DPP has the role of enforcing the Act through court and related actions. It has taken a considerable amount of work to gear up for operating under the new Act. The Office has developed procedures, trained staff, liaised with the investigative agencies, and undertaken tasks necessary to develop expertise in a new and complex area. Agencies, mainly the AFP, have begun referring cases under the new Act which is proving a challenging, and interesting, area of the DPP's practice.

There have also been developments in more traditional areas of the DPP's work. The Government recently announced that the DPP would be given additional funding to prosecute cases arising from the report of the Royal Commission into the collapse of HIH Insurance. The cases will be investigated by the Australian Securities and Investments Commission and prosecuted by the DPP. These cases have the potential to be among the more complex commercial cases prosecuted by the DPP. The Office is also responsible for prosecuting cases arising from the Building Industry Royal Commission and cases referred by the Building Industry Task Force.

There has also been a steady increase in the number of cases where the alleged offender is outside Australia or where relevant evidence is in another country. It is increasingly the case that successful prosecution depends on an effective use of the Extradition and Mutual Assistance regimes. The DPP has put a lot of work over recent years into developing expertise in those areas and in working closely with officers of the Attorney-General's Department who play an essential role in this process.

The Office has a skilled and committed workforce. I would like to thank all members of staff for their hard work over the past year. The responsibilities of staff in a prosecuting office are many and varied. The work during the year has been challenging and I am pleased to say that the staff have met those challenges. In some regions trial numbers have increased while in others the work mix has varied or the cases have involved new challenges. I thank everyone for the way

in which they have dealt with those increased workloads, addressed new challenges or provided assistance to other staff members in developing training programs to meet those new challenges.

During the year we commenced the negotiations for a further Certified Agreement. The provision of information to staff about this process, the process itself and, ultimately, the centralised negotiations by representatives on behalf of National Staff Members create their own tensions within a busy work environment.

The DPP employs a number of barristers as in-house counsel. As at 30 June 2003 there was a total of ten in-house counsel, of whom two were Senior Counsel. The Senior Counsel were Richard Maidment QC, who is based in Melbourne Office, and Patricia Kelly QC, who began working in the Adelaide Office in January 2003. Patricia has, since the end of the reporting year, been appointed to the District Court of South Australia. I congratulate Patricia on her appointment.

The in-house counsel are a valuable resource, who add to the skill level of the Office. However, in-house counsel do not do all the DPP's appearance work. Many court appearances are also undertaken by Counsel from the Independent Bars and by DPP Officers, as part of their normal duties. The National Advocacy Training Program (referred to in my Report last year) has been further developed during the year and staff, who have participated in the program, are taking on increased responsibilities as advocates within the Office.

As for every year, there are some particular milestones that should be noted. In the course of 2002-2003 Paul Foley of the Adelaide Office, was appointed as a Magistrate in South Australia. I wish him well in his new role. Paul Shaw of the Sydney Office has been awarded a Churchill Fellowship to study white-collar crime and will commence work on the Fellowship in the coming year.

In the course of the year the DPP conducted its second Client Survey. The first Survey was conducted in 1998 and provided valuable feedback for planning within the DPP. The responses to the latest Survey were generally positive. However, the Survey has identified areas where we can improve, and where we will work to do so. Further details of the Survey appear in the body of the Report.

In the coming year the DPP will revise and re-issue the Corporate Plan. The Plan is an important document which will direct and regulate the work of the Office over the next three years. All Offices will be consulted in the review process, and all Officers will be given an opportunity to be involved in the process.

In the course of the year the DPP issued Guidelines for Commonwealth investigators on preparing briefs of evidence and referring cases to the DPP. This is an important document. For the first time all Commonwealth investigators have a single set of Guidelines setting out how to prepare a brief of

evidence and what the brief should contain. I think this is one of the ways we can work towards greater consistency while also improving the standard of material delivered to the DPP.

The DPP has almost completed its review of the Prosecution Policy of the Commonwealth. The document needed to be brought up to date, with new sections incorporated. In particular the document will now have to include Guidelines relevant to the new function of civil forfeiture. This review process has taken some time because of the need to consult not only with stakeholders but also the Directors of Public Prosecutions from the States and Territories. An early draft of the Prosecution Policy Statement was used in 1989 as the basis for the formulation of the uniform Prosecution Guideline of all the Directors of Public Prosecutions in this country. Any review of key areas of the Policy must be mindful of the need to maintain uniformity wherever possible. The review will be completed during the coming year.

As in past years, I would like to thank all the Agencies the DPP deals with for their continued support during the past year. The DPP enjoys close relations with all Commonwealth Investigative Agencies, including the Australian Federal Police, the Australian Crime Commission, the Australian Securities and Investments Commission, Centrelink, the Australian Taxation Office, the Australian Customs Service, the Health Insurance Commission and the Australian Consumer and Competition Commission. We also enjoy a close working relationship with other Agencies involved in the law enforcement process including the Attorney-General's Department and Insolvency and Trustee Service Australia.

Finally I would like to thank the Attorney-General, the Honourable Daryl Williams AM QC MP, and the Minister for Justice and Customs, Senator the Honourable Christopher Ellison, for their continued support for the DPP. The DPP has developed a good and positive working relationship with both Ministers.

**Damian Bugg QC**  
**Commonwealth Director of Public Prosecutions**

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## CHAPTER 1

# Office of the DPP

### Establishment

The DPP was established under the *Director of Public Prosecutions Act 1983*. The Office began operations on 8 March 1984. The Office works under the control of the Director of Public Prosecutions, who is appointed for a term of up to seven years.

The current Director of Public Prosecutions is Damian Bugg QC who was appointed for a term of five years commencing on 2 August 1999. He was previously the DPP for the State of Tasmania.

The DPP operates independently of the political process. The Commonwealth Attorney-General has power under section 8 of the DPP Act to issue directions and guidelines to the Director. However any guidelines must be issued in writing, must be tabled in Parliament and there must be prior consultation between the Attorney-General and the Director. The power under section 8 is exercised infrequently. There were no directions or guidelines issued under section 8 in 2002-2003.

### Role

The primary role of the DPP is to prosecute offences against Commonwealth law and to recover the proceeds of Commonwealth crime. The DPP also conducts prosecutions for offences against the laws of Jervis Bay and Australia's external territories, other than Norfolk Island.

The DPP does not generally prosecute street crime. Those matters are normally covered by the criminal laws of the States and, except in Jervis Bay and Australia's external territories, the offences are prosecuted by State and Territory DPPs.

The main cases prosecuted by the DPP involve drug importation and money laundering, offences against the Corporations Act, fraud on the Commonwealth (including tax fraud, medifraud and social security fraud) and people smuggling. The DPP also conducts prosecutions for offences involving terrorism, child sex tourism and sexual servitude. The remaining area of the DPP's practice covers a

wide range of matters which cannot be easily categorised. In general terms, the DPP's prosecution practice is as wide as the reach of Commonwealth law.

Most Commonwealth prosecutions are conducted by the DPP. However, there are a few areas where Commonwealth agencies conduct summary prosecutions by arrangement with the DPP. There are also some cases where a State agency conducts a Commonwealth prosecution, usually for reasons of convenience.

The DPP is not an investigating agency. It can only prosecute, and take recovery action, when there has been an investigation by the Australian Federal Police, the Australian Crime Commission or some other investigative agency. However, the DPP regularly provides advice and assistance to investigators at the investigating stage.

Under the Commonwealth's current administrative arrangements, a large number of Commonwealth agencies have an investigating role and the DPP receives briefs of evidence from, and provides legal advice to, a wide range of agencies. In 2002-2003 the DPP received briefs of evidence from about 40 different agencies.

## **Corporate plan**

The DPP's vision is a fair and just society where laws are respected and obeyed and there is public confidence in the justice system.

The Corporate Plan sets out strategies and an action plan for achieving that vision. The Plan will be reviewed and re-issued during the coming year.

## **Social justice and equity**

The DPP aims to advance the interests of social justice and equity by working with other agencies to enforce the criminal law for the benefit of all members of the community, and to ensure that alleged offenders and other people affected by the criminal justice process are treated fairly and equally.

## **Prosecution policy**

All decisions made in the prosecution process are regulated by guidelines set out in the Prosecution Policy of the Commonwealth. That document is a public document which has been tabled in Parliament and is available from any of the DPP offices 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. Under the Prosecution Policy 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 crime. The role of the prosecutor 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 presented by the defence, whether it is satisfied beyond reasonable doubt that the defendant is guilty.

The DPP takes a similar approach in deciding whether to take action to recover the proceeds of crime. There must be sufficient material to support recovery action and it must be clear that it would be in the public interest to take such action.

The DPP is currently reviewing the Prosecution Policy to bring it up to date.

## 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 2002.

As noted above, the main functions of the Director are to prosecute offences against Commonwealth law and to recover the proceeds of Commonwealth crime. The Director also has a number of miscellaneous functions including:

- to prosecute indictable offences against State law where 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 proceedings under the *Extradition Act 1988* and 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 an instrument was signed which gives the DPP a general power to recover pecuniary penalties under Commonwealth law.

The DPP does not conduct proceedings under Part XIV of the *Customs Act 1901*, which are called prosecutions but which are enforced by a quasi-criminal process. The responsibility for prosecuting those matters rests with the Australian Government Solicitor. However, the DPP prosecutes all criminal matters arising under the Customs Act, including offences of importing and exporting narcotic goods and offences of importing and exporting “tier 1” and “tier 2” goods.

## Organisation

The DPP has a Head Office in Canberra and regional offices in Sydney, Melbourne, Brisbane, Perth, Adelaide, Hobart and Darwin. There are also sub-offices of the Brisbane Office in Townsville and Cairns which provide prosecution and asset recovery services in central and north Queensland.

Head Office provides advice to the Director and has a role in coordinating and supporting the work across Australia. Head Office is also responsible for conducting case work in the ACT and southern NSW.

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

## Corporate governance

A Senior Management chart appears at the end of this Chapter. The chart shows the senior executive employed by the DPP and their areas of responsibility.

The larger offices (Sydney, Melbourne and Brisbane) each have a Senior Management Committee which meets on a regular basis to assist the Deputy Director in charge of that office. There is a less formal structure within the other offices, which reflects the size of those offices. There is a twice annual meeting of the Director and the Deputy Directors to discuss policy and management issues.

The DPP has issued Guidelines on Official Conduct for DPP employees. The document sets out the ethical standards expected of all employees. Every DPP employee has signed a copy of the document to indicate that they are aware of the ethical standards expected of them.

## Outcomes and outputs

An outcome and output chart for 2002-2003 appears at the end of this Chapter.

## **Best practice**

The DPP has a rolling program to review the operation of each DPP office through a Best Practice Review Committee. The Committee has representatives from Head Office and regional level. The Committee has so far reviewed Head Office and the Sydney, Brisbane, Adelaide, Perth, and Melbourne offices.

The purpose of the reviews is to identify best practices within the DPP and allow all offices to benefit from experiences gained in other jurisdictions. The next project for the Committee will be a review of the DPP's in-house counsel arrangements.

In the course of the year the DPP conducted its second Client Survey. That project is designed to obtain feedback on performance from stakeholders, including Commonwealth investigators and the agencies the DPP deals with on a regular basis. A report on the survey appears in Chapter 2.

# Senior Management Chart

(as at 30 June 2003)

<b>Director Damian Bugg QC</b>	<b>Head Office</b>	Dep Dir B2 Legal and Practice Management (J Thornton) Dep Dir B2 Corporate Management (S Walker) Dep Dir B2 Special Projects (I Bermingham)	SES B1 Commercial Pros (G Davidson) SES B1 Policy (J McCarthy) SES B1 Crim Assets (G Gray) SES B1 International (C Giles) SES B1 Tax Branch (A Oakey) SES B1 ACT Prosecutions (G Lalor)
First Deputy Director B3 (G Delaney)	<b>Sydney Office</b>	Deputy Director B2 (J Joliffe)	SES B1 Prosecutions (G Drennan) SES B1 Prosecutions (D Stevens) SES B1 Prosecutions (Michael Allnutt) SES B1 Prosecutions and Tax (J Shouldice) SES B1 Criminal Assets (C Murphy) SES B1 Commercial Pros (P Shaw)
	<b>Melbourne Office</b>	Deputy Director B2 (M Pedley)	SES B1 Prosecutions (S Bruckard) SES B1 Prosecutions (B Tchakerian) SES B1 Tax Branch (L West) SES B1 Crim Assets (C Davy) SES B1 Commercial Pros (S Kirne)
	<b>Brisbane Office</b>	Deputy Director B2 (P Evans)	SES B1 Prosecutions (C Porritt) SES B1 Crim Assets (S Grono) SES B1 Commercial Pros (C Barker) SES B1 Townsville (G Davey) Principal Legal Officer Cairns (P Usher)
	<b>Perth Office</b>	Deputy Director B1 (D Adsett)	SES B1 Pros and Criminal Assets (M Plummer) SES B1 Commercial Pros (P Bevilacqua)
	<b>Adelaide Office</b>	Deputy Director B1 (J Phillips)	
	<b>Hobart Office</b>	Assistant Director Legal 2 (I Arendt)	
	<b>Darwin Office</b>	Assistant Director Legal 2 (F Propsting)	

## Outcome and output chart 2002-2003

### DIRECTOR OF PUBLIC PROSECUTIONS Director: Damien Bugg QC

Total price of outputs	\$64 470 976
Departmental outcome appropriation	\$62 516 000

**Outcome 1:**      **To contribute to the safety and well-being of the people of Australia and to help protect the resources of the Commonwealth through the maintenance of law and order and by combating crime.**

Total price	\$64 470 976
Departmental output appropriation	\$62 516 000

### Output 1.1

**An independent service to prosecute alleged offences against the criminal law of the Commonwealth, in appropriate matters, in a manner which is fair and just and to ensure that offenders, where appropriate, are deprived of the proceeds and benefits of criminal activity.**

Total price	\$64 470 976
Appropriation	\$62 516 000

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## CHAPTER 2

# General prosecutions

### Practice

Prosecuting is one of the key functions of the DPP and a majority of DPP officers work in the General Prosecutions, Tax and Commercial Prosecutions Branches.

The conduct of litigation is the 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 warrants and other warrants. A lot of work is put into cases which, for one reason or another, do not proceed or which result in guilty pleas without a trial.

Prosecution work requires a high level of liaison with investigators and the investigating agencies. The investigators and the prosecutors each have their own roles to perform, and it is important to ensure that there is a proper separation of the functions. However it has long been recognised that, at least in complex cases, investigators require advice and support at the investigation stage and that the support is best provided by the lawyers who are going to run any prosecution that results from the investigation.

DPP lawyers regularly participate in training courses for investigators. It is important for the DPP to assist in ensuring that investigators are properly equipped to perform their duties. However, the work places significant resource demands on the Office.

The Commonwealth does not have its own criminal courts. The DPP prosecutes in State and Territory courts, which have been given Commonwealth jurisdiction 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 will brief counsel from the private Bar if the case requires expertise or resources that are not available in-house.

Performance indicators and prosecution statistics appear in Chapter 4.

## Summary prosecutions, committals and trials

In this Report, a reference to a summary prosecution should be read as a reference to a matter that is dealt with to completion by a magistrate. As a general rule, less serious offences can be dealt with in the magistrate's courts and the more serious offences are dealt with by a judge and jury in a superior court. All States and mainland Territories have a Supreme Court. Some, but not all, also have an intermediate court called either a District Court or a County Court.

A reference to a committal proceeding is a reference to a preliminary hearing before a magistrate to determine whether a case which involves a serious offence should proceed to trial before a judge and jury in a superior court.

A reference to a trial is a reference to a defended hearing before a judge and jury in a superior court.

## Developments in case work

### Tax prosecutions

The last Annual Report noted that there was an increasing number of cases being referred to the DPP that involved fraud against GST. That trend has continued. The more serious cases are prosecuted under the Crimes Act 1914 or the Criminal Code, however less serious cases (such as failing to furnish a Business Activity Statement) are usually prosecuted under the provisions of the *Taxation Administration Act 1953*. Under a long-standing arrangement between DPP and ATO, cases under the Taxation Administration Act are usually prosecuted by officers of ATO unless there is a complicating feature that warrants the direct involvement of the DPP.

In the course of the year the DPP settled standard forms of information/complaint for failing to furnish a return in the approved form and standard sentencing submissions for cases of that kind. The DPP also agreed to conduct all prosecutions relating to GST fraud for an initial period until the courts become more familiar with the relevant offences.

The prosecution of Excise fraud, particularly with respect to "chop-chop" tobacco, continues to be a major area of work for the Tax Branches in Sydney, Melbourne and Brisbane. The issues raised by those cases were outlined last year and have not changed.

### Freedom of information

There has been an increase in the number of requests made under the *Freedom of Information Act 1982* for access to documents held by the DPP in relation to prosecution cases. The DPP has both statutory and common law obligations of disclosure when cases are before the courts. It is unusual for the DPP to release any more material in response to an FOI request than has already been released to



the defendant. Any material which has not been released is usually exempt from production on grounds of personal privacy and/or legal professional privilege and an exemption is almost always claimed. However, it is still necessary for the case officer to examine each individual document and decide whether it should be released.

The result is that most FOI requests made in relation to current proceedings achieve little, but they can divert the case officer away from the task of preparing the matter for trial at precisely the time when that should be the main focus.

### **People smuggling**

Over past years the DPP has prosecuted a large number of cases of alleged people smuggling under sections 232A and 233 of the *Migration Act 1958*. In the past the majority of these cases involved the crew of vessels used to bring illegal non-citizens to Australia. In 2002-2003 the focus of the prosecutions has started to shift to those who are alleged to have organised people smuggling operations.

These are proving to be challenging cases. It is often necessary to bring the defendant from a foreign country using the extradition process, and the cases require evidence from witnesses spread around Australia, and sometimes the world. In some cases the witnesses are in migration detention and sometimes they need special support because of their cultural background or family situation. The witnesses often have limited command of English, which means their evidence has to be presented through an interpreter.

These can be long and expensive prosecutions. However these cases are important. People smuggling involves deliberate and organised criminal conduct which also puts lives at risk. It is important to pursue these cases to a successful outcome despite the difficulties that arise.

## **DPP guidelines on brief preparation**

On 29 April 2003 the Director approved a new set of guidelines to assist Commonwealth investigators when preparing briefs of evidence. A brief of evidence is the document used by an investigative agency to refer a case to the DPP for assessment and possible prosecution.

The new guidelines currently apply to all Commonwealth agencies except the Australian Federal Police, Australian Crime Commission, Australian Securities and Investments Commission and Centrelink. The DPP already has already settled guidelines on briefs with those four agencies. The new guidelines will be Standard No. 6 in the new Commonwealth Investigation Standards Package, which has been endorsed in principle by the Heads of Commonwealth Operational Law Enforcement Agencies.

A brief of evidence normally includes copies of all the statements and documentary exhibits the DPP will require to prove a case. It also normally includes an assessment of the evidence and comments by the investigators on what charges they consider can be supported by the evidence. A brief of evidence can be a long document, and may take up many folders of paper in a large or complex case. In the past year the DPP received 5 752 briefs of evidence from about 40 agencies.

The new guidelines were produced after wide consultation within the DPP and with many of the agencies that refer briefs to the DPP. The new guidelines provide detailed information to investigators about how to put together a brief and what the brief should contain.

The guidelines set out the required format for:

- the brief cover sheet;
- electronic briefs;
- witness list or brief head; and
- exhibit list

and contain practical guidance on matters such as:

- the number of paper copies required;
- pagination and paragraph numbering; and
- what witness contact details are required.

The guidelines also contain the DPP's Disclosure Policy and a disclosure certificate for investigators to be used when required under the Disclosure Policy.

The new guidelines should make it easier for the investigators to do their work. They will know precisely what the DPP wants from them, irrespective of what region they are working in. The investigative agencies will also be able to use the guidelines as a basis for training their officers.

The guidelines should also help the DPP. The DPP does not have unlimited resources, and it is important to find ways to do our work more efficiently. One of the best ways is to ensure that investigators provide high quality briefs of evidence. The guidelines will not achieve this by themselves, but they should assist that process.

## **Survey of client agencies**

The DPP's Corporate Plan required that a client survey be conducted in 2002. On 10 September 2002 the DPP Emailed letters and survey forms to 419 people working in 39 Commonwealth and State agencies. The questionnaire consisted of a series of multiple choice questions, which asked the recipient to rate various aspects of the DPP's work, and some open ended questions that asked for written

comments. The questions covered both the prosecution practice and the criminal assets work.

The DPP received replies from 27 agencies, 69% of the agencies surveyed. However there were only 146 completed survey forms which was a response rate of 35%. The response rate was lower than expected.

There were a number of factors that may have contributed to the low response rate. Centrelink received the DPP survey forms at the same time as it received a survey from another Commonwealth agency and a number of people who had long term dealings with the DPP, and who might have been expected to respond to the survey, left their agencies shortly before the survey was sent out. In addition, a number of agencies decided to give a corporate response rather than individual responses. It may also have been relevant that the survey forms were sent from DPP Head Office, and were not sent out at regional level.

The DPP will consider different strategies for future surveys. Fortunately, all the major agencies the DPP deals with provided some responses.

Overall the comments made by those who responded to the survey were positive. People tended to give a high rating to the quality of the DPP's prosecution work, legal advice and criminal assets work. They also tended to rate the quality of liaison between the DPP and their agency as good and the DPP's contribution to training as good. Many said that DPP publications were useful, including the DPP Search Warrants Manual and the General Guidelines for Dealings between Commonwealth Investigators and the DPP. There are also many positive comments about the DPP's integrity, professionalism and helpfulness.

There were a few negative comments. As with the previous survey, some of those who responded to the survey raised timeliness of DPP work as an issue and some identified problems relating to liaison.

One thing which became apparent from the survey is that many investigators and some agencies do not appreciate how little control the DPP has over the time it takes for matters to progress once they are in the court system. Once a case is before the courts, the case is controlled by the courts and there are limits to what the DPP can do to avoid delay. On the other hand, the DPP can control the time it takes to assess a brief of evidence. The new guidelines on the preparation of briefs should improve the quality of the briefs referred to the DPP and that should help speed up the assessment process.

As far as liaison is concerned, the DPP plans to develop training material for its officers on liaison with investigative agencies and will hold in-house training on this topic. The new guidelines on the preparation of briefs should also help in this area, by providing more certainty on what the DPP expects from a brief of evidence. Reducing the scope for misunderstanding between agencies is likely to lead to better liaison.

The responses to the multiple choice questions were as follows:

	<b>Poor</b>	<b>OK</b>	<b>Good</b>	<b>V good</b>
Overall quality of CDPP's prosecution work	4	16	46	72
Fairness of CDPP prosecutions	1	12	48	68
Turnaround times in CDPP prosecution work	29	46	37	25
CDPP assistance prior to a brief being referred	14	17	48	55
CDPP understanding of your agency's responsibilities as they impact on prosecution	12	37	42	51
CDPP understanding of the legislation administered by your agency	6	18	46	69
Consultation with your agency when CDPP varies or withdraws charges	18	17	43	53
Quality of written advice	4	21	45	69
Quality of oral advice	5	23	47	68
Overall quality of CDPP's criminal assets work	2	2	15	11
Fairness of CDPP criminal assets work	0	3	14	8
Turnaround times in CDPP criminal assets work	4	4	14	6
CDPP assistance prior to brief being referred	2	4	17	14
CDPP understanding of your agency's responsibilities	3	4	19	16
Consultation with your agency when deciding to take criminal assets action such as seeking restraining orders	1	2	11	15
Quality of written advice	0	4	12	17
Quality of oral advice	1	6	12	15
Overall liaison between CDPP and your agency	5	21	34	74
Liaison between CDPP management and your agency's management	10	18	33	45
Liaison between CDPP lawyers and your agency's investigators	7	15	41	65
Liaison between your agency and CDPP's liaison officer	7	14	21	59
Liaison between your agency and CDPP's specialised tax units	2	1	6	17
Liaison between your agency and CDPP's specialised Centrelink units	1	0	7	9
CDPP participation in training courses	8	12	33	22
Quality of CDPP speakers	2	10	39	26
Quality of CDPP written material provided as part of training	3	7	34	27

## CHAPTER 3

# Commercial prosecutions

### Practice

The DPP Commercial Prosecutions Branches conduct prosecutions for offences arising under the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*. As a result of transitional provisions contained in those Acts, offences committed against the Corporations Law and the ASIC Laws of the States prior to 15 July 2001 are now treated as offences against those Acts.

The Commercial Prosecutions Branches also prosecute any large fraud prosecutions where there is a corporate element and all prosecutions for offences against the *Trade Practices Act 1974*.

The responsibility for investigating breaches of the ASIC Act and the Corporations Act rests with the Australian Securities and Investments Commission. By arrangement with the DPP, ASIC conducts minor regulatory prosecutions for offences against those Acts. However, when an investigation discloses the commission of a serious criminal offence, ASIC refers the matter to the DPP for prosecution.

ASIC and DPP have settled guidelines for investigating and prosecuting corporate crime. Under those guidelines the DPP provides early advice to 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 assist ASIC in identifying those areas that are most likely to result in a prosecution. There is regular liaison between ASIC and the DPP at head of agency, management and operational levels.

The responsibility for investigating breaches of the Trade Practices Act rests with the Australian Competition and Consumer Commission. The DPP meets regularly with the ACCC to discuss specific case and general liaison issues.

The statistics that appear in Chapter 4 include statistics for prosecutions conducted by the Commercial Prosecutions Branches.

## Issues

### Corporations Act

The *Corporations Act 2001* came into operation on 15 July 2001. In the matter of Corbett there was a challenge to the validity of transitional provisions in the Corporations Act, which treat offences against the old Corporations Law as offences against that Act, and to provisions in Queensland legislation which are designed to validate action taken by Commonwealth officers that would otherwise be invalid on the basis of the High Court decision in Hughes.

On 6 September 2002 the Queensland Court of Appeal dismissed the challenge to the indictments, finding that the legislation was valid (*DPP v Corbett* [2002] QCA 340). The High Court refused special leave to appeal from the decision of the Court of Appeal.

### Challenges to DPP power

There have been a number of challenges to the DPP's power to prosecute offences against State law. The issue arises because it is sometimes necessary for the DPP to lay charges under fraud or theft provisions in State law when a case that has been investigated by ASIC involves a fraud on a company, or a fraud using a company structure. That is because in some cases there are no appropriate charges available under Commonwealth law.

In the matter of Fukusato the Queensland Court of Appeal held that the DPP is able to prosecute State offences where it is also prosecuting connected Commonwealth offences. The High Court refused special leave to appeal from the decision of the Court of Appeal.

The matter of Dexter raised the issue of whether the DPP can prosecute State offences if the matter involves only State offences and there are no charges under Commonwealth law. The Queensland Court of Appeal dismissed an appeal against conviction and sentence by Dexter. In doing so, the Court found that the indictment was validly signed and presented. Dexter has lodged an application for special leave to appeal to the High Court.

### HIH

On 3 July 2003 the Government announced that the DPP will have the carriage of any criminal prosecutions that arise from the financial collapse of HIH Insurance Limited and related companies.

HIH was Australia's second largest insurance company and its collapse is one of the largest corporate failures in Australia's history. The collapse caused significant public concern as many individuals, organisations and businesses were left without insurance. In response, ASIC commenced an investigation and a Royal Commission was established. On 4 April 2003 the Royal Commissioner, Justice Owen, handed down a report in which he recommended, among other things, that 53 matters be referred to ASIC for investigation and possible criminal prosecution. ASIC has advised the DPP that it will not limit its investigation to

the matters referred to in the recommendations and that it may refer other cases which arise out of the collapse of HIH to the DPP for prosecution.

At the time of writing two matters have come before the courts. Reports on those matters are included in the case reports that appear below.

## **Case reports**

### **Fukusato**

The prosecution in this case was delayed by legal proceedings brought to challenge the DPP's power to run the proceedings. The challenge was based on the fact that some of the charges in the matter involved alleged offences against Queensland law. The defence argued that the Commonwealth DPP can not lawfully prosecute offences against State law. On 8 February 2002 the Supreme Court of Queensland found that the DPP had power to run the prosecution. On 26 June 2002 the High Court refused special leave to appeal against that decision. The matter came on for trial in 2002.

The investigation began when Yazawa, a popular and prominent musician in Japan, complained that he had lost \$27 million as a result of fraud. Yazawa invested in real estate in Australia, using two Australian companies, between 1987 and 1990. The companies accumulated valuable real estate including commercial properties on the Gold Coast, condominiums at the Pacific Mirage Southport, a villa at the Mirage Resort Port Douglas and a house in Sorrento.

Yazawa employed Kawada to live at the Gold Coast and manage the properties in Australia. Kawada reported to Fukusato, who was the financial controller of Yazawa's principal company in Japan.

It was alleged that Kawada, with assistance from Fukusato, entered into a number of property deals on the Gold Coast and that he used Yazawa's properties as security for money that he borrowed, and subsequently lost. The banks foreclosed on the securities they held and by the end of 1995 all the properties had been sold up.

Kawada had himself appointed as a director of the Australian companies without Yazawa's knowledge. He also went to great lengths to give Yazawa the impression that the Australian investments were being handled properly. Kawada sent hundreds of forged documents to Japan, including bank statements, contracts of sale and tenancy agreements, that gave an entirely false picture of what was happening in Australia. It was alleged that Fukusato helped Kawada by ensuring that Yazawa did not find out what Kawada was doing.

Kawada was charged with a total of 14 offences against Queensland law and the Corporations Act, including false pretences, misappropriation, forgery, failing to act honestly as an officer of a company and improperly using his position as an officer of a company. Fukusato was charged with five offences including

forgery, uttering a forged document, aiding forgery and failing to act honestly as an officer of a company.

Both defendants ultimately pleaded guilty. Kawada was sentenced to an effective term of ten years imprisonment with a minimum term of three years and four months. Fukusato, who gave evidence at Kawada's sentence proceedings, was sentenced to an effective term of eighteen months imprisonment with a minimum term of 12 months.

### **Hannes**

This matter was reported in the last Annual Report. At that stage Hannes had been convicted, for the second time, of one offence against section 1002G of the Corporations Law (insider trading) and two offences against section 31(1) of the Financial Transaction Reports Act (conducting transactions so as to avoid reporting requirements). Hannes had yet to be sentenced.

The charge under the Corporations Law related to the purchase of call options in TNT at a time when Macquarie Corporate Finance Ltd was acting for TNT in relation to a proposed takeover by a Dutch company. It was alleged that Hannes, who was an executive director of Macquarie Corporate Finance Limited, purchased a large number of TNT call options in a false name before the takeover negotiations became public knowledge. The charges under the Financial Transaction Reports Act related to action which it is alleged that Hannes took to conceal his purchase of the call options.

Hannes was initially convicted of both offences in 1999 but the convictions were set aside on appeal. He was convicted a second time in September 2002.

On 13 December 2002 Hannes was sentenced to two years and two months imprisonment, with a fine of \$100 000, on the first charge and an additional four months concurrent imprisonment on each of the second and third charges. The court imposed an effective minimum term of 20 months imprisonment. Since Hannes had already served some time in jail, the effect of the sentence was that he had to serve an additional four months and nine days.

Hannes has given notice of an intention to appeal again against conviction and sentence.

### **HIH Cases**

As noted above, the DPP has the carriage of all prosecutions relating to the financial collapse of the HIH Insurance Group. To date two prosecutions have commenced.

- **Adler**  
Adler was a director of HIH Insurance Limited prior to its collapse. He has been charged with five offences against the Corporations Act, as it stood prior to changes introduced by the Financial Services Reform Act



2001. There are two charges under section 997(1) of the Corporations Act, one under section 997(7) and two under section 999.

The charges under sections 997(1) and 997(7) allege that, on three dates in June 2000, Adler engaged in stock market manipulation designed to increase or maintain the value of shares in HIH. The charges under section 999 allege that, on two dates in June 2000, Adler disseminated false information in relation to the share purchases, via a journalist employed by the Australian Financial Review, knowing that the information was false and that it was likely to induce other people to buy shares in HIH.

On 11 July 2003 Adler was committed for trial to the Supreme Court of NSW. A trial date has not yet been fixed.

- **Wilkie, Mainprize and Burroughs**

This case relates to the management of the FAI group, which was taken over by HIH shortly before HIH collapsed. Mainprize was a director of FAI Insurances Limited and FAI General Insurance Company Limited. Wilkie was a director of FAI General Insurance Company Limited. Burroughs was employed as the FAI Group reinsurance manager.

The charges relate to reinsurance contracts that were taken out by FAI. It is alleged that the contracts were not taken out to manage risk but to artificially inflate profits and give a misleading picture of the financial position of FAI.

Wilkie and Mainprize have each been charged with one offence against section 1309(2) of the Corporations Act, of omitting to provide information to an auditor of FAI so that the information that was provided was misleading. Burroughs has been charged with one offence, and Wilkie and Mainprize with two offences, against sections 232(2) and 1317FA of the Corporations Law, of failing to act honestly as an officer of a company.

This investigation was conducted while the Royal Commission was inquiring into the collapse of HIH and the charges relate to matters identified by the Royal Commissioner in his report. No date has yet been set for a committal hearing.

**Rivkin**

The defendant in this case was charged with one count of insider trading contrary to section 1002G(2)(b) of the Corporations Act. It is alleged that he took advantage of inside information to purchase shares in Qantas Airways in the expectation that they would increase in value. Inside information is, in effect, defined to mean any information that is not generally available but which, if it were generally available, a reasonable person would expect to have a material effect on the price or value of securities of a corporation.

It was alleged that the defendant purchased 50 000 shares in Qantas, through his private company, on 24 April 2001 shortly after he had a conversation with the CEO of Impulse Airlines. The conversation related to the proposed purchase by the CEO of a property from a company that was owned and controlled by the defendant and his wife. It was alleged that during the conversation the defendant learned that there was a proposal to merge the business of Impulse Airlines with that of Qantas and that the parties were waiting for approval from the Australia Competition and Consumer Commission before proceeding with the merger. The defendant also learned that the parties expected that approval would be forthcoming.

That afternoon the defendant rang his stockbroker and placed an order for 50 000 Qantas shares. The total purchase price was a little over \$139 500. A few days later the stockbroker noticed that the value of the shares had risen and notified the defendant. On 1 May 2001 the defendant placed an order to sell the shares. The shares had risen in value and were sold for a profit of \$2 664.94.

At 12.20 pm on that day trading in Qantas shares was suspended and it was later announced that Qantas and Impulse Airlines had entered an agreement under which the business of Impulse Airlines would be merged with the business of Qantas.

The defendant pleaded not guilty, but was convicted by a jury after a five week trial. On 29 May 2003 the defendant was sentenced to imprisonment for nine months, to be served by way of periodic detention. He was also fined \$30 000. The defendant has appealed against conviction and sentence.

## CHAPTER 4

# Prosecution statistics

### Exercise of statutory powers

#### No bill applications

A no bill application is a request by a defendant or a lawyer that the case not proceed after the person has been committed for trial by a magistrate.

In the past year there were 25 no bill applications received from defendants or their representatives. Of these, 11 were granted and 14 refused. A further 21 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 32.

Of the matters discontinued, the sufficiency of evidence was the main factor in 27 cases. Public interest was the main factor in the remaining cases.

Four no bills were granted in fraud cases, six in drugs cases, five in corporations cases and 17 in other matters.

#### Indemnities

Section 9(6) of the DPP Act gives the Director power 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 for perjury. 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 DPP gave undertakings under sections 9(6) and 9(6D) to 16 witnesses in a total of 12 matters. In some cases, indemnities were given to more than one witness in a single matter.

#### 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. That power was exercised twice in the past year.

In the first case a person commenced a private prosecution against a magistrate, a police officer, and the Attorney-General for Victoria. The Director decided that

the action was frivolous and without merit and took over and discontinued the prosecutions. The person then commenced a fresh private prosecution against three people, this time naming the Director as one of the defendants. This prosecution was also taken over and discontinued.

In the second case the DPP took over and discontinued a private prosecution against a judge of the Family Court. Again the Director decided that the action was frivolous and without merit.

#### Ex-officio indictments

The Director has power under section 6(2D) of the DPP Act to file an indictment against a person who has not been committed for trial. In the past year the Director exercised the power in relation to five defendants in five matters. In each case there was a contested committal but the magistrate declined to commit for legal or evidential reasons that the Director considered were wrong.

In a number of cases a defendant stood trial on different charges from those on which they were committed or a defendant was dealt with in a different place from the State or Territory where a committal order was made. The indictments filed in those cases are sometimes called ex officio indictments, but are not treated as ex officio indictments for present purposes.

#### **Consent to conspiracy proceedings**

Conspiracy proceedings under Commonwealth law can only be commenced with the consent of the Director. In the past year the Director gave consent to commence conspiracy proceedings against 28 defendants in relation to four alleged conspiracies.

## **Performance indicators**

The following table lists the DPP's performance indicators for the conduct of all prosecutions for 2002-2003 and compares them with the figures for the previous year.

<b>Description</b>	<b>Target</b>	<b>Outcome</b>	<b>Details (by no. of defs)</b>
Prosecutions resulting in a conviction	90%	98%	4 608 (out of 4 726)
Figures for 2001-02	90%	98%	4 386 (out of 4 471)
Defended summary hearings resulting in conviction	60%	67%	174 (out of 259)
Figures for 2001-02	60%	70%	148 (out of 211)
Defended committals resulting in a committal order	80%	94%	257 (out of 272)
Figures for 2001-02	80%	99%	327 (out of 330)
Defended trials resulting in a conviction	60%	72%	85 (out of 118)
Figures for 2001-02	60%	77%	75 (out of 97)
Prosecution sentence appeals upheld in summary matters	60%	69%	11 (out of 16)
Figures for 2001-02	60%	78%	7 (out of 9)
Prosecution sentence appeals upheld after a trial	60%	50%	7 (out of 14)
Figures for 2001-02	60%	80%	12 (out of 15)

The indicators show that the DPP is well above target in five of the six areas that are measured.

The indicator relating to the final area, prosecution sentence appeals upheld after a trial, is below target. However, the DPP is satisfied that the failure to meet the target was not due to any failure of DPP systems or performance. It can be a difficult exercise to convince an appeal court that it should increase the penalty imposed at first instance in a criminal matter even if it is clear that the initial penalty was low. In most of the cases where an appeal was unsuccessful the appeal court agreed that the initial sentence was low. Some of the appeal courts made comments which can be used in future cases, and which ensure that the initial sentence will not be used as a precedent. The DPP exceeded the target in 2001-2002. In view of the small number of appeals made each year, such variations in outcomes are not unexpected.

## Prosecution tables

In the course of the year the DPP completed criminal proceedings against 4 726 people involving a total of 8 771 charges. The DPP received cases from 39 different agencies.

The tables which follow set out details of the prosecutions conducted in 2002-2003.

<b>Table 1: Outcomes of successful prosecution action by DPP 2002-2003</b>	
No of defendants convicted of summary offences	4 223
No of defendants convicted of indictable offences	385
No of defendants committed for trial or sentence	437

<b>Table 2: Summary prosecutions in 2002-2003</b>	
Defendants convicted after a plea of guilty	4 049
Defendants convicted after a plea of not guilty	174
Total defendants convicted	4 223
Defendants acquitted after a plea of not guilty	85
<b>Total</b>	<b>4 308</b>

<b>Table 3: Committals in 2002-2003</b>	
Defendants committed after a plea of guilty	180
Defendants committed after a plea of not guilty	257
Total defendants committed	437
Defendants discharged after a plea of not guilty	15
<b>Total</b>	<b>452</b>

<b>Table 4: Prosecutions on indictment in 2002-2003</b>	
Defendants convicted after a plea of guilty	300
Defendants convicted after a plea of not guilty	85
Total defendants convicted	385
Defendants acquitted after a plea of not guilty	33
<b>Total</b>	<b>418</b>

1 – 5 days	58
6 – 10 days	30
11 – 15 days	16
16 – 20 days	11
21 – 25 days	2
26 – 30 days	8
Over 30 days	10
<b>Total trials</b>	<b>135</b>

	<b>Summary</b>	<b>Indictable</b>
Number of appeals upheld	11	7
Number of appeals dismissed	5	7
Total number of appeals	16	14
Percentage of appeals upheld	68.8%	50.0%

	<b>Summary</b>	<b>Indictable</b>
Number of appeals against sentence upheld	78	17
Number of appeals against sentence dismissed	30	35
Number of appeals against conviction upheld	4	5
Number of appeals against conviction dismissed	13	6
Number of appeals against conviction & sentence upheld	9	10
Number of appeals against conviction & sentence dismissed	6	21
<b>Total number of appeals</b>	<b>140</b>	<b>94</b>

**Table 8: Legislation: charges dealt with in 2002-2003**

	Summary	Indictable
Aboriginal and Torres Strait Islander Commission Act	1	
Air Navigation Act and Regulations	5	
ANTS (Australian Business Number) Act	3	1
ANTS (Family Assistance) (Administration) Act	25	
Australian Citizenship Act	4	
Australian Federal Police Act	1	1
Australian Postal Corporation Act	2	
Banking Act	21	
Bankruptcy Act	65	21
Census and Statistics Act	64	
Child Support (Registration and Collection) Act	2	
Childcare Rebate Act	1	
Civil Aviation Act and Regulations	67	1
Commonwealth Electoral Act	123	
Companies Code		3
Copyright Act	11	
Corporations Law	16	43
Crimes (Aviation) Act	18	1
Crimes (Currency) Act	33	7
Crimes Act	392	203
Criminal Code	891	59
Customs Act	70	209
Dairy Produce Act	4	
Defence Act and Regulations	18	
Environment Protection & Biodiversity Conservation Act	10	
Environment Protection (Sea Dumping) Act	1	
Excise Act	45	27
Export Meat Orders	1	
Financial Management and Accountability Act	2	
Financial Transaction Reports Act	122	31
Fisheries Management Act	446	2
Fuel (Penalty and Surcharges) Administration Act	8	
Great Barrier Reef Marine Park Act and Regulations	90	
Health Insurance Act	41	2
Insurance (Agents and Brokers) Act	1	1
Marriage Act and Regulations	5	
Migration Act	83	43



**Table 8: Legislation: charges dealt with in 2002-2003 cont.**

	<b>Summary</b>	<b>Indictable</b>
Australian Crime Commission Act	1	
National Health Act	8	
Navigation Act	9	
Non-Commonwealth legislation: Drugs	35	37
Non-Commonwealth legislation: Other	149	54
Passports Act	30	5
Primary Industries Levy Collection	9	
Proceeds of Crime Act	5	2
Public Order (Protection of Persons and Property) Act	49	
Radiocommunications Act	4	
Royal Commissions Act	2	
Social Security Act	4 681	3
Statutory Declarations Act	2	
Student Assistance Act	42	
Superannuation Industry (Supervision) Act	13	5
Taxation legislation	186	
Telecommunications Act	1	
Therapeutic Goods Act	32	
Torres Strait Fisheries Act	7	10
Trade Marks Act	10	
Trade Practices Act	14	
Veterans Entitlements Act	15	
Wildlife Protection (Regulation of Exports & Imports) Act	2	
Workplace Relations Act	2	
<b>Total</b>	<b>8000</b>	<b>771</b>

**Table 9: Crimes Act 1914: charges dealt with in 2002-2003**

	Summary	Indictable
Fail to furnish name (s.3)		1
Accessory after the fact (s.6)		1
Inciting or urging offences (s.7A)	2	
Breach of recognisance (ss.20A, 20AC)	4	
Treason (s.24)	3	
Damage property (s.29)	24	
False pretences (s.29A)	2	
Imposition (s.29B)	118	23
False statements (s.29C)	1	
Fraud (s.29D)	95	143
Administration of justice (ss.32-50)	6	7
Child Sex Tourism (ss50AA – 50GA)		4
Forgery (ss.65-69)	23	5
Stealing or receiving (s.71)	9	10
Falsification of books (s.72)	2	
Bribery (ss.73 & 73A)		1
False returns by public officers (s.74)	1	
Resisting public officers (s.76)	5	
Computer offences (ss.76A – 76E)	9	
Espionage and official secrets (ss.77 - 85D)		5
Postal offences (ss.85E - 85ZA)	16	2
Telecommunications offences (ss.85ZB - 85ZKB)	61	
Conspiracy (s.86)		1
Trespass on Commonwealth land (s.89)	11	
<b>Total</b>	<b>392</b>	<b>203</b>

**Table 10: Commonwealth Criminal Code: charges dealt with in 2002-2003**

	Summary	Indictable
Attempt to commit an offence (s.11.1)	2	4
Terrorist acts (s.101.1)	1	
Theft (s.131.1)	19	1
Receiving stolen property (s.132.1)	2	
Robbery (s.132.2)	4	
Dishonest taking or retention of property (s.132.8)	1	
Obtaining property by deception (s.134.1)	7	3
Obtaining a financial advantage by deception (s.134.2)	15	32
General dishonesty (s.135.1)	36	16
Obtaining financial advantage (s.135.2)	730	1
False or misleading statement in applications (s.136.1)	8	
False or misleading information (s.137.1)	4	
False or misleading documents (s.137.2)	7	
Corrupting benefits to C'wealth official (s.142.1)	1	
Making forged document (s.144.1)	9	
Using forged document (s.145.1)	8	
Possession or make devices for forgery (s.145.3)	1	
Falsification of documents (s.145.4)	1	
Causing harm to Commonwealth public official (s.147.1)	8	
Threatening to cause harm to C'wealth official (s.147.2)	5	
Impersonate C'wealth official (s.148.1)	1	
Obstruction of Commonwealth public officials (s.149.1)	9	1
Theft of mail receptacles, articles or messages (s.471.1)	2	1
Taking or concealing mail receptacles etc (s.471.3)	1	
Damaging or destroying mail receptacles etc (s.471.6)	3	
Tamper with mail receptacles (s.471.7)	1	
Use postal service to menace etc (s.471.12)	3	
Unauthorised access to, modification of, data (s.478.1)	2	
<b>Total</b>	<b>891</b>	<b>59</b>

<b>Table 11: Defendants dealt with in 2002-2003: referring agencies</b>		
	<b>Summary</b>	<b>Indictable</b>
Australian Bureau of Statistics	62	
Australian Communications Authority	1	
Australian Competition and Consumer Commission	7	
Australian Crime Commission (also National Crime Commission)	4	37
Australian Customs Service	32	8
Australian Electoral Commission	122	
Australian Federal Police	428	308
Australian Fisheries Management Authority	263	
Australian Industrial Registry	1	
Australian National Parks and Wildlife Service	58	
Australian Postal Corporation	42	5
Australian Prudential Regulation Authority	13	
Australian Quarantine and Inspection Service	3	
Australian Securities & Investments Commission	12	43
Australian Taxation Office	211	43
Australian Telecommunications Authority	1	
Building Industry Royal Commission	1	
Centrelink	3 282	30
Child Support Agency	1	
Civil Aviation Safety Authority	17	1
Comcare	1	
Dept of Agriculture Fisheries and Forestry	8	
Dept of Defence	4	
Dept of Education Science and Training	2	
Dept of Employment Workplace Relations	7	
Dept of Environment and Heritage	1	
Dept of Finance and Administration		1
Dept of Health and Ageing	1	
Dept of Immigration Multicultural and Indigenous Affairs	44	2

<b>Table 11: Defendants dealt with in 2002-2003: referring agencies (cont)</b>		
	<b>Summary</b>	<b>Indictable</b>
Dept of Transport and Regional Services		
Dept of Veterans Affairs	14	2
Great Barrier Reef Marine Park Authority	1	
Health Insurance Commission	47	4
Insolvency and Trustee Service Australia	31	2
National Registration Authority	2	
Non-Commonwealth agencies		
- State police	225	19
- Other	46	2
Therapeutic Goods Administration	10	
<b>Total</b>	<b>5 005</b>	<b>507</b>

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## CHAPTER 5

# Criminal assets

### Overview

Recovering the proceeds of crime has always been an important part of the DPP's work. Initially the work was limited to taking action to recover civil remedies on behalf of the Commonwealth and taking action under Division 3 of Part XIII of the Customs Act to recover profits earned from "prescribed narcotic dealings".

In 1987 the Commonwealth Parliament enacted the *Proceeds of Crime Act 1987* which set up a comprehensive scheme for freezing and confiscating the proceeds of crime committed against Commonwealth law. However, the provisions of that Act had limited operation because the legislation was conviction based. It was not possible for the DPP to apply for final orders until a person had been convicted of an indictable offence against Commonwealth law.

In 2002 the Commonwealth Parliament enacted the *Proceeds of Crime Act 2002*. The Act introduced a civil based confiscation regime into Commonwealth law. The courts now have power to make forfeiture orders and pecuniary penalty orders on the basis of civil proceedings, independent of the prosecution process. The Act also contains conviction based provisions which are based on the model of the 1987 Act, but which go beyond that model in a number of ways. The DPP has been given the function of taking recovery action under both the conviction based regime and the civil based regime.

The new Act came into force on 1 January 2003. The 1987 Act is still in force, but only applies to proceedings which were commenced before 1 January 2003.

### The PoC Act 2002

#### Overview

The new Act was passed on 11 October 2002 and came into operation on 1 January 2003. The Act provides a comprehensive scheme to trace, restrain and confiscate the proceeds of crime against Commonwealth law. It can also be used to confiscate the proceeds of crime against foreign law and, in some cases, the proceeds of a crime against State law.

As noted above, the Act provides for two streams of recovery action: a conviction based stream based on the provisions of the 1987 Act, and a civil based stream under which recovery action can be taken independently of the prosecution process. In all there are seven types of recovery action available under the Act:

- conviction based forfeiture order;
- conviction based pecuniary penalty order;
- automatic forfeiture following conviction;
- person directed civil based forfeiture order;
- asset directed civil based forfeiture order;
- civil based pecuniary penalty order; and
- literary proceeds order.

The first three recovery options make up the conviction based stream. The next four make up the civil based stream.

The responsibility for investigating cases and collecting evidence rests with the AFP and other Commonwealth investigative agencies. ITSA is responsible for managing restrained property in all cases where a court directs that property be taken into custody and control.

#### **The conviction based recovery stream**

Under the conviction based stream recovery action can only be taken after a person has been convicted of an indictable offence against Commonwealth law. There are two types of confiscation order that can be made after conviction:

- a forfeiture order (under which property which is the proceeds of crime or an instrument of crime is forfeited to the Commonwealth); and
- a pecuniary penalty order (under which a defendant is ordered to pay a penalty equal to the benefit derived from crime).

There is also provision for automatic forfeiture if a person has been convicted of a “serious offence” as defined in the Act. There is, in effect, a rebuttable presumption that any property the person owns or controls is the proceeds of crime. If any property of the person has been placed under restraint, the person must satisfy a court that the property was derived from a lawful source or else it will be forfeited to the Commonwealth six months after conviction (although that time can be extended).

“Serious offence” is defined to include a range of serious crimes including drug crime, money laundering, terrorism, people smuggling, child sex tourism, sexual slavery, serious fraud and some offences against the *Financial Transaction Reports Act 1988*.

#### **The civil based recovery stream**

The civil recovery stream provides a basis under which action can be taken to recover the proceeds of crime independently of the prosecution process. A civil



based action can run before there is a prosecution, after prosecution or in parallel to a prosecution. It can also be run in a case where there is no prosecution.

As noted, there are four types of civil order that can be made under the Act:

*A person directed forfeiture order*

If property of a person is under restraint and a court finds, to the civil standard, that the person has committed a serious offence, as defined, the person must satisfy the court that the property was derived from a lawful source or else it will be forfeited.

*An asset directed forfeiture order*

A court must make a forfeiture order against property if the property is under restraint and the court finds, to the civil standard, that the property is the proceeds of a Commonwealth offence, a foreign offence, or a State offence “of Commonwealth concern”, or if the court finds that the property is an instrument of a terrorism offence. A State offence becomes an offence of Commonwealth concern if the proceeds of the offence are dealt with in a way that contravenes a Commonwealth law dealing with import/export, communications or banking.

*A person directed pecuniary penalty order*

A court must make a PPO against a person if it finds, to the civil standard, that the person has committed a serious offence, as defined. The penalty amount is a sum equal to the proceeds of the particular offence and the proceeds of any other identified unlawful activity.

*A literary proceeds order*

A court has power to make an LPO against a person if the person has committed a crime against Commonwealth law and sold their story to the media or if they have committed a crime against foreign law and sold their story in Australia. There is no need for the person to have been convicted of the crime.

### **Restraining orders**

The Act includes provisions for the courts to make restraining orders to ensure that property which is potentially liable to confiscation is not disposed of during the course of the proceedings. There is provision for reasonable living expenses to be paid from restrained property.

### **Investigative powers and examinations**

The Act includes a range of provision to support investigations. They include:

- production orders for property tracking documents;
- notices to financial institutions to obtain basic account information;
- monitoring orders to monitor activity on an account; and
- search warrants.

The Act also gives investigative powers to ITSA to facilitate the identification and collection of property which is under ITSA's control.

Part 3.1 of the Act deals with compulsory examinations. An examination order can only be made if there is a restraining order in place. An examination order must be made by a court, but the actual examination takes place before an approved examiner. A person cannot refuse to answer a question or produce a document on grounds of legal professional privilege or self-incrimination. The Act provides direct protection for people being examined, but there is no derivative use protection.

The DPP has issued guidelines for the conduct of compulsory examinations under the PoC Act 2002. The guidelines have been approved by the Attorney-General. A copy of the guidelines appears at Appendix 2 to this Report.

The guidelines envisage that the DPP will ask questions designed to determine whether the crimes which are alleged to have been committed were in fact committed and not just questions to determine whether benefits were derived from a crime. In the case of NSWCC v Murchie [2000] NSWSC 591 the NSW Supreme Court found that the examination provisions in the *Criminal Assets Recovery Act 1991* (NSW) were wide enough to allow questions of that kind. The provisions of the PoC Act 2002 are drafted in a similar form.

### **Legal costs**

A person whose property has been restrained can not get access to the property to pay legal costs. However, the person can apply for legal aid. If legal aid is granted, the relevant Legal Aid Commission can recover its costs against the restrained assets. The result is that restrained assets can still be used, indirectly, to pay legal costs. However, the Legal Aid Commissions now regulate and control the use of restrained money for that purpose.

### **Protection for third parties**

The Act contains a range of provisions to protect the interest of innocent third parties. These include excluding orders, exclusion orders, compensation orders and hardship orders. In addition, as noted, a court can require the DPP to give an undertaking as to costs and damages as a condition for making a restraining order.

## **Operating structure**

The work in this area is performed by Criminal Assets Branches in the regional offices. The larger branches include, or have access to, the services of in-house financial analysts. There is also a Criminal Assets Branch in DPP Head Office which coordinates the work on a national basis and conducts case work in the ACT.

The DPP works closely in this area with the Australian Federal Police, the Australian Crime Commission and the Commonwealth's other investigating agencies. The DPP relies on the investigating agencies to locate and collect the evidence and other material required to pursue the proceeds of crime. The DPP provides advice and other support at the investigation stage. Indeed, in most criminal assets cases there is no clear break between the investigation stage and the recovery process. Cases often require ongoing support from the investigators to identify assets, and determine how they were acquired, up to and after final confiscation orders have been made.

The DPP also works closely with the Insolvency and Trustee Service Australia. ITSA is responsible for securing, managing and realising restrained property. ITSA exercises an independent function and operates separately from the DPP. However, that does not prevent the two agencies from coordinating their activities.

## Developments

The introduction of the PoC Act 2002 imposed significant demands on the DPP. It has been necessary for the DPP to recruit and train new staff, update information systems and develop a range of new precedents, guidelines and policy documents. That work is far from complete. The DPP has also worked closely with the AFP and other agencies to provide training to investigators and to develop protocols and operating procedures.

The Act is not only new legislation, it is also innovative. A lot of the provisions are untested. There has been a lot of activity under the new Act but the Act has not been in force for very long, and so far only a few cases have been carried to completion. It is too early to reach any conclusions on how effective the new Act is going to be. However it can already be said that the Act has provided the DPP with a range of new tools and the indications are that it will provide an effective addition to the Commonwealth's armoury to control and deter crime.

The total amount recovered under the criminal assets initiative for 2002-2003 was a little under \$3.5 million. Most of that money was recovered under the *Proceeds of Crime Act 1987*, and only a small amount has so far been recovered under the new Act. It takes time to run a case to completion and it is too soon for the new Act to have had any effect on the recovery figures.

The figure for total recoveries was lower than in some previous years. That reflects the nature of the work under the 1987 Act and the fact that the Act was conviction based. The range of cases that could be dealt with under the 1987 Act was limited and the outcome in a small number of cases could have an effect on the recovery statistics.

As at 30 June 2003, the total value of property that was under restraint under the 1987 Act and the 2002 Act was approximately \$25 million, although not all that property may eventually be confiscated.

A breakdown of these numbers is given in the tables at the end of this Chapter.

## Performance indicators

The DPP's performance indicators for criminal assets cases are set out below.

<b>Criminal assets performance indicators 2002-2003</b>			
<b>Description</b>	<b>No.</b>	<b>%</b>	<b>Target</b>
Applications for restraining order that succeeded	45	100%	90%
Figures for 2001 – 2002	25	100%	90%
Application for pecuniary penalty order that succeeded	13	100%	90%
Figures for 2001 – 2002	8	100%	90%
Applications for forfeiture order that succeeded	31	100%	90%
Figures for 2001 – 2002	59	100%	90%
Damages awarded against DPP	Nil	--	--
Figures for 2001 – 2002	Nil	--	--
No of cases costs awarded against DPP	Nil	--	--
Figures for 2001 – 2002	1	--	--
Amounts paid for costs awarded against DPP	Nil	--	--
Figures for 2001 – 2002	Nil	--	--

The performance indicators show that the DPP exceeded targets in all applicable areas in 2002-2003. The number of applications for forfeiture orders was down this year, but the number of applications for restraining orders was significantly higher, which reflects the amount of work that is already being done under the new Act.

## 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 the CSB Act, a Commonwealth employee who has been convicted of a corruption offence, as defined, and who has been sentenced to more than 12 months imprisonment with at least some time to serve, can lose the government funded component of their superannuation benefits. Under Part VA of the AFP Act, members of the AFP can lose the government funded component of their superannuation benefits if they are convicted of a corruption offence, as defined, or are found guilty of some types of disciplinary misconduct.

The mechanism involves the Attorney-General or the Minister for Justice and Customs signing 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 satisfied. 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 2002-2003 the DPP obtained six superannuation orders under the CSB Act. For the fourth year running there were no orders under Part VA of the AFP Act. Details of the orders obtained under the CSB Act are set out below.

<b>Superannuation orders 2002-2003</b>		
<b>Name</b>	<b>State</b>	<b>Date</b>
Wastl	NT	1 August 2002
Metcalfe	Qld	4 September 2002
Cateaux	Vic	4 February 2003
Richardson	Vic	4 February 2003
Gant	Qld	28 February 2003
De Zilwa	NSW	24 March 2003

## Criminal assets recovery tables

The tables which follow set out details of the criminal assets work conducted by the DPP in 2002-2003.

**Table 1: PoC Act 1987: orders and forfeitures in 2002-2003**

	Number	Value
Restraining orders	10	\$5 616 500
Pecuniary penalty orders	11	\$11 522 619 (*)
Forfeiture orders	21	\$562 537
Automatic forfeiture	8	\$2 209 500

(\*) The fact that PPO has been made against a person does not necessarily mean that all the money involved will be recovered by the DPP. A PPO may be made for an amount that exceeds the value of the defendant's property.

**Table 2: PoC Act 1987: restraining orders in force as at 30 June 2003**

	Number	Value
No. of restraining orders in force	44	\$18 827 552

**Table 3: PoC Act 1987: money recovered in 2002-2003**

	Number	Amount Recovered
Pecuniary penalty orders	9	\$905 261
Forfeiture orders	27	\$955 448
Automatic forfeiture	8	\$1 264 080
Total recovered		\$3 124 789

**Table 4: PoC Act 2002: orders and forfeitures in 2002-2003**

	Number	Value
Restraining orders (conviction based)	25	\$6 174 930
Restraining orders (civil based)	10	\$2 768 110
Pecuniary penalty orders (conviction based)	2	\$175 825(*)
Pecuniary penalty orders (civil based)	0	0
Forfeiture orders section 47	2	\$34 000
Forfeiture orders section 48	8	\$97 358
Forfeiture orders section 49	0	0
Automatic forfeiture under section 92	0	0
Literary proceeds orders	0	0

(\*) The fact that PPO has been made against a person does not necessarily mean that all the money involved will be recovered by the DPP. A PPO may be made for an amount that exceeds the value of the defendant's property.

**Table 5: PoC Act 2002: restraining orders in force as at 30 June 2003**

	Number	Value
No. of restraining orders in force	35	\$8 943 040

**Table 6: PoC Act 2002: money recovered in 2002-2003**

	Number	Amount Recovered
Pecuniary penalty orders (conviction based)	0	0
Pecuniary penalty orders (civil based)	0	0
Forfeiture orders section 47	1	\$104 863
Forfeiture orders section 48	1	\$57 963
Forfeiture orders section 49	0	0
Automatic forfeiture under section 92	0	0
Literary proceeds orders	0	0
Total recovered		\$162 826

**Table 7: Customs Act: orders, seizures and condemnations in 2002-2003**

	Number	Value
Restraining orders	0	0
Pecuniary penalty orders	0	0
Cases where property seized*	0	0
Condemnations (*)	1	\$300 000

(\*) These figures only include cases where a person contests forfeiture and the proceedings are conducted by the DPP.

**Table 8: Customs Act: money recovered in 2002-2003**

	Number	Amount Recovered
Pecuniary penalty orders	1	\$501
Condemned property realised	1	\$60 350
Settlement etc.	0	0
<b>Total recovered</b>		<b>\$60 851</b>

**Table 9: Civil remedies: orders obtained by DPP in 2002-2003**

	Number	Value
Injunctions	0	0
Judgments and reparation orders	1	\$131 045

**Table 10: Civil remedies: money recovered in 2002-2003**

	Number	Amount Recovered
Judgments and reparation orders	3	\$83 498
Settlements etc.	0	0
<b>Total recovered</b>		<b>\$83 498</b>



<b>Table 11: Criminal Assets: summary of recoveries for 2002-2003</b>	
PoC Act 1987 pecuniary penalty orders	\$905 261
PoC Act 1987 forfeiture orders	\$955 448
PoC Act 1987 automatic forfeiture	\$1 264 080
<b>PoC Act 1987 total</b>	<b>\$3 124 789</b>
<hr/>	
PoC Act 2002 section 47 forfeiture	\$104 863
PoC Act 2002 section 48 forfeiture	\$57 963
<b>PoC Act 2002 total</b>	<b>\$162 826</b>
<hr/>	
Customs Act pecuniary penalty orders	\$501
Customs Act condemnation	\$60 350
<b>Customs Act total</b>	<b>\$60 851</b>
<hr/>	
Civil remedies judgments and reparations	\$83 498
<b>Civil remedies total</b>	<b>\$83 498</b>
<hr/>	
<b>Grand total</b>	<b>\$3 431 964</b>

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## CHAPTER 6

# International

### Practice

The international work of the DPP falls into two main categories: Extradition and Mutual Assistance. Both involve cooperation with foreign governments and the agencies of those governments. Both also involve close cooperation with Australian agencies involved in the law enforcement process, particularly the Commonwealth Attorney-General's Department.

This is a growing area of work for the DPP. Crime is increasingly becoming a matter of global concern. Organised crime does not respect international boundaries and no country can look at crime in purely national terms. The work in this area has been given added impetus by the emergence of people smuggling and terrorism as priority issues for law enforcement.

The case work in this area is carried out mainly in the DPP regional offices and is coordinated by the International Branch in Head Office. The International Branch also provides information and support to the DPP regional offices in what is a technical, and sometimes complex, area of work. The International Branch is the main point of liaison with the International Crime Branch of the Attorney-General's Department and works closely with that Branch.

There is also potentially work for the DPP under the *International War Crimes Tribunals Act 1995* and the *International Criminal Court Act 2002*. However, there was no case work under either of those Acts in 2002-2003.

### Extradition

The DPP has a role in relation to both incoming extradition requests received by Australia and outgoing extradition requests. In the case of incoming requests, the DPP appears in the court proceedings in Australia and in any appeals arising from those proceedings. The DPP appears for the foreign country in the proceedings, but acts on the basis of instructions provided by the Attorney-General's Department.

In the case of outgoing extradition requests, the DPP prepares requests for extradition in any case where a person is wanted for prosecution for an offence against Commonwealth law. The DPP has no role in cases where a person is

wanted for prosecution for an offence against State or Territory law. In such cases the authorities of the relevant State or Territory deal directly with the Commonwealth Attorney-General's Department.

The Attorney-General's Department is the Central Authority for extradition for Australia. It processes all incoming and outgoing extradition requests, except requests involving New Zealand where there is a simplified procedure for extradition.

In the past year the DPP received instructions from the Attorney-General's Department to act or requests to provide advice or other assistance in relation to 30 new incoming provisional arrest and formal extradition requests (14 in 2001-2002). Not all of those matters have resulted in court proceedings in Australia.

In the same period, the DPP requested the Attorney-General's Department to make 12 Australian extradition requests, including provisional arrest requests, in relation to prosecutions being conducted by the DPP (five in 2001-2002). A breakdown of these numbers is given in the tables at the end of this section.

The DPP also provided assistance to the Attorney-General's Department in a number of other cases where a foreign country sought advice before making an extradition request. Extradition is a technical business and it often takes considerable work to get the documents into a form that can be presented to an Australian magistrate.

The figures show that the work has more than doubled in the past year. It is likely to increase as governments across the world continue to focus on ways to control international crime.

The other challenge in this area is to find ways to speed up the extradition process. If a person decides to challenge every step of the process, and has sufficient resources to do so, extradition proceedings can take years to work through the courts. A delay of that kind can frustrate the criminal process. There have been cases where an extradition request has been withdrawn because the delay has been so long that criminal charges can no longer proceed and cases where a person has died of natural causes while contesting extradition.

<b>Extradition requests involving the DPP*: source country</b>		
<b>Country</b>	<b>Incoming Requests</b>	<b>Outgoing Requests #</b>
USA	12	
United Kingdom	4	1
Philippines	1	
Canada	1	
Hong Kong	5	1
Switzerland	1	
Italy	2	
Greece	1	
Sri Lanka	1	
Cambodia	1	
Jordan	1	
South Africa		1
Turkey		1
Korea		1
Sweden		1
Thailand		2
Netherlands		1
Egypt		1
Singapore		1
Venezuela		1
<b>Total requests</b>	<b>30</b> <b>(no. for previous year: 14)</b>	<b>12</b> <b>(no. for previous year: 5)</b>

\* Includes work done on both provisional arrest and formal extradition requests.

# This does not include extradition requests initiated by State and Territory agencies.

<b>Extradition requests involving the DPP*: type of matter</b>		
<b>Type of Matter</b>	<b>Incoming Requests</b>	<b>Outgoing Requests</b>
Fraud	18	2
Murder	1	
Sex offences	4	
Drugs	5	4
People Smuggling		5
Other	2	1
<b>Total requests</b>	<b>30</b>	<b>12</b>

\* Includes work done on both provisional arrest and formal extradition requests.

## Mutual assistance

Mutual assistance is the formal process under which countries provide assistance to each other to investigate and prosecute criminal offences and to recover the proceeds of crime. This formal process runs in parallel to a less formal system of international cooperation between investigating agencies.

The Attorney-General's Department is the Central Authority for mutual assistance for Australia. The Central Authority processes all incoming and outgoing mutual assistance requests. The DPP works closely with the International Crime Branch of the Attorney-General's Department and with the AFP and the other Australian agencies that work in this area. Success in this area depends upon cooperation. Each agency involved in the process has a role to perform and the process is only effective when all agencies work together. The DPP provides a high level of technical support to Commonwealth investigators and regularly participates in training on MA issues. The DPP has a close and productive working relationship with the International Crime Branch of the Attorney-General's Department.

In incoming matters, the DPP provides assistance when search warrants are applied for in Australia, conducts any court proceedings needed in Australia, and carries out any work required to restrain or recover the proceeds of crime. In the past year, the DPP was involved in 31 cases where incoming requests for assistance were processed under the *Mutual Assistance in Criminal Matters Act 1987*. There were 26 cases in the previous year.

The 31 cases do not include matters where a request for assistance could be dealt with without exercising coercive powers in Australia. If a request does not require the exercise of coercive powers, it does not normally require work from the DPP.

In outgoing cases, the DPP prepares the paperwork for mutual assistance requests in all Commonwealth matters where charges have been laid and in the bulk of Commonwealth matters which are still at the investigation stage. The DPP does

not have a role in relation to mutual assistance requests initiated by State and Territory agencies.

In the past year, Australia made 85 mutual assistance requests in matters involving the DPP. There were 57 such requests in the previous year and 27 in the year before that. The 85 cases involved 33 different countries, an increase of nine from the previous year.

The figures show that there is a continuing increase in the casework in this area. What the figures do not show is that MA requests are becoming not only more common, but also more complex. The range of countries that Australia deals with is getting wider. Each new country brings with it a range of new challenges for those who need to work out what assistance can be obtained from the foreign country and how it can be obtained. Some of the countries that Australia now deals with on a regular basis were once thought to be too different from Australia to be MA partners. At the same time, investigators and prosecutors are becoming more inventive in their use of MA and more imaginative about the types of material they ask for. We are not yet at the point where it is possible to talk in terms of a typical MA request. The nature of mutual assistance is still evolving.

The figures also show the extent to which Australian investigations, prosecutions and recovery actions are coming to rely on evidence from overseas. Mutual assistance used to be a novelty reserved for high profile cases. It has now become a standard tool used by investigators and prosecutors around the world.

In the course of the year the DPP set up a system to ensure that all incoming MA requests are reviewed to determine whether there is a potential for recovery action under the *Proceeds of Crime Act 2002*. The DPP has power under the PoC Act 2002 to apply for a restraining order against property that is reasonably suspected of being the proceeds of crime against foreign law. In some cases the DPP can use that power to restrain property found in Australia as a result of action taken under an MA request even if the authorities of the foreign country have not obtained any orders under their own law. The DPP will only take action of that kind after consultation with the Attorney-General's Department, which will check with the authorities of the foreign country to ensure that action under the PoC Act 2002 is not going to cause them any problems. There is provision in the PoC Act 2002 under which money recovered under that Act can be shared with a foreign country if the Minister decides to make a payment under the equitable sharing program.

<b>Mutual Assistance Act: requests involving the DPP: source country</b>		
<b>Country</b>	<b>Incoming</b>	<b>Outgoing (*)</b>
Albania		1
Argentina		1
Bahamas		1
Bahrain		1
Belgium	1	1
Brazil		1
Canada		2
Colombia		2
Czech Republic	1	
Dominica		1
Fiji	1	
Finland		1
France	1	
Germany	1	3
Hong Kong	1	5
Indonesia	1	4
Israel	2	
Italy	1	3
Japan		1
Jersey		1
Kosovo		1
Latvia		1
Lebanon		2
New Zealand	2	2
Norway		1
Pakistan		3
Panama		2
Scotland	1	
Serbia		1
South Korea		1
St Vincent & Grenadines		1
Sweden		2
Switzerland		2
Thailand	1	2
The Netherlands	3	17
The Philippines	1	1
United Kingdom	5	6
USA	8	9
Vanuatu		2
<b>Total</b>	<b>31</b> <b>(no. for previous year: 26)</b>	<b>85</b> <b>(no. for previous year: 57)</b>

(\*) This column does not include mutual assistance requests initiated by State and Territory agencies



<b>Type of Matter</b>	<b>Incoming</b>	<b>Outgoing</b>
Drugs	7	32
Fraud	13	26
Terrorism		9
People Smuggling		6
Proceeds of Crime	7	9
Other	4	3
<b>Total:</b>	<b>31</b>	<b>85</b>

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## CHAPTER 7

### Law reform

One of the objectives of the DPP is to provide recommendations on the laws and proposed laws of the Commonwealth relating to the criminal justice system.

The DPP is in a unique position to comment on practical problems which arise in the enforcement of Commonwealth criminal laws and on the likely practical consequences of proposed changes to those laws. The responsibility for coordinating the DPP's work in this area rests with the Policy Branch of Head Office. That Branch works closely with the Criminal Justice Division of the Attorney-General's Department and with other relevant areas of that Department.

This Chapter outlines some of the main issues considered in 2002-2003.

#### **Acts Interpretation Amendment (Court Procedures) Act 2003**

Following a recommendation by the DPP, the *Acts Interpretation Act 1901* was amended by the *Acts Interpretation Amendment (Court Procedures) Act 2003* to add section 27A. The new section ensures that references in Commonwealth legislation to the commencement of proceedings pursuant to State or Territory procedures which are picked up and made applicable to the commencement of proceedings for a Commonwealth offence are taken to include all documents through which proceedings may be instituted in a court. This new section was made necessary as a result of changes to the procedure in New South Wales for the institution of criminal proceedings. Those changes came into effect on 7 July 2003 and replaced the system of instituting criminal proceedings by a summons upon information or complaint with the issuing and filing of a "court attendance notice". The effect of that change was to raise a doubt about whether a range of Commonwealth provisions which talk about commencing proceedings by summons upon information or complaint were capable of applying to criminal proceedings in NSW.

#### **The new money laundering offences**

The DPP has reservations whether some of the new money laundering offences inserted into the Criminal Code by the *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002* can operate as intended and

has recommended to the Attorney-General's Department that the provisions be re-examined.

A number of the DPP's concerns relate to a degree of duplication between the definition of "deals with money or other property" in subsection 400.2(1) and the definition of "proceeds of crime" in section 400.1(1). The DPP's concerns can be illustrated by reference to the offence under section 400.3(3) of possessing the proceeds of crime. The duplication between the two definitions would appear to have the effect that, while it would be sufficient for the purposes of the circumstance element of the offence that the defendant was negligent as to the fact that the money or property was the proceeds of crime, for the purposes of the conduct element of that offence the prosecution would nevertheless be required to establish that the defendant had meant to possess proceeds of crime.

In addition, the offence under section 400.9(1) relies, in subparagraph 400.9(1)(b)(i), on the concepts of a "Commonwealth indictable offence" and a "foreign indictable offence". However, those concepts have only been defined for the purposes of section 400.2, which defines "dealing with money or other property". The offence under subsection 400.9(1) does not rely on the concept of a "dealing with money or other property".

The Attorney-General's Department has advised the DPP that it is addressing these issues and is developing proposals for amendments for consideration by the Government.

## **Section 20AB of the Crimes Act**

The DPP has recommended to the Attorney-General's Department that home detention orders provided in Victorian legislation be prescribed for the purposes of section 20AB of the Crimes Act. That would enable Commonwealth offenders sentenced in Victoria to serve a sentence of imprisonment by way of home detention. The Attorney-General's Department has advised the DPP that it is also addressing these issues and is developing proposals for possible amendments for consideration by the Government.

## CHAPTER 8

# Resource management

### Overview

#### Management

The DPP has a Corporate Management Branch in Head Office, which is responsible, on a national basis, for Financial and Human Resource Management, Library Services and Information Technology. The Branch is under the overall direction of the Deputy Director, Corporate Management, who also provides advice and guidance to the Resource Management Branches in each state.

There is a Resource Management Branch in each regional office which is headed by an Executive Officer who works under the supervision of the Deputy Director for that region.

The Head Office Branch includes a Human Resource Management Section and a Financial Management Section.

The Human Resource Management Section is responsible for providing policy direction and guidelines to the regional offices to ensure consistency of practice throughout the DPP. The Section also provides national payroll services, advice on entitlements and conditions of service and negotiates and implements Certified Agreements and Australian Workplace Agreements. The Section is also responsible for ensuring that the DPP meets its reporting requirements in relation to human resource issues.

The Financial Management Section is responsible for the national management of the DPP's finances.

#### Significant developments

##### *Certified Agreement*

The CDPP Certified Agreement expired on 30 June 2003. Negotiations are currently taking place to implement a new Agreement as soon as possible. As at 30 June 2003 there were 405 staff covered by the Certified Agreement. The salary scales are included in the tables at the end of this chapter.

*Australian Workplace Agreements*

The DPP is required to have an AWA in place for every substantive SES employee and all those who are acting in the SES for a period of more than six months where that results from a merit selection process.

*Intranet and internet*

The DPP Intranet is used to provide an on-line information service to staff on resource management issues. The material available includes the Director's Personnel Instructions and explanatory notes, the Certified Agreement and policies and procedures including the Performance Management Scheme and the Workplace Diversity Plan.

The DPP is in the process of putting in place the necessary infrastructure to provide secure email access via the Internet using Fedlink.

The DPP has an on-line recruitment site on the DPP's home page on the Internet and potential applicants have electronic access to information relating to current vacancies and DPP policies and procedures.

*Human resource policies*

The following policies were settled and published in 2002-2003:

- Elimination of Workplace Harassment;
- Acceptance of Gifts;
- Public interest Whistleblowing; and
- Unauthorised Absence.

The following Policies are currently being developed or revised:

- Workplace Diversity;
- Disability Strategy; and
- SES Staffing Policy.

In addition, guidelines have been finalised on recruitment and selection to assist all Executive Officers and Personnel/Recruitment Officers.

*Access to personnel records*

All staff can now apply for leave, overtime and temporary assignment of duties online using the Employee Self Service System (ESS), which operates via SAP. Staff can also update addresses and change and/or commence banking arrangements online. There is an online reporting function which allows managers and support staff access to a range of reports through ESS. Managers and supervisors can now approve leave online using the Email system.

The implementation of ESS was very successful, after a few initial teething problems. The system produces a report each fortnight for Executive Officers, to ensure that proper procedures are being followed to approve leave and other arrangements.

As was expected, the online implementation of ESS has substantially reduced the amount of data entry work performed by the DPP pay team and this has resulted in the saving of an APS 4 position.

#### *Performance management*

The DPP has a Performance Management Scheme for non-SES staff. There was a full cycle of the scheme during 2002-2003 and eligible staff will advance in salary with effect from 1 July 2003. The Performance Management Scheme is designed, in part, to ensure that salary advancement is linked to performance. It also ensures that training needs are identified and that employees are aware of the corporate goals of the DPP.

## **Staff**

### **Overview**

The staff of the DPP is undoubtedly the most valuable resource of the DPP. Without the staff there could be no Office. About half the staff are lawyers or in-house counsel, but all are experts in their field. Those fields include litigation support, financial analysis, accountancy, IT, library services, finances and administrative support. The range of skills is diverse, but the staff work together as a composite team.

As at 30 June 2003 the total number of staff was 471 (466 at 30 June 2002). A breakdown of this figure appears in the tables at the end of this Chapter. The average staffing for the year was 435 (442 for 2001-2002).

All staff are employed under the *Public Service Act 1999* or section 27 of the *DPP Act*.

### **Training and development**

As part of the Performance Management Scheme, each non-SES employee is required to have a personal development plan, which is reviewed each year following a performance assessment. If a training need is identified by either the supervisor or the employee, the DPP endeavours to ensure that relevant training is provided as part of the performance management cycle.

Each personal development plan is tailored to meet the needs of the individual to ensure that the employee has the skills required for their current position and the skills needed for career development. The personal development plans are also used to develop training programs and to ensure that every staff member receives a fair allocation of training resources.

All DPP offices conduct regular in-house legal training to ensure that DPP lawyers keep their skills current and that they are able to comply with continuing legal education requirements which apply to them. The DPP also runs an in-house advocacy training course for DPP lawyers.

Direct expenditure on external training for the year was \$134 334 (\$156 038 in 2001-2002). There was also considerable in-house training and on the job training which was not costed.

### **Occupational health and safety**

The DPP recognises the need to provide a safe and comfortable workplace for all employees. Every DPP office has an occupational health and safety representative who is responsible for monitoring health and safety issues. New representatives are selected and trained whenever a position becomes vacant. There is also an occupational health and safety committee in each office which meets on a regular basis to discuss and resolve any health and safety issues which arise.

The DPP attempts to foresee, and avoid, potential problems before they arise, particularly problems that may result from the introduction of new equipment. If a problem arises the DPP's practice is to bring in specialists who have the skills needed to carry out inspections and develop strategies to overcome the problem.

### **Workplace diversity and equal employment opportunity**

It is a requirement of the Public Service Act that every Australian public service workplace be free from discrimination and recognise and use the diversity of the Australian community it serves. Section 18 of the Act provides that an agency head must establish a workplace diversity program. The DPP settled its workplace diversity plan in February 1999. That plan is being reviewed and a new plan will be put in place by the end of 2003.

The key objective of the current plan is to encourage staff to model appropriate behaviour so as to create a work environment which values people of different backgrounds, experiences, perspectives and family responsibilities and which utilises the contributions they can all make to the work of the DPP. The same principles will underpin the new plan.

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

Some of the employment levels for EEO target groups have varied since last year. The number of women employees has increased, but only from 291 to 292. The number of staff who have identified a disability has remained steady at 21. However, the number of people who have identified themselves as having a non-English speaking background has risen from 69 to 79.

As at 30 June 2003, the office employed two Indigenous Legal Cadets, both in Brisbane.



**Workplace participation**

The DPP Certified Agreement includes provision for employees, and their representatives, to be involved in the development and implementation of major change. Consultation occurs mainly through regular staff meetings or special purpose meetings called to discuss specific issues.

**Commonwealth disability strategy**

The DPP constantly keeps its employment practices under review to ensure that they comply with the requirements of the *Disability Discrimination Act 1992*. The relevant practices relate to selection and recruitment, training and development, health and safety, and workplace diversity. The tables at the end of this Chapter include performance indicators for this area and outlines the DPP's practices.

**Financial management****General**

The DPP uses the SAP R/3 Financial Management Information System and a fines and costs debtors system to meet the requirements of the *Financial Management and Accountability Act 1997* and to comply with appropriate accounting standards.

The DPP's financial management policies are set out in a series of Director's Financial Instructions and related delegations. The instructions comply with the requirements of the Financial Management and Accountability Act and give effect to the DPP's obligations under that Act.

**Financial statements**

The audited financial statements at the end of this Report were prepared in accordance with Schedule 2 of the Financial Management and Accountability Orders issued by the Minister for Finance and Administration. For detailed information on the accounting policy used to prepare the audited financial statements refer to Note 2 in the financial statements.

Under current budget arrangements the DPP has one outcome with one output. For further information on the DPP budget see the Attorney-General's Portfolio Budget Statements.

**Financial analysis**

Total net accrual expenditure for 2002-2003 was \$61.281 million, against net accrual revenue of \$64.471 million (in 2001-2002 net accrual expenditure was \$58.863 million and net accrual revenue was \$62.063 million).

**Purchasing**

The DPP complies with core purchasing policies and principles.

**Consultancy services**

The DPP engages consultants in areas where it does not have in-house expertise. The main areas where consultants were used in 2002-2003 related to the renting and fitting out of office space. As a general rule, all consultancies with a value over \$30 000 are publicly advertised. Consultancies with a value less than \$30 000 are either publicly advertised or sought by quotation.

The tables at the end of this chapter include details of consultancies for 2002-2003 which had a contract value greater than \$10 000. During 2002-2003 the DPP engaged 16 consultants in that category, at a total cost of \$919 195.

**Accounts processing**

During 2002-2003 there was an increase in the proportion of payments made by electronic funds transfer. The DPP is continually reviewing its accounts processing practices to identify potential areas for improved efficiency, especially for low value payments.

**Asset management**

The DPP leases all personal computers, servers, printers and notebooks. This has resulted in cost savings to the DPP and a reduction in the administrative work involved in acquiring and maintaining IT equipment.

**Capital works management**

The DPP had no major capital works projects that cost \$6 million or more in 2002-2003.

During 2002-2003 the DPP commenced minor fitout works to increase the security ratings of all IT facilities. This decision was based on advice received from ASIO. The DPP completed a refurbishment of the Darwin Office and a minor refurbishment of the Canberra and Hobart Offices. The DPP is currently undertaking preliminary work for two major projects which will take place next year. The first will see the Sydney Office move in May 2004. The second will see the Melbourne Office move in July 2004.

**Agency evaluations**

As noted elsewhere in this Report, the DPP has an ongoing program to review the operation of each office through a Best Practice Review Committee. The next project for the Committee will be a review of the DPP in-house counsel arrangements.

## Other areas

### Information technology

The DPP computer installation is made up of IBM-compatible personal computers with local and wide area networks and in-house applications running in a client-server environment. Windows 2000 and Office 2000 are the basic office tools. All IT assets are leased.

The DPP maintains the following in-house systems:

- Case Recording and Information Management System (CRIMS), which records details of prosecutions conducted by the DPP;
- Criminal Assets Recording System (CARS), which records and tracks action by the Criminal Assets Branches;
- File Registry System (FILE), which keeps a record of administration files.

The DPP runs a SAP R/3 Resource Management Information System to support finance, payroll and human resource management. The system operates on Windows 2000 servers using MS SqlServer database. The Office also operates the FIRST library system that also runs MS SqlServer database on the Windows 2000 server.

In 2003-2004 all DPP officers will be given desktop access to external (Internet) Email systems. Access to the Internet Web browsing and searches is provided through stand alone computers.

The DPP has adapted a litigation support system known as LSS to be the standard support system for DPP litigation. The system was initially developed by the Australian Securities and Investments Commission. It was used on a regular basis during 2002-2003.

During the year the DPP worked with ASIC and the AFP to develop an interface between LSS and the AFP's computer system. At the time of writing, this interface was in the final stages of testing. When the interface is operating it will be possible for the AFP to deliver exhibit lists and other material electronically to the DPP.

### Libraries

The DPP has a library in each office staffed by qualified librarians. The librarians provide research, reference and information services to DPP officers and maintain an extensive legal collection of electronic and hard copy materials. Each library provides support to the office in which it is based and contributes to the dissemination of legal and other information throughout the DPP. Every DPP officer has access, through the library network, to the combined resources of all the DPP's libraries. This includes a high quality current awareness service.

The librarians use the DPP Intranet to provide access to legal information through legal resource pages, in-house databases and legal publishers' electronic services. Staff members also have desktop access to the library catalogue through the Intranet. Library staff conduct regular training sessions on the use of these electronic resources.

The Head Office library also has a national coordinating and management role. National services include maintaining DPP in-house databases, distributing manuals, disseminating information, cataloguing and managing the library system. There are regular librarians' meetings which provide an opportunity for all librarians to participate in the development of library network policies and procedures.

In 2000-2001 there was a review by the Best Practice Review Committee of the DPP library services. As a result of the review, the library collection in each office was rationalised and arrangements have been put in place for the sharing of some material.

#### **Fraud control and internal audit**

The DPP has an integrated risk management framework which was developed in 2001-2002. It standardises all risk assessment methods and documentation. Using this framework, the DPP has prepared a fraud risk assessment and a fraud control plan in accordance with the Australian Standard and the revised Commonwealth Fraud Control Guidelines.

In the course of the year, an audit was conducted into all administrative processes in all offices. The processes were found to be accurate and complete.

There were no cases of internal fraud reported during the year and there were no relevant disciplinary proceedings under the *Public Service Act 1999*.

#### **External scrutiny**

DPP was not referred to in any report by the Auditor-General in 2002-2003 except the report on financial statements. The Auditor-General reported that he had issued an unqualified audit report for the DPP.

The DPP provided information to the Auditor-General for several cross agency performance audits.

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.

**Public relations**

All media inquiries are handled by a media contact officer in Head Office who can be contacted on (02) 6206 5606 during office hours. The DPP will provide accurate information on any matter that is on the public record but will not disclose information on cases that are yet to come before the courts.

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

The DPP did not undertake any advertising campaigns or market research in 2002-2003.

During 2002-2003 the DPP spent \$95 144 on advertising vacant positions and public tenders.

**Ecologically sustainable development and environmental performance**

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

In the course of 2002-2003 Head Office installed a light control system and re-lamped the building. A portion of electricity costs for Sydney, Canberra and Melbourne is sourced from green energy options.

The DPP has developed a comprehensive Intranet site which includes research material, manuals, procedures, directions and other information which used to be distributed in paper form. As already noted, the DPP has also implemented an Employee Self Service scheme for access to personnel records. That has further reduced the demand for paper.

**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.

**Status of women**

The responsibility for ensuring that proper attention is paid to the status of women rests with the Director and the Deputy Directors as part of the normal management of the Office.

As at 30 June 2003, 62% of all DPP employees were women, and 61% of the lawyers were women (up from 54% in 2001-2002). Approximately 32% of SES positions were filled by women (unchanged since last year) and two of the eight main DPP offices were headed by women.

The DPP is represented on the Steering Committee of Women in Law Enforcement Strategy (WILES) which develops and implements strategies to encourage women to pursue careers in law enforcement.

On a larger scale, the DPP also works with other agencies involved in the criminal justice process to ensure that there is no discrimination against women, or any other group of people, in the criminal justice process.

**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): DPP staff as at 30 June 2003**

<b>Classification</b>	<b>ACT</b>	<b>NSW</b>	<b>VIC</b>	<b>QLD</b>	<b>SA</b>	<b>WA</b>	<b>TAS</b>	<b>NT</b>	<b>TOTAL</b>
Director	1								1
SES Band 3	1								1
SES Band 2	3	1	1	1					6
SES Band 1	6	11	6	7	2	5			37
PLO	8	19	13	10	4	6	2	2	64
SLO	4	18	27	10	4	6			69
LO 2		13	11	8	1	4	1	1	39
LO 1	2	10		5	4	2	1	1	25
Exec 2	7	2	3	1					13
Exec 1	5	5	3	4	1	1			19
APS 6	7	4	3			2		1	17
APS 5	5	1	3	2	1				12
APS 4	5	19	12	13	2	5	1	2	59
APS 3	2	19	14	14	11	10	3	3	76
APS 2		10	13			1			24
APS 1		1	1				1		3
Cadet				2					2
Article Clerk			4						4
<b>Totals</b>	<b>56</b>	<b>133</b>	<b>114</b>	<b>77</b>	<b>30</b>	<b>42</b>	<b>9</b>	<b>10</b>	<b>471</b>

**Legend:**

<b>SES</b>	<b>Senior Executive Service (including in-house-counsel)</b>
<b>PLO</b>	<b>Principal Legal Officer</b>
<b>SLO</b>	<b>Senior Legal Officer</b>
<b>LO</b>	<b>Legal Officer</b>
<b>Exec</b>	<b>Executive Officer</b>
<b>APS</b>	<b>Australian Public Service Officer</b>
<b>CADET</b>	<b>Indigenous Australian Cadet – Legal</b>
<b>Article Clerk</b>	<b>Article Clerk - Legal</b>

**Table 1(b): Staffing summary 2002-2003**

Statutory Office Holders	1
Total staff employed under the PS Act	445
Total staff employed under the DPP Act	25
<b>Total</b>	<b>471</b>

The total number of non-ongoing employees included in this table is 41

**Table 2: Staff by gender and category (as at 30 June 2003)**

Category	Full Time		Part Time	
	Male	Female	Male	Female
Director	1			
Senior Executive -				
Band 3	1			
Band 2	5	1		
Band 1	24	10		3
Legal Officer	77	96		24
Executive Officer	19	12		1
APS 1 – 6	47	116	3	25
Indigenous Cadet	1	1		
Article Clerk	1	3		
<b>Total: 471</b>	<b>176</b>	<b>239</b>	<b>3</b>	<b>53</b>

**Table 3: Staff usage by Office \***

Office	Actual Average Staffing 2002 – 2003
ACT	53.19
NSW	132.12
VIC	109.73
QLD	74.66
SA	28.97
WA	39.86
TAS	8.09
NT	9.18
<b>Total</b>	<b>455.80</b>

\* Note: this table includes inoperative staff



**Table 4: EEO Profile as at 30 June 2003**

<b>Classification</b>	<b>Male</b>	<b>Female</b>	<b>ATSI</b>	<b>PWD</b>	<b>First language English plus another</b>	<b>First language other than English</b>
Director	1					
SES Band 3	1					
SES Band 2	5	1				1
SES Band 1	24	13		1	1	2
Legal Officers	77	120	1	6	20	7
Executive Officers	19	13			2	4
APS Employees	50	141	1	14	25	15
Indigenous Cadet	1	1	2		1	1
Article Clerk	1	3				
<b>Total</b>	<b>471</b>	<b>179</b>	<b>4</b>	<b>21</b>	<b>49</b>	<b>30</b>

**Table 5: Salary Scales as at 30 June 2003**

<b>Classification</b>	<b>Salary</b>
SES Band 3	\$161 978 - \$173 166
SES Band 2	\$130 001 - \$147 970
SES Band 1	\$118 249 - \$124 966
Principal Legal Officer	\$84 977 - \$88 658
Executive Level 2	\$73 785 - \$86 449
Senior Legal Officer	\$63 972 - \$77 840
Executive Level 1	\$63 972 - \$69 081
Legal Officer 2	\$46 507 - \$55 769
APS 6	\$49 901 - \$57 324
APS 5	\$46 204 - \$48 994
Legal Officer 1	\$38 296 - \$44 978
APS 4	\$41 425 - \$44 978
APS 3	\$37 168 - \$40 115
APS2	\$33 529 - \$36 187
APS 1	\$28 834 - \$31 867

<b>Table 6: Consultancies for 2002-2003 (value over \$10 000)</b>			
<b>Consultant</b>	<b>Purpose</b>	<b>Cost</b>	<b>Reason used</b>
<b>Canberra</b>			
Intersect Alliance*	Develop IT Security and plan for internet connection	\$53 971	Special expertise not available in office
Forward Media	SAP support and development	\$171 322	Special expertise not available in office
Presence of IT*	SAP support and development	\$38 250	Special expertise not available in office
SAP Australia	SAP Database migration and basis support	\$25 488	Special expertise not available in office
Plaut	SAP Database migration and basis support	\$89 836	Special expertise not available in office
Hassell Pty Ltd*	Architectural services for office refurbishment	\$38 522	Special expertise not available in office
ASIO (T4)*	Security planning	\$23 849	Special expertise not available in office
D Rudd and Partners*	Mechanical services engineering works for office refurbishment	\$12 790	Special expertise not available in office
<b>Sydney</b>			
Carson Group	Project management	\$91 746	Special expertise not available in office
Hassell Pty Ltd	Architectural services for office refurbishment	\$228 437	Special expertise not available in office
DJ Jones	Quantity Surveyor	\$13 025	Special expertise not available in office
Heyday Group*	Electrical engineering	\$22 000	Special expertise not available in office
James L Williams Pty Ltd*	Mechanical engineering	\$22 700	Special expertise not available in office
<b>Melbourne</b>			
Urbis	Independent property advice	\$43 609	Special expertise not available in office
<b>Hobart</b>			
Philip Lighton Architects*	Architectural services for office refurbishment	\$13 515	Special expertise not available in office
<b>Darwin</b>			
Hassell Pty Ltd*	Architectural services for office refurbishment	\$30 125	Special expertise not available in office

**Consultancies marked \* were not publicly advertised.**

**Table 7: Resources for outcome**

	<b>Budget for 2002-2003 (1)</b>	<b>Actual 2002-2003</b>	<b>Budget 2003-2004</b>
Administered appropriations	-	-	-
Total administered expenses	\$14 668 000	\$26 760 157	\$16 508 000
Price of departmental appropriations Output 1.1	\$61 652 000	\$62 516 000	\$66 177 000
Total revenue from government appropriations	\$61 652 000	\$62 516 000	\$66 177 000
Contributing to price of departmental outputs	\$61 652 000	\$62 516 000	\$66 177 000
Revenue from other sources Output 1.1	\$ 2 380 000	\$ 1 901 646	\$ 1 716 000
Total revenue from other sources	\$ 2 380 000	\$ 1 901 646	\$ 1 716 000
Total Price of departmental outputs	\$64 032 000	\$64 417 646	\$67 893 000
Total estimated resourcing for outcome 1	\$64 032 000	\$64 417 646	\$67 893 000

(1) The figures are as per the original budget for the year

**Table 8: Average staffing level \***

	<b>2002-2003</b>	<b>2003-2004 (Estimate)</b>
Average staffing level (number)	435	465

\* Note: this table excludes inoperative staff

**Table 9: Commonwealth Disability Strategy Report**

The following report addresses the performance criteria of the DPP as the employer role under the Commonwealth Disability Strategy.

<b>Performance Indicator</b>	<b>Performance Measure</b>	<b>Current level of performance</b>	<b>Goals for 2003 – 2004</b>	<b>Actions for 2003 – 2004</b>
1. Employment policies, procedures and practices comply with requirements of the Disability Discrimination Act 1992.	Number of employment policies, procedures and practices that meet the requirements of the Disability Discrimination Act 1992.	The DPP has several employment policies which meet the requirements of the Disability Discrimination Act 1992.  Reasonable adjustment principles have been applied in relation to ongoing staff with disabilities	Ongoing assessment to ensure that employment policies are relevant for all employees of the DPP.  Planning and implementation of a Disability Plan for the DPP.  DPP WDP addresses the needs of members of staff with disabilities.	Completion of the DPP Disability Plan.  New WDP 2001-2003 by December 2003.
2. Recruitment information for potential job applicants is available in accessible formats on request.	Percentage of recruitment information requested and provided in: - accessible electronic formats; and - accessible formats other than electronic.  Average time taken to provide accessible information in : - electronic formats; and - formats other than electronic.	100% available via fax, electronic e-mail and mail.  E-mail requests provided within 48 hours.  Phone requests dispatched within 48 hours of request.	100% of customers requests processed via desired medium within 48 hours of receipt.  Extensions of closing periods granted consistent with any delays in providing information.	DPP website designed to provide 100% of recruitment information.
3. Agency recruiters and managers apply the principle of reasonable adjustment.	Percentage of recruiters and managers provided with information on reasonable adjustment.	No specific actions, however, in practice the principle has been in place at the DPP for the greater part of the past decade. Workplaces are modified as necessary to accommodate staff with disabilities.	All staff aware of reasonable adjustment principle via revised WPD  100% of internal recruitment staff will be made aware of the DPP's policy on reasonable adjustment.	New DPP WDP program specifically incorporates the principle of reasonable adjustment.

<b>Performance Indicator</b>	<b>Performance Measure</b>	<b>Current level of performance</b>	<b>Goals for 2003 – 2004</b>	<b>Actions for 2003 - 2004</b>
4. Complaint/grievance mechanism, including access to external mechanisms, in place to address issues and concerns by staff.	Established complaints/grievance mechanisms, including access to external mechanisms in operation.	The DPP has a well established process for complaints and grievance handling. This includes access to external mechanisms to an Employees Assistance Program and the Merit Protection and Review Agency. No complaints or grievances involved disability issues in the workplace during 2002-2003.	All employees continue to be provided with access to Employees Assistance Program services and complaints/grievance mechanisms.	Information on Employee Assistance Program services reviewed and updated as appropriate.

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## CHAPTER 9

### Significant Cases

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

Reports on some of the cases prosecuted by the Commercial prosecutions Branches appear in Chapter 4.

#### **Disun, Nurdin, Benjamin and Junus**

This matter was one of eight people smuggling trials conducted by the Perth office in 2002-2003. Those cases have put a significant burden on one of the DPP's smaller offices, as well as other agencies involved in the matters including the AFP, the Department of Immigration Multicultural and Indigenous Affairs and the Australian Customs Service.

Disun was the captain, and the other defendants were crewmen, on a wooden Indonesian vessel, KM Palapa II, which carried 433 passengers of middle east origin towards Christmas Island from Indonesia. The vessel was navigated by Disun using a hand held Global Positioning System device. The GPS contained a pre-plotted weigh point for Christmas Island.

The vessel broke down in international waters and the crew and passengers were rescued by the Norwegian vessel MV Tampa which then sailed into Australian Territorial waters surrounding Christmas Island. The passengers were taken on board the Australian naval vessel HMAS Manoora, which conveyed them to the Republic of Nauru. The crew were arrested on the MV Tampa by officers of the AFP and were taken to Christmas Island and eventually to Perth.

The four crew members were charged with facilitating the bringing to Australia of a group of five or more non-citizens contrary to section 232A of the *Migration Act 1958*. They pleaded not guilty. The defendant Junus claimed to be a juvenile but was found to be at least 18 years old on the basis of expert evidence of skeletal age based on a wrist x-ray.

After a trial in the District Court of WA Disun and Nurdin were convicted on the charges against them and Benjamin and Junus were acquitted. Benjamin and Junus both claimed that they were no more than crew members of the Indonesian boat and had no control over the vessel. It appears that the jury accepted their evidence.

Disun was sentenced to seven years imprisonment with a non-parole period of three years and Nurdin was sentenced to four years imprisonment with a non-parole period of 18 months. Orders were made under the *Proceeds of Crime Act 1987* for the forfeiture of currency seized from Disun and Nurdin and the GPS device used by Disun.

Disun and Nurdin appealed against conviction on the basis that the MV Tampa was a Norwegian vessel and the AFP should have made an extradition request to Norway rather than sending officers on board the vessel to arrest them. The WA Court of Criminal Appeal dismissed the appeal finding that it, as a general rule of international and municipal law, a State possesses jurisdiction over the persons and property of foreign nationals found within its territory. The MV Tampa was in Australian waters when the AFP boarded it and there was no basis upon which a person on board the vessel who had committed an offence against Australian law could claim to be immune from arrest and prosecution. Disun and Nurdin have sought special leave to appeal to the High Court.

The DPP appealed against sentence. The appeal was dismissed. The Court noted that the sentences were lenient, but declined to intervene.

## **Freeman**

The defendant in this case was a medical practitioner who was prosecuted for Medifraud. It was alleged that between January 1998 and August 2000 Freeman defrauded the Health Insurance Commission by obtaining Medicare rebates for services that he did not provide. He was charged with one offence of defrauding the Commonwealth under section 29D of the *Crimes Act 1914*.

The charge related to a large number of separate false claims which involved the use of six different Medicare item numbers. The numbers related to respiratory testing, ECG testing, ingrown toenail wedge resection, aspiration/injection into a joint, x-rays of arms and x-rays of legs. Part of the prosecution case was based on statistical evidence which showed that the defendant's claim pattern was highly unusual when compared with other medical practices. The prosecution also called evidence from a sample of patients who said that they did not receive the services that had supposedly been provided to them. There was also evidence from receptionists employed by the defendant to show, for example, that the defendant only had access to old x-ray equipment which he did not actually use. The Director signed indemnities for four witnesses to allow them to give evidence without risk of self-incrimination. Many of the patients whose names Freeman misused were heroin addicts when they attended his clinic.

The case began with a five week committal hearing, which was run in conjunction with charges laid by the Victoria Police. Freeman was committed on the Commonwealth charge but discharged on the State charges. Freeman then changed his plea on the Commonwealth charge to guilty but disputed details of the matters alleged against him. There was a contested sentence hearing, which



ran for four days. The main issue was how much fraud could be proven against Freeman. The sentencing judge found that \$516 773 of fraud could be proven beyond reasonable doubt, largely on the basis of a comparison with the average services performed by general practitioners in Victoria and the frequency with which the average GP used the item numbers relied on by Freeman.

On 11 June 2003 Freeman was convicted and sentenced to imprisonment for three years with a minimum term of two years. He was also ordered to pay a pecuniary penalty of \$516 773 under the PoC Act 1987. The judge rejected an argument that the pecuniary penalty order should be reduced to reflect the fact that Freeman had entered a partnership arrangement in relation to one of his two clinics which meant that he did not personally receive all the income from that clinic.

## **Gee and Thaller**

The defendants in this matter were charged with defrauding the Commonwealth by understating their income for taxation purposes. The defendants came before the District Court at Adelaide. The defendants, using rules of South Australia procedure, applied for preliminary rulings on evidence before a jury was empanelled. The trial judge heard argument and ruled that part of the prosecution evidence had been obtained illegally and should be excluded from the trial. The DPP applied, under section 350 of the Criminal Law Consolidation Act (SA), for the trial judge to state a case for consideration by the Full Court of the Supreme Court of South Australia.

The defendants challenged the jurisdiction of the Supreme Court to deal with the matter, arguing that the provisions which allow a trial judge to state a case to the Full Court of the Supreme Court are not picked up by section 68 of the *Judiciary Act 1903* and do not apply in Commonwealth cases. The Full Court upheld the argument and declined to answer the questions stated by the trial judge.

The DPP took the point to the High Court. In March 2003 the High Court rejected the defendant's argument and found that the provisions of the Criminal Law Consolidation Act can apply in Commonwealth cases and that the DPP can use those provisions to seek a review of rulings made in cases like the present. The matter has been referred back to the Full Court of the Supreme Court of South Australia to answer the questions in the stated case.

## **Kaye**

The defendant in this case was charged with one offence of encouraging another to commit an act of indecency on a person under the age of 16 years outside Australia, that is encouraging an act of child sex tourism. The charge was laid under section 50DB of the *Crimes Act 1914*.

It was alleged that Kaye advertised in the personal columns of local special interest and community newspapers offering to arrange accommodation and provide to guides to people wishing to travel to Thailand. A person who responded to one of these advertisements was invited to Kaye's house to discuss the services Kaye could provide. At that meeting Kaye showed the person photographs of young males ranging in age from 14 to 18 and said he could arrange for children to be made available for sexual purposes in Thailand. The person reported the matter to police. Kaye was arrested a short time later. The police seized documents and obtained telephone interception material which confirmed that Kaye had contacts in Thailand and was able to provide child sex services if required.

The defendant pleaded not guilty, but was convicted after a jury trial. He was sentenced to six years imprisonment with a non-parole period of three years. This was the first time a charge under section 50DB of the Crimes Act proceeded to a jury trial. In that way it was a significant test of the legislation and an important indication that Australia is serious in its efforts to address the issue of organised child sex tourism.

## **Knaggs**

This case involved the prosecution of alleged offences against section 8C(1)(a) of the *Taxation Administration Act 1953* involving the non-lodgment of income tax returns.

Up until 2000, section 8C(1)(a) of the Taxation Administration Act made it an offence for a person to refuse to furnish an income tax return when and as required. Section 8C(1)(a) was amended by the *A New Tax System (Tax Administration) Act (No 2) 2000* to delete the reference to income tax returns. It became an offence to refuse or fail to furnish an "approved form". However, the provisions of the amending Act provided that the change only applied to the 2000-2001 income year and later years.

Knaggs was prosecuted, and convicted, on charges which alleged that he failed to furnish income tax returns for the years 1982-1983 to 2000-2001. He appealed to the Supreme Court of NSW against the convictions. The Court upheld that appeal on the basis that the charges should have alleged that Knaggs failed to furnish approved forms and that the prosecution should have led evidence to show that the relevant returns were all approved forms.

Unfortunately neither the prosecution nor the defence drew the Court's attention to the fact that the change that was made to section 8C(1)(a) only applied to the 2000-2001 income year and later years. The result was that the Supreme Court fell into error with respect to the returns for all years prior to 1999-2000. The Supreme Court's reasoning was only correct with respect to 2000-2001. A form of tax return for that year was approved on 17 April 2001, but there was no evidence to that effect before the court.

The case is reported as *Knaggs v DPP* (2003) 52 ATR 16.

## **Knight**

Over a period of four years Knight obtained almost \$363 000 in Centrelink benefits by adopting 22 false identities. Knight used the same method in each case. He painstakingly compiled identity documents in the names of Australian citizens who died overseas and then used the documents to claim welfare benefits. As the people had all died overseas, there was no record of their death in Australia. At the time of his arrest Knight was receiving approximately \$7 600 per fortnight as a result of the false claims.

The offences involved a high degree of premeditation and planning. In addition, some of the claims were made while Knight was serving a term of imprisonment for earlier offences of dishonesty. The matter was investigated jointly by the AFP and Centrelink. In the course of the investigation the AFP executed a search warrant at Knight's home. The investigators found a large number of documents in false names including Medicare cards, Centrelink concession cards and ATM cards.

Knight was charged with a total of 32 offences against the *Crimes Act 1914* and the Commonwealth Criminal Code. He pleaded guilty to all charges and was sentenced to eight years imprisonment with a single non-parole period of five years. He was also ordered to pay reparation in the sum of \$362 997. Knight has lodged an appeal against sentence.

## **Kourounis**

Kourounis was a director of a cleaning company called GJ & K Cleaning Services Pty Ltd. Between June 1989 and March 1992 the company performed cleaning duties at 4 Treasury Place Melbourne. One of the offices at 4 Treasury Place was the Melbourne office of the Governor-General.

The Governor-General's office contained a select number of paintings on loan from the Australian National Gallery, including a work by Ethel Carrick-Fox entitled "In the Nice flower market". The painting was worth between \$180 000 and \$190 000. Sometime in the early 1990's the painting was stolen from the Governor-General's office.

In July 1995 the defendant contacted an art dealer in Ballarat. He said he had purchased "In the Nice flower market" while overseas and offered to sell it to or through the art dealer. In August 1995 the art dealer sold the painting to a fine arts dealer in Toorak. The painting was eventually advertised for public sale, at which point it was identified as belonging to the Australian National Gallery. The painting was recovered by police in November 1997. Police inquiries led back to the defendant.

The defendant was charged with one offence under section 71 of the *Crimes Act 1914* with receiving property belonging to a Commonwealth authority. There was evidence that the defendant sold the painting to the art dealer in Ballarat and there was evidence to show that the defendant had access to the Governor-General's office. However, there was no direct evidence to show that the defendant was the person who stole the painting.

The defendant contested the committal proceedings but pleaded guilty before the case came to trial. He was convicted but released on a good behaviour bond and ordered to pay \$15 000. The painting was returned to the Australian National Gallery.

## **Lappas and Dowling**

Lappas was employed by the Department of Defence as an intelligence analyst working in the Defence Intelligence Organisation. As required for his employment, he held the highest level of security clearance and thereby had access to top secret information. It was his duty to keep such information secret. At the relevant time Dowling was employed by an escort service in the ACT. Lappas met Dowling in July 2000 and formed an attachment to her.

It was alleged that on 11 July 2000 Lappas took a classified document from work and gave it to Dowling. He suggested that she sell it for money and told her how to go about contacting a foreign embassy. It was further alleged that, on 12 July 2000, Lappas photocopied two classified documents and gave the copies to Dowling.

Lappas was charged with two offences against section 78(1)(b) of the *Crimes Act 1914*, of communicating a document that might be useful to a foreign power for a purpose prejudicial to the Commonwealth, and two offences against section 79(3), of communicating documents to a person to whom he was not authorised to communicate them. Dowling was charged with offences of receiving documents that had been given to her in breach of the Crimes Act provisions.

Lappas pleaded guilty to the charges under section 79(3) but not guilty to the charges under section 78(1)(b). That made it necessary to take the matter to trial. The difficulty the DPP faced was that the documents which formed the basis of the proceedings were classified. That raised issues about how much of the material could be disclosed to the defence team and to the jury.

The first trial in this matter commenced on 12 November 2001, as a joint trial against Lappas and Dowling. It came to an end when the defence attempted to have documents tendered by the prosecution and the DPP raised a claim for public interest immunity. The trial judge upheld the claim for immunity, but then ruled that it would be unfair to allow the trial to proceed if the jury could not see the documents. The trial judge ordered that the prosecution on one of the charges under section 78(1)(b) be stayed.

The second trial in the matter, against Lappas alone, came to an end on 21 May 2002 when Lappas' defence team was forced to withdraw from the proceedings.

On 16 December 2002, after a third trial, Lappas was convicted of the outstanding charge under section 78(1)(b) of the Crimes Act. On 16 January 2003, he was sentenced to 12 months imprisonment on the charge under section 78(1)(b) and three months imprisonment on the charge under section 79(3) to be served concurrently. The judge ordered that both sentences be suspended upon Lappas entering a good behaviour bond and agreeing to obey conditions relating to psychiatric treatment and counselling. The DPP has appealed against the sentence and the appeal is the subject of a reserved judgment.

Dowling eventually pleaded guilty to two charges against her. On 19 May 2003 she was convicted and released on a good behaviour bond.

## **Lyll**

The defendant in this matter was a serving officer of the AFP at the time of the alleged offences. It was alleged that in 2001 he played a key role in placing orders for cocaine and ecstasy on behalf of friends and in organising payment for drugs on their behalf. It was also alleged that he gave information on police methodology to two of his friends to help them avoid detection. One of the friends was a drug supplier.

The defendant was charged with seven offences against Victorian law, relating to the misuse of drugs, and two offences against the *Australian Federal Police Act 1979*, of communicating information in breach of duty. The defendant pleaded guilty and was sentenced to an overall effective term of 11 months imprisonment with a minimum term of six months. He applied to the Court of Appeal for leave to appeal against sentence but leave was refused.

## **On**

On 28 August 2002 On and a person called Do were arrested at Melbourne airport after arriving on a flight from Cambodia via Malaysia. On and Do were selected for random body search. Customs officers found they were carrying heroin inside plastic bags concealed under their clothing. The bags were packed in the same way for each defendant and, in both cases, were taped around their midriffs. The total weight of pure heroin imported was almost 3kg.

On was 16 at the time of the offences and Do was 18. They were both charged with one count of importing heroin and one count of aiding and abetting the importation of heroin.

The case was complicated by the fact that On was under 18 and was a child for the purpose of the law. Under Victorian law any criminal charge against a child must be heard summarily in the Children's Court unless a court finds that there

are exceptional circumstances which warrant the defendant being dealt with as an adult. The maximum penalty that can be imposed in the Children's Court is a term of three years detention in a youth training centre.

The DPP applied to Children's Court for a direction that the matter be heard in a normal criminal court given the seriousness of the alleged offences. After hearing argument, a magistrate of the Children's Court made a ruling to that effect. The defendant applied to the Victorian Supreme Court for an order quashing that decision but subsequently withdrew the application.

The defendant entered a plea of guilty when the matter came before the County Court. Despite the defendant's youth, the Court imposed an effective sentence of seven years imprisonment with a non-parole period of three years and six months. The court noted the seriousness of the offence and the need to discourage other young persons from allowing themselves to be recruited as drug couriers. This was only the second case in Victoria where a child has been prosecuted for importing narcotic goods.

## **Suarez-Mejia, Parrish and Reaves**

In July 2001, 938kg of cocaine was imported at Dulverton Bay on the North West Coast of WA on board a vessel called the White Dove. This was the largest known importation of cocaine into Australia. The vessel sailed to Australia from the USA and the cocaine was transferred onto it during a rendezvous with another vessel in mid-ocean off the Azores.

Three people, who comprised the crew of the vessel, were arrested at Dulverton Bay while the boat was being unloaded. Those arrested and charged were Carlos Suarez-Mejia, William Reaves and Joel Parrish. Suarez-Mejia pleaded guilty and was sentenced to life imprisonment with a non-parole period of 20 years. That sentence was upheld on appeal. Reaves pleaded guilty and was sentenced to 25 years imprisonment with a non-parole period of 14 years. He has appealed against sentence and the DPP has cross-appealed.

The third defendant, Parrish, pleaded not guilty. He underwent three trials. The first trial was aborted due to an irregularity involving a juror. The second trial resulted in a hung jury and the third trial ended with an acquittal. Parrish's defence at all stages was that he acted under duress. He claimed that he was threatened by Reaves that if he did anything to jeopardise the venture he and his family could be killed by a Columbian cartel. It appears that the jury accepted the defence.

In the course of the trial Parrish called two witnesses to give character evidence on his behalf. They turned out to be judges from his home State of Georgia, USA. It is unusual for a defendant in a criminal case to call character evidence from a judge.

## Tzatzimakis

This matter arose from a request by Greece for the extradition of a person to serve a sentence of 16.5 years for drug offences committed in 1990. The DPP had carriage of the court proceedings in Australia.

The defendant was convicted of the charges by a court on the Greek island of Crete and the sentence was imposed on 24 January 1992. Tzatzimakis was present before the court when the trial began, but he left Crete during the course of the trial was not present when the sentence was imposed.

In April 2000 the DPP commenced proceedings before a magistrate in Melbourne for the purpose of determining whether Tzatzimakis was eligible for extradition. On 11 September 2000 the magistrate found that Tzatzimakis was not eligible for surrender and ordered that he be released. The magistrate found that Tzatzimakis should be treated as a person who had been convicted in his absence and that, accordingly, the Extradition Act 1988 required that he be treated as a suspected offender rather than a convicted offender. The documents prepared by Greece did not include all the documents which must be included when a person is a suspect. In particular, the documents did not include a duly authenticated arrest warrant. The finding was made despite the fact that Tzatzimakis was before the court when the trial began and absconded during the course of the trial.

On 29 September 2000, the DPP applied to the Federal Court for a review of the magistrate's decision. On 27 March 2002 a single judge of the Federal Court upheld the magistrate's ruling. The DPP lodged an appeal to the Full Federal Court. On 31 January 2003 the Full Federal Court dismissed the appeal.

The case shows the technical nature of the extradition process and the quite dramatic consequences which can flow from a failure to comply with the strict procedural rules.

## Theophanous

Andrew Theophanous is a former member of the Commonwealth Parliament. In May 2002 he was convicted of one count of conspiring to defraud the Commonwealth, one count of defrauding the Commonwealth and two counts of bribery. The offences were committed while he was an MP and relate to advice and assistance that Theophanous gave in relation to immigration matters.

Theophanous appealed against conviction and sentence. The principal grounds of appeal were:

- evidence was admitted in breach of section 16(3) of the *Parliamentary Privileges Act 1987* because the defendant was questioned about speeches he made in Parliament;

- evidence relating to the conspiracy charge was obtained unfairly or unlawfully, because it was procured by unlawful conduct on the part of law enforcement officers who pretended to join a conspiracy; and
- the judges directions concerning dishonesty were insufficient.

The Victorian Court of Appeal dismissed the first two grounds of appeal but upheld the third.

The Court found that cross-examining the defendant in relation to things he said in Parliament was a breach of the *Parliamentary Privileges Act 1987*, even though there was no objection at the trial and even though the defendant was the one who first referred to Parliamentary debates. However the Court was not satisfied that this irregularity had any substantial effect on the outcome of the trial. The Court found that there was a large body of evidence against the defendant that eclipsed any damage which might have been done to his credit by the evidence concerning his statements in Parliament.

The Court also found that the investigators had not acted unlawfully. The fact that law enforcement officers pretended to join a conspiracy in order to investigate alleged offences did not, by itself, involve an act of unfairness which required that the trial be stayed.

The Court also rejected an argument that the defendant's conduct was not dishonest if he believed that Australia's immigration policy was morally offensive and that he was justified in adopting techniques to circumvent it.

However, the Court went on to find that there was potential for confusion in relation to the conspiracy charge and that the trial judge's directions to the jury were not adequate. Accordingly the Court upheld the appeal in relation to the conspiracy charge and ordered a retrial on that charge.

On 31 July 2003 the Court reduced the penalty imposed on Theophanous from six year imprisonment with a minimum term of three and a half years to three years imprisonment with a minimum term of 21 months. No date has yet been set for a retrial on the conspiracy count.

In the meantime, the defendant has filed an application for special leave to appeal to the High Court on the issue of Parliamentary Privilege.



## Appendix 1

### **Statement under the *Freedom of Information Act 1982***

Under section 8(1)(b) of the Freedom of Information Act 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 Chapter 1.

- (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.

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.

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

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

## Appendix 2

# Guidelines for the conduct of compulsory examinations under the *Proceeds of Crime Act 2002*

Guidelines for the conduct of compulsory examinations under the Proceeds of Crime Act 2002

### 1. Background

- 1.1 Section 180 of the Proceeds of Crime Act 2002 gives the courts power to make a compulsory examination order when there is a restraining order in force under that Act. An examination order can be made in relation to any person and the person can be examined about the affairs (including the nature and location of any property) of any person who owns, or has or claims to have an interest in, the restrained property; any person who the restraining order states to be a suspect for the offence to which the restraining order relates; and any person who is a spouse (including a de facto spouse) of one of those people.
- 1.2 The effect of section 196(1) and 197(2) is that a person who is examined pursuant to an order under section 180 cannot decline to answer a question or produce a document on the basis that the answer or document may incriminate them or on grounds of legal professional privilege.
- 1.3 Section 198 provides that an answer given or a document produced by a person in an examination is not admissible in evidence in criminal proceedings against the person except in proceedings for giving false or misleading information. This means that the examinee has no derivative use protection under the Act and that the answers and documents can be used as a basis for conducting further inquiries.
- 1.4 These guidelines are designed to ensure that the examination power is used in an appropriate manner, especially in cases where the person being examined is, or may become, the subject of criminal proceedings, and to ensure that proper protection is given to material obtained through a compulsory examination.

## 2. Scope of examination

2.1 Section 180 is designed to facilitate the enforcement of the Proceeds of Crime Act. It is not designed to give power to conduct a general inquiry into the criminal history of a person for purposes unrelated to the confiscation proceedings. It follows that section 180 should not be used to obtain information about matters which have no relevance to confiscation action under the Proceeds of Crime Act. In particular, it would be an improper and unlawful use of section 180 to use an examination for the purpose of obtaining information to advance a criminal investigation.

2.2 The compulsory examination will be under the control of an approved examiner. Subject to any directions by the approved examiner, if questions are otherwise relevant to the matters in issue, questions can be asked on the following topics:

- the identity, nature, location and value of property which may become the subject of confiscation under the Proceeds of Crime Act;
- the nature and value of the interest held by the person being examined, or another person, in any such property;
- the basis on which the person being examined, or another person, acquired any such property or acquired the money used to buy such property;
- the use which was made, or was intended to be made, of any such property;
- the benefits which flowed to the person being examined, or another person, from the alleged offence which provided the basis for the court to make a restraining order;
- questions that require the person being examined to provide a response to the allegations which provided the basis for the court to make a restraining order;
- questions designed to determine the benefits derived by a person from unlawful activity for the purpose of assessing the penalty amount under a proposed pecuniary penalty order; and
- questions to follow up or test any answer given by the person being examined.

2.3 Questions should not be asked on any other topic unless, in the special circumstances of the case, information on that topic is required to support confiscation action under the Proceeds of Crime Act and the approved examiner allows questions on that topic.

### **3. Legal Professional Privilege**

- 3.1 As already noted, the effect of sections 196(1) and 197(2) is that a person is not entitled to refuse to answer a question or produce a document on grounds of legal professional privilege. That is one of the provisions which ensures that the approved examiner has power to obtain all relevant information. It also ensures that the examination process cannot be delayed or frustrated by claims for legal professional privilege, which would need to be referred to a court for adjudication.
- 3.2 However, the examination provisions should only be used for the purpose for which they were enacted, which is to obtain information to support confiscation action under the Proceeds of Crime Act. The examination should not be used to find out what legal advice has been given to a person unless that information is relevant to showing that a particular event or transaction occurred or to showing why that event or transaction occurred.
- 3.3 It follows that questions should not be asked if the only purpose is to find out what legal advice was given by a lawyer to a client.

### **4. Conduct of the examination**

- 4.1 Section 187 of the PoC Act provides that a person may be examined on oath or affirmation by the approved examiner and the DPP. In this context the reference to the DPP must include a person representing the Director. In the majority of cases it is likely that the approved examiner will allow the bulk of the questioning to be conducted by the DPP.
- 4.2 As far as possible, and subject to any directions by the approved examiner, the following procedure should be followed in any case where there is a related prosecution or a related criminal investigation that may potentially result in a prosecution:
- if the examination is conducted by a DPP officer it should be conducted by an officer who has no role in the prosecution or the potential prosecution;
  - if an examination is conducted by counsel from the private Bar, it should be conducted by counsel who has no role in the prosecution or the potential prosecution and if there is an instructing officer, the instructing officer should be a person who has no role in the prosecution or the potential prosecution; and
  - no one from the DPP or the investigating agency should attend the examination unless they have a role in the confiscation proceedings or in

the investigation that is supporting the confiscation proceedings and they have a legitimate reason for attending the examination.

- 4.3 The examination should be conducted fairly and with proper regard to the rights and dignity of the person being examined. The person conducting the examination should not harass, threaten or insult the person being examined, and should avoid asking questions which are double barreled or which might otherwise confuse the person or produce a misleading answer. If the person being examined wants to provide further explanation for an answer they should be given an opportunity to do so, although that opportunity can be deferred if it would disturb the flow of the examination to allow the person to provide the explanation immediately.
- 4.4 Subject to any ruling by the approved examiner, the person conducting the examination can cross exam, ask leading questions and ask speculative questions. If the circumstances require, the person conducting the examination can remind the person being examined that it is an offence to refuse to answer a question or to provide a false or misleading answer; that the person may be re-called for further examination after their answers have been considered; and that, subject to an examination order being made, other people can called for examination in relation to answers given in an examination.
- 4.5 Note that, by virtue of section 188(3), any person from the DPP or the investigating agency other than the person who is appearing to represent the DPP will require permission from the approved examiner to attend the examination.

## **5. Use of material**

- 5.1 Information which is obtained from a compulsory examination for the purpose of supporting action under the Proceeds of Crime Act may be relevant to matters which go beyond the enforcement of the Proceeds of Crime Act. The material may, for example, show that a person has committed criminal offences or engaged in professional misconduct. This section deals with the use which can made of information obtained from an examination.
- 5.2 There is only one provision in the Proceeds of Crime Act which expressly limits the use which can be made of information obtained from a compulsory examination. That is section 198, which provides that an answer given or a document produced by a person in an examination is not admissible in evidence in civil or criminal proceedings against the person except in five situations:
- criminal proceedings for giving false or misleading information;

- proceedings on an application under the Act;
- proceedings ancillary to an application under the Act;
- proceedings for the enforcement of a confiscation order; and
- in the case of a document, civil proceedings for or in respect of a right or liability the document confers or imposes.

There is no provision for derivative use protection under section 198.

5.3 However, it is a general principle that material which has been obtained through the use of a compulsory power can only be used for the purpose for which the power was enacted and for purposes reasonably connected to it (see: *Johns v ASC* (1993) 116 ALR 567, *Marcel v Commissioner of Police* [1992] 1 All ER 72).

5.4 In addition, any material obtained from a compulsory examination which is "personal information" within the meaning of the Privacy Act 1988 will be protected by the Privacy Act and should be dealt with in accordance with the restrictions set out in that Act. "Personal information" is defined in section 6 of the Privacy Act to mean "information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion". "Individual" is defined to mean a natural person.

5.5 Under the Privacy Act personal information held by an agency can be:

- used (within the agency) for the purpose for which it was collected or for a purpose that is directly related to the purpose for which the information was obtained;
- disclosed (outside the agency) if the individual concerned is reasonably likely to have been aware, or was made aware by an appropriate notice, that information of that kind is usually passed to that person, body or agency;
- used or disclosed if it is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue;
- used or disclosed if it is required or authorised by or under law; or
- used or disclosed if the individual concerned has consented to the use or disclosure.

- 5.6 It follows that, if it is otherwise appropriate in the circumstances of the case, and subject to any court ruling or direction to the contrary, material obtained from an examination can be used and/or disclosed for the following purposes:

**Proceeds of Crime proceedings**

The material can be used for any purposes that are reasonably necessary for confiscation proceedings under the Proceeds of Crime Act, and can be given to any person or organisation if the disclosure is reasonably necessary to achieve the enforcement of the Proceeds of Crime Act. The receiving person or organisation must not use or disclose the information for any other purpose.

**Use in connection with a current criminal investigation**

If the material is relevant to matters which are the subject of a current criminal investigation or prosecution, the material can be provided to the investigators who are conducting the prosecution, the material can be provided to the investigators who are conducting the investigation or the prosecutors who are conducting the prosecution to determine whether the material has identified additional matters that should be investigated.

**Offences not currently under investigation**

If the material shows that serious criminal conduct has occurred which is not the subject of a current investigation the material can be provided to an appropriate agency for investigation with a view to possible prosecution. However, that should only be done if the Director, or an officer of the Senior Executive Service who has been authorised by the Director, considers that it is in the public interest that the conduct be investigated.

**Provision to professional associations or regulatory agencies**

If the material shows that serious professional misconduct has occurred the material can be provided to an appropriate professional association or regulatory agency. However, that should only be done if the Director, or an officer of the Senior Executive Service who has been authorised by the Director, is satisfied that it is in the public interest that the conduct in question be examined by the professional association or regulatory agency.

It should be explained to the professional association or regulatory agency that the material can be used as a basis for investigation, but cannot be used as direct evidence in disciplinary proceedings against the person who provided the material or for any other purpose.

**Provision to prosecutors**

Material can be provided to officers conducting criminal proceedings if the person who was examined is going to give evidence in the proceedings which may conflict with answers given at the examination and there is reason to believe that the material may assist prosecuting officers to prepare cross-examination. (Note that material obtained from a person cannot be tendered



at a trial of that person even if the person gives evidence at the trial which conflicts with answers given at the compulsory examination).

### **Use in Dietrich applications and bail proceedings**

Dietrich applications and bail proceedings are probably not civil or criminal proceedings against the person for the purpose of section 198 of the Proceeds of Crime Act. Accordingly, if it is otherwise appropriate to do so, and if the court allows, the DPP can use evidence of what a person said at a compulsory examination if the person subsequently gives conflicting evidence at a Dietrich application or on a bail application or a bail appeal.

### **Disclosure of information to legal aid commissions**

Section 294 of the Proceeds of Crime Act provides that the DPP or the Official Trustee may disclose to a legal aid commission information obtained under the Proceeds of Crime Act that is relevant to determining whether a person requires legal assistance under Part 4.2 of the Act for the purpose of making that determination.

### **Summonses and other compulsory process**

Material obtained from a compulsory examination may have to be produced if the DPP is under a legal compulsion to produce it and there are no grounds for objecting to production.

- 5.7 Material obtained from a compulsory examination should not be used by the DPP for any other purpose without written approval from the Director or the First Deputy Director. Any such approval should be given on a case by case basis and, if the material is personal information within the meaning of the Privacy Act, the approval should comply with the requirements of that Act.

## **6. Copy of guidelines to be given to examinee**

- 6.1 A copy of these guidelines should be given to the examinee before the person is examined to ensure that the person is aware of the conditions under which the examination will be conducted and the use which may be made of material obtained from the examination.

## G l o s s a r y

ACC	Australian Crime Commission
ACCC	Australian Competition and Consumer Commission
AFP	Australian Federal Police
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AWA	Australian Workplace Agreement
CALG	Criminal Assets Liaison Group
Crimes Act	<i>Crimes Act 1914</i>
CSB Act	<i>Crimes (Superannuation Benefits) Act 1989</i>
DPP	Director of Public Prosecutions
EEO	Equal Employment Opportunity
ESS	Employee Self Service Scheme
HOCOLEA	Heads of Commonwealth Law Enforcement Agencies
IT	Information Technology
ITSA	Insolvency and Trustee Service Australia
LSS	Litigation Support System
PoC Act 1987	<i>Proceeds of Crime Act 1987</i>
PoC Act 2002	<i>Proceeds of Crime Act 2002</i>
SES	Senior Executive Service
WDP	Workplace Diversity Plan
WILES	Women in Law Enforcement Strategy

**Office of the Commonwealth  
Director of Public Prosecutions**

**Independent Audit Report 2002-2003**



## INDEPENDENT AUDIT REPORT

To the Attorney-General

### Scope

I have audited the financial statements of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2003. The financial statements comprise:

- Statement by the Chief Executive Officer;
- Statements of Financial Performance, Financial Position and Cash Flows;
- Schedules of Contingencies and Commitments
- Schedule of Administered Items; and
- Notes to and forming part of the Financial Statements.

The Office of the Commonwealth Director of Public Prosecutions' Chief Executive is responsible for the preparation and presentation of the financial statements and the information they contain. I have conducted an independent audit of the financial statements in order to express an opinion on them to you.

The audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards, to provide reasonable assurance as to whether the financial statements are free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with Accounting Standards and other mandatory professional reporting requirements in Australia and statutory requirements so as to present a view which is consistent with my understanding of the Office of the Commonwealth Director of Public Prosecutions' financial position, its financial performance and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

**Audit Opinion**

In my opinion the financial statements:

- (i) have been prepared in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and
- (ii) give a true and fair view, in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia and the Finance Minister's Orders, of the financial position of the Office of the Commonwealth Director of Public Prosecutions as at 30 June 2003, and its financial performance and cash flows for the year then ended.

Australian National Audit Office

A handwritten signature in blue ink, appearing to read 'Crossley', is written over a blue diagonal line that extends from the top left towards the bottom right.

David Crossley  
Executive Director

Delegate of the Auditor-General

Canberra  
16 September 2003

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**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**

**FINANCIAL STATEMENTS 2002-2003**

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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2002-2003

STATEMENT BY THE  
CHIEF EXECUTIVE OFFICER  
AND  
CHIEF FINANCE OFFICER

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In my opinion, the attached Financial Statements give a true and fair view of the matters required by the Finance Minister's Orders made the *Financial Management and Accountability Act 1997*.

  
Damian Bugg QC  
Director

16<sup>th</sup> September 2003

  
Stela Walker  
Deputy Direct Corporate Management

16 September 2003

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**STATEMENT OF FINANCIAL PERFORMANCE**

For the period ended 30 June 2003

	Note	2002-2003 \$'000	2001-2002 \$'000
<b>Revenues from ordinary activities</b>			
Revenues from government	4	62,576	59,964
Sales of goods and services	5	1,210	917
Interest		48	565
Revenue from sale of assets	6	72	53
Other	7	565	564
Total revenues from ordinary activities		<u>64,471</u>	<u>62,063</u>
<b>Expenses from ordinary activities</b> <i>(excluding borrowing costs expense)</i>			
Employees	8	36,427	32,855
Suppliers	9	20,412	21,605
Depreciation and amortisation	10	3,181	3,542
Write-down of assets	11	90	282
Expenses for sale of assets	6	228	80
Other	12	943	498
Total expenses from ordinary activities <i>(excluding borrowing cost expense)</i>		<u>61,281</u>	<u>58,862</u>
<b>Net surplus (deficit)</b>		<u>3,190</u>	<u>3,201</u>
Net credit (debit) to asset revaluation reserve	24	768	(199)
<b>Total revenues, expenses and valuation adjustments</b> <b>attributable to the Commonwealth and recognised</b> <b>directly in equity</b>		<u>768</u>	<u>(199)</u>
<b>Total changes in equity other than those resulting</b> <b>from transactions with owners as owners</b>		<u>3,958</u>	<u>3,002</u>

The above statement should be read in conjunction with the accompanying notes

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**STATEMENT OF FINANCIAL POSITION**

For the period ended 30 June 2003

	Note	2002-2003 \$'000	2001-2002 \$'000
<b>ASSETS</b>			
Financial assets			
Cash	13	241	14,461
Receivables	14	16,406	565
Total financial assets		<u>16,647</u>	<u>15,026</u>
Non-financial assets			
Land and buildings	15,18	5,704	5,409
Infrastructure, plant and equipment	16,18	5,891	6,067
Intangibles	17,18	786	1,203
Other	19	1,371	1,005
Total non-financial assets		<u>13,752</u>	<u>13,684</u>
<b>Total assets</b>		<u><b>30,399</b></u>	<u><b>28,710</b></u>
<b>LIABILITIES</b>			
Non-interest bearing liabilities			
Other	20	2,163	3,218
Total non-interest bearing liabilities		<u>2,163</u>	<u>3,218</u>
Provisions			
Employees	21	12,401	10,495
Capital use charge		-	82
Total provisions		<u>12,401</u>	<u>10,577</u>
Payables			
Suppliers	22	3,315	4,700
Other	23	-	11
Total payables		<u>3,315</u>	<u>4,711</u>
<b>Total liabilities</b>		<u><b>17,879</b></u>	<u><b>18,506</b></u>
<b>EQUITY</b>			
Contributed equity	24	1,507	2,027
Reserves	24	4,388	3,620
Retained surpluses	24	6,625	4,557
<b>Total equity</b>		<u><b>12,520</b></u>	<u><b>10,204</b></u>
<b>Current assets</b>		<b>18,018</b>	16,031
<b>Non-current assets</b>		<b>12,381</b>	12,679
<b>Current liabilities</b>		<b>7,958</b>	8,762
<b>Non-current liabilities</b>		<b>9,921</b>	9,744

The above statement should be read in conjunction with the accompanying notes

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**STATEMENT OF CASH FLOWS**  
For the period ended 30 June 2003

	Note	2002-2003 \$'000	2001-2002 \$'000
<b>OPERATING ACTIVITIES</b>			
Cash received			
Appropriations		62,516	59,904
Sales of goods and services:			
Government		825	833
Non-government		222	227
Interest		190	429
GST refunds received		1,722	1,847
Other (a)		700	265
Total cash received		<u>66,175</u>	<u>63,505</u>
Cash used			
Employees		34,724	31,953
Suppliers		25,575	24,356
Other (b)		452	359
Appropriation cash returned to OPA		15,757	-
Total cash used		<u>76,508</u>	<u>56,668</u>
<b>Net cash from / (used by) operating activities</b>	25	<u>(10,333)</u>	<u>6,837</u>
<b>INVESTING ACTIVITIES</b>			
Cash received			
Proceeds from sales of infrastructure, plant and equipment		46	113
Other (c)		100	-
Total cash received		<u>146</u>	<u>113</u>
Cash used			
Purchase of land and buildings		983	1,104
Purchase of infrastructure, plant and equipment		1,019	931
Purchase of intangibles		307	568
Total cash used		<u>2,309</u>	<u>2,603</u>
<b>Net cash from / (used by) investing activities</b>		<u>(2,163)</u>	<u>(2,490)</u>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**STATEMENT OF CASH FLOWS**

For the period ended 30 June 2003

	Note	2002-2003 \$'000	2001-2002 \$'000
<b>FINANCING ACTIVITIES</b>			
Cash received			
Other (d)		-	125
Total cash received		<u>-</u>	<u>125</u>
Cash used			
Capital use charge paid		1,204	1,093
Return of contributed equity		520	-
Total cash used		<u>1,724</u>	<u>1,093</u>
<b>Net cash from / (used by) financing activities</b>		<u><b>(1,724)</b></u>	<u><b>(968)</b></u>
<b>Net increase / (decrease) in cash held</b>		<u><b>(14,220)</b></u>	<u><b>3,379</b></u>
Cash at the beginning of the reporting period		14,461	11,082
<b>Cash at the end of the reporting period</b>		<u><b>241</b></u>	<u><b>14,461</b></u>

- (a) Employee and supplier expense recoveries
- (b) Costs awarded payments
- (c) Lease incentives received as cash
- (d) Refund of excess CUC

The above statement should be read in conjunction with the accompanying notes

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**SCHEDULE OF COMMITMENTS**  
For the period ended 30 June 2003

	Note	2002-2003 \$'000	2001-2002 \$'000
<b>BY TYPE</b>			
<b>Capital Commitments Payable</b>			
Land and buildings		404	36
Infrastructure, plant and equipment		-	107
Intangibles		-	32
Total capital commitments payable		<u>404</u>	<u>175</u>
<b>Other Commitments Payable</b>			
Operating leases	2.6	55,405	30,731
Legal services		4,174	3,504
Goods and services (excluding legal services)		585	994
GST payable on commitments receivable		18	19
Total other commitments payable		<u>60,182</u>	<u>35,248</u>
<b>Commitments Receivable</b>			
Sub-lease rental	2.6	(458)	(594)
GST receivable on commitments payable		(5,488)	(2,359)
Total commitments receivable		<u>(5,946)</u>	<u>(2,953)</u>
<b>Net commitments</b>		<u>54,640</u>	<u>32,470</u>
<b>BY MATURITY</b>			
<b>Capital Commitments</b>			
One year or less		404	175
<b>Operating Lease Commitments Payable</b>			
One year or less		8,190	8,311
From one to five years		22,648	17,267
Over five years		24,567	5,153
Total operating lease commitments payable		<u>55,405</u>	<u>30,731</u>
<b>Operating Lease Commitments Receivable</b>			
One year or less		(198)	(177)
From one to five years		(260)	(417)
Total operating lease commitments receivable		<u>(458)</u>	<u>(594)</u>
<b>All Net Commitments</b>			
One year or less		11,041	11,157
From one to five years		21,265	16,628
Over five years		22,334	4,685
Total net commitments		<u>54,640</u>	<u>32,470</u>

NB: Commitments are GST inclusive where applicable

The above schedule should be read in conjunction with the accompanying notes

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
SCHEDULE OF CONTINGENCIES**

For the period ended 30 June 2003

	Note	2002-2003	2001-2002
		\$'000	\$'000
<b>CONTINGENCIES</b>		<b>N/A*</b>	<b>N/A*</b>

**SCHEDULE OF UNQUANTIFIABLE CONTINGENCIES**

\* If a matter being prosecuted by the Commonwealth Director of Public Prosecutions (CDPP) is defended successfully, the court may order that the CDPP meet certain costs incurred by the defence. If a matter is being prosecuted by the CDPP and assets are frozen under the *Proceeds of Crime Act 1987*, the CDPP gives an undertaking against potential losses in respect of assets administered by the Commonwealth. If the related prosecution is unsuccessful, damages can be awarded against the CDPP. Costs and damages so awarded are met from the CDPP or client organisations annual appropriations.

Although costs and damages have been awarded against the CDPP and will continue to be awarded from time to time, the CDPP is unable to declare an estimate of liabilities not recognised nor undertakings due to the uncertainty of the outcome of matters, but more particularly to the sensitivity of the information related to matters still before the courts.

The above schedule should be read in conjunction with the accompanying notes

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
SCHEDULE OF ADMINISTERED ITEMS**

	Note	2002-2003 \$'000	2001-2002 \$'000
<b>Revenues Administered on Behalf of Government</b>			
<i>For the period ended 30 June 2003</i>			
Non-taxation			
Reversal of previous asset write-downs	31	108	515
Fees and fines		24,569	18,260
Other		-	105
Total non-taxation		<u>24,677</u>	<u>18,880</u>
Total Revenues Administered on Behalf of Government		<u>24,677</u>	<u>18,880</u>
<b>Expenses Administered on Behalf of Government</b>			
<i>For the period ended 30 June 2003</i>			
Write-down of assets	32	7,566	1,395
Other	33	19,194	14,478
Total Expenses Administered on Behalf of Government		<u>26,760</u>	<u>15,873</u>
The above schedule should be read in conjunction with the accompanying notes			



**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
SCHEDULE OF ADMINISTERED ITEMS**

	Note	2002-2003 \$'000	2001-2002 \$'000
<b>Assets Administered on Behalf of Government</b>			
<i>As at 30 June 2003</i>			
Financial assets			
Cash		-	14
Receivables	34	1,857	5,442
Total financial assets		<u>1,857</u>	<u>5,456</u>
<b>Total Assets Administered on Behalf of Government</b>		<u>1,857</u>	<u>5,456</u>
<b>Liabilities Administered on Behalf of Government</b>			
<i>As at 30 June 2003</i>			
Provisions and payables			
Other payables		14	-
Total provisions and payables		<u>14</u>	<u>-</u>
<b>Total Liabilities Administered on Behalf of Government</b>		<u>14</u>	<u>-</u>
<b>Current assets</b>		1,752	5,304
<b>Non-current assets</b>		105	152
<b>Current liabilities</b>		14	-
<b>Non-current liabilities</b>		-	-
The above Schedule should be read in conjunction with the accompanying notes			

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
SCHEDULE OF ADMINISTERED ITEMS**

	Note	2002-2003 \$'000	2001-2002 \$'000
<b>Administered Cash Flows</b>			
<i>For the period ended 30 June 2003</i>			
<b>OPERATING ACTIVITIES</b>			
Cash received			
Fines and costs		1,862	1,740
Cash from Official Public Account-refunds		53	-
Other		-	105
Total cash received		<u>1,915</u>	<u>1,845</u>
Cash used			
Cash to Official Public Account		1,583	1,674
Other		346	174
Total cash used		<u>1,929</u>	<u>1,848</u>
<b>Net cash from / (used by) operating activities</b>		<u>(14)</u>	<u>(3)</u>
<b>Net increase / (decrease) in cash held</b>		<u>(14)</u>	<u>(3)</u>
Cash at the beginning of the reporting period		14	17
<b>Cash at the end of the reporting period</b>		<u>-</u>	<u>14</u>
The above Schedule should be read in conjunction with the accompanying notes			

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
SCHEDULE OF ADMINISTERED ITEMS**

	Note	2002-2003 \$'000	2001-2002 \$'000
<b>Administered Commitments</b>			
<i>As at 30 June 2003</i>			
		<b>Nil</b>	Nil
<b>Administered Contingencies</b>			
<i>As at 30 June 2003</i>			
		<b>Nil</b>	Nil

**SCHEDULE OF UNQUANTIFIABLE CONTINGENCIES**

Fines and costs receivables are recorded at the amount set down in a decision by a Court. These decisions are subject to appeal, either by the Prosecution or by the Defence. If an appeal is successful, the amount of fines and costs receivable may increase or decrease.

The CDPP is unable to declare an estimate of contingent gains or losses not recognised due to the uncertainty of the outcome of matters, but more particularly to the sensitivity of the information related to matters still before the courts.

The above Schedule should be read in conjunction with the accompanying notes

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2003

---

<b>Note</b>	<b>Description</b>
1	Objectives
2	Summary of Significant Accounting Policies
3	Events Occurring After Balance Date
4	Revenues from Government
5	Sales of goods and services
6	Net gains / (losses) from sale of assets
7	Other operating revenues
8	Employee expenses
9	Supplier expenses
10	Depreciation and amortisation
11	Write-down of assets
12	Other operating expenses
13	Cash
14	Receivables
15	Land and buildings
16	Infrastructure, plant and equipment
17	Intangibles
18	Analysis of land, buildings, plant, equipment and intangibles
19	Other non-financial assets
20	Non-interest bearing liabilities
21	Employee provisions
22	Suppliers payables and provisions
23	Other provisions and payables
24	Equity
25	Cash flow reconciliation
26	Executive remuneration
27	Remuneration of Auditors
28	Act of Grace payments, Waivers and Defective Administration Scheme
29	Average staffing level
30	Financial instruments
31	Reversal of previous Administered asset write-downs
32	Write-down of Administered assets
33	Other Administered expenses
34	Administered receivables
35	Administered reconciliation table
36	Administered financial instruments
37	Appropriations
38	Special accounts
39	Reporting by outcomes

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**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2003

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**Note 1 - Objectives of the Office of the Commonwealth Director of Public Prosecutions**

The objective of the Office of the Commonwealth Director of Public Prosecutions (CDPP) is to provide a fair, effective and efficient prosecution service to the Commonwealth and to the people of Australia.

The CDPP has one outcome:

*To contribute to the safety and well-being of the people of Australia and to help protect the resources of the Commonwealth through the maintenance of law and order and by combating crime.*

The CDPP has one output:

*An independent service to prosecute alleged offences against the criminal law of the Commonwealth, in appropriate matters, in a manner which is fair and just and to ensure that offenders, where appropriate, are deprived of the proceeds and benefits of criminal activity.*

**Note 2 - Summary of significant accounting policies****2.1 Basis of Accounting**

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997 (FMA)*, and are a general purpose financial report.

The statements have been prepared in accordance with:

- Finance Minister's Orders (*being the Financial Management and Accountability (Financial Statements for reporting periods ending on or after 30 June 2003) Orders*);
- Australian Accounting Standards and Accounting Interpretations issued by Australian Accounting Standards Boards; and
- Consensus Views of the Urgent Issues Group.

The statements have been prepared having regard to Statements of Accounting Concepts.

The Agency Statements of Financial Performance and Financial Position have been prepared on an accrual basis and are in accordance with historical cost convention, except for certain assets, which, as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

Assets and liabilities are recognised in the Agency Statement of Financial Position when and only when it is probable that future economic benefits will flow and the amounts of the assets and liabilities can be reliably measured. Assets and liabilities arising under agreements equally proportionately unperformed are however not recognised unless required by an Accounting Standard. Assets and liabilities which are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Revenues and expenses are recognised in the Agency Statement of Financial Performance when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**For the period ended 30 June 2003

---

**Note 2 – Summary of significant accounting policies (cont)**

The continued existence of the CDPP in its present form, and with its present programs, is dependent on Government policy and on continuing appropriations by Parliament for the CDPP's administration and programs.

**2.2 Changes to Accounting Policy**

The accounting policies used in the preparation of these financial statements are consistent with those used in 2001-2002 except in respect of:

- Measurement of certain employee benefits at nominal amounts (refer Note 2.5);
- The initial revaluation of property plant and equipment on a fair value basis (refer Note 2.10 B); and
- the imposition of an impairment test for non-current assets carried at cost (refer Note 2.10 C).

**2.3 Revenue****A. Revenues from Government - Agency Appropriations**

Departmental outputs appropriations for the year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised as revenue, except for certain amounts which relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

**B. Resources Received Free of Charge**

Services received free of charge are recognised as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Services received free of charge from other Commonwealth agencies are recorded as revenues from Government, those received from State Government agencies are recorded as other revenues.

**C. Other Revenue**

Revenue from the sale of goods is recognised upon delivery of goods to customers.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts or other agreements to provide services. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets.

Revenue from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the period ended 30 June 2003

---

**Note 2 – Summary of significant accounting policies (cont)**

**2.4 Transactions with the Government as Owner**

*Capital Use Charge*

A capital use charge of 11% (11% in 2001-2001) is imposed by the Government on the net agency assets of the CDPP. The charge is adjusted to take account of asset gifts and revaluation increments during the financial year. The charge is accounted for as a dividend to Government.

In accordance with the recommendations of a review of Budget Estimates and Framework, the Government has decided that the Charge will not operate after 30 June 2003.

**2.5 Employee Entitlements**

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for wages and salaries (including non-monetary benefits) and annual leave are measured at their nominal amounts. Other employee benefits expected to be settled within 12 months of the reporting date are also measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability. This is a change in accounting policy from last year required by on initial application of a new Accounting Standard AASB 1028 from 1 July 2002. As there was no increase in pay rates from 30 June 2002 to 30 June 2003 there was no financial effect for this change.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

**A. Leave**

The liability for employee entitlements includes provision for annual leave and long service leave. No provision has been made for sick leave, as sick leave is non-vesting, and the average sick leave taken in future years by employees of the CDPP is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the Agency's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

During 1999-2000 the CDPP arranged for an actuarial assessment of its long service leave entitlements. This provided advice on the average length of service at which employees would take long service leave and what was the probability of employee reaching ten years service. In determining the present value of the liability, the CDPP has taken into account pay increases through promotion and inflation.

**B. Separation and redundancy**

Provision is made for separation and redundancy payments in circumstances where the CDPP has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.



**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2003

**Note 2 – Summary of significant accounting policies (cont)**

*C. Superannuation*

Ongoing staff employed by the CDPP contribute to the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. Non-ongoing staff who do not contribute to the above schemes are entitled to superannuation guarantee payments to nominated superannuation funds.

The liability for Commonwealth superannuation benefits is recognised in the financial statements of the Commonwealth and is settled by the Commonwealth in due course. The CDPP makes employer contributions to the Commonwealth at rates determined by an actuary to be sufficient to meet the cost to the Commonwealth of the superannuation entitlements of the Agency's employees.

The liability for superannuation recognised as at 30 June represent outstanding contributions for the final fortnight of the year.

**2.6 Leases**

A distinction is made between finance leases, which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets, and operating leases, under which the lessor effectively retains substantially all such risks and benefits.

Operating lease payments are expensed on a basis that is representative of the pattern of benefits derived from the leased assets. The net present value of future net outlays in respect of surplus space under non-cancellable lease arrangements is expensed in the period in which the space is recognised as surplus.

Operating lease receipts are credited on a basis that is representative of the pattern of benefits derived from the leased assets.

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

Operating leases included in the Schedule of Commitments are effectively non-cancellable and comprise:

<u>Nature of lease</u>	<u>General description of leasing arrangement</u>
Leases for office accommodation	<ul style="list-style-type: none"> <li>▪ Lease payments are subject to increases in accordance with the terms and conditions of each lease.</li> <li>▪ The initial term of the leases vary, as do the options to renew.</li> </ul>
Leases for motor vehicles (for general office use and for senior executives' remuneration packages)	<ul style="list-style-type: none"> <li>▪ No contingent rentals exist.</li> <li>▪ There are no renewal or purchase options available to the CDPP.</li> </ul>

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**Note 2 – Summary of significant accounting policies (cont)**

<u>Nature of lease</u>	<u>General description of leasing arrangement</u>
Lease for computer equipment	<ul style="list-style-type: none"> <li>▪ The master planned rental agreement commenced w.e.f. 01.07.2001.</li> <li>▪ Lease payments are determined at the start of the lease made under the master planned rental agreement, are based on the prevailing interest rates at that time and are fixed for the lease period</li> <li>▪ The term of the lease can be extended.</li> </ul>
Sub-lease for vacant office accommodation	<ul style="list-style-type: none"> <li>▪ Lease payments are subject to set bi-annual increases.</li> <li>▪ There is no option to renew.</li> </ul>
Sub-lease for shared office accommodation	<ul style="list-style-type: none"> <li>▪ Lease payments are subject to increases in accordance with the terms and conditions of the head-lease.</li> <li>▪ There is an option to renew in the head-lease.</li> </ul>

The CDPP has no finance leases.

### **2.7 Cash**

Cash includes notes and coins held, deposits held at call with a Bank or Financial Institution.

A recommendation of the Budget Estimates and Framework Review was that Agencies return cash, above agreed working fund levels, to the Official Public Account. As at 30 June the CDPP returned \$15,757,333.57 to the Official Public Account. This money is still appropriated to the CDPP and is available for CDPP expenditure. As shown in Note 14, this amount is now recognised as a receivable rather than as cash.

### **2.8 Financial Instruments**

Accounting policies for financial instruments are stated at Notes 30 and 36.

### **2.9 Acquisition of Assets**

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring administrative arrangements. In the latter case, assets are initially recognised at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring.

### **2.10 Property, Plant and Equipment**

#### *A. Asset Recognition Threshold*

Purchases of Property, Plant and Equipment are recognised initially at cost in the Statement of Financial Position, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total). The \$2,000 threshold is not applied to Library Holdings, Original Artworks and limited edition prints.

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**Note 2 – Summary of significant accounting policies (cont)****B. Revaluation**

Land, buildings, plant and equipment are carried at valuation. Revaluations undertaken up to 30 June 2002 were done on a deprival basis; revaluations since that date are at fair value. This change in accounting policy is required by Australian Accounting Standard AASB 1041 *Revaluation of Non-Current Assets*.

The CDPP deemed all assets held at deprival value at 30 June 2002 to be the same fair value as at 1 July 2002. As a result there was no financial effect of this accounting policy change. Under both deprival and fair value, assets which are surplus to requirements are measured at their net realisable value.

Accounting Standard AAS 6 *Accounting Policies* requires, where practicable, presentation of the information that would have been disclosed in the 2001-2002 had the new accounting policy always been applied. The change from deprival to fair value had no impact on comparative 2001-2002 values.

During the 2001-2002 Financial Year, the CDPP revalued all property, plant and equipment assets using the deprival method:

- all property, plant and equipment assets acquired before 31 May 2002, except Library Assets, were subject to an Independent Revaluation, with an effective valuation date of 30 June 2002. The revaluation was conducted by International Valuation Consultants, using the Deprival Method of valuation, having regard to the estimated Current Replacement Costs. The individual valuer was Jarrod Booker MAVA; and
- a Directors' Valuation of the Library Assets was undertaken, with an effective valuation date of 30 June 2002.

As at 30 June 2003 the CDPP revalued fitout and make good assets to fair value taking into account an index which reflected building cost price movements. The index used was the Building Economist Cost Index published by the Australian Institute of Quantity Surveyors. All other asset values were assessed by the CDPP as being consistent with current fair values for their asset classes.

**C. Recoverable Amount Test**

From 1 July 2002, the Schedule 1 no longer requires the application of the recoverable amount test in Australian Accounting Standard AAS 10 *Recoverable Amount of Non-Current Assets* to the assets of agencies when the primary purpose of the asset is not the generation of net cash inflows.

No property plant and equipment assets other than land now held for sale have been written down to recoverable amount per AAS 10. Accordingly, the change in policy has had no financial effect.

**D. Depreciation and Amortisation**

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the CDPP using, in all cases, the straight-line method of depreciation. Leasehold improvements include office fit out and purpose built furniture, and are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

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**Note 2 – Summary of significant accounting policies (cont)**

Depreciation/amortisation rates (useful lives), and the methods, are reviewed at each balance date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Residuals are re-estimated for a change in prices only when the assets are revalued.

Depreciation and amortisation rates applying to each class of depreciable Asset are based on the following useful lives:

<u>Class</u>	<u>2002-2003</u>	<u>2001-2002</u>
Leasehold Improvements	Lease Term	Lease Term
Property, Plant and Equipment	2 – 30 years	2 – 30 years

The aggregate amount of Depreciation allocated for each class of asset during the reporting period is disclosed in Note 10.

**2.11 Intangibles**

Intangibles comprise internally developed software for internal use. As at 30 June 2002 the CDPP deemed the 30 June 2002 Deprival valuation to be the cost basis. There was no financial impact of this change in accounting policy.

From 1 July 2002, Schedule 1 no longer requires the application of the recoverable amount test in Australian Accounting Standard AAS 10 *Recoverable Amount of Non-Current Assets* to the assets of agencies when the primary purpose of the asset is not the generation of net cash inflows. However, Schedule 1 now requires such assets, if carried on the cost basis, to be assessed for indications of impairment. The carrying amount of impaired assets must be written down to the higher of its net market selling price or depreciated replacement cost.

All software assets were assessed for impairment as at 30 June 2003. None were found to be impaired.

Software is amortised on a straight line basis over its anticipated useful life. The useful lives of software range from 4 – 13 years for both 2002-2003 and 2001-2002

**2.12 Taxation**

The CDPP is exempt from all forms of taxation with the exception of fringe benefits tax and the goods and services tax (GST).

Revenues, expenses, liabilities and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

**2.13 Foreign Currency**

Transactions denominated in a foreign currency are converted at the exchange rate at the date of the transaction.

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**Note 2 – Summary of significant accounting policies (cont)****2.14 Insurance**

The CDPP has insured for risks, other than worker's compensation, through the Government's insurable risk managed fund, Comcover. Worker's compensation is insured through Comcare Australia.

**2.15 Comparative Figures**

Comparative figures have been adjusted to conform with changes in presentation in these Financial Statements where required.

**2.16 Rounding**

Amounts have been rounded to the nearest \$1,000 except in relation to the following note disclosures:

- act of grace payments and waivers;
- remuneration of executives;
- remuneration of auditors; and
- appropriations.

**2.17 Commitments**

The amount shown as legal services commitments on the Schedule of Commitments represents estimated costs where legal counsel has been engaged to act on behalf of the CDPP. Although legal services cannot be contracted, these estimates are undertakings that are expected to create future liabilities.

**2.18 Executive Remuneration**

Finance Minister's Orders (FMOs) 7.B requires agencies to show the aggregate remuneration of all managers whose remuneration for the financial year is \$100,000 or more.

The FMOs provide additional guidance from last year in that for 2002-2003 reporting "managers" means Senior Executive Services (SES) or equivalent officers. In previous years the CDPP has reported on non-SES staff involved in the management of the CDPP and excluded staff who had no management responsibility.

Remuneration includes salary, employer superannuation costs, change in value of leave entitlements, non cash benefits and fringe benefit tax.

**2.19 Administered Items**

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Schedule of Administered Items and related Notes.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for Agency items, including the application to the greatest extent possible of Accounting Standards, Accounting Interpretations and UIG Consensus Views.

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**Note 2 – Summary of significant accounting policies (cont)**

Administered appropriations received or receivable from the Official Public Account (OPA) are not reported as administered revenues or assets respectively. Similarly, administered receipts transferred or transferable to the OPA are not reported as administered expenses or payables. These transactions or balances are internal to the Administered entity.

These transfers of cash are reported as administered (operating) cash flows and in the administered reconciliation table in Note 35.

Accounting policies which are relevant to administered activities only are disclosed below.

**2.20 Administered Revenue**

All revenues described in this note are revenues relating to the core operating activities performed by the CDPP on behalf of the Commonwealth.

Fines and costs are set down in a decision by a Court and are recorded as revenue on the date of the Court's decision. Where applicable, changes to the amount of fines and costs by subsequent appeals are recorded as a variation to the revenue (plus or minus) on the date of the Court's decision in respect of the appeal.

Reversal of previous write-downs occurs when a receivable written-off in a previous financial period is subsequently recovered.

**2.21 Administered Expenses**

All expenses described in this note are expenses relating to the core operating activities performed by the CDPP on behalf of the Commonwealth.

*A. Write-down of assets*

Receivables are written down where fines and costs have been converted to a prison sentence or a community service order, or are estimated to be irrecoverable.

The collectability of receivables are reviewed at balance date and a provision is made when collection of the receivable is judged to be less rather than more likely.

*B. Transfers to other Agencies*

Fines and costs that are payable to another agency are recorded as an expense.

**2.22 Administered Receivables**

The CDPP is not responsible for the collection of fees and fines; this is the responsibility of the Courts and/or State Collection Agencies.

**Note 3 - Events Occurring After Balance Date**

There were no events occurring after balance date that had any material effect on the 2002-2003 Financial Statements.

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	2002-2003 \$'000	2001-2002 \$'000
<b><u>Note 4 - Revenues from Government</u></b>		
Appropriations for outputs	62,516	59,904
Resources received free of charge-Related entities	60	60
Total	<u>62,576</u>	<u>59,964</u>
<b><u>Note 5 - Sales of goods and services</u></b>		
Provision of goods	4	24
Operating lease rental revenue	186	117
Rendering of services revenue	1,001	758
Other	19	18
Total	<u>1,210</u>	<u>917</u>
Goods were sold as follows:		
Related entities	-	-
External entities	4	24
Total	<u>4</u>	<u>24</u>
Services were sold as follows:		
Related entities	1,000	758
External entities	206	135
Total	<u>1,206</u>	<u>893</u>
Costs of sales of goods	-	-
<b><u>Note 6 - Net gains / (losses) from sale of assets</u></b>		
Non-financial assets		
Infrastructure, plant and equipment		
Proceeds from sale	72	38
Net book value at sale	(228)	(76)
Net gain / (loss) from sales	<u>(156)</u>	<u>(38)</u>
Intangibles		
Proceeds from sale	-	15
Net book value at sale	-	(4)
Net gain / (loss) from sales	<u>-</u>	<u>11</u>
Total Proceeds from sale	72	53
Total Net book value at sale	(228)	(80)
Net gain / (loss) from sales	<u>(156)</u>	<u>(27)</u>

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	2002-2003 \$'000	2001-2002 \$'000
<b><u>Note 7 - Other operating revenues</u></b>		
Employment subsidies	24	36
Civil costs awarded	8	5
Resources received free of charge-External entities	498	382
Other	35	141
Total	<u>565</u>	<u>564</u>
<b><u>Note 8 - Employee expenses</u></b>		
Wages and salary	29,160	26,667
Superannuation	4,237	3,829
Leave and other entitlements	1,898	1,021
Separation and redundancy payments	331	257
Other employee benefits	A 309	726
Total employee benefits expense	<u>35,935</u>	<u>32,500</u>
Other employee expenses	492	355
Total	<u>36,427</u>	<u>32,855</u>
A Other employee benefits includes \$83K (2001-2002 \$283K) for operating leases on motor vehicles.		
<b><u>Note 9 - Supplier expenses</u></b>		
Supply of goods	2,179	1,852
Supply of services	12,015	12,689
Operating leases	2.6 6,218	7,064
Total	<u>20,412</u>	<u>21,605</u>
Goods were purchased as follows:		
Related entities	52	29
External entities	2,127	1,823
Total	<u>2,179</u>	<u>1,852</u>
Services were purchased as follows:		
Related entities	980	1,125
External entities	11,035	11,564
Total	<u>12,015</u>	<u>12,689</u>
Operating lease payments comprise:		
Minimum lease payments	6,030	6,932
Rental expense for sub-leases	188	132
Total	<u>6,218</u>	<u>7,064</u>



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	2002-2003 \$'000	2001-2002 \$'000
<b>Note 10 - Depreciation and amortisation</b>		
The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:		
Leasehold improvements	1,302	1,651
Plant and equipment	1,239	1,309
Intangibles	640	582
Total	<u>3,181</u>	<u>3,542</u>
<b>Note 11 - Write-down of assets</b>		
Financial assets		
Receivables	1	-
Sub-total	<u>1</u>	<u>-</u>
Non-financial assets - write-off		
Leasehold improvements	-	44
Plant and equipment	5	236
Intangibles	84	2
Sub-total	<u>89</u>	<u>282</u>
Total	<u>90</u>	<u>282</u>
<b>Note 12 - Other operating expenses</b>		
Costs awarded against the Commonwealth	943	498
Total	<u>943</u>	<u>498</u>
<b>Note 13 - Cash</b>		
Cash at bank	200	1,297
Cash on hand	41	49
Term deposit	-	13,115
Total	<u>241</u>	<u>14,461</u>

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	2002-2003 \$'000	2001-2002 \$'000
<b><u>Note 14 - Receivables</u></b>		
Appropriations	15,757	-
Goods and services	253	60
GST receivable from the Australian Taxation Office	212	175
Interest	-	142
Lease incentives receivable	88	188
Other	96	-
Total	<u>16,406</u>	<u>565</u>
All receivables are current assets and there are no provisions for doubtful debts		
Receivables are aged as follows:		
Not overdue	16,315	543
Overdue less than 30 days	-	2
Overdue 30 to 60 days	-	-
Overdue 60 to 90 days	-	1
Overdue more than 90 days	91	19
Total	<u>16,406</u>	<u>565</u>
<b><u>Note 15 - Land and buildings</u></b>		
Leasehold improvements		
Leasehold improvements at fair value	2.10B 14,981	-
Accumulated amortisation	<u>(9,277)</u>	-
	<u>5,704</u>	-
Leasehold improvements at 2002 valuation	2.10B -	13,808
Accumulated amortisation	-	<u>(8,399)</u>
	-	<u>5,409</u>
Total leasehold improvements	<u>5,704</u>	<u>5,409</u>
Total land and buildings (non-current)	<u>5,704</u>	<u>5,409</u>
<b><u>Note 16 - Infrastructure, plant and equipment</u></b>		
Plant and equipment		
Computers at fair value	2.10B 1,320	-
Accumulated depreciation	<u>(1,031)</u>	-
	<u>289</u>	-
Computers at 2002 valuation	2.10B -	1,648
Accumulated depreciation	-	<u>(1,178)</u>
	-	<u>470</u>
Furniture at fair value	2.10B 4,447	-
Accumulated depreciation	<u>(2,799)</u>	-
	<u>1,648</u>	-

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		2002-2003 \$'000	2001-2002 \$'000
<b>Note 16 - Infrastructure, plant and equipment (cont)</b>			
Furniture at 2002 valuation	2.10B	-	4,438
Accumulated depreciation		-	(2,725)
		<u>-</u>	<u>1,713</u>
Other plant and equipment at fair value	2.10B	<b>2,487</b>	-
Accumulated depreciation		<b>(950)</b>	-
		<u><b>1,537</b></u>	<u>-</u>
Other plant and equipment at 2002 valuation	2.10B	-	2,310
Accumulated depreciation		-	(1,117)
		<u>-</u>	<u>1,193</u>
Other plant and equipment at cost		-	99
Accumulated depreciation		-	(1)
		<u>-</u>	<u>98</u>
Artwork at fair value	2.10B	<b>153</b>	-
Accumulated depreciation		<b>(56)</b>	-
		<u><b>97</b></u>	<u>-</u>
Artwork at 2002 valuation	2.10B	-	153
Accumulated depreciation		-	(44)
		<u>-</u>	<u>109</u>
Library holdings at fair value	2.10B	<b>3,275</b>	-
Accumulated depreciation		<b>(955)</b>	-
		<u><b>2,320</b></u>	<u>-</u>
Library holdings at 2002 valuation	2.10B	-	3,275
Accumulated depreciation		-	(791)
		<u>-</u>	<u>2,484</u>
Total plant and equipment		<u><b>5,891</b></u>	<u>6,067</u>
Total Infrastructure, plant and equipment (non-current)		<u><b>5,891</b></u>	<u>6,067</u>
<b>Note 17 - Intangibles</b>			
Computer software			
Purchased software at cost		<b>3,056</b>	2,806
Accumulated amortisation		<b>(2,365)</b>	(1,934)
		<u><b>691</b></u>	<u>872</u>
Internally developed software - deemed at cost	2.11	<b>784</b>	1,279
Accumulated amortisation		<b>(689)</b>	(948)
		<u><b>95</b></u>	<u>331</u>
Total computer software		<u><b>786</b></u>	<u>1,203</u>
Total intangible assets		<u><b>786</b></u>	<u>1,203</u>

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**Note 18 - Analysis of land, buildings, plant, equipment and intangibles**

**A. Movement summary for reporting period for all assets irrespective of valuation basis**

Item	Buildings- leasehold improvements	Infrastructure , plant and equipment	Intangibles -computer software	Total
	\$'000	\$'000	\$'000	\$'000
<b>Gross value at beginning of reporting period</b>	13,808	11,923	4,085	<b>29,816</b>
Additions: purchase of assets	983	1,110	307	<b>2,400</b>
Disposals	-	(1,155)	-	<b>(1,155)</b>
Write-offs	(335)	(45)	(552)	<b>(932)</b>
Revaluations: write-ups / (write-downs)	526	-	-	<b>526</b>
Assets transferred in / (out)	-	(151)	-	<b>(151)</b>
Other movements	(1)	-	-	<b>(1)</b>
<b>Gross value at end of reporting period</b>	<u>14,981</u>	<u>11,682</u>	<u>3,840</u>	<u><b>30,503</b></u>
<b>Accumulated depreciation / amortisation at beginning of reporting period</b>	8,399	5,856	2,882	<b>17,137</b>
Depreciation / amortisation charge for the reporting period	1,302	1,239	640	<b>3,181</b>
Disposals	-	(927)	-	<b>(927)</b>
Write-offs	(335)	(40)	(468)	<b>(843)</b>
Revaluations: write-ups / (write-downs)	(88)	(198)	-	<b>(286)</b>
Assets transferred in / (out)	-	(138)	-	<b>(138)</b>
Other movements	(1)	(1)	-	<b>(2)</b>
<b>Accumulated depreciation / amortisation at end of reporting period</b>	<u>9,277</u>	<u>5,791</u>	<u>3,054</u>	<u><b>18,122</b></u>
<b>Net book value at end of reporting period</b>	<u><b>5,704</b></u>	<u><b>5,891</b></u>	<u><b>786</b></u>	<u><b>12,381</b></u>
Net book value at beginning of reporting period	<u>5,409</u>	<u>6,067</u>	<u>1,203</u>	<u>12,679</u>

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**Note 18 - Analysis of land, buildings, plant, equipment and intangibles**

**B. Summary of balances of assets held at valuation at end of reporting period**

Item	Buildings- leasehold improvements	Infrastructure , plant and equipment	Intangibles -computer software	Total
	\$'000	\$'000	\$'000	\$'000
<b>As at end of reporting period</b>				
Gross value	14,981	11,682	-	<b>26,663</b>
Accumulated depreciation / amortisation	9,277	5,791	-	<b>15,068</b>
Net book value at end of reporting period	<u>5,704</u>	<u>5,891</u>	<u>-</u>	<u><b>11,595</b></u>
<b>As at beginning of reporting period</b>				
Gross value	13,808	11,824	-	<b>25,632</b>
Accumulated depreciation / amortisation	8,399	5,855	-	<b>14,254</b>
Net book value at beginning of reporting period	<u>5,409</u>	<u>5,969</u>	<u>-</u>	<u><b>11,378</b></u>

No assets were held under finance lease during the reporting period.

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	2002-2003 \$'000	2001-2002 \$'000
<b><u>Note 19 - Other non-financial assets</u></b>		
Prepayments	1,371	1,005
Total	<u>1,371</u>	<u>1,005</u>
<b><u>Note 20 - Non-interest bearing liabilities</u></b>		
Lease incentives	2,163	3,218
Total	<u>2,163</u>	<u>3,218</u>
Current	1,178	1,249
Non-current	985	1,969
<b><u>Note 21 - Employee provisions</u></b>		
Salaries and wages	872	742
Leave	2.5A 11,355	9,479
Superannuation	130	110
Separations and redundancies	-	164
Sub-total employee benefits liability	<u>12,357</u>	<u>10,495</u>
Other employee provisions	44	-
Total	<u>12,401</u>	<u>10,495</u>
Current	4,118	3,621
Non-current	8,283	6,874
<b><u>Note 22 - Suppliers payables and provisions</u></b>		
Trade Creditors	2,358	3,746
Provision for fitout restoration	928	883
Provision for rent on surplus space	29	71
Total	<u>3,315</u>	<u>4,700</u>
Current	2,662	3,799
Non-current	653	901
<b><u>Note 23 - Other provisions and payables</u></b>		
Prepayments received	-	11
Total	<u>-</u>	<u>11</u>
Current	-	11
Non-current	-	-

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	Accumulated Results		Asset Revaluation Reserve		Contributed Equity		Total Equity	
	2002-2003 \$'000	2001-2002 \$'000	2002-2003 \$'000	2001-2002 \$'000	2002-2003 \$'000	2001-2002 \$'000	2002-2003 \$'000	2001-2002 \$'000
Opening balance as at beginning of reporting period	4,557	2,558	3,620	3,819	2,027	2,027	10,204	8,404
Operating results	3,190	3,201	-	-	-	-	3,190	3,201
Net revaluation increment / (decrement)	-	-	768	(199)	-	-	768	(199)
Transactions with owners: Distributions to owner:	-	-	-	-	(620)	-	(620)	-
Return of equity	(1,122)	(1,202)	-	-	-	-	(1,122)	(1,202)
Capital Use Charge (CUC) payments <sup>A</sup>	6,626	4,557	4,398	3,620	1,607	2,027	12,620	10,204
Closing balance as at end of reporting period	-	-	-	-	-	-	-	-
Less: Outside equity interests	6,626	4,557	4,398	3,620	1,607	2,027	12,620	10,204
<b>Total equity attributable to the Commonwealth</b>	-	-	-	-	-	-	-	-
	6,626	4,557	4,398	3,620	1,607	2,027	12,620	10,204

A. The CUC amount for 2001-2002 includes an adjustment of \$27,000 for the 2000-2001 financial year.

	2002-2003	2001-2002
	\$'000	\$'000

**Note 25 - Cash flow reconciliation**

Reconciliation of Cash per Statement of Financial Position to Statement of Cash Flows:

Cash at year end per Statement of Cash Flows	241	14,461
Cash as per Statement of Financial Position	241	14,461

Reconciliation of operating surplus to the net cash provided by operating activities:

Net Surplus (deficit)	3,190	3,201
Depreciation and amortisation	3,181	3,541
Loss on sale of non-current assets	156	28
Write-down of non-current assets	88	282
Assets not previously recognised	-	(3)
Decrease (increase) in net receivables	(15,872)	202
Decrease (increase) in prepayments paid	(366)	(161)
Increase (decrease) in debt	(1,055)	(1,249)
Increase (decrease) in employee provisions	1,906	755
Increase (decrease) in supplier payables	(1,550)	230
Increase (decrease) in prepayments received	(11)	11
Net cash from / (used by) operating activities	<u>(10,333)</u>	<u>6,837</u>



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2002-2003      2001-2002

**Note 26 - Executive remuneration**

The number of Executives who received or were due to receive total remuneration of \$100,000 or more:

	Number	Number
\$100,000 to \$109,999	-	2
\$110,000 to \$119,999	3	1
\$120,000 to \$129,999	2	4
\$130,000 to \$139,999	1	5
\$140,000 to \$149,999	8	7
\$150,000 to \$159,999	7	5
\$160,000 to \$169,999	9	6
\$170,000 to \$179,999	4	3
\$180,000 to \$189,999	2	1
\$190,000 to \$199,999	2	-
\$200,000 to \$209,999	1	1
\$210,000 to \$219,999	1	-
\$240,000 to \$249,999	-	1
\$250,000 to \$259,999	1	-
\$300,000 to \$309,999	-	1
\$350,000 to \$359,999	1	-
Total	<u>42</u>	<u>37</u>

The aggregate amount of total remuneration of the executives included above      **\$6,970,192**      \$5,530,662

The aggregate amount of separation and redundancy payments of the executives included above      \$ -      \$ -

NB: see note 2.18 re change in FMO's affecting this note disclosure.

**Note 27 - Remuneration of Auditors**

Financial statement audit services are provided free of charge to the Agency. The fair value of audit services provided was:

<u>\$ 60,000</u>	<u>\$ 60,000</u>
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No other services were provided by the Auditor-General.

**Note 28 - Act of Grace payments, Waivers and Defective Administration Scheme**

Act of Grace payments	Nil	Nil
Waivers made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i>	Nil	Nil
Defective Administration Scheme	Nil	Nil
Total	<u>\$ -</u>	<u>\$ -</u>

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**2002-2003**      2001-2002

**Note 29 – Average Staffing Level**

The average full time equivalent staffing levels  
for the Agency during the year were

**435**                      442

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**Note 30 – Financial Instruments**

**(a) Terms, conditions and accounting policies**

<b>Financial Instrument</b>	<b>Note</b>	<b>Accounting Policies and Methods (including recognition criteria and measurement basis)</b>	<b>Nature of Underlying Instrument (including significant terms &amp; conditions affecting the amount, timing and certainty of cash flows)</b>
Financial Assets		Financial Assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured.	
Cash – at Bank	13	Deposits are recognised at their nominal amounts. The account ceased to be interest bearing on 1 April 2003 when the interest cap had been attained.	The Agency maintains an account with the Reserve Bank of Australia for its for daily activities. End of day balances are swept into the Official Public Account nightly and returned at the beginning of the following business day. Interest was earned from the Department of Finance and Administration up to 31 March 2003. Interest rates averaged 2.00% (2001-2002 = 2.00%).
Cash – Term deposit	13	The term deposit account was closed on 30 June 2003.	Interest was earned from Department of Finance and Administration up to 31 December 2002, when the interest cap had been attained. Interest rates averaged 4.73% whilst interest was earned (2001-2002 = 4.42%).
Appropriations receivable	14	These receivables are recognised at their nominal amounts.	Amounts appropriated by the Parliament in the current or previous years which are available to be drawn down by the Office.
Receivables – Goods and services, Interest, lease incentives & other.	14	Receivables are reported at the nominal amounts due less any provision for bad or doubtful debts where applicable. Collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely.	Receivables are with the Commonwealth and external entities. The receivables are recoveries of expenses. Credit terms are net 30 days (2001-2002 30 days).

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**Note 30 – Financial Instruments (cont)**

**(a) Terms, conditions and accounting policies (cont)**

<b>Financial Instrument</b>	<b>Note</b>	<b>Accounting Policies and Methods (including recognition criteria and measurement basis)</b>	<b>Nature of Underlying Instrument (including significant terms &amp; conditions affecting the amount, timing and certainty of cash flows)</b>
<b><i>Financial Liabilities</i></b>		Financial Liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured.	
Suppliers provisions and payables - Trade creditors - Agency	22	Creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods and services have been received (and irrespective of having been invoiced).	Creditors are entities that are part of the Commonwealth legal entity and external to the Commonwealth. Settlement is usually made net 30 days.



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**Note 30 – Financial Instruments (cont)**

**(c) Net Fair Values of Agency Financial Assets and Liabilities**

		2002-2003		2001-2002	
	Note	Total carrying amount \$'000	Aggregate net fair value \$'000	Total carrying amount \$'000	Aggregate net fair value \$'000
<b>Financial Assets</b>					
Cash - at bank	13	200	200	1,297	1,297
Cash - term deposit	13	-	-	13,115	13,115
Receivables - appropriations	14	15,757	15,757	-	-
Receivables - goods and services (net)	14	253	253	60	60
Receivables - interest	14	-	-	142	142
Receivables - lease incentives	14	88	88	-	-
Receivables - other	14	96	96	-	-
<b>Total Financial Assets</b>		<b>16,394</b>	<b>16,394</b>	14,614	14,614
<b>Financial Liabilities (Recognised)</b>					
Trade creditors	22	2,358	2,358	3,746	3,746
<b>Total Financial Liabilities (Recognised)</b>		<b>2,358</b>	<b>2,358</b>	3,746	3,746

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**Note 30 – Financial Instruments (cont)****(c) Net Fair Values of Financial Assets and Liabilities (cont)*****Financial Assets***

The net fair values of cash, current term deposits and non-interest-bearing monetary financial assets approximate their carrying amounts.

***Financial Liabilities***

The net fair values for trade creditors are short term in nature and approximated by their carrying amounts.

**(d) Credit Risk Exposures**

The Agency's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Agency Statement of Financial Performance.

There are no significant exposures to any concentrations of credit risk in relation to the Agency receivables.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

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		2002-2003 \$'000	2001-2002 \$'000
<b>Note 31 - Reversal of previous Administered asset write-downs</b>			
Decrease in provision for doubtful debts	2.21A	-	502
Reinstate receivable previously written-off		108	13
Total		<u>108</u>	<u>515</u>
<b>Note 32 - Write-down of Administered assets</b>			
Financial Assets			
Write-off		747	870
Prison sentence		1,088	398
Community service orders		106	127
Increase in provision for doubtful debts	2.21A	5,625	-
Total		<u>7,566</u>	<u>1,395</u>
<p>Note: A significant amount of debts outstanding may not be recovered, as Fines and Costs may be converted by serving time in prison, by performing community service or similar provisions. A number of Fines and Costs are also written off as irrecoverable.</p>			
<b>Note 33 - Other Administered expenses</b>			
Revenue transfers to other Agencies <sup>A</sup>		227	174
Receivables assumed by other Agencies	2.19	18,967	14,304
Total		<u>19,194</u>	<u>14,478</u>
<p><sup>A</sup> Fines and Costs awarded by the Courts are usually CDPP revenue, however, working arrangements with some Government agencies allow for this revenue to be paid to them.</p>			



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For the period ended 30 June 2003

	2002-2003 \$'000	2001-2002 \$'000
<b>Note 34 - Administered receivables</b>		
Fines and Costs	10,270	8,230
Less : Provision for doubtful debts	(8,413)	(2,788)
Total	<u>1,857</u>	<u>5,442</u>
Fines and costs receivable (gross) are aged as follows:		
Not overdue	660	694
Overdue less than 30 days	260	1,827
Overdue 30 to 60 days	241	318
Overdue 60 to 90 days	222	132
Overdue more than 90 days	8,887	5,259
Total	<u>10,270</u>	<u>8,230</u>
The provision for doubtful debts is aged as follows:		
Not overdue	(35)	-
Overdue less than 30 days	(13)	-
Overdue 30 to 60 days	(48)	-
Overdue 60 to 90 days	(153)	-
Overdue more than 90 days	(8,163)	(2,788)
Total	<u>(8,412)</u>	<u>(2,788)</u>
<b>Note 35 - Administered reconciliation table</b>		
Administered assets less administered assets as at 1 July	5,456	4,123
Plus Administered revenues	24,677	18,880
Less Administered expenses	(26,760)	(15,873)
Less transfers to OPA	(1,583)	(1,674)
Plus transfers from OPA	53	-
Administered assets less administered liabilities as at 30 June	<u>1,843</u>	<u>5,456</u>

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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

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**Note 36 – Administered Financial Instruments**

**(a) Terms, conditions and accounting policies**

<b>Financial Instrument</b>	<b>Note</b>	<b>Accounting Policies and Methods (including recognition criteria and measurement basis)</b>	<b>Nature of Underlying Instrument (including significant terms &amp; conditions affecting the amount, timing and certainty of cash flows)</b>
<b><i>Financial Assets</i></b>		Financial Assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured.	
Cash – at Bank		Deposits are recognised at their nominal amounts. Interest on the accounts is paid to the Commonwealth and is not reported by the Agency.	The Agency maintains a group of Administered accounts with the Reserve Bank of Australia for its administered activities. The money disbursed to the Commonwealth is transferred to an account from which the end of day balances are swept into the Official Public Account and retained. No interest is earned on these accounts. The balance of these accounts was nil at 30 June.
Receivables – Fines and Costs	34	Receivables are reported at the nominal amounts due less any provision for bad or doubtful debts where applicable. Collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely.	Receivables are with external entities. Receivables consist of Fines and Costs awarded in criminal cases prosecuted by the Agency.

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<b>Note 36 - Administered financial instruments (cont)</b>											
<b>(b) Interest Rate Risk: Administered</b>											
Financial Instrument	Notes	Floating Interest Rate 2002-2003 2001-2002 \$'000 \$'000	Fixed Interest Rate				Non-Interest Bearing \$'000	Total \$'000	Weighted Average Effective Interest Rate		
			1 year or less 2002-2003 2001-2002 \$'000 \$'000	1 to 2 years 2002-2003 2001-2002 \$'000 \$'000	2 to 5 years 2002-2003 2001-2002 \$'000 \$'000	> 5 years 2002-2003 2001-2002 \$'000 \$'000			2002-2003 2001-2002 %	2002-2003 2001-2002 %	
<b>Financial Assets</b>											
Cash at bank		-	-	-	-	-	-	-	-	-	n/a
Receivables - Fees and Fines (gross)	34	-	-	-	-	-	10,270	8,230	14	14	n/a
Total Financial Assets		-	-	-	-	-	10,270	8,244	1,857	5,456	n/a
<b>Financial Liabilities</b>											
Payables - other		-	-	-	-	-	-	-	14	-	n/a
Total Financial Liabilities		-	-	-	-	-	-	-	14	-	n/a
<b>Total Administered Liabilities</b>									14	-	n/a

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**Note 36 – Administered Financial Instruments (cont)**

**(c) Net Fair Values of Agency Financial Assets and Liabilities**

	Note	2002-2003		2001-2002	
		Total carrying amount \$'000	Aggregate net fair value \$'000	Total carrying amount \$'000	Aggregate net fair value \$'000
<b>Financial Assets</b>					
Cash - at bank		-	-	14	14
Receivables - Fees and Fines (net)	34	1,857	1,857	5,442	5,442
<b>Total Financial Assets</b>		<b>1,857</b>	<b>1,857</b>	<b>5,456</b>	<b>5,456</b>
<b>Financial Liabilities</b>					
Payables - other		14	14	-	-
<b>Total Financial Liabilities</b>		<b>14</b>	<b>14</b>	<b>-</b>	<b>-</b>

**Financial Assets**

The net fair values of cash approximates the carrying amount.

The net fair values of fees and fines receivable is the carrying amount less the provision for doubtful debts.

**Financial Liabilities**

The net fair values for other payables are short term in nature and approximated by their carrying amounts.

**(d) Credit Risk Exposures**

The Agency's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Administered Balance Sheet.

There are no significant exposures to any concentrations of credit risk in relation to the Administered receivables.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

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	2002-2003 \$.	2001-2002 \$.
<b>Note 37 - Appropriations</b>		
<b>A. Cash basis acquittal of Appropriations from Acts 1 and 3</b>		
Balance available at beginning of period	14,460,641	11,082,231
Appropriations for reporting period (Act 1)	61,652,000	60,004,000
Appropriations for reporting period (Act 3)	864,000	-
Adjustments determined by the Finance Minister	-	(100,000)
Amounts from Advance to the Minister for Finance	-	-
Amounts for Comcover receipts	-	-
Refunds credited (FMA s.30)	-	-
GST credits (FMA s.30A)	2,128,225	1,847,493
Annotated to net appropriations (FMA s.31)	2,083,269	1,865,599
Total appropriated in the period	<u>66,727,494</u>	<u>63,617,092</u>
Total appropriations available for payments	<u>81,188,135</u>	<u>74,699,323</u>
Payments during the period	65,000,605	60,238,682
Balance of appropriations for outputs at end of period	<u>16,187,530</u>	<u>14,460,641</u>
Represented by:		
Cash	241,010	14,460,641
Appropriations receivable	15,756,894	-
GST receivable from ATO (net)	212,109	n/a *
GST receivable from customers	39,739	n/a *
GST payable payable to suppliers	(62,222)	n/a *
	<u>16,187,530</u>	<u>14,460,641</u>

\* This note was prepared on a pure cash basis in 2001-2002

**B. Cash basis acquittal of Appropriations from Acts 2 and 4**

There were no equity injections, loans or carryovers in the reporting period.

**C. Cash basis acquittal of Special Appropriations**

There were no special appropriations in the reporting period.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
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	2002-2003	2001-2002
	\$.	\$.

**Note 38 - Special accounts**

**A. Other Trust Moneys Account**

Legal authority - *Financial Management and Accountability Act 1997*; s20  
Purpose - for the receipt of money temporarily held on trust or otherwise for the benefit of a person or entity other than the Commonwealth.

**Fines & Costs Component (Administered)**

Balance at beginning of the reporting period	14,316	17,114
Add: Receipts from appropriations	-	-
Receipts from OPA for refunds	53,230	-
Receipts from Courts o.b.o. defendants	1,861,710	1,813,968
Available for payment	1,929,256	1,831,082
Less: Payments to OPA	(1,583,031)	(1,582,485)
Payments of refunds	(133,638)	(60,438)
Payments to related entities	(212,587)	(173,843)
Sub-total payments made	(1,929,256)	(1,816,766)
Balance at end of reporting period	-	14,316
Represented by: Cash at Bank	-	14,316

**B. Service for other Governments & Non-Agency Bodies Account**

Legal authority - *Financial Management and Accountability Act 1997*; s20  
Purpose - for expenditure in connection with services performed on behalf of other Governments and bodies that are not FMA agencies.

Balance at beginning of the reporting period	-	-
Add: Receipts from appropriations	-	-
Receipts from Comcare	32,386	19,267
Available for payment	32,386	19,267
Less: Payments made to employees	(32,386)	(19,267)
Sub-total payments made	(32,386)	(19,267)
Balance at end of reporting period	-	-

Note on usage - for the receipt of money temporarily held on trust and advanced to the Agency by Comcare for the purpose of distributing compensation payments made in accordance with the *Safety Rehabilitation and Compensation Act 1998*.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**For the period ended 30 June 2003

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2002-2003	2001-2002
\$.	\$.

**Note 38 - Special accounts (cont)****C. Law Enforcement Projects Account**Legal authority - *Financial Management and Accountability Act 1997*; s20Purpose - for expenditure of moneys on law enforcement projects selected for the purpose of Section 34D of the *Proceeds of Crime Act 1987*.

- \* There were no transactions on the Office of the Director of Public Prosecutions' Law Enforcement Projects Account in either year.
- \* The Office of the Director of Public Prosecutions' Law Enforcement Projects Account was abolished on 26 June 2003.

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	2002-2003 \$'000	2001-2002 \$'000
<b>Note 39 - Reporting by outcomes</b>		
<b>Reporting by outcome</b>	<b>Outcome 1</b>	
Administered expenses	26,760	15,873
Agency expenses	61,281	58,862
Total expenses	<u>88,041</u>	<u>74,735</u>
External revenues		
Administered revenues	24,677	18,880
Agency revenues	1,955	2,159
Total external revenues	<u>26,632</u>	<u>21,039</u>
Net cost to Budget outcome	<u>61,409</u>	<u>53,696</u>
<b>Major Agency Revenues &amp; Expenses by outcome</b>		
Operating revenues		
Revenues from Government	62,576	59,964
Sales of goods and services	1,210	917
Other	685	1,182
Total operating revenues	<u>64,471</u>	<u>62,063</u>
Operating expenses		
Employees	36,427	32,855
Suppliers	20,412	21,605
Other	4,442	4,402
Total operating expenses	<u>61,281</u>	<u>58,862</u>
<b>Major Administered Revenues &amp; Expenses by outcome</b>		
Operating revenues		
Fees and Fines	2.19 24,569	18,260
Other	108	620
Total operating revenues	<u>24,677</u>	<u>18,880</u>
Operating expenses		
Write-down of assets	7,566	1,395
Other	2.19 19,194	14,478
Total operating expenses	<u>26,760</u>	<u>15,873</u>