



D P P

Commonwealth Director
of Public Prosecutions

Annual Report 2004 – 2005

© Commonwealth of Australia 2005

ISSN 1034-3318

ISBN 0-9751368-2-8

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth available from the Department of Communications, Information Technology and the Arts. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Intellectual Property Branch, Department of Communications, Information Technology and the Arts, GPO Box 2154, Canberra ACT 2601 or posted at **<http://www.dcita.gov.au/cca>**.



DPP

Commonwealth Director of Public Prosecutions

11 October 2005

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 2005, 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 AM QC
Director of Public Prosecutions

Office of the Commonwealth DPP

Head Office

Director: Damian Bugg AM QC
4 Marcus Clarke St,
CANBERRA CITY ACT 2601
Tel: 02 6206 5666, Fax: 02 6257 5709
GPO Box 3104, CANBERRA CITY ACT 2601
Email: inquiries@cdpp.gov.au

Sydney Office

Deputy Director: Jim Jolliffe
Level 7, Civic Tower, 66-68 Goulburn Street,
SYDNEY NSW 2000
Tel: 02 9321 1100, Fax: 02 9264 8241,
Locked Bag A4020, SYDNEY SOUTH NSW 1235
Email: sydney@cdpp.gov.au

Melbourne Office

Deputy Director: Mark Pedley
15th floor, 460 Lonsdale Street,
MELBOURNE VIC 3000
Tel: 03 9605 4333, Fax: 03 9670 4295
GPO Box 21A, MELBOURNE VIC 3001
Email: melbourne@cdpp.gov.au

Brisbane Office

Deputy Director: Paul Evans
19th Floor, MLC Court, 15 Adelaide St,
BRISBANE QLD 4000
Tel: 07 3224 9444, Fax: 07 3229 4124
GPO Box 847, BRISBANE QLD 4001
Email: brisbane@cdpp.gov.au

Perth Office

Deputy Director: Ros Fogliani
5th Floor, 77 St Georges Terrace,
PERTH WA 6000
Tel: 08 9264 7264, Fax: 08 9264 7266
GPO Box B92, PERTH WA 6001
Email: perth@cdpp.gov.au

Adelaide Office

Deputy Director:

Freda Propsting
15th Floor, Commonwealth Bank Building,
100 King William St,
ADELAIDE SA 5000
Tel: 08 8238 2600, Fax: 08 8231 8257
GPO Box 2562, ADELAIDE SA 5001
Email: adelaide@cdpp.gov.au

Hobart Office

Assistant Director:

Ian Arendt
8th Floor, 188 Collins St,
HOBART TAS 7000
Tel: 03 6238 8100, Fax: 03 6238 8124
GPO Box 366, HOBART TAS 7001
Email: hobart@cdpp.gov.au

Darwin Office

Assistant Director:

Paul Usher
9th Floor, National Mutual Centre, 11 Cavenagh St,
DARWIN NT 0800
Tel: 08 8980 8700, Fax: 08 8980 8777
GPO Box 3345, DARWIN NT 0801
Email: darwin@cdpp.gov.au

Townsville Office

Assistant Director:

Gary Davey
Level 3, 61-73 Sturt Street
TOWNSVILLE QLD 4810
Tel: 07 4772 7177, Fax: 07 4772 1358
PO Box 1233, TOWNSVILLE QLD 4810
Email: tow@cdpp.gov.au

Cairns Office

Principal Legal Officer:

Melanie Ho
Level 12, Cairns Corporate Tower, 15 Lake St,
CAIRNS QLD 4870
Tel: 07 4031 3105, Fax: 07 4031 3438
PO Box 5955, CAIRNS QLD 4870
Email: cairns@cdpp.gov.au

ACT prosecutions

Assistant Director:

Jon White
4 Marcus Clarke St,
CANBERRA CITY ACT 2601
Tel: 02 6206 5666, Fax: 02 6206 5684
GPO Box 3104, CANBERRA CITY ACT 2601

Contents

Compliance statement		IX
Director's overview		XI
Chapter 1	Office of the DPP	1
	Senior management chart	5
	Outcome and output chart 2004-2005	6
Chapter 2	General prosecutions and practice management	7
Chapter 3	Commercial prosecutions	15
Chapter 4	Prosecution statistics	25
Chapter 5	Criminal confiscation	48
Chapter 6	International	57
Chapter 7	Law reform	65
Chapter 8	Resource management	69
	Overview	69
	Staff	72
	Financial performance	74
	Other areas	76
	Resource management tables	80
Chapter 9	Significant cases	87
Appendix 1	Statement under the Freedom of Information Act	109
Appendix 2	Commonwealth DPP Corporate Plan	111
Glossary		113
Compliance index		118
Financial statements		121

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:

- *The 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 and the email address is inquiries@cdpp.gov.au.

For further inquiries contact the media contact officer, DPP Head Office, on (02) 6206 5606.

Director's Overview

I am now in my sixth year as the Commonwealth Director of Public Prosecutions. Throughout that time there have been many changes to the DPP, both in terms of prosecuting Commonwealth offences, and in terms of the management of the Office of the DPP. I am proud to say that I believe that the Office of the DPP continues to adapt to those many changes, and continues to deliver a very good prosecution service to the Australian people.

The prosecution of offences against Commonwealth law is now a more important feature of the fabric of the criminal law in Australia than ever before. Rather than becoming a left-over quirk of the federal system, Commonwealth criminal law has expanded into a keystone of the criminal justice system in Australia. With the rise of terrorism as a worldwide social concern, many people in Australia look to the Government, and to the criminal justice system, to provide stability and reassurance in a changing world. The DPP has an increasingly important role to play in the delivery of a principled and reliable federal prosecution service.

It is not only terrorist offences which are altering the traditional landscape of Commonwealth offending. Rather, the very nature of Commonwealth offending is steadily changing. Gone are the days when it might have been said that Commonwealth offending was basically limited to frauds on the social security and tax systems, and the importation of drugs. With the introduction of a range of new offences such as sexual servitude and slavery offences, people trafficking and a new serious drugs regime, in many ways offences against Commonwealth law have taken a central place in prosecuting in Australia.

The globalisation of crime, and the investigation of that crime, will continue to have an effect on the way that the DPP operates and the place that the DPP holds in the Australian criminal justice system. In this respect, it is likely that the DPP's international functions, such as extradition and mutual assistance, will continue to take on a greater significance in the context of prosecuting. However it is not only those cases with an obvious international aspect that will be affected by the globalisation of crime. Rather, the changing face of criminal offending has meant that Commonwealth prosecuting must also embrace a broader international perspective in a general sense; for example, the consideration of evidence from overseas in particular matters, the impact of international treaties and conventions, the experience of other jurisdictions in prosecuting similar offences, and the consideration of the introduction of foreign offences into Australian law.

I am pleased to say that, during the past year, the DPP has continued to adjust to the changes I have mentioned and meet its obligation to deliver an effective prosecution service for the Commonwealth.

Much of the work done by the DPP is of a highly specialised nature. For example, corporate offending has long been an area where the DPP has delivered a specialised prosecution service, utilising the skill and expertise which has been built up in this Office over many years. Likewise, in the areas of mutual assistance and extradition, the Office employs some of Australia's leading experts in the field.

Of course, gauging the success of a prosecution service does not equate with securing a conviction in every matter. Rather, the DPP aims to fairly bring matters before the Court system in a way which is ethical, consistent and robust. By their nature, many of the prosecutions which the DPP now conducts, raise difficult issues. For example, prosecuting offences in the relatively new and untested area of sexual servitude and slavery, raises a broad range of difficulties: the interpretation of new law, matters of practice and procedure, issues arising from the international nature of the offences, and issues arising from the sexual nature of the offences. In a real sense, these prosecutions take place at the intersection of law, gender, culture and practice. The lawyers involved in the prosecutions of these matters must be alive to such difficulties, and be able to present the matter to the Court in a considered, logical and meaningful way.

There are, of course, many other aspects of the DPP's work which do not directly involve the prosecution of particular matters. The DPP continues to provide meaningful input into the development of the criminal law in Australia. In this regard, in the past year alone, the DPP has provided practical input into the development of legislation and policy covering a broad range of issues including Commonwealth sentencing, the applicable rules of evidence, as well as the nature and effect of actual offence provisions.

In addition, the DPP is in the process of developing a fresh approach to the practice of the recovery of proceeds of crime. Specialist proceeds of crime lawyers around Australia are actively testing the relatively new provisions of the *Proceeds of Crime Act 2002*. The DPP's criminal assets teams work closely with the Australian Federal Police and have been successful this year in extending the use of this new legislation. The DPP is looking forward to bedding down its practice in this area, and incrementally building up a reputation for being able to quickly and effectively deprive offenders of their criminal assets.

The prosecutors in our Office cannot continue to deliver a high quality product without support in a range of areas including corporate management, infrastructure, library services, and information technology. In terms of corporate management, the lawyers in the DPP receive a consistently high

level of support Australia wide, and this support is required to anticipate and meet the ever changing needs of the Office. I would also like to acknowledge the library and information technology staff of the DPP. The consistent delivery of high quality services enables DPP lawyers to have continued access to recent law, international decisions, relevant articles and books, and importantly, the written opinions of lawyers in the Offices of the DPP Australia wide. Needless to say, this contributes to the operation of the Office as whole, and the ability of DPP lawyers to prosecute in an effective way.

Throughout the course of the year, the delivery of these services has altered somewhat, with DPP lawyers being provided with limited Internet access from their desktops. In an environment where security of information is a top priority, the work done by the staff working in the information technology area of the DPP was particularly valuable. The provision of this service to DPP lawyers facilitated the task of prosecuting. Again, the officers of the DPP have shown adaptability in a changing working environment. This has resulted in the Office being able to continue to deliver a contemporary prosecution service within the technological context of the new millennium.

As in any year, this year there were a number of changes in the staffing of the DPP, which affected the operation of the Office as a whole. I note particularly the retirement of Alan Oakey from DPP's Head Office. Alan had a long career at the DPP, and had built up a wealth of knowledge about Commonwealth criminal law. His good nature and sense of humour is already greatly missed.

In addition, Geoff Gray, who joined the DPP when it first commenced operations twenty-one years ago, left the DPP during the course of the year. Geoff now heads the Criminal Law Branch of the Criminal Justice Division in the Attorney-General's Department. I would like to especially thank Geoff, not only for his considerable contribution to both the international work and the criminal assets work of the DPP over the last several years, but also for the contribution he made to many other areas of DPP work over two decades. Geoff's prodigious contribution to the criminal law while he was at the DPP was greatly appreciated.

I would like to thank the Attorney-General, the Honourable Philip Ruddock MP, and the Minister for Justice and Customs, Senator the Honourable Christopher Ellison, for their continued support.

I would also like to thank the agencies and departments which work closely with the DPP, and which, in doing so, demonstrate a belief in the quality and reliability of the service that the DPP strives to deliver. It is very simple; the DPP would not be able to function on any level without the assistance, support and expertise which is continually provided by the investigators and

other officers who work in these agencies and departments. The DPP values and appreciates this assistance.

Finally, I would like to thank the Staff of the DPP and acknowledge the effort they have made during the year. It is often said that an organisation is made up of the individuals who comprise it. I am proud to be associated with such a fine organisation.

I am pleased to present the Annual Report for 2004-2005.

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

Damian Bugg AM QC

Commonwealth Director of Public Prosecutions

C H A P T E R 1

Office of the DPP

Establishment

The DPP was established under the *Director of Public Prosecutions Act 1983* (the DPP Act) and 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 AM QC who was initially appointed for a term of five years commencing on 2 August 1999. On 2 August 2004, his term of appointment was extended for a further three years.

The DPP is an independent prosecuting agency. 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 and must be tabled in Parliament, and there must be prior consultation between the Attorney-General and the Director. There were no directions or guidelines issued under section 8 in 2004-2005.

Role

The role of the DPP is to prosecute offences against Commonwealth law, and to confiscate 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. That type of offence is 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 corporate law, fraud on the Commonwealth (including tax fraud, medifraud and social security fraud), people smuggling, sexual servitude, and terrorism. The remaining area of the DPP's practice covers a wide range of matters which cannot be easily

categorised. 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 for straight forward regulatory offences by arrangement with the DPP, the main areas being tax offences, electoral offences and minor corporations offences. There are also some cases where a State agency conducts a Commonwealth prosecution, usually for reasons of convenience.

The DPP is not an investigative agency. It can only prosecute, or take confiscation action, when there has been an investigation by the Australian Federal Police (AFP), the Australian Crime Commission or some other investigative agency. However, the DPP regularly provides advice and assistance to investigators at the investigative stage and works closely with the investigators, particularly in confiscation cases.

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 2004-2005, the DPP received briefs of evidence from about 40 different agencies.

Corporate Plan

In 2005, the DPP renewed the 2003-2004 Corporate Plan.

The DPP's vision is for a fair and just society, where laws are respected and obeyed and there is public confidence in the justice system. The DPP's mission is to operate a high quality Commonwealth prosecution service for the benefit of the Australian people.

Social Justice and Equity

The DPP advances the interests of social justice and equity by working with other agencies to enforce the criminal law for the benefit of the community. The DPP also works to ensure that alleged offenders and other people affected by the criminal justice process are treated fairly.

Prosecution Policy

All decisions made in the prosecution process are regulated by guidelines set out in the *Prosecution Policy of the Commonwealth*. That document has been tabled in Parliament and is available from any 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 evident from the facts of the case, and all the surrounding circumstances, that the 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 of the 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 confiscate the proceeds of crime. There must be sufficient material to support confiscation action and it must be clear that it would be in the public interest to take such action.

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 including the *Proceeds of Crime Act 2002*.

As noted above, the main functions of the Director are to prosecute offences against Commonwealth law and to confiscate 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 provide legal advice to Commonwealth investigators;
- 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 1901*, 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 perform prosecution and asset confiscation work in central and north Queensland.

Head Office provides advice to the Director and coordinates the work of the Office across Australia. Head Office is also responsible for case work in the Australian Capital Territory and southern New South Wales. The DPP Regional Offices are responsible for conducting prosecutions and confiscation action in the relevant region.

Corporate Governance

A Senior Management Chart appears at the end of this Chapter. The chart shows the senior executive officers of the DPP, and their different 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. There are also regular meetings of an executive management group comprising senior officers from Head Office and a number of the Regional Offices.

The DPP has issued Guidelines on Official Conduct for DPP employees. The document sets out the ethical standards expected of all employees. DPP employees have all 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 2004-2005 appears at the end of this Chapter.

Senior Management Chart

(as at 30 June 2005)

<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> Director Damian Bugg AM QC </div> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> First Deputy Director B3 (John Thornton) </div>	Head Office	Dep Dir B2 Legal and Practice Management (Ian Bermingham)	SES B1 Crim Assets (vacant)
	Dep Dir B2 Corporate Management (Stela Walker)	SES B1 Policy (James Carter)	
	SES B2 CITC Branch (Graeme Davidson)	SES B1 Tax Branch (vacant)	
		Assistant Director ACT Prosecutions (Jon White)	
	Sydney Office	Deputy Director B2 (Jim Jolliffe)	SES B1 Prosecutions (Gabrielle Drennan)
			SES B1 Prosecutions (David Stevens)
			SES B1 Prosecutions (Michael Allnut)
			SES B1 Tax and Economic Crime (Elizabeth Ryan)
			SES B1 Criminal Assets (Chris Murphy)
			SES B1 Commercial Pros (Paul Shaw)
			SES B1 CT Unit (Helen Brown)
	Melbourne Office	Deputy Director B2 (Mark Pedley)	SES B1 Prosecutions (Andrea Pavleka)
		SES B1 Prosecutions (Daniel Caporale)	
		SES B1 Tax Branch (Berdj Tchakerian)	
		SES B1 Crim Assets (Carolyn Davy)	
		SES B1 Commercial Pros (Shane Kirne)	
		SES B1 CT Unit (Scott Bruckard)	
Brisbane Office	Deputy Director B2 (Paul Evans)	SES B1 Prosecutions (Clive Porritt)	
		SES B1 Crim Assets (Sylvia Grono)	
		SES B1 Commercial Pros (Catherine Barker)	
		SES B1 Tax Branch (Shane Hunter)	
		SES B1 Townsville (Gary Davey)	
		Principal Legal Officer Cairns (Melanie Ho)	
Perth Office	Deputy Director B2 (Ros Fogliani)	SES B1 Pros and Criminal Assets (Martyn Plummer)	
		SES B1 Commercial Pros (Mark Fletcher)	
Adelaide Office	Deputy Director B1 (Freda Propsting)		
Hobart Office	Assistant Director (Ian Arendt)		
Darwin Office	Assistant Director (Paul Usher)		

Outcome and Output Chart 2004-2005

DIRECTOR OF PUBLIC PROSECUTIONS

Director: Damian Bugg AM QC

Total price of outputs	\$77,291,000
Departmental outcome appropriation	\$75,102,000

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	\$77,291,000
Departmental output appropriation	\$75,102,000

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	\$77,291,000
Appropriation	\$75,102,000

C H A P T E R 2

General Prosecutions and Practice Management

Overview

The DPP is responsible for the conduct of prosecutions for offences against the laws of the Commonwealth. The practice of the DPP therefore involves the prosecution of a broad range of offences: from frauds on the social security system to the importation of narcotic substances; from terrorism to fishery offences; and from tax frauds to bankruptcy prosecutions. As the practice of the DPP becomes broader with the introduction of new types of offences such as sexual servitude and sexual slavery offences, the DPP is developing a more sophisticated practice with a deeper experience of prosecuting. Something of the breadth of the range of offences prosecuted by the DPP is illustrated in the Significant Case Reports at Chapter 9 of this Report.

Prosecuting is not limited to litigation itself. Rather, prosecuting includes a range of other work such as preparing cases for hearing, providing advice and other assistance to investigators, drafting charges and settling applications for warrants. Commonwealth offending can often involve very large and complex briefs of evidence which take significant time and skill to consider. For many years, the DPP has delivered high quality advice on very complex matters, particularly, for example, in the areas of tax and corporate fraud.

A number of investigating agencies (and departments) refer matters to the DPP. The DPP works closely with the AFP and the Australian Crime Commission. In addition, the DPP has close working relationships with a number of Commonwealth agencies, such as Centrelink and the Australian Taxation Office, which refer a large number of matters to the DPP every year. The DPP also has close relationships with a number of other investigating agencies, which refer a broad range of matters to the DPP for consideration. These agencies include, for example, the Health Insurance Commission, the Civil Aviation Safety Authority, the Australian Maritime Safety Authority, the Department of the Environment and Heritage, and the Department of Immigration and Multicultural and Indigenous Affairs.

The DPP endeavours to provide each of these investigating agencies with the support that the agency requires in order to efficiently investigate offences.

In this respect, the DPP and the investigating agency must work closely together if the prosecution action is to be effective. The DPP aims to support investigating agencies in two ways. First, the DPP aims to provide timely, accurate and useful advice to investigators in particular matters. Often this advice is sought and provided at a very early stage of the investigation, which serves to direct the investigation in a useful way. Secondly, the DPP provides regular training to investigating agencies on a range of general matters, such as the effect of new legislation, legal practice and procedure, and the prosecution of particular types of offences.

The prosecution of offences against Commonwealth law has long straddled two levels of government in Australia: Commonwealth and State. Commonwealth offences are generally prosecuted in the Courts of the various States and Territories. This adds a layer of complexity to the prosecution of Commonwealth offences because, although the substantive law is uniform Australia wide, the practice and procedure of the prosecution of an offence varies between the States and Territories. This means that there can be significant differences in prosecutions between the jurisdictions, including for example, differences in the rules of evidence, differences in the practical conduct of the matter (including matters such as whether there will be a committal and how that committal will be conducted), as well as differences in the available sentences. Understanding these differences, and the way they affect the dynamics of prosecuting in the different Australian jurisdictions, is an important feature of prosecuting offences against Commonwealth law.

Summary Prosecutions, Committals and Trials

In general terms, there are two basic types of prosecution action: less serious offences are dealt with at a Magistrates Court (or 'Local Court') level, and are referred to in this Report as 'summary offences.' In some of these matters, there has been an election made to have the matter dealt with in a Magistrates Court. In other matters, there is no election, and the matter must proceed before a Magistrate according to the relevant legislation.

As a general rule, more serious offences are dealt with 'on indictment,' and where matters are contested, are heard before a judge and jury. All States and mainland Territories have a Supreme Court. Some jurisdictions, but not all, also have an intermediate Court, called either a District Court or a County Court.

In this Report, 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. A reference to a trial is a reference to a defended hearing before a judge and jury.

In this Report, a person who has been charged with an offence is referred to as a 'defendant.' The word used to apply to such a person varies between the different States and Territories, and also depends on the Court that is hearing the matter, and the stage of the proceedings. For the sake of simplicity, this Report uses the word 'defendant' across the board.

Performance indicators and prosecution statistics appear in Chapter 4.

Developments in Case Work

▪ Centrelink

Prosecutions for fraud on Centrelink are a significant part of the DPP's work. In 2004-2005, the DPP dealt with 4,102 Centrelink prosecutions. Centrelink has set up computerised systems under which its customers can report details of income earned and certain other matters through Centrelink's Internet site or by speaking on the telephone to a computer. Prosecutions where customers may have used these systems raise new legal issues and challenges for prosecutors. The DPP and Centrelink have worked together on this important development. The DPP has provided advice to Centrelink which has assisted in the development of these new systems, and Centrelink has assisted the DPP to understand the detail of these systems. There were a small number of prosecutions involving these new systems in 2004-2005, and more are expected in 2005-2006 as a greater number of Centrelink customers start using the new systems.

▪ Tax Prosecutions

In the last Annual Report it was noted that convictions had been obtained in two significant trials of promoters of fraudulent tax minimisation schemes. The convictions of Tieleman, Pearce and Wharton, prosecuted as a result of Operation Spada, were upheld following an appeal. The defendants in that matter have lodged applications for Special Leave to Appeal to the High Court of Australia. The conviction of Hart reported in last year's Annual Report was overturned on appeal, and a retrial ordered. Hart has been convicted following a trial in relation to another fraudulent tax minimisation scheme and that conviction is currently subject to an appeal.

As in previous years, the prosecution of excise fraud, especially in relation to 'chop-chop' tobacco, remains a major part of the practice of the DPP's Tax Branches, particularly in Melbourne and Sydney. The DPP also continues to prosecute a steady stream of matters relating to income tax and Goods and Services Tax fraud.

The DPP and the Australian Taxation Office continue to work in close cooperation, particularly in relation to the investigation and prosecution of large or complex matters.

▪ **Civil Aviation Safety Authority**

The DPP regularly prosecutes matters involving breaches of air safety which have been investigated by the Civil Aviation Safety Authority. The effective prosecution of these matters is an essential part of the regulatory regime designed to ensure the safety of aircraft operations in Australia. As part of the ongoing relationship between the two agencies, a Memorandum of Understanding was entered into between the DPP and the Civil Aviation Safety Authority in March 2005.

▪ **Sexual Servitude**

Division 270 of the *Criminal Code*, which came into force on 21 September 1999, created the offences of slavery, sexual servitude and deceptive recruiting. As at 30 June 2005, there was a total of five matters before the Courts in Australia, three in Sydney and two in Melbourne. All of the matters involved more than one defendant.

While the facts of the matters vary somewhat, there are a number of similar features across the cases. The matters involve the trafficking of women from South East Asian countries for the purpose of having those women work in the sex industry in Australia. In some of the cases, the women have been aware that they were travelling to Australia for the purpose of working in the sex industry, but the Crown case is that the conditions of that work amounted to 'slavery' in terms of the *Criminal Code*. In one of the cases prosecuted in Sydney, the Crown case was that the woman involved did not understand that she would be working in the sex industry in Australia. Rather, she believed that she was travelling to Australia to work in a restaurant.

The very nature of the offences raises a number of issues for the DPP. First, the international aspect of the cases means that obtaining evidence is sometimes difficult, and access to appropriate potential witnesses can be limited. The fact that the offences are of a sexual nature, and some of the key witnesses are victims of those offences, lends a further sensitivity to the prosecutions. In addition, there is no doubt that the prosecutions take place in the context of difficult and sensitive cultural, linguistic and gender dynamics. These matters present new challenges for the DPP as such matters have not formed part of the traditional landscape of Commonwealth offending.

▪ Terrorism Prosecutions

The DPP is currently prosecuting four people for offences against Part 5.3 of the *Criminal Code*, which deals with terrorism offences. All four matters are currently awaiting trial in the Supreme Courts of the States. The offences include collecting and making documents connected with preparation for a terrorist act, inciting another to do a terrorist act, receiving training from a terrorist organisation, and getting funds from and providing support to a terrorist organisation.

This is a new and challenging area of work for the DPP and frequently raises new and novel issues of law and practice. The work involves providing ongoing legal advice to the AFP in the course of their investigations and requires close liaison with intelligence agencies and police at all stages of the prosecution. The cases often involve the adducing of overseas evidence, and therefore raise the difficulties associated with that process. During the year, the case of Mallah was completed, and a report on the outcome of that case appears in Chapter 9 of this Report.

▪ People Smuggling

Last year's Annual Report noted that there were a number of matters being prosecuted in Australia which focused on the alleged organisers of people smuggling offences. As stated in last year's Report, the prosecution of these matters raises significant issues. Not only are the cases prosecuted in an international context, which itself invests the prosecutions with a layer of complexity, but they often raise difficult issues of law and practice.

In last year's Report, reference was made to a people smuggling case being conducted by the DPP in Perth. That case involved three defendants who were alleged to have organised the bringing to Australia a group of about 50 people who were not Australian citizens and had no visas. The group came to Australia by boat from Vietnam in July 2003, and were apprehended about 12 nautical miles from Port Hedland. One of the defendants was acquitted at trial. The other two defendants were convicted, but were successful in having those convictions quashed on appeal, due to a legal issue which arose out of comments made by the Trial Judge to the jury. The matter is listed for a re-trial in the latter part of 2005.

In last year's Report, reference was also made to the matter of the 'SIEV X,' which was a vessel carrying over 400 unlawful non-citizens into Australia, and which tragically sank on the afternoon of 19 October 2001. Most of the passengers were drowned. Charges were laid against Khaleed Daoed for his role in organising the venture. Daoed was convicted and sentenced to nine years' imprisonment with a non-parole period of four and a half years. A report about that matter is at Chapter 9 of this Report.

Last year's Report also made reference to a matter being conducted in Darwin. That matter involved charges against a person who was a principal organiser in a people smuggling syndicate. On 9 September 2004, Ali Al Jenabi was sentenced to eight years' imprisonment with a non-parole period of four years for his role in bringing three boatloads of people into Australia over a period of 12 months. A report about that matter is at Chapter 9 of this Report.

Practice Management

▪ DPP Corporate Plan

In 2004-2005, the DPP renewed its 2003-2004 Corporate Plan. The 2003-2004 Plan was discussed in some detail and was reproduced in the 2003-2004 Annual Report. The Corporate Plan appears at Appendix 2 of this Report.

The current Plan maintains focus on acting in accordance with the law and the *Prosecution Policy of the Commonwealth*, adhering to best practice, recruiting and developing high quality staff, and on working in partnership with investigating authorities and investigators. The Plan requires that the DPP will cooperate with the enforcement strategies of referring authorities and assist with training of investigators.

A more detailed review of the Plan is planned for 2005-2006.

▪ Advocacy Training

Advocacy is an important part of the effective prosecution of Commonwealth offences. The majority of advocacy in Commonwealth prosecutions is conducted 'in-house' by DPP lawyers or in-house counsel.

The DPP held two in-house advocacy courses in 2004-2005. They were basic advocacy courses in which prosecutors attended seminars and then conducted a moot summary prosecution. The courses used a Centrelink prosecution as a demonstration model. Centrelink cases form a significant part of the DPP's workload and it is important that prosecutors know how to conduct them to a high standard. The courses are run with assistance from Centrelink, which means that Centrelink investigators experience giving evidence in a mock court situation. A total of 28 prosecutors attended the courses.

In June 2005, the DPP held a national conference for prosecutors on Centrelink prosecutions. As part of the conference, the DPP conducted a moot prosecution of a Centrelink case. The moot case was reliant on evidence of electronic lodgement of claims over both the Internet and an automated telephone lodgement system. These new Centrelink systems

raise highly technical legal issues, and the moot provided valuable training for both prosecutors and Centrelink investigators. Seventeen prosecutors and eleven Centrelink staff attended.

Courses on both summary prosecutions and sentencing proceedings are planned for 2005-2006.

▪ **Warrants Manuals**

During the course of the year, the DPP produced a new manual called the Surveillance Devices Warrants Manual, which deals with warrants under the *Surveillance Devices Act 2004*. The DPP also released updated versions of the DPP Search Warrants Manual and the Telecommunications Interception Warrants Manual. The Manuals provide practical guidance on obtaining, executing and defending warrants under Commonwealth law.

This area of law is very technical. The DPP has an important role in ensuring that investigators are provided with clear and appropriate advice in relation to the exercise of powers under the relevant legislation and case law. Each of these Manuals is reviewed on a regular basis and is available electronically to DPP officers and Commonwealth investigators.

▪ **Copyright Prosecutions Outline**

In the intellectual property area, the DPP has produced a range of material to provide practical guidance and assistance to investigators and prosecutors in copyright and trademark matters. The DPP has released an updated version of the Copyright Prosecutions Outline. Together with the Trade Marks Prosecutions Outline, the Copyright Prosecutions Outline has proved to be a useful resource in the effective prosecution of matters of this nature.

▪ **Training for Investigators**

The DPP continues to provide training to the AFP and other investigative authorities. Often this training relates to the operation of new legislation. This year, for example, the DPP's Legal and Practice Management Branch developed training modules and materials on the introduction of child pornography and abuse material offences in the *Criminal Code* in March 2005.

The DPP has also been involved in providing training to the AFP and other agencies on a more informal basis. For example, the DPP regularly makes presentations at AFP courses on a variety of matters including the sexual servitude and slavery offences in the *Criminal Code*, mutual assistance and extradition, and proceeds of crime.

C H A P T E R 3

Commercial Prosecutions

Practice

Responsibility for investigating breaches of the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* (the 'ASIC Act') rests with the Australian Securities and Investments Commission (ASIC). By arrangement with the DPP, ASIC conducts minor regulatory prosecutions for offences against those Acts. However, where an investigation appears to disclose the commission of a serious criminal offence, ASIC refers the matter to the DPP for consideration and prosecution action, where appropriate.

There are specialist Commercial Prosecutions branches in each of the larger Regional Offices of the DPP. Those branches prosecute breaches of the *Corporations Act 2001* and the ASIC Act. By virtue 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. In addition, the DPP's Commercial Prosecutions branches also deal with any large fraud prosecutions where there is a corporate element, as well as all prosecutions for offences against the *Trade Practices Act 1974*.

Matters which involve the potential commission of serious corporate fraud can be very technical, and the prosecution of such matters requires specialist skill. In order to ensure effective prosecution action, the DPP is available to provide early advice to ASIC in the investigation of suspected offences. There is regular liaison between ASIC and the DPP at head of agency, management and operational levels.

Early liaison between the DPP and ASIC is particularly important in large fraud cases, where investigations can be long and resource intensive. Often the material provided to the DPP by ASIC is voluminous and complex. Early involvement by the DPP in these matters can assist to direct and focus the investigation, which ensures that any prosecution is as effective as possible.

The responsibility for investigating breaches of the *Trade Practices Act 1974* rests with the Australian Competition and Consumer Commission (ACCC). The DPP meets regularly with the ACCC to discuss specific case and general liaison issues.

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

Significant Cases

Prosecutions Arising out of the Collapse of HIH

The DPP has the carriage of the criminal prosecutions which have arisen 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 considerable public concern as many individuals, organisations and businesses were left without insurance. The ASIC investigation into the circumstances of the collapse resulted in a number of prosecutions. Those matters were reported in last year's Annual Report and updated reports are as follows:

▪ Charles Percy Abbott

Abbott was a non-executive director of HIH. He was charged with one offence against section 184 of the *Corporations Act 2001* of dishonestly using his position as a director of HIH to gain an advantage. It was alleged that on the day prior to HIH being put into provisional liquidation, Abbott used his position to secure the payment of invoices totalling \$181,445 that were owing to his private company, Ashkirk Pty Ltd. On 19 March 2005, at the conclusion of the committal proceedings, the Magistrate found there was a prima facie case against Abbott, but discharged him on the basis that a reasonable jury properly instructed would not convict him of the offence charged.

▪ Rodney Stephen Adler

Adler was a non-executive director of HIH. In 2002, he had been charged with five offences against the *Corporations Act 2001* in relation to his conduct relating to Pacific Eagle Equities Limited (PEE). There were two charges under section 997(1) of the Act, one under section 997(7) (both offences of stock market manipulation), and two under section 999 (false statements in relation to securities). On 16 February 2005, Adler pleaded to the two counts under section 999, which was accepted in full discharge of all PEE counts.

Adler also pleaded guilty to one count under section 184 of the *Corporations Act 2001* (dishonest use of position), and one count under section 178BB of the *Crimes Act 1900* (NSW) (false statement with intent to obtain a financial

advantage). These charges were laid in relation to his conduct in procuring HIH to invest in Business Thinking System Pty Ltd, a company in which he had a significant indirect interest. On 14 April 2005, Adler was sentenced in the Supreme Court of New South Wales to imprisonment of four years and six months, to serve two years and six months of that term.

▪ **Terence Kevin Cassidy**

Cassidy was a Managing Director of the HIH Group. On 24 March 2004, two *ex officio* indictments were presented against him in the Supreme Court of New South Wales. One of those indictments contained two offences against section 178BB of the *Crimes Act 1900* (NSW). Those offences related to Cassidy's alleged conduct in making false statements to the Australian Prudential Regulatory Authority with the intent of obtaining a financial advantage. The other indictment contained one offence against section 184 of the *Corporations Act 2001* and was in relation to Cassidy's alleged conduct regarding preference share documents.

Cassidy entered pleas of guilty to all counts. He received a substantial discount in sentence for his early plea and assistance to law enforcement authorities. On 29 April 2005, Cassidy was sentenced to 15 months' imprisonment to serve ten months of that term.

▪ **Bradley David Cooper**

Cooper has been charged with six offences against section 249B of the *Crimes Act 1900* (NSW) of corruptly offering a benefit to another person in order to influence him to show favour to Cooper and his companies. He has also been charged with seven offences against section 178BB of the *Crimes Act 1900* (NSW) of publishing a false or misleading statement with intent to obtain a financial advantage. During the period of the alleged offences, HIH paid approximately \$11.3 million to companies associated with Cooper, and a further \$1.79 million in debt was forgiven.

In October 2004, Cooper was committed for trial in the Supreme Court of New South Wales on all thirteen charges. The trial has been set down to commence in August 2005 and is expected to run for six to eight weeks.

▪ **Daniel Wilkie, Timothy Mainprize and Stephen Burroughs**

Wilkie, Mainprize and Burroughs are all former officers of the FAI group. They have been charged in relation to reinsurance contracts that were taken out by FAI shortly before it was taken over by HIH. It is alleged that the contracts were not taken out to manage risk, but to artificially inflate the

profits of FAI and give a misleading picture of the financial position of that company.

Wilkie and Mainprize have also each been charged with one offence against section 1309(2) of the *Corporations Act 2001* of providing information to the auditor which omitted matters which rendered the information misleading. In addition, Wilkie and Mainprize have each been charged with two offences, and Burroughs has been charged with one offence against section 232(2) of the *Corporations Act 2001* of failing to act honestly as an officer of a company.

On 19 July 2004, all three defendants were committed for trial. The trial date has been set for 12 weeks to commence on 5 September 2005.

▪ **Raymond Reginald Williams**

Williams was the Chief Executive Officer of HIH. On 15 December 2004, an *ex officio* indictment was presented in the Supreme Court of New South Wales. This indictment contained one offence against section 996(1) of the *Corporations Act 2001* of authorising the issue of prospectus which contained an omission, one offence against section 1308(2) of the *Corporations Act 2001* of making a statement in the HIH 1998-1999 Annual Report which was misleading, and one offence against section 184(1) of the *Corporations Act 2001* of being reckless and failing to exercise his powers for a proper purpose.

Williams entered pleas of guilty to all counts. On 15 April 2005, he was sentenced to four years and six months' imprisonment, to serve two years and nine months of that term.

Other Significant Cases

Luke Duffy

Duffy was the head trader of the Foreign Exchange Options Desk at the National Australia Bank. The Crown alleged that he and three other traders took advantage of internal flaws in the bank's procedures to enter false FX spot and options trades so as to cover growing losses of the trading desk. An 'FX spot trade' is a short-term currency transaction, while an 'FX option' is a long term currency transaction. An 'FX option' is a financial contract that gives the buyer the right, but not the obligation, to buy or sell a fixed amount of currency in exchange for another currency at a specified exchange rate on or before a specified date. In simple terms, Duffy and the other defendants were not successful in trading in these currency transactions, made losses for the bank, and then sought to conceal those losses.

In addition, it was alleged that Duffy and other traders received performance bonuses, partly as a result of management's reliance upon the falsified figures which indicated that the desk had achieved its budget of a profit of A\$37 million, when in fact the desk made a loss.

It was alleged that Duffy and others entered false spot trades to the value of approximately A\$42 million on both 1 and 2 October 2003, and to the value of approximately A\$33 million on 9 January 2004, thereby inflating profits and hiding losses by those amounts. As at 9 January 2004, there were seven 'active' options trades in the bank's system which had the effect of falsely inflating profit and hiding losses by approximately A\$145 million.

Duffy pleaded guilty to offences of dishonestly using his position under section 184(2) of the *Corporations Act 2001*. He has indicated a willingness to give evidence against his co-accused. He was sentenced to a term of 29 months' imprisonment, to be released after serving 16 months of that term. Duffy's sentence was reduced in consideration of his cooperation with authorities. But for his cooperation, the effective sentence would have been four years and three months' imprisonment, to serve two years and three months of that term.

Duffy has lodged an appeal against the severity of the sentence, which is pending.

Gregory Joseph Fisher

Fisher was the Managing Director of The Satellite Group Limited (TSGL), a public company that listed on the Australian Stock Exchange on 23 September 1999 and raised \$25 million from public subscriptions. The prospectus sought public investment to progress real estate development and media interests, with the latter being most particularly concerned with the gay and lesbian print media.

In his capacity as the Managing Director of TSGL, Fisher directed six cheques to be drawn between 20 April 2000 and 21 June 2000, payable to Alex Perry Pty Ltd and totalling \$220,425.67. The immediate purpose of the payments was to sponsor Sydney fashion designer Alex Perry's Mercedes Fashion Week collection in 2000. At the material time Alex Perry was a leading designer of ladies evening wear.

The prosecution case was that this expenditure of TSGL's funds was improper because this project had no connection to real estate or media, which TSGL had sought public funding to develop. The prosecution case was that in making these payments, Fisher had dishonestly used his position as an officer of the company. At no time before, or subsequent to the writing of the cheques, was the subject of the payments to Alex Perry raised by Fisher with the Board of Directors of TSGL or its audit committee.

Fisher was sentenced to an effective term of imprisonment of two years and six months, which was reduced to one year and eight months in consideration of his assistance to authorities.

Significantly, at the time the jury delivered its verdict in this matter, there were two further trials of Fisher ready to proceed in the District Court of New South Wales, which also alleged the improper use by Fisher of his position as an officer of TSGL. In anticipation of the further trials, His Honour Judge Norrish ordered the suppression of the publication of the verdict in the media in order to prevent any prejudice to Fisher in the subsequent trials. His Honour relied upon the implied power of the District Court of New South Wales to act in any way necessary to serve the administration of justice.

The suppression order was appealed by John Fairfax Publications Pty Ltd and News Ltd in the New South Wales Court of Appeal. The Court allowed the appeal, finding that there was no implied power in the District Court to order non-publication of a verdict. The Court found that where proceedings are conducted in an open court, there is no power to direct parties unrelated to the proceedings not to publish the verdict in the proceedings.

Donna Tung Sing Ho and Mark Sweeney

Ho was a director of Bo Long International Development Co Pty Ltd (Bo Long), and Sweeney was the chief executive officer. Bo Long raised funds from investors in Australia for the purpose of investing in two projects in China, a gas meter project and an electronic police monitoring system. Investors were sought through Sweeney. Investors usually paid funds directly to Sweeney who in turn transferred funds to either personal or company accounts operated by Ho.

The funds raised were never in fact sent to China for the purported projects but were instead used by Ho to purchase luxury cars (a Mercedes-Benz and a Porsche) and real estate (four private properties in Brisbane) for Ho and her family. The total amount of monies applied by Ho for private purposes was \$1,513,826.80.

Ho pleaded guilty to fraud offences under the *Queensland Criminal Code*, and was sentenced in the Brisbane District Court on 18 October 2004. She was sentenced to nine years' imprisonment, with a recommendation for parole after three years.

Sweeney was tried, and on 26 October 2004, was convicted of fraud offences under the *Queensland Criminal Code*. He was sentenced to imprisonment for a term of eight and a half years, with no recommendation for parole. Sweeney has lodged an appeal against conviction and sentence, which is pending.

Craig William Manners

Manners was a client adviser with a Melbourne stockbroking firm and a director of Adelong Capital Ltd, a company listed on the Australian and German stock exchanges. On 13 January 2000, Manners gave an interview by e-mail to a German financial journalist without board approval, in which he made false and misleading claims about Adelong's existing and future business prospects.

The interview was published on a popular German financial website called Wallstreet-Online. It immediately produced a wave of buying, causing Adelong's share price to rise dramatically, first on the German and then Australian stock exchanges. Manners progressively sold off his shares and options making a profit of at least A\$1.7 million.

In late 2002, Manners was charged with a number of offences under the *Corporations Act 2001*. On 9 June 2005, after a nine week trial, a jury found Manners guilty on three counts of making statements that he knew or ought to have known were false in a material particular, or materially misleading and likely to induce the purchase of securities.

Action has also been taken under the proceeds of crime regime in this matter and a report about that action is in Chapter 5. Sentencing proceedings are pending.

Daniel Francis McLaughlin

This prosecution arises out of the collapse of the Harris Scarfe group of companies in South Australia. Harris Scarfe was a major retailer in Australia. Turnover was \$406 million for the year ended 31 July 2000 and \$246.7 million for the seven months to February 2001. The company went into receivership in April 2001.

McLaughlin was the Chief Operating Officer for Harris Scarfe in the period covered by the charges (that is, from January 1999 to February 2001). It is alleged that in his role, McLaughlin knowingly presented monthly reports to the board of directors of Harris Scarfe Holdings Ltd, which contained false gross profit figures. In so presenting those reports, it is alleged that McLaughlin dishonestly failed to exercise his powers and duties in good faith.

The trial of the defendant commenced on 14 February 2005 in the District Court of South Australia and continued for about five weeks. The jury was not able to reach a verdict and the matter has been listed for re-trial in February 2006.

Antony Gordon Oates

The charges in this matter arose out of an extensive investigation conducted by the Australian Securities Commission and the AFP into events in 1988 and 1989 relating to the takeover of The Bell Group Ltd and Bell Resources Ltd ('Bell Resources') by Bond Corporation, and misuse of significant Bell Resources funds by Bond Corporation. Oates eventually pleaded guilty to three counts of improperly authorising the transfer of sums totalling \$500 million for the use of Bond Corporation from Bell Resources through an intermediary structure. The transfer of funds was effected solely for the benefit of Bond Corporation Group and was designed to give the false appearance that Bell Resources funds were being deposited with a merchant bank, whereas in fact they were being loaned to Bond Corporation.

Alan Bond and Peter Mitchell were co-accused in the matter and each entered pleas of guilty to different counts in 1997. Oates is the last offender to be dealt with for offences associated with this investigation.

In January 1995, Oates was charged with three offences, to which he eventually pleaded guilty. At that time, he was also charged with a number of other offences. Oates was in Poland in 1995. In July 1996, the Attorney-General of Australia requested Oates' extradition from Poland. In June 2003, Oates was extradited to Australia on 15 of the 17 charges, the other two charges being time barred according to Polish law.

After his extradition to Australia in June 2003, Oates pleaded not guilty to the charges. The first trial was conducted in August and September 2004, but was aborted after the Court held that the prosecution had unfairly introduced new evidence during cross examination of Oates. On 18 July 2005, Oates pleaded guilty to three counts of improperly using his position as a director, in full satisfaction of the indictment.

On 7 September 2005, Oates was sentenced in the Supreme Court of Western Australia to a total effective sentence of 40 months' imprisonment. At the time of sentence, Oates had served approximately 23 months in custody, both in Poland and Australia, and was given credit for this time served. He was released on parole on 9 September 2005.

Due to changes in State sentencing laws in 2003, Oates' sentence of 40 months was in real terms longer than that imposed on his co-offender Mitchell in 1997. Mitchell's minimum term was 16 months, whereas Oates' minimum term was 20 months. The higher sentence imposed on Oates reflected the fact that there were greater mitigating factors in Mitchell's case.

Robert Andrew Street

Street was a financial adviser who, between September 2000 and August 2002, obtained \$1,039,910 from five of his clients on the basis of misrepresentations as to the use of that money. The clients were advised that their money was to be invested in various legitimate projects. Instead, Street transferred most of the money to overseas individuals or entities connected with a form of Nigerian Advance Fee fraud.

Street pleaded guilty to charges under the *Victorian Crimes Act 1958* and was sentenced to five years and three months' imprisonment, to serve a minimum term of four years.

At sentence, psychiatric evidence was given concerning the defendant's long-standing bi-polar disorder. The Sentencing Judge found that the mental illness provided a basis for moderation of the sentence, but that the defendant's deceptive conduct was nonetheless deliberate and carefully considered. The defendant applied to a single judge of the Court of Appeal for leave to appeal the sentence, primarily on the basis of failure to give sufficient weight to the defendant's mental illness. This application was refused, and the defendant has applied to have the application heard before a bench of three judges on 6 October 2005.

Maxwell John Sweetman

Sweetman had been responsible for the finance and administration related activities of the publicly listed company, Harts Australasia Ltd, until his resignation as a director on 22 December 2000. On 8 and 9 January 2001, he sold a total of 416,000 Harts Australasia Ltd shares. At the time of these sales Sweetman was in possession of information that was not generally available. The information showed the extent of Harts Australasia Ltd's financial underperformance compared to the forecast profit set out in the prospectus. The information also revealed that the company would report a large loss for the first half of the year ending 30 June 2001. This information was not announced publicly until 25 January 2001.

On 17 December 2004, after pleading guilty to insider trading offences, Sweetman was convicted and sentenced to imprisonment of eighteen months, to be released after serving three months.

In addition, the Court made a pecuniary penalty order against Sweetman under the *Proceeds of Crime Act 2002* in the sum of \$280,349.54.

C H A P T E R 4

Prosecution Statistics

Exercise of Statutory Powers

The Director has a number of powers which can be exercised as part of the conduct of prosecution action. These include the power to ‘no bill’ a prosecution, to grant an ‘indemnity,’ to take over a private prosecution, to file an *ex officio* indictment, and to consent to conspiracy charges being laid in a particular case.

No Bill Applications

After a defendant has been committed for trial, the question sometimes arises whether the prosecution should continue. This can arise either as a result of an application by the defendant, or on the initiative of the DPP lawyer involved in the prosecution. A submission made to the Director to discontinue such a matter is known as a ‘no bill’ application.

In the past year, there were 21 no bill applications received from defendants or their representatives. Of these, three were granted, and 18 were refused. A further 12 prosecutions were discontinued on the basis of a recommendation from a Regional Office without prior representations from the defendant. The total number of cases discontinued was 15.

Of the 15 cases which were discontinued, in four of the matters the primary reason for discontinuing the prosecution was because there was insufficient evidence. Five of the matters were discontinued because the public interest did not warrant the continuation of the prosecution. In the remaining six cases, the reason for discontinuing the prosecution was both the insufficiency of evidence and the public interest. Of the discontinued cases, four involved fraud, four involved drugs, four involved corporations offences, and three involved other matters.

Indemnities

The DPP Act empowers the Director to give what is known in shorthand terms as an ‘indemnity’ to a potential witness.

Section 9(6) of the DPP Act authorises the Director to give an undertaking to a potential witness in Commonwealth proceedings, which is to the effect that any evidence the person may give, and anything derived from that evidence, will not be used in evidence against the person, other than in proceedings for perjury. Section 9(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. Section 9(6B) empowers the Director to give an undertaking to a person that any evidence he or she may give in proceedings under State or Territory law will not be used in evidence against them in a Commonwealth matter.

In the past year, the DPP gave undertakings under sections 9(6) and 9(6D) to 35 people, and gave two undertakings under section 9(6B). Those undertakings were given in a total of 23 matters. In some cases, indemnities were given to more than one witness in a single matter, or more than one type of indemnity was given to the one witness.

Taking Matters Over – Private Prosecutions

Traditionally, it has been open to any person to bring a private prosecution for a criminal offence. That right is protected in Commonwealth matters by section 13 of the *Crimes Act 1914*, and is expressly preserved under section 10(2) of the DPP Act.

Under section 9(5) of the DPP Act, the Director has the power to take over a prosecution for a Commonwealth offence that has been instituted by another person. The Director is empowered to either carry on the prosecution or, if appropriate, discontinue it. The power to take over and discontinue a prosecution was exercised 18 times in 2004-2005. In some cases, the person who commenced the prosecution had brought proceedings against more than one defendant, and the Director's power was exercised with respect to each of those defendants.

***Ex Officio* Indictments**

The Director has the power under section 6(2D) of the DPP Act to file an indictment against a person who has not been committed for trial. In 2004-2005, the Director exercised this power in relation to eight defendants. Five of those defendants were charged with drugs offences, and three were charged with corporations offences.

In a number of other cases, a defendant stood trial on different charges from those on which he or she was committed, or the defendant stood trial in a different State or Territory jurisdiction from that in which the person was committed. The indictments filed in those cases are sometimes referred to

as *ex officio* indictments, but they are not treated as *ex officio* indictments for the purpose of these statistics.

Consent to Conspiracy Proceedings

The consent of the Director is required before proceedings for Commonwealth conspiracy offences can be commenced. In 2004-2005, the Director gave consent to the commencement of conspiracy proceedings against 62 defendants in relation to 18 alleged conspiracies. Twelve of the alleged conspiracies related to drugs offences and six related to other types of offences.

Performance Indicators

The following table lists the DPP's performance indicators for the conduct of all prosecutions for 2004-2005, and compares them with the figures for the previous year. There are six performance indicators.

Prosecution performance indicators for 2004-2005

Description	Target	Outcome	Details (by no. of defs)
Prosecutions resulting in a conviction	90%	98%	5069 (out of 5186)
Figures for 2003 – 2004	90%	98%	4728 (out of 4843)
Defended summary hearings resulting in conviction	60%	67%	157 (out of 235)
Figures for 2003 – 2004	60%	60%	142 (out of 235)
Defended committals resulting in a committal order	80%	97%	295 (out of 305)
Figures for 2003 – 2004	80%	89%	281 (out of 316)
Defended trials resulting in a conviction	60%	68%	84 (out of 123)
Figures for 2003 – 2004	60%	74%	64 (out of 86)
Prosecution sentence appeals in summary matters upheld	60%	54%	7 (out of 13)
Figures for 2003 – 2004	60%	80%	4 (out of 5)
Prosecution sentence appeals on a prosecution on indictment upheld	60%	48%	15 (out of 31)
Figures for 2003 – 2004	60%	50%	7 (out of 14)

The indicators show that the DPP is well above target in terms of reaching its statistical goal for four of the six areas. The two areas in which the DPP did not reach its statistical target were prosecution appeals against sentence in summary matters, and prosecution appeals against sentence in indictable matters.

Discussion – Appeals

The DPP monitors the performance of prosecution appeals against sentence throughout the year. In March 2005, the DPP introduced new guidelines for prosecutors who were seeking the Director’s approval to appeal against a sentence. These guidelines aim to assist in ensuring that appeals are brought in appropriate circumstances; that is, where it can be asserted with some confidence that the appeal will be successful.

The DPP will continue to monitor its performance in appeals, and the effect of the new guidelines.

▪ Prosecution Sentence Appeals in Summary Matters

During the course of 2004-2005, most prosecution appeals brought against sentences given in summary matters were matters in which the Magistrate had found the offence proved, but had declined to convict the defendant. Such an order is made under section 19B of the *Crimes Act 1914*.

Section 19B provides that a Court can decide, in effect, not to enter a conviction against a person for an offence committed against Commonwealth law where:

“... the court is satisfied, in respect of [the] charge or more than one of [the] charges, that the charge is proved, but is of the opinion, having regard to:

- (i) the character, antecedents, cultural background, age, health or mental condition of the person;
- (ii) the extent (if any) to which the offence is of a trivial nature; or
- (iii) the extent (if any) to which the offence was committed under extenuating circumstances;

that it is inexpedient to inflict any punishment, or to inflict any punishment other than a nominal punishment, or that it is expedient to release the offender on probation...”

The interpretation of this section was in issue in some of the cases that were appealed by the DPP. In four related matters, the defendants Mehran

Behrooz, Sajid Hussain and Aftab Kakar escaped from immigration detention. Kakar escaped twice, and for the purposes of the statistics in this Report, the DPP brought two separate appeals in relation to him. Each of the defendants pleaded guilty, and they were dealt with at the same time. The Magistrate found the offence proved in each case, and the Magistrate sentenced each of the defendants under section 19B.

Each of the appeals was heard by Justice Gray in the Supreme Court of South Australia. In relation to all four matters, the DPP argued that the Magistrate had not completed the two stage process required by section 19B. The DPP argued that, as a question of law, in order to be in a position to make an order under section 19B, the Magistrate must first identify one or more of the factors listed in the section. Then the Magistrate must determine whether, in light of that factor or factors, it was expedient to impose any punishment. The DPP also argued that in each case, the Magistrate had not taken sufficient account of the policy reasons underlying the legislative regime that established the offences, or the seriousness of the offences and the need for general deterrence.

Justice Gray delivered a separate judgment for each of the defendants. In each case, he found that the Magistrate had failed to perform the two stage process required by section 19B. He allowed one of the DPP's appeals in relation to Kakar, finding that in all the circumstances of the case, including the fact that Kakar had escaped on two different occasions, Kakar should be re-sentenced. He imposed a conviction in that matter. Justice Gray declined to interfere with the sentences given under section 19B in relation to the other three matters.

In terms of the statistics counted in this Report, three of the matters (Behrooz, Hussain, and one of the Kakar appeals) have been counted as dismissed appeals, even though the Judge found that the Magistrate had erred in law when sentencing the defendants. (The second matter of Kakar has been counted as an appeal which was upheld.)

These cases demonstrate two points. First, they illustrate the way in which the statistics may not necessarily provide an accurate picture of the 'success' or otherwise of appeals. That is to say, it is sometimes the case that the DPP is successful in terms of the substance of the case, but the statistics reflect the outcome of the appeal as 'unsuccessful.' In addition, these cases demonstrate that there are occasions where, although an appeal is not upheld, the appeal itself gives an Appeal Court the opportunity to correct an erroneous approach taken by a Sentencing Court. This is important in terms of the clarity and consistency of the criminal law.

▪ Prosecution Sentence Appeals on a Prosecution on Indictment

As with appeals against sentence in summary matters, statistical information about sentences appealed in indictable matters does not always reflect the whole picture.

For example, in two of the unsuccessful DPP appeals brought last year, Simon Prasad and Alex Aksu, the Appeal Courts found that the original sentences were too lenient, but declined to allow the appeals. In seven other appeals, the Judges in the Appeal Courts were divided on whether to allow the DPP appeal.

There are two main points here: first, the differing views taken by Judges hearing the same appeal illustrates the complexity involved in both the sentencing process and the decision whether or not to appeal a sentence. Second, it is sometimes the case that an Appeal Court recognises the leniency of a sentence, although the appeal is not upheld. This is important for two reasons: first, because it shows the 'one-dimensional' nature of the statistics, and second, because it demonstrates that an appeal sometimes enables a higher court to identify the appropriate sentencing range, or the correct approach to sentencing, which can then be applied in future cases.

A number of appeal cases heard in 2004-2005 serve to illustrate these points.

Simon Sunil Prasad

Prasad was convicted, after a trial, of being knowingly concerned in the importation of a commercial quantity of ecstasy. The total consignment contained 34.401 kilograms of pure drug, with an estimated value of between \$7.2 and \$12 million. Prasad was not the principal offender, but played an important role in the importation. He was sentenced to 14 years' imprisonment with a non-parole period of eight years and eight months.

The DPP appealed the sentence on the basis that it was manifestly inadequate. There were two main arguments made by the DPP. First, that the sentence was inadequate given the sentences which had been given to Prasad's co-accused; and second, that the Sentencing Judge had erred in law in his approach to the fact that section 16G of the *Crimes Act 1914* had been repealed.

The New South Wales Court of Criminal Appeal restated the well established principles which apply to Crown appeals. These include the idea that 'the Court has a lively discretion to refuse to intervene [and alter the sentence] even if error has been shown,' and that 'a sentence which is imposed as a consequence of a successful Crown appeal will generally be less than that which should have been imposed by the Sentencing Court.'

The Court decided that, having regard to the sentences which had been given to the co-accused, as well as all the other facts and circumstances of the case, the original sentence ‘fell outside the legitimate sentencing range, and was unduly lenient.’ The Court found that an appropriate sentence would have been in the order of 17 years’ imprisonment with a non-parole period of 11 years and two months. However, having regard to the principles which apply to Crown appeals, the Court dismissed the appeal.

This appeal was counted as unsuccessful in terms of the statistics in this Report, but this brief outline of the case demonstrates one of the real difficulties with Crown appeals against sentence. The threshold to successfully appeal is to demonstrate that the sentence is ‘manifestly inadequate.’ Here, the Court found that the sentence was ‘unduly lenient’ and dismissed the appeal. The public, and possibly also some lawyers, may have difficulty in discerning a distinction.

Alex Umit Aksu

Aksu was convicted of having been involved with others in the importation of 708 grams of heroin. He collected the packages and gave them to a co-offender, and so his role was equivalent to that of a courier. He had three co-offenders, all of whom played a more serious role in the importation. Aksu was sentenced to four years and three months’ imprisonment, with a non-parole period of two years and six months.

The DPP appealed against the sentences of all four co-offenders. The appeals regarding three of the co-offenders (including Aksu) were dealt with at the same time. The appeal of the fourth co-accused is pending.

On 18 August 2004, the New South Wales Court of Appeal delivered its decision in relation to the three co-accused whose appeals were heard together. That decision held that the original sentences in all three matters were lenient. The Court noted that the Sentencing Judge had failed to give appropriate weight to the ‘punitive, retributive and deterrent elements’ of sentencing, and to the seriousness of the offences. However, the Court again noted the principles which are applicable to Crown appeals. Although the Court upheld the DPP appeals in relation to the other two co-offenders, the Court dismissed the DPP’s appeal in relation to Aksu.

The appeal in relation to Aksu was counted as unsuccessful in terms of the statistics in this Report.

Angelo Alateras

On 10 August 2004, Alateras pleaded guilty in the County Court of Victoria at Melbourne to having committed an internal Centrelink fraud amounting

to approximately \$92,000. He was sentenced to a term of nine months' imprisonment to be released forthwith, and also to perform 100 hours community service.

The DPP appealed the matter to the Victorian Court of Appeal on the basis that the sentence was manifestly inadequate. The DPP argued that the offender ought to have been sentenced to a term of actual imprisonment. The Court dismissed the appeal.

Two of the Judges found that the Crown had not shown that the sentence was manifestly inadequate, but one of those Judges described the sentence as showing 'very considerable leniency.'

The third Judge found that the sentence was, indeed, inappropriately low. That Judge noted that 'those who commit serious frauds against the revenue should be punished with custodial sentences and such sentences should include a period actually to be served.' However, that Judge was of the view that because of the delay in bringing the prosecution, and having regard to the principles which apply to Crown appeals, it would be inappropriate for the Court to interfere with the sentence.

This appeal was counted as unsuccessful in terms of the statistics in this Report.

Donny Low, Tanya Sayachack, Terry Ting, Danny Hui and Cindy Yong

Low, Sayachack, Ting, Hui and Yong were convicted of a large tax fraud. Three of the defendants were employees of the Australian Taxation Office. All five participated in a conspiracy to defraud the revenue, which lasted over seven years and employed sophisticated methodology. The loss to the Commonwealth was over \$1.3 million. The fraud was organised and executed with considerable skill.

The offenders were sentenced to various periods of imprisonment ranging from four years to serve 18 months, to 18 months to serve three months. The DPP appealed all five sentences to the Victorian Court of Appeal. The DPP argued that the sentences were manifestly inadequate, both in terms of the head sentences and in terms of the periods of actual imprisonment to be served.

The Court of Appeal dismissed the DPP's appeals. Again, two of the Judges were of the view that the appeals should be dismissed. One of those Judges said that 'the sentences imposed by Her Honour are at the low end of the range, to the point of being merciful,' but was not prepared to interfere with the Sentencing Judge's discretion. The third Judge, Chernov JA, dissented. Chernov JA found that the sentences imposed '... fail[ed] to reflect the gravity of the offending conduct ... and undervalue[d], to an unacceptable extent,

the operation of sentencing principles particularly general deterrence.’ Chernov JA would have allowed the DPP’s appeal and re-sentenced the defendants to ‘significantly higher sentences.’

All five appeals were counted as unsuccessful in terms of the statistics in this Report. This appeal, involving sentences for a significant fraud on the revenue, demonstrates the difficulty that prosecutors face in exercising their appellate discretion. Although the bar for Crown appeals is set at an appropriately high level, it is sometimes difficult for prosecutors to discern whether it can be ‘asserted with some confidence that an appeal will be successful,’ which is the relevant test to be applied by the DPP when determining whether to appeal against sentence, according to the *Prosecution Policy of the Commonwealth*.

This matter is also reported in Chapter 9.

Jack Roche

Roche entered a plea of guilty part way through his trial for an offence of conspiring to commit an offence contrary to section 8(3C)(a) of the *Crimes (Internationally Protected Persons) Act 1976*. He was sentenced in the District Court of Western Australia to nine years’ imprisonment with a non-parole period of four years and six months. Roche was charged with having conspired to intentionally damage the premises of the Israeli Embassy in Canberra, with the intention of endangering the lives of people by that destruction.

The DPP appealed to the Western Australian Court of Criminal Appeal on the basis that the sentence was manifestly inadequate. The DPP argued that the sentence simply did not reflect the seriousness of the offence.

Murray ACJ noted the principles which apply to appeals brought by the Crown, and stated that ‘the error by the Sentencing Judge which is to be identified must appear with abundant clarity before this Court will intervene.’ Murray ACJ stated that he was not persuaded that the sentence that had been imposed in this case fell into that category. Likewise, Templeman J found that the Sentencing Judge’s discretion had not miscarried.

The third Judge, McKechnie J, dissented. He set out a number of principles which he believed were important in the sentencing of terrorism offences, and noted that the sentence given in this case was insufficient to act as a general deterrent. He found that the sentence manifested error. McKechnie J would have allowed the Crown appeal, and would have imposed a sentence of 15 years’ imprisonment with a non-parole period of nine years.

This appeal was counted as unsuccessful in terms of the statistics in this Report.

Prosecution Statistics

In the course of the year, the DPP dealt with 6,123 people for a total of 9,447 charges. The cases were referred to the DPP from more than 40 different agencies. The tables which follow set out details of the prosecutions conducted in 2004-2005.

Table 1: Outcomes of successful prosecution action by DPP 2004 - 2005

Defendants convicted of summary offences	4 554
Defendants convicted of indictable offences	515
Defendants committed for trial or sentence	502

Table 2: Summary prosecutions in 2004-2005

Defendants convicted after a plea of guilty	4 397
Defendants convicted after a plea of not guilty	157
Total defendants convicted	4 554
Defendants acquitted after a plea of not guilty	78
Total	4 632

Table 3: Committals in 2004-2005

Defendants committed after a plea of guilty	207
Defendants committed after a plea of not guilty	295
Total defendants committed	502
Defendants discharged after a plea of not guilty	10
Total	512

Table 4: Prosecutions on indictment in 2004-2005

Defendants convicted after a plea of guilty	431
Defendants convicted after a plea of not guilty	84
Total defendants convicted	515
Defendants acquitted after a plea of not guilty	39
Total	554

Table 5: Prosecutions on indictment – duration of trials in 2004-2005

1 – 5 days	35
6 – 10 days	22
11 – 15 days	22
16 – 20 days	8
21 – 25 days	9
26 – 30 days	6
31 – 50 days	11
51 - 90 days	5
Total trials	118

Table 6: Prosecution appeals against sentence in 2004-2005

	Summary	Indictable
Number of appeals upheld	7	15
Number of appeals dismissed	6	16
Total number of appeals	13	31
% of appeals upheld	54%	48%

Table 7: Defence appeals in 2004-2005

	Summary	Indictable
Appeals against sentence upheld	93	16
Appeals against sentence dismissed	31	39
Appeals against conviction upheld	7	5
Appeals against conviction dismissed	7	14
Appeals against conviction & sentence upheld	14	2
Appeals against conviction & sentence dismissed	2	17
Total appeals	154	93

Table 8: Legislation: charges dealt with in 2004-2005

	Summary	Indictable
Aged Care Act 1997	1	
Agriculture & Veterinary Chemicals (Administration) Act 1992	1	
Air Navigation Act 1920	1	
Australian Citizenship Act 1948	3	
Australian Crime Commission Act 2002	3	
Australian Federal Police Act 1979	1	
Australian Securities & Investments Commission Act 2001	2	
Australian Postal Corporation Act 1989	3	
Aviation Transport Security Act 2004 & Regulations	12	
Bankruptcy Act 1966	167	28
Civil Aviation Act 1988 & Regulations	49	4
Companies Act 1981		14
Complaints (Australian Federal Police) Act 1981	1	
Commonwealth Electoral Act 1918	2	
Copyright Act 1968	37	
Corporations Law	49	38
Crimes (Aviation) Act 1991	24	1
Crimes (Currency) Act 1981	44	13
Crimes Act 1914	228	164
Criminal Code Act 1995	3347	216
Customs Act 1901	65	268
Customs Act 1901 (Christmas Island)	1	
Dairy Produce Act 1986	1	
Defence Force Act 1903 & Regulations	1	
Environment Protection & Biodiversity Conservation Act 1999 & Regulations	13	3
Excise Act 1901	25	57
Export Control Act 1982	1	
Family Law Act 1975	1	
Financial Management & Accountability Act 1997	1	
Financial Sector (Collection of Data) Act 2001	3	
Financial Transaction Reports Act 1988	85	10
Fisheries Management Act 1991	470	113
Fuel (Penalties Surcharge) Admin Act 1997	2	
Great Barrier Reef Marine Park Act 1975 & Regulations	48	

Table 8: Legislation: charges dealt with in 2004-2005 cont.	Summary	Indictable
Health Insurance Act 1973	40	1
Historic Shipwrecks Act 1976		1
Income Tax Assessment Act 1936	4	
Insurance (Agents & Brokers) Act 1984	1	
Maritime Transport Security Regulations	1	
Marriage Act 1961 & Regulations	4	
Migration Act 1958	76	19
National Crime Authority Act 1984		3
National Health Act 1953	2	1
Occupational Health & Safety (Commonwealth Employment) Act 1991	1	
Other - Non-Commonwealth Legislation	135	65
Passports Act 1938	75	19
Primary Industries Levy Collection Act 1991	12	
Proceeds of Crime Act 2002		4
Protection of Sea (Prevention of Pollution from Ships) 1983	6	3
Public Order (Protection of Persons & Property) Act 1971	4	
Quarantine Act 1908 & Regulations	12	2
Radiocommunications Act 1992	3	
Referendum (Machinery Provisions) Act 1984	1	
Secret Commissions Act 1905		3
Service & Execution of Process Act 1992	3	
Social Security (Administration) Act 1999	2186	
Social Security Act 1947	1	
Social Security Act 1991	779	
State Drug legislation	32	37
Statutory Declarations Act 1959	6	
Student Assistance Act 1973	10	
Superannuation Industry (Supervision) Act 1993	18	2
Taxation Legislation	188	5
Torres Strait Fisheries Act 1984	27	4
Trade Marks Act 1995	14	2
Trade Practices Act 1974	2	
Veterans Entitlements Act 1986	7	
Wildlife Protection (Regulation of Exports & Imports) Act 1982	3	2
Total	8345	1102

Table 9: Crimes Act 1914: charges dealt with in 2004-2005

	Summary	Indictable
Refuse to furnish name (s.3V(2)(d))	1	
Breach of recognisance (ss.20A & 20 AC)	9	
Treachery (s.24AA)	1	
Damage property (s.29)	4	
False Pretences (s.29A)		2
Imposition (s.29B)	66	18
Fraud (s.29D)	53	117
Administration of justice (ss.32-50)	11	13
Forgery (ss.65-69)	5	4
Disclose of information by Commonwealth Official (s.70)	2	
Stealing or receiving (s.71)	4	2
Bribery (ss.73 and 73A)		2
Computer offences (ss.76A-76E)	2	
Postal offences (ss.85E-85ZA)	7	1
Telecommunications offences (ss.85ZB-85ZKB)	59	
Conspiracy (s.86)		5
Trespass on Commonwealth land (s.89)	4	
Total	228	164

Table 10: Commonwealth Criminal Code 1995: charges dealt with in 2004-2005

	Summary	Indictable
Part 2.4 Extensions of criminal liability (ss.11.1 – 11.6)	4	10
Part 5.3 Division 101 Terrorism offences (ss.101.1(1) – 101.6(1))		2
Part 7.2 Theft and other property offences (ss.131.1 – 132.8)	30	5
Part 7.3 Fraudulent conduct offences (ss.134.1 – 135.4)	3140	139
Part 7.4 False or misleading statements (ss.136.1 – 137.2)	42	
Part 7.5 Unwarranted demands offences (ss.138.1 – 139.2)		1
Part 7.6 Bribery and related offences (ss.141.1 – 142.2)	1	9
Part 7.7 Forgery and related offences (ss.144.1 – 145.4)	23	9
Part 7.8 Causing harm to, impersonating, obstructing Commonwealth officials (ss.147.1 – 149.1)	71	35
Part 7.20 Division 270 Slavery, sexual servitude and deceptive recruiting offences (ss.270.3 – 270.7)		3
Part 10.2 Money laundering offences (ss.400.3 – 400.9)	6	1
Part 10.5 Postal offences (ss.471.1 – 471.15)	22	2
Part 10.6 Telecommunications offences (ss.474.1 – 474.17)	4	
Part 10.7 Other computer offences (ss.478.1 – 478.4)	4	
Total	3347	216

Table 11: Defendants dealt with in 2004-2005: referring agencies

	Summary	Indictable
Aboriginal & Torres Strait Islander Commission	1	1
Agriculture Fisheries & Forests Australia	12	
Attorney-General's Department	2	
Australian Communications Authority	2	
Australian Competition & Consumer Commission	1	
Australian Crime Commission	10	17
Australian Customs Service	33	19
Australian Electoral Commission	3	
Australian Federal Police	379	308
Australian Fisheries Management Authority	288	58
Australian Government Solicitor	1	
Australian Maritime Safety Authority	2	2
Australian National Parks & Wildlife Service	7	
Australian Pesticides & Veterinary Medicines Authority	3	
Australian Postal Corporation	43	8
Australian Protective Service	1	
Australian Prudential Regulation Authority	15	
Australian Quarantine and Inspection Service	3	2
Australian Securities & Investments Commission	32	42
Australian Taxation Office	175	74
Australian Telecommunications Commission	2	
Centrelink	4047	55
Civil Aviation Safety Authority	12	2
Cocos (Keeling) Islands	2	
Comcare Australia	2	3
Dept of Defence	4	1
Dept of Education Science & Training	1	1
Dept of Employment & Workplace Relations	9	3
Dept of Environment & Heritage	4	
Dept of Foreign Affairs & Trade	10	
Dept of Immigration & Multicultural & Indigenous Affairs	45	1

Table 11: Defendants dealt with in 2004-2005: referring agencies cont.	Summary	Indictable
Dept Primary Industries & Energy	2	
Dept of Veterans Affairs	12	
Environmental Protection Agency	20	
Great Barrier Reef Marine Park Authority	8	
Health Insurance Commission	43	3
Insolvency Trustee Service Australia	111	4
National Crimes Authority		1
Non-Commonwealth Agencies (Other than State Police)	7	2
State Police	135	18
Other	9	
Total	5498	625

Table 12: Reparation orders and fines and costs

	Value: 2003-2004	Value: 2004-2005
Reparation orders made in Commonwealth cases	\$34,905,838	\$37,077,453
Fines and costs orders made in Commonwealth cases	\$4,085,826	\$8,070,587

C H A P T E R 5

Criminal Confiscation

Overview

The importance of measures designed to attack the financial benefits obtained by persons from unlawful activity is widely recognised, both within Australia and internationally. The *Proceeds of Crime Act 2002* (POC Act 2002) demonstrates Australia's commitment at a national level to punishing, deterring and disabling criminals by the use of proceeds of crime action. The POC Act 2002 establishes a 'civil' based regime, in addition to retaining the prosecution based regime, which already existed under the *Proceeds of Crime Act 1987* (POC Act 1987). This dual system in proceeds of crime action reflects the approach taken in a number of other jurisdictions.

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

The DPP, in partnership with other federal law enforcement authorities, has a central role in taking confiscation action under both the conviction based regime and the civil based regime.

The *Proceeds of Crime Act 2002*

The POC Act 2002 came into operation on 1 January 2003. It provides a 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.

Under the POC Act 2002, confiscation action can be taken independently of the prosecution process. There are seven types of confiscation 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 confiscation 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. The Official Trustee is responsible for managing restrained property in all cases where a Court directs that property be taken into custody and control.

Confiscated assets and other money is paid into the Confiscated Assets Account, which was established by the POC Act 2002.

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

The POC Act 2002 contains a range of provisions to protect the interests of innocent third parties. These include exclusion orders, compensation orders and hardship orders. In addition, a Court can require the DPP to give an undertaking as to costs and damages as a condition for making a restraining order.

Other Recovery Options

As noted above, the POC Act 1987 applies to cases that were commenced before 1 January 2003. Given the nature of the proceeds function, work is still being undertaken by the DPP in relation to ongoing or past proceedings under the POC Act 1987.

The DPP also has power to bring proceedings under Division 3 of Part XIII of the *Customs Act 1901*, to recover profits earned from 'prescribed narcotic dealings.' The DPP also has a civil remedies power, which gives the DPP power to enforce traditional civil remedies on behalf of the Commonwealth in cases where there is a connection with a prosecution. Those powers were used regularly before the enactment of the POC Act 1987, but are now used infrequently.

Operating Structure

The work in this area is performed by Criminal Assets Branches in the Regional Offices. There is also a National Coordinator in Head Office, who coordinates the work on a national basis. The Criminal Assets Branch of Head Office also conducts case work in the Australian Capital Territory and, where appropriate, southern New South Wales.

The DPP works closely in this area with the AFP, the Australian Crime Commission and other investigating agencies. The DPP relies on 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 confiscation process. Cases often require ongoing support from the investigators to identify assets and determine how they were acquired, both up to and after final confiscation orders have been made. The DPP also works closely with the Insolvency and Trustee Service Australia (ITSA). ITSA is responsible for securing, managing and realising restrained property. ITSA exercises an independent function and operates separately from the DPP.

The Criminal Assets Branches may also conduct litigation in cases where the AFP has seized drug related goods under the provisions of the *Customs Act 1901*, or where the Australian Taxation Office has seized goods under the provisions of the *Excise Act 1901*, and the owner of the goods contests forfeiture.

In some regions, the Criminal Assets Branches also conduct prosecutions for offences against the *Financial Transactions Reports Act 1988*. That reflects the fact that in many of the prosecutions under that Act, defendants plead guilty and the real dispute is about whether the money involved in the offence should be forfeited.

Early Results Under the POC Act 2002

As with other criminal and civil litigation, proceedings under the POC Act 2002 can be lengthy and complex. For this reason, the full impact of the POC Act 2002 will only be revealed in coming years. However, even in the relatively short time since the commencement of the POC Act 2002, it has become clear that the Act is likely to have a significant impact.

A detailed breakdown of the results for the 2004-2005 year is provided by the tables at the end of this Chapter. It is important to note that there may be a time lag between the date when property is ordered to be confiscated, and when funds are actually recovered. For that reason, the total amount confiscated and the total amount recovered in any given year will not correlate.

The following is a summary of the results achieved under the POC Act 2002 for the 2004-2005 year:

- 173 new restraining orders were obtained.

- 206 restraining orders were in force at as 30 June 2005.
- 16 pecuniary penalty orders were obtained.
- 56 forfeiture orders were obtained.
- Automatic forfeiture occurred in 18 matters.
- The total amount recovered was \$6,544,935.

Examinations

Part 3.1 of the POC Act 2002 deals with compulsory examinations. An examination order must be made by a Court, but the actual examination takes place before an approved examiner. The majority of examinations are conducted before members of the Administrative Appeals Tribunal. A person cannot refuse to answer a question or produce a document on grounds of legal professional privilege or self-incrimination. The POC Act 2002 provides direct protection for people being examined, but there is no derivative use protection.

The DPP conducts examinations in appropriate matters.

The DPP has made extensive use of the examination power. The 2004-2005 year saw a considerable increase in the DPP's use of the examination power. In the 2003-2004 year, the DPP conducted 46 examinations. This year, the DPP conducted 146 examinations. The DPP's ability to conduct examinations quickly and frequently has proven to be a very effective tool in obtaining positive confiscation outcomes.

Proceeds of Crime Act 1987

There were no new matters commenced under the POC Act 1987 for the 2004-2005 year. However, there is still a number of continuing POC Act 1987 matters. The total amount recovered for the 2004-2005 year was \$1,371,363.

Civil Remedies and Action Under the Customs Act 1901

Action taken under the *Customs Act 1901*, or by way of civil remedies, continued to decline. In 2004-2005, there were no judgments for civil remedies, reparations, settlements or other payments, nor was there any property secured by injunction.

Property worth \$8,700 was condemned under the *Customs Act 1901*. There was one matter in which condemned property worth \$4,970 was realised.

Performance Indicators

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

Description	Number		Target
Applications for restraining orders that succeeded	173	100%	90%
Figures for 2003 – 2004	107	100%	90%
Applications for pecuniary penalty orders that succeeded	10	100%	90%
Figures for 2003 – 2004	8	100%	90%
Applications for forfeiture orders that succeeded	56	98%	90%
Figures for 2003 – 2004	50	98%	90%
Damages awarded against undertakings	1	\$5,000	-
Figures for 2003 – 2004	1	\$5,456	-
Number of cases where costs awarded against DPP	4	\$1,932	-
Figures for 2003 – 2004	2	\$91,000	-

The performance indicators show that the DPP exceeded targets in all applicable areas in 2004-2005.

Superannuation Orders

The Criminal Assets Branches conduct proceedings under the *Crimes (Superannuation Benefits) Act 1989* (CSB Act) and Part VA of the *Australian Federal Police Act 1979* (AFP Act). Under the CSB Act, a Commonwealth employee who has been convicted of a corruption offence, 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, and have been sentenced to more than 12 months' imprisonment, or are found guilty of some types of disciplinary misconduct.

The Attorney-General or the Minister for Justice and Customs must sign an authorisation before the DPP can 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.

The ability of the DPP to obtain such orders can clearly act as a significant deterrent against the commission of a corruption offence by a Commonwealth employee.

In 2004-2005, the DPP obtained three superannuation orders under the CSB Act. There were no orders under Part VA of the AFP Act. Details of the orders obtained under the CSB Act are set out below.

Superannuation orders 2004 – 2005

Name	State	Date
Loader	VIC	14 October 2004
Collins	WA	30 March 2005
Wagstaff	NSW	5 May 2005

Significant Cases

Darryl Wing-Kin Chan

Darryl Wing-Kin Chan was a pharmacist who operated his own pharmacy in Queensland. Over a period of several years, Chan made fraudulent claims to the Health Insurance Commission for rebates under the Pharmaceutical Benefits Scheme. Chan falsified prescriptions so as to suggest that drugs had been dispensed, when in fact the drugs had not been either purchased or dispensed by the pharmacy.

On 6 April 2004, Chan pleaded guilty to three counts of fraud under the *Crimes Act 1914*. The amount which Chan was proven to have fraudulently obtained in relation to the specific charges was approximately \$195,000. Chan was sentenced in the District Court of Queensland to four years' imprisonment, to be released after serving one year.

The DPP commenced civil proceedings against Chan under the POC Act 2002. In those proceedings, the DPP claimed that data from the Health Insurance Commission, from Chan's own pharmacy, and from drug companies which had supplied Chan, indicated that the total amount obtained by Chan from fraudulent claims was well in excess of \$195,000.

The DPP's proceedings under the POC Act 2002 were ultimately resolved by consent. In December 2004, the Brisbane District Court made an order that Chan was to pay to the Commonwealth a pecuniary penalty of \$377,500.

In addition, the Court made orders that property belonging to Chan, and which had previously been restrained by the Court, was to be sold in order to satisfy the pecuniary penalty order.

Yung-Chen Chen

Yung-Chen Chen was a target of an investigation by the Australian Crime Commission and the Queensland Police Service, into the alleged distribution of cocaine, heroin and ecstasy. As a result of the investigation, in late 2004 Chen was charged with drug offences under Queensland State law.

Upon investigation into Chen's affairs it was found that, despite being unemployed and having declared no income to the Australian Taxation Office, Chen had in his possession two 2003 model motor vehicles including a BMW; cash and funds held in bank accounts in excess of \$267,000; jewellery valued at more than \$10,000; and two plasma screen televisions.

The DPP obtained restraining orders under the POC Act 2002 in relation to the property on the basis that it was suspected of having been acquired with the proceeds from taxation offences and/or narcotics offences.

Under the POC Act 2002, Chen had six months in which to establish that the property had been lawfully derived. However, he did not apply to have the property excluded from confiscation. Accordingly, in May 2005, the District Court of Queensland ordered that the restrained property be forfeited to the Commonwealth. The total value of the confiscated property was in excess of \$320,000.

Diez v DPP

Section 101 of the POC Act 1987 gave a Court the power to order that costs be paid by the Commonwealth in certain specific circumstances. Section 323 of the POC Act 2002 reproduces section 101.

It had been the DPP's view that section 101 provided an exhaustive code for dealing with cost applications by defendants and third parties under the POC Act 1987. Under section 101, a person could not obtain a costs order unless the Court was satisfied that the person was not involved, in any way, in the commission of the offence in respect of which the forfeiture order or restraining order was sought or made.

At first instance, James J in the Supreme Court of New South Wales concluded that the defendant was precluded by section 101 from claiming costs against the Commonwealth. The defendant appealed that decision to the New South Wales Court of Appeal.

On appeal, the New South Wales Court of Appeal concluded that section 101 did not provide an exhaustive code. The Court of Appeal held that a successful defendant will not be precluded by section 101 from seeking a costs order under the Court's general power to order costs.

Michael and John Fares

Michael and John Fares, who are brothers, were accountants practising in Victoria. In late 2003, the AFP became aware that, over the space of nine days, the Fares brothers had deposited a total sum of \$1.17 million into a National Australia Bank account in their names via a series of 125 separate cash deposits at 21 separate branches of the National Australia Bank. Each of the deposits was for a sum under \$10,000.

Under the *Financial Transaction Reports Act 1988*, Australian banks are required to lodge a report in relation to any cash transaction involving \$10,000 or more. Section 31 of the Act provides that it is an offence for a person to conduct transactions in such a manner that it can be concluded that the person was attempting to avoid a report being made about the transactions.

The DPP commenced action under the POC Act 2002 to restrain the \$1.17 million which had been deposited into the Fares brothers' bank account. Shortly afterwards, the Fares brothers were each arrested and charged with one count under section 31 of the *Financial Transaction Reports Act 1988*.

Further investigation revealed that the \$1.17 million was part of a larger sum of \$9.8 million in profit which the Fares brothers had made on an investment in AMP. The profit had been made when the price of AMP shares jumped from \$5.15 to \$6.67 overnight, after the National Australia Bank had announced a takeover offer in relation to AMP. Michael Fares had been working at the National Australia Bank at the time the bank announced its takeover offer.

It was not alleged by the DPP that the Fares brothers' profit had been derived from insider trading.

The Fares brothers each pleaded guilty to an offence of 'structuring' under section 31 of the *Financial Transaction Reports Act 1988*. At their sentencing hearing, the Fares brothers indicated that they would not contest forfeiture of the \$1.17 million in structured funds, and that sum was later forfeited to the Commonwealth.

Richard James Frawley

On 17 October 2002, Frawley was charged under the *Corporations Law* with 21 offences of insider trading relating to shares in JNA Telecommunications

Ltd. It was alleged that, having obtained confidential information during his employment about the value of JNA shares, Frawley acquired 253,500 shares in JNA between 21 May 1998 and 15 July 1998, and then sold all of the shares on 20 and 21 July 1998, making a profit of about \$479,789.

On 2 October 2003, the DPP commenced proceedings against Frawley under the POC Act 2002. The DPP obtained orders restraining Frawley's interest in two residential properties.

On 24 June 2005, Frawley agreed to court orders requiring him to pay to the Commonwealth a pecuniary penalty under the POC Act 2002 equal to the amount of the benefit obtained from his offences. The total amount which Frawley was ordered to pay (taking into account the increased value of money) was just over \$586,000.

On the same date, Frawley entered a plea of guilty to the insider trading charges and was sentenced to a period of two and a half years of periodic detention.

Ka-Hung Ip

Ka-Hung Ip was a director of finance at the National Archives of Australia (NAA). In 2002 and 2003, Ip was instrumental in arranging for part of the NAA's data processing work to be outsourced to a company called 3I Consulting Pty Ltd. Ip recommended 3I Consulting as the optimal provider, organised for a contract with 3I Consulting to be drawn up, and also negotiated for contract amounts of \$1.65 million and \$275,000 to be fully prepaid to the company.

In late 2003, after the outsourcing arrangements had been in place for some time, inquiries into 3I Consulting revealed that the company's only directors, shareholders and employees were Ip and his wife. Ip had at no time disclosed his or his wife's personal interest in 3I Consulting to the NAA, and emails received from 3I Consulting had used the name of a person who did not in fact exist. It was also discovered that an audit report furnished in respect of 3I Consulting had been a forgery, and that Ip had been using NAA resources to complete some of the work supposed to have been done by 3I Consulting.

Ip was charged with dishonesty and abuse of public office offences under the Commonwealth Criminal Code. He voluntarily repaid \$1.539 million of the money received by 3I Consulting in March 2004, but initially disputed that the NAA was entitled to the return of any additional funds.

The DPP commenced action against under the POC Act 2002 to restrain additional benefits which Ip may have derived from the contract fees paid to 3I Consulting. Financial investigations revealed that Ip's access to the

contract fees had allowed him to reduce loan and interest amounts owed by him and his wife on three properties, to purchase an investment property, and to derive interest from money transferred to various term deposits.

In August 2004, in contravention of the restraining orders made by the Supreme Court of the Australian Capital Territory, Ip withdrew \$420,000 from the mortgage accounts relating to two restrained properties, and transferred the funds to an account in Hong Kong. When these transactions were discovered in September 2004, Ip claimed that he believed the restraining orders had been lifted. He transferred the funds back to Australia.

In October 2004, Ip agreed to pay a further \$450,000 to the Commonwealth in settlement of the DPP's action against him under the POC Act 2002, and an earlier civil action brought against him by the Commonwealth for breach of fiduciary duty.

Ip ultimately pleaded guilty to offences of dishonesty and abuse of public office, and also to an offence under the POC Act 2002 of breaching a restraining order over property. Ip was sentenced to 18 months' periodic detention, a sentence which was increased by the Court of Criminal Appeal to two years' periodic detention.

Caleb Loades

In August 2004, the Australian Customs Service intercepted an international mail package from Canada said to contain 'Creatine.' The package contained nine plastic bottles filled with white powder. Upon analysis, the powder was found to be 2.63 kilograms of ephedrine, which is a precursor drug used in the manufacture of amphetamines.

A search warrant was executed at Loades' premises in Adelaide. Police located evidence linking him with the imported package as well as \$3,000 in cash, a diamond ring which had recently been purchased for cash, and a motor vehicle which had been recently purchased for cash. A separate sum of \$235,450 in cash was also located in a safety deposit box owned by Loades and his brother. Loades had a prior conviction for importing 6000 tablets of ephedrine in 1999.

Loades was also found to have established bank accounts in a false name, and to have conducted transactions involving hundreds of thousands of dollars. Significant sums had been transferred to accounts in Canada, and Loades had travelled to Canada on a number of occasions.

The DPP took action under the POC Act 2002 to restrain the cash and other items located during the execution of search warrants. Restraining orders were also obtained over money held in bank accounts, and over Loades' share in a house owned jointly with his brother. It was suspected that this

property represented proceeds of a drug and money laundering network involving Loades and others.

Loades ultimately pleaded guilty to one count of importing prohibited imports under the *Customs Act 1901*, a number of money laundering offences, and offences relating to his use of bank accounts in false names.

The Court made orders forfeiting the cash and other items of property to the Commonwealth. The total value of the confiscated property was in excess of \$350,000.00.

Jean-Teddy Ramanah

Ramanah was a public accountant, registered tax agent, and registered financial advisor in Canningvale, Western Australia. During the period from 1996 to 2004 Ramanah submitted 184 tax returns on behalf of clients to the Australian Taxation Office in which, without the knowledge of his clients, he included falsely inflated claims for tax refunds. Ramanah directed the Australian Taxation Office to pay the refunds into a business trust account, kept the fraudulent part of the refund, and then forwarded the balance properly payable to his clients.

As a consequence of the false claims, Ramanah obtained in excess of \$1.5 million in refunds from the Australian Taxation Office which were not payable.

The DPP commenced civil action under the POC Act 2002. Restraining orders were obtained from the Perth District Court over two investment properties, motor vehicles, shareholdings and a number of business and personal bank accounts.

Ramanah ultimately pleaded guilty to fraud offences under the *Crimes Act 1914* and the *Criminal Code*. The Perth District Court sentenced Ramanah to imprisonment for nine years with a non-parole period of four and a half years. Ramanah has appealed against this sentence.

In addition, the District Court made an order under the POC Act 2002 requiring Ramanah to pay a pecuniary penalty of \$1,585,716.93. There is no appeal pending in relation to this aspect of the case.

Michael Simon Studman

Michael Studman was a former employee of ITSA who used his position as an employee to steal monies from the Commonwealth and to otherwise commit fraud in excess of \$380,000.

On 15 February 2005, Studman pleaded guilty to various offences against the *Crimes Act 1914* and the *Crimes Act 1900* (NSW).

In April 2005, Studman filed an application seeking to prevent statutory forfeiture of property, which had been the subject of restraining orders under the POC Act 2002. Some of the restrained property was money from a redundancy payout received by Studman, which he had deposited into an account in a false name.

On 18 August 2005, Justice Hulme of the Supreme Court of New South Wales dismissed Studman's application. His Honour found that the restrained property could not be excluded from restraint as it was the 'proceeds of unlawful activity,' in particular, operating a bank account in a false name. His Honour's decision was significant because he held that, in considering whether the restrained property was 'proceeds of unlawful activity,' the Court was not restricted to those offences with which Studman had actually been charged. In this regard, His Honour followed the decision of the New South Wales Court of Criminal Appeal in *Jeffrey v DPP (Cth)* (1995) 79 A Crim R 514.

Criminal Assets Confiscation Tables

The tables which follow set out details of the criminal assets work conducted by the DPP in 2004-2005.

Table 1: POC Act 1987: orders and forfeitures in 2004 – 2005

	Number	Value
Restraining orders	0	0
Pecuniary penalty orders	1	\$799,321 (*)
Forfeiture orders	0	0
Automatic forfeiture	1	\$1,112,443

* The fact that a 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 2005

	Number	Value
Number of restraining orders in force	20	\$6,803,659

Table 3: POC Act 1987: Money recovered in 2004 – 2005

	Number	Value
Pecuniary penalty orders	5	\$133,194
Forfeiture orders	4	\$1,117
Automatic forfeiture	1	\$1,237,052
Matters where money recovered but no formal orders made	0	0
Total recovered		\$1,371,363

Table 4: POC Act 2002: orders and forfeitures in 2004 – 2005

	Number	Value
Restraining orders	173	\$83,827,922
Pecuniary penalty orders	16	\$4,729,313(*)
Forfeiture orders	56	\$1,849,238
Automatic forfeiture under section 92	18	\$2,932,696
Literary proceeds orders	0	0

* The fact that a 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 2005

	Number	Value
Number of restraining orders in force	206	\$135,775,134

Table 6: POC Act 2002: money recovered in 2004 – 2005

	Number	Amount Recovered
Pecuniary penalty orders	11	\$1,234,109
Forfeiture orders	44	\$2,078,140
Automatic forfeiture under section 92	17	\$2,343,378
Literary proceeds orders	0	0
Matters where money recovered but no formal orders made	3	\$889,308
Total recovered		\$6,544,935

Table 7: Criminal assets: summary of recoveries for 2004 – 2005

POC Act 1987 pecuniary penalty orders	\$133,194
POC Act 1987 forfeiture orders	\$1,117
POC Act 1987 automatic forfeiture	\$1,237,052
Matters where money recovered but no formal orders made	\$0
POC Act 1987 total	\$1,371,363
POC Act 2002 pecuniary penalty orders	\$1,234,109
POC Act 2002 forfeiture orders	\$2,078,140
POC Act 2002 automatic forfeiture	\$2,343,378
Matters where money recovered but no formal orders made	\$889,308
POC Act 2002 total	\$6,544,935
Customs Act condemnations	\$4,970
Customs Act total	\$4,970
Grand total	\$7,921,268

C H A P T E R 6

International

Practice

Transnational crime is becoming more prevalent, and investigations and prosecutions which have an international aspect are becoming more common. The result of this is that a greater number of Commonwealth prosecutions are either reliant on assistance from foreign law enforcement authorities, or could be greatly supported by that assistance.

Often matters that have an international aspect are also sensitive or significant cases. For example, large fraud, drug, or terrorist cases, people smuggling and sexual servitude cases often by their nature have an international dimension. The international aspect of this work is an important part of the DPP's practice.

The DPP is involved in two main categories of international work: Extradition and Mutual Assistance. Extradition and Mutual Assistance are essentially international systems that allow cooperation between governments in the investigation and prosecution of criminal matters. Australia participates in those systems through the Australian Central Authority, which is located in the Commonwealth Attorney-General's Department.

The DPP's international work is coordinated in the Commercial, International and Counter-Terrorism Branch of the DPP's Head Office. Head Office provides an important link between the Australian Central Authority and the DPP's Regional Offices. Head Office is the main point of liaison with the Australian Central Authority, and works closely with that Authority.

Extradition

The Australian Central Authority, within the Attorney-General's Department, is responsible for processing all incoming and outgoing extradition requests, except requests to or from New Zealand, where there is a simplified procedure for extradition.

The DPP has a dual role in extradition matters. First, the DPP deals with incoming extradition requests received by Australia. In these matters, 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, acting on the basis of instructions provided by the Australian Central Authority.

Secondly, the DPP has a role in preparing extradition requests to foreign countries in matters involving Commonwealth offences. The DPP has no role in cases where extradition is sought for an offence against State or Territory law. In those cases, the authorities of the relevant State or Territory deal directly with the Australian Central Authority.

Extradition is a specialist area of the law. Documents submitted in support of an extradition request must meet the requirements of the *Extradition Act 1988* and the relevant treaty. Given the widely differing legal systems throughout the world, the provision of these documents, both in support of outgoing and incoming requests, requires specialist expertise. The DPP regularly provides advice about specific cases.

Some extradition cases may take a number of years to reach finality.

In the past year, the DPP received instructions from the Australian Central Authority to act, or requests to provide advice or other assistance, in 22 new requests from foreign countries. Five of those matters have resulted in Court proceedings in Australia, with three of the people consenting to extradition, one person being found eligible for surrender to the requesting country, and one matter currently before the Court.

In the same period, the DPP requested the Attorney-General's Department to make eight requests to foreign countries in relation to prosecutions being conducted by the DPP. The requests involved both formal requests and requests for provisional arrest, pending submission of a formal request.

A breakdown of these numbers is given in the following tables.

Extradition requests involving the DPP*: source country

Country	Incoming Requests	Outgoing Requests#
Germany	4	1
Turkey	1	
South Africa	1	
Belgium	1	
UK	5	1
USA	6	1
Lebanon	2	
Argentina	1	
Hungary	1	
Thailand		3
Brazil		1
Hong Kong		1
Total requests	22 (no. for previous year 16)	8 (no. for previous year 5)

* Includes work done on both provisional arrest and formal extradition requests and advice to the Attorney-General's Department.

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

Extradition requests involving the DPP: type of matter

Type of Matter	Incoming Requests	Outgoing Requests
Fraud	3	2
Murder/Assault	4	
Sex offences	4	
Drugs	3	5
People Smuggling		1
Other	8	
Total requests	22	8

Mutual Assistance

Mutual assistance is the formal process by which countries provide assistance to each other to investigate and prosecute offences, and to recover the proceeds of crime. The formal mutual assistance regime relies on a network of international relations, and the goodwill of countries to assist each other in the investigation and prosecution of criminal matters.

This international network is partly underpinned by a number of international treaties. Australia is currently a signatory to over 20 bilateral mutual assistance treaties, and a number of international conventions which assist the mutual assistance process. Australia also has a number of important bilateral relationships with non-treaty countries based on the principle of reciprocity. Countries provide assistance on the understanding that they will receive similar assistance in return, if requested.

The mutual assistance regime in Australia is governed by the *Mutual Assistance in Criminal Matters Act 1987*. The Australian Central Authority is responsible for mutual assistance matters in Australia. DPP Head Office is responsible for liaising with the Australian Central Authority about mutual assistance matters.

The formal mutual assistance regime runs parallel with a less formal system of international cooperation between investigating agencies. The formal mutual assistance channel is usually used when a request for assistance requires the use of coercive powers in the requested country, or the material requested is required in a form that may be admissible in criminal proceedings in the requesting country.

The main types of assistance provided under the mutual assistance regime involve the use of coercive powers and include:

- taking evidence from witnesses for use in foreign criminal proceedings;
- executing search warrants and notices to produce material; and
- locating, restraining and recovering proceeds of crime.

In terms of incoming requests for assistance, the DPP generally becomes involved where the execution of the request requires the use of coercive powers, such as the execution of search warrants. The DPP also conducts any Court proceedings which are necessary to satisfy an incoming request. The DPP may also become involved where action to forfeit the proceeds of crime is being considered.

In the past year, the DPP was involved in providing assistance to obtain 54 search warrants to seize material to assist in foreign investigations. The DPP also conducted Court proceedings to take evidence from 17 witnesses required to give evidence in foreign criminal proceedings. This assistance was provided in relation to 30 requests made by 11 countries. The method

of recording statistics for incoming requests has been changed this year to record only the number of requests received. In past years the statistics recorded the number of separate tasks arising from the requests.

In the past year, there has been a continuing increase in the number of requests for evidence to be taken in Australian Courts for use in foreign Courts, by way of video link. These matters sometimes pose practical difficulties because of differences in time, language and legal systems. As technology becomes more widely available, and more sophisticated systems are developed to facilitate this type of evidence, it is likely that these types of requests will continue to increase, and will form a valuable contribution to global law enforcement.

In the past year, the DPP was involved in 126 outgoing requests made by Australia to 41 countries. These requests were generally made in conjunction with Commonwealth investigating agencies, or arising out of joint taskforces comprising law enforcement officers from both Commonwealth and State or Territory agencies. The DPP is not generally involved in mutual assistance requests initiated by State and Territory agencies.

The number and complexity of incoming and outgoing mutual assistance requests is likely to continue to increase, given the globalisation of crime and the widening recognition that there is a need to address crime on an international level.

Mutual assistance requests involving the DPP

Country	Incoming requests <i>(involving the exercise of coercive powers)</i>	Outgoing requests
Algeria		1
Argentina	1	1
Austria		1
Bahamas		1
Belgium	2	5
British Virgin Islands		3
Canada		2
Cayman Islands		1
Chile	1	
China		1
Costa Rica		1
Denmark		1
Dubai		1
Fiji	1	
France		2
Germany	1	5
Hong Kong		14
India		1
Indonesia		1
Ireland		1
Isle of Man		1
Israel		1
Italy		1
Jersey		1
Lebanon		1
Malaysia		3
Maldives		1
Mauritius		1
New Zealand	3	7

Country	Incoming requests <i>(involving the exercise of coercive powers)</i>	Outgoing requests
Pakistan		1
Poland	1	2
Singapore		8
Solomon Islands		1
South Africa		2
Spain		3
St Kitts & Nevis		1
Switzerland	1	4
Thailand		6
The Netherlands	5	8
United Kingdom	8	14
USA	6	14
Uruguay		1
Vanuatu		1
Total requests	30	126

Mutual assistance matters involving the DPP: type of matter

Type of Matter	Incoming	Outgoing
Corporations		5
Drugs	8	37
Fraud	16	48
Laundering	5	12
Other	2	17
Terrorism		7
Total	31	126

C H A P T E R 7

Law Reform

The Policy Branch in Head Office coordinates the DPP's work in the area of law reform. As the agency responsible for the conduct of prosecutions against the laws of the Commonwealth in all Australian jurisdictions, the DPP is in a unique position to provide insight into the practical operation of existing and proposed laws. The DPP also has an interest in ensuring that Commonwealth legislation regarding the criminal law is clear, consistent and practical. Because the DPP conducts prosecutions in the context of Commonwealth legislation, it is important to the DPP that this legislation is logical and workable.

In a law reform context, the Policy Branch acts as a coordination point for the varying areas of specialist expertise within the DPP, including the Commercial, International and Counter-Terrorism Branch, and the Criminal Assets Branch. The Policy Branch operates closely with the Legal and Practice Management Branch in establishing and maintaining links between prosecutors in Regional Offices and Commonwealth law makers.

The DPP does not develop criminal law policy. Rather, the DPP's main role in the law reform process is to provide advice to law makers about the practical implications of existing legislation, policy proposals and proposed legislation. This can involve identifying deficiencies in the criminal law and bringing those deficiencies to the attention of the Attorney-General's Department or other relevant department or agency. The DPP has a close working relationship with the Criminal Justice Division of the Attorney-General's Department, and with other areas of that department.

Much of the DPP's ongoing contribution to law reform arises out of the conduct of criminal prosecutions. That is, deficiencies in the existing legislation sometimes become clear during the course of prosecution action. One example of this which arose in 2004-2005 came to light as the result of a prosecution being conducted in Sydney. That prosecution involved large seizures of the narcotic methylamphetamine (commonly known as 'ice'), which had been imported into Australia. The relevant legislation, being Schedule VI of the *Customs Act 1901*, did not specify a commercial quantity for ice. As only a trafficable quantity was specified, the available maximum penalty was limited to 25 years' imprisonment.

Shortly after the prosecution, the *Customs Amendment Bill 2004* was introduced and passed, which specified a commercial quantity for a number

of narcotics, including ice. A penalty of life imprisonment is now available for prosecutions involving large amounts of those narcotics.

The DPP's ability to raise important issues of law reform was also demonstrated in the last year by the DPP's input into the possible reform of the *Trade Marks Act 1995*. During the course of the year, the DPP made a number of comments to the Attorney-General's Department on the operation of aspects of that Act. Having regard to the DPP's practical expertise, the DPP was able to make recommendations that consideration be given to possible amendments to the Act.

In the past year, the DPP has commented on a wide range of policy and legislative proposals, many involving new areas of prosecuting for the DPP. These have included making comments on the new offences now contained in the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*. Those provisions introduced a range of new offences to the Criminal Code which are designed to outlaw deceptive recruiting, trafficking in persons and debt bondage, and also introduce offences involving suicide related materials. These new offence provisions may prove particularly useful in the context of sexual servitude and slavery type prosecutions. In light of the DPP's practical experience in those areas, the DPP was able to provide valuable input regarding the effect and interpretation of the new provisions, and the manner in which those provisions might operate in the context of a prosecution.

In addition, the DPP provided comments on the new offences introduced as Part 10.6 into the *Criminal Code* in March 2005, which involve telecommunication services. Those new offences include specific provisions relating to the use of a carriage service for child pornography, and using a carriage service to procure or groom persons under 16 years of age in relation to sexual activity, as well as using a carriage service to make a threat to kill or for a hoax threat. The DPP has provided both internal and external training on these new offences, in particular the offences relating to child pornography and abuse material.

The DPP has also been involved in the development of the *Law and Justice Legislation (Serious Drug Offences and Other Measures) Bill 2005*. That Bill contains new serious drug offences, to be inserted in the *Criminal Code*. The proposed legislation would repeal the existing offences in the *Customs Act 1901*, and insert offences involving importing narcotic goods into the *Criminal Code*. Offences involving the importation of narcotics to Australia are among the most serious Commonwealth offences, and comprise a very significant part of the DPP's practice. In addition to offences relating to the import and export of drugs, the Bill extends the existing range of Commonwealth offences to trafficking, the commercial cultivation and selling of controlled

plants, the commercial manufacture of controlled drugs, and pre-trafficking in precursors.

The DPP is active in relation to law reform through discussions with investigative agencies, both in the context of particular cases, and in general liaison meetings. The DPP also participates in reviews, conferences and interdepartmental committees where law reform issues are discussed. The DPP participates in various working groups and committees relating to law reform, for example the National Working Group on Diversion of Precursor Chemicals.

The Australian Law Reform Commission is presently reviewing two very important areas in relation to the DPP's practice, namely federal sentencing and the operation of the uniform Evidence Act scheme. The DPP has welcomed the opportunity to provide input into these reviews, and to contribute, with the Attorney-General's Department and other agencies, to the reform of Commonwealth criminal law. Again, the DPP has been able to provide valuable input into the reviews on the basis of its practical experience in the prosecution of federal offences.

During the year, the DPP participated in two international evaluations of the effectiveness of Commonwealth criminal law. The DPP provided detailed information and assistance to the Financial Action Task Force into Anti-Money Laundering and Combating the Financing of Terrorism, as part of the evaluation of Australia by that Task Force. The DPP also participated in the review conducted by the Organisation for Economic Cooperation and Development into Australia's compliance with the *Convention Against Bribery of Foreign Public Officials in International Business Transactions*.

In each of these evaluations, the DPP was one of a number of agencies that provided information about the criminal law in Australia, through the Criminal Justice Division of the Attorney-General's Department. The DPP provided practical information about the prosecution process in Australia, discussed the operation of the relevant criminal offences, and provided statistical information. The DPP sees this provision of practical information as a useful contribution to the review and reform of law enforcement regimes, in both a national and international context. The DPP's expertise forms part of Australia's contribution to these evaluations, and the DPP values the opportunity to work closely with the other agencies involved in the evaluations.

The DPP also made a submission to the Review of the Regulation of Access to Communications under the *Telecommunications (Interception) Act 1979*, which was announced by the Attorney-General in March 2005, on various aspects of the Act.

The *Prosecution Policy of the Commonwealth* remains under review. Whilst it is some years since the last edition of this document, the DPP's experience is

that it continues to be very significant in promoting consistency in decisions made by the DPP, and in informing the public of the principles which underlie those decisions.

In the past year the DPP has reviewed its policy in relation to prosecution disclosure and has finalised a draft statement. That draft statement is presently the subject of consultation with Commonwealth agencies, and will be publicly released when the comments of Commonwealth agencies have been considered. The object of this review is to clearly state the disclosure obligations of the DPP and investigative agencies.

The DPP has reviewed its joint trial arrangements with each of the State and Territory Directors of Public Prosecutions with a view to establishing similar arrangements with each State and Territory DPP. The DPP has entered into a new joint trial arrangement with both the Tasmanian and Northern Territory DPPs and consultations are continuing with the other jurisdictions.

C H A P T E R 8

Resource Management

Overview

Management

The DPP has a Corporate Management Branch in Head Office, which is nationally responsible for Financial and Human Resource Management, Library Services and Information Technology (IT). The Branch is under the overall direction of the Deputy Director, Corporate Management, who also coordinates the Resource Management work 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, a Financial Management Section, a Library Section and an IT 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 is responsible for negotiating and implementing Certified Agreements and Australian Workplace Agreements. The Human Resource Management 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. The Library Section provides specialist library services throughout the office including reference, research, current awareness and online resources. The Information Technology Section is responsible for the technical infrastructure of the Office including the communications network, the computing capacity and the development and maintenance of various systems including the DPP's intranet and litigation support.

Significant Developments

▪ **Certified Agreement**

The Commonwealth DPP Agreement for 2003-2006 was certified by the Industrial Relations Commission on 26 November 2003. As at 30 June 2005, there were 406 staff members covered by the Certified Agreement. The third increase in salary, of 3%, was paid with effect from 1 May 2005. The salary scales are included in the tables at the end of this Chapter.

▪ **Australian Workplace Agreements**

The DPP has an Australian Workplace Agreement in place for each substantive Senior Executive Service (SES) employee, and all those who are acting in the SES for a period of more than six months, as the result of a merit selection process.

▪ **Intranet and Internet**

The Resource Management site on the DPP Intranet is a very useful resource for staff. It is continually updated to provide all resource management information online to DPP employees. The information includes the Director's Personnel Instructions, Director's Financial Instructions, Financial Delegations, IT Policies and Procedures, Explanatory Notes, the Certified Agreement, and other policies and procedures including the Performance Management Scheme and the Workplace Diversity Program.

The DPP has an on-line recruitment site on the DPP Internet home page. That ensures that potential applicants have electronic access to information relating to current vacancies, and to DPP policies and procedures. The site has been very successful and experience has shown that it has been used effectively by potential applicants.

▪ **Human Resource Policies**

The following Director's Personnel Instructions and policies were approved and published in 2004-2005:

- Part Time Employment Conditions;
- Fitness for Duty (revised); and
- Attendance, Hours of Duty, Public Holidays and Christmas/New Year Closure (revised).

▪ **SAP Human Resource Management System**

SAP was upgraded this year from 4.6b to 4.6c. This was a technical upgrade only, but it had implications for the Employee Self Service System (ESS), and other human resource areas within SAP. After a considerable period of time configuring and testing the new version, it went smoothly into production on 4 April 2005.

▪ **Performance Management**

The DPP has a Performance Management Scheme for non-SES staff. There was a full cycle of the scheme during 2004-2005, with eligible staff advancing in salary with effect from 1 July 2005. 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.

There has been a substantial improvement in performance management since in-house training was provided to all staff last year. Training in giving and receiving feedback was provided to a number of staff members this year. This training is continuing through next year to ensure that all staff members have the opportunity to attend.

▪ **Health Initiative**

The DPP arranged for Health Services Australia to conduct Lifestyle Screening to all staff interested in being assessed. Two hundred and fifty employees participated in this program.

▪ **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 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 consult specialists who have the skills needed to carry out inspections and develop strategies to overcome the problem.

Staff

Overview

The employees of the DPP are the most valuable resource of the Office. Fifty-five percent of the staff members are lawyers or in-house counsel. The remainder provide a range of services including litigation support, financial analysis, accountancy, IT services, library services, human resource services, and finance and administrative support.

As at 30 June 2005, the total number of staff was 498, there having been 492 as at 30 June 2004. A breakdown of this figure appears in the tables at the end of this Chapter. The average staffing level for the year was 481.76 (468 for 2003-2004). As at 30 June 2005, the full time equivalent staffing number was 476.90. All staff members are employed under the *Public Service Act 1999* or section 27 of the *DPP Act 1983*.

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 training is provided as part of the performance management cycle. The personal development plans are tailored to meet the needs of the individual to ensure that the employee has the skills required for their current position and for career development. Personal development plans are also used to develop training programs and to ensure that every staff member receives a fair allocation of training resources.

The DPP conducts in-house legal training to ensure that DPP lawyers comply with any continuing legal education requirements which apply to them. The DPP also runs an in-house advocacy training course for DPP lawyers. Training is also being provided in giving and receiving feedback, and this will be followed by selection panel training.

Direct expenditure on external training for the year was \$180,365. There was also considerable in-house training and 'on the job' training which was not costed.

Workplace Diversity and Equal Employment Opportunity

It is a requirement of the *Public Service Act 1999* 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 that Act

provides that an agency head must establish a workplace diversity program. A new Workplace Diversity Plan for the DPP was approved in April 2004. The aim of the Plan is to support diversity by creating an environment which enables DPP staff members to realise their full potential and contribute meaningfully to the DPP's vision and mission. Essentially, the Plan aims to capitalise on the contributions that people with different backgrounds, perspectives and experiences can make to the DPP workplace.

The DPP aims to integrate the principles of workplace diversity into all aspects of personnel management. This involves raising awareness of, and promoting, core values and standards of behaviour among all staff. It also involves embedding those principles into all human resource management policies and practices, including the performance management scheme, and selection and induction processes.

The DPP's Equal Employment Opportunity (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 EEO employment levels have varied since last year. The number of women employees has increased from 319 to 329. The number of people who have self identified as having a non-English speaking background has increased from 79 to 83.

As at 30 June 2005, the DPP had one Indigenous Legal Cadet, who is located in the Brisbane Office.

Status of Women

A table showing a breakdown of DPP employees by sex is at the end of this Chapter.

As at 30 June 2005, women made up 66% of DPP employees, and 65% of lawyers.

Of the 45 full-time members of the SES, 14 of those were women. There were two part-time members of the SES, both of whom were women. In percentage terms, 36% of SES positions were filled by women, which is an increase of 4% from last year.

As at 30 June 2005, there were more women part-time employees than men. In addition to the only two part-time SES officers being women, of the 27 part-time legal officers working for the DPP, 26 were women.

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

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 keeps its employment practices under review to ensure that they comply with the requirements of the *Disability Discrimination Act 1992*. The key practices are those that relate to selection and recruitment, training and development, health and safety, and workplace diversity. The tables at the end of this Chapter include a report on the implementation of the Commonwealth Disability Strategy.

Financial management

Financial statements

The audited financial statements at the end of this Report were prepared in accordance with the *Financial Management and Accountability (Financial Statements for reporting periods ending on or after 30 June 2004) Orders* issued by the Minister for Finance and Administration. Detailed information on the accounting policies used to prepare the audited financial statements is at Note 2 in the financial statements.

Under current budget arrangements, the DPP has one outcome with one output. Further information about the DPP's budget is in the Attorney-General's Portfolio Budget Statements.

Financial Performance

Introduction

The DPP's operations are largely funded through parliamentary appropriations. A small amount of revenue is received independently, which under an arrangement pursuant to section 31 of the *Financial Management and Accountability Act 1997*, is accounted for as agency revenue and retained for use by the DPP.

In accordance with the *Director of Public Prosecutions Act 1983*, the DPP prosecutes offences that result in fines and costs being ordered. The revenue

is accounted for as administered funds, and when received as cash, is paid directly into Consolidated Revenue.

Operating Results

Operating revenues for 2004-2005 were \$5.722m (8%) more than 2003-2004. This increase in revenues is largely due to increased appropriations from government for prosecutions functions. These functions include the Proceeds of Crime and Centrelink Identity Fraud measures announced in the 2003-2004 Budget, the HIH measure announced in the 2003-2004 Additional Estimates Budget. Also, the DPP received additional funding for indexation, less an efficiency dividend on the DPP's base appropriation.

Operating expenses for 2004-2005 were \$5.401m (8%) more than 2003-2004. This increase in expenditure is largely due to increased employee and legal expenses flowing from the increased appropriations.

Purchasing

The DPP complies with the *Commonwealth Procurement Guidelines* policies and principles.

Consultancy Services

The DPP engages consultants in areas where it does not have in-house expertise.

As a general rule, all consultancies with a value over \$30,000 are publicly advertised. Consultancies with a value of less than \$30,000 are either publicly advertised or sought by quote.

During 2004-2005, the DPP entered into two new consultancy contracts with an estimated value of \$10,000 or more. Further details of these consultancies are provided in Table 6 at the end of this Chapter.

During 2004-2005, the DPP spent a total of \$278,787 on seven consultancy contracts. This includes \$120,269 on the two new consultancy contracts entered into during 2004-2005.

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.

During the year:

- The fit out of the new Melbourne Office was completed. The relocation was carried out in August 2004;
- Additional space was fitted-out and occupied in the Brisbane Office;
- Minor refurbishment to the Sydney and Perth Offices was carried out; and
- A staged refurbishment of Head Office was commenced.

Internal Audit and Fraud Control

Internal audits are carried out every two years, and the next is due in 2005-2006.

The DPP has an integrated risk management framework which standardises all risk assessment methods and documentation. Using this framework, the DPP has prepared a Fraud Risk Assessment and Fraud Control Plan.

The latest approved Fraud Risk Assessment and Fraud Control Plan was updated in August 2004.

During 2004-2005, one matter was investigated as a possible fraud. The investigation was not concluded as at 30 June 2005.

External Scrutiny

The Auditor-General issued an unqualified audit report for the DPP's 2004-2005 financial statements.

The DPP was one of several agencies included in a cross agency performance audit commenced in 2004-2005. Information was also provided to the Auditor-General for several other 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.

Other Areas

Information Technology

The DPP has a computer installation which is made up of personal computers with local and wide area networks and in-house applications running in a client-server environment. The basic office tools are Windows XP and Office 2003. As stated above, all IT assets are leased.

All DPP staff have access to external email including to Fed-link, which provides secure delivery of email classified up to and including the classification of 'protected.'

In 2004-2005, all staff in the DPP were provided with limited access to the Internet from their desktops, for the purpose of accessing commercial legal databases, government sites, legal organisations and some non-legal commercial sites. The DPP provides access to the remaining resources on the Internet through stand alone computers. All library and some IT staff have a full desktop access to the Internet.

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 action by the Criminal Assets Branches; and
- File Registry System (FILE), which keeps a record of general and administration files.

The DPP runs an 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 which also runs MS SqlServer database on the Windows 2003 server.

The DPP has adopted a litigation support system known as LSS as 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 2004-2005.

Libraries

The DPP has a library in each Regional Office staffed by qualified librarians. The librarians provide valuable research, reference and information services to DPP officers, as well as 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 access to high quality current awareness services.

The librarians use the DPP Intranet to provide access to legal information through legal resource pages, in-house databases and legal publishers' electronic services. During 2004-2005, access was extended to Internet legal resources. Staff members also have desktop access to the library catalogue

through the Intranet. Library staff conduct regular training sessions on the use of all these electronic resources.

The Head Office library 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.

The DPP uses the FIRST library management system. During 2004-2005, the user interface to the library catalogue (OPAC) was re-designed. The new design has improved and simplified access to library material for legal staff. The FIRST request management module will be implemented later in 2005. This module is designed to maintain a record of research and to integrate it with data already held on the library system. Using this module, a user researching a particular issue will have the benefit of any research already done on that issue.

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 2004-2005.

During 2004-2005 the DPP spent \$69,543 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. A portion of electricity costs for Sydney, Melbourne and Head Office is sourced from green energy options.

The DPP has developed a comprehensive Intranet site for use by staff which includes research material, manuals, guidelines, directions and other documents which were once distributed in paper form. In addition, the Employee Self Service scheme gives employees electronic access to personnel records, which has further reduced the demand for paper.

Business Regulation

The DPP has no direct role in business regulation other than to prosecute criminal offences in appropriate cases. The DPP's activities in the area of Commercial Prosecutions are reported in Chapter 3 of this Report.

Public comment

Any person is free to write to the DPP about any matter, at the addresses shown at the front of this Report.

Privacy

There were no reports served on the DPP by the Privacy Commissioner under section 30 of the *Privacy Act 1988* in the past year.

Resource Management Tables

Table 1(a): Staff as at 30 June 2005*

	ACT	NSW	VIC	Qld	SA	WA	TAS	NT	TOTAL
Director	1								1
SES Band 3	2								2
SES Band 2	3	1	1	1		1			7
SES Band 1	3	13	9	8	1	3			37
PLO	10	21	13	14	6	5	2	1	72
SLO	6	27	25	10	4	6		2	80
LO 2	2	14	6	7	3	5	2	2	41
LO 1	2	15	7	7	3	3		1	38
Exec 2	7	3	2	1					13
Exec 1	6	5	2	3	1	1			18
APS 6	5	4	3	1	1	2		1	17
APS 5	6	3	4	4	2				19
APS 4	7	17	9	13	1	6	2	3	58
APS 3	2	18	15	11	6	11	1	2	66
APS 2		10	9	1		2	1		23
APS 1		1	1				1		3
Cadet				1					1
Articled Clerk			2						2
Totals	62	152	108	82	28	45	9	12	498

* Includes inoperative staff.

Legend:

SES	Senior Executive Service
PLO	Principal Legal Officer
SLO	Senior Legal Officer
LO	Legal Officer
Exec	Executive Officer
APS	Australian Public Service Officer
Cadet	Indigenous Australian Cadet – Legal
Articled Clerk	Articled Clerk - Legal

Table 1(b): Staffing summary 2004-2005*

Category	Number
Statutory Office Holders	1
Total staff employed under the PS Act	451
Total staff employed under the DPP Act	46
Total	498

*Includes inoperative staff.

The total number of non-ongoing employees included in this table is 72

Table 2: Staff as at 30 June 2005 by sex and category*

Category	Full Time		Part Time	
	Male	Female	Male	Female
Director	1			
Senior Executives				
Band 3	2			
Band 2	5	2		
Band 1	23	12		2
Legal Officers	78	126	1	26
Executive Officers	17	11	1	2
APS 1 – 6	39	122	1	24
Cadet		1		
Article Clerk	1	1		
Total: 492	166	275	3	54

* Includes inoperative staff

Table 3: Staff usage by Office*

Office	Actual Average Staffing 2004 – 2005
ACT	61.2
NSW	142.78
VIC	105.82
Qld	83.14
SA	26.71
WA	44.39
TAS	8.35
NT	9.37
Total	481.76

* Includes inoperative staff

Table 4: EEO Profile as at 30 June 2005

Classification	Male	Female	ATSI	PWD	First Language English plus Another	First Language other than English
Director	1					
SES Band 3	2					
SES Band 2	5	2				2
SES Band 1	23	14		1	1	1
Legal Officers	79	152	1	5	27	8
Executive Officers	18	13			2	4
APS Employees	40	146	2	12	22	14
Cadet		1	1			1
Article Clerk	1	1			1	
Total 498	169	329	4	18	53	30

*Includes inoperative staff

Legend:

ATSI Aboriginal and Torres Strait Islander
PWD Person with disability

Table 5: Salary Scales as at 30 June 2005

Classification	Salary
SES Band 3	\$181,008 - \$193,473
SES Band 2	\$145,385 - \$165,403
SES Band 1	\$132,292 - \$139,775
Principal Legal Officer	\$95,226 - \$99,326
Executive Level 2	\$82,757 - \$96,866
Senior Legal Officer	\$71,826 - \$87,275
Executive Level 1	\$71,826 - \$77,517
Legal Officer 2	\$52,368 - \$62,687
APS 6	\$56,150 - \$64,419
APS 5	\$52,030 - \$55,139
Legal Officer 1	\$43,221 - \$50,665
APS 4	\$46,706 - \$50,665
APS 3	\$41,964 - \$45,248
APS2	\$37,910 - \$40,871
APS 1	\$19,607 - \$36,059

Table 6: New consultancy contracts for 2004-2005 with an estimated value over \$10,000

Consultant	Purpose	Estimated Value* (including GST)	Procurement Method **	Reason for contract ++
GibsonQuai-AAS Pty Ltd	Telecommunications advice	\$57,025	1	A
Hassell Pty Ltd	Architectural advice	\$61,060	1	A

* Actual value if completed, estimated value at 30 June if not completed.

** Procurement Method

1. Not publicly advertised. Firms may be approached through a selective tender process, selected from an existing panel arrangement, or receive an extension of an existing contract.

++ Reason for Contract

- A. Lack of in-house resources and/or specialist skills.

Table 7: Resources for Outcome

	Budget for 2004-2005* \$'000	Actual 2004-2005 \$'000	Budget 2005-2006 \$'000
Administered appropriations	-	-	-
Total administered expenses	22,850	3,764 (2)	2,900
Price of departmental appropriations Output 1.1	75,212	75,102	79,210
Total revenue from government appropriations	75,212	75,102	79,210
Contributing to price of departmental outputs	75,212	75,102	79,210
Revenue from other sources Output 1.1	1,823	2,189	2,095
Total revenue from other sources	1,823	2,189	2,095
Total price of departmental outputs	77,035	77,291	81,305
Total estimated resourcing for outcome	77,035	77,291	81,305

* The figures are as per the original budget for the year, as published in May 2004.

The reason for variation between the budget estimate and the actual is the removal of reparation orders from CDDP revenues and expenses, see note 2.20 of the 2003-2004 Financial Statements. This accounting change was made after finalisation of the 2004-2005 Budget.

Table 8: Average staffing level (full time equivalents)*

	2004-2005	2005-2006 (estimate)
Average staffing level (number)	469	472

* Excludes inoperative staff members

Table 9: Commonwealth Disability Strategy Report

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

Performance Indicator	Performance Measure	Current level of performance	Goals for 2005–2006	Actions for 2005-2006
1. Employment policies, procedures and practices comply with requirements of the <i>Disability Discrimination Act 1992</i> .	Number of employment policies, procedures and practices that meet the requirements of the <i>Disability Discrimination Act 1992</i> .	The DPP has several employment policies which meet the requirements of the <i>Disability Discrimination Act 1992</i> . 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. DPP Workplace Diversity Plan addresses the needs of members of staff with disabilities.	Amend or update policies, procedures and practices if necessary and in line with legislative regulatory and case law developments. Continue to meet the requirements of the <i>Disability Discrimination Act 1992</i> .
2. Recruitment information for potential job applicants is available in accessible formats on request.	Percentage of recruitment information requested and provided in: <ul style="list-style-type: none"> ▪ accessible electronic format; and ▪ accessible formats other than electronic. Average time taken to provide accessible information in: <ul style="list-style-type: none"> ▪ electronic format; 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 customer requests processed via desired medium within 48 hours of receipt. Extensions of closing periods granted consistent with any delays in providing information.	DPP will continue to provide information to potential job applicants in accessible formats on request. Respond to requests as necessary.
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.	Maintain staff awareness of principles and practices.	Formal training for selection committee members during 2005-2006 covering the application of the principles of reasonable adjustment.
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, the Merit Protection Commission and the Australian Industrial Relations Committee.	All employees continue to be provided with access to Employees Assistance Program services and complaints/grievance mechanisms.	Information on complaints/grievance mechanisms are reviewed and updated as necessary.

C H A P T E R 9

Significant Cases

The cases summarised in this Chapter are some of the matters dealt with by the DPP in the past year. The cases are important either because the facts and circumstances alleged by the prosecution are significant, or because the case demonstrates a point of legal relevance.

Steven Adams, Igor May and Iouri Chouster

This case arose out of a random baggage search of Adams, who arrived into Melbourne Airport in early January 2004. That search located suspicious documents including the technical specifications of an 'Envirotainer,' which is a refrigerated air-shipping container, and the address of a factory in Bayswater in New South Wales. The day after Adams arrived in Australia, officers of the AFP undertook surveillance in the vicinity of the factory and saw Adams take delivery of an Envirotainer. The Envirotainer was subsequently found to contain approximately 20 kilograms of ecstasy tablets concealed within PVC tubes underneath the floor of the container. The container had been imported into Australia several days earlier.

Subsequent inquiries identified the importation of a further Envirotainer which was yet to be delivered. Examination of this container revealed another concealment of ecstasy tablets, this time weighing approximately 22 kilograms. Surveillance was maintained for several weeks until the Envirotainer was delivered to a workshop in Elsternwick in New South Wales. May took delivery of the container and Chouster later attended the workshop to assist with lifting the floor of the container to access the concealment.

May pleaded guilty and was sentenced to six years' imprisonment with a non-parole period of three and a half years. Adams and Chouster were tried separately and each claimed that he had no knowledge that narcotics were concealed in the respective Envirotainers. Each was found guilty. Adams was sentenced to nine years' imprisonment with a non-parole period of seven years, and Chouster was sentenced to five and a half years' imprisonment with a non-parole period of three and a half years.

ADI Limited

This was a matter in which ADI Ltd was charged with one count of supplying an unsafe plant for use by employees in contravention of section 19(1)(a) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. Essentially, ADI Ltd was contracted to provide maintenance services for the Australian Navy vessel, *HMAS Westralia*.

On 5 May 1998, four sailors died when a fire broke out in the engine room of the *Westralia*. Fifty-six flexible fuel hoses had been fitted on behalf of ADI Ltd a short time before, to replace the existing fixed metal pipes in an effort to resolve a problem with fuel leaks. The hoses had failed after only 35 to 40 hours of operation. This failure caused the fire.

After a seven day summary hearing in the Perth Magistrates Court, the Magistrate found that ADI Ltd had failed to take all reasonably practicable steps to ensure that the flexible fuel hoses were safe. The Magistrate found that it was obvious that the task of replacing 56 fixed metal lines, which conveyed fuel in a hot engine room, was important and dangerous. The Magistrate further found that none of the actions required of the defendant to avert the risk were costly, time consuming or difficult.

The maximum penalty for a breach of section 19 at the time of the offence was a fine of \$100,000. The Magistrate fined ADI Ltd \$75,000, and ordered the company to pay costs of the proceedings in the sum of \$23,000.

Ali Al Jenabi

The defendant was originally indicted on four counts of contravening section 232A of the *Migration Act 1958*, and a number of alternative counts against section 233(1)(a) of the same Act. In essence, the Crown alleged that Ali Al Jenabi was heavily involved in a people smuggling ring which brought boatloads of illegal immigrants to Australia.

The trial commenced with a *voir dire* which started on 7 June 2004 and ended on 27 July 2004. The purpose of that hearing was principally to test the admissibility of photo-board evidence which the Crown intended to rely upon at trial. At that stage, the defendant denied that he was Ali Al Jenabi and also denied that he was guilty of any of the offences charged in the indictment. The majority of the identification material was found to be admissible, and the Crown relied on that material at trial.

The trial before the jury commenced on 3 August 2004. The Crown alleged that the defendant had organised the bringing into Australia of four boat loads of illegal immigrants. The first boat was a vessel referred to as the *Stonyville*, which arrived in Australia with 36 passengers and two crew from Indonesia in about June 2000. The second boat was called the *Fruitgrove*, and

arrived in Australia with 33 passengers and three crew on 15 October 2000. The third boat was named the *Outtrim*, and arrived on 5 May 2001 with 65 passengers and three crew. The last boat was the *Bacala*, which arrived on 20 August 2001 with 225 passengers and four crew.

The trial proceeded until 9 September 2004, when the defendant entered guilty pleas for the charges relating to the *Fruitgrove* and the *Bacala*. He indicated also that he wished the charge in relation to the *Outtrim* be taken into account on sentence. The Crown accepted this, and a *nolle prosequi* was filed in relation to the other charges.

The Court found that Al Jenabi was heavily involved in the people smuggling syndicate which had organised the three boatloads to come to Australia. The course of conduct in which he was involved took place over a period of about 12 months and the number of passengers on each boat had escalated from 33 to 65 to 225. Al Jenabi was sentenced to eight years' imprisonment with a non-parole period of four years' imprisonment.

Gregory Roy Cook

Cook pleaded guilty to one count of sexual conduct with a child under the age of 16 years outside Australia, pursuant to section 50BC of the *Crimes Act 1914*.

The allegations were that Cook had sexually assaulted two Amerasian girls whilst holidaying in Vietnam in June 2003. The girls are sisters, and were then aged seven and nine years old. The two sisters complained that Cook had inserted his fingers into their vaginas, whilst playing with them in a hotel swimming pool.

This matter raised a number of issues. First, the girls were distressed by the incident, and were reluctant to travel to Australia for the purpose of giving evidence. In addition, there had been some initial delay caused by the failure of the Vietnamese authorities to investigate the matter. As is often the case in matters such as this, the Crown case relied solely on the uncorroborated testimony of the children.

On 23 February 2005, Cook was sentenced in the New South Wales District Court to three years' imprisonment, to be released after serving 18 months of that term.

Martin Garth Cook

In September 2004, Cook pleaded guilty in the District Court of Queensland to Queensland State offences relating to the possession of child abuse computer games and child abuse photographs, and to Commonwealth offences of attempting to import child pornography and importing child

pornography. The attempted importation related to eight video compact discs of child pornography which Cook had purchased over the Internet from the Philippines. The importation offence related to the importation of a compact disc containing child pornography images from the United States of America, which Cook had also arranged over the Internet. The Commonwealth DPP prosecuted both the Commonwealth and the State offences.

The Sentencing Judge imposed fines of \$1,000 in respect of each offence. The Commonwealth DPP and the Queensland Attorney-General appealed against the leniency of the sentences, and the Commonwealth DPP handled the appeals in respect of all offences.

The Queensland Court of Appeal allowed the appeals against all the sentences. In respect of the Commonwealth offences, the Court substituted a sentence of 12 months' imprisonment with an order that the defendant be released forthwith. The Court also ordered that the amount of the fines for each of the State offences be increased to \$2,500.

In her decision, the President of the Queensland Court of Appeal noted:

“The production of child pornography exploits and damages young people and is a most serious matter. The relationship between the maker of pornography and those who use it is akin to the relationship between receivers and thieves. People will not be inclined to exploit children to make child pornography if there is no market for it. The Commonwealth legislature clearly intended that significant deterrent sentences be imposed upon those who use the Internet to import child pornography.”

Khaleed Shnayf Daoed

In 2003, Daoed was extradited to Australia from Sweden to face prosecution over his involvement in the 'SIEV X' tragedy. The trial lasted about three weeks and concluded on 8 June 2005.

In short, the Crown case was that between July and October 2001, Daoed aided the Egyptian people smuggler, Abu Quassey, to organise the proposed entry into Australia of over 400 non-citizens aboard a vessel which was later code-named 'SIEV X' by Australian authorities. ('SIEV' stands for Suspected Illegal Entry Vessel.)

The non-citizens were of Middle Eastern origin. None of them held valid visas authorising them to travel to and enter Australia. They left their country of origin and travelled initially to Sumatra, the largest island of Indonesia. After negotiating their fare with Quassey or an intermediary such as Daoed, they were transferred to accommodation at Cipenas, just south of Bogor, and then taken by road and ferry to another hotel in Sumatra pending

departure. On 18 October 2001, the passengers were transferred by vehicle to the beach where they were to embark onto the vessel.

The vessel was so overcrowded that one group of about twenty passengers refused to board it. Another group of about twenty people disembarked after the vessel had been travelling for some hours. The remainder, along with some Indonesian crew, sailed on, but on the afternoon of 19 October 2001 the vessel encountered rough weather and sank. Tragically, most of the passengers drowned, but about 45 of the passengers were eventually rescued by Indonesian fishing vessels and landed on Java.

Daoed was at a senior level in the people smuggling organisation. He assisted Quassey in various ways: for example, by attending promotional meetings with groups of prospective passengers; by negotiating the price and terms of travel to Australia; by providing information to passengers concerning the transport vessel; and by accompanying passengers on the trip to Sumatra.

Daoed was convicted and sentenced to nine years' imprisonment with a non-parole period of four and a half years.

Tiong Hou Goh and Chow Hee Tan

This matter arose out of the importation of 15 kilograms of pure heroin which was secreted in machinery shipped to Australia from Malaysia. The heroin arrived in Australia on 17 November 2003 by ship in a container carrying six items of machinery described as 'plastic injection moulding machines.' The heroin was hidden inside the rotors of the machines. Goh and Tan were charged with aiding and abetting the principal (who is thought to be in Malaysia) and unknown others in the importation of the heroin, and with attempting to possess the heroin.

The defendants both pleaded guilty to attempting to possess the heroin. Goh was sentenced to 12 and a half years' imprisonment with a non-parole period of eight years and nine months. Tan was sentenced to 12 years and eight months' imprisonment, with a non-parole period of eight years and ten months.

Steven Irvine Hart

Hart was a tax agent and the owner of a large accounting practice in Queensland. The charges arose out of a joint investigation by the Australian Taxation Office and the AFP into a tax minimisation scheme known as the Employment Retention Plan. In 1989, Hart adapted the plan from an investment product marketed by AMP, and commenced to sell it to his own clients. The prosecution related to nine clients who invested in the scheme.

The scheme involved each taxpayer (client) claiming a tax deduction for making a contribution to a staff benefit trust for the purchase of an insurance bond in favour of a key employee of that taxpayer. If the employee remained employed by the taxpayer for a period of ten years, the employee would receive the proceeds of the insurance bond. The payment was tax deductible as the taxpayer was providing an incentive to retain key employees by way of a gift to a staff benefit trust.

The purchase of each insurance bond was to be funded by each taxpayer's initial contribution of 12.7%, with the remaining 87.3% being provided by way of a loan.

Each taxpayer paid their initial contributions to Harts Fidelity Pty Ltd as trustee of the staff benefit trust on the understanding that it would be used for the purchase of an insurance bond. However, the money, which totalled \$335,000, was not used for this purpose but rather applied to the use of Harts Australia Ltd.

Hart generated false loans and insurance bonds through a company in Vanuatu. The false claims in the clients' tax returns amounted to \$1,470,000.

Hart was convicted and sentenced to seven years' imprisonment with a non-parole period of two years and nine months. He has appealed against conviction and sentence and the DPP has appealed against sentence. The appeal is pending.

Donny Low, Tanya Sayachack, Terry Ting, Danny Hui and Cindy Yong

This was a matter where three former officers of the Australian Taxation Office (ATO) conspired amongst themselves and with others to defraud the Commissioner of Taxation of \$1.3 million between 1991 and 2001. The ATO officers made some 2000 unauthorised accesses to the ATO computer systems to cause the system to generate 254 false assessments and refund cheques in the names of the conspirators or people associated with them.

The County Court of Victoria in Melbourne sentenced the defendants to terms of imprisonment ranging from four years' imprisonment with an order that 18 months of that term be served; to 18 months' imprisonment with an order that three months of that term be served. Crown appeals against the inadequacy of the sentences were unsuccessful. The Victorian Court of Appeal dismissed the appeals on 15 December 2004.

Zaky Mallah

Mallah applied for and was denied an Australian passport in mid-2002. He subsequently sought a review of the decision by the Minister for Foreign

Affairs in the Administrative Appeals Tribunal. As a result of the passport refusal, Mallah developed animosity towards the Australian government, especially against the Australian Security Intelligence Organisation (ASIO) and the Department of Foreign Affairs and Trade (DFAT).

In June and September 2003, Mallah made enquiries about obtaining a weapon. He later acquired a Sterling .22 rifle and about 100 rounds of ammunition which were located by the New South Wales Police during the execution of a search warrant on his home.

The New South Wales Police Counter Terrorist Command subsequently undertook an operation using an undercover operative to investigate Mallah. The undercover operative took on the guise of a freelance journalist who was interested in writing a story on Mallah, and maintained contact with Mallah between November 2003 and December 2003. During these discussions, Mallah made threats to kill officers of ASIO and DFAT in the course of a siege, which he said he had planned. The 'plan' involved the surveillance of either an ASIO or DFAT building, after which he would make an entry armed with a weapon, hold its occupants hostage and shoot some of them. Mallah stated that he expected the police to be called to the scene, and that they would, at his request, permit the undercover operative to enter the building with a video camera, by which they could record Mallah's message.

Mallah was acquitted of a charge for the acquisition of a 0.22 calibre rifle and 100 live rounds of ammunition in preparation for or planning a terrorist act contrary to section 101.6(1) of the *Criminal Code*. He was also acquitted of a charge of selling a 'martyrdom' video and other items in preparation for or planning a terrorist act contrary to section 101.6(1) of the *Criminal Code*.

Mallah pleaded guilty to a charge of threatening to cause harm to ASIO and DFAT officers (being Commonwealth officers) contrary to section 147.2 of the *Criminal Code* 1995, part way through a trial. He was effectively sentenced to imprisonment for two years and six months, to be released after serving one year and nine months of that sentence.

Matrim Marine Inc

On 25 December 2002, a pilot observed an extensive oil spill in the area of the Whitsunday Islands. The main band of the spill was 62 kilometres in length and had spread quickly to be about 1.5-2.5 kilometres wide. Later estimates indicated that approximately 9,300 litres of oil had been spilt. The AFP with the assistance of the Australian Maritime Safety Authority, the Great Barrier Reef Marine Park Authority and State agencies commenced an immediate investigation. Six ships were identified as having been in the area at the time. Arrangements were made for samples to be obtained from

the spill and each of the six ships. The spill itself caused no identifiable long term damage as it dispersed naturally because of favourable weather conditions.

The *Pacific Quest* had used the inner shipping route of the Great Barrier Reef on the day in question and was *en route* to New Zealand. With the cooperation of New Zealand authorities, samples were obtained from the ship when it docked. A specialist environmental analyst was engaged and compared the bunker fuel oil sample located at the spill site with samples from the sludge tank on the *Pacific Quest*. The analyst concluded that this ship had been the source of the spill. Investigators had failed to detect any malfunction with equipment. There was no physical evidence of pumping oil by illegal means, and the captain of the ship denied any illegal activity.

The owner Matrim Marine Inc, a Liberian company, was charged with a breach the strict liability provision section 9(1B) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. After four days of a committal in Brisbane, the company indicated that a plea would be entered to charges on an *ex officio* indictment. On 2 June 2005, in the District Court of Queensland, the company pleaded guilty and was fined \$180,000. The maximum penalty for the offence was \$275,000. The company had also paid clean-up costs totalling \$34,277.84. The Sentencing Judge recognised the fact that the company had taken all steps to identify the culprit, and that its procedures in relation to pollution measures were exemplary, but balanced those factors with the need for general deterrence.

John Thomas McMunn

This prosecution was the first matter to arise out of a mass marketed tax minimisation scheme case in Victoria since the 'bottom of the harbour' case in the late 1980s. It was one of the first of its kind to be prosecuted in Australia.

In short, between early February 1998 and September 1999, McMunn promoted a mass marketed sale of a tax minimisation scheme. There were two basic strands to the fraud. The first part of the fraud involved investors being induced, by reason of false representations made to their financial advisers, to invest approximately \$801,900 in the scheme by purchasing master licenses to operate a business involving the re-calculation of bank interest. The defendant undertook to conduct those master license businesses on behalf of the individual investors. No such businesses were in fact conducted or indeed ever intended to be conducted in the way in which the investors were led to believe. Instead, the defendant treated the money invested in the scheme as his own.

The second strand of the scheme was that part of the set-up expenses of the master licence businesses were represented by McMunn to be tax deductible. The representations made by McMunn caused the majority of the investors to lodge claims for deductions in their tax returns for the financial year in which they entered the scheme, and the Australian Taxation Office conferred \$1.4 million in taxation benefits on those investors. The expenses claimed by the investors were not in fact deductible as no genuine businesses were conducted by the defendant. As a result, the Commonwealth was deprived of revenue.

McMunn was charged with both State and Commonwealth offences for his role in the fraud. On 27 May 2005, in relation to the Commonwealth offences, he was sentenced to three years' imprisonment to be released after serving two years. In relation to the State charges, he was effectively sentenced to five years and four months' imprisonment with a non-parole period of three years and six months.

Karen May Nilsson

Karen May Nilsson worked for her parents' company, which ran a business involved in the import and wholesale of live aquarium fish. Nilsson was responsible for buying and selling the fish in which the company traded.

Nilsson placed an order with an overseas supplier to import some fish. As part of the order Nilsson requested some *Osphronemus goramy* (Giant Gourami fish) and asked the supplier to label the fish as '*Colisa labiosa*' (thick-lipped Gourami). It is not permitted to import Giant Gourami into Australia. However, thick-lipped Gourami may be imported legally into Australia without a permit.

The potential impact the fish could have on the Australian environment is not known because a comprehensive risk assessment has not been conducted. The fish are, however, thought to have a moderately high risk to the environment if released. The fish can grow to up to 70 centimetres in size, and there is a long history of the fish establishing feral populations. The native flora and fauna of Australia are under constant threat from introduced species of wildlife.

On 22 April 2005, the defendant was sentenced to total fines of \$4,000.

Operation Bluewing

In this case, five defendants were charged with possession of approximately 2,930 kilograms of cannabis resin, which had been imported into Australia from Dubai. The shipment was estimated to have a wholesale value of approximately \$15 million and a street value in excess of \$140 million. At the

time the importation was discovered, it was the largest detected importation of cannabis resin into Victoria, and the third largest in Australia.

On 14 August 2001, the defendants unloaded approximately 27 tonnes of marble tiles from two shipping containers imported from Dubai. Once the tiles were removed, the wooden floors of the containers were lifted to reveal the concealed cargo of cannabis resin blocks. All defendants denied any knowledge of the narcotic shipment, stating that they had been recruited to unload tiles.

After a retrial lasting eight weeks in the County Court at Melbourne, the defendants were found guilty. One defendant, Jessie Franco, was convicted and sentenced to nine years' imprisonment with a non-parole period of six years. The remaining four defendants were each sentenced to seven and a half years' imprisonment with a non-parole period of five years. Franco has appealed against sentence, and two of the other defendants have appealed against both conviction and sentence.

Action was also taken under the criminal assets confiscation regime to forfeit the two shipping containers in which the drugs were imported, and the 3,240 black marble tiles which were used to disguise the false floor of the container. The total value of the forfeited assets was about \$16,000.

Operation Fordo

This prosecution arose out of a fraud involving the evasion of customs and excise duty of \$17,553,038 between March 1999 and September 2001. The fraud was an ongoing one, and was committed over the period which covered the introduction of the *Criminal Code*.

In short, the defendants set up a false duty-free store called World Wide Duty Free (WWDF), purchased mainly cigarettes and alcohol duty-free, and then sold them to the domestic market in a manner which was inconsistent with their duty-free status. The defendants established elaborate documentary and monetary trails to make it appear that the goods were being purchased by overseas buyers, that money came from overseas, and that the goods were exported.

After the introduction of the Goods and Services Tax (GST) in July 2000, there was also GST fraud of approximately \$500,000 due to WWDF claiming and obtaining GST refunds for the GST paid on acquisition of goods that they purported to have exported.

This matter was a complex prosecution and had a number of significant aspects. For example, the Trial Judge provided one of the earliest rulings about the *Criminal Code*. The Judge concluded that 'common purpose or joint enterprise,' previously known under the defraud offence of the *Crimes*

Act 1914, was not available under the *Code*. The result of this was that the conspiracy charge, which was the subject of the post *Code* period of offending, had been properly laid by the Crown. Further, the Judge then ruled on the issue as to whether or not a substantive count and a conspiracy count could be joined on the one indictment. The Judge found that while there is no legal basis to prevent the substantive and conspiracy counts from being joined on one indictment, it was appropriate to sever the charges, given the likely prejudice or unfairness to the defendants.

In total, there were eight defendants, seven of whom eventually entered pleas of guilty. Of the seven defendants who entered pleas of guilty, six have been sentenced. Their sentences range from 36 months' imprisonment to be released after serving 12 months; to two and a half years' imprisonment to be released after serving 15 months; to 12 months' imprisonment to be released forthwith. Some of the defendants received substantial discounts to their sentences due to assistance given to authorities.

The eighth defendant was found guilty after a trial. That defendant was sentenced to 24 months' imprisonment to be released after serving four months of that term. The defendant has lodged an appeal against conviction and sentence, and the appeal is pending.

Operation Linnet

Eighteen men were charged under section 233B(1)(d) of the *Customs Act 1901* with being knowingly concerned in the importation of 252.3 kilograms of pure heroin in October 1998. The pure amount of heroin was the largest ever detected by Australian law enforcement authorities. The wholesale value of the heroin was said to be \$77 million, and the retail value was said to be \$605.52 million.

The *Uniana* was a fishing trawler specially converted for the heroin trade. Amongst other features, the trawler had a specially constructed valve which could flood the compartment containing the heroin, in case of an unexpected search. The trawler also contained falsified logs so as to hide the true route which had been taken by the vessel.

The roles of the 18 men prosecuted ranged from the captain of the ship to junior crew members. All but eight junior crew members were ultimately convicted. They were sentenced to varying terms of imprisonment, and a number appealed against their convictions and/or sentences.

The Sentencing Judge described the venture as:

“A crime of massive proportion perpetrated in a disciplined manner by criminals able to marshal money, ships, speed boats, crew, other personnel and a refuelling at sea. It was a highly

sophisticated criminal enterprise conducted by professional criminals whose connections stretched over several countries. The amount of heroin intercepted, its quantity and consequent value, alone placed this crime within that band of such crime that may properly be labelled as most serious.”

This case is of interest because it demonstrates the practical problems involved in prosecuting a number of people with diverse roles and involvement in such an enterprise. It shows the need for sentences imposed to reflect the gravity of the offences and the different levels of criminal responsibility. Further, because the defendants were tried in various groups, this case also demonstrates the need for overall parity of the sentences that are finally imposed.

All but two of the defendants convicted were sentenced to life imprisonment. Of the defendants sentenced to life imprisonment, no non-parole period was specified in relation to two of them. Five defendants received non-parole periods ranging between 18 and 28 years. The other two defendants were sentenced to lesser periods of imprisonment.

The New South Wales Court of Criminal Appeal, in dealing with the appeals, remarked, ‘if ever there was an appropriate case to impose a life sentence without parole it was each of these two cases,’ thereby affirming the sentences imposed by the Trial Judge.

Operation Swiftlet

The twelve defendants in this matter were charged with conspiracy to import 120 kilograms of cocaine. The matter arose out of an agreement which was made in the early part of 2001 to import the cocaine into Australia. The original plan was to use a small sailing vessel to transport the cocaine from South America to a suitable point close to the Australian coast where a boat from Australia would rendezvous with the sailing vessel. The cocaine was to be transferred to the Australian based boat, which would then return to the mainland with the drugs.

The original plan was altered when the crew on board the sailing vessel discovered that law enforcement authorities may have been aware of the venture. Ultimately, they decided to deposit the cocaine into a shallow part of the sea off the Australian coast so that it could be retrieved by an Australian based vessel. The precise location of the deposit site was fixed with the assistance of global positioning coordinates. The sailing vessel, minus the drugs, arrived in Southport, Queensland on 7 July 2001. The drugs were never located.

The first trial of the conspirators commenced on 4 February 2003 and continued for over four months. Three of the defendants pleaded guilty and

assisted the authorities. Of those three defendants, two were each sentenced to imprisonment for ten years and six months with non-parole periods of six years and three months. The other was sentenced to imprisonment for nine years with a non-parole period of five years and three months.

Two of the defendants were found not guilty at trial. Two of the other defendants were each convicted and sentenced to 24 years' imprisonment with non-parole periods of 14 years and six months.

The jury could not reach a verdict with respect to a further five defendants. These defendants were re-tried, with the trial starting on 27 January 2004 and continuing for four months. As a result of that trial, another two defendants were convicted and sentenced, the first to ten years' imprisonment with a non-parole period of six years, and the second to 24 years' imprisonment with a non-parole period of 14 years and six months.

In relation to the remaining three defendants, the jury could not reach a verdict, and the charges against them will not be pursued. One of the defendants who was convicted as a result of the second trial has lodged an intention to appeal and that matter is pending.

Operation Shard

This was a case involving eight defendants who were charged with having been knowingly concerned in bringing cocaine into Australia.

In February 2000, Australian law enforcement authorities boarded a yacht called the *Ngairé Wha* and found 21 bales stacked on the floor and around the main cabin. The bales were found to contain cocaine with a gross weight of 502 kilograms and a pure weight of 383 kilograms. The Crown case was that the *Ngairé Wha* had sailed from New Zealand and rendezvoused just off the northern tip of New Zealand with another yacht called the *Bora Bora II*, for the purpose of transferring the cocaine to the *Ngairé Wha*. The *Bora Bora II* had sailed from Panama in Central America.

One of the defendants, who pleaded guilty prior to the commencement of the trial and undertook to give evidence for the Crown, was sentenced to 13 years' imprisonment with a non-parole period of eight and a half years. The other seven defendants were tried together in the District Court of New South Wales from February 2001 to September 2001. Each was found guilty.

Two of the defendants were each sentenced to life imprisonment with a non-parole period of 25 years. The other five defendants were each sentenced to 24 years' imprisonment with a non-parole period of 16 years.

All seven defendants appealed and three of them were granted re-trials. One of the defendants pleaded guilty on the first day of the retrial, which was on 5 July 2004. He was sentenced to 20 and a half years' imprisonment with

a non-parole period of 13 years. Another of the defendants pleaded guilty on 19 July 2004 (that is, two weeks after the commencement of the trial). He was sentenced to 20 years' imprisonment with a non-parole period of 12 and a half years. The final defendant was found guilty by the jury, and was sentenced on 3 December 2004 to 21 years' imprisonment with a non-parole period of 14 years.

One of the defendants has indicated an intention to appeal, and the matter is pending.

Salvatore Palmisano

This prosecution arose out of an extensive illegal tobacco ('chop-chop') enterprise conducted in Victoria. The illegality of the enterprise essentially stemmed from the evasion of excise duty payable on the sale of tobacco in Australia. Palmisano was a principal in the enterprise and was found to have manufactured, sold and transported a large quantity of tobacco. He is one of the few people in Victoria to receive an actual custodial sentence for offences relating to the evasion of excise duty.

The defendant purchased leaf tobacco from growers in Queensland and Victoria, sold cut tobacco in Queensland and Victoria, and hired people to transport leaf and cut tobacco and machines between the two States. He also hired people to manufacture tobacco in Victoria and to house and maintain the tobacco cutting machines. Also, he distributed the manufactured tobacco in Victoria. The defendant sold over 3,500 kilograms of tobacco on the black market as part of the enterprise in which he was engaged.

Palmisano was sentenced to two years' imprisonment to be released after serving nine months of that term.

Murray James Perrier, Peter Hans Malman, Voicu Pop and Peter Alan Tilley (Operation Lagos)

This was a prosecution which arose out of a conspiracy to import heroin into Australia from Nepal. The period of the conspiracy was from June 2002 when one of the conspirators travelled to Nepal, until 12 March 2003 when the drugs were imported into Australia by a courier who carried most of the drugs internally.

In 1989, the organiser of the conspiracy, Perrier, was convicted of conspiring to import heroin and sentenced to life imprisonment. The facts were similar to the facts in this later case. Perrier had been released on licence by the Attorney-General on 30 November 2001, on the ground that his partner was dying of cancer. The licence period was ten years.

Following his conviction for this offence, Perrier's licence was revoked and the life sentence he had been given in 1989 was reinstated. He was then also sentenced to life imprisonment with no non-parole period in respect of the later offence. He has filed an application for leave to appeal against conviction and sentence.

Two of the other defendants in the conspiracy were sentenced respectively to terms of imprisonment for six years and six months with a non-parole period of four years and four months; and imprisonment for seven years and six months with a non-parole period of five years and six months. One of these defendants has filed an application for leave to appeal against conviction and sentence. Another defendant is yet to be sentenced.

Argemiro Antonio Rodriguez

On 1 September 2004, the defendant returned to Australia from The Netherlands. During a search at the border, the defendant admitted that he was expecting some unaccompanied baggage which may contain some 'offensive material.' The defendant's unaccompanied baggage was examined and found to contain a number of floppy discs. The discs contained very graphic images of adults engaging in sex with children, as well as images depicting bestiality, many of which involved the defendant.

The defendant was charged with three offences of importing prohibited 'tier 2' goods contrary to section 233BAB(5) of the *Customs Act 1901*.

He was originally convicted in the Melbourne Magistrates Court and placed on a Community Based Order for a period of two years. That Order had conditions that the defendant undergo assessment and intervention as directed by a Community Corrections Officer, in consultation with the Sex Offender Program staff, and be under the supervision of a Community Corrections Officer. No work component was attached to the Order. The defendant was also convicted and fined an aggregate amount of \$5,000.

The Crown appealed the sentence and on 16 June 2005, a Judge of the County Court of Victoria set aside the Orders of the Magistrate and re-sentenced the defendant. The Community Based Order remained on the same terms as that imposed in the Magistrates Court. However, the Judge effectively reduced the other part of the sentence, placing the defendant on a bond to be of good behaviour for a period of 21 months, with a condition that he continue treatment and counselling as directed by his treating psychologist. The Judge also fined the defendant \$1000.

As the DPP's appeal was unsuccessful, the Judge also ordered the prosecution to pay half of the defendant's costs of the appeal.

Ida, Nitzan and Izhar Ronen

This matter arose out of a fraud on the Commissioner of Taxation. The defendants were charged under section 86A of the *Crimes Act 1914* with conspiracy to defraud the Commonwealth from 1991 to 1995, and then under section 86(1) of that Act until the date of arrest in 2001. The two conspiracies were entered into by the same people, with an additional participant in the later conspiracy.

Ida Ronen owned and operated a number of stores (either in her own name, or in the name of a company controlled by her called On Fovo Pty Ltd), which sold clothing. The clothing was supplied by her sons' companies, known as the Dolina Group of companies. In essence, the Crown case was that cash from the sales was concealed and not banked or declared to the Australian Taxation Office. The income of the shops was recorded in a set of books maintained by Ida Ronen at her house, together with a record of the cash distribution. The cash was subsequently distributed between Ida Ronen and her two sons.

The second conspiracy continued throughout the introduction of the Goods and Services Tax (GST) in 2000. Evidence was led in the trial about the defendants' response to the GST, including their use of computer software, the manipulation of cash register data and the creation of false till rolls.

In January 2005, a New South Wales Supreme Court jury returned a verdict of guilty in relation to the three defendants. The verdict followed a nine month trial and extensive pre-trial hearings. The amount of cash concealed was in the vicinity of \$15 million to \$17 million.

The Ronens are due to be sentenced in October 2005.

Susan Saxby

In June 2003, the AFP and the Western Australia Police Service commenced a joint investigation into a transnational drug trafficking syndicate based in the United Kingdom (UK) and Australia. Law enforcement authorities believed that the syndicate was importing commercial quantities of ecstasy into Australia, selling that drug in Perth and Sydney, and arranging for the proceeds of the sale to be remitted back to the UK.

Saxby was a Perth based drug trafficker, who headed a drug distribution syndicate for the ecstasy tablets that were supplied to her by a principal of the syndicate who was based in the UK. Saxby was responsible for the distribution of 265,000 ecstasy tablets weighing 79 kilograms, and for remitting at least \$130,000 as the proceeds of ecstasy sales. Saxby directly supplied her distributors with large quantities of ecstasy over several months.

Saxby was sentenced to life imprisonment. The life sentence reflects the level of seniority which Saxby had within the syndicate, her close ties with the UK principal of the syndicate, and the amount of the drugs imported over a long period of time. The matter is being appealed, and the appeal is pending.

In addition, \$32,000 cash found in Saxby's possession was forfeited under the *Proceeds of Crime Act 2002*.

Suman Sood

Dr Suman Sood was a registered medical practitioner who operated a practice called the Australian Woman's Health Clinic in Fairfield, New South Wales. Sood specialised in women's health and a large number of patients came to see Sood for a termination of pregnancy.

Sood advertised the practice as a bulk billing medical centre. Under the Medicare bulk billing arrangements, when a patient assigns their right to a benefit to the medical practitioner who performs the service, the doctor undertakes to accept the Medicare benefit in full payment. The doctor is not entitled to charge an additional fee. When making a claim on Medicare, the doctor declares that, 'no payments have been sought from any person in respect of the professional services specified in the attached assignment forms and claims transmission summary sheet.'

Despite this, Sood charged an additional fee which was payable only in cash, and was calculated based on the gestation period of the pregnancy. Patients paid the additional fee to the receptionist at the same time as they handed over their Medicare card. The receptionist wrote a receipt for the money which showed that the money paid was for 'counselling and theatre fees.' The receipt and Medicare assignment forms were put in the patient's file and given to Sood.

When the Health Insurance Commission (HIC) officers arrived to execute the search warrant at the clinic, Sood was still operating. With sensitivity in mind, the officers waited until the last patient had left before commencing their search. In two waste bins in the recovery room of the clinic, an investigator found a large number of receipt books evidencing the additional fee paid to Sood. The Crown case was that Sood had hidden the receipt books the bin under some waste material after the HIC officers arrived at the clinic. The receipt books were the only evidence that patients paid an additional fee.

Sood was tried and convicted of 96 counts of obtaining a benefit by deception, contrary to section 134.2 of the *Criminal Code*. The total amount of money obtained from Medicare was \$154,376.40. Sood claimed that she had not behaved dishonestly and the Health Insurance Commission had not been deceived. She argued that the additional payment was not for the

service claimed; it was for 'counselling and theatre fees.' She also claimed that all other abortion providers who bulk billed also charged their patients an additional fee and that the HIC had always known that privately operated abortion providers charged an additional fee.

This case was unusual in that there was no allegation that the service claimed by Sood was not provided. The defence had argued that the Commonwealth had not been defrauded because Sood had received no more than she would have if patients had taken an invoice to Medicare and obtained a cheque for Sood themselves. Sood gave evidence that when she first set up practice she had issued invoices but found some patients gave false names and addresses and bulk billing was a way of reducing bad debts.

Following the jury verdict, Sood was sentenced to 300 hours community service on count one, and a fine of \$250 on each of the other counts (a total fine of \$23,750).

Hazelle Margaret Angel Stack

The defendant claimed and received payments of Special Benefit, Widows' Pension and Age Pension from Centrelink over a period of almost 20 years from late 1982 until mid 2002. The defendant made the claims in the maiden name of her sister, and the payments totalled \$177,198.17. Stack's sister had died in 1999, prior to the investigation of the offences. At the time of sentence, Stack was 75 years old and suffering from some health problems. Her husband, who was at least to some extent dependant on her, was also suffering from some health problems.

On 31 March 2005, Stack was sentenced in the District Court of New South Wales to an effective sentence of three years and three months' imprisonment with a non-parole period of 15 months.

Sven Arne Temmingh

Temmingh was a registered veterinary surgeon in New South Wales. In November 2003, he arranged for 4.27 kilograms of nandrolone decanoate, which is an anabolic substance, to be imported into Australia. Temmingh requested the overseas supplier to label the nandrolone decanoate as 'creatine monohydrate or glucosamine HCL.' He imported the substance under the name of a private company of which he was a director. Temmingh pleaded guilty to one charge under the *Customs Act 1901* arising out of the importation.

On 28 January 2005, Temmingh was sentenced in the District Court of New South Wales to a good behaviour bond. Temmingh had previous convictions

for offences relating to steroids. The Crown appealed the sentence on the basis that it was manifestly inadequate.

The New South Wales Court of Criminal Appeal delivered its judgment on 11 August 2005. The Court allowed the appeal and imposed a substitute sentence of 12 months' imprisonment which was, in effect, fully suspended. The Court found that the leniency of the sentence imposed in the District Court failed to have due regard to the objective criminality of the offence and the principle of general deterrence. The Court found that an actual term of imprisonment should have been imposed by the District Court. However, due to considerations arising as a result of double jeopardy, and the fact that Temmingh had been at liberty since the date of his sentence, the Court of Criminal Appeal decided it was not appropriate to impose an actual term of imprisonment on Temmingh as the result of a Crown appeal.

Sally Xu, Ngoc Tran and Jamie Qi

This case arose out of the experiences of a woman called Ms K. Ms K was a young Thai woman who allegedly made a triple-0 telephone call to the New South Wales Police on the evening of 5 January 2003. In short, the Crown alleged that the New South Wales police 'rescued' Ms K from the brothel where she had been held against her will.

The Crown case was that Ms K, who had been a law student in Bangkok, had been deceptively recruited from Thailand on the basis that she would be working in a restaurant in Australia. The Crown alleged that Ms K's fare to Australia was paid and a visa organised, and she was accompanied by a female 'minder' from Bangkok to Sydney. Her passport was then confiscated and she was kept initially in a boarding house in Surry Hills before being taken to a brothel. There was evidence to corroborate Ms K's account that she was forced to crawl through a hole in the wall to sleep in accommodation adjacent to the brothel. Ms K also gave evidence that she was threatened with what she thought was a baseball bat, and forced to have sex with multiple men during her time at the brothel. The Crown case was that from 27 December 2002 until 5 January 2003, Ms K was kept locked up at a house whilst being transported to be used as a prostitute in three brothels operated by one of the defendants.

At trial, the defence ran a proactive case in which they portrayed Ms K as a willing sex worker who had been involved in the sex trade overseas before coming to Australia, and who only expressed disquiet at the brothels in Sydney as a result of not making enough money. The effect of the defence case was that it was nonsensical to have an unwilling sex worker or one who was complaining to various customers about her plight, as it would be bad for business.

The jury was unable to reach a verdict on any of the ten counts before them (except one, regarding which they acquitted the defendant). Ms K has since returned to Thailand, and has indicated that she will not be available to give evidence at a re-trial because she found the experience of giving evidence too traumatic. Without Ms K's evidence, the Crown is not able to proceed to a retrial, and no evidence has been offered in relation to the remaining nine charges.

Anna Zhang and Wei-Ling Tu

Zhang and Tu were each charged with offences arising out of their involvement in the importation of a narcotic called Crystal Methamphetamine (which is commonly known as 'ice'). On 3 May 2003, a container arrived in Sydney from China containing about 400 boxes. The container was consigned to a company associated with Zhang. Following examination of the cargo, 20 of the boxes were found to contain 212 kilograms gross (163.35 kilos pure) of ice. The ice was packaged with foodstuffs imported from China. A further six kilograms (gross) of the drug was found at Zhang's apartment and 107 kilos (gross) of the drug was found at Tu's apartment.

This is the largest detected importation of ice into Australia to date. At the time of sentencing, His Honour Judge Finnane of the District Court of New South Wales indicated that he was troubled by the fact that at that time, there was no commercial quantity of ice prescribed by the *Customs Act 1901*. Following His Honour's comments, a bill was passed on 9 December 2004 which amended the *Customs Act 1901* to provide for a commercial quantity of ice.

On 3 December 2004, Zhang was sentenced to 20 years' imprisonment with a non-parole period of 13 years and four months. Tu was sentenced to 25 years' imprisonment with a non-parole period of 16 years and seven and a half months. Zhang has lodged an appeal against conviction and sentence, which is pending.

Successful proceeds of crime action was taken against both Zhang and Tu. A restraining order over all of Tu's property was obtained from the Supreme Court of New South Wales on 16 May 2003, immediately after Tu's arrest. The only property of value of Tu's in Australia was \$101,500 in a Star City Casino account. Tu filed an exclusion application, seeking to have those funds excluded from forfeiture on the basis that they were legitimate winnings from Star City Casino. The DPP successfully opposed that application on the basis that the source of the initial gambling funds was unlawful activity. The Court found that it could not be satisfied that the funds in the Star City account were not the proceeds of unlawful activity and dismissed Tu's application.

On 16 May 2003, a restraining order was obtained over property belonging to Zhang. That property included a piece of real property that was subject to a mortgage, funds in an ANZ Bank account (\$11,027), approximately \$130,000 in cash, and a diamond watch (\$6,000). Most of the identified property was forfeited to the Commonwealth on 7 October 2004.

A p p e n d i x 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 that are:
 - (i) documents referred to in paragraph 12(1)(b) or 12(1)(c) of the Freedom of Information Act; or
 - (ii) documents that are customarily made available to the public, otherwise than under the Freedom of Information Act, free of charge on request.

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

- DPP Annual Report; and
 - The *Prosecution Policy of the Commonwealth*: Guidelines for the making of decisions in the prosecution process.
- (d) Particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain physical access to the documents of the agency.

Facilities for the inspection of documents, and preparation of copies if required, are provided at each DPP office. Copies of all documents are not held in each office and therefore some documents cannot be inspected immediately upon request. Requests may be sent or delivered to the FOI Coordinating Officer at any of the addresses set out at the beginning of this Report. Business hours are 8:30 a.m. to 5:00 p.m.

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

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

A p p e n d i x 2

Commonwealth DPP Corporate Plan April 2004 – March 2005

Vision: A fair and just society where laws are respected and obeyed and there is public confidence in the justice system.

Mission: Operate a high quality Commonwealth prosecution service for the benefit of the Australian people.

Outcomes: To contribute to the safety and wellbeing of the Australian people and help protect the resources of the Commonwealth through the maintenance of law and order and by combating crime.

In particular:

- prosecutions under Commonwealth law conducted fairly and effectively;
- offenders not able to retain proceeds and instruments of crime;
- general law enforcement effort enhanced by DPP participation; and
- best possible use of resources.

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

Strategies

Strategy 1	Strategy 2	Strategy 3	Strategy 4	Strategy 5
<p>Conduct cases to a high standard, in a fair and just manner</p>	<p>Participate effectively in law enforcement</p>	<p>Recruit & develop high quality staff</p>	<p>Provide professional assistance to referring agencies</p>	<p>Monitor and enhance DPP performance</p>
<p>1.1 Adopt best practice in legal work and case management</p> <p>1.2 All case decisions made in accordance with the law, the <i>Prosecution Policy of the Commonwealth</i> and internal DPP policy</p> <p>1.3 Decisions to be timely</p> <p>1.4 Key decisions made at an appropriate level</p> <p>1.5 Support legal staff with high level library, IT and administrative people and systems</p>	<p>2.1 Liaise effectively at all levels with agencies with law enforcement roles</p> <p>2.2 Provide useful, timely and accurate reports on DPP work and performance</p> <p>2.3 Assist in Commonwealth criminal law reform</p>	<p>3.1 Recruit and develop high quality staff</p> <p>3.2 Foster and acknowledge optimum performance</p> <p>3.3 Manage staff effectively and professionally</p> <p>3.4 Provide a safe, secure and healthy workplace</p>	<p>4.1 Provide professional and timely advice to investigators</p> <p>4.2. Have regard to, identify and cooperate with, referring agencies' enforcement strategies</p> <p>4.3 Assist with training of investigators</p> <p>4.4 Liaise effectively with referring agencies at regional and national levels</p>	<p>5.1 Monitor DPP performance against appropriate standards and goals</p> <p>5.2 Apply best practice in managing the resources of the office and personnel management</p> <p>5.3 Adhere to Australian Public Service values and code of conduct and diversity principles</p>

Action Plan

What the DPP will do	When the DPP will do it	Re strategy
1 Use performance indicator information	Monthly	Re all
2 Best practice reviews	Ongoing	Re all
3 Obtain feedback from courts	Ongoing	Re 1
4 Undertake case reviews	Ongoing	Re 1
5 Provide staff training and utilize performance management scheme	Ongoing	Re 3
6 Review performance through feedback from external agencies	Ongoing	Re 2 & 4

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
CARS	Criminal Assets Recording System
CRIMS	Case Reporting and Information Management System
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>
PPO	Pecuniary Penalty Order
SES	Senior Executive Service
WDP	Workplace Diversity Plan

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

Independent Audit Report 2004 – 2005

This page is intentionally blank

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2004-2005

CONTENTS

Independent Audit Report

Certification of the Financial Statements

Statement of Financial Performance

Statement of Financial Position

Statement of Cash Flows

Schedule of Commitments

Schedule of Contingencies

Schedule of Administered Items

Notes to and forming part of the Financial Statements



INDEPENDENT AUDIT REPORT

To the Attorney General

Matters relating to the Electronic Presentation of the Audited Financial Statements

This audit report relates to the financial statements published in both the annual report and on the website of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2005. The Office of the Commonwealth Director of Public Prosecutions Chief Executive is responsible for the integrity of both the annual report and its web site.

The audit report refers only to the financial statements, schedules and notes named below. It does not provide an opinion on any other information which may have been hyperlinked to/from the audited financial statements.

If users of this report are concerned with the inherent risks arising from electronic data communications they are advised to refer to the hard copy of the audited financial statements in the Office of the Commonwealth Director of Public Prosecutions annual report.

Scope

The financial statements and Chief Executive's responsibility

The financial statements comprise:

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

of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2005.

The Office of the Commonwealth Director of Public Prosecutions Chief Executive is responsible for preparing financial statements that give a true and fair presentation of the financial position and performance of the Office of the Commonwealth Director of Public Prosecutions, and that comply with accounting standards, other mandatory financial reporting requirements in Australia, and the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*. The Office of the Commonwealth Director of Public Prosecutions Chief Executive is also responsible for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial statements.

Audit approach

I have conducted an independent audit of the financial statements in order to express an opinion on them to you. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing and Assurance Standards, in order to provide reasonable assurance as to whether the financial statements are free of material misstatement. The nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent



limitations of internal control, and the availability of persuasive, rather than conclusive, evidence. Therefore, an audit cannot guarantee that all material misstatements have been detected.

While the effectiveness of management's internal controls over financial reporting was considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal controls.

I have performed procedures to assess whether, in all material respects, the financial statements present fairly, in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, accounting standards and other mandatory financial reporting requirements in Australia, a view which is consistent with my understanding of the Office of the Commonwealth Director of Public Prosecutions financial position, and of its performance as represented by the statements of financial performance and cash flows.

The audit opinion is formed on the basis of these procedures, which included:

- examining, on a test basis, information to provide evidence supporting the amounts and disclosures in the financial statements; and
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made by the Chief Executive.

Independence

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the ethical requirements of the Australian accounting profession.

Audit Opinion

In my opinion, the financial statements of the Office of the Commonwealth Director of Public Prosecutions

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and
- (b) give a true and fair view of the Office of the Commonwealth Director of Public Prosecutions financial position as at 30 June 2005 and of its performance and cash flows for the year then ended, in accordance with:
 - (i) the matters required by the Finance Minister's Orders; and
 - (ii) applicable accounting standards and other mandatory financial reporting requirements in Australia.

Australian National Audit Office



Richard Rundle
Executive Director

Delegate of the Auditor-General

Canberra
11 October 2005

This page is intentionally blank

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2004-2005

**STATEMENT BY THE
CHIEF EXECUTIVE OFFICER
AND
CHIEF FINANCE OFFICER**

In our opinion, the attached Financial Statements for the year ended 30 June 2005 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made the *Financial Management and Accountability Act 1997*, as amended.



Damian Bugg AM QC
Director

11th October 2005



Stela Walker
Deputy Director Corporate Management

11th October 2005

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

For the period ended 30 June 2005

	Note	2004-2005 \$'000	2003-2004 \$'000
Revenues from ordinary activities			
Revenues from government	5	75,102	69,108
Sales of goods and services	6	1,302	1,345
Revenue from sale of assets	7	55	72
Other	8	832	1,043
Total revenues from ordinary activities		<u>77,291</u>	<u>71,568</u>
Expenses from ordinary activities <i>(excluding borrowing costs expense)</i>			
Employees	9	44,327	40,463
Suppliers	10	27,565	25,922
Depreciation and amortisation	11	3,102	3,328
Write-down of assets	12	2	83
Expenses for sale of assets	7	33	149
Other	13	371	53
Total expenses from ordinary activities <i>(excluding borrowing cost expense)</i>		<u>75,400</u>	<u>69,998</u>
Net surplus (deficit)		<u>1,891</u>	<u>1,570</u>
Net credit (debit) to asset revaluation reserve	26	346	124
Total revenues, expenses and valuation adjustments recognised directly in equity		<u>346</u>	<u>124</u>
Total changes in equity other than those resulting from transactions with the Australian Government as owners		<u>2,237</u>	<u>1,694</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

As at 30 June 2005

	Note	2004-2005 \$'000	2003-2004 \$'000
ASSETS			
Financial assets			
Cash	14	330	238
Receivables	15	15,163	18,604
Total financial assets		<u>15,493</u>	<u>18,842</u>
Non-financial assets			
Land and buildings	16,19	12,784	11,133
Infrastructure, plant and equipment	17,19	6,852	6,776
Intangibles	18,19	390	371
Other	20	1,059	1,286
Total non-financial assets		<u>21,085</u>	<u>19,566</u>
Total assets		<u>36,578</u>	<u>38,408</u>
LIABILITIES			
Non-interest bearing liabilities			
Other	21	1,437	2,115
Total non-interest bearing liabilities		<u>1,437</u>	<u>2,115</u>
Provisions			
Employees	22	14,440	14,073
Other	23	1,116	1,501
Total provisions		<u>15,556</u>	<u>15,574</u>
Payables			
Suppliers	24	3,102	6,505
Other	25	32	-
Total payables		<u>3,134</u>	<u>6,505</u>
Total liabilities		<u>20,127</u>	<u>24,194</u>
EQUITY			
Parent entity interest			
Contributed equity	26	1,507	1,507
Reserves	26	4,859	4,513
Retained surpluses	26	10,085	8,194
Total equity		<u>16,451</u>	<u>14,214</u>
Total liabilities and equity		<u>36,578</u>	<u>38,408</u>
Current assets		16,552	20,128
Non-current assets		20,026	18,280
Current liabilities		8,324	13,943
Non-current liabilities		11,803	10,251

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 2005

	Note	2004-2005 \$'000	2003-2004 \$'000
OPERATING ACTIVITIES			
Cash received			
Appropriations		77,975	67,303
Sales of goods and services:			
Government		1,141	1,046
Non-government		390	239
GST refunds received		3,267	2,359
Other (a)		514	397
Total cash received		<u>83,287</u>	<u>71,344</u>
Cash used			
Employees		44,058	38,755
Suppliers		32,005	25,638
Other (b)		386	718
Total cash used		<u>76,449</u>	<u>65,111</u>
Net cash from / (used by) operating activities	27	<u><u>6,838</u></u>	<u><u>6,233</u></u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of infrastructure, plant and equipment		41	21
Other (c)		60	83
Total cash received		<u>101</u>	<u>104</u>
Cash used			
Purchase of land and buildings		4,777	4,561
Purchase of infrastructure, plant and equipment		1,826	1,618
Purchase of intangibles		244	156
Other		-	5
Total cash used		<u>6,847</u>	<u>6,340</u>
Net cash from / (used by) investing activities		<u><u>(6,746)</u></u>	<u><u>(6,236)</u></u>

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

For the period ended 30 June 2005

	Note	2004-2005 \$'000	2003-2004 \$'000
FINANCING ACTIVITIES			
Cash received			
Other		-	-
Total cash received		-	-
Cash used			
Return of contributed equity		-	-
Total cash used		-	-
Net cash from / (used by) financing activities		-	-
Net increase / (decrease) in cash held		92	(3)
Cash at the beginning of the reporting period		238	241
Cash at the end of the reporting period		330	238

- (a) Employee and supplier expense recoveries
- (b) Costs awarded payments
- (c) Lease incentives received as cash

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
SCHEDULE OF COMMITMENTS

As at 30 June 2005

	Note	2004-2005 \$'000	2003-2004 \$'000
BY TYPE			
Capital Commitments Payable			
Land and buildings		197	2,384
Infrastructure, plant and equipment		-	2,361
Total capital commitments payable		<u>197</u>	<u>4,745</u>
Other Commitments Payable			
Operating leases	2.6	60,136	67,163
Legal services		4,877	4,582
Goods and services (excluding legal services)		3,602	2,508
GST payable on commitments receivable		8	23
Total other commitments payable		<u>68,623</u>	<u>74,276</u>
Commitments Receivable			
Sub-lease rental	2.6	(85)	(296)
Legal services		-	(87)
GST receivable on commitments payable		(6,253)	(7,180)
Total commitments receivable		<u>(6,338)</u>	<u>(7,563)</u>
Net commitments		<u><u>62,482</u></u>	<u><u>71,458</u></u>
BY MATURITY			
Capital Commitments			
One year or less		197	4,745
Operating Lease Commitments Payable			
One year or less		7,952	8,588
From one to five years		30,153	29,445
Over five years		22,031	29,130
Total operating lease commitments payable		<u>60,136</u>	<u>67,163</u>
Operating Lease Commitments Receivable			
One year or less		(64)	(221)
From one to five years		(21)	(75)
Over five years		-	-
Total operating lease commitments receivable		<u>(85)</u>	<u>(296)</u>
All Net Commitments			
One year or less		12,710	17,076
From one to five years		29,720	27,817
Over five years		20,052	26,565
Total net commitments		<u><u>62,482</u></u>	<u><u>71,458</u></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

As at 30 June 2005

	Guarantees		Claims for damages / costs		Total	
	2004-2005 \$'000	2003-2004 \$'000	2004-2005 \$'000	2003-2004 \$'000	2004-2005 \$'000	2003-2004 \$'000
Contingent Liabilities						
Balance from previous period	-	-	-	-	-	-
New	-	-	-	-	-	-
Re-measurement	-	-	-	-	-	-
Liabilities crystallised	-	-	-	-	-	-
Obligations expired	-	-	-	-	-	-
Total Contingent Liabilities	-	-	-	-	-	-
Contingent Assets						
Balance from previous period	-	-	89	-	89	-
New	-	-	151	89	151	89
Re-measurement	-	-	-	-	-	-
Assets crystallised	-	-	(89)	-	(89)	-
Contingencies expired	-	-	-	-	-	-
Total Contingent Liabilities	-	-	151	89	151	89

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 28: Contingent liabilities and assets

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	2004-2005	2003-2004
		\$'000	\$'000
Revenues Administered on Behalf of Government			
<i>For the period ended 30 June 2005</i>			
Non-taxation			
Fees and fines	34	8,070	4,086
Reversal of previous asset write-downs	35	38	337
Total non-taxation		<u>8,108</u>	<u>4,423</u>
Total Revenues Administered on Behalf of Government		<u>8,108</u>	<u>4,423</u>
Expenses Administered on Behalf of Government			
<i>For the period ended 30 June 2005</i>			
Write-down of assets	36	3,764	2,063
Other	37	-	140
Total Expenses Administered on Behalf of Government		<u>3,764</u>	<u>2,203</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	2004-2005	2003-2004
		\$'000	\$'000
Assets Administered on Behalf of Government			
<i>As at 30 June 2005</i>			
Financial assets			
Receivables	38	4,159	1,807
Total financial assets		<u>4,159</u>	<u>1,807</u>
Total Assets Administered on Behalf of Government		<u>4,159</u>	<u>1,807</u>
Liabilities Administered on Behalf of Government			
<i>As at 30 June 2005</i>			
Provisions and payables			
Other payables		-	141
Total provisions and payables		<u>-</u>	<u>141</u>
Total Liabilities Administered on Behalf of Government		<u>-</u>	<u>141</u>
Current assets		3,323	1,713
Non-current assets		836	94
Current liabilities		-	141
Non-current liabilities		-	-
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	2004-2005	2003-2004
		\$'000	\$'000
Administered Cash Flows			
<i>For the period ended 30 June 2005</i>			
OPERATING ACTIVITIES			
Cash received			
Fines and costs		2,012	2,678
Cash from Official Public Account-refunds		161	281
Other		-	617
Total cash received		<u>2,173</u>	<u>3,576</u>
Cash used			
Cash to Official Public Account		2,012	2,678
Other		161	898
Total cash used		<u>2,173</u>	<u>3,576</u>
Net cash from / (used by) operating activities		<u>-</u>	<u>-</u>
Net increase / (decrease) in cash held		<u>-</u>	<u>-</u>
Cash at the beginning of the reporting period		-	-
Cash at the end of the reporting period		<u>-</u>	<u>-</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	2004-2005	2003-2004
		\$'000	\$'000
Administered Commitments			
<i>As at 30 June 2005</i>			
		Nil	Nil
Administered Contingencies			
<i>As at 30 June 2005</i>			
		Nil	Nil
<p>Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 40: Administered contingent liabilities and assets</p>			
<p>The above Schedule should be read in conjunction with the accompanying notes</p>			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the period ended 30 June 2005

Note	Description
1	Objectives
2	Summary of Significant Accounting Policies
3	Adoption of AASB Equivalents to International Financial Reporting Standards from 2005-2006
4	Events Occurring After Balance Date
5	Revenues from Government
6	Sales of goods and services
7	Net gains / (losses) from sale of assets
8	Other operating revenues
9	Employee expenses
10	Supplier expenses
11	Depreciation and amortisation
12	Write-down of assets
13	Other operating expenses
14	Cash
15	Receivables
16	Land and buildings
17	Infrastructure, plant and equipment
18	Intangibles
19	Analysis of land, buildings, plant, equipment and intangibles
20	Other non-financial assets
21	Non-interest bearing liabilities
22	Employee provisions
23	Other provisions
24	Suppliers payables
25	Other payables
26	Equity
27	Cash flow reconciliation
28	Contingent liabilities and assets
29	Executive remuneration
30	Remuneration of Auditors
31	Specific payment disclosures
32	Average staffing level
33	Financial instruments
34	Administered fees and fines revenue
35	Reversal of previous Administered asset write-downs
36	Write-down of Administered assets
37	Other Administered expenses
38	Administered receivables
39	Administered reconciliation table
40	Administered contingent liabilities and assets
41	Administered financial instruments
42	Appropriations
43	Special accounts
44	Reporting by outcomes

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

For the period ended 30 June 2005

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 2004) 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 2005

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 2003-2004.

2.3 Revenue

A. Revenues from Government - Agency Appropriations

Departmental outputs appropriations for the year (adjusted for any forma additions and reductions) are recognised as revenue.

Appropriations receivable are recognised at their nominal amounts.

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.

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.

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

2.4 Transactions with the Government as Owner

There were no transactions with the Government as Owner during the reporting periods.

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.

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

For the period ended 30 June 2005

Note 2 – Summary of significant accounting policies (cont)

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 and workers compensation premium rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

During 2004-2005 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 attrition rates and 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.

C. Superannuation

Ongoing staff employed by the CDPP contribute to the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme.

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

Non-ongoing staff who do not contribute to the above schemes are entitled to superannuation guarantee payments to nominated superannuation funds.

The liability for superannuation recognised as at 30 June represent accrued contributions for the period from the last pay day of the financial year to 30 June.

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

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

For the period ended 30 June 2005

Note 2 – Summary of significant accounting policies (cont)

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"> Lease payments are subject to increases in accordance with the terms and conditions of each lease. The initial term of the leases vary, as do the options to renew.
Leases for motor vehicles (for general office use)	<ul style="list-style-type: none"> No contingent rentals exist. There are no renewal or purchase options available to the CDPP.
Lease for computer equipment	<ul style="list-style-type: none"> There are two separate agreements, the first master planned rental agreement commenced w.e.f. 01.07.2001 and the second commenced w.e.f. 01.10.2004. 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 The term of the lease can be extended.
Sub-lease for shared office accommodation	<ul style="list-style-type: none"> Lease payments are subject to increases in accordance with the terms and conditions of the head-lease. There is an option to renew in the head-lease.

The CDPP has no finance leases.

2.7 Borrowing Costs

The CDPP has no borrowings.

2.8 Cash

Cash includes notes and coins held, and deposits held at call with a Bank or Financial Institution. Cash is recognised at its nominal amount.

2.9 Financial Instruments

Accounting policies for financial instruments are stated at Notes 33 and 41.

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

For the period ended 30 June 2005

Note 2 – Summary of significant accounting policies (cont)

2.10 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.

2.11 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.

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.

Fair values for each class of asset are determined by:

<u>Class</u>	<u>Fair value measured as:</u>
Leasehold Improvements	Depreciated replacement cost
Property, Plant and Equipment	Market selling price

Assets which are surplus to requirements are measured at their net realisable value.

As at 30 June 2005 and 30 June 2004 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. 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.

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.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the period ended 30 June 2005

Note 2 – Summary of significant accounting policies (cont)

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

<u>Class</u>	<u>2004-2005</u>	<u>2003-2004</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 11.

2.12 Impairment of Non-Current Assets

Non-current assets carried at up to date fair value at the reporting date are not subject to impairment testing.

The non-current assets carried at cost, which are not held to generate net cash inflows, have been assessed for indications of impairment. Where indications of impairment exist, the asset is written down to the higher of its net selling price and, if the entity would replace the asset's service potential, its depreciated replacement cost.

2.13 Intangibles

Intangible assets comprise software licenses and configuration costs of purchased software. These assets are carried at cost.

A Asset Recognition Threshold

Purchases of Intangibles are recognised initially at cost in the Statement of Financial Position, except for purchases costing less than \$5,000, 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 threshold in 2003-2004 was also \$5,000.

Costs of application development for internally developed applications and configuration costs of purchased software are capitalised where there is a significant increase in functionality. Costs for the preliminary project (i.e. prior to application development) and post implementation, including training, are excluded.

B System Upgrades and Maintenance

Application costs incurred in upgrading from one version to another are capitalised. System maintenance costs are expensed as incurred.

C Amortisation

Amortisable intangible 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 amortisation.

System upgrade costs are amortised over the life of the new maintenance support period using the straight-line method.

The useful lives of the CDPP's software is 4 to 20 years (2003-2004: 4 to 20 years).

Software licenses that are in perpetuity and are covered by maintenance agreements that provide upgrades at no additional cost are not amortised.

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

For the period ended 30 June 2005

Note 2 – Summary of significant accounting policies (cont)

D Impairment and Derecognition

All intangible assets were assessed for impairment as at 30 June 2005. During 2004-2005 several assets were impaired based on reduced functionality and technology changes. All assets had a zero book value so there was no effect on the Statement of Financial Performance or on the Statement of Financial Position.

During 2003-2004 a review was conducted of two assets previously brought to account in 1998-1999 by an independent valuation that was deemed to be the cost basis as at 1 July 2002. As at 30 June 2004 both assets had a net book of zero. It was decided that these assets, with a cost base of \$476,519 and \$307,366 could no longer meet the asset recognition test in SAC4 of being able to be reliably valued. As such both assets were derecognised. There was no effect on the Statement of Financial Performance or on the Statement of Financial Position.

2.14 Taxation / Competitive Neutrality

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.

No part of CDPP operations is subject to competitive neutrality arrangements.

2.15 Foreign Currency

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

2.16 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.

2.17 Comparative Figures

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

2.18 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.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

Note 2 – Summary of significant accounting policies (cont)

2.19 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.

2.20 Executive Remuneration

Finance Minister's Orders (FMOs) 7.B require 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 "managers" means Senior Executive Services (SES) or equivalent officers.

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

2.21 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.

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 39.

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

2.22 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.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

Note 2 – Summary of significant accounting policies (cont)

2.23 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, have been received by other agencies, 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.

2.24 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 – Adoption of Australian Equivalents to International Financial Reporting Standards from 2005-2006

The Australian Accounting Standards Board (AASB) has issued replacement Australian Accounting Standards to apply from 2005-2006. The new standards are the Australian Equivalents to the International Financial Reporting Standards (AEIFRS) that are issued by the International Accounting Standards Board (IASB). The new standards cannot be adopted early. The standards being replaced are to be withdrawn with effect from 2005-2006, but continue to apply in the meantime, including reporting periods ending on 30 June 2005.

It is expected that the Finance Minister will continue to require compliance with the Australian Standards issued by the AASB, including AEIFRS, in the Finance Minister Orders for the Preparation of Agency financial statements for 2005-2006 and beyond.

AEIFRS contain certain additional provisions that will apply to not-for-profit entities including Australian Government Agencies. Some of these provisions are in conflict with the IFRS and therefore the CDPP will only be able to assert compliance with the Australian Accounting Standards.

Existing AASB standards that have no IFRS equivalent will continue to apply, including in particular AAS 29 *Financial Reporting by Government Departments*.

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

For the period ended 30 June 2005

Note 3 – Adoption of Australian Equivalents to International Financial Reporting Standards from 2005-2006 (cont)

Australian Standard AASB 1047 *Disclosing the Impact of Adopting Australian Equivalents to IFRS* requires that the financial statements for 2004-2005 disclose:

- An explanation of how the transition to the AEIFRS is being managed;
- A narrative explanation of the key differences in accounting policies arising from the transition.
- any known or reliably estimable information about the impacts on the financial report had it been prepared using AEIFRS; and
- if the impacts of the above are not known or reliably estimable, a statement to that effect.

The purpose of this note is to make these disclosures.

3.1 Management of the transition to the AASB Equivalents to IFRS

The primary task during 2004-2005 has been the identification of differences between the current reporting framework and AEIFRS.

The identification process has included attendance at professional seminars, reading of professional journals and publications and reading of the AEIFRS. The known significant changes are listed below.

During 2004-2005 an opening balance sheet applying AEIFRS was prepared and available for audit scrutiny.

System changes will not be made until after 1 July 2005.

Where there are options in AEIFRS the CDPP will apply choices made by the Finance Minister.

3.2 Significant changes in accounting policy

The CDPP believes that the first financial report prepared under AEIFRS (i.e. at 30 June 2006), will be prepared on the basis that the CDPP will be a first time adopter under *AASB 1 First-time Adoption of Australian Equivalents to International Financial Reporting Standards*. Changes in accounting policies under AEIFRS are applied retrospectively, i.e. as if the new policy had always applied except in relation to the exemptions available and prohibitions under AASB 1. This means that an AEIFRS compliant balance sheet has to be prepared as at 1 July 2004. This will enable the 2005-2006 financial statements to report comparatives under AEIFRS.

A first time adopter of AEIFRS may elect to use exemptions under paragraphs 13 to 25E. When developing the accounting policies applicable to the preparation of the 1 July opening balance sheet, no exemptions were applied by the CDPP.

Changes to major accounting policies are discussed in the following paragraphs.

Management's review of the quantitative impacts of AEIFRS represents the best estimates of the impacts of the changes as at reporting date. The actual effects of the impacts of AEIFRS may differ from these estimates due to:

- continuing review of the impacts of AEIFRS on the CDPP's operations;
- potential amendments to the AEIFRS and AEIFRS Interpretations; and
- emerging interpretation as to the accepted practice in the application of AEIFRS and the AEIFRS Interpretations.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

Note 3 – Adoption of Australian Equivalents to International Financial Reporting Standards from 2005-2006 (cont)

Property, Plant and Equipment

It is expected that the 2005-2006 Finance Minister's Orders will continue to require property plant and equipment assets to be valued at fair value in 2005-2006. As this is already the case for the CDPP no changes for AEIFRS are required.

Intangible Assets

The Australian Equivalent on Intangibles does not permit intangibles to be measured at valuation unless there is an active market for the intangible assets.

During 2003-2004 a review was conducted of two assets previously brought to account in 1998-1999 by an independent valuation that was deemed to be the cost basis as at 1 July 2002. As at 30 June 2004 both assets had a net book of zero. It was determined that these assets, with a cost base of \$476,519 and \$307,366 could no longer meet the asset recognition test in SAC4 of being able to be reliably valued. As such both assets were derecognised. There was no effect on the Statement of Financial Performance or on the Statement of Financial Position.

As a result no changes for AEIFRS are required.

Impairment of Property, Plant and Equipment and Intangibles

Under AEIFRS these assets will be subject to assessment for impairment and, if there are indications of impairment, an assessment of the degree of impairment. (Impairment measurement must also be done, irrespective of any indications of impairment, for intangible assets not yet available for use). The impairment test is that the carrying amount of an asset must not exceed the greater of (a) its fair value less costs to sell and (b) its value in use. 'Value in use' is the depreciated replacement cost for assets which would be replaced if the CDPP were deprived of them.

However, an impairment assessment of the CDPP's assets indicate that no adjustment will be required.

Employee Benefits

The provision for long service leave is measured at the present value of estimated future cash outflows using market yields as the reporting date on national government bonds.

The 2003-2004 Financial Report noted that under AEIFRS the same discount rate will be used unless there is a deep market in high quality corporate bonds, in which case the market yield on such bonds must be used. The AASB has decided that a deep market in high quality corporate bonds does not exist and therefore national government bonds will be referenced.

AEIFRS require that annual leave that is not expected to be taken within 12 months of balance date is to be discounted. After assessing the staff leave profile and seeking advice from the Australian Government Actuary the impact of the change has been calculated as a reduction of \$89,699 to the liability for leave as at 1 July 2004. The impact of the change to the 2004-2005 Statement of Financial Performance is a reduction in leave expense of \$468 and a corresponding increase in leave provisions.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

Note 3 – Adoption of Australian Equivalents to International Financial Reporting Standards from 2005-2006 (cont)

Decommissioning, Restoration and Make Good

The CDPP has recognised a liability for make good over its leased office property for many years, that liability had been stated at the nominal value, as revalued yearly.

AEIFRS require that such liabilities that are not expected to materialise within 12 months of balance date is to be discounted. The impact of this change has been calculated as an increase of \$79,860 to the liability for make good as at 1 July 2004. The impact of the change to the 2004-2005 Statement of Financial Performance is a reduction in make good expense of \$31,141 and a corresponding increase in make good provisions.

Administered Items

Assessment of the administered assets and liabilities indicate that there are no adjustments due to the transition to AEIFRS.

Financial Instruments

AEIFRS include an option for entities not to restate comparative information in respect of financial instruments in the first AEIFRS report. It is expected that Finance Minister's Orders will require entities to use this option. Therefore, the amounts for financial instruments presented in the CDPP's 2004-05 primary financial statements are not expected to change as a result of the adoption of AEIFRS.

The CDPP will be required by AEIFRS to review the carrying amounts of financial instruments at 1 July 2005 to ensure they align with the accounting policies required by AEIFRS. It is expected that the carrying amounts of financial instruments held by the CDPP will not materially change as a result of this process.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the period ended 30 June 2005

Note 3 – Adoption of Australian Equivalents to International Financial Reporting Standards from 2005-2006 (cont)

Reconciliation if Impacts – AGAAP to AEIFRS

	30-Jun-05 \$'000	30-Jun-04 \$'000
Reconciliation of Departmental Equity		
Total Departmental Equity under AGAAP	16,451	14,214
Adjustment to accumulated results	41	10
Total Departmental Equity under AEIFRS	<u>16,492</u>	<u>14,224</u>
Reconciliation of Departmental Accumulated Results		
Total Departmental Accumulated Results under AGAAP	10,085	8,194
Provision for Annual Leave	90	90
Provision for Make Good	(49)	(80)
Total changes resulting from AEIFRS	<u>41</u>	<u>10</u>
Total Departmental Accumulated Results under AEIFRS	<u>10,126</u>	<u>8,204</u>
Reconciliation of Net Surplus from ordinary activities		
Total Departmental Net Surplus under AGAAP	1,891	
Employee expenses: Annual Leave	-	
Supplier expenses: Make Good	31	
Total changes resulting from AEIFRS	<u>31</u>	
Total Departmental Net Surplus under AEIFRS	<u>1,922</u>	

Note 4 - Events Occurring After Balance Date

There were no events occurring after balance date that had any material effect on the 2004-2005 Financial Statements.

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

For the period ended 30 June 2005

	2004-2005	2003-2004
	\$'000	\$'000
Note 5 - Revenues from Government		
Appropriations for outputs	75,102	69,108
Total	75,102	69,108

Note: in 2003-2004 resources received free of charge from related entities was reported under this heading. From 2004-2005 this has been transferred to Other Revenues, see Note 8.

Note 6 - Sales of goods and services

Provision of goods	5	7
Operating lease rental revenue	144	249
Rendering of services revenue	1,131	1,069
Other	22	20
Total	1,302	1,345
Goods were sold as follows:		
Related entities	-	-
External entities	5	7
Total	5	7
Services were sold as follows:		
Related entities	1,128	1,042
External entities	169	296
Total	1,297	1,338
Costs of sales of goods	-	-

Note 7 - Net gains / (losses) from sale of assets

Non-financial assets

Infrastructure, plant and equipment		
Proceeds from sale	40	72
Net book value at sale	(33)	(149)
Net gain / (loss) from sales	7	(77)
Intangibles		
Proceeds from sale	15	-
Net book value at sale	-	-
Net gain / (loss) from sales	15	-
Total Proceeds from sale	55	72
Total Net book value at sale	(33)	(149)
Net gain / (loss) from sales	22	(77)

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

For the period ended 30 June 2005

	2004-2005	2003-2004
	\$'000	\$'000
<u>Note 8 - Other operating revenues</u>		
Employment subsidies	20	41
Civil costs awarded	-	4
Resources received free of charge-Related entities	66	60
Resources received free of charge-External entities	375	513
Other	371	425
Total	<u>832</u>	<u>1,043</u>
<u>Note 9 - Employee expenses</u>		
Wages and salary	34,733	32,427
Superannuation	6,690	6,043
Leave and other entitlements	1,070	1,007
Separation and redundancy payments	880	169
Other employee benefits	242	212
Total employee benefits expense	<u>43,615</u>	<u>39,858</u>
Workers' compensation premium	225	191
Other employee expenses	487	414
Total	<u>44,327</u>	<u>40,463</u>
<u>Note 10 - Supplier expenses</u>		
Supply of goods	3,582	2,826
Supply of services	17,011	14,653
Operating leases	2.6 6,972	8,443
Total	<u>27,565</u>	<u>25,922</u>
Goods were purchased as follows:		
Related entities	4	53
External entities	3,578	2,773
Total	<u>3,582</u>	<u>2,826</u>
Services were purchased as follows:		
Related entities	1,420	1,125
External entities	15,591	13,528
Total	<u>17,011</u>	<u>14,653</u>
Operating lease payments comprise:		
Minimum lease payments	6,823	8,154
Rental expense for sub-leases	149	289
Total	<u>6,972</u>	<u>8,443</u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

	2004-2005	2003-2004
	\$'000	\$'000
Note 11 - Depreciation and amortisation		
A Depreciation		
Leasehold improvements	1,722	1,598
Plant and equipment	1,189	1,179
Sub-total	<u>2,911</u>	<u>2,777</u>
B Amortisation		
Intangibles	191	551
Sub-total	<u>191</u>	<u>551</u>
Total	<u><u>3,102</u></u>	<u><u>3,328</u></u>
The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:		
Leasehold improvements	1,722	1,598
Plant and equipment	1,189	1,179
Intangibles	191	551
Total	<u><u>3,102</u></u>	<u><u>3,328</u></u>
Note 12 - Write-down of assets		
Non-financial assets - write-off		
Leasehold improvements	-	-
Plant and equipment	2	2
Intangibles	-	81
Sub-total	<u>2</u>	<u>83</u>
Total	<u><u>2</u></u>	<u><u>83</u></u>
Note 13 - Other operating expenses		
Costs awarded against the Commonwealth	371	53
Total	<u><u>371</u></u>	<u><u>53</u></u>
Note 14 - Cash		
Cash at bank	284	195
Cash on hand	46	43
Total	<u><u>330</u></u>	<u><u>238</u></u>

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

For the period ended 30 June 2005

	2004-2005	2003-2004
	\$'000	\$'000
Note 15 - Receivables		
Appropriations	14,689	17,562
Goods and services	88	271
GST receivable from the Australian Taxation Office	285	683
Lease incentives receivable	-	66
Other	101	22
Total	15,163	18,604

All receivables are current assets and there are no provisions for doubtful debts

Receivables are aged as follows:

Not overdue	15,145	18,505
Overdue less than 30 days	-	78
Overdue 30 to 60 days	-	12
Overdue 60 to 90 days	12	-
Overdue more than 90 days	6	9
Total	15,163	18,604

Note 16 - Land and buildings

Leasehold improvements

Leasehold improvements at fair value	2.11B	19,059	17,331
Accumulated amortisation		(6,275)	(6,198)
		12,784	11,133
Total leasehold improvements		12,784	11,133
Total land and buildings (non-current)		12,784	11,133

Note 17 - Infrastructure, plant and equipment

Plant and equipment

Computers at fair value	2.11B	1,040	1,117
Accumulated depreciation		(657)	(579)
		383	538
Furniture at fair value	2.11B	4,619	4,250
Accumulated depreciation		(1,388)	(1,778)
		3,231	2,472

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

		2004-2005	2003-2004
		\$'000	\$'000
<u>Note 17 - Infrastructure, plant and equipment (cont)</u>			
Other plant and equipment at fair value	2.11B	2,429	2,371
Accumulated depreciation		(1,247)	(846)
		<u>1,182</u>	<u>1,525</u>
Artwork at fair value	2.11B	123	154
Accumulated depreciation		(59)	(69)
		<u>64</u>	<u>85</u>
Library holdings at fair value	2.11B	3,274	3,274
Accumulated depreciation		(1,282)	(1,118)
		<u>1,992</u>	<u>2,156</u>
Total plant and equipment		<u>6,852</u>	<u>6,776</u>
Total Infrastructure, plant and equipment (non-current)		<u>6,852</u>	<u>6,776</u>
<u>Note 18 - Intangibles</u>			
Computer software			
Purchased software at cost		2,177	2,055
Accumulated amortisation		(1,787)	(1,684)
		<u>390</u>	<u>371</u>
Total computer software		<u>390</u>	<u>371</u>
Total intangible assets		<u>390</u>	<u>371</u>

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

For the period ended 30 June 2005

Note 19 - Analysis of land, buildings, plant, equipment and intangibles

A. Reconciliation of opening and closing balances of property, plant and equipment and intangibles

Item	Buildings- leasehold improvements \$'000	Infrastructure, plant and equipment \$'000	Intangibles- computer software \$'000	Total \$'000
As at 1 July				
Gross value	17,331	11,166	2,055	30,552
Accumulated depreciation / amortisation	(6,198)	(4,390)	(1,684)	(12,272)
Opening Net Book Value	11,133	6,776	371	18,280
Additions: purchase of assets	3,000	1,300	210	4,510
Depreciation / amortisation charge	(1,722)	(1,189)	(191)	(3,102)
Disposals	-	(33)	-	(33)
Write-offs	-	(2)	-	(2)
Revaluations: write-ups / (write-downs)	373	-	-	373
As at 30 June				
Gross value	19,059	11,485	2,177	32,721
Accumulated depreciation / amortisation	(6,275)	(4,633)	(1,787)	(12,695)
Closing Net Book Value	12,784	6,852	390	20,026

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

For the period ended 30 June 2005

Note 19 - Analysis of land, buildings, plant, equipment and intangibles

B. Assets at valuation

Item	Buildings- leasehold improvements \$'000	Infrastructure, plant and equipment \$'000	Intangibles- computer software \$'000	Total \$'000
As at 30 June				
Gross value	19,059	11,485	-	30,544
Accumulated depreciation / amortisation	6,275	4,633	-	10,908
Net book value at end of reporting period	<u>12,784</u>	<u>6,852</u>	<u>-</u>	<u>19,636</u>
As at 1 July				
Gross value	17,331	11,166	-	28,497
Accumulated depreciation / amortisation	6,198	4,390	-	10,588
Net book value at beginning of reporting period	<u>11,133</u>	<u>6,776</u>	<u>-</u>	<u>17,909</u>

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

	2004-2005	2003-2004
	\$'000	\$'000
<u>Note 20 - Other non-financial assets</u>		
Prepayments made	863	296
Other accruals	196	990
Total	<u>1,059</u>	<u>1,286</u>
<u>Note 21 - Non-interest bearing liabilities</u>		
Lease incentives	1,437	2,115
Total	<u>1,437</u>	<u>2,115</u>
Represented by:		
Current	212	688
Non-current	1,225	1,427
Total	<u>1,437</u>	<u>2,115</u>
<u>Note 22 - Employee provisions</u>		
Salaries and wages	131	1,240
Leave	2.5A 13,487	12,397
Superannuation	120	234
Separations and redundancies	-	81
Sub-total employee benefits liability	<u>13,738</u>	<u>13,952</u>
Other employee provisions	702	121
Total	<u>14,440</u>	<u>14,073</u>
Represented by:		
Current	4,978	6,041
Non-current	9,462	8,032
Total	<u>14,440</u>	<u>14,073</u>
<u>Note 23 - Other provisions</u>		
Provision for fitout restoration	1,116	1,006
Provision for rent on surplus space	-	495
Total	<u>1,116</u>	<u>1,501</u>
Represented by:		
Current	-	709
Non-current	1,116	792
Total	<u>1,116</u>	<u>1,501</u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

	2004-2005	2003-2004
	\$'000	\$'000
<u>Note 24 - Suppliers payables</u>		
Trade creditors	1,139	5,039
Accrued expenses	1,963	1,466
Total	<u>3,102</u>	<u>6,505</u>
Represented by:		
Current	3,102	6,505
Non-current	-	-
Total	<u>3,102</u>	<u>6,505</u>
<u>Note 25 - Other payables</u>		
Prepayments received	32	-
Total	<u>32</u>	<u>-</u>
Represented by:		
Current	32	-
Non-current	-	-
Total	<u>32</u>	<u>-</u>

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

For the period ended 30 June 2005

Note 26 - Equity

	Accumulated Results		Asset Revaluation Reserve		Contributed Equity		Total Equity	
	2004-2005 \$'000	2003-2004 \$'000	2004-2005 \$'000	2003-2004 \$'000	2004-2005 \$'000	2003-2004 \$'000	2004-2005 \$'000	2003-2004 \$'000
Opening balance as at beginning of reporting period	8,194	6,624	4,513	4,389	1,507	1,507	14,214	12,520
Operating results	1,891	1,570	-	-	-	-	1,891	1,570
Net revaluation increment / (decrement)	-	-	346	124	-	-	346	124
Transactions with owners:								
<i>Distributions to owner:</i>								
Return of equity	-	-	-	-	-	-	-	-
Closing balance as at end of reporting period	10,085	8,194	4,859	4,513	1,507	1,507	16,451	14,214
Less: Outside equity interests	-	-	-	-	-	-	-	-
Total equity attributable to the Commonwealth	10,085	8,194	4,859	4,513	1,507	1,507	16,451	14,214

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

For the period ended 30 June 2005

	2004-2005	2003-2004
	\$'000	\$'000
<u>Note 27 - Cash flow reconciliation</u>		
Reconciliation of Cash per Statement of Financial Position to Statement of Cash Flows:		
Cash at year end per Statement of Cash Flows	330	238
Cash as per Statement of Financial Position	330	238
Reconciliation of operating surplus to the net cash provided by operating activities:		
Net Surplus (deficit)	1,891	1,570
Depreciation and amortisation	3,102	3,328
Loss on sale of non-current assets	(22)	78
Write-down of non-current assets	2	83
Assets not previously recognised	25	1
Decrease (increase) in net receivables	3,449	(2,264)
Decrease (increase) in prepayments paid	227	84
Increase (decrease) in debt	(678)	(47)
Increase (decrease) in employee provisions	366	1,673
Increase (decrease) in supplier payables	(1,556)	1,727
Increase (decrease) in prepayments received	32	-
Net cash from / (used by) operating activities	<u>6,838</u>	<u>6,233</u>

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

For the period ended 30 June 2005

Note 28 – Contingent liabilities and assets

Quantifiable contingent assets

The Schedule of Contingencies reports a contingent asset in respect of a claim for compensation for defects on an office Fitout project. The estimate is based on the costs incurred, or to be incurred, to rectify the defects.

Unquantifiable contingent liabilities

If a matter prosecuted by the 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* or the *Proceeds of Crime Act 2002*, 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, due to the sensitivity of the information related to matters still before the courts.

Unquantifiable contingent assets

Nil.

Remote contingent liabilities

The CDPP has a number of contracts with suppliers that include indemnities for any default by the CDPP or its agents. These are standard contract conditions and the CDPP is satisfied that there is no foreseeable risk of any of the indemnities being called upon.

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

For the period ended 30 June 2005

2004-2005 2003-2004

Note 29 - 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	-	1
\$110,000 to \$119,999	1	1
\$120,000 to \$129,999	-	1
\$130,000 to \$139,999	1	3
\$140,000 to \$149,999	4	2
\$150,000 to \$159,999	4	7
\$160,000 to \$169,999	13	9
\$170,000 to \$179,999	4	2
\$180,000 to \$189,999	2	10
\$190,000 to \$199,999	5	2
\$200,000 to \$209,999	4	1
\$210,000 to \$219,999	1	4
\$220,000 to \$229,999	2	-
\$230,000 to \$239,999	-	1
\$240,000 to \$249,999	2	1
\$350,000 to \$359,999	-	1
\$370,000 to \$379,999	1	-
\$380,000 to \$389,999	1	-
Total	<u>45</u>	<u>46</u>

The aggregate amount of total remuneration of the executives included above

\$ 8,388,275 \$ 8,092,673

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

\$ - \$ -

Note 30 - Remuneration of Auditors

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

2004-2005 Financial Statements	\$ 60,000	\$ 60,000
2004-2005 Opening AEIFRS Balance	\$ 6,500	\$ -
	<u>\$ 66,500</u>	<u>\$ 60,000</u>

No other services were provided by the Auditor-General.

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

For the period ended 30 June 2005

	2004-2005	2003-2004
Note 31 - Specific payment disclosures		
Agency		
Act of Grace payments	Nil	Nil
<i>Number of payments 2004-2005:Nil, 2003-2004:Nil</i>		
Ex-gratia payments	Nil	Nil
<i>Number of payments 2004-2005:Nil, 2003-2004:Nil</i>		
Waivers made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i>	Nil	Nil
<i>Number of payments 2004-2005:Nil, 2003-2004:Nil</i>		
Defective Administration Scheme	Nil	Nil
<i>Number of payments 2004-2005:Nil, 2003-2004:Nil</i>		
Payments made pursuant to section 73 of the <i>Public Service Act 1999</i>	Nil	Nil
<i>Number of payments 2004-2005:Nil, 2003-2004:Nil</i>		
Total	<u>\$ -</u>	<u>\$ -</u>

Administered		
Act of Grace payments	Nil	Nil
<i>Number of payments 2004-2005:Nil, 2003-2004:Nil</i>		
Ex-gratia payments	Nil	Nil
<i>Number of payments 2004-2005:Nil, 2003-2004:Nil</i>		
Waivers made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i>	Nil	Nil
<i>Number of payments 2004-2005:Nil, 2003-2004:Nil</i>		
Defective Administration Scheme	Nil	Nil
<i>Number of payments 2004-2005:Nil, 2003-2004:Nil</i>		
Total	<u>\$ -</u>	<u>\$ -</u>

Note 32 - Average staffing level

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

469

454

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

For the period ended 30 June 2005

Note 33 – Financial Instruments

a) Terms, conditions and accounting policies

Financial Instrument	Note	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of Underlying Instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
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	14	Deposits are recognised at their nominal amounts.	The Agency maintains an account with the Reserve Bank of Australia for it's 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. No interest is earned on the account.
Appropriations receivable	15	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, Lease Incentives & Other.	15	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 (2003-2004 30 days).

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**
For the period ended 30 June 2005

Note 33 – Financial Instruments (cont)

a) Terms, conditions and accounting policies (cont)

Financial Instrument	Note	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of Underlying Instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
Financial Liabilities		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 - Agency	24	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.

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

For the period ended 30 June 2005

Note 33 - Financial instruments (cont).

(b) Interest Rate Risk: Agency

Financial Instrument	Notes	Floating Interest Rate		Fixed Interest Rate				Non-Interest Bearing		Total		Weighted Average Effective Interest Rate	
		Rate		1 to 5 years		> 5 years						2004-2005 2003-2004	
		2004-2005	2003-2004	2004-2005	2003-2004	2004-2005	2003-2004	2004-2005	2003-2004	2004-2005	2003-2004	%	%
		\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000		
Financial Assets													
Cash - at bank	14	-	-	-	-	-	-	284	195	284	195	Nil	Nil
Receivables - appropriations	15	-	-	-	-	-	-	14,689	17,562	14,689	17,562	n/a	n/a
Receivables - goods and services (gross)	15	-	-	-	-	-	-	88	271	88	271	n/a	n/a
Receivables - lease incentives	15	-	-	-	-	-	-	-	66	-	66	n/a	n/a
Receivables - other	15	-	-	-	-	-	-	101	22	101	22	n/a	n/a
Total Financial Assets (Recognised)		-	-	-	-	-	-	15,162	18,116	15,162	18,116		
Total Agency Assets								36,578	38,408	36,578	38,408		
Financial Liabilities													
Trade creditors	24	-	-	-	-	-	-	1,139	5,039	1,139	5,039	n/a	n/a
Accrued Expenses	24	-	-	-	-	-	-	1,963	1,466	1,963	1,466	n/a	n/a
Total Financial Liabilities (Recognised)		-	-	-	-	-	-	3,102	6,505	3,102	6,505		
Total Agency Liabilities								20,127	24,194	20,127	24,194		

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

Note 33 - Financial instruments (cont)

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

		2004-2005		2003-2004	
	Note	Total carrying amount \$'000	Aggregate net fair value \$'000	Total carrying amount \$'000	Aggregate net fair value \$'000
Financial Assets					
Cash - at bank	14	284	284	195	195
Receivables - appropriations	15	14,689	14,689	17,562	17,562
Receivables - goods and services (net)	15	88	88	271	271
Receivables - lease incentives	15	-	-	66	66
Receivables - other	15	101	101	22	22
Total Financial Assets		15,162	15,162	18,116	18,116
Financial Liabilities (Recognised)					
Trade creditors	24	1,139	1,139	5,039	5,039
Accrued Expenses	24	1,963	1,963	1,466	1,466
Total Financial Liabilities (Recognised)		3,102	3,102	6,505	6,505

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS			
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS			
For the period ended 30 June 2005			
		2004-2005	2003-2004
		\$'000	\$'000
Note 34 - Administered fees and fines revenue			
Fines and Costs		8,070	4,086
Other		-	-
Total		8,070	4,086
Note 35 - Reversal of previous Administered asset write-downs			
Decrease in provision for doubtful debts	2.23A	-	79
Reinstate receivable previously written-off		38	258
Total		38	337
Note 36 - Write-down of Administered assets			
Financial Assets			
Write-off		511	906
Prison sentence		460	545
Community service orders		97	145
Received by other agencies		1,663	467
Increase in provision for doubtful debts	2.23A	1,033	-
Total		3,764	2,063
<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>			
Note 37 - Other Administered expenses			
Revenue transfers to other Agencies ^A	2.23B	-	140
Total		-	140
<p>^A Fines and Costs awarded by the Courts are usually CDPD revenue, however, working arrangements with some Government agencies allow for this revenue to be paid to them.</p>			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS		
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS		
For the period ended 30 June 2005		
	2004-2005	2003-2004
	\$'000	\$'000
Note 38 - Administered receivables		
Fines and Costs	13,527	10,141
Less : Provision for doubtful debts	(9,368)	(8,334)
Total	4,159	1,807
Fines and costs receivable (gross) are aged as follows:		
Not overdue	900	561
Overdue less than 30 days	884	307
Overdue 30 to 60 days	804	242
Overdue 60 to 90 days	296	184
Overdue more than 90 days	10,643	8,847
Total	13,527	10,141
The provision for doubtful debts is aged as follows:		
Not overdue	(29)	(123)
Overdue less than 30 days	(20)	(15)
Overdue 30 to 60 days	(39)	(48)
Overdue 60 to 90 days	(109)	(92)
Overdue more than 90 days	(9,170)	(8,056)
Total	(9,367)	(8,334)
Note 39 - Administered reconciliation table		
Administered assets less administered liabilities as at 1 July	1,666	1,843
Plus Administered revenues	8,108	4,423
Less Administered expenses	(3,764)	(2,203)
Less transfers to OPA	(2,012)	(2,678)
Plus transfers from OPA	161	281
Administered assets less administered liabilities as at 30 June	4,159	1,666

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

Note 40 – Administered contingent liabilities and assets

Unquantifiable contingent liabilities / assets

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, due to the sensitivity of the information related to matters still before the courts.

Unquantifiable contingent assets

Matters before the courts at the reporting date may result in fines, costs and reparations being awarded to the Commonwealth.

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the period ended 30 June 2005

Note 41 – Administered Financial Instruments

a) Terms, conditions and accounting policies

Financial Instrument	Note	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of Underlying Instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
Financial Assets		Financial Assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured.	
Receivables – Fines and Costs	38	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.
Financial Liabilities		Financial Liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured.	
Other payables	-	Other payables are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised when money received is identified as not belonging to the Agency	Payees are entities that are part of the Commonwealth legal entity and external to the Commonwealth. Settlement is usually made net 7 days.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS												
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS												
For the period ended 30 June 2005												
Note 41 - Administered financial instruments (cont)												
(b) Interest Rate Risk: Administered												
Financial Instrument	Notes	Floating Interest Rate		Fixed Interest Rate			Non-Interest Bearing	Total	Weighted Average Effective Interest Rate			
		2004-2005 \$'000	2003-2004 \$'000	1 year or less 2004-2005 \$'000	1 to 5 years 2004-2005 \$'000	> 5 years 2004-2005 \$'000			2004-2005 \$'000	2003-2004 \$'000	2004-2005 %	2003-2004 %
Financial Assets												
Receivables - Fees and Fines (gross)	38	-	-	-	-	-	13,527	10,141	13,527	10,141	n/a	n/a
Total Financial Assets		-	-	-	-	-	13,527	10,141	13,527	10,141		
Total Administered Assets							4,159	1,807				
Financial Liabilities												
Payables - other		-	-	-	-	-	-	141	-	141	n/a	n/a
Total Financial Liabilities		-	-	-	-	-	-	141	-	141		
Total Administered Liabilities							-	141				

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

Note 41 - Administered financial instruments (cont)

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

		2004-2005		2003-2004	
	Note	Total carrying amount \$'000	Aggregate net fair value \$'000	Total carrying amount \$'000	Aggregate net fair value \$'000
Financial Assets					
Receivables - Fees and Fines (net)	38	4,159	4,159	1,807	1,807
Total Financial Assets		4,159	4,159	1,807	1,807
Financial Liabilities					
Payables - other	-	-	-	141	141
Total Financial Liabilities		-	-	141	141

Financial Assets

The net fair value 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 the reporting date in relation to each class of recognised financial asset is the carrying amount of those assets as indicated in the Administered Schedule of Administered Items.

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.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

	2004-2005	2003-2004
	\$.	\$.
Note 42 - Appropriations		
A. Cash basis acquittal of Appropriations from Acts 1 and 3		
Balance available at beginning of period	18,047,333	16,187,529
	18,047,333	16,187,529
Appropriations for reporting period (Act 1)	75,212,000	66,177,000
Appropriations for reporting period (Act 3)	(110,000)	2,931,000
Adjustments determined by the Finance Minister	-	-
Amounts from Advance to the Minister for Finance	-	-
Amounts for Comcover receipts	-	87,636
Refunds credited (FMA s.30)	130,999	-
GST credits (FMA s.30A)	3,405,531	2,641,058
Annotated to net appropriations (FMA s.31)	2,014,960	1,698,039
Total appropriated in the period	80,653,490	73,534,733
Total appropriations available for payments	98,700,823	89,722,262
Payments during the period	83,505,226	71,674,929
Balance of appropriations for outputs at end of period	15,195,597	18,047,333
Represented by:		
Cash	329,684	237,876
Appropriations receivable	14,689,023	17,561,947
GST receivable from ATO (net)	285,291	683,165
GST receivable from customers	3,234	30,014
GST payable payable to suppliers	(111,635)	(465,669)
	15,195,597	18,047,333

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
 For the period ended 30 June 2005

Note 42 – Appropriations (cont)

Under Section 31 of the *Financial Management and Accountability Act 1997* (the FMA Act), the Minister for Finance may enter into a net appropriation agreement with an agency Minister. Appropriation Acts Nos. 1 and 3 (for the ordinary annual services of government) authorise the supplementation of an agency's annual net appropriation by amounts received in accordance with its Section 31 Agreement e.g. receipts from charging for goods and services.

The CDPP had a Section 31 Agreement in place that commenced on 1 July 1998 and was intended to continue until either replaced or cancelled. It has now been brought to our attention that as a result of changed wording in *Appropriation Act No. 1 1999-2000*, that this agreement lapsed after 30 June 1999. Our next Section 31 Agreement commenced on 1 July 2000, therefore, in respect of the 1999-2000 financial year there was no Section 31 Agreement in place yet the CDPP retained receipts as if an agreement was in place, the total of these receipts was \$940,094. It is noted that no expenses were incurred in respect of these receipts. Options are being examined for making available for spending any unspent receipts not previously captured by an agreement, to enable them to be spent in accordance with Section 83 of the Constitution.

Doubt has arisen as to whether the CDPP's Section 31 Agreement covering the period 1 July 2000 to 1 December 2004 was effective because the signatories may not have had an express delegation or authority for signing the agreements. Legal advice indicates that in the circumstances a court is unlikely to conclude that the doubtful agreement is invalid for the purposes of determining whether there has been a breach of Section 83 of the Constitution.

Our current Section 31 Agreement was made on 2 December 2004 by our Chief Executive and a delegate of the Minister for Finance.

The period and amounts covered by the CDPP's Section 31 Agreements are set out below:

Financial Year	<u>Receipts</u> <u>affected</u>	<u>Amounts</u> <u>spent</u>	<u>Amounts</u> <u>unspent</u>
	\$	\$	\$
1999-2000	940,094	0	940,094
2000-2001	1,956,259	0	1,956,259
2001-2002	1,865,601	0	1,865,601
2002-2003	2,083,268	0	2,083,268
2003-2004	1,698,039	0	1,698,039
Sub-total previous years	8,543,261	0	8,543,261
2004-2005 to 1 Dec	1,001,533	0	1,001,533
2004-2005 from 2 Dec	1,013,427	0	1,013,427
Total	10,558,221	0	10,558,221

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

For the period ended 30 June 2005

	2004-2005	2003-2004
	\$.	\$.

Note 43 - 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 carried from previous period	-	-
Add: Appropriation for reporting period	-	-
Receipts from Courts o.b.o. defendants	2,011,582	2,677,769
Available for payment	2,011,582	2,677,769
Less: Payments to OPA	(1,850,139)	(1,779,734)
Payments of refunds	(20,964)	(229,496)
Payments to related entities	(140,479)	(668,539)
Sub-total payments made	(2,011,582)	(2,677,769)
Balance carried to the next period	-	-
Represented by: Cash at Bank	-	-

Note on usage - for the receipt of money temporarily held on trust and advanced to the Agency by Courts or related bodies pending either (1) allocation to administered receivables and payment to OPA or (2) refund to the Court or (3) payment to another Agency.

Bonds Component (Administered)

Balance carried from previous period	-	-
Add: Receipts from appropriations	-	-
Receipts from other sources	-	617,246
	-	617,246
Less: Payments to related entities	-	(617,246)
Balance carried to the next period	-	-

Note on usage - for the receipt of money temporarily held on trust and advanced to the Agency by or on behalf of a defendant as a result of a decision of a Court. Depending on the outcome, the money could either be (1) refunded to the defendant, (2) paid to another Agency or (3) paid to OPA.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the period ended 30 June 2005

	2004-2005	2003-2004
	\$.	\$.
Note 43 - Special accounts (cont)		
Comcare Component (Departmental)		
Balance carried from previous period	-	-
Add: Receipts from appropriations	-	-
Receipts from Comcare	50,719	46,447
Available for payment	50,719	46,447
Less: Payments made to employees	(50,719)	(46,447)
Sub-total payments made	(50,719)	(46,447)
Balance carried to the next 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* .

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.

* There were no transactions during either year.

Note - in 2003-2004 Comcare transactions were incorrectly reported as being processed through this account. They were however processed through the Other Trust Monies Special Account (see above)

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2005

	2004-2005	2003-2004
	\$'000	\$'000
Note 44 - Reporting by outcomes		
Net Cost of Outcome Delivery		Outcome 1
Administered expenses	3,764	2,203
Departmental expenses	75,400	69,998
Total expenses	79,164	72,201
External revenues		
Administered revenues	8,108	4,423
Departmental revenues	2,123	2,400
Total external revenues	10,231	6,823
Net cost of outcome	68,933	65,378
Major Classes of Departmental Revenues & Expenses by outcome		
Operating revenues		
Revenues from Government	75,102	69,108
Sales of goods and services	1,302	1,345
Other	887	1,115
Total operating revenues	77,291	71,568
Operating expenses		
Employees	44,327	40,463
Suppliers	27,565	25,922
Depreciation	3,102	3,328
Other	406	285
Total operating expenses	75,400	69,998
Major Classes of Administered Revenues & Expenses by outcome		
Operating revenues		
Fees and Fines	2.22 8,070	4,086
Other	38	337
Total operating revenues	8,108	4,423
Operating expenses		
Write-down of assets	3,764	2,063
Other	2.23B -	140
Total operating expenses	3,764	2,203

I n d e x

A

Abbott, Charles Percy, 16
 Action Plan, 112
 Adams, Steven, Igor May and Iouri Chouster, 87
 Adelong Capital Ltd, 21
 ADI Limited, 88
 Adler, Rodney Stephen, 16–17
 advocacy training, 12–13
 air safety
 breaches of, 10
 Aksu, Alex Umit, 31
 Al Jenabi, Ali, 12, 88–89
 Alateras, Angelo, 31–32
 Alex Perry Pty Ltd, 19–20
 appeals *see* prosecution sentence appeals
 in summary matters; prosecution sentence appeals on a prosecution on indictment
 aquarium fish
 illegal importation of, 95
 asset management, 75–76
 Attorney-General, 1, 47
 Attorney-General's Department, 57, 58, 65, 67
 Australian Central Authority (Attorney-General's Department), 57–58, 60
 Australian Crime Commission, 7, 45, 49
 Australian Customs Service, 52
Australian Federal Police Act 1979 (AFP Act), 47, 48
 Australian Federal Police (AFP), 2, 7, 13, 45
 Australian Law Reform Commission, 67
 Australian Maritime Safety Authority, 7
Australian Securities and Investments Commission Act 2001 (ASIC Act), 15
 Australian Securities and Investments Commission (ASIC), 15
 Australian Security Intelligence Organisation (ASIO), 93
 Australian Taxation Office, 7, 10, 32, 45, 53
 Australian Workplace Agreements, 69, 70

B

The Bell Group Ltd, 22
 Bell Resources Ltd, 22
 Bo Long International Development Co Pty Ltd, 20
 Bond Corporation, 22
 Burroughs, Stephen *see* Wilkie, Daniel, Timothy Mainprize and Stephen Burroughs
 business regulation, 79

C

Case Recording and Information Management System (CRIMS), 77
 Cassidy, Terence Kevin, 17
 Centrelink, 7, 12–13
 fraud, 9, 31–32, 104
 Certified Agreement, 69, 70, 74
 Chan, Darryl Wing-Kin, 48–49
 charges dealt with
 statistics, 35–37
 Chen, Yung-Chen, 49
 child pornography, 89–90, 101
 'chop-chop' tobacco, 9, 100
 Chouster, Iouri *see* Adams, Steven, Igor May and Iouri Chouster
 Civil Aviation Safety Authority, 7, 10
 civil remedies and action under *Customs Act 1901*, 46
 Commercial, International and Counter-Terrorism Branch, 57, 65
 commercial prosecutions, 15–23
 Commercial Prosecutions Branches, 15
 committals, 8
 statistics, 34
Commonwealth Criminal Code 1995 see Criminal Code 1995
 Commonwealth criminal law, XI
 Commonwealth Disability Strategy, 74
 report, 85
 compliance statement, IX
 Confiscated Assets Account, 44
 confiscation *see* criminal assets confiscation
 conspiracy proceedings
 consent to, 27
 consultancy services, 75, 83
Convention Against Bribery of Foreign Public Officials in International Business Transactions, 67
 Cook, Gregory Roy, 89
 Cook, Martin Garth, 89–90
 Cooper, Bradley David, 17
 Copyright Prosecutions Outline, 13
 corporate crime, XII
 corporate fraud, 15
 Corporate Management Branch, 69
 Corporate Plan, 2, 12, 111–112
Corporations Act 2001, 15–23, 50–51
 costs, 49–50
 see also reparation orders and fines and costs
Crimes Act 1900 (NSW), 16, 17, 54
Crimes Act 1914, 26, 28, 30, 48, 53, 54, 89, 96–97, 102

- charges dealt with
 - statistics, 38
 - Crimes (Internationally Protected Persons) Act 1976*, 33
 - Crimes (Superannuation Benefits) Act 1989* (CSB Act), 47, 48
 - Criminal Assets Branches, 44, 45, 47, 65, 77
 - criminal assets confiscation, XII, 43–44, 103
 - cases, 48–54
 - performance indicators, 47
 - summary of recoveries, 56
 - tables, 54–56
 - see also Proceeds of Crime Act 1987* (POC Act 1987); *Proceeds of Crime Act 2002* (POC Act 2002)
 - Criminal Assets Recording System (CARS), 77
 - Criminal Code 1995*, 10, 11, 13, 53, 66, 93, 96–97, 103
 - charges dealt with
 - statistics, 39
 - Criminal Code Amendment (Trafficking in Persons Offences) Act 2005*, 66
 - criminal confiscation *see* criminal assets confiscation
 - Criminal Justice Division (Attorney-General's Department), 65, 67
 - criminal justice system, XI
 - criminal law
 - development of, XII
 - see also* Commonwealth criminal law
 - Customs Act 1901*, 4, 44, 45, 53, 65–66, 97, 101, 104, 106
 - civil remedies and action under, 46
 - customs and excise duty
 - evasion of, 96–97
- D**
- Daood, Khaleed Shnayf, 11, 90–91
 - deceptive recruiting, 10, 66, 105
 - defence appeals
 - statistics, 35
 - defendants, 9
 - referring agencies
 - statistics, 40–41
 - Department of Foreign Affairs and Trade (DFAT), 93
 - Department of Immigration and Multicultural and Indigenous Affairs, 7
 - Department of the Environment and Heritage, 7
 - Deputy Director, Corporate Management, 69
 - Deputy Directors, 4, 69
 - Diez v DPP*, 49–50
 - Director, 1
 - overview by, XI–XIV
 - see also* statutory powers, exercise of *Director of Public Prosecutions Act 1983* (DPP Act), 1, 3, 74
 - see also* statutory powers
 - Director of Public Prosecutions (DPP), Office of, XI–XII
 - Action Plan, 112
 - corporate governance, 4
 - establishment, 1
 - functions and powers, 3–4
 - mission, 111
 - organisation, 4
 - outcomes and outputs, 4, 6, 111
 - see also* Outcome 1; Output 1.1
 - resource management, 69–85
 - role, 1–2
 - strategies, 112
 - vision, 111
 - dishonesty and abuse of public office
 - recovery of proceeds of, 51–52
 - DPP lawyers
 - support for, XII–XIII
 - drug crime, 30–31, 45, 66–67, 87, 91, 95–96, 97–100, 100–101, 102–103, 104–105, 106–107
 - recovery of proceeds of, 44, 49, 52–53
 - Duffy, Luke, 18–19
- E**
- ecologically sustainable development, 78–79
 - Employee Self Service System (ESS), 71
 - Equal Employment Opportunity (EEO), 73
 - profile, 82
 - equity *see* social justice and equity
 - ex officio* indictments, 26–27
 - examinations under *Proceeds of Crime Act 2002*, 46
 - Excise Act 1901*, 45
 - external scrutiny, 76
 - extradition, XII, 57–58
 - requests – tables, 59
 - Extradition Act 1988*, 3
- F**
- Fares, Michael and John, 50
 - File Registry System (FILE), 77
 - Financial Action Task Force into Anti-Money Laundering and Combating the Financing of Terrorism, 67
 - financial management, 74
 - Financial Management Section, 69
 - financial performance, 74–76
 - financial statements, 74, 115–174
 - notes, 132–174
 - Financial Transactions Reports Act 1988*, 45, 50
 - Fisher, Gregory Joseph, 19–20
 - fraud, ^*see also* corporate fraud, ^*see also*

Goods and Services Tax fraud, ^see also Medicare fraud, ^see also Pharmaceutical Benefits Scheme fraud, ^see also tax fraud
 recovery of proceeds of, 53–54
see also under Centrelink

fraud control *see* internal audit and fraud control

Fraud Risk Assessment and Fraud Control Plan, 76

Frawley, Richard James, 50–51

Freedom of Information Act 1982
 statement under, 109–110

functions and powers, 3–4

FX spot and options trades
 National Australia Bank, 18–19

G

globalisation of crime, XI

Goh, Tiong Hou and Chow Hee Tan, 91

Goods and Services Tax fraud, 9, 96, 102

Guidelines on Official Conduct for DPP employees, 4

H

Harris Scarfe group, 21

Hart, Steven Irvine, 9, 91–92

Harts Australasia Ltd, 23

health initiative, 71

Health Insurance Commission, 7, 48

Health Insurance Commission (HIC), 103

Health Services Australia, 71

HIH Insurance Ltd cases, 16–18

HMAS Westralia, 88

Ho, Donna Tung Sing, and Mark Sweeney, 20

Hui, Danny *see* Low, Donny, Tanya Sayachack, Terry Ting, Danny Hui and Cindy Yong

Human Resource Management Section, 69

human resource policies, 70

I

immigration detention
 escape from, 28–29

indemnities, 25–26

independent audit report, 76, 118–119

indictment, prosecutions on, 8

Indigenous Legal Cadet, 73

information technology (IT), 76–77

Information Technology Section, 69

information technology staff, XIII

insider trading, 23
 recovery of proceeds of, 50–51

Insolvency and Trustee Service Australia (ITSA), 45, 54

intellectual property, 13

internal audit and fraud control, 77

international evaluations of the

effectiveness of Commonwealth criminal law, 67

international work, XI, 57–63
see also extradition; mutual assistance

Internet, 70

Intranet, 70, 79

investigators training, 13

Ip, Ka-Hung, 51–52

J

James, Murray *see* Perrier, Murray James, Peter Hans Malman, Voicu Pop and Peter Alan Tilley (Operation Lagos)

JNA Telecommunications Ltd, 50–51

joint trial arrangements, 68

L

Law and Justice Legislation (Serious Drug Offences and Other Measures) Bill 2005, 66

law reform, 65–68

Legal and Practice Management Branch, 13, 65

legislation
 charges dealt with
 statistics, 35–37

letter of transmittal, III

libraries, 77–78

Library Section, 69

library staff, XIII

live aquarium fish
 illegal importation of, 95

Loades, Caleb, 52–53

Low, Donny, Tanya Sayachack, Terry Ting, Danny Hui and Cindy Yong, 32–33, 92

M

Mainprize, Timothy *see* Wilkie, Daniel, Timothy Mainprize and Stephen Burroughs

Mallah, Zaky, 11, 92–93

Malman, Peter Hans *see* Perrier, Murray James, Peter Hans Malman, Voicu Pop and Peter Alan Tilley (Operation Lagos)

Manners, Craig William, 21

Matrim Marine Inc, 93–94

May, Igor *see* Adams, Steven, Igor May and Iouri Chouster

McLaughlin, Daniel Francis, 21

McMunn, John Thomas, 94–95

media inquiries, 78

Medicare fraud, 103–104

Migration Act 1958, 88

Minister for Justice and Customs, 47

mission, 111

mutual assistance, XII, 57, 60–61
 requests – tables, 62–63

Mutual Assistance in Criminal Matters Act 1987, 3, 60

N

National Archives of Australia (NAA), 51
 National Australia Bank, 18–19, 50
 National Working Group on Diversion of
 Precursor Chemicals, 67
 Nilsson, Karen May, 95
 no bill applications, 25

O

Oates, Antony Gordon, 22
 occupational health and safety, 71
*Occupational Health and Safety
 (Commonwealth Employment) Act 1991*,
 88
 Office of Director of Public Prosecutions
see Director of Public Prosecutions (DPP),
 Office of
 Official Trustee, 44
 online recruitment, 70
 operating result, 75
 Operation Bluewing, 95–96
 Operation Fordo, 96–97
 Operation Lagos *see* Perrier, Murray
 James, Peter Hans Malman, Voicu Pop
 and Peter Alan Tilley (Operation Lagos)
 Operation Linnet, 97–98
 Operation Shard, 99–100
 Operation Spada *see* Tieleman, Pearce and
 Wharton: Operation Spada
 Operation Swiftlet, 98–99
 Organisation for Economic Cooperation
 and Development, 67
Osphronemus goramy (Giant Gourami fish)
 illegal importation of, 95
 Outcome 1, 6, 111
 resources for, 84
 Output 1.1, 6, 111
 outsourcing, 51–52

P

Pacific Quest, 94
 Palmisano, Salvatore, 100
 people smuggling, 11–12, 88–89, 90–91
 performance indicators
 criminal assets cases, 47
 prosecutions, 27–28
 Performance Management Scheme, 71, 72
 Perrier, Murray James, Peter Hans
 Malman, Voicu Pop and Peter Alan Tilley
 (Operation Lagos), 100–101
 Pharmaceutical Benefits Scheme fraud, 48
 Policy Branch, 65
 Pop, Voicu *see* Perrier, Murray James, Peter
 Hans Malman, Voicu Pop and Peter Alan
 Tilley (Operation Lagos)
 practice management, 12–13
 Prasad, Simon Sunil, 30–31
 privacy, 79
 private prosecutions, 26

Proceeds of Crime Act 1987 (POC Act 1987),
 43, 46, 49, 103
 money recovered – table, 55
 orders and forfeitures – table, 54
 restraining orders in force – table, 54
see also criminal assets confiscation
Proceeds of Crime Act 2002 (POC Act 2002),
 XII, 23, 43–44, 45–46, 48–54, 103
 money recovered – table, 55
 orders and forfeitures – table, 55
 restraining orders in force – table, 55
see also criminal assets confiscation
 prosecution appeals, 28–33
 prosecution disclosure policy, 68
 prosecution policy, 2–3
Prosecution Policy of the Commonwealth, 2,
 3, 12, 67–68
 prosecution sentence appeals
 on a prosecution on indictment, 30–33
 statistics, 35
 in summary matters, 28–29
 prosecution statistics, 34–41
 prosecutions
 on indictment
 statistics, 34–35
 jurisdictional differences, 8
 overview, 7–8
 performance indicators, 27–28
 successful outcomes
 statistics, 34
*Protection of the Sea (Prevention of Pollution
 from Ships) Act 1983*, 93–94
 public comment, 79
 public relations, 78
 purchasing, 75

Q

Qi, Jamie *see* Xu, Sally, Ngoc Tran and
 Jamie Qi

R

Ramanah, Jean-Teddy, 53
 recovery of proceeds of crime *see* criminal
 assets confiscation
 Regional Offices, 4, 15, 44, 57, 65, 69, 77
 reparation orders and fines and costs
 statistics, 41
 resource management, 69–85
 tables, 80–85
 Resource Management Branches, 69
 Resource Management site (DPP Intranet),
 70
 resources for Outcome, 84
 Review of the Regulation of Access to
 Communications, 67
 risk management framework, 76
 Roche, Jack, 33
 Rodriguez, Argemiro Antonio, 101
 Ronen, Ida, Nitzan and Izhar, 102

S

salary scales, 83
 SAP Human Resource Management System, 71
 Saxby, Susan, 102–103
 Sayachack, Tanya *see* Low, Donny, Tanya Sayachack, Terry Ting, Danny Hui and Cindy Yong
 Search Warrants Manual, 13
 Senior Executive Service (SES) employees, 70
 women, 73
 Senior Management Chart, 5
 Senior Management Committees, 4
 sexual conduct with a child under the age of 16 years outside Australia, 89
 sexual servitude, XII, 10, 66, 105–106
 SIEV X, 11, 90–91
 slavery, XII, 10, 66
 social justice and equity, 2
 Sood, Dr Suman, 103–104
 Stack, Hazelle Margaret Angel, 104
 staff, 72–74, 80–82, 84
 changes, XIII
 staff training and development, 72
 status of women, 73
 statutory powers
 exercise of, 25–27
 Steering Committee of Women in Law Enforcement Strategy, 73
 strategies, 112
 Street, Robert Andrew, 23
 Studman, Michael Simon, 53
 summary prosecutions, 8
 statistics, 34
 superannuation orders, 47
 Surveillance Devices Warrants Manual, 13
 Sweeney, Mark *see* Ho, Donna Tung Sing, and Mark Sweeney
 Sweetman, Maxwell John, 23

T

Tan, Chow Hee *see* Goh, Tiong Hou and Chow Hee Tan
 tax fraud, 9–10, 32–33, 91–92, 94–95, 102
 recovery of proceeds of, 53
 telecommunication services offences, 66
Telecommunications (Interception) Act 1979, 67
 Telecommunications Interception Warrants Manual, 13
 Temmingh, Sven Arne, 104–105
 terrorism, XI
 offences, 33
 prosecutions, 11, 93
 The Satellite Group Limited (TSGL), 19–20
 3I Consulting Pty Ltd, 51–52
 Tieleman, Pearce and Wharton: Operation Spada, 9

Tilley, Peter Alan *see* Perrier, Murray James, Peter Hans Malman, Voicu Pop and Peter Alan Tilley (Operation Lagos)
 Ting, Terry *see* Low, Donny, Tanya Sayachack, Terry Ting, Danny Hui and Cindy Yong
 tobacco *see* 'chop-chop' tobacco
Trade Marks Act 1995, 66
 Trade Marks Prosecutions Outline, 13
Trade Practices Act 1974, 15
 training *see* advocacy training;
 investigators training
 Tran, Ngoc *see* Xu, Sally, Ngoc Tran and Jamie Qi
 transnational crime, 57
 trials, 8
 see also joint trial arrangements
 Tu, Wei-Ling *see* Zhang, Anna, and Wei-Ling Tu

U

uniform Evidence Act scheme, 67

V

vision, 111

W

Warrants Manuals, 13
 website, 70
 Wilkie, Daniel, Timothy Mainprize and Stephen Burroughs, 17–18
 Williams, Raymond Reginald, 18
 women, status of, 73
 Workplace Diversity Plan, 73
 workplace diversity program, 72–73
 workplace participation, 73–74

X

Xu, Sally, Ngoc Tran and Jamie Qi, 105–106

Y

Yong, Cindy *see* Low, Donny, Tanya Sayachack, Terry Ting, Danny Hui and Cindy Yong

Z

Zhang, Anna, and Wei-Ling Tu, 106–107

