



Commonwealth  
Director of Public  
Prosecutions

# annual report 2008–09

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COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

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Commonwealth  
Director of Public  
Prosecutions

22 October 2009

Attorney-General  
Parliament House  
Canberra

Dear Attorney

I have the honour to submit my report on the operations of the Office of the Commonwealth Director Public Prosecutions for the year ended 30 June 2009, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully

CHRISTOPHER CRAIGIE SC  
Commonwealth Director of Public Prosecutions

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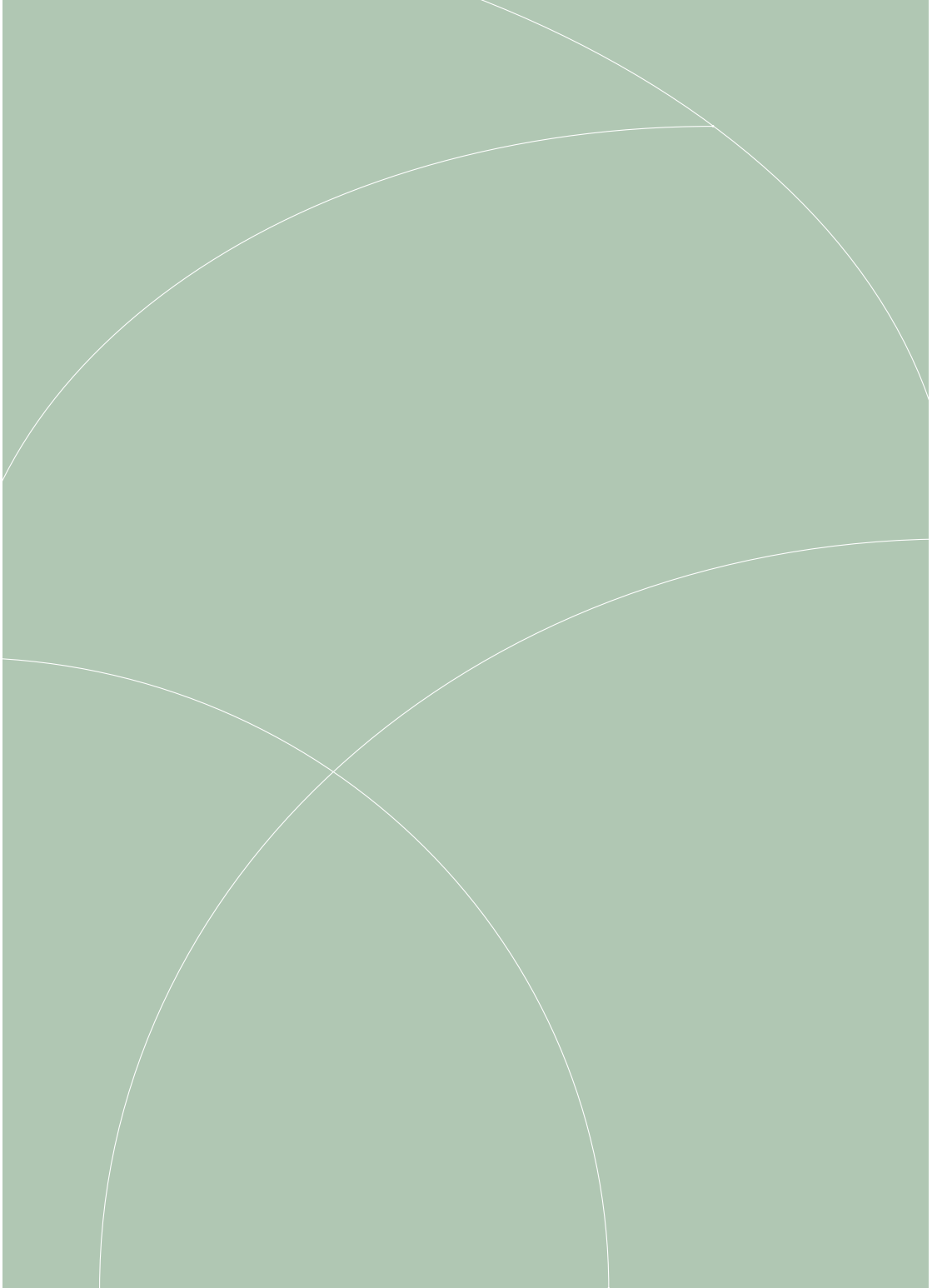
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# Compliance statement

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

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

The Report has been prepared in accordance with the Requirements for Annual Reports for 2008-2009.

As aids to access, the Report includes a table of contents, a glossary, referred to as 'Acronyms and Abbreviations', and an alphabetical index.

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

- ▶ The *Prosecution Policy of the Commonwealth*;
- ▶ CDPP Strategic Directions; and
- ▶ Portfolio Budget Statements for the Attorney-General's Portfolio.

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

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



# Director's Overview



This year marked an important milestone for the Office as the CDPP celebrated its 25th Anniversary on 5 March 2009. The Commonwealth through successive Governments has, for 25 years, remained committed to the crucial principle of independence upon which the Office was founded.

The Office was delighted the Attorney was able to attend our Anniversary celebration. On the occasion I thanked our current Attorney and all the Commonwealth Attorneys over the history of the CDPP for their commitment to the independence of the Office and their support for our work. As I present this Report I would like to thank the Attorney and the Minister for Home Affairs, The Honourable Brendan O'Connor and his predecessor, The Honourable Bob Debus, for their support of the Office this year.

At our Anniversary I also paid tribute to each of my predecessor Directors of Public Prosecutions and would like to do so again as I present this Report. Each has contributed much in establishing, building, maintaining and operating the Office as a truly national prosecuting entity across the Commonwealth, in every State and Territory, and in courts at every jurisdictional level. In all these respects singular contributions have been made by each Director, from the first, Ian Temby QC, the Honourable Justice Mark Weinberg, His Honour Chief Judge Michael Rozenes, the Honourable Chief Justice Brian Martin, and the CDPP's longest serving Director, Damian Bugg AM QC.

The laws of the Commonwealth, and accordingly the prosecution and proceeds of crime practices of my Office, have significantly expanded in the last

quarter century. From its long standing practice involving fraud on the Commonwealth and the importation of serious drugs, the CDPP now prosecutes in a great variety of areas. These include prosecutions relating to national security, counter terrorism, serious and organised crime and border protection. If one were to identify a key feature of the CDPP's development in the last 25 years this would be its continuing and growing capacity to take on new challenges and to adapt with new skills, expertise and effective responses.

The principles governing the basis upon which the CDPP performs statutory functions were affirmed this year in the revised *Prosecution Policy of the Commonwealth*. The *Prosecution Policy* provides guidelines for the making of decisions regarding the prosecution process and serves two main purposes, namely to promote consistency in decision making, and to inform the public of the principles upon which the CDPP performs its statutory functions. This revised *Prosecution Policy* is a further refinement of these fundamental principles that have been in place since 1986.

The test in relation to the decision to commence or continue a prosecution remains the same and is contained in the Prosecution Policies of all the Australian States and Territories. The revised *Prosecution Policy* however includes new areas such as recognising that it is important in all prosecution action that victims are treated with respect for their dignity, the mental health of alleged offenders, and prosecution disclosure.

This year the CDPP has issued its Victims of Crime Policy, focussing on the importance of all CDPP

staff treating victims with courtesy, dignity and respect. This development recognises the changing nature of the CDPP's legal practice as an increasing number of offences involving individual victims are conducted by the Office. The CDPP *Victims of Crime Policy* is at Appendix 4 to this report.

The breadth of the CDPP's practice is also reflected in a new Annexure B to the *Prosecution Policy* to address anticipated prosecution action for cartel activity. This addresses applications for immunity by the first participant in cartel activity to seek immunity. Subsequent applications for immunity will be dealt with in accordance with the *Prosecution Policy*.

This year the CDPP received briefs of evidence from over 40 investigative agencies, including some non-Commonwealth agencies, covering diverse criminal activity. These agencies range from the Australian Federal Police, the Australian Securities and Investments Commission, the Australian Taxation Office and Centrelink to agencies with a relatively new investigative capacity. I am grateful for the dedicated work prosecutors carry out to assist these agencies and for the cooperation and effort by these agencies as they investigate alleged offences and refer matters to the CDPP.

I would like to mark the significant contribution made by Mick Keelty to Commonwealth law enforcement on his recent retirement as Commissioner of the AFP. Over his long career with the AFP, from newly graduated AFP Officer to his appointment as its Commissioner, Mick worked alongside the CDPP and I thank him for the assistance and support he has provided to the office over so many years. Officers from my Melbourne Office Counter Terrorism Unit

were honoured by Former Commissioner Keelty with the Commissioner's Group Citation for Conspicuous Conduct for displaying outstanding service, commitment to duty, dedication and professionalism during Operation Pendennis, which resulted in the conviction of seven persons in Victoria for terrorism related offences this year. Scott Bruckard, Fiona Truong, Aman Dhillon, Allan Sharp and David Sewell were awarded. This award is reserved for individuals who have demonstrated a collective outstanding dedication to duty in circumstances demanding tenacity of a high order.

I take the opportunity to welcome Commissioner Tony Negus and look forward to working with him and continuing to strengthen the relationship between our agencies.

I would also note the retirement of Paul O'Sullivan as the Director General of Security at ASIO before his appointment as Australia's High Commissioner to New Zealand, and welcome David Irvine as he assumes leadership of ASIO. I greatly appreciated Paul's principled and effective leadership of ASIO and his contribution to further developing the relationship between our agencies.

In relation to appointments of particular significance, I congratulate The Honourable Justice Stephen Hall on his elevation to the Bench of the Supreme Court of Western Australia. His Honour first joined our Office in 1986, working for 14 years both in General Prosecutions and Commercial Prosecution branches. In 1999 he joined the Independent Bar in Western Australia and continued to regularly appear for our Office before being appointed as in-house senior counsel based in Perth for four years prior to his appointment to the Bench.



*The Honourable Justice Stephen Hall and Christopher Craigie SC at the CDPP 25 year celebration in the Perth Office.*

This year has also seen the appointment of Greg Fisher as a Magistrate of the Magistrates Court of South Australia. Mr Fisher worked in the CDPP for over 10 years and made a strong contribution, particularly as an advocate, in both our Adelaide and Darwin offices.

I record my thanks to the senior management of the CDPP in Head Office, particularly the First Deputy Director, John Thornton, and senior executives around Australia for their invaluable support and the sound and comprehensive advice provided, often under considerable time pressures. This Report, which seeks to reflect the significance and breadth of the office's work, involves the contribution of many people and for its compilation I thank James Carter, Deputy Director Legal, Practice Management and Policy and Penny McKay.

One of the features of our 25th Anniversary has been occasions in each of our offices to celebrate the commitment and dedication exemplified by the staff of the Office, past and present. It has been my

pleasure to award certificates to many officers this year marking their service of 20 or 10 years to the CDPP. CDPP officers, over the history of the office, have contributed strongly to its development and in so doing, to the Australian criminal justice system.

In conclusion, may I acknowledge each of the staff of the office and thank them for their valuable contribution and their dedication to the work of the CDPP and its high standing as an Office serving the Commonwealth.

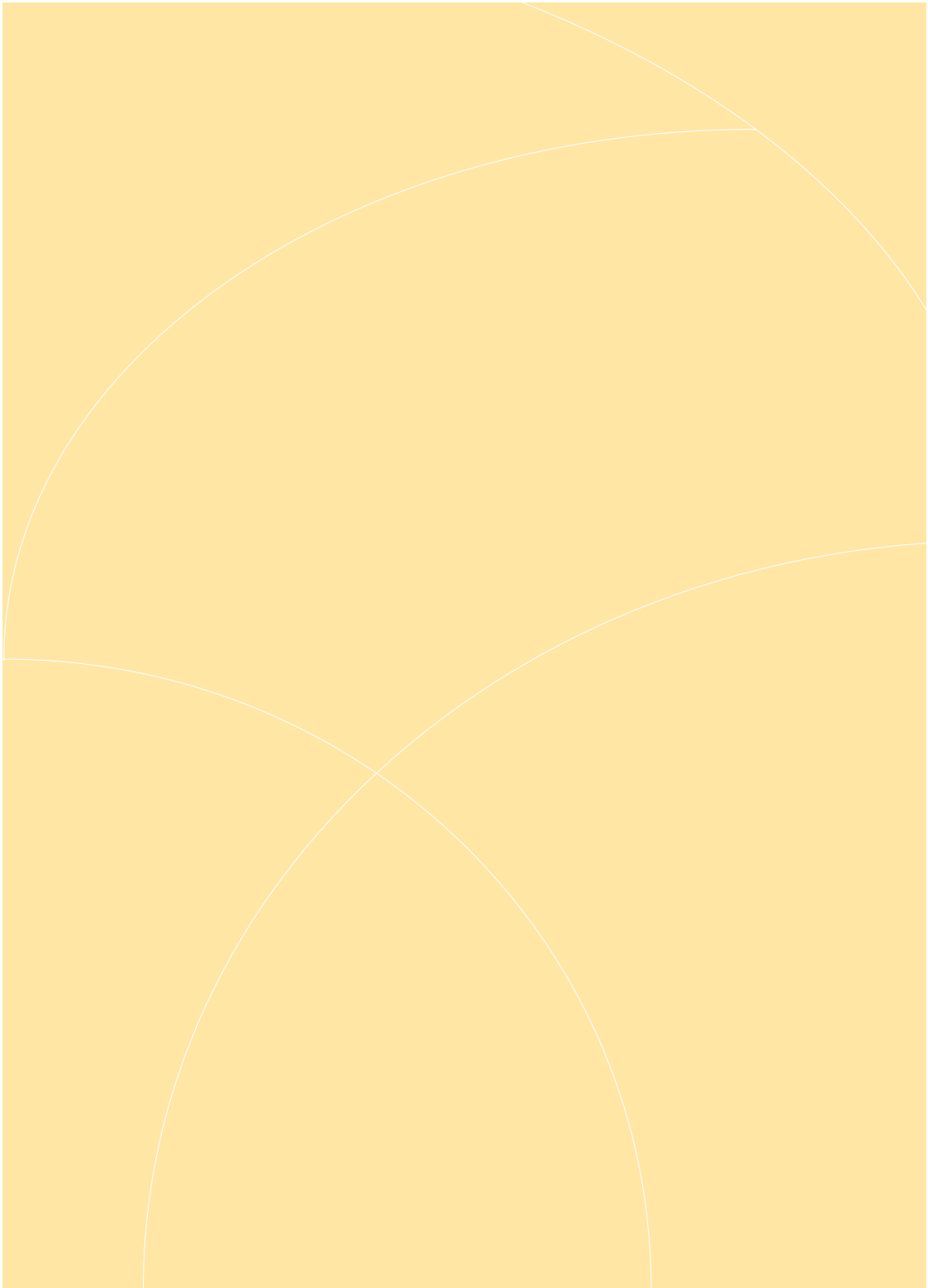
I am pleased to present the Annual Report for 2008-2009.

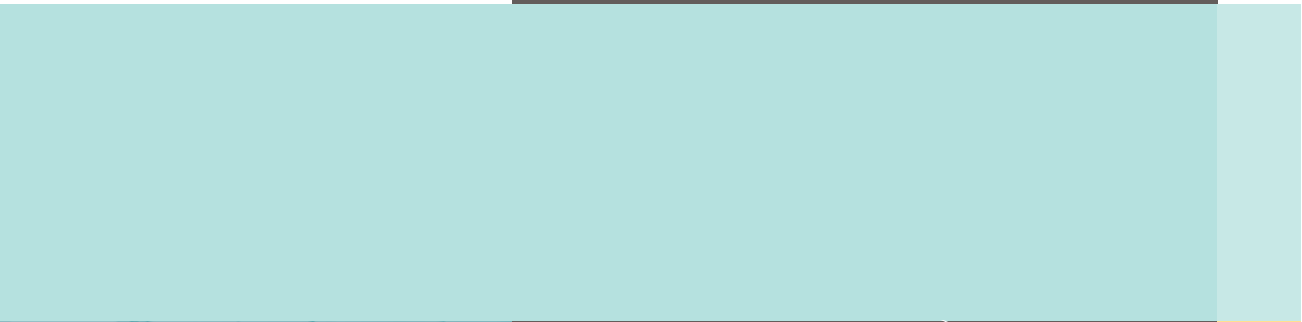
**Christopher Craigie SC**

*Commonwealth Director of Public Prosecutions*



*Christopher Craigie SC and First Deputy Director, John Thornton.*





1

office of  
the CDPP



# Office of the CDPP

THE OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS (CDPP) IS AN INDEPENDENT PROSECUTING SERVICE ESTABLISHED BY PARLIAMENT TO PROSECUTE ALLEGED OFFENCES AGAINST COMMONWEALTH LAW AND TO DEPRIVE OFFENDERS OF THE PROCEEDS AND BENEFITS OF CRIMINAL ACTIVITY.

THE CDPP'S VISION IS FOR A FAIR, SAFE AND JUST SOCIETY WHERE THE LAWS OF THE COMMONWEALTH ARE RESPECTED AND MAINTAINED AND THERE IS PUBLIC CONFIDENCE IN THE JUSTICE SYSTEM. IT AIMS TO PROVIDE AN EFFECTIVE NATIONAL CRIMINAL PROSECUTION SERVICE TO THE COMMUNITY. THE CDPP'S PURPOSE IS TO PROVIDE AN ETHICAL, HIGH QUALITY AND INDEPENDENT PROSECUTION SERVICE FOR AUSTRALIA IN ACCORDANCE WITH THE PROSECUTION POLICY OF THE COMMONWEALTH.

## Establishment

The CDPP was established under the *Director of Public Prosecutions Act 1983* (the *DPP Act*) and began operations on 8 March 1984. The Office is under the control of the Director, who is appointed for a term of up to 7 years.

The current Commonwealth Director of Public Prosecutions, Christopher Craigie SC, was appointed on 13 October 2007.

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

Director. Directions or guidelines must be in writing and 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 2008-2009.

## Role

The role of the CDPP is to prosecute offences against Commonwealth law, and to confiscate the proceeds of Commonwealth crime.

The CDPP has a long-standing practice in the prosecution of the importation of serious drugs, frauds on the Commonwealth (including tax and social security frauds) and commercial prosecutions. The CDPP has prosecuted these matters, as well as a range of regulatory offences, for many years. These matters have long formed the backbone of the CDPP's prosecution practice.

Commonwealth law has significantly expanded in the last decade to include a range of offences not previously known to Commonwealth law. The CDPP is now prosecuting in a range of other areas including counter-terrorism, money laundering, people trafficking, slavery and sexual servitude, child exploitation including on-line sexual exploitation, offences impacting upon the environment, and safety.

Commonwealth offending can often involve very large and complex briefs of evidence which may take significant time and expertise to consider. In this way, prosecuting is not limited to litigation itself. Rather, prosecuting includes a range of other

work such as preparing cases for hearing, providing legal advice and assistance to investigators, assessing evidence, drafting charges, and settling applications for warrants.

The State and Territory Directors of Public Prosecutions are responsible for the prosecution of alleged offences against State and Territory laws. The CDPP conducts prosecutions for offences against the laws of Jervis Bay and Australia's external territories, other than Norfolk Island.

The work of the CDPP extends through all levels of the courts from Magistrates Courts to the High Court and CDPP lawyers are involved at all stages of the prosecution process. Lawyers appear on mentions, bail, summary matters, committals, trials and appeals. This differs somewhat from State and Territory DPP's where the emphasis is mainly on committals and trials and there are police prosecutors who handle many matters at earlier stages.

Most Commonwealth prosecutions are conducted by the CDPP. However, there are a few areas where Commonwealth agencies conduct summary prosecutions for straight-forward regulatory offences by arrangement with the CDPP. In 2008-2009, the Australian Taxation Office (ATO) conducted prosecutions in which offences were found proved against 2,685 people. The Australian Securities and Investments Commission (ASIC) prosecuted 545 offenders for 1,011 offences, and obtained fines totalling \$637,250 with \$102,417 in professional costs and \$54,840 in court costs. The Australian Electoral Commission prosecutes some electoral offences. There are also some cases where a State or Territory agency conducts a Commonwealth prosecution, usually for reasons of convenience.

The public interest is served by cooperation among Commonwealth law enforcement agencies. This is

reflected in the CDPP's Strategic Directions. The CDPP regularly provides legal advice to other agencies in the course of investigations, for example:

- ▶ where an investigative agency seeks advice in connection with deciding whether to commence an investigation;
- ▶ where an investigative agency seeks advice as to appropriate charges and related issues such as the admissibility of evidence;
- ▶ where an investigative agency seeks advice in obtaining search, listening device or telephone interception warrants; and,
- ▶ where an investigative agency seeks general advice unrelated to an actual investigation but which is intended to provide guidance to the agency in the conduct of future investigations.

From its inception the CDPP has provided legal advice during investigations particularly in complex matters or matters involving new areas of law. Early legal advice from the CDPP leads to more effective prosecutions and allows early focus on which offences sufficiently reflect the overall alleged criminal conduct in light of the available admissible evidence. It also assists agencies to effectively utilise investigative resources, saves the CDPP time when preparing advice and reduces the need for further requests for evidence at a later stage.

The CDPP can only prosecute or take confiscation action when there has been an investigation by an investigative agency. The CDPP does not have an investigative function. A large number of Commonwealth agencies have an investigating role and the CDPP receives briefs of evidence from, and provides legal advice to, a wide range of agencies. In 2008-2009, the CDPP received briefs of evidence from over 40 different agencies, including some non-Commonwealth agencies. Centrelink consistently remains the highest referral agency with 4,499 defendants dealt with throughout the year.

## CDPP Strategic Directions

### **VISION:**

A fair, safe and just society where the laws of the Commonwealth are respected and maintained and there is public confidence in the justice system.

### **PURPOSE:**

To operate an ethical, high quality and independent prosecution service for Australia in accordance with the *Prosecution Policy of the Commonwealth*.

### **CORE VALUES:**

We value

- ▶ applying the highest ethical standards to prosecutions and proceeds of crime action;
- ▶ applying the highest professional standards of competence, commitment and hard work to prosecutions and proceeds of crime action;
- ▶ maintaining the CDPP's prosecutorial independence;
- ▶ providing, and being recognised as providing, a high quality, timely, efficient and cost effective prosecution service;
- ▶ treating everyone with courtesy, dignity and respect;
- ▶ giving due recognition to the status of victims;
- ▶ the knowledge, skills and commitment of our people;
- ▶ leadership from senior lawyers and managers;
- ▶ accountability and excellence in governance within the CDPP; and
- ▶ protecting the natural environment.



## Social Justice and Equity

THE CDPP 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 CDPP RECOGNISES THE IMPORTANCE OF ADOPTING THE HIGHEST PROFESSIONAL AND ETHICAL STANDARDS IN PROSECUTIONS AND IN DEALING WITH PROCEEDS OF CRIME. THE *PROSECUTION POLICY* UNDERPINS ALL OF THE DECISIONS MADE BY THE CDPP THROUGHOUT THE PROSECUTION PROCESS AND PROMOTES CONSISTENCY IN DECISION MAKING.

The CDPP works to ensure that alleged offenders and other people affected by the criminal justice process are treated fairly. To support the CDPP's contribution to the criminal justice system, the CDPP takes action to promote and maintain an internal culture which values fairness, equity and respect. The CDPP expects from its employees conduct which reflects high ethical standards. The CDPP has issued *Guidelines on Official Conduct for CDPP employees* setting out the ethical standards expected of all employees. CDPP employees have all signed a copy of the document.

Traditionally, in terms of numbers of prosecutions, much of the CDPP's work has not involved crime directed at individual victims. A range of new offences have been introduced into Commonwealth law, leading to an increased number of Commonwealth offences involving individual victims. This includes areas such as child sex tourism, online child sexual exploitation, and people trafficking including sexual servitude and slavery. The CDPP recognises that victims of Commonwealth offending have an important place in the criminal justice system and this year has issued a *Victims of Crime Policy*.

## CDPP Strategic Themes

The CDPP's strategic themes are:

- ▶ conduct cases ethically and professionally;
- ▶ recruit, develop and retain high quality people;
- ▶ continuously improve CDPP performance;
- ▶ provide professional assistance to referring agencies; and
- ▶ actively contribute to law reform and whole of Government law enforcement initiatives.

Each of these themes is underpinned by strategic priorities which are detailed in the Strategic Directions document at Appendix 2 to this report.

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## Prosecution Policy

On 4 March 2009 the Attorney-General approved the revised *Prosecution Policy of the Commonwealth*. A copy of the *Prosecution Policy* is Appendix 3 to this report. The revision of the *Prosecution Policy* followed a review conducted by the CDPP which included a comparison of prosecution policies around Australia, the United Kingdom and Canada, together with consultation with Commonwealth agencies that refer matters for prosecution, the Attorney-General's Department and the Directors of Public Prosecutions for the States and Territories.

The revised *Prosecution Policy* is a refinement of the previous *Policy*, but also introduces new sections on victims and prosecution disclosure. The fundamental principles underlying the *Prosecution Policy*, including the test for commencement of prosecution, have not changed.

The *Prosecution Policy* is a public document which sets out guidelines for the making of decisions in the prosecution process. It applies to all Commonwealth prosecutions whether or not conducted by the Commonwealth Director of Public Prosecutions. The *Prosecution Policy* is publicly

available from any of the CDPP offices listed at the front of this Report or [www.cdpp.gov.au](http://www.cdpp.gov.au).

The main purpose of the *Prosecution Policy* is to promote consistency in the making of the various decisions which arise in the institution and conduct of prosecutions. The *Prosecution Policy* outlines the relevant factors and considerations which are taken into account when a prosecutor is exercising the discretions relevant to his or her role and functions. The Policy also serves to inform the public and practitioners of the principles which guide the decisions made by the CDPP.

Under the *Prosecution Policy* there is a two-stage test that must be satisfied:

- ▶ there must be sufficient evidence to prosecute the case; 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.

In determining whether there is sufficient evidence to prosecute a case, the CDPP must be satisfied that there is *prima facie* evidence of the elements of the offence, and a reasonable prospect of obtaining a conviction. The existence of a *prima facie* case is not sufficient.

In making this decision, the prosecutor must evaluate how strong the case is likely to be when presented in court. The evaluation must take into account such matters as the availability, competence and credibility of witnesses and their likely effect on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence open to the alleged offender and any other factors that could affect the likelihood or otherwise of a conviction.

The possibility that any evidence might be excluded by a court should be taken into account and, if that evidence is crucial to the case, this may substantially affect the decision whether or not to institute or proceed with a prosecution. It is the prosecutor's role to look beneath the surface of the evidence in a matter, particularly in borderline cases.

Having been satisfied that there is sufficient evidence to justify the initiation or continuation of a prosecution, the prosecutor must then consider whether the public interest requires a prosecution to be pursued. In determining whether this is the case, the prosecutor will consider all of the provable facts and all of the surrounding circumstances. The factors to be considered will vary from case to case, but may include:

- ▶ whether the offence is serious or trivial;
- ▶ any mitigating or aggravating circumstances;
- ▶ the youth, age, intelligence, physical health, mental health or special vulnerability of the alleged offender, witness or victim;
- ▶ the alleged offender's antecedents and background;
- ▶ the passage of time since the alleged offence;
- ▶ the availability and efficacy of any alternatives to prosecution;
- ▶ the prevalence of the alleged offence and the need for general and personal deterrence;
- ▶ the attitude of the victim;
- ▶ the need to give effect to regulatory or punitive imperatives;
- ▶ the likely outcome in the event of a finding of guilt.

These are not the only factors, and other relevant factors are contained in the *Prosecution Policy*.

Generally, the more serious the alleged offence is, the more likely it will be that the public interest will require that a prosecution be pursued.

The decision to prosecute must be made impartially and must not be influenced by any inappropriate reference to race, religion, sex, national origin or political association. The decision to prosecute must not be influenced by any political advantage or disadvantage to the Government.

The CDPP 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 CDPP 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 *POC 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 CDPP a general power to recover pecuniary penalties under Commonwealth law.

The CDPP does not conduct proceedings under Part XIV of the *Customs Act*, 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 CDPP prosecutes all criminal matters arising under the *Customs Act*, including offences of importing and exporting narcotic goods and offences of importing and exporting 'tier 1' and 'tier 2' goods.

## Summary Prosecutions, Committals and Trials

In general terms, there are 2 basic types of prosecution action conducted by the CDPP.

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.

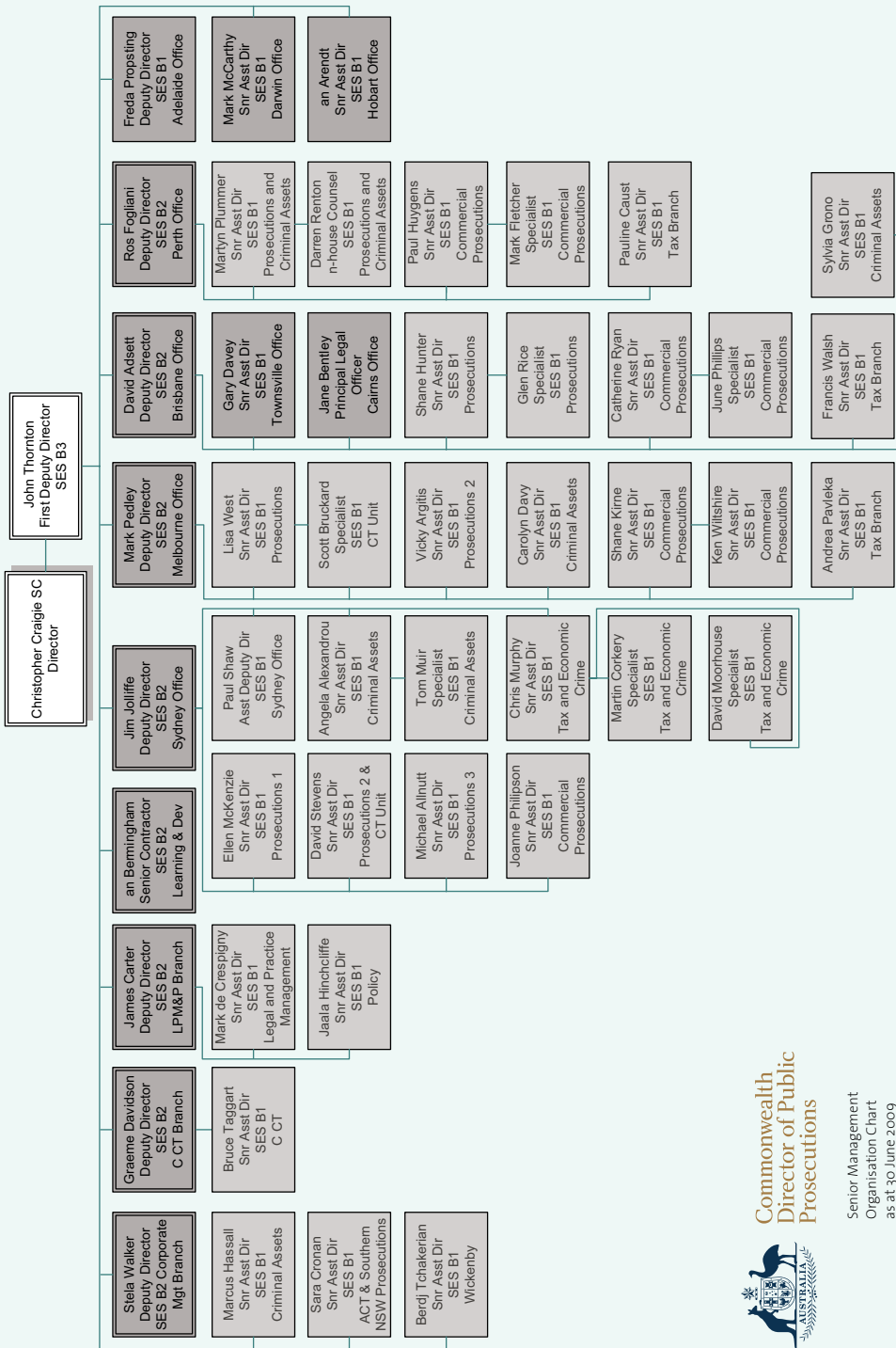
As a general rule, more serious offences are dealt with 'on indictment,' and where matters are contested, are heard before a judge and jury. All States and mainland Territories have a Supreme Court. Some jurisdictions, but not all, also have an intermediate Court, called either a District Court or a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

## Corporate Governance and Organisation

The CDPP has a Head Office in Canberra and Regional Offices in Sydney, Melbourne, Brisbane, Perth, Adelaide, Hobart and Darwin. There are sub-offices of the Brisbane Office in Townsville and Cairns, which perform prosecution and asset confiscation work in central and north Queensland. There is also a sub-office of the Sydney Office in Parramatta.



Senior Management  
Organisation Chart  
as at 30 June 2009

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 CDPP Regional Offices are responsible for conducting prosecutions and confiscation action in the relevant region.

The CDPP has staff spread throughout its Offices Australia-wide, the largest being Sydney. 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.

A Senior Management Chart appears on page 8 of this Chapter. The chart shows the senior executive officers of the CDPP and their different areas of responsibility.

## Outcome and Output Chart 2008-2009

### DIRECTOR OF PUBLIC PROSECUTIONS

Director: Christopher Craigie SC

|                                    |                   |
|------------------------------------|-------------------|
| Total price of outputs             | \$109.412 million |
| Departmental outcome appropriation | \$106.783 million |

### 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                       | \$109.412 million |
| Departmental output appropriation | \$106.783 million |

### 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   | \$109.412 million |
| Appropriation | \$106.783 million |

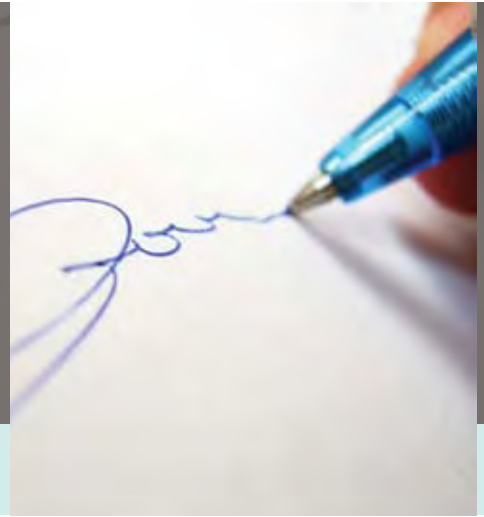


# 2

## areas of practice

the CDPP seeks to apply the highest professional standards of competence, commitment and hard work to prosecutions

## 2.1 Fraud



THE CDPP ASSISTS IN PROTECTING THE RESOURCES OF THE COMMONWEALTH THROUGH THE PROSECUTION OF FRAUD OFFENCES. FRAUD PLAYS A MAJOR ROLE IN THE PRACTICE OF THE CDPP AND OFFENCES INVOLVING FRAUDULENT CONDUCT ACCOUNT FOR THE HIGHEST VOLUME OF MATTERS REFERRED TO THE CDPP.

### **HAROLD VAN HALTREN**

#### **IDENTITY CRIME**

The defendant was declared bankrupt in Perth in November 2000 as a result of incurring debts in excess of \$1 million.

Between March 2001 and September 2004 the defendant committed offences in Sydney involving operating bank accounts in false names; obtaining credit in false names without informing the lender that he was an undischarged bankrupt; possession of a false instrument (a Medicare card in a false name); and using a false instrument (a stolen cheque made payable in the sum of \$50,000).

In committing these offences he used 5 false identities – Henry Thomas, Dr Henry Thomas, Henry Van Haltren, Jonathon Fiske and Jonathan Fiske.

On 12 July 2004 the defendant arrived at Sydney Airport on a flight from China. ACS officers searched his bags and located several forms of identification in other names and he was arrested.

The defendant was charged with and pleaded guilty to 25 counts against various laws of the Commonwealth including the *Financial Transactions Reports Act 1988*, the *Bankruptcy Act 1966* and the *Criminal Code* and 1 offence against State law relating to the stolen cheque.

On sentence the prosecution contended that the value of credit, loans and property obtained by the defendant was \$3.979 million, although a precise quantification of the amount obtained was not able to be determined. The victims of the offences were able to recover some of their losses through repossession of properties or items acquired by the defendant.

The Court found that the defendant was well aware that he had been declared bankrupt at the time of committing the offences and that he had brazenly deceived various credit providers. His deception extended beyond the use of false identities to deceive banks and other corporate entities to denying that he was using false identities accompanied, at



times, by threats of litigation against those who made such assertions. The offences were committed over a lengthy period of time for personal gain and were motivated by greed.

THE COURSE OF CRIMINAL CONDUCT INVOLVED PERSISTENT IDENTITY CRIME – BOTH ‘IDENTIFICATION FABRICATION’ BY CREATING FICTITIOUS IDENTITIES AND ‘IDENTIFICATION MANIPULATION’ BY ALTERING HIS OWN IDENTITY BY CHANGING ONE OR MORE ELEMENTS OF HIS IDENTITY.

On 16 November 2007 in the District Court of New South Wales in Sydney the defendant was sentenced to a total effective penalty of 6 years imprisonment with a non-parole period of 3 years and 8 months.

The defendant appealed against the severity of this sentence and in November 2008 the New South Wales Court of Criminal Appeal dismissed his appeal.

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### **JACOBUS LEONARDUS KERKVLIT**

#### **FUEL GRANT FRAUD**

Between April 2003 and March 2005 the accused obtained a total of \$343,843.85 in rebates as a result of lodging 7 false Diesel and Alternative Fuel Grants Scheme claims and 38 false Energy Grant Credits Scheme claims with the ATO in the name of Zurge Transport Pty Ltd. The amounts were deposited into bank accounts in Adelaide and Perth. The defendant was not entitled to the rebates because during that period he was no longer in control of Zurge Transport Pty Ltd as it had gone into receivership on 29 September 2000. Further, he was no longer in possession of the vehicle which he originally registered as eligible to receive the rebates as it was sold by the receiver/manager on 22 February 2001. Finally, the company did not incur the fuel expense on which the rebates were based.

The defendant was charged with 55 counts of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code*.

On 8 May 2009 in the District Court of Western Australia the defendant was sentenced to a total effective penalty of 40 months imprisonment with a non-parole period of 22 months. The court also made a reparation order for the total amount of \$343,843.85 pursuant to section 21B of the *Crimes Act*.

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### **PETER DUNCAN**

#### **ALLEGED FRAUD**

The defendant in this matter was a former South Australian Attorney-General and former Minister in the Hawke Labor Government.

As a director of Omnipol Pty Ltd and a significant shareholder of Omnipol Australia Pty Ltd, a plastics recycling company, the defendant allegedly made a series of false statements to AusIndustry in support of a grant to assist in the research and development of a new plastic recycling method. The statements concerned the ownership of the intellectual property rights to the technology being developed. It was also alleged that the defendant entered into an agreement on behalf of Omnipol Australia Pty Ltd that it was, and would remain so for the period of the grant, a subsidiary of Omnipol Pty Ltd.

The prosecution alleged that all of the statements regarding ownership of the intellectual property rights and the shareholdings of Omnipol Australia Pty Ltd were false as, just prior to making the false statements, Omnipol Pty Ltd had transferred all of its shares in Omnipol Australia Pty Ltd to Regent Street Pty Ltd. It was further alleged that Regent Street Pty Ltd was a Duncan family company with the defendant's wife being a director at the relevant time.

Grant payments totalling \$808,782.70 were made to Omnipol Pty Ltd, with the first instalment payment directly linked to the alleged false statements being \$277,860.

The defendant was charged with 2 counts of making an untrue statement in connexion with an application for a grant pursuant to section 29C of the *Crimes Act* and 1 count of dishonestly obtaining a gain from the Commonwealth pursuant to section 135.1 of the *Criminal Code*.

At trial the case revolved around the timing of the purchase of Omnipol Australia Pty Ltd shares by Regent Street Pty Ltd.

On 11 November 2008, following an 8 day trial in Adelaide, the defendant was acquitted on all counts.

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## **JULIE BUCKLEY**

### **CHILD CARE BENEFIT FRAUD**

THIS MATTER REPRESENTS AN EMERGING AREA OF FRAUD COMMITTED AGAINST THE COMMONWEALTH.

The defendant was the director and owner of a child care centre in Adelaide called Tiny Tots Academy. She was responsible for completing and lodging Statements of Child Care Usage on behalf of Tiny Tots to the Family Assistance Office (FAO) in order to receive payment of Child Care Benefit.

Between July 2001 and June 2006 the defendant:

- ▶ lodged with the FAO child care usage details for children who were not in attendance nor booked to attend on the said days – several of these children had not commenced child care or had ceased being cared for at Tiny Tots;
- ▶ inflated or falsified usage details for 248 children and 55,697 hours of care;
- ▶ forged parents' signatures on attendance records; and
- ▶ altered records to reflect absences as attendances.

As a result, the defendant obtained \$154,201.75 in Child Care Benefit to which she was not entitled.

The defendant was charged with 20 counts of obtaining a financial advantage by deception pursuant to section 134.2 of the *Criminal Code*. She made full and frank admissions in a record of interview and was in a position to make full reparation prior to being sentenced.

On 12 May 2009 the defendant pleaded guilty and was sentenced in the District Court of South Australia in Adelaide. She was convicted and sentenced to 4 years imprisonment to be released forthwith on condition that she be of good behaviour for 2 years and make full reparation within 28 days.

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**DR MUNNA LAL SHARMA****CHILD CARE BENEFIT FRAUD**

The defendant was the owner and operator the Kingsley Childcare Centre at Kingsley, Western Australia. Between July 2003 and September 2005 the defendant electronically submitted false claims for Child Care Benefit amounting to \$57,092.93. During this period the defendant manipulated and forged attendance records, exerted pressure on parents to manipulate records and sign for days on which their child was not in the child care centre.

The defendant was charged with 1 count of dishonestly causing a loss to the Commonwealth pursuant to section 135.1(3) of the *Criminal Code*.

On 5 March 2009 the defendant was convicted and sentenced in the District Court of Western Australia in Perth. He was sentenced to 28 months imprisonment to be released after serving 6 months on condition that he be of good behaviour for 22 months. He was also fined \$10,000 and a pecuniary penalty order for \$62,092.93 was made pursuant to section 116 of the *POC Act 2002*.

The defendant lodged an appeal against this sentence, but subsequently discontinued the appeal on 25 June 2009.

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**DANIEL RODRIGUEZ AKA ROBERT CAMPOS****GST FRAUD**

Between March 2005 and February 2006 the defendant lodged 14 Business Activity Statements (BAS) for GST refunds with the ATO. Nine of the BAS were in the name of Robert Campos Fishing Supplies; 2 in the name of Jester Holdings; 1 in the name of Bortech Mining and 1 in the name of Michael Campos. Although the total amount of GST refund sought in the 14 BAS was not paid to the defendant, he did receive \$95,493.00 to which he was not entitled.

The defendant was charged with 3 counts of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code* and 1 count of attempting to obtain a financial advantage by deception pursuant to sections 11.1 and 134.2(1) of the *Criminal Code*. Three further counts of attempting to obtain a financial advantage by deception were taken into account on sentence pursuant to section 16BA of the *Crimes Act*.

On 19 March 2009 the defendant was sentenced in the District Court of New South Wales in Sydney to a total effective penalty of 2 years imprisonment to be released after serving 12 months on condition that he be of good behaviour for the remainder of the term.

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**PAUL ANTHONY MCARTHUR****GST FRAUD**

In November 2005, February 2006 and April 2006 the defendant lodged Business Activity Statements (BAS) with the ATO claiming GST refunds amounting to \$46,147 for the Welcel Family Trust when the Trust was only entitled to \$942 in refunds. As a result of the defendant's actions \$18,564 was received to which the Trust was not entitled.

In May and June 2006 the ATO contacted the defendant and asked for invoices regarding the capital purchases referred to by the defendant in the BAS. On 2 June 2006 the defendant sent a fax to the ATO which included 9 fabricated receipts. On 13 June 2006 the defendant admitted the offences to the ATO.

The defendant was charged with 2 counts of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code*; 1 count of attempting to obtain a financial advantage by deception pursuant to sections 11.1 and 134.2(1) of the *Criminal Code*; and using a forged document pursuant to section 145.1(1) of the *Criminal Code*.

On 13 February 2009 the defendant was sentenced in the District Court of New South Wales in Port Macquarie to a sentence of 3 years imprisonment with a non-parole period of 1 year and 9 months. He was also ordered to pay reparation of \$18,564.

**MARK WILLIAM ROWSON****GST FRAUD**

This case was reported in the 2007-2008 Annual Report at page 24 and involved a challenge to the Director's ability to appeal against sentence utilising State appeal provisions.

Between October 2002 and October 2004 the defendant fraudulently obtained, and attempted to obtain, GST refunds through the registration of two companies using as nominated directors identities of persons who had previously had identity documents stolen. As a result of the defendant's conduct refunds totalling \$2,453,102.22 were paid and further claims for \$1,334,173 were made but ultimately not paid.

The defendant was originally sentenced to a total effective penalty of 3 years and 1 day imprisonment with a non-parole period of 18 months.

Following a Director's appeal against the inadequacy of the sentence the defendant was re-sentenced to a total effective head sentence of 5 years imprisonment with a non-parole period of 3 years. The defendant subsequently lodged an application for special leave to appeal to the High Court of Australia.

The application for special leave to appeal to the High Court of Australia raised 2 questions:

(1) whether, as a matter of statutory construction, sub-section 68(2) of the *Judiciary Act 1903* confers on the CDPP a right of appeal against sentences imposed by Victorian Courts in respect of federal offences committed in Victoria (this ground challenged the correctness of the decision of the High Court of Australia in *Peel v The Queen* (1971) 125 CLR 447); and

(2) whether section 68(2) of the *Judiciary Act 1903*, to the extent that it purports to confer on the CDPP a right of appeal in respect of federal offences committed in Victoria, is invalid on the basis that it is purporting to require courts exercising federal jurisdiction to exercise legislative power.

The defendant's application was heard before the High Court of Australia in Melbourne on 29 May 2009 and special leave was refused.

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**JIMMY YEE-KA FUNG****AUSTRALIA POST FRAUD**

The defendant was the Licensee and Manager of the Kenthurst Licensed Post Office from August 1999 until February 2008 when he sold the business.

On 22 November 2007 NSW Police, accompanied by Australia Post Investigators, executed a search warrant at the Post Office. The defendant made immediate admissions. He stated that he took money from customers for parcels, printed and affixed a postage label, then suspended that transaction. He knew that after about a week any record of that label being printed would be automatically 'cleaned up' by the electronic accounting system unless it was finalised by entering a method payment. About 5,000 transactions were suspended by the defendant in the period of the offence without money being accounted for to Australia Post.

As a result of the defendant's actions he received \$87,711.58 to which he was not entitled. He repaid this amount in full in December 2007.

The defendant was charged with 1 count of causing a loss to a Commonwealth entity pursuant to section 135.1(3) of the *Criminal Code*.

On 22 October 2008 the defendant was convicted and sentenced in the District Court of New South Wales to perform 350 hours of community service.

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**MICHAEL ANGELO PELLEGRINO AND SIMON JOHN BERRY****EXCISE DUTY FRAUD**

The defendants were employed by Patrick Stevedores Operations Pty Ltd. On 6 February 2006 the defendants stole 750 boxes containing 8,556,000 cigarettes from a 40 foot shipping container belonging to Patrick Stevedores Operations Pty Ltd at Port Botany, NSW. The container was said to contain 750 cartons of PVC electrical tape. The consignor of the container was Chamberlain Trading Pty Ltd and the consignee was Prayster Pty Ltd. Prayster Pty Ltd had no knowledge of, or involvement in, the importation of the container and its contents.

The excise duty that would have been required to be paid on the cigarettes was approximately \$2.017 million.

The defendants were charged with theft and aiding and abetting a theft pursuant to sections 11.2(1) and 131.1(1) of the *Criminal Code*.

On 13 March 2009 the defendants appeared in the District Court of New South Wales in Sydney and were convicted and sentenced. Pellegrino was sentenced to 3 years imprisonment to be released forthwith on condition that he be of good behaviour for 5 years and pay a pecuniary penalty of \$20,000 by 12 September 2013. Berry was sentenced to a 5 year good behaviour bond on condition that he pay a pecuniary penalty of \$2,000 by 12 September 2013.

**NOUR EDDINE GHAZLI****EXCISE DUTY FRAUD**

THE DEFENDANT IN THIS MATTER AIDED AND ABETTED ANOTHER PERSON TO IMPORT A CONSIGNMENT OF TOBACCO INTO AUSTRALIA WITHOUT PAYING THE NECESSARY EXCISE DUTY OF \$1,081,517.03.

On 24 December 2006 a shipping container arrived at Port Botany, NSW from Indonesia. The contents of the container were declared as 808 cartons of biscuits and soap. On 27 December 2006 \$431.87 in duty was paid on the declared contents of the container. The next day the container was x-rayed by ACS officers and was found to contain 508 boxes of tobacco, 200 boxes of biscuits and 100 boxes of soap. Some of the tobacco was placed back into the container. Later that day the defendant paid money into the freight company's account. On 4 January 2007 a 'managed delivery' at a storage facility was carried out by the NSW Police. The defendant was present when the truck arrived, he arranged for others to attend to assist in the unloading of the container, opened the container and assisted in unloading it.

When the NSW Police arrested the defendant he was in possession of documents relating to the import.

The defendant was charged with one count of aiding, abetting, counselling or procuring a loss to a Commonwealth entity pursuant to section 135.1(3) of the *Criminal Code*.

On 5 December 2008 the defendant was convicted and sentenced in the District Court of New South Wales in Sydney to 12 months imprisonment to be released forthwith on condition that he be of good behaviour for 2 years.

**DOUGLAS CHARLES SMITH****MEDICARE FRAUD**

The defendant was a pharmacist at the Thirroul Pharmacy in New South Wales. Between July 2004 and October 2006 the defendant submitted 13 Pharmaceutical Benefit Scheme (PBS) claims to Medicare Australia which related to prescriptions for medications which had not been supplied to the patients named. Attached to each of the claim forms were prescription forms on which the offender had forged the signature of 12 patients or a representative of the patient. Ninety-eight false prescriptions were attached to the claim forms. Sixty-nine were for prescriptions claimed to have been dispensed to 6 patients on either the day the patient had died, or after the death of the patient. In one case 4 prescriptions were dispensed 7 weeks after the death of the patient. The remaining 29 false prescriptions related to 6 patients who had left repeat prescriptions with the Thirroul Pharmacy but had not had all repeat medication supplied to them.

The defendant was paid approximately \$5,200 in benefit for medications which were never supplied. The defendant repaid this amount to Medicare prior to sentencing.

The defendant was charged with 1 count of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code*.

On 30 September 2008 in the New South Wales Local Court the charge against the defendant was dismissed without a conviction being recorded pursuant to section 19B of the *Crimes Act*. The Director appealed against the inadequacy of this sentence to the District Court of New South Wales on the ground that the seriousness of the conduct warranted a conviction. On 17 December 2008 the appeal was upheld. The defendant was convicted and fined \$100.

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### JOHN TSIAOUSIS

#### FINANCIAL TRANSACTION FRAUD

On 6 separate occasions between March 2005 and July 2005 the defendant made 47 cash deposits of \$8,500 into bank accounts controlled by him. In total the defendant deposited \$399,500.

The prosecution alleged that the transactions were conducted in this manner so as to avoid the reporting requirements applicable to transactions involving \$10,000 or more in value. When interviewed by police, the defendant acknowledged that he had made all the cash deposits, but asserted that he had not known of the requirement for cash deposits of \$10,000 or more to be reported. He maintained that he had made the cash deposits in that manner because he did not feel safe being seen to deposit a large amount of money in one transaction. The defendant stated that the money was from personal savings and from the operation and sale of a café business that he had owned.

The defendant was charged with 6 counts of conducting transactions so as to avoid reporting requirements pursuant to section 31(1) of the *Financial Transaction Reports Act 1988*.

This matter proceeded to trial and the defendant was found guilty of all 6 counts. On 27 March 2009 in the County Court of Victoria in Melbourne he was sentenced to a total effective penalty of 2½ years imprisonment to be released forthwith on condition that he be of good behaviour for 2½ years.

IN SENTENCING, THE COURT STRESSED THE IMPORTANCE OF GENERAL DETERRENCE FOR THIS TYPE OF OFFENCE AND INDICATED THAT THE SENTENCES IMPOSED IN PREVIOUS MATTERS WERE 'FAR TOO LENIENT'.



## Social Security Fraud

Centrelink refers the largest number of briefs to the CDPP of any agency and these generally relate to people allegedly receiving Centrelink benefits knowing that they were not entitled to receive them. Cases may involve receiving income from paid employment or failing to declare a marriage-like relationship whilst receiving a Centrelink benefit. Other cases may involve using multiple false identities to obtain multiple Centrelink benefits.

Centrelink prosecutions can vary in the level of complexity involved. Cases involving multiple false identities or marriage-like relationships can be very complex and demanding. Prosecuting social security fraud involves technical evidence of Centrelink's benefits systems, often using electronic transactions. The CDPP and Centrelink work closely together to seek to achieve best practice in investigating and prosecuting in this important area.

In May 2009 the CDPP held its annual prosecutors' conference on Centrelink prosecutions. Prosecutors from all CDPP offices attended. A range of matters were discussed including witness statements and sentencing submissions.

**RICHARD GRENFELL****IDENTITY FRAUD**

THIS CASE INVOLVED A FRAUDULENT SCHEME AGAINST THE SOCIAL SECURITY SYSTEM CONDUCTED OVER 28 YEARS WITH THE DEFENDANT, WHO WAS LEGALLY BLIND, AGED 76 AT THE TIME OF SENTENCE AND 78 AT THE APPEAL. THE NEW SOUTH WALES COURT OF CRIMINAL APPEAL CONSIDERED HOW AGE AND DISABILITY SHOULD BE ADDRESSED WHEN SENTENCING A SOCIAL SECURITY OFFENDER.

Between May 1978 and June 2006 the defendant was legally blind and legitimately in receipt of a social security payment. However over that 28 year period he continuously claimed another social security payment using a false identity to unlawfully obtain approximately \$203,000 in social security payments from the Department of Social Security/Centrelink.

The defendant was charged with 1 count of imposing on the Commonwealth by false representation pursuant to section 29B of the *Crimes Act*; 4 counts of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act*; and 2 counts of dishonestly causing a loss to a Commonwealth entity pursuant to section 135.1(5) of the *Criminal Code*.

On 21 February 2008 the defendant was convicted by the District Court of New South Wales in Sydney and sentenced to a total effective penalty of 4½ years imprisonment with a non-parole period of 2 years and 8 months. On 15 February 2007 a restraining order was made by the Supreme Court of New South Wales pursuant to section 17 of the *POC Act 2002* prohibiting any person from dealing with the property of the defendant. On 13 March 2008 all of the property subject to the restraining order and amounting to \$80,772 was forfeited to the Commonwealth.

The defendant appealed to the New South Wales Court of Criminal Appeal against the excessiveness of the sentence in light of his age and disability.

On 2 June 2009 the defendant's appeal was dismissed and the New South Wales Court of Criminal Appeal found that there had been no error by the sentencing Judge and that the defendant's subjective circumstances were adequately addressed by the imposition of wholly concurrent sentences for each count.

THE NEW SOUTH WALES COURT OF CRIMINAL APPEAL STATED:

'THE EXTENT TO WHICH APPROPRIATE CARE AND MEDICAL ASSISTANCE IS AVAILABLE, AND THE NATURE AND EXTENT OF FACILITIES THAT ARE AT HAND TO CARE FOR PRISONERS WITH ILL HEALTH, ARE FACTORS THAT ARE DIRECTLY RELATED TO QUESTIONS OF WHETHER OR NOT THE APPLICANT WILL OR MIGHT BE SUBJECTED TO AN UNDULY BURDENSOME PERIOD IN CUSTODY. THERE IS NO SIGNIFICANT WEIGHT OF MEDICAL OPINION THAT SUGGESTS THAT THE APPLICANT'S INDIFFERENT HEALTH WILL IMPOSE UNIQUE HARDSHIP UPON HIM IN THE CIRCUMSTANCES, EVEN IF HIS PERIOD IN CUSTODY MIGHT REASONABLY IF NOT OBVIOUSLY HAVE BEEN THOUGHT TO BE SOMEWHAT EASIER FOR HIM IF HE WERE WELL. THE BALANCING EXERCISE THAT HIS HONOUR WAS REQUIRED TO UNDERTAKE HAVING REGARD TO THE IDIOSYNCRATIC NATURE OF THE APPLICANT'S COMBINATION OF CONDITIONS AND THE NEED TO IMPOSE A SENTENCE THAT REFLECTED THE EXTENT OF HIS CRIMINALITY DOES NOT APPEAR TO ME TO HAVE BEEN MISCARRIED.'

**WENDY BLAND****SOCIAL SECURITY FRAUD**

The defendant in this matter received the Disability Support Pension over a period of approximately 5 years. However over that time she was working and earned a total of \$149,314.74 in gross wages and only declared to Centrelink that she had earned \$23,858.44. As a result, the defendant received \$43,252.81 in social security benefits to which she was not entitled.

The defendant was charged with 2 counts of obtaining a financial advantage by deception contrary to section 135.2 of the *Criminal Code*.

On 11 February 2009 the defendant appeared before the Magistrates Court of Victoria in Werribee and was discharged without conviction on condition that she be of good behaviour for 12 months. She was also ordered to pay reparation for the outstanding debt to Centrelink.

The Director appealed against the inadequacy of the sentence. On 19 June 2009 the County Court of Victoria upheld the Director's appeal, convicted the defendant and released her on condition that she be of good behaviour for 2 years. The presiding appeal Judge stated that had he heard the matter at first instance, he would have imposed a fully suspended term of 3 months imprisonment.

**DIANNE JANE COOMBE****SOCIAL SECURITY FRAUD**

Between February 1996 and June 2006 the defendant received Carer's Payment and Single Parenting Payment from Centrelink. However, over that 10 year period she was living in America and using the payments to fund mortgages on properties in South Australia and Western Australia. The defendant subsequently sold both of those properties and bought another in Rockingham prior to leaving her partner. In an interview with Centrelink the defendant admitted that she used her sister's address for all Centrelink communications and sent a letter to Centrelink in 2005 saying that she was moving to the east coast of Australia for work when she was in fact still in America.

As a result of her actions the defendant received \$102,440.99 in social security payments to which she was not entitled.

The defendant was charged with 1 count of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act* and 1 count of dishonestly causing a loss to a Commonwealth entity pursuant to section 135.1(5) of the *Criminal Code*.

On 21 November 2008 the defendant was convicted and sentenced in the District Court of Western Australia in Perth to a total sentence of 32 months imprisonment to be released after serving 12 months on condition that she be of good behaviour for 20 months. The defendant was also ordered to pay a pecuniary penalty order of \$12,000 which she paid. The defendant repaid the debt to Centrelink prior to sentence being imposed.

The defendant appealed against the excessiveness of the sentence and on 8 June 2009 the Western Australia Court of Appeal dismissed the appeal.

**KERRYN RAMSHAW****SOCIAL SECURITY FRAUD**

Between September 1997 and July 2000, and then again between October 2002 and November 2007, the defendant claimed Single Parenting Payment whilst she was living with her husband. In relation to the first period she neglected to inform Centrelink that she had reconciled with her husband, and in relation to the second period she falsely claimed she was separated from her husband. The defendant suffered from numerous health problems and together with her husband was experiencing financial difficulties. As a result of her actions the defendant received \$82,435.27 in social security payments to which she was not entitled.

The defendant was charged with one count of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act* and one count of obtaining a financial advantage by deception pursuant to section 134.2 of the *Criminal Code*.

On 11 February 2009 in the Magistrates Court of Victoria in Werribee the defendant was discharged without conviction to be of good behaviour for 12 months.

The Director appealed to the County Court of Victoria against the inadequacy of this sentence. On 19 June 2009 the County Court of Victoria convicted the defendant and ordered that she be released on condition that she be of good behaviour for 2 years. The presiding Judge on appeal held that had he heard the matter at first instance he would have imposed a fully suspended sentence.

**MAUREEN ERICA GRAHAM****SOCIAL SECURITY FRAUD**

Over a period of 6 years and 8 months the defendant received \$70,489.13 in social security payments to which she was not entitled through failing to inform Centrelink of her employment and earnings during that time.

The defendant commenced full-time employment in November 1999, earning an average salary of \$42,428.00 gross per year. However over the next 6 years and 8 months, she continued to receive Single Parenting Payment, Newstart Allowance and the Disability Support Pension. The defendant's offending was discovered in 2006 as a result of a data matching exercise between Centrelink and the ATO. She was 55 years old at the time of sentencing with no prior convictions.

The defendant was charged with 1 count of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act* and 1 count of dishonestly causing a loss to a Commonwealth entity pursuant to section 135.1(5) of the *Criminal Code*.

The defendant was sentenced in the District Court of Western Australia in Perth on 26 May 2009 to a total sentence of 12 months imprisonment to be released after serving 6 months on condition that she be of good behaviour for 6 months. The defendant made reparation for the full amount prior to sentencing.

**IAN DAVID STUMBLES****SOCIAL SECURITY FRAUD**

The defendant received Disability Support Pension over a 14 year period between 1992 and 2006. In 1998, using the name Ian Grey, the defendant commenced employment with a courier company and continued to be in permanent employment, although later with another employer, until September 2006. He failed to advise Centrelink of any of the income from his employment.

On two occasions the defendant submitted rent certificates to claim rent assistance from Centrelink. On both certificates he falsely claimed that Ian Grey was his landlord, completing the forms in the name of Stumbles. A further 2 false statements were made to Centrelink. Centrelink officers and AFP agents executed a search warrant on 10 August 2006.

Between 1998 and 2006, the defendant received a total of \$96,878.66 in social security benefits to which he was not entitled.

The defendant was charged with 1 count of imposition on the Commonwealth pursuant to section 29B of the *Crimes Act* and 1 count of dishonestly causing a loss to the Commonwealth pursuant to section 135.1(5) of the *Criminal Code*.

At sentence, the defendant submitted that because of his multiple health issues which included HIV, diabetes, duodenal ulcer and renal impairment, the authorities could not adequately care for him if he were imprisoned. The prosecution led evidence from the body responsible for the care of prison inmates in NSW, which established that adequate care was available. The Court was satisfied that satisfactory health care was available in prison and, given the objective seriousness of the offending, a term of imprisonment was required.

On 29 November 2008 in the District Court of New South Wales in Sydney the defendant was sentenced to a total effective sentence of 18 months imprisonment to be released after serving 6 months on condition that he be of good behaviour for 12 months.

**GORDON WALDOCK****SOCIAL SECURITY FRAUD**

The defendant received Newstart Allowance over a 9 year and 9 month period. Each fortnight he made false representations to Centrelink by either stating that he had not done any work or by under-declaring the income he had earned during the 2 week period. Over the entire period the defendant received \$266,953.92 in gross earnings, however he only declared \$5,330 to Centrelink. As a result of his actions the defendant received \$82,098.97 in social security benefits to which he was not entitled. The offending was discovered via a data match between Centrelink and the ATO.

The defendant was charged with 1 count of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act* and 1 count of dishonestly obtaining a financial advantage pursuant to section 134.2(1) of the *Criminal Code*.

On 15 August 2008 in the District Court of Western Australia in Perth the defendant was sentenced to a total effective penalty of 30 months imprisonment to be released after serving 10 months on condition that he be of good behaviour for 2 years.

**DEBRA THOMSON****SOCIAL SECURITY FRAUD**

Over a period of 12 years between 1994 and 2007 the defendant failed to notify Centrelink that she worked and earned income as an administrative assistant at the South Australian Attorney-General's Department and the South Australian Department for Families and Community Services whilst she was in receipt of Centrelink benefits.

The defendant was put on notice in 2003 that she was being investigated for social security fraud, and in 2004 she was served with a complaint. However despite the matter being before the court, the defendant continued to misrepresent her circumstances to Centrelink for a further 3 years whilst a warrant was outstanding for her arrest for failure to appear before court in December 2005. As a result the defendant obtained payments of Sole Parent Pension and Parenting Payment Single to which she was not entitled in the total amount of \$101,324.67.

The defendant was charged with 4 counts of imposition pursuant to section 29B of the *Crimes Act* and 3 counts of dishonestly causing loss to a Commonwealth entity pursuant to section 135.1(5) of the *Criminal Code*.

On 27 May 2009 in the District Court of South Australia the defendant was convicted and sentenced to 2 years and 9 months imprisonment to be released forthwith on condition that she be of good behaviour for 2 years.

The Director appealed to the South Australian Court of Criminal Appeal against the inadequacy of this sentence. On 11 August 2009 the South Australian Court of Criminal Appeal allowed the appeal and re-sentenced the defendant to 2 years imprisonment to be released after serving 9 months on condition that she be of good behaviour for 2 years.

IN A UNANIMOUS JUDGMENT, THE SOUTH AUSTRALIAN COURT OF CRIMINAL APPEAL HELD THAT IT WAS NECESSARY TO INTERVENE OTHERWISE 'THE EFFECT OF THIS DECISION WOULD BE TO SIGNIFICANTLY ERODE THE APPROPRIATE STANDARD OF PUNISHMENT FOR SIMILAR CASES'. THE COURT CONSIDERED THAT THE LONG PERIOD OF OFFENDING, THE AMOUNT OF THE FRAUD AND THE CONTINUATION OF OFFENDING AFTER SHE HAD BEEN CHARGED AND BEFORE THE COURT WERE 'ALL SERIOUSLY AGGRAVATING FEATURES WHICH MILITATED AGAINST AN ORDER FOR EARLY RELEASE BEING MADE'.

**VIOLETTA KOSTADINOSKA****IDENTITY CRIME**

This matter is an example of courts dealing with breaches of court orders in social security cases.

Over a 12 year period the defendant obtained approximately \$90,000 in various social security payments to which she was not entitled by dishonestly misrepresenting or failing to disclose her true marital status; various income streams and assets of her and her husband; and by simultaneously claiming the same payment under more than one name. After originally pleading guilty, the defendant and her husband, who had been charged with similarly obtaining \$50,000 to which he was not entitled, sought to reverse their pleas, but this was refused by the Supreme Court of New South Wales.

The defendant was charged with 5 counts of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act* and 3 counts of dishonestly causing a loss to a Commonwealth entity pursuant to section 135.1(1) of the *Criminal Code*.

In sentencing the defendant on 4 March 2008 the District Court of New South Wales in Parramatta determined that periodic detention was appropriate due to concerns for the welfare of her several young children. The defendant was convicted and sentenced to a total penalty of 3 years imprisonment to be served by way of periodic detention, to be released after serving 1½ years on condition that she be of good behaviour for 3 years. The defendant's husband received a sentence of imprisonment.

Later, the New South Wales Department of Corrective Services discovered the defendant in possession of a mobile phone whilst imprisoned in a periodic detention facility and breach proceedings were instituted. On 5 June 2009 the defendant was brought back before the Court and re-sentenced for her original offences. The same original sentence of 3 years imprisonment was imposed, backdated to the original commencement date, and to continue to be served by way of periodic detention. However, the original good behaviour bond was substituted with an order authorising her release after 1 year and 9 months had been served, extending the pre-release period of the sentence by 3 months due to the defendant's failure to comply with the original sentence.





## Tax Fraud

Prosecuting frauds against the Australian taxation system continued to make up a significant part of the CDPP practice this year. The cases detailed below demonstrate various categories of taxation fraud and the deterrent penalties imposed by courts, including sentences of imprisonment.

As in previous years, the CDPP prosecuted a significant number of taxation prosecutions stemming from tax minimisation schemes and fraud relating to income tax and the GST.

The CDPP prosecutes taxation frauds referred by the Serious Non-Compliance area of the ATO, the AFP and the ACC. In addition, the CDPP works closely with the In-House Prosecutions area of the ATO. By arrangement with the CDPP, the In-House Prosecutions area prosecutes most regulatory offences relating to taxation matters. If a matter becomes a defended hearing, the In-House Prosecutions area refers the matter to the CDPP to continue the prosecution. This cooperative relationship assists the ATO with its compliance program by enabling the efficient and effective prosecution of regulatory offences relating to the proper administration of Australia's taxation laws.



**PATRICK JOHN FINCHAM**

## TAX FRAUD

## PERVERT THE COURSE OF JUSTICE

The defendant was convicted of 4 offences covering two discrete courses of criminal conduct. First, he was convicted of 1 count of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act* and 1 count of dishonestly obtaining Commonwealth property pursuant to section 134.1(1) of the *Criminal Code*. These offences related to the defendant's lodgement of false Business Activity Statements (BAS) to the ATO thereby fraudulently obtaining \$121,884.97.

Secondly, he was convicted of 2 counts of attempting to pervert the course of justice pursuant to section 43 of the *Crimes Act*. The defendant attempted to pervert the course of justice by providing false medical reports to the CDDP and the court in support of his applications to adjourn and discontinue the prosecution of the tax fraud offences.

On 15 February 2008 in the County Court of Victoria the defendant was convicted and sentenced to a 3 year good behaviour bond and ordered to pay \$121,884.97 reparation. The Director appealed against the inadequacy of this sentence and, due to the serious and aggravated nature of the offending, the Victorian Court of Appeal re-sentenced the offender on 28 September 2008 to 12 months imprisonment to be released on condition that he be of good behaviour for 3 years. The reparation order remained in place.

**CARL WILLIAM WHEELER**

## TAX FRAUD

The defendant was associated with a company called Floreat Meat Exporters Pty Ltd. Over a 6 year period he failed to declare to the ATO part of his income, as well as part of the income of Floreat Meat Exporters Pty Ltd. He used the company's funds to pay his personal expenses, principally related to his home renovations, which were then claimed as a business deduction of the company. He also used 2 bank accounts in the UK to conceal both his personal income and company income from the ATO. Over the charge period the defendant personally avoided paying \$282,696.04 in tax and Floreat Meat Exporters Pty Ltd avoided paying \$189,971.09 in tax.

The defendant was charged with 4 counts of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act* and 8 counts of obtaining a financial advantage by deception pursuant to section 134.2 of the *Criminal Code*.

On 10 October 2008 in the District Court of Western Australia in Perth the defendant was sentenced to a total effective penalty of 3½ years with a non-parole period of 21 months.



## PROJECT WICKENBY

In February 2006 the Commonwealth committed significant and specific funding to establish Project Wickenby, a Commonwealth cross-agency taskforce to combat the serious threat to the integrity of Australia's tax and other regulatory systems posed by international tax evasion. This funding was recently supplemented by additional funding.

Project Wickenby is designed to enhance the strategies and capabilities of Australian and international agencies to collectively detect, deter and deal with international tax avoidance and evasion. It is also designed to improve community confidence in Australian regulatory systems, particularly in relation to serious non-compliance with tax laws, and reform of administrative practice, policy and legislation.

Project Wickenby involves a number of investigating agencies including the ATO, the ACC, ASIC and the AFP. It is supported by AUSTRAC, the Attorney-General's Department and the Australian Government Solicitor. The CDPP has a significant and important role to play in the prosecution of offences which arise out of investigations and action to recover the proceeds of crime under the *POC Act 2002*.

The CDPP participates in regular meetings of the Project Wickenby Chief Executive Officers and the Project Wickenby Cross Agency Advisory Committee. The CDPP plays a valuable advisory role in relation to prosecutions and criminal asset recovery, both generally and in relation to specific matters arising from Project Wickenby. The CDPP also participates in many of the other cross agency governance processes which have been established around Project Wickenby.

As at the end of June 2009 the CDPP was prosecuting 42 defendants in various jurisdictions resulting from Project Wickenby investigations conducted by the AFP and ACC. Four other matters have been concluded, including the cases of *CAK* and *CAL* reported below in which the Director was

successful in an appeal against the inadequacy of the sentences imposed by the District Court of Queensland.

On 30 December 2008 Jersey Police arrested Philip Eric de Figueiredo in response to a request for his provisional arrest sent to Jersey by Australia. de Figueiredo appeared in a Jersey Court the day after his arrest and was granted bail. A formal extradition hearing is underway in Jersey.

The CDPP has so far taken action to restrain property valued at approximately \$25 million in relation to a number of Wickenby matters. Recently the CDPP successfully obtained a civil pecuniary penalty in the sum of \$900,000 in one matter and in a related matter a civil forfeiture order for real property with an estimated value of \$212,000 was made against another person. Also, consent orders were made by the District Court of Queensland in late 2007 that a person against whom criminal charges had not yet been laid pay a pecuniary penalty of \$955,000.

The CDPP has played a significant role in requests made to foreign jurisdictions for assistance pursuant to the *Mutual Assistance in Criminal Matters Act 1987*. A number of requests have been made and important evidence has been obtained. The validity of mutual assistance requests in connection with Project Wickenby has been challenged in the matters of *Dunn v ACC* [2008] FCA 424, and *Strachans SA v Attorney-General* [2008] FCA 553. This challenge was unsuccessful in the Federal Court of Australia. The defendants appealed to the Full Federal Court and this appeal was dismissed on 24 February 2009. The defendants have lodged an application to the High Court of Australia seeking special leave to appeal.

It is anticipated that significant numbers of Project Wickenby prosecution and criminal asset recovery matters will be referred to the CDPP. These matters are likely to be complex and voluminous with difficult legal issues raised. The conduct of these matters will require specialist legal expertise in both a prosecution and proceeds of crime context.

**CAK AND CAL****TAX FRAUD**

CAK and CAL were directors of a company, ABG Pty Ltd, which was trustee for the ABG Trust (the Trust). Each defendant caused the Trust to obtain a financial advantage of \$177,333.34 from the Commissioner of Taxation by causing the Trust to pay false invoices in the amount of \$341,000 thereby reducing the Trust's taxable income. The amount of \$275,000 paid on the invoices was returned to CAK and CAL and of that amount, they returned \$200,000 to the Trust by crediting their directors' loan account. They also claimed GST credits of \$31,000 to which the Trust was not entitled.

This tax avoidance scheme had been promoted to the respondents by the accountant, ES. The scheme entailed the provision of 2 false invoices by ES for consultancy services which were never provided. The invoices formed the basis for the apparent legitimate transfer of funds from the company ABG to entities controlled by ES.

The defendants were charged with 2 counts of obtaining a financial advantage by deception pursuant to sections 11.2(1) and 134.2(1) of the *Criminal Code*.

On 21 October 2008 both defendants were convicted and sentenced in the District Court of Queensland in Brisbane. They were each sentenced to 3 years imprisonment to be released after serving 4 months on condition that they be of good behaviour for the remainder of the sentence.

The Director appealed to the Queensland Court of Appeal against the inadequacy of these sentences. On 20 February 2009 the Director's appeal was upheld and the defendants' original sentences were varied so that they were required to serve 9 months of their 3 year head sentence before being released to be of good behaviour for 27 months. The Queensland Court of Appeal held that normally offenders being sentenced to serve imprisonment for federal matters should serve 60-66% of their head sentence before being released on a bond or parole.

**ADAM HARGRAVES, GLENN HARGRAVES AND DANIEL STOTEN****ALLEGED TAX FRAUD**

These were the first Project Wickenby matters to proceed to trial. Evidence obtained overseas pursuant to mutual assistance requests to Switzerland, China and the United Kingdom formed a significant and substantial part of the prosecution case.

The prosecution alleged that the defendants engaged the services of Strachans SA (Strachans), a Swiss-based accounting firm, to provide an offshore structure for tax avoidance purposes. It was alleged that the structure was perpetuated by the use of offshore trusts and in-house Strachans' companies and was promoted to the defendants by Philip Egglshaw. The day-to-day administration of the structure was allegedly managed by Philip de Figueiredo, a Senior Trusts Manager within Strachans. de Figueiredo is currently the subject of extradition proceedings arising from his involvement in this matter as discussed above.

Strachans, upon direction from Adam Hargraves and Stoten, allegedly created false invoices for data listing services purportedly provided to Phone Directories Co. Pty Ltd (PDC). PDC produces telephone directories for major regional cities in Queensland, Northern Territory and New South Wales and the defendants were directors of PDC.

Genuine data-listing expenses had been incurred by PDC with a Chinese company, QH Data.

Allegedly, the false invoices created by Strachans were issued through an in-house company, Amber Rock, and were identical to the invoices issued to QH Data, but for the inflated amounts incurred for services purportedly delivered by Amber Rock. In reality, the prosecution alleged that Amber Rock did not perform any services and the ultimate control over Amber Rock was exercised by the defendants. Funds paid to Amber Rock were allegedly repatriated to the defendants by way of cash withdrawals via ATMs in Australia from credit and debit cards linked to trusts administered by Strachans on the defendants' behalf.

The prosecution alleged that the total amount of funds made available to the defendants by these means exceeded \$6 million over a period of nearly 6 years and the scheme enabled PDC to minimise its tax liability by claiming, as deductions for expenses, the amount charged by Amber Rock for purported data listings services.

The defendants were each charged with 1 count of conspiring to defraud the Commonwealth pursuant to sections 29D and 86 of the *Crimes Act* and 1 count of conspiring to defraud a Commonwealth entity pursuant to section 135.4(3) of the *Criminal Code*.

Following a 28 day trial the jury retired to deliberate on 14 April 2009 and continued to deliberate until 20 April 2009 when the jury was discharged without having reached a verdict. The case has been listed for re-trial on 18 January 2010.



## 2.2 Serious drugs



THE PROSECUTION OF SERIOUS DRUG OFFENCES ARE A SIGNIFICANT PART OF THE CDPP'S PRACTICE AND ARE AMONG THE MOST SERIOUS COMMONWEALTH OFFENCES. THE INTERCEPTION OF ILLICIT DRUGS AND PRECURSORS AT THE BORDER PREVENTS THEM FROM ENTERING THE AUSTRALIAN COMMUNITY. DRUG OFFENCES ATTRACT SUBSTANTIAL PENALTIES, INCLUDING IMPRISONMENT FOR LIFE FOR OFFENCES INVOLVING A COMMERCIAL QUANTITY OF DRUGS.

THERE ARE A RANGE OF SERIOUS DRUG OFFENCES IN THE *CRIMINAL CODE* INCLUDING TRAFFICKING AND THE COMMERCIAL MANUFACTURE OF DRUGS. THE CDPP ALSO PROSECUTES STATE AND TERRITORY DRUG OFFENCES USUALLY WHERE THE INVESTIGATION INVOLVES A COMMONWEALTH AGENCY AND IT IS APPROPRIATE FOR THE CDPP TO CONDUCT THE PROSECUTION.

### **DALE CHRISTOPHER HANDLEN AND DENNIS PAUL PADDISON**

#### **COCAINE AND ECSTASY IMPORTATION**

THIS CASE INVOLVES THE LARGEST IMPORTATION OF COCAINE AND ECSTASY IN QUEENSLAND WITH AN ESTIMATED STREET VALUE OF \$136.3 MILLION. THIS WAS THE FIRST MATTER WHERE LIFE IMPRISONMENT WAS IMPOSED IN QUEENSLAND FOR A DRUG IMPORTATION.

In 2006 the defendants were involved in importing cocaine and ecstasy in 2 separate importations. The drugs were secreted in used computer monitors shipped from Canada to Australia in shipping containers. Handlen was the manager of both importations, attending to arrangements in Canada before coming to Australia to supervise receipt of the containers and provision of the drugs to distributors. Paddison was involved in concealing the drugs in Canada and came to Australia prior to the arrival of the second shipment to assist with recovering the drugs.

The total quantity of drugs involved in the 2 importations was approximately 139kgs of cocaine with an estimated street value of \$123.5 million and 80kgs of methamphetamine (approximately 320,000 tablets) with an estimated street value of \$12.8 million.

Handlen was charged with 2 counts of importing a commercial quantity of border controlled drugs pursuant to sections 307.1 and 311.1 of the *Criminal Code*; 1 count of possessing a commercial quantity of border controlled drugs pursuant to sections 307.5 and 311.1 of the *Criminal Code*; and 1 count of attempting to possess a commercial quantity of border controlled drugs pursuant to sections 307.5, 311.1 and 11.1 of the *Criminal Code*.

Paddison was charged with 2 counts of importing a commercial quantity of border controlled drugs pursuant to sections 307.1 and 311.1 of the *Criminal Code* and 1 count of attempting to possess a commercial quantity of border controlled drugs pursuant to sections 307.5, 311.1 and 11.1 of the *Criminal Code*.

The defendants were sentenced on 5 June 2009 in the Supreme Court of Queensland. Handlen was convicted and sentenced to life imprisonment with a non-parole period of 22 years – 987 days of pre-sentence custody was declared as time served. Paddison was convicted and sentenced to 22 years imprisonment with a non-parole period of 14½ years – 980 days of pre-sentence custody was declared as time served.

Both defendants have lodged appeals against both their convictions and sentence.

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### **MARK ANDREW AISBETT AND ANTONIO GIAMPAOLO**

#### **ECSTASY IMPORTATION**

AT THE TIME OF THIS IMPORTATION THIS WAS THE LARGEST IMPORTATION OF METHAMPHETAMINE IN AUSTRALIA, BEING 1,000 TIMES THE COMMERCIAL QUANTITY OF METHAMPHETAMINE.

On 12 April 2005 a cargo ship arrived in Melbourne from Italy carrying a container consisting of 8 pallets of ceramic tiles in cardboard boxes. These boxes were stacked around the outer sides of the pallets and an examination by ACS officers revealed 670 plastic bags containing pills within the centre of the stack. The total gross weight of methamphetamine was 1,236kgs (approximately 5,051,000 tablets) with a purity of approximately 40%. The total net weight of the tablets was 503.81kgs. On 14 April 2005 a controlled delivery took place to a factory in Thomastown, Victoria and soon afterwards AFP officers entered the factory and arrested the defendants who were unpacking the tiles and substituted tablets.

The defendants were both charged with attempting to possess a commercial quantity of methamphetamine pursuant to section 11.1 of the *Criminal Code* and section 233B(1) of the *Customs Act*. Both defendants pleaded not guilty and were convicted at trial by jury. A further four persons connected with import of the shipment were arrested and charged and acquitted at trial.

On 24 August 2007 both defendants were sentenced in the County Court of Victoria to 6 years imprisonment with a non-parole period of 4 years.

The Director appealed against the inadequacy of the sentences and invited the Victorian Court of Appeal to consider whether the sentences were consistent with Commonwealth sentences imposed in other States in relation to large commercial quantities of serious drugs.

On 24 July 2009 the Victorian Court of Appeal dismissed the Director's appeal. The Court acknowledged that the sentences at first instance may be seen as lenient given each defendant's prior convictions and mitigating factors, however the Court did not see this case where a Victorian precedent was relied upon, as an appropriate vehicle for exploring the issue of consistency in Commonwealth sentencing.

**HERNAN JAVIER ANDRADE AND ANTON ENGLISH****ECSTASY IMPORTATION**

THIS CASE WAS REPORTED IN THE 2007-2008 ANNUAL REPORT AT PAGES 27-28 AND HIGHLIGHTS THE USE OF UNDERCOVER POLICE OPERATIVES WHEN INVESTIGATING DRUG CRIMES. BOTH DEFENDANTS WERE RECIDIVIST DRUG IMPORTERS WHO REOFFENDED SHORTLY AFTER BEING RELEASED FROM PRISON.

This case involved an importation of 6,117 methamphetamine tablets concealed in the front and back covers of 3 hard cover books. The tablets weighed a total of 1780.4g with a purity of 31.2% or 555.48g.

Both defendants pleaded guilty to one count of aiding and abetting the importation of a commercial quantity of methamphetamine contrary to sections 307.1(1) and 11.2 of the *Criminal Code*.

English pleaded guilty on 23 August 2007 and was sentenced in the County Court of Victoria on 19 November 2007 to a term of 7½ years imprisonment with a non-parole period of 5 years. English had previously been sentenced on 13 May 2004 in relation to very similar offences also involving tablets hidden inside the front and back covers of books. On that occasion he was sentenced to a total effective penalty of 3 years to be released after 18 months upon entering a recognisance in the sum of \$1000 to be of good behaviour for 18 months and he was ordered to pay a pecuniary penalty in the sum of \$25,000.

Andrade pleaded guilty on 9 April 2008 and was sentenced on 15 April 2008. Andrade was in breach of a previous sentencing order by this offending. On 23 July 2004 he was sentenced in the County Court of Victoria on 1 count of aiding, abetting, counselling or procuring the importation of a trafficable quantity of cocaine pursuant to section 233B(1)(b) of the *Customs Act* and section 11.2 of the *Criminal Code*. The pure quantity of the cocaine was approximately 1300g. The cocaine was sent by air freight hidden inside a cylinder.

In relation to the breach the court ordered that the recognisance be revoked. Andrade was ordered to serve the balance of his unserved term on the original offence (being 18 months in prison). In relation to the new offence Andrade was convicted and sentenced to a term of 7 years imprisonment to commence on 15 October 2008. This resulted in a total effective penalty of 7½ years with a non-parole period of 5 years.

English appealed against his sentence and on 9 April 2009 it was dismissed by the Victorian Court of Appeal. The Court held that the trial judge did not err in considering English's offer to co-operate with police nor in applying principles of parity in relation to the sentence of the co-offender Andrade. There was no fresh evidence indicating that the position of English or his family was significantly different from the time of sentence. In relation to the English's mental state an affidavit from a drug and alcohol rehabilitation expert added little to material before the sentencing Judge.

Andrade did not lodge an appeal.



**CHUCK SUN LAU****HEROIN IMPORTATION AND EXTRADITION**

This case involved an escape from custody prior to sentence and explored the significance of time spent in custody overseas prior to extradition.

In 1994 the defendant and Ho formed a plan to import heroin into Australia on a cargo ship from China. The defendant and Cheung resided in Canada and travelled to China where they met with Wan who delivered the heroin to them. The defendant and Cheung then repackaged the heroin into cardboard boxes before delivering the boxes to 3 seamen working on a cargo ship who stowed the heroin. They then arranged through Ho to fly from Hong Kong to Geraldton in Western Australia to meet the seamen and take possession of the 47kgs of heroin. Upon arrival in Geraldton, the defendant and Cheung received the heroin from the seamen and then drove to Perth. The defendant telephoned Ho to confirm he had taken possession of the heroin and then, at Ho's direction, met a man at an hotel in Perth who was to purchase 27kgs of the heroin. The purchaser was a Police informant. On 17 September 1994 the defendant and Cheung were arrested at the Perth International Airport attempting to leave for Hong Kong.

The defendant was charged with 1 count of being knowingly concerned in the importation of a commercial quantity of heroin pursuant to section 233(1)(b) of the *Customs Act* and 1 count of being in possession of a commercial quantity of heroin pursuant to section 233B(1)(a) of the *Customs Act*.

The defendant initially indicated an intention to plead guilty to the offences and give evidence against his co-offenders however changed his plea to not guilty at committal. On 27 March 1995, while waiting for committal proceedings to commence, the defendant escaped custody at Perth Central Law Courts. He remained at large until arrested in Vancouver on 28 June 1997. The defendant remained in custody in Canada for approximately 10 years pending extradition before being surrendered to Australia on 8 May 2007.

On 4 March 2008 in the Supreme Court of Western Australia the defendant was sentenced to 25 years imprisonment with a non-parole period of 16 years. The sentence was backdated to 1 December 1996 (a period of 11 years and 3 months) to take into account time spent in custody.

The Director appealed against both the inadequacy of the sentence and on the ground that the Court had erred by backdating the sentence by taking into account all of the time spent in Canadian custody, as this failed to reflect the defendant's conduct in resisting extradition.

The defendant appealed against the excessiveness of the sentence in light of the sentence imposed on one of his co-offenders; his past cooperation with authorities; his plea of guilty and other matters in mitigation.

On 5 June 2009 the Western Australian Court of Appeal dismissed the defendant's appeal and partially allowed the Director's appeal. The Court found that the sentencing court had erred by failing to consider whether the defendant's conduct in resisting extradition warranted a lesser period of prior custody being taken into account. The Court of Appeal commented:

- ▶ Credit ought to be given for not pursuing purely technical opposition to extradition;
- ▶ The acceptance of lawful extradition has a utilitarian value, much like a plea of guilty, by avoiding the expense of lengthy legal proceedings and avoiding the prosecution case suffering prejudice;
- ▶ The defendant made numerous unsuccessful attempts to avoid extradition from Canada over a very lengthy period of time. Cases such as this, where a defendant prolongs proceedings beyond what is reasonably necessary, give rise to additional considerations;
- ▶ The defendant's guilty plea was an acknowledgement that his long battle against extradition was on purely technical grounds, not because he was innocent.

The defendant's sentence of 25 years with a non-parole period of 16 years was backdated to 31 December 2001 effectively increasing the defendant's time to serve by 5 years.

The defendant has filed an application for special leave to appeal to the High Court of Australia.

**JOHN DAVID MCFERRIER****INTERNAL COCAINE IMPORTATION**

On 27 August 2008 the defendant arrived at Perth International Airport from South Africa and admitted to ACS officers at the airport that he was internally concealing 91 packages of a drug that he believed was heroin. He had already passed and re-swallowed some of these packages when his flight was delayed and he was therefore concerned for his own safety by the time he reached Perth. The defendant was to receive \$4,000 for delivering the drugs to Australia. The drug was found to be cocaine with a net pure weight of 546.5g and a street value up to about \$500,000.

The defendant was charged with 1 count of importing a marketable quantity of a border controlled drug pursuant to section 307.2(1) of the *Criminal Code*.

On 28 November 2008 in the District Court of Western Australia the defendant was sentenced to 7 years imprisonment with a non-parole period of 4 years. The amount of \$2,935,56 was forfeited under the *POC Act 2002*.

In sentencing the Chief Judge noted that the defendant was not a drug addict, nor was he involved in the drug syndicate in an ongoing way. The offence was committed out of desperation for money. The seriousness of the offence and the need for general deterrence was of primary concern to the Court in sentencing.

**MPHO SAMUEL MOKOENA****INTERNAL HEROIN IMPORTATION**

On 25 August 2007 the defendant imported 891.6g of brown powder internally into Australia. The powder yielded 497.5g of heroin with an approximate street value of \$995,000. The defendant cooperated with authorities and pleaded guilty.

The defendant was charged with 1 count of importing a marketable quantity of a border controlled drug into Australia pursuant to section 307.2(1) of the *Criminal Code*.

On 17 July 2008 in the Supreme Court of Queensland the defendant was convicted and sentenced to 9 years imprisonment with a non-parole period of 4 years and 9 months. The defendant appealed against his sentence to the Queensland Court of Appeal.

On appeal the defendant argued that the sentence, or more specifically the non-parole period, did not give appropriate weight to his co-operation, remorse, plea of guilty, the fact that he was HIV positive, the distance from his family in South Africa and lack of criminal history. The defendant was a 29 year old married man with 2 children.

THE QUEENSLAND COURT OF APPEAL EXAMINED THE PRACTICE CONSISTENTLY APPLIED IN NSW AND OTHER STATES OF SETTING NON-PAROLE PERIODS FOR COMMONWEALTH DRUG OFFENCES AT A POINT BETWEEN 60-66% OF THE HEAD SENTENCE. THE PROSECUTOR HAD SUBMITTED THAT THIS PRACTICE SHOULD BE FOLLOWED BY THE SUPREME COURT OF QUEENSLAND. THE COURT OF APPEAL NOTED THAT THE QUEENSLAND STATUTORY REGIME FOR THE SETTING OF PAROLE ELIGIBILITY 'HAS NO APPLICATION, DIRECT OR INDIRECT, TO THE

*PROCESS OF FIXING A NON-PAROLE PERIOD FOR A FEDERAL OFFENCE. THE SETTING OF THE NON-PAROLE PERIOD IS, OF COURSE, A MATTER OF INDIVIDUAL DISCRETION; BUT AT THE SAME TIME, IN EXERCISING FEDERAL JURISDICTION, CONSISTENCY WITH DECISIONS IN OTHER JURISDICTIONS IS DESIRABLE.*

The court held that the head sentence of 9 years imprisonment was ‘unremarkable’ and that the non-parole period was consistent with the practice in Queensland and other States of setting the non-parole period beyond the half-way mark of the head sentence in drug importation cases.

### **TONY NGUYEN**

#### **PRECURSOR IMPORTATION**

On 5 August 2008 a package was intercepted by Australia Post. The package had been consigned from Vietnam to the defendant’s residential address. ACS officers examined the package and discovered that, amongst other foodstuffs, it contained 4 foil packets said to contain cake mix powder. Presumptive chemical tests carried out on one of the packets indicated that it contained pseudoephedrine. The total net weight of powder within the 4 foil packets was 3,854kgs. Chemical analysis confirmed that the total amount of pure pseudoephedrine was 785.1g (19.6% to 21.1% pure) and was capable of producing approximately 706g of methamphetamine with a street value of between \$141,000 and \$282,000.

The defendant was charged with aiding, abetting, counselling or procuring the importation of a marketable quantity of a border controlled precursor pursuant to section 307.12(1) of the *Criminal Code*.

On 7 May 2009 in the District Court of New South Wales the defendant was sentenced to 18 months imprisonment to be released on 11 May 2009 on condition that he be of good behaviour for the remainder of the term.

### **KEVIN NHAT HUY NGUYEN, ANTONIO OLIVERI, DUC HIEN PHAN, THANH DINH PHAN, PHONG VAN NGUYEN**

#### **PRECURSOR IMPORTATION**

**THIS CASE INVOLVED INDICTMENTS SIGNED BY THE NSW DIRECTOR OF PUBLIC PROSECUTIONS AND THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS IN RELATION TO A SIGNIFICANT IMPORTATION OF A PRECURSOR.**

The defendants were each allegedly involved in the importation of 102.279kgs of pseudoephedrine (21.7854kgs pure) which arrived in Australia via 3 separate consignments. The first and second consignments arrived in March 2007 and the third consignment arrived in May 2007. The defendants were arrested following a controlled delivery of the precursors conducted by the AFP.

The principal of the operation, Than Dinh Phan, was charged with 2 counts of importing a commercial quantity of a border controlled precursor pursuant to section 307.11 of the *Criminal Code* and pleaded guilty to 1 of these counts immediately prior to trial.

Following committal, the remaining 4 defendants were each charged with, and pleaded not guilty to, 1 count of supplying a commercial quantity of a prohibited drug pursuant to section 25(2) of the *Drug Misuse and Trafficking Act 1985* (NSW).

Following a 25 day trial in the District Court of New South Wales in Sydney, on 7 November 2008 the jury found Kevin Nhat Huy Nguyen, Antonio Oliveri and Duc Hien Phan guilty of the supplying charge, Than Dinh Phan guilty of the other import charge, and Phong Van Nguyen was acquitted.

On 3 July 2009 the defendants were sentenced as follows:

- ▶ Kevin Nhat Huy Nguyen: 10½ years imprisonment with a non-parole period of 8 years — eligible for parole on 3 November 2016;
- ▶ Antonio Oliveri: 8 years imprisonment with a non-parole period of 6 years — eligible for parole on 31 October 2014;
- ▶ Duc Hien Phan: 8 years imprisonment with a non-parole period of 6 years — eligible for parole on 5 November 2014;
- ▶ Thanh Dinh Phan: total effective penalty of 11 years imprisonment with a non-parole period of 8 years — eligible for parole on 27 February 2019.



**PHALLY SAM****HEROIN IMPORTATION**

On 9 October 2006 a Cambodian tour group flew from Phnom Penh in Cambodia to Sydney via Bangkok. Two of the tour group members fell unconscious on board and were taken to hospital on arrival in Bangkok. They were later discovered to have internally concealed heroin.

During the flight to Sydney, another tour group member fell unconscious. On arrival in Sydney he was taken to hospital where he underwent surgery to remove 176 balloons containing heroin. Six other tour group members were also found to be concealing similar balloons of heroin. The total pure weight of heroin imported was approximately 1.1kgs. All 7 couriers pleaded guilty to importing a border controlled drug. Six provided statements to the AFP stating that the defendant was the organiser of the importation and undertook to give that evidence at trial. This assistance was reflected by reduced sentences for the 6 couriers. These matters are reported in last year's Annual Report at page 29.

The defendant was charged with 6 counts of aiding, abetting, counselling or procuring the importation of a marketable quantity of a border controlled drug pursuant to sections 307.2(1) and 11.2 of the *Criminal Code*.

At trial, the 6 couriers gave evidence that the defendant paid for their passports and airline tickets and handed the balloons to them with instructions to swallow them while in Phnom Penh. One courier gave evidence that the defendant inserted the remaining balloons which she could not swallow into the courier's rectum. Another courier gave evidence that the defendant castigated him when he could not swallow more than 30 balloons, saying that amount would not even cover the air fare. Five of the 6 identified the defendant on a photo board. The couriers' evidence was supported by listening device and telephone intercept material. On 19 June 2008 the jury returned guilty verdicts in relation to all 6 Commonwealth charges.

The defendant pleaded guilty to 1 count of supplying a prohibited drug pursuant to section 25(1) of the *Drugs Misuse and Trafficking Act 1985* (NSW) prior to the Commonwealth trial.

On 6 February 2009 the defendant was convicted and sentenced in relation to all 7 charges. The defendant gave evidence at the sentencing hearing that she was innocent of the charges and had provided the AFP with information about the alleged involvement of others in Cambodia. The AFP and sentencing Judge assessed this information as having no value. The Judge remarked that she found the prosecution case compelling and the defendant's role as principal required a high degree of planning.

In relation to the Commonwealth charges the defendant was sentenced to a total term of imprisonment of 15 years with a non-parole period of 9 years. In relation to the State charge, the defendant was sentenced to 18 months imprisonment. The total effective penalty was 16 years imprisonment with a non-parole period of 10 years.

The defendant has lodged an appeal against conviction and sentence to the New South Wales Court of Criminal Appeal.

**LAN YA TSEN****HEROIN IMPORTATION**

On 4 June 2008 the defendant was apprehended at Perth International Airport when a package containing heroin was found within the lining of her suitcase. The weight of the heroin was 1195.8g which was later found to have a pure weight of 667.2g, being of purity of 55.8%.

The defendant was charged with 1 count of importing a marketable quantity of a border controlled drug pursuant to section 307.1 of the *Criminal Code*.

The defendant pleaded not guilty and stood trial in the District Court of Western Australia in Perth in February 2009. The defendant denied knowing that she was trafficking heroin, instead stating that she believed she was smuggling precious stones for an international syndicate. The prosecution relied on emails obtained pursuant to a mutual assistance request to the USA to prove that the defendant was aware of a substantial risk that her suitcase contained heroin. These emails showed that the defendant had been warned by friends and family members that she may be carrying drugs.

On 26 February 2009 the jury found the defendant guilty. On 23 April 2009 the defendant was sentenced to 11 years imprisonment with a non-parole period of 6½ years.

**DENISE EUGENIA TUCKER****IMPORTATION**

On 23 September 2008 the defendant arrived in Sydney on a flight from Amsterdam via Singapore. The defendant approached the baggage examination area and was subjected to an lonscan swab which indicated the presence of cocaine. Following subsequent questioning by ACS officers, the defendant indicated that she had a substance concealed underneath her wig. The defendant claimed that she had been approached by 2 men in Amsterdam prior to her departure who had physically threatened her, held her down, and then sewn a substance underneath her wig.

A forensic examination conducted by the AFP revealed 3 packages concealed under the defendant's wig. The packages were stitched to her natural hair which had been braided. Subsequent testing revealed the total pure weight of cocaine to be 636.7g.

The defendant was charged with 1 count of importing a marketable quantity of a border controlled drug pursuant to section 307.2(1) of the *Criminal Code*.

At sentence, the Court ultimately rejected the defendant's claim that she had been forced to conceal the cocaine or was acting under any duress. On 22 May 2009 in the District Court of New South Wales the defendant was sentenced to 8 years imprisonment with a non-parole period of 5 years.

**ALEXANDER VAN DUIJN****PRECURSOR IMPORTATION**

On 8 April 2008 the defendant imported almost 1kg of methamphetamine into Australia and was arrested by the AFP. The defendant admitted to the AFP that the drugs were going to be delivered to a co-offender and a controlled operation took place at a hotel room at Burswood in Perth, Western Australia. The co-offender and the defendant met and negotiated prices in relation to selling and distributing the drugs and an exchange of the drugs took place. This conversation was recorded and the co-offender was arrested by the AFP.

The defendant was charged with 1 count of importing a commercial quantity of a border controlled drug pursuant to section 307.1(1) of the *Criminal Code*.

On 9 March 2009 in the Supreme Court of Western Australia the defendant was sentenced to 9 years and 10 months imprisonment with a non-parole period of 4 years and 11 months. The court determined this sentence after reducing a 14 year sentence by 30% as a result of the defendant's cooperation with the AFP resulting in the arrest of his co-offender.

**BILLY SERGIO PALEMENE AND RUBEN HURTADO****COCAINE IMPORTATION**

Palemene was a courier driver for FedEx Pty Ltd when he recruited Hurtado to assist him in importing cocaine from South America. Cocaine was concealed in a package of electronic equipment addressed to a legitimate business in Palemene's delivery area. Both defendants liaised with people in relation to the packaging and address for the package and monitored the package on the FedEx tracking website using the consignment number which was provided by the overseas senders. When the package was allocated to Palemene for delivery, he took it to his house instead of delivering it. Palemene then contacted Hurtado who flew to Brisbane to take possession of the cocaine. The defendants were arrested in possession of 16.6293kg of pure cocaine. The estimated street value of the cocaine was \$27 million.

Prior to this importation, the defendants had unsuccessfully attempted to import a parcel of 478.9g of cocaine using the same method. The parcel containing the cocaine was intercepted by police in Memphis in the United States of America.

The defendants were each charged with 1 count of importing a commercial quantity of a border controlled drug pursuant to section 307.1(1) of the *Criminal Code* and 1 count of attempting to import a marketable quantity of a border controlled drug pursuant to sections 307.2(1) and 11.1(1) of the *Criminal Code*.

On 15 December 2008 in the Supreme Court of Queensland the defendants were convicted and sentenced. Hurtado was sentenced to 15 years imprisonment with a non-parole period of 9 years. Palemene was sentenced to 12 years imprisonment with a non-parole period of 7 years and 3 months.



**PETER PETRAS, MEHMAT SERIBAN, DAVID LINDSAY BARRY AKA DAVID MICHAEL KELLY AND GRAYDON WOODS**

**PRECURSOR IMPORTATION**

Petras and Seriban met whilst Seriban was in custody in Australia for a people smuggling offence and were the principals in this importation of pseudoephedrine. Petras recruited Woods and Barry for the purposes of raising capital for the importation and assisting with arrangements for the transportation of the pseudoephedrine following its arrival into Australia. Barry was also responsible for finding a buyer for the pseudoephedrine in Adelaide. Petras buried a 125 litre plastic drum in the ground at a remote coastal location in the Northern Territory and disguised the site as a pet's grave. Seriban's role was to source and purchase the pseudoephedrine in Indonesia, arrange for its importation by boat into Australia in accordance with instructions and GPS co-ordinates provided by Petras, and then to bury it in the concealed plastic drum until it could be collected. Petras also travelled to Indonesia where he met with Seriban and tasted a sample of the pseudoephedrine sourced by Seriban.

Petras was arrested upon his return to Australia on a flight from Jakarta to Darwin. Woods and Barry were arrested shortly after. Seriban was deported from Indonesia and arrived in Perth, Western Australia. He was then extradited to the Northern Territory.

The defendants were each charged with 1 count of conspiring to import a commercial quantity of a precursor pursuant to sections 11.5(1) and 307.11(1) of the *Criminal Code*.

Woods and Barry pleaded guilty prior to trial. Petras pleaded guilty after a disputed fact hearing and Seriban proceeded to trial. Notwithstanding that Petras had already pleaded guilty and had been sentenced, the defence case was that there was no conspiracy to import drugs, but there was a fake drug operation put in place. It was asserted that Seriban confessed the scam to Petras in Indonesia and then sought Petras' assistance to trick Barry and Woods out of the money they were prepared to provide for the fake drug importation. The jury rejected the defence and found Seriban guilty.

The defendants were sentenced in the Supreme Court of the Northern Territory:

- ▶ Seriban: 12 years and 3 months imprisonment with a non-parole period of 7 years and 10 months;
- ▶ Petras: 12 years imprisonment with a non-parole period of 7 years;
- ▶ Barry: 7 years imprisonment with a non-parole period of 3½ years;
- ▶ Woods: 5 years imprisonment to be released forthwith on condition that he be of good behaviour for 5 years.

The Director appealed against the inadequacy of the sentence imposed upon Woods. The Northern Territory Court of Criminal Appeal agreed that the sentence was manifestly inadequate and a term of actual imprisonment was required, but dismissed the appeal on the basis of the defendant's minor role, naivety, age, previous good character and the fact it was a Crown appeal.

## 2.3 Commercial prosecutions

THERE ARE SPECIALIST COMMERCIAL PROSECUTION BRANCHES IN EACH OF THE CDPP'S LARGER REGIONAL OFFICES. THESE BRANCHES PROSECUTE OFFENCES PURSUANT TO THE *CORPORATIONS ACT* AND THE *ASIC ACT*, ASSOCIATED STATE OR TERRITORY OFFENCES, AND LARGE FRAUD MATTERS WHERE THERE IS A CORPORATE ELEMENT. THE SMALLER REGIONAL OFFICES HAVE PROSECUTORS WHO SPECIALISE IN COMMERCIAL PROSECUTIONS.

Responsibility for investigating alleged breaches of the *Corporations Act* and the *ASIC Act* rests with the Australian Securities and Investments Commission (ASIC). More serious alleged contraventions are referred by ASIC to the CDPP for consideration and prosecution action where appropriate. Where an investigation reveals both Commonwealth offences and State offences the CDPP will prosecute the State offences pursuant to arrangements with State and Territory Directors of Public Prosecutions. By arrangement with the CDPP, ASIC conducts minor regulatory prosecutions for offences against the *Corporations Act* and the *ASIC Act*.

THE INVESTIGATION OF LARGE COMMERCIAL MATTERS CAN BE LONG AND RESOURCE INTENSIVE AND FREQUENTLY THE MATERIALS PROVIDED TO THE CDPP BY ASIC IN RELATION TO SUCH MATTERS ARE BOTH VOLUMINOUS AND COMPLEX. THE PROSECUTION OF THESE MATTERS REQUIRES SPECIALIST SKILL.

The CDPP is available to provide early advice to ASIC in the investigation of large commercial matters. The provision of early advice can assist to direct and focus the investigation, which ensures that any prosecution is as effective as possible. There is regular liaison between ASIC and the CDPP at head of agency, management and operational levels.

The CDPP's Commercial Prosecutions branches also prosecute offences against the *Trade Practices Act 1974*. Responsibility for investigating alleged breaches of the *Trade Practices Act 1974* rests with the Australian Competition and Consumer Commission (ACCC). The CDPP meets regularly with the ACCC to discuss specific case and general liaison issues.

The Commercial Prosecutions branches are responsible for the prosecution of the serious cartel offences in sections 44ZZRF and 44ZZRG of the *Trade Practices Act 1974* recently enacted on 24 July 2009.

Annexure B of the recently revised *Prosecution Policy* contains the CDPP policy for 'Immunity from Prosecution in Serious Cartel Offences'. Where the ACCC makes a recommendation to the Director that an applicant for conditional immunity under the ACCC's 'Immunity Policy for Cartel Conduct' should be granted immunity from criminal prosecution, the Director will decide whether to grant an undertaking under section 9(6D) of the *DPP Act* by applying the criteria in Annexure B of the *Prosecution Policy*. It is anticipated that the Director will consider immunity applications at an early stage of an ACCC investigation and that there will be close co-operation between the ACCC and the CDPP whenever a cartel participant seeks immunity.

The Enforcement Unit of the Insolvency and Trustee Service Australia (ITSA) investigates the majority of alleged contraventions of the *Bankruptcy Act 1966*. The CDPP and ITSA meet regularly at both the national and regional office levels to discuss issues relevant to the prosecution of offences under the *Bankruptcy Act 1966*.

Chapter 3 of this Report includes statistics for prosecutions conducted by the Commercial Prosecutions Branches.

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### **MUKESH PANCHAL**

#### **INSIDER TRADING**

The defendant was the Company Secretary of Queensland Gas Company Limited (QGC). Whilst he was in that position he purchased shares in QGC while he was in possession of inside information namely:

- (i) that QGC and UK based British Gas (BG) were in the process of negotiating an alliance to produce and market liquefied natural gas;
- (ii) that the due diligence process conducted by BG was almost complete;
- (iii) that the Managing Director of QGC had informed him that a special board meeting would be held on 1 or 5 February 2008 to consider the deal being negotiated; and
- (iv) that the effect of the deal on QGC if approved by the board would be very significant.

Between 15 January 2008 and 1 February 2008 the defendant purchased 418,148 QGC shares through his online trading account for a total consideration of \$1,308,621.72. If he had waited until after the ASX announcement on 4 February 2008 to purchase the shares, he would have paid \$322,155.50 more.

The defendant was charged with 4 counts of acquiring shares whilst in possession of inside information pursuant to sections 1311(1) and 1043A of the *Corporations Act*.

On 27 April 2009 in the District Court of Queensland in Brisbane the defendant was convicted and sentenced to a total effective sentence of 2 years imprisonment to be released after serving 14 months on condition that he be of good behaviour for 2 years. On 27 October 2008 the defendant consented to a pecuniary penalty order in the sum of \$322,155.50, being the difference between the amount the defendant paid for the shares and the price of the shares when the inside information became known.

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### **ROCCO MUSUMECI AND RICHARD WADE**

#### **MARKET MANIPULATION**

The defendants worked for two different stockbroking firms. They placed bids on the instructions of certain clients for the purpose of ensuring that the price for shares in a particular listed company rose to, or was maintained at, a specified level. The level of the price for the shares at the end of a trading day was significant to the clients in question as large numbers of shares in this company had been used as security for margin loans.

Both defendants were charged with offences of taking part in transactions that had the effect of, or were likely to have the effect of, creating an artificial price for trading in, or maintaining at a level that is artificial, a price for trading in the securities of a listed company pursuant to section 1041A of the *Corporations Act*. The defendants pleaded guilty to all of the offences and waived their right to committal proceedings.

The defendants were sentenced on 16 February 2009 in the County Court of Victoria. Musumeci was sentenced to 7 months imprisonment, whilst Wade was sentenced to 15 months imprisonment. Both defendants were released forthwith on recognisance release orders.

Three co-accused are listed to proceed to committal in early 2010.

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### **NEIL AUSTIN BURNARD**

#### **COMMERCIAL FRAUD**

This matter was reported in the 2007-2008 Annual Report at page 38.

On 6 May 2008 the defendant was found guilty by a jury in the District Court of New South Wales of 9 counts of making a false statement with intent to obtain a financial advantage pursuant to section 178BB of the *Crimes Act 1900* (NSW). These offences related to the promotion of investments in the form of mezzanine financing through Westpoint Mezzanine companies to be utilised in the realisation of Westpoint projects. The defendant was responsible for obtaining a financial advantage for the Westpoint Mezzanine companies in the order of \$1,175,000.

On 22 August 2008 the defendant was sentenced to 12 months imprisonment to be released forthwith and fined \$50,000.

The Director appealed against the inadequacy of the sentence. On 10 February 2009 the New South Wales Court of Criminal Appeal dismissed the appeal, finding that whilst the sentence imposed was manifestly inadequate, the Court should refuse to intervene in the exercise of its discretion.

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### **PETER BRAUN**

#### **DISHONEST CONDUCT**

THIS MATTER IS THE FIRST PROSECUTION OF AN AUTHORISED REPRESENTATIVE OF AN AUSTRALIAN FINANCIAL SERVICES LICENSEE FOR ENGAGING IN DISHONEST CONDUCT IN RELATION TO A FINANCIAL PRODUCT PURSUANT TO SECTION 1041G OF THE *CORPORATIONS ACT*. IT IS AUTHORITY FOR THE PRINCIPLE THAT THE OBJECTIVE CRIMINALITY CAN REMAIN HIGH EVEN WHEN THE OFFENDER IS NOT A SENIOR EXECUTIVE OR AN EMPLOYEE EXERCISING MANAGERIAL CONTROL.

The defendant was engaged as an authorised representative of Fundamental Group Pty Ltd from June 2004 to October 2006, to be a share trader on behalf of investors. Part of his duties was to report to the investors about how their investment was performing and he earned income by way of commission only.

The defendant's reports to 6 investors were false in that they overstated the value of the investments and referred to securities and quantities which were not in fact held by those investors. The false reports gave the investors the impression that their investments had risen in value when in fact they had sharply declined in value.

When one of the investors requested documents known as Buy/Sell Confirmations which evidenced the specific stocks bought and sold by the offender on their behalf for the purposes of complying with tax obligations, the defendant prepared false Buy/Sell Confirmations and gave them to the investor.

In total, the investors suffered a loss to their investments of \$838,270.00.

The defendant was charged with 6 counts of engaging in dishonest conduct in relation to a financial product pursuant to section 1041G of the *Corporations Act* and 2 counts of making a false instrument with intention to induce another to accept it as genuine to their prejudice pursuant to section 300(1) of the *Crimes Act 1900* (NSW).

On 25 July 2008 in the District Court of New South Wales the defendant was sentenced to a total effective penalty of 3 years and 3 months imprisonment to be released after serving 2 years and 5 months on condition that he be of good behaviour for the balance of the term.

The defendant appealed to the New South Wales Court of Criminal Appeal against the severity of this sentence. On 5 November 2008 the defendant's appeal was upheld and his sentence was reduced to a total effective penalty of 2 years and 8 months to be released after serving 1 year and 8 months on condition that he be of good behaviour for the balance of the term.

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### **ROBIN POUMAKO AND ANN-MARIE DONALDSON**

#### **UNLAWFUL FUNDRAISING**

This case was reported in the 2007-2008 Annual Report at page 41 and represents the first contested prosecution of the unlawful fundraising offences contained in sections 727(1) and (4) of the *Corporations Act*.

The defendants were the directors and shareholders of International Finance Corporation Ltd (IFC) and procured investors to make loans to IFC by way of debentures. During the period between December 2002 and December 2003 IFC raised \$3,015,000 from 37 investors.

The *Corporations Act* requires that a disclosure document must be lodged with ASIC and be provided to investors in relation to any issue of securities, such as debentures, which results in either the issue of securities to more than 20 investors, or the raising of more than \$2 million, in any 12 month period.

Although IFC breached the 20 investor ceiling on 14 July 2003 it did not lodge a disclosure document with ASIC or make disclosure to investors in accordance with the requirements of the *Corporations Act* in respect of subsequent offers of debentures.

The defendants were charged with 22 counts of unlawfully offering securities pursuant to section 727(1) of the *Corporations Act* and 22 counts of unlawfully issuing securities pursuant to section 727(4) of the *Corporations Act*. The charges related to 22 loans totalling \$1,228,000 made by 19 investors from 14 July 2003.

Following a 15 day trial the defendants were convicted by a jury in the District Court of South Australia.

The defendants were sentenced on 1 October 2008. Poumako was sentenced to 2½ years imprisonment to be released after serving 12 months on condition that he be of good behaviour for 18 months. Donaldson was sentenced to 18 months imprisonment to be released forthwith on condition that she be of good behaviour for 18 months.

Poumako appealed against both his conviction and sentence. Donaldson appealed against her conviction and the Director appealed against the inadequacy of her sentence.

On 19 February 2009 the South Australia Court of Criminal Appeal dismissed Poumako's appeal against his conviction, but allowed Donaldson's appeal in part, setting aside 26 of her 44 convictions.

On 2 April 2009 the South Australian Court of Criminal Appeal dismissed Poumako's appeal against sentence and re-sentenced Donaldson to 18 months imprisonment to be released forthwith on condition that she be of good behaviour for 12 months. The Director's appeal against Donaldson's sentence was discontinued following her partially successful conviction appeal.

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## HANNA SMOLAREK

### DIRECTOR'S RESPONSIBILITIES

The defendant was convicted of 1 count of failing, as a director of EZNut Pty Ltd, to provide the company's books and records to the Administrator of the company as soon as practicable pursuant to section 438B of the *Corporations Act*. The defendant was fined \$500 and ordered to pay \$1,000 in costs.

The defendant unsuccessfully sought a review order pursuant to section 26 of the *Magistrates Court Act 2004 (WA)* in relation to entering a plea as provided for in section 126 of the *Criminal Procedure Act 2004 (WA)*. The defendant also appealed against her conviction on the basis that ASIC had no power to commence a prosecution as it had not conducted an investigation as required under section 49 of the *ASIC Act*. Leave to appeal was refused. Both of these decisions were unsuccessfully appealed by the defendant.

The Western Australian Court of Appeal held that:

- ▶ in the matter proceeding to hearing without compliance with the requirements of section 126 of the *Criminal Procedure Act 2004 (WA)* there was no miscarriage of justice as the defendant was still afforded the trial that would have been required to occur in any event;
- ▶ section 49 of the *ASIC Act* does not set out exhaustively the power of ASIC to commence prosecutions for offences against the *Corporations Act* and consequently ASIC was entitled to commence the prosecution against the appellant by virtue of section 1315 of the *Corporations Act*;
- ▶ section 438B of the *Corporations Act* created only 1 offence, with the obligation of a director being both to deliver all of the books of the company to the administrator and to tell the administrator where those books are.

The defendant has lodged an appeal with the High Court of Australia.

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## CARRERABENZ DIAMOND INDUSTRIES PTY LTD

### CONSUMER PROTECTION

The defendant placed advertisements in 6 national newspapers advertising diamond sales to be held at large hotels in Melbourne, Sydney, Perth and Adelaide. Diamonds were advertised with two prices – a usual marked price and a 'crazy price' that the diamonds were to be sold for. In fact, the representation was false and misleading as the diamonds had never been offered for sale at the usual marked price.

The defendant was charged with 27 counts of making a false or misleading representation about the price of goods in connection with the promotion of goods in advertisements pursuant to section 75AZC of the *Trade Practices Act 1974*.

On 9 July 2008 in the Federal Court of Australia in Brisbane the defendant was fined \$200,000.

IN SENTENCING THE DEFENDANT THE COURT SAID, "... A PARTICULAR PURPOSE OF THE TRADE PRACTICES ACT IS CONSUMER PROTECTION. FURTHER, OFFENCES AGAINST THE TRADE PRACTICES ACT ARE NOT ALWAYS EASY TO DETECT OR, AT LEAST, INSOFARAS THEY ARE DETECTED, INVOLVE A CONSIDERABLE INVESTMENT IN PUBLIC FUNDS IN THEIR INVESTIGATION AND PROSECUTION."

"THERE IS A NEED FOR A REMINDER TO BE GIVEN TO THOSE WHO ENGAGE IN TRADE AND COMMERCE THAT AN ADVERTISEMENT WHICH IS MISLEADING IN THE REPRESENTATION MADE IN RESPECT OF PRICE IS CRIMINAL CONDUCT AND WILL BE VISITED WITH SALUTARY PENALTY IF PROVED."

### **ASCOT FOUR PTY LTD (FORMERLY KNOWN AS ZAMEL'S PTY LTD)**

#### **CONSUMER PROTECTION**

The defendant was the proprietor of a jewellery retail business with jewellery stores throughout Australia. In November 2005 the defendant published a catalogue advertising a number of items of jewellery at a sale price for the limited period of one month ending on Christmas Eve. The sale price appeared next to the pre-sale price which had a line through it. Eleven of the items of jewellery in the catalogue were never sold at or close to the advertised 'strikethrough' price.

The defendant was charged with 11 counts of making false or misleading statements about the price of goods pursuant to section 75AZC(1)(g) of the *Trade Practices Act 1974*.

On 23 January 2009, following a hearing in the Federal Court of Australia in Adelaide, the defendant was convicted and fined a total of \$380,000. The defendant appealed against the convictions and the Full Federal Court dismissed the appeal.

### **WILLIAM SCOTT RODWAY**

#### **FAILURE TO DISCLOSE**

This case addresses the treatment of property which a bankrupt acquires with income earned during bankruptcy.

The defendant was declared bankrupt on 9 July 1999. Whilst bankrupt, the defendant was employed by and received \$155,440 in income from Jiffy Foods. The defendant's income was credited to his bank account. The defendant used the income in his account to purchase shares in various companies listed on the Australian Stock Exchange and failed to declare this to his trustee.

The defendant was charged with 21 counts of failing to disclose to his trustee his interest in shares pursuant to section 265(1)(a) of the *Bankruptcy Act 1966*.

On 27 January 2009 in the Magistrates Court of Western Australia the defendant was convicted and fined \$5,700. The defendant appealed against his conviction to the Supreme Court of Western Australia.

The defendant argued on appeal that because ‘after-acquired income’ of a bankrupt (i.e. income earned during bankruptcy) does not constitute after-acquired property which is divisible amongst creditors pursuant to section 116(1) of the *Bankruptcy Act 1966*, property such as the shares he had acquired by the use of that income is not property which is divisible amongst creditors. The defendant then argued that the shares did not need to be disclosed pursuant to section 265(1)(a) of the *Bankruptcy Act 1966* or at all.

On 20 July 2009 the Supreme Court of Western Australia held that where a bankrupt converts after-acquired income into a distinctly different form of property, then unless the property comes within section 116(1), the bankrupt acquires property that is divisible amongst creditors and is therefore property which must be disclosed. As the defendant had converted his income into a distinctly different form of property which did not fall within any exempt category under section 116(2), he should have disclosed his acquisition of the shares.

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## JOHN NAVAROLLI

### FAILURE TO DISCLOSE AND FORGERY

The defendant had been declared bankrupt twice in a previous name. In 2002 he failed to disclose his previous bankruptcies and previous name in the statement of affairs concerning his third bankruptcy. In 2004 the defendant was attempting to prop up a failing business and obtained credit in the amount of approximately \$33,000 without disclosing that he was an undischarged bankrupt. Amongst other things, a boat was offered as security for the loan. The defendant subsequently obtained \$20,000 from another person in exchange for the boat, having represented that he owned the boat outright and it was unencumbered. When this person found out the boat had been offered as security for a loan, the defendant forged a letter stating that the boat was not security for a loan. He also forged the signature of his business partner on a cheque for \$5,000.

The defendant was charged with 1 count of obtaining credit in excess of the prescribed amount without informing the credit provider that he was an undischarged bankrupt pursuant to section 269(1)(a) of the *Bankruptcy Act 1966*, 2 counts of forging a document with intent to defraud under section 488(1)(a) of the *Criminal Code 1899* (Qld) and 1 count of dishonestly obtaining property pursuant to section 408C(1) of the *Criminal Code 1899* (Qld).

The defendant claimed to be medically unfit to stand trial, however it was discovered that he was working full-time. When the trial started, he called the police and threatened to harm himself and was put in a psychiatric facility. On failing to appear at court the court asked that the defence produce medical evidence for his absence or a warrant for his arrest would issue. The defendant then appeared and the trial resumed.

The defendant was found guilty and sentenced in the District Court of Queensland in Brisbane to a total effective penalty of 2 years imprisonment to be released after serving 12 months on condition that he be of good behaviour for 4 years.

The defendant appealed to the Queensland Court of Appeal against his convictions. The appeal was dismissed.



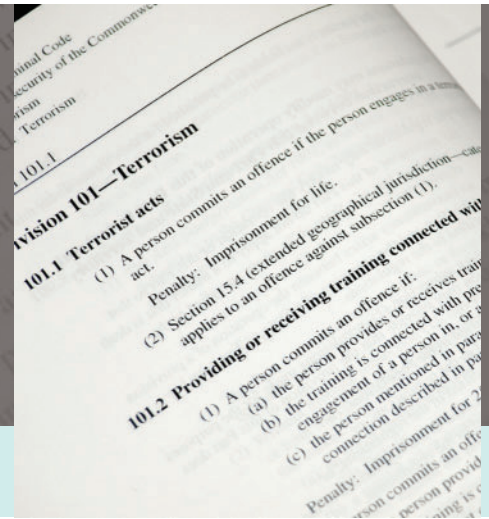


## Prosecutions Arising Out of the Collapse of HIH

The HIH Group consisting of HIH Insurance Ltd and its related companies was Australia's second largest insurer and its collapse was one of the largest corporate failures in Australian history. A Royal Commission was established to inquire into the reasons why the Group failed. On 4 April 2003 Royal Commissioner Justice Owen handed down his report in which he recommended, among other things, that 56 matters be referred to ASIC for investigation and possible criminal prosecution. On 3 July 2003 the Government announced that the CDPP would have carriage of any criminal prosecutions arising from the collapse of HIH and its related companies.

The briefs of evidence referred to the CDPP by ASIC were typically voluminous and complex. The CDPP conducted 18 prosecutions arising from ASIC's investigations. Some of the prosecutions related to the same defendant. Ultimately 10 persons were convicted of offences, 4 were acquitted or discharged at committal, and charges were discontinued in relation to 1 person.

## 2.4 Counter-terrorism



**AN IMPORTANT PART OF THE WORK OF THE CDPP IS THE PROSECUTION OF THE TERRORIST OFFENCES CONTAINED IN PART 5.3 OF THE *CRIMINAL CODE*.**

These provisions were first enacted by the *Security Legislation Amendment (Terrorism) Act 2002* in July 2002 and have been amended from time to time. The CDPP continues to provide assistance to the Attorney-General's Department on law reform proposals which may affect terrorism offences, or the way in which such offences are prosecuted. The CDPP also assists in a number of inter-departmental committees by providing advice on issues of practice and procedure which arise in the context of terrorism prosecutions.

Terrorism prosecutions are often factually complex and may involve large quantities of evidence. The CDPP's experience has been that terrorism prosecutions are often subject to numerous interlocutory appeals and challenges. To respond to these challenges, the CDPP has designated specialist counter-terrorism prosecutors in each regional office and has established Counter-Terrorism Branches in the Sydney and Melbourne Offices and Head Office. These branches are staffed by experienced senior prosecutors. Head Office has oversight of the conduct of counter-terrorism prosecutions.

The Joint Counter-Terrorism Task Force comprising of the AFP, State and Territory Police is responsible for the investigation of persons suspected to have committed Commonwealth terrorism offences. Following the provision of briefs of evidence, the CDPP evaluates whether the *Prosecution Policy* is satisfied and when appropriate conducts any prosecution. The AFP and the CDPP maintain a positive relationship and the CDPP provides early legal advice to the AFP during their investigations.

In February 2008 a review by former NSW Chief Justice, Sir Laurence Street, was completed into the interoperability between the AFP and its national security partners. Substantial work has occurred over the last year in responding to the recommendations of the Street Review. This includes a new Joint Operations Protocol between ASIO and the AFP and new Counter-Terrorism Prosecution Guidelines. The Counter-Terrorism Prosecution Guidelines clarify the roles and responsibilities of the CDPP, AFP and ASIO during the investigation and prosecution of counter-terrorism matters.

On 13 March 2008 the Attorney-General, the Hon Robert McClelland MP, announced the appointment of the Hon John Clarke QC to conduct an inquiry into the case of Dr Mohamed Haneef. The CDPP formally offered its commitment to cooperate fully with the Inquiry and to assist the Inquiry in any way that it could. On 21 May 2008 the CDPP provided the Inquiry with a comprehensive submission addressing the involvement of the CDPP in the prosecution of Dr Haneef and addressing the Inquiry's Terms of Reference. Documents relating to the prosecution of Dr Haneef were also provided to the Inquiry. On 14 August 2008 the CDPP provided a submission to the Inquiry that was published on the Inquiry's website.

On 21 November 2008 Mr Clarke presented the report of his inquiry into the case of Dr Haneef to the Attorney-General. The report was tabled in Parliament on 23 December 2008 together with the Government's response. The Government has accepted, and has said that it will implement, all 10 recommendations made by Mr Clarke. The CDPP welcomed Mr Clarke's Report and is cooperating fully in the implementation of its recommendations. The CDPP believes that the implementation of Mr Clarke's recommendations will further enhance coordination between the agencies.

AS AT 30 JUNE 2009 THERE WERE 13 PEOPLE FACING CHARGES FOR COMMONWEALTH TERRORISM OFFENCES IN AUSTRALIA. ONE MAJOR TERRORISM TRIAL COMMENCED IN NOVEMBER 2008 INVOLVING 5 ACCUSED PERSONS AND WAS ONGOING AT 30 JUNE 2009. TWO FURTHER MAJOR TRIALS ARE EXPECTED TO COMMENCE IN THE CURRENT FINANCIAL YEAR. APPLICATIONS FOR LEAVE TO APPEAL AGAINST CONVICTION AND SENTENCE HAVE ALSO BEEN FILED BY 11 ACCUSED WHOSE TRIALS WERE COMPLETED THIS YEAR.

SINCE 30 JUNE 2009 A MAJOR POLICE OPERATION HAS RESULTED IN A FURTHER 5 PEOPLE BEING CHARGED WITH COMMONWEALTH TERRORISM OFFENCES. IN ADDITION, 2 FURTHER ACCUSED IN SEPARATE MATTERS HAVE ENTERED PLEAS OF GUILTY TO COMMONWEALTH TERRORISM OFFENCES AND ARE AWAITING SENTENCE.

### JOSEPH TERENCE THOMAS

#### COUNTER-TERRORISM

This case was reported in the 2005-2006 Annual Report at page 19-20 and in the 2007-2008 Annual Report at page 50.

On 4 January 2003 the defendant was apprehended by Pakistani officials attempting to leave Pakistan for Australia. It was alleged that at the time he was apprehended the defendant was in possession of an Australian passport which had been falsified. It was further alleged that he was also in possession US\$3,500 cash which had been provided to him by the terrorist organisation, Al Qaeda. The defendant was detained by Pakistani officials between January and June 2003. On 8 March 2003 the defendant was interviewed by AFP officers in Pakistan and in the course of that interview made a series of admissions to police. The defendant was arrested by the AFP in Australia in November 2004.

The defendant was charged with 1 count of receiving funds from a terrorist organisation pursuant to section 102.6(1) of the *Criminal Code*, 2 counts of providing resources to a terrorist organisation pursuant to section 102.7(1) of the *Criminal Code* and 1 count of possessing a falsified Australian passport pursuant to section 9A(1)(e)(i) of the *Australian Passports Act 2005*. Prior to the commencement of his trial, lawyers acting for the defendant unsuccessfully applied to the Supreme Court of Victoria to have the evidence of the record of interview conducted with the AFP in Pakistan excluded from the evidence to be used against him at trial.

On 26 February 2006 the defendant was found guilty by a jury for the offences of receiving funds from a terrorist organisation and possessing a falsified Australian passport. He was acquitted of the remaining counts. On 31 March 2006 in the Supreme Court of Victoria the defendant was sentenced to a total effective penalty of 5 years imprisonment with a non-parole period of 2 years.

On 27 February 2006 the Australian Broadcasting Corporation aired a Four Corners television program entitled 'The Convert' which included an interview between journalist Sally Neighbour and the defendant during which the defendant made relevant admissions.

The defendant appealed against his conviction and sentence. On 18 August 2006 the Victorian Court of Appeal quashed the convictions on the basis that the record of interview admitted into evidence at the trial had not been provided voluntarily. On 20 December 2006 the Victorian Court of Appeal directed that the defendant be retried on the 2 counts on which he was originally convicted. The Court upheld a submission by the prosecution that statements made by the defendant in his Four Corners interview were capable of supporting a conviction on both counts. The decision of the Court of Appeal to order a retrial was the subject of further legal proceedings brought by the defendant, including an unsuccessful application for Special Leave before the High Court of Australia.

On 23 October 2008 in the Supreme Court of Victoria a jury found the defendant guilty of possessing a falsified Australian passport but not guilty of the offence of receiving funds from a terrorist organisation. On 29 October 2008 the defendant was sentenced to 9 months imprisonment to be released after serving 265 days. Taking into account the time already served, the defendant was released immediately.

**ABDUL NACER BENBRIKA, AIMEN JOUD, FADL SAYADI, SHANE KENT, HANY TAHA, ABDULLAH MERHI, BASSAM RAAD, AHMED RAAD, SHOUE HAMMOUD, EZZIT RAAD, MAJED RAAD, AMER HADDARA, IZZYDEN ATIK**  
**COUNTER-TERRORISM**

This case was reported in the 2007-2008 Annual Report at pages 49-50.

On 15 and 16 September 2008 in the Supreme Court of Victoria a jury found Benbrika, Joud, Sayadi, Merhi, Ahmed Raad, Ezzit Raad and Haddara guilty of intentionally being members of a terrorist organisation pursuant to section 102.3(1) of the *Criminal Code*. The organisation was said to be a local, home grown, terrorist organisation led by Benbrika committed to preparing, planning, assisting in or fostering the doing of a terrorist act. Joud, Ahmed Raad and Sayadi were also each found guilty of intentionally providing resources to the same terrorist organisation pursuant to section 102.7(1) of the *Criminal Code*. Ahmed Raad, Joud and Ezzit Raad were found guilty of attempting to intentionally make funds available to the terrorist organisation pursuant to section 102.6(1) of the *Criminal Code*. Joud and Benbrika were found guilty of possessing a thing connected with the preparation for a terrorist act pursuant to section 101.4(1) of the *Criminal Code*. Benbrika was also found guilty of intentionally directing the activities of the terrorist organisation pursuant to section 102.2(1) of the *Criminal Code*. Bassam Raad, Hammoud, Majed Raad and Taha were acquitted of all charges whilst the jury were unable to reach a verdict with respect to the charge brought against the defendant, Kent.

On 3 February 2009 the Supreme Court of Victoria sentenced the defendants as follows:

- ▶ Benbrika: convicted and sentenced to a total effective penalty of 15 years imprisonment with a non-parole period of 12 years;
- ▶ Joud: convicted and sentenced to a total effective penalty of 10 years imprisonment with a non-parole period of 7½ years;
- ▶ Sayadi: convicted and sentenced to a total effective penalty of 8 years imprisonment with a non-parole period of 6 years;
- ▶ Merhi : convicted and sentenced to be imprisoned for 6 years with a non-parole period of 4½ years;
- ▶ Ahmed Raad : convicted and sentenced to a total effective penalty of 10 years imprisonment with a non-parole period of 7½ years;
- ▶ Ezzit Raad: convicted and sentenced to a total effective penalty of 6½ years imprisonment with a non-parole period of 5 years and 9 months;
- ▶ Haddara: convicted and sentenced to 6 years imprisonment with a non-parole period of 4½ years.

Atik had earlier pleaded guilty to being a member of a terrorist organisation pursuant to section 102.3(1) of the *Criminal Code* and providing support to a terrorist organisation pursuant to section 102.7(1) of the *Criminal Code*. He made a statement to police regarding his involvement in these offences and undertook to give evidence for the prosecution at the trial of his co-accused.

On 23 August 2007 Atik was convicted and sentenced to a total effective penalty of 5½ years imprisonment with a non-parole period of 4 years, 1 month and 14 days. The Court declared that, but for his undertaking to co-operate with law enforcement agencies, he would have been sentenced to an aggregate sentence of 7½ years imprisonment with a non-parole period of 5 years, 7 months and 15 days.

Applications for leave to appeal against conviction and sentence have been lodged by all the defendants sentenced on 3 February 2009 except Merhi who has sought leave to appeal only against his conviction. These applications for leave to appeal are expected to be heard in early 2010.

On 28 July 2009 Kent appeared before the Supreme Court of Victoria where he pleaded guilty to 1 count of intentionally being a member of the Benbrika terrorist organisation pursuant to section 102.3(1) of the *Criminal Code* and 1 count of making a document connected with preparation for a terrorist act pursuant to section 101.5(2) of the *Criminal Code*.

On 2 September 2009 in the Supreme Court of Victoria Kent was sentenced to a total effective penalty of 5 years imprisonment with a non-parole period of 3 years and 9 months — 1,115 days of pre-sentence custody was declared to be time already served.

**ARURAN VINAYAGAMOORTHY, SIVARAJAH YATHAVAN & ARUMUGAM RAJEEVAN****ALLEGED COUNTER-TERRORISM**

This case was reported in the 2007-2008 Annual Report at page 51.

Vinayagamorthy and Yathavan were arrested by the AFP on 1 May 2007. Rajeevan was arrested on 10 July 2007. Pre-trial legal proceedings commenced before the Supreme Court of Victoria in the second half of 2008. The 3 defendants are now awaiting trial before the Supreme Court of Victoria on a number of charges alleging that each made assets available to a proscribed entity, namely the Liberation Tigers of Tamil Eelam, contrary to section 21 of the *Charter of the United Nations Act 1945*. The trial is expected to commence in the second half of 2009.

**BELAL SAADALLAH KHAZAAL****COUNTER-TERRORISM**

THIS WAS THE FIRST PROSECUTION WHERE A PERSON WAS CHARGED WITH ATTEMPTING TO INCITE A TERRORIST ACT. THE DEFENDANT MADE A NUMBER OF CHALLENGES TO THE INDICTMENT AS WELL AS CONSTITUTIONAL CHALLENGES TO THE VALIDITY OF THE *TELECOMMUNICATIONS (INTERCEPTION) ACT 1979* AND *AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION ACT 1979*.

The prosecution alleged that the defendant compiled a 'book' titled "*Provisions on the Rules of Jihad – Short Judicial Rulings for Fighters and Mujahideen Against Infidels*" using a pseudonym. The book urged Muslims to engage in a holy war against a list of various nations and contained what may loosely be termed as an 'assassination manual'.

In September 2003 the defendant requested that the book be published on a website. The book was subsequently published on the website and downloaded numerous times before it was removed. The defendant was arrested and charged on 2 June 2004.

The defendant was charged with 1 count of knowingly making a document connected with assistance in a terrorist act pursuant to section 101.5(1) of the *Criminal Code* and 1 count of attempting to incite the commission of a terrorist act pursuant to sections 11.1(1), 11.4(1) and 101.1(1) of the *Criminal Code*.

Following a trial the defendant was convicted of knowingly making a document connected with assistance in a terrorist act, but the jury was unable to reach a unanimous verdict on the offence of attempting to incite the commission of a terrorist act.

On 25 September 2009 in the Supreme Court of New South Wales the defendant was sentenced to 12 years imprisonment with a non-parole period of 9 years.

## 2.5 Money laundering



MONEY LAUNDERING PROSECUTIONS ARE TYPICALLY COMPLEX PROSECUTIONS, INVOLVING COMPLICATED FACTUAL CIRCUMSTANCES AND OFTEN INCLUDING CONDUCT OVERSEAS, WHICH REQUIRES OVERSEAS COOPERATION AND EVIDENCE TO ASSIST THE INVESTIGATION AND PROSECUTION. THE PROSECUTION OF THESE OFFENCES OFTEN REQUIRES DETAILED FINANCIAL ANALYSIS AND EVIDENCE. THE CDDP IS PROSECUTING AN INCREASING NUMBER OF MONEY LAUNDERING PROSECUTIONS SINCE THE ENACTMENT OF THE MONEY LAUNDERING OFFENCES IN THE *CRIMINAL CODE*.

The Federal Government enacted specific money laundering offences in 1987 with the passage of the *Proceeds of Crime Act 1987*. The Act included 2 money laundering offences — section 81 (money laundering) and section 82 (possession of property suspected of being proceeds of crime).

Following recommendations by the Australian Law Reform Commission in its report No. 87 – *Confiscation that Counts – A Review of the Proceeds of Crime Act 1987*, the legislature repealed sections 81 and 82 of the *Proceeds of Crime Act 1987* and replaced them with the current provisions relating to money laundering in Part 10.2 (Division 400) of the *Criminal Code*. Those provisions came into effect on 1 January 2003.

### **HONG PHONG LE AND NGOC THUAN NGUYEN**

#### **INTERNATIONAL MONEY LAUNDERING**

Le and Nguyen were members of the Ken syndicate, a Sydney based drug syndicate comprising about 10 members and named after its leader Khanh Tran (Ken). The syndicate purchased drugs, both overseas and locally, and onsold them to syndicate members and buyers in Victoria. Money used for the purchase of the drugs was channelled through money remittance businesses in Melbourne, Sydney and Vietnam.

Between December 2005 and July 2006 there was at least 117 remittances on behalf of the syndicate totalling in excess of \$4,725,850 with approximately \$515,000 being sent from Australia to Vietnam. The investigation uncovered 4 separate importations and 6 instances of trafficking, during the 7 month offence period.

Le, a Sydney based member of the syndicate, was the second-in-command and Ken's right-hand man. He was charged with and pleaded guilty to 1 count of conspiring to import a marketable quantity of heroin pursuant to section 233B(1)(a)(iii) of the *Customs Act*, 1 count of conspiring to traffic in commercial quantities of heroin and methamphetamine pursuant to section 302.2(1) of the *Criminal Code* and 1 count of conspiring to deal in over \$1 million intended as an instrument of crime pursuant to section 400.3(1) of the *Criminal Code*.



On 25 September 2008 in the District Court of New South Wales in Sydney Le was sentenced to a total effective penalty of 13½ years imprisonment with a non-parole period of 9 years. He was given a 50% discount on his sentence for his guilty plea and assistance. The court indicated that but for the defendant's guilty plea and assistance the court would have considered him to be a candidate for life imprisonment.

Nguyen, a Melbourne based syndicate member, was charged with and pleaded guilty to 1 count of conspiring to traffic commercial quantities of heroin and methamphetamine pursuant to section 302.2(1) of the *Criminal Code* and 1 count of conspiring to deal in over \$1 million intended to be used as an instrument of crime pursuant to section 400.3(1) of the *Criminal Code*.

On 9 April 2009 in the District Court of New South Wales in Sydney Nguyen was sentenced to a total effective penalty of 8 years imprisonment with a non-parole period of 5 years. Nguyen was given a 25% discount on her sentence for her guilty plea.

Ken has pleaded guilty and is due to be sentenced in October 2009.

## Operation Checkmate

IN SENTENCING THE DEFENDANTS INVOLVED IN THIS MATTER THE COURT RE-EMPHASISED THE IMPORTANCE OF GENERAL DETERRENCE TO DISCOURAGE 'SERIOUS AND SOPHISTICATED OFFENDING INVOLVING LARGE SCALE FRAUD UPON THE COMMONWEALTH'.

### **MARK PRCHAL, JEAN MARC RAFFAUT, CARLOS ANTONIO ROJAS AND TOMAS SMETANA** MONEY LAUNDERING AND FRAUD

Between October 2003 and December 2003 Raffaut, an accountant, prepared amended income tax returns in the name of his friend, Prchal for the 2001 and 2002 financial years and lodged them with the ATO. The amended returns contained false information in relation to dividend imputation credits from shares. As a result the ATO paid Prchal \$35,038.87 in refunds to which he was not entitled.

Raffaut and Prchal then agreed to extend the fraud by lodging false amended returns in the names of other taxpayers. Raffaut agreed to provide tax file numbers and personal details of genuine taxpayers to which he had access in the course of his employment. Rojas was recruited to attend at the offices of tax agents representing himself to be the various taxpayer identities. He was offered \$200-\$250 a day to do this. Smetana was recruited by Prchal to provide details of his bank accounts so that payment of the refunds from the false returns could be directed into those accounts. Smetana was to receive 8% of the proceeds of the refunds for his involvement.

During January 2004 amended returns were lodged with the ATO in respect of the 2001 and 2002 financial years in the names of 11 taxpayer identities. These returns contained false details in relation to family trust distributions, imputation credits and interest deductions. As a result of the lodgement of these false returns, refunds totalling \$262,580.23 were paid by the ATO into 3 nominated bank accounts. Refunds totalling a further \$162,121.89 were claimed, however payment was not made by the ATO.

Prchal was charged with 1 count of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code* and 1 count of conspiring to obtain a

financial advantage by deception pursuant to sections 11.5(1) and 134.2(1) of the *Criminal Code*.

Raffaut was charged with 1 count of aiding, abetting, counselling or procuring obtaining a financial advantage by deception pursuant to sections 11.2(1) and 134.2(1) of the *Criminal Code* and 1 count of conspiracy to obtain a financial advantage by deception pursuant to sections 11.5(1) and 134.2(1) of the *Criminal Code*.

On 10 October 2008 in the County Court of Victoria in Melbourne Prchal and Raffaut were each sentenced to 2½ years imprisonment to be released after serving 12 months on condition that they be of good behaviour for 18 months. They were ordered to make reparation to the Commonwealth in the sum of \$66,298.78 each, representing their portion of the outstanding balance of the total amount fraudulently obtained.

Rojas was charged with 1 count of conspiring to obtain a financial advantage by deception pursuant to sections 11.5(1) and 134.2(1) of the *Criminal Code*.

On 10 October 2008 in the County Court of Victoria in Melbourne Rojas was sentenced to 12 months imprisonment to be released forthwith on condition that he be of good behaviour for 12 months. He was ordered to make reparation to the Commonwealth in the sum of \$31,259.91, representing the balance outstanding of the amount fraudulently obtained in relation to the count of conspiracy.

Smetana was charged with 1 count of recklessly dealing with proceeds of crime worth \$100,000 or more pursuant to section 400.4(2) of the *Criminal Code*.

On 10 October 2008 in the County Court of Victoria in Melbourne Smetana was sentenced to 12 months imprisonment to be released forthwith on condition that he be of good behaviour for 12 months. He was ordered to make reparation to the Commonwealth in the sum of \$27,708.11, representing the balance outstanding after deduction of all amounts recovered as at the date of sentence from the total amount of refunds paid into his bank accounts.

In sentencing the defendants the court re-emphasised the importance of general deterrence to discourage 'serious and sophisticated offending involving large scale fraud upon the Commonwealth'. The court accepted the prosecution submission that immediate custodial sentences were required in respect of the two principal offenders, Prchal and Raffaut, despite Prchal's absence of relevant prior convictions and Raffaut's absence of any prior convictions. The court noted that the involvement and implication of numerous innocent people and, in the case of Raffaut, the breach of trust that he owed to his employer and to his employer's clients, were aggravating factors.

Prchal and Raffaut each lodged appeals against their sentences, however later abandoned those appeals.

**VASILE POP****FAILURE TO REPORT FUNDS**

On 2 April 2009 the defendant was arrested at Perth International Airport after an amount equivalent to AUD\$72,464 was detected in his hand luggage and hidden inside shoes in his checked-on baggage. He admitted to police that he had concealed the money knowing that he was required by law to declare it. The defendant said that the money was part of approx \$190,000 which had been given to him for safekeeping by a Sydney drug dealer and which he had buried in his backyard. After the drug dealer was killed he treated the money as his own. He laundered some of the money through casinos. The defendant was taking the money out of the country to 'clean it' by mixing it with funds from the sale of property overseas. The defendant stated that he intended to declare all of those funds when he returned to Australia.

The defendant was charged with 1 count of transferring out of Australia an amount of currency greater than AUD\$10,000 without making a report in respect of that transaction pursuant to section 53(1)(a)(ii) of the *Anti-Money Laundering and Counter-Terrorism Act 2006*.

On 26 June 2009 in the Magistrates Court of Western Australia in Perth the defendant was sentenced to 8 months imprisonment to be released after serving 4 months on condition that he be of good behaviour for 18 months. The money was forfeited to the Commonwealth pursuant to section 48(2) of the *POC Act 2002*.

**RK AND LK****ALLEGED MONEY LAUNDERING**

About September 2003 LK met with a person called 'Dallas' or 'Douglas' who was interested in meeting someone for an investment. LK introduced 'Dallas' or 'Douglas' to Ralph Michael. Ralph Michael asked LK if he knew anyone who had an European bank account to be used for the investment. As a result LK approached RK on numerous occasions for details relating to his Swiss bank account. RK eventually provided the account details to humour LK expecting nothing to come of it.

On 24 December 2003 a number of persons other than the defendants defrauded the Commonwealth Superannuation Scheme (CSS) by way of a fraudulent fax. A fax was sent to JP Morgan, who was the bank acting as custodian for the CSS, instructing that funds of approximately AUD\$150 million be transferred to 4 designated bank accounts. One of the accounts to which the money was transferred was held in the name of RK.

RK held a Swiss bank account with Banque Cantonale Vaudoise (BCV) from about 1994. The account had been dormant between November 1994 and December 2003. On 24 December 2003, as a result of the fraudulent fax, JP Morgan transferred the amount of 24,876,432.87 Swiss Francs into RK's account.

On 26 December 2003 RK received a fax at his home from Ralph Michael instructing him to withdraw the full amount 'in cash and leave it until further instruction'.

LK disembarked a cruise ship in Hobart and returned to Sydney having commenced the cruise on 20 December 2003.

On 29 December 2003 LK travelled to RK's home in Leura. During that evening RK made telephone calls to Switzerland. At approximately 11:52pm Ralph Michael sent a facsimile to RK instructing him to transfer 23,632,611.23 Swiss Francs from his account to an account held with a New York bank. RK subsequently altered the addressee of the fax, the signature and the amount to 23 million Swiss Francs and sent it to BCV by fax at 12:37am on 30 December 2003.

On the same day JP Morgan detected the fraud and notified BCV seeking to stop the payment. Ultimately the entire amount was returned to JP Morgan.

Between 24 and 30 December 2003 LK, RK and Ralph Michael were in telephone contact with each other.

The defendants were charged with 1 count of conspiracy to recklessly deal with the proceeds of crime worth \$1 million or more pursuant to sections 11.5(1) and 400.3(2) of the *Criminal Code*.

**DISTRICT COURT OF NEW SOUTH WALES**

Both defendants pleaded not guilty to the charge and the matter proceeded to trial in the District Court of New South Wales. At the conclusion of the prosecution case legal representatives for both defendants made submissions that there was no case to answer. The submissions on behalf of LK were directed to the sufficiency of the evidence only. However, the submissions made on behalf of RK were that the prosecution could not prove the offence which it had charged because in applying the conspiracy provision to the offence the prosecution was required to establish that the conspirators knew all of the facts that made their conduct criminal. However,

the prosecution relied upon recklessness to prove the nature of the funds were the proceeds of crime and did not rely upon the fault element of knowledge/belief.

Following submissions from all parties the trial Judge took the view that she was bound to apply the law as the court understood it in *Ansari v R* (2007) 173 A Crim R 112. The trial Judge found that the charge on the indictment, on the case presented by the prosecution, was bad or unknown to the law. Accordingly, the trial Judge directed verdicts of acquittal in relation to both LK and RK.

#### **NEW SOUTH WALES COURT OF CRIMINAL APPEAL**

Following the directed verdicts the Director appealed the decision of the trial Judge to the New South Wales Court of Criminal Appeal pursuant to section 107 of the *Crimes (Appeal and Review) Act 2001* (NSW).

The grounds of appeal were:

- ▶ the trial Judge had erred in interpreting *Ansari* and finding a person cannot be charged with conspiring to commit an offence the mental element of which is recklessness, simpliciter.
- ▶ the trial Judge had erred in finding the indictment was ‘*bad or unknown to law*’;
- ▶ the trial Judge had erred in disposing of the matters by directing the jury to acquit the defendants.
- ▶ On 22 December 2008 the appeal was dismissed for the following reasons:
  - ▶ for a person to be guilty of the offence of conspiracy to commit an offence, both at common law and under the *Criminal Code*, they must know the facts that make the act or acts unlawful;
  - ▶ the trial Judge had properly distinguished *Ansari* on the basis that, in that case, it was the prosecution case that the defendant actually did know all of the facts that made the conduct criminal. In the trial of RK and LK only recklessness was alleged; and
  - ▶ it was open to the court to direct a verdict, rather than to quash the indictment.

RK raised constitutional issues relating to the provision under which the prosecution had lodged its appeal. In addition it was argued that this provision was not available because the proceedings commenced prior to the enactment of the section which it was submitted did not operate retrospectively. The Court felt it unnecessary to deal with any of these issues in the judgement given the outcome of the appeal.

#### **HIGH COURT OF AUSTRALIA (APPLICATION FOR SPECIAL LEAVE)**

On 17 February 2009 the Director lodged an application for Special Leave to Appeal with the High Court of Australia.

The main ground that was sought to be argued on the Special Leave application was that the Court of Criminal Appeal erred in interpreting section 11.5 of the *Criminal Code* in that to be guilty of a conspiracy to commit an offence which has recklessness as a fault element to a physical element, the offender must have knowledge or intention to satisfy the fault element in relation to that physical element.

The application for special leave was heard on 19 June 2009 and a limited grant of special leave to argue the above was granted.

A date has not yet been fixed for this appeal.

**NHON ANH KHUU AND CHI VIEN DUONG**

THE DEFENDANTS IN THIS MATTER ENGAGED IN A LARGE SCALE SYSTEMATIC FRAUD, COMMITTED OVER A LONG PERIOD WHICH ULTIMATELY DEPRIVED THE COMMISSIONER OF TAXATION OF SUBSTANTIAL REVENUE.

The defendants ran 2 labour hire businesses with a very substantial number of employees. The defendants hired out labour to various chicken processing sites that were operated by entities with whom the businesses had labour hire agreements. The true nature of the businesses was obscured from the ATO by the creation of a network of bogus subcontractors by the defendants.

In addition, 1 of the businesses had a separate arrangement with 1 of its chicken processing sites. From time to time, instead of that processor paying the business for the provision of workers in money, it paid in raw chickens. These raw chickens were then sold for cash. This additional income via the sale of chickens was not declared to the ATO in the company income tax return for the business and company income tax was evaded.

The offending related to a tax fraud of \$2.7 million actual loss and \$3.5 million risk of a loss, the components of which were:

- ▶ \$1.16 million GST fraud
- ▶ \$1.5 million income tax fraud
- ▶ \$3.5 million PAYG fraud (including Medicare levy).

For both defendants the risk of a loss to the Commonwealth totalled \$3,455,836. The actual loss to the Commonwealth attributable to Duong was \$2,179,893 and the actual loss attributable to Khuu was \$1,673,833.

The defendants were charged with 3 counts of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act*; 2 counts of obtaining property by deception pursuant to section 134.2(1) of the *Criminal Code*; 2 counts of dishonestly causing a risk of a loss to the Commonwealth pursuant to section 135.1(5) of the *Criminal Code* and 1 count of dealing with money intending that it become an instrument of crime where the value of the money was more than \$1 million pursuant to section 400.3(1) of the *Criminal Code*. Duong was also charged with 2 further counts of obtaining property by deception pursuant to section 134.2(1) of the *Criminal Code* and Khuu was charged with 1 further count of obtaining property by deception contrary to section 134.2(1) of the *Criminal Code*.

On 29 July 2009 in the County Court of Victoria both the defendants pleaded guilty and were sentenced. Duong as the book keeper, but with not real distinction in roles, was sentenced to a total effective penalty of 5½ years imprisonment with a non-parole period of 3 years and 4 months. Khuu as the supervisor, but with no real distinction in roles, was sentenced to a total effective penalty of 4½ years imprisonment with a non-parole period of 2 years and 8 months.

Restraining orders were obtained over both of the defendant's property including real property and cash. Some of the property has been forfeited, however proceeds of crime action has not yet been finalised.



## 2.6 People trafficking, slavery and sexual servitude



AUSTRALIA'S COMMONWEALTH PEOPLE TRAFFICKING OFFENCES INCLUDE THE OFFENCES OF SLAVERY, SEXUAL SERVITUDE, DECEPTIVE RECRUITING, TRAFFICKING IN PERSONS AND DEBT BONDAGE. THESE OFFENCES ARE CONTAINED IN DIVISIONS 270 AND 271 OF THE *CRIMINAL CODE*.

SINCE THE COMMENCEMENT OF DIVISIONS 270 AND 271 OF THE *CRIMINAL CODE*, 9 PEOPLE HAVE BEEN CONVICTED OF PEOPLE TRAFFICKING RELATED OFFENCES. SIX OF THOSE DEFENDANTS HAD BEEN CONVICTED OF SLAVERY OFFENCES, 2 OF SEXUAL SERVITUDE OFFENCES AND 1 OF TRAFFICKING IN PERSONS. IN 2008 THE QUEENSLAND COURT OF APPEAL SET ASIDE THE SLAVERY CONVICTIONS IN RELATION TO 2 OTHER DEFENDANTS AND ORDERED THAT THOSE MATTERS BE RETRIED. AS AT 30 JUNE 2009, 6 PEOPLE TRAFFICKING MATTERS, INVOLVING 12 DEFENDANTS, WERE BEFORE THE COURTS. THREE OF THOSE 6 MATTERS WERE AT THE APPEAL STAGE.

IN 2008 THE HIGH COURT OF AUSTRALIA CONSIDERED AN APPEAL IN RELATION TO THE CONVICTION OF WEI TANG, WHO WAS THE FIRST PERSON IN AUSTRALIA TO BE CONVICTED OF SLAVERY OFFENCES. THE APPEAL WAS ALLOWED AND THE CONVICTIONS REINSTATED. ON 17 AUGUST 2009 WEI TANG WAS RESENTENCED BY THE VICTORIAN COURT OF APPEAL.

THE CDPP WORKS CLOSELY WITH GOVERNMENT DEPARTMENTS IN THE AREA OF PEOPLE TRAFFICKING AND IS A MEMBER OF THE ANTI-PEOPLE TRAFFICKING INTERDEPARTMENTAL COMMITTEE. THE CDPP IS ALSO A MEMBER OF THE NATIONAL ROUNDTABLE ON PEOPLE TRAFFICKING AND CONTRIBUTED TO THE DEVELOPMENT OF THE *NATIONAL GUIDELINES FOR NGOS WORKING WITH TRAFFICKED PEOPLE* WHICH WAS LAUNCHED IN MARCH 2009.

THESE PROSECUTIONS RELY ON EVIDENCE FROM VICTIMS OF THESE ALLEGED OFFENCES AND THE CDPP SEEKS TO ASSIST VICTIMS TO PARTICIPATE IN THE CRIMINAL JUSTICE SYSTEM. THIS YEAR THE CDPP HAS ISSUED ITS VICTIMS OF CRIME POLICY, WHICH WAS APPROVED BY THE DIRECTOR ON 15 JUNE 2009.

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### KEITH DOBIE

#### PEOPLE TRAFFICKING

THIS WAS THE FIRST PROSECUTION IN AUSTRALIA PURSUANT TO THE 'TRAFFICKING IN PERSONS' OFFENCE IN DIVISION 271 OF THE *CRIMINAL CODE*.

On 2 separate occasions the defendant travelled to Thailand and assisted 2 Thai sex workers to apply for passports and to complete and lodge false applications with the Department of Immigration and Multicultural Affairs for tourist visas to travel to Australia. Both women obtained tourist visas and travelled to Australia. The true purpose



of the women travelling to Australia was to enable them to engage in sex work in Australia and thereby earn income to assist the defendant with his financial problems.

The defendant deceived both women in relation to the extent to which they would be free to cease providing sexual services whilst in Australia. He deceived the first woman by telling her she could choose how much she worked in Australia. The defendant deceived the second woman by telling her she could 'holiday' on Sundays and Mondays. In fact, the defendant intended to and did pressure the women to work whenever a customer telephoned. The defendant received almost all of the money the women earned from performing sex work in Australia for his own use.

The defendant travelled to Thailand a third time and whilst there, assisted 2 more women to complete and lodge false applications with the Department of Immigration and Multicultural Affairs for tourist visas to travel to Australia. On his return to Australia, the defendant submitted further false documentation to the Department in support of the visa applications. The purpose of applying for the visas was to enable these women to travel to Australia to perform sex work. The visas were refused.

The defendant was charged with 2 counts of trafficking in persons pursuant to section 271.2(2B) of the *Criminal Code*, 1 count of dealing in proceeds of crime over \$10,000 pursuant to section 400.6(1) of the *Criminal Code* and 4 counts of aiding, abetting, counselling or procuring the presentation of a false document pursuant to section 234(1)(a) of the *Migration Act 1958* and section 11.2(1) of the *Criminal Code*.

On 23 December 2008 in the District Court of Queensland in Southport the defendant was sentenced to a total effective penalty of 5 years imprisonment with a non-parole period of 22 months.

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### **MELITA KOVACS AND ZOLTAN KOVACS**

#### **ALLEGED SLAVERY**

This matter was reported in the 2007-2008 Annual Report at pages 61-62.

A jury found both defendants guilty of arranging a marriage for the purpose of assisting someone to get a Stay Visa pursuant to section 240(1) of the *Migration Act 1958*; intentionally possessing a slave pursuant to section 270.3(1)(a) of the *Criminal Code*; and intentionally exercising over a slave a power attaching to the right of ownership, namely the power to use, pursuant to section 270.3(1)(a) of the *Criminal Code*.

Zoltan Kovacs was sentenced to 8 years imprisonment with a non-parole period of 3 years and 9 months for slavery and arranging a contrived marriage. Melita Kovacs was sentenced to 4 years imprisonment with a non-parole period of 18 months.

On 21 December 2007 both defendants filed appeals against conviction and sentence in the Queensland Court of Appeal. On 23 December 2008 the Queensland Court of Appeal in Brisbane set aside the slavery offences for both defendants and ordered re-trials in relation to the *Criminal Code* offences. The convictions for arranging a sham marriage were upheld.

The matter is currently awaiting a listing for re-trial.

**WEI TANG****SEXUAL SLAVERY**

This matter was reported in the 2006-2007 Annual Report at pages 45-46 and the 2007-2008 Annual Report at pages 58-59.

This case is significant as it provides the first consideration by the High Court of Australia of not only the slavery offences contained in the *Criminal Code* but also the process of determining the elements of an offence in accordance with the general principles of criminal responsibility contained in Chapter 2 of the *Criminal Code*.

The defendant was charged with 5 counts of intentionally possessing a slave and 5 counts of intentionally exercising over a slave a power attaching to the right of ownership, namely the power to use, contrary to paragraph 270.3(1)(a) of the *Criminal Code*. The charges were in relation to 5 Thai women who had worked at a brothel in metropolitan Melbourne owned by the defendant.

While in Thailand each complainant entered into an agreement to come to Australia to work in the sex industry. The 'contract' required them to incur a debt of between \$35,000 and \$45,000 which they would pay off by servicing clients of the brothel. Upon their arrival in Australia, the complainants' passports were confiscated and kept at the brothel. According to the complainants, they were required to work at the brothel 6 days a week. Of the \$110 earned in respect of each client, \$50 was deducted from the debt. The remainder of the proceeds went to the brothel. The complainants were given the option of working on their 'free' day and of retaining the \$50 per client that would otherwise be used to reduce their debt for that day. The complainants were required to hand over their passports upon arriving in Australia and had restrictions placed on their freedom of movement whilst they were repaying their debts.

On 9 June 2006 following a trial, the defendant was convicted on all counts. She was sentenced to 10 years imprisonment with a non-parole period of 6 years. The defendant appealed to the Victorian Court of Appeal.

On 27 June 2007 the Court of Appeal held that the trial Judge's directions on the fault elements to be proved by the Crown were inadequate and ordered a re-trial.

On 14 December 2007 the CDPP was granted special leave to appeal to the High Court of Australia against the decision of the Court of Appeal. The defendant sought special leave to cross-appeal against the order for a new trial rather than an acquittal.

The appeal was heard by the High Court of Australia on 13 and 14 May 2008.

On 28 August 2008 the High Court allowed the Crown appeal by a 6-1 majority and overturned the order of the Victorian Court of Appeal for a new trial, effectively reinstating the defendant's convictions.

It held that the prosecution had made out the required elements of the offences and did not need to prove what the defendant knew or believed about her rights of ownership. The prosecution did not need to prove that she knew or believed that the women were slaves. The critical powers she exercised were the power to make each woman an object of purchase, the capacity to use the women in a substantially unrestricted manner for the duration of their contracts, the power to control and restrict their movements, and the power to use their services without commensurate compensation.

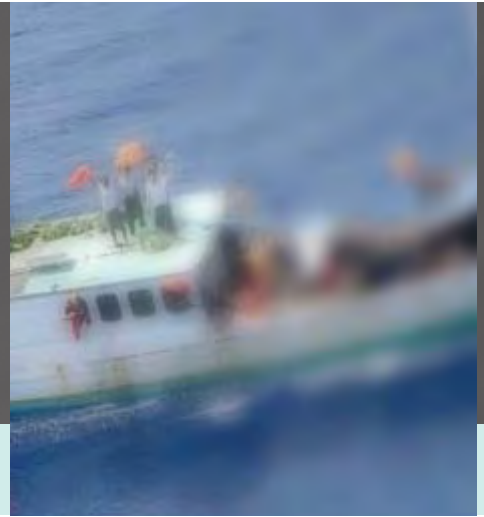
In respect of the application of the general principles of criminal responsibility the High Court held that the offence involved a physical element of conduct with the fault element of intention. The applicable definition of 'intention' was determined by the conclusion that the physical element was that of conduct.

The High Court unanimously granted the defendant special leave to cross-appeal on the grounds concerning the meaning and constitutional validity of section 270.3(1)(a) of the *Criminal Code*, but dismissed the cross-appeal. It held that Parliament had the power to make laws with respect to external affairs, in this case by section 270 of the *Criminal Code* giving effect to Australia's obligations under the *Slavery Convention*. The Court refused special leave with respect to the ground that the jury's verdicts were unreasonable or could not be supported by the evidence.

The High Court remitted Tang's appeal on sentence to the Victorian Court of Appeal for consideration. The Court of Appeal heard this appeal on 5 February 2009 and handed down its decision on 17 August 2009. The Court of Appeal reduced Tang's sentence from 10 years imprisonment with a non-parole period of 6 years, to 9 years imprisonment with a non-parole period of 5 years. The Court held that although the sentence was not manifestly excessive, the appeal ground had been made out that Tang had effectively been punished twice for each count of 'possessing a slave' and 'using a slave', and this was sufficient to re-open the sentencing discretion. Once the discretion was re-opened, the Court also resented on the basis that the successful Crown appeal to the High Court caused her additional hardship. The Court also took into account changes in Tang's health since the original sentence.



## 2.7 People smuggling



OFFENCES FOR SMUGGLING PEOPLE INTO AUSTRALIA ARE CONTAINED IN THE *MIGRATION ACT 1958*. OFFENCES INCLUDE ORGANISING OR FACILITATING THE BRINGING OF GROUPS OF NON-CITIZENS INTO AUSTRALIA, TAKING PART IN BRINGING A NON-CITIZEN INTO AUSTRALIA IN CONTRAVENTION OF THE *MIGRATION ACT 1958* AND CONCEALING A PERSON WHO HAS ILLEGALLY ENTERED OR INTENDS TO ENTER AUSTRALIA.

IN 2008-2009 THERE WAS AN INCREASE OVER THE PREVIOUS YEAR IN THE NUMBER OF MARITIME PEOPLE SMUGGLING MATTERS REFERRED TO THE CDPP. AS AT 30 JUNE 2009 THERE WERE 30 PEOPLE SMUGGLING PROSECUTIONS INVOLVING ORGANISERS, CAPTAIN AND CREW BEFORE THE COURTS.

### **ABDUL HAMID**

#### PEOPLE SMUGGLING

In September 2008 the defendant was on a vessel, the *Cahaya Mulia*, which brought 14 passengers, 3 Iranian and 9 Afghani persons, to Australia. The *Cahaya Mulia* was observed by the Royal Australian Navy transiting the Australian Contiguous Zone and was boarded. On searching the vessel, travel documents, approximately 500 litres of water, 6 empty 44 gallon tanks and approximately 300 litres of diesel were located. The vessel was extremely dirty, unkempt, in poor condition and not maintained. The hull was taking on water at an excessive rate.

The defendant, a farmer by trade, had taken over steering and effective command of the vessel after 4 other Indonesian crew left. He knew he was taking passengers to Ashmore Reef which he was told was the limits of Australia where he was to leave passengers and return. He was instructed how to steer and navigate the vessel using a compass and was to be paid 2 million Indonesian Rupiah. The passengers were taken to Christmas Island. The other crew member was approximately 15 or 16 years old and was not charged.

The defendant was charged with 1 count of bringing into Australia a group of 5 or more persons reckless as to whether the persons had a lawful right to come to Australia pursuant to section 232A *Migration Act 1958*.

On 5 March 2009 in the District Court of Western Australia in Perth the defendant was sentenced to 6 years imprisonment with a non-parole period of 3 years. The *Cahaya Mulia* was destroyed due to its poor condition.

Picture courtesy Australian Customs and Border Protection Service

In sentencing the defendant the Court noted that the defendant was a farmer by trade and his lack of experience as a seafarer put the passengers at risk. Further, the state of the vessel placed both the defendant and the passengers in grave danger as there were no navigational aids, life rafts or buoyancy floats on board. The Court noted the need for general deterrence particularly given the violation of Australia's sovereignty and the burden and expense imposed on Australia both before and after detection. The Court also noted the fact that people smuggling frustrates the Australian legislative and administrative systems that seek to deal in a fair and orderly way with non-citizens wishing to remain in Australia, including refugees.

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### **AMOS NDOLO**

#### PEOPLE SMUGGLING

The defendant was the captain of a vessel boarded on 6 October 2008 by the Royal Australian Navy. There were 14 suspected illegal immigrants on board. The boat was unseaworthy due to rotting planking along the water line and the 3 inches of water in the bilge caused it to be unstable and unsuitable for extended tow.

The defendant was found to have 3,256,000 Indonesian Rupiah wrapped in a sarong in his bag which he said was given to him by friends. He refused to participate in a record of interview.

The defendant was charged with 1 count of facilitating the bringing of a group of 5 or more persons to Australia reckless as to whether those persons had a lawful right to come to Australia pursuant to section 232A of the *Migration Act 1958*.

On 3 April 2009 in the District Court of Western Australia in Perth the defendant was sentenced to 5 years imprisonment with a non-parole period of 3 years. The amount of 3,256,000 Indonesian Rupiah was forfeited.

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### **MAN POMBILI**

#### PEOPLE SMUGGLING

The defendant was the captain of a vessel intercepted in November 2008 by the Royal Australian Navy 90 nautical miles north of the Australian coast. The vessel was taking on water and 10 Afghani males and 2 Indonesian males were transferred to the Royal Australian Navy ship HMAS Ararat. The vessel sank a short time later.

Most of the passengers gave similar accounts of the condition of the vessel stating that there were no life jackets on board. During the journey, the boat started to take on water from a small hole and the crew and passengers of the vessel bailed water out of the vessel using a plastic bucket. However, the vessel began to take on more and more water and began to sink despite the crew and passengers increasing the frequency of their bailing.

The vessel appeared to be very old and in poor condition. The vessel's engine broke down several times during the journey and there did not appear to be sufficient fuel for the journey. The passengers stated they feared for their safety and were frightened of the vessel sinking.

The defendant steered the boat using a compass and by reference to the stars. He was also observed referring to a map located on the vessel.

The defendant was charged with 1 count of facilitating the bringing to Australia of a group of 5 or more persons reckless as to whether those persons had a lawful right to come to Australia pursuant to section 232A of the *Migration Act 1958*.

On 17 April 2009 in the District Court of Western Australia the defendant was sentenced to 6 years imprisonment with a non-parole period of 3 years. An amount of 2,566,000 Indonesian Rupiah seized from the defendant at arrest was forfeited.

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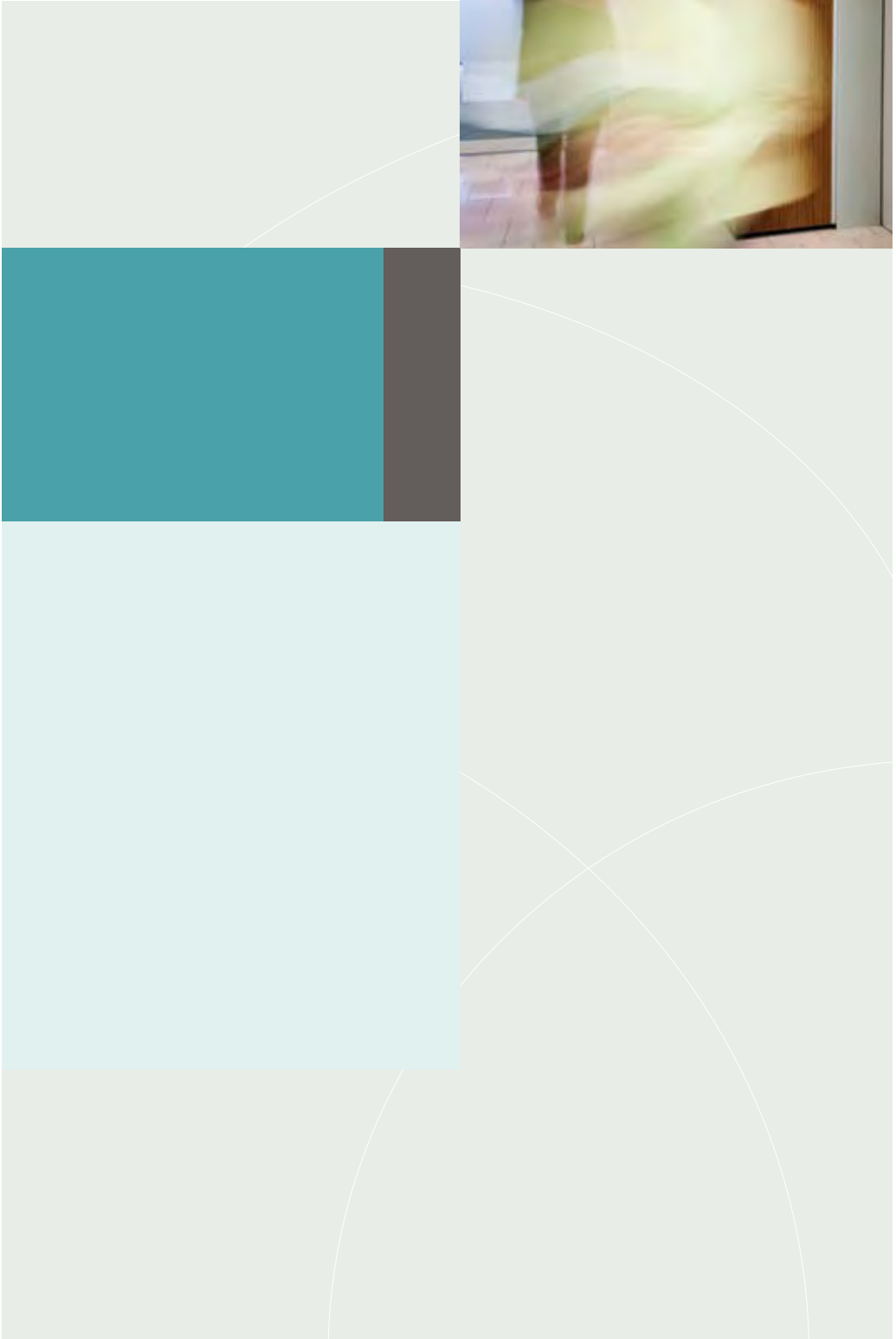
**THUSHARA SAMPATH FERNANDO WARNAKULASURIYA, BALAPU WAOUGE IANDIKA MENDIS AND SUMITH SURESH KUMARA MENDIS LAPU WADUGE**

**ESCAPE FROM DETENTION**

The 3 defendants arrived in Australia on a vessel from Sri Lanka in November 2008 and were held in detention on Christmas Island. They escaped from the detention centre during the night of 18 and the morning of 19 December 2008. There was an extensive search of the detention centre, neighbouring residential areas, bushland and also the coastline to locate them. The defendants were eventually located in a car park by the high school and returned to detention. A few days before the escape from immigration they had received information that they were to be deported to Sri Lanka on 20 December 2008.

The defendants were each charged with 1 count of escaping from immigration detention pursuant to section 197A of the *Migration Act 1958*.

On 21 May 2009 in the Christmas Island Magistrate's Court sitting in Perth the 3 defendants were sentenced to 3 months imprisonment to be released forthwith on condition that they be of good behaviour for 2 years.



## 2.8 Child exploitation

THE CDPP IS PROSECUTING AN INCREASING NUMBER OF OFFENCES INVOLVING THE ON-LINE EXPLOITATION OF CHILDREN. THERE ARE MANY OFFENCES IN PART 10.6 OF THE *CRIMINAL CODE* RELATING TO CHILD PORNOGRAPHY MATERIAL, CHILD ABUSE MATERIAL, AND GROOMING AND PROCURING PERSONS UNDER THE AGE OF 16 TO ENGAGE IN, OR SUBMIT TO, SEXUAL ACTIVITY.

The purpose of the telecommunications-based child exploitation offences is to cover the range of activities that a person can engage in when using the internet, email, mobile phones and other applications to deal with child pornography and child abuse material, including viewing, copying, downloading, sending, exchanging and making available for viewing, copying or downloading.

The grooming and procuring offences are targeted at adult offenders who use the anonymity of telecommunications services to win the trust of a child as a first step to the future sexual abuse of the child and to allow law enforcement to intervene before a child is actually assaulted.

Prosecuting these offences may involve complex technical and evidentiary issues. The CDPP works closely with the AFP, ACS and other law enforcement agencies in this growing area.

These offences are increasingly becoming more sophisticated through the use of networks to distribute material and the protection of material by encryption. Cases can involve hundreds of thousands of depraved and disturbing images of children and the scale and seriousness of this industry poses challenges for investigation and prosecution.

Recently, on 16 July 2009 in the District Court of Queensland, in *R v Parisi* Bradley J stated:

*“This is an insidious industry that, as I said before, seems to be becoming more and more widespread. The Courts are seeing more and more people like you accessing this material, and it is only if there are consumers like you that access this material that the industry will continue.”*

Dealing with such distressing material requires prosecutors to hear or read stories of a disturbing nature and may involve viewing pornographic movies, photos and/or graphic material depicting explicit sexual acts involving serious harm to children. The CDPP has established an Employee Wellbeing Programme designed to implement practical policies and guidelines to support employees who may be at risk of experiencing trauma as a result of exposure to potentially distressing materials.

Another form of child exploitation involves child sex tourism. These offences are contained in Part IIIA of the *Crimes Act* and address sexual activity by Australian citizens and permanent residents with children under the age of 16 which occurs overseas. It is also an offence to encourage or benefit from an offence of this type. Penalties of up to 17 years imprisonment apply to these offences.



**DEREK RICHARD MARA****ON-LINE CHILD PORNOGRAPHY**

In mid-2004 the defendant and 3 others established a highly sophisticated group using internet newsgroups with the objective to pursue their common interest in child pornography. These 4 core members screened, tested and subsequently admitted new members. The 4 core members and 2 others were the 'administrators', overseeing the structure and internal workings of the group, and providing instructions relating to security protocols, arrangements for the secure posting of material and the expectations of members. The core members and administrators were identified by nicknames. Other members of the group were known as the 'trustworthy'. None of the group knew the true identity of any of the other members. Many of the members were convicted sex offenders.

A large quantity of child exploitation material was traded, much of which had never been seen by police before. The group also purchased and commissioned the production of material. The material was posted to newsgroups as binary files that were unable to be viewed by anyone who did not have an encryption 'key'. The group used highly sophisticated techniques to avoid detection, including:

- ▶ encryption requiring the use of paired encryption keys to view the material and to communicate with other members. The keys were changed regularly and involved 3 different levels of security;
- ▶ frequently changing nicknames which accorded to a theme;
- ▶ changing the newsgroup location ;
- ▶ changing the file extension in order to disguise the nature of the file contents; and
- ▶ using a program written by a group member to automate the file extension change process.

The defendant was involved in ensuring that the encryption and security systems were followed, although another member was the gatekeeper. During his involvement the defendant used at least 8 nicknames to protect his identity. He posted editorial comment and large quantities of child pornography material for members of the group and frequently downloaded such material. When he wanted particular files he would post a message asking a group member to post the file for his use. He assisted others with the technical aspects of accessing the material. He did so for his own sexual gratification and that of other like-minded individuals.

The defendant was also aware that some members of the group made financial contributions towards 'custom made' videos involving the sexual abuse of children but did not make any financial contribution himself. He tried to withdraw from the group several times, but due to his addiction returned each time.

In January 2006 police from the Queensland Police Service's Taskforce Argos covertly infiltrated the group and commenced gathering data to identify offenders. At that time the group had 43 members. The investigation developed into a 26 month international operation, named Operation Achilles, based in Washington, USA. The defendant was inactive for 11 of those 26 months. Between August 2006 and

February 2008 police collected over 444,000 images and 1,100 movie/video files of child exploitation material which had been uploaded and advertised for use by the group.

On 29 February 2008, as part of an international police operation against members of the group in several countries, police executed a search warrant at the defendant's home and seized his computer equipment for forensic examination. Initial attempts to examine the hard drives were impeded due to the defendant's use of the group's encryption software.

After first refusing to be interviewed, on 1 March 2008 the defendant participated in an interview with police and made significant admissions. He told police he had deleted his entire collection of pornography several times in the preceding years, including shortly after the police raid of his home which resulted in him being charged with cannabis offences in February 2007, but he had always found himself 'coming back to it'. About 2½ weeks later, he provided police with passwords without which they would not have been able to forensically interrogate areas of the hard drives.

As a result of the decryption of the defendant's hard drives forensic examination revealed:

- ▶ 75,706 image files and 763 movie/video files of child pornography on the external hard-drive;
- ▶ 1,206 images of child pornography (recovered from the deleted space), 13 image files and 40 movie/video files of child pornography on the internal drive; and
- ▶ that between 7 January 2006 and 21 May 2007 the defendant had uploaded at least 116 movie or video files of child pornography for the group's use.

Police also located a short movie file where the defendant had used his mobile phone to record about 2 minutes of 'upskirting' footage of a 5 year old girl who was a friend of his family. Whilst on remand the defendant was assessed by a forensic psychologist as conforming to a diagnosis of the sexual disorder paedophilia.

The defendant was charged with 1 count of using a carriage service to access child pornography pursuant to section 474.19(1) of the *Criminal Code*; 1 count of using a carriage service to cause child pornography to be transmitted pursuant to section 474.19(1) of the *Criminal Code*; 1 count of using a carriage service to transmit child pornography pursuant to section 474.19(1) of the *Criminal Code*; and 1 count of indecently treating a child under 16 with a circumstance of aggravation pursuant to sections 210(1)(f) and (3) of the *Criminal Code* (Qld).

On 5 March 2009 in the District Court of Queensland in Townsville the defendant was convicted and sentenced to a total effective penalty of 6 years imprisonment to be released after serving 32 months on condition that he be of good behaviour for 3 years and be subject to 18 months probation upon his release. A forfeiture order pursuant to section 228G of the *Criminal Code* (Qld) was made in relation to the defendant's computer tower and external hard drive.

The defendant appealed to the Queensland Court of Appeal against the excessiveness of his sentence. The appeal was unanimously dismissed by the Court of Appeal.

**ABDUL RAHMAN YOSEF AL-HARBI****IMPORTING CHILD PORNOGRAPHY**

On 8 October 2008 the defendant, a Saudi Arabian citizen, arrived at Perth International Airport on a Royal Brunei flight from Brunei via Manila. The defendant was selected for baggage examination due to his unusual itinerary and ACS Officers found 9 DVDs with image labels depicting child pornography.

The DVDs were examined and 7 were found to contain a total of 30 video files containing images of young children engaged in sexual activity. Two of the DVDs were corrupted and unable to be viewed. ACS Officers also found a mobile phone belonging to the defendant containing 2 child pornography images.

The defendant was charged with 1 count of intentionally importing tier 2 goods containing items depicting child pornography pursuant to section 233BAB of the *Customs Act*.

On 23 March 2009 in the District Court of Western Australia in Perth the defendant was convicted and sentenced to 9 months imprisonment to be released after serving 4 months on condition that he be of good behaviour for 5 months.

IN SENTENCING THE DEFENDANT THE COURT DISCOUNTED THE SENTENCE ON THE BASIS THAT THE DEFENDANT WAS 'UNAWARE OF HOW SERIOUSLY AUSTRALIANS REGARD THE MATERIAL...' AND NOTWITHSTANDING THAT THE DEFENDANT KNEW WHAT THE MATERIAL WAS, HE 'FAILED TO APPRECIATE THE DEVASTATION SUCH MATERIAL CAUSES IN THE LIVES OF CHILDREN.' HER HONOUR CONCLUDED THAT 'WHILE [THE OFFENDER] MAY NOT BE FAMILIAR WITH AUSTRALIAN LAWS, [HE] SHOULD KNOW ENOUGH ABOUT AUSTRALIA TO KNOW THAT WE ENDEAVOUR TO PROTECT OUR CHILDREN AND OTHER PEOPLE'S CHILDREN AS WELL.'

**RUSSELL GORDEN BOSHAMMER****ON-LINE PROCURING**

THIS MATTER RECEIVED SIGNIFICANT MEDIA ATTENTION AND BECAME THE SUBJECT MATTER OF A POLICE INTERNET CHILD SAFETY VIDEO TO BE SHOWN TO SCHOOL CHILDREN.

On 2 October 2007 the defendant contacted a 13 year old girl via an internet chat room after seeing her profile page on a social networking website. The girl accepted the defendant as a 'contact friend' and during an initial internet chat the girl told the defendant her age and indicated that she attended high school. The defendant asked her if he could meet her and 'have fun' and they arranged to meet at a nearby sports club within walking distance of the girl's house. The defendant and girl met and the girl refused a lift in the defendant's vehicle. She then told her mother about the incident and made a formal complaint to police.

On 5 October 2007 a Queensland police officer covertly posed as the girl and chatted via the internet to the defendant. The defendant made graphic and salacious sexualised comments to the girl and indicated his desire to have sex with her. A meeting was then arranged for that afternoon at the same sports club where they had earlier met. Police arrested the defendant at the sports club. He was found in possession of a box of condoms which had been purchased on the way to the meeting. A warrant executed on the defendant's home found implements for smoking cannabis.

The defendant was charged with 1 count of using a carriage service to procure a person under 16 years for sexual activity pursuant to section 474.26(1) of the *Criminal Code* and 1 count of possessing utensils or pipes pursuant to section 10(2)(A) of the *Drugs Misuse Act 1986* (Qld).

On 29 May 2009 in the Supreme Court of Queensland in Brisbane the defendant was convicted and sentenced to 2½ years imprisonment to be released after serving 8 months on condition that he be of good behaviour for 3 years and subject to probation for 6 months. He was convicted of the drug offence but not further punished.

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### **RICHARD GEORGE CARLYON**

#### **ON-LINE CHILD PORNOGRAPHY**

The AFP Interpol Office in Canberra received information from the Republic of Austria Federal Ministry of the Interior, Criminal Intelligence Service, Austria (Interpol Vienna) which was forwarded to the AFP Online Child Sex Exploitation Team. The information related to the possession and distribution of child pornography through 4 Austrian based Internet addresses.

On 3 December 2007 a search warrant was executed at the defendant's address and 1 computer tower (containing two internal hard drives), 2 thumb drives, and 96 CDs and DVDs were seized and forensically examined. On examination of the computer hard drives 109,400 images (55% child abuse material and 30% child pornography material) and 559 video files (70% child abuse material and 30% child pornography material) were located. The images and video files included child pornography images of girls between the ages of 5 and 15 years.

The defendant was charged with 1 count of using a carriage service to access child pornography material pursuant to section 474.19(1)(a)(i) of the *Criminal Code* and 1 count of possessing child pornography pursuant to section 60(4) of the *Classification (Publications Films and Computer Games) Enforcement Act 1996* (WA).

On 24 October 2008 in the District Court of Western Australia in Perth the defendant was convicted and sentenced to a total effective penalty of 2 years imprisonment with a non-parole period of 12 months. A forfeiture order was made in relation to the computer equipment pursuant to sections 48 and 56 of the *POC Act 2002*.

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### **REGINALD CHRISTIAN COLIN**

#### **ON-LINE PROCURING AND CHILD PORNOGRAPHY**

**THIS MATTER REPRESENTS THE SECOND HIGHEST PENALTY IMPOSED IN AUSTRALIA FOR USING A CARRIAGE SERVICE TO PROCURE A CHILD UNDER 16 YEARS.**

The defendant, a 33 year old resident of Brisbane, met a 15 year old girl from New South Wales via Facebook. Using the internet the defendant procured the girl for sexual activity and paid for her flight to Brisbane so they could meet. Over a weekend they engaged in various sexual acts, many of which were photographed and videoed by the defendant. The defendant gave the girl a Skype mobile phone so they could communicate after the weekend. The defendant transmitted to the girl over the internet some of the images from their weekend together. He also transmitted the images to another person who expressed his disgust. The defendant and the girl also created a Facebook website

together and the defendant uploaded the images of the sex acts they had engaged in onto their Facebook page.

The defendant claimed that the reason he did this was to show other paedophiles, attract their comments and let the girl know how dangerous paedophiles can be. During their relationship the defendant also instructed the girl to perform certain sexual acts on webcam via instant messenger. The defendant employed the same modus operandi to try to procure the girl's 15 year old friend who, whilst initially engaging in explicit internet chats with the defendant, declined his offer to meet for sex.

The girl's mother discovered the offences and alerted police. After the defendant was first arrested and while he was on bail, the defendant was the subject of another search warrant. Police located a large cache of child pornography videos downloaded from the internet as well as an MP3 player with images and videos of the girl engaged in sexual acts with and for the defendant.

Two separate indictments were presented. The CDPP presented an indictment charging the defendant with 3 counts of using a carriage service to procure a person under 16 for sexual activity pursuant to section 474.26(1) of the *Criminal Code*; 1 count of making child exploitation material pursuant to section 228B of the *Criminal Code* (Qld); 2 counts of using a carriage service to transmit child pornography pursuant to section 474.19(a)(iii) of the *Criminal Code*; 2 counts of possessing child exploitation material pursuant to section 228D of the *Criminal Code* (Qld); and 1 count of using a carriage service to access child pornography material pursuant to section 474.19(a)(i) of the *Criminal Code*.

The Qld DPP presented an indictment charging the defendant with 3 counts of carnal knowledge of a child under 16 years pursuant to section 215 of the *Criminal Code* (Qld) and 1 count of indecent treatment of a child under the age of 16 years pursuant to section 210(1)(c) of the *Criminal Code* (Qld).

On 16 June 2009 in the Supreme Court of Queensland in Brisbane the defendant was sentenced to a total effective penalty of 5 years imprisonment with a non-parole period of 3 years. The defendant was sentenced to a concurrent term for offences contained on the State indictment. An order was made to forfeit all the equipment used in the commission of the offences pursuant to section 228G of the *Criminal Code* (Qld).

At sentence the defendant's counsel, relying on a psychological report, contended that he suffered from '*white knight syndrome*' whereby he '*saves vulnerable people from perceived dangers*.' The court gave little or no weight to this contention and expressed abhorrence in relation to the defendant's offences.

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### VIPULKUMAR GAJJAR

#### ON-LINE PROCURING

The defendant entered an online chat site and met an undercover AFP officer posing as a 14 year old girl. The defendant engaged in a 2 hour chat session during which time he asked questions about the 'girl's' age, whether she'd had sex before and whether she wanted to have sex with him. The defendant used explicit language during this exchange.

The defendant arranged to meet with the 'girl' the following day at Flinders Street station in Melbourne. The defendant attended as arranged but left shortly after becoming alerted to the presence of police at the station.

During an interview with police the defendant admitted using the internet to chat with the ‘girl’, engaging in sexually explicit conversation and arranging to meet, however he stated that he attended the train station only to see if the other person was a ‘real 14 year old.’

The defendant was charged with using a carriage service to procure a person under 16 years pursuant to section 474.26 of the *Criminal Code*.

On 20 June 2008 in the County Court of Victoria in Melbourne the defendant was convicted and sentenced to 2½ years imprisonment to be released after serving 8 months on condition that he be of good behaviour for 22 months. He was also ordered to be subject to the supervision of a probation officer and obey all reasonable directions of that officer including any direction to participate in a sex offender treatment program or undergo psychological or psychiatric assessment.

The defendant appealed to the Victorian Court of Appeal against the excessiveness of this sentence. It was the first time the Victorian Court of Appeal had considered a sentence imposed in relation to section 474.26 of the *Criminal Code*. The Court stated that as a general rule, cases of this type can ordinarily expect to receive a term of immediate imprisonment.

THE VICTORIAN COURT OF APPEAL STATED:

*‘OF COURSE IT CANNOT BE SAID THAT THIS OFFENCE FALLS WITHIN ANYTHING LIKE THE WORST CATEGORY OF ITS TYPE. NOR, HOWEVER, CAN IT BE DESCRIBED AS ANYTHING BUT A SERIOUS EXAMPLE OF CONDUCT THAT IS PERNICIOUS AND DIFFICULT TO DETECT. AS SUCH, IT WARRANTS SEVERE PUNISHMENT.’*

*‘THERE IS NOTHING IN THE APPELLANT’S POINT THAT IT IS WRONG TO LAY DOWN, AS A GENERAL PRINCIPLE, THAT ORDINARILY ONE CAN EXPECT TO RECEIVE A TERM OF IMMEDIATE IMPRISONMENT IN CASES OF THIS TYPE. APPELLATE COURTS OFTEN MAKE STATEMENTS OF THAT KIND IN AN EFFORT TO GIVE GUIDANCE TO SENTENCING JUDGES.’*

## DANIEL HIZHNIKOV

### ON-LINE PROCURING AND CHILD PORNOGRAPHY

On 6 February 2008 the defendant entered an on-line chat site and engaged in a chat session with a covert member of the Victorian Police Sexual Crimes Squad. At the commencement of the chat session the police officer told the defendant she was a 14 year old girl and the defendant said he was 25 years old.

On 6 February and 10 February 2008 the defendant and ‘girl’ engaged in one on one chats using Windows Live Messenger. The content of the chats was sexual and there was an agreement to meet at the Broadmeadows train station.

On 10 February 2008 the defendant was arrested at the Broadmeadows train station and his car was searched. Police located 5 bourbon and cola cans, condoms and a small amount of cannabis. A search of the defendant’s premises was also conducted and a computer with internet capability was seized. Forensic analysis of the computer found 58 image files and 7 movie files of child pornography. A Norica air rifle (which was in pieces) was also located in his bedroom.

The defendant was charged with 1 count of using a carriage service to procure a person under 16 years pursuant to section 474.26(1) of the *Criminal Code*; 1 count of possessing child pornography pursuant to section 70(1) of the *Crimes Act 1958* (Vic); 1 count of

possessing an unregistered firearm pursuant to section 6A(1) of the *Firearms Act 1996* (Vic); and 1 count of possessing cannabis pursuant to section 73 of the *Drugs Poisons and Controlled Substances Act 1981* (Vic).

On 15 August 2008 in the County Court of Victoria in Melbourne the defendant was convicted and sentenced to a total effective penalty of 22 months imprisonment to be released forthwith on condition that he be of good behaviour for 4 years. He was fined \$500 for the firearm offence. An order for forfeiture of the defendant's computer tower was made pursuant to section 48 of the *POC Act 2002*.

The Director appealed against the inadequacy of the sentence imposed for the procuring offence. Although the appeal was ultimately dismissed by the Victorian Court of Appeal, the court's reasons outline that the starting point for a procuring offence should be immediate imprisonment.

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### **CHRISTOPHER JAMES**

#### **ON-LINE CHILD PORNOGRAPHY**

On 8 March 2007 the AFP executed a search warrant on the defendant's premises and seized 25 compact discs, 2 computers, and 26 colour images on A4 pages. A preliminary examination of the material revealed over 130,000 images, video and movie files. Some of these images were examined and 3,235 child pornography images and 77 child pornography videos were identified.

The defendant was charged with 1 count of using a carriage service to access child pornography pursuant to section 474.19(1)(a)(i) of the *Criminal Code* and 1 count of possessing child pornography pursuant to section 91H(3) of the *Crimes Act 1900* (NSW).

On 23 April 2008 in the District Court of New South Wales in Sydney the defendant was convicted and sentenced to a total effective penalty of 18 months imprisonment to be released after serving 12 months on condition that he be of good behaviour for 3 years.

The defendant appealed to the New South Wales Court of Criminal Appeal against the excessiveness of the sentence. On 3 March 2009 the defendant's appeal was dismissed.

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### **GRAEME MALCOLM MCLEOD**

#### **ON-LINE PROCURING**

On 6 January 2008 the defendant accessed an on-line instant messaging site where he had a conversation with a person who introduced himself as a 12 year old boy from Melbourne. On 6 separate occasions between January and August 2008 the defendant and the 'boy' had sexually explicit on-line conversations with the defendant often expressing a desire to meet at various places in Melbourne. The defendant discussed spending the night together at a hotel in Melbourne and attempted to convince the 'boy' that sexual relations between an adult male and a 12 year old boy were considered normal.

A search warrant was executed at the defendant's residence and a number of floppy discs, CDs and DVDs were seized revealing approximately 2,300 images and 30 video files of child pornography as well as 10 child pornography text based stories.

The defendant was charged with 1 count of using a carriage service to procure a person under 16 years pursuant to section 474.26 of the *Criminal Code* and 1 count of possessing child pornography pursuant to section 70(1) of the *Crimes Act* (Vic).

On 26 May 2009 in the County Court of Victoria in Ballarat the defendant was convicted and sentenced to a total effective penalty of 2½ years imprisonment to be released after serving 15 months. The defendant's computer tower, discs and hard copy stories were forfeited. In sentencing, the Court had no hesitation in accepting the principle that in cases of this type, offenders can ordinarily expect an immediate term of imprisonment.

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### **PAUL JAMES SUMMERS**

#### **IMPORTING CHILD PORNOGRAPHY**

In December 2007 the defendant imported a laptop and an external hard drive into Australia through Perth International Airport. ACS officers found that these devices contained a total of about 45,000 image files and 1500 video files. Some images inspected at the airport were found to be child pornography.

The defendant was charged with 1 count of importing tier 2 goods containing child pornography pursuant to section 233BAB(5) of the *Customs Act*.

Over the following months, the defence contended that the prosecution should specify exactly how many child pornography images the charges related to before the defendant would commit to a plea. Analysing this many images has potential occupational health consequences and resource implications for ACS officers. ACS agreed to view a random sample of the images and of the almost 1,300 images examined, just over 1,200 were found to be child pornography.

Although the offender pleaded guilty to the offence, at sentencing the defence objected to an inference that the offender was being sentenced with respect to 45,000 images of child pornography. The prosecution maintained that the facts were accurate and not prejudicial and reiterated that around 1,200 images had been conclusively identified as child pornography. The Judge stated that he could only sentence on this number, but that it would not make a significant impact on sentencing in any case. He stated that 1200 images is a lot by any standard.

The defence relied on a psychological report referring to the defendant having neurological damage resulting in collecting behaviour as an explanation for the defendant's offending. The report noted that the defendant had no sexual deviancy. In response, the prosecution submitted that there was no clinical evidence available that the neurological damage had caused the collection of child pornography or that it diminished the defendant's capacity to comprehend the abhorrent nature of child pornography as he did not delete the images when he discovered what they were. There was no evidence of the defendant engaging in any other type of collecting behaviour. The prosecution's submission was accepted by the court. The defendant was otherwise of good character, with a supportive family. He was remorseful and had voluntarily undergone counselling.

On 14 November 2008 the defendant was sentenced in the District Court of Western Australia to 12 months imprisonment to be released after serving 6 months on condition that he be of good behaviour for 6 months.



**NEIL JAMES WILLIAMS****ON-LINE CHILD PORNOGRAPHY**

The defendant is a retired Queen's Counsel, author and academic who was 75 at the time of sentence.

In June 2008 the AFP Child Protection Team received information regarding peer-to-peer file sharing of child pornography material over the internet. The defendant was identified as one of the participants and the AFP subsequently attended at the defendant's residence and executed a search warrant.

Computer equipment and compact discs containing 10,535 images, 278 videos and 1,571 written text files depicting child pornography were seized. Analysis of the defendant's computer discovered that between August 2006 and April 2008 1,838 child pornography files were received from other internet users via 'Google Hello' and between December 2006 and March 2008 1,860 child pornography files were transmitted to other internet users via 'Google Hello'. 'Google Hello' is a software program providing both an online chat program and the ability to share digital images such as photographs.

The defendant was charged with 1 count of possessing child pornography pursuant to section 70(1) of the *Crimes Act 1958* (Vic), 1 count of using a carriage service to access child pornography pursuant to section 474.19(1)(a)(i) of the *Criminal Code* and 1 count of using a carriage service to transmit child pornography pursuant to section 474.19(1)(a)(iii) of the *Criminal Code*.

On 23 April 2009 in the County Court of Victoria in Bendigo the defendant was sentenced to a total effective penalty of 2 years imprisonment to be released after serving 6 months on condition that he be of good behaviour for 18 months. The defendant was declared to be a serious sexual offender pursuant to section 6F of the *Sentencing Act 1991* (Vic) and was registered as a serious sexual offender pursuant to the *Sex Offender Registration Act 2002* (Vic) with a life-long reporting period.

In sentencing the defendant, the Court acknowledged that the defendant had no prior convictions, was remorseful and unlikely to reoffend. His Honour stated that the defendant had *'made significant contributions to the legal profession in this country in general'* and that he had done so *'in every facet of [his] professional life both as a barrister, solicitor and author.'* His Honour acknowledged that the defendant's reputation *'was in tatters'* and that his *'fall from grace was complete.'*

His Honour stated that general deterrence was the primary sentencing consideration. The offending was aggravated by the depravity and deviancy of the images; the duration of the offending (the defence conceded that he had accessed child pornography over a 12-year period); the trading of the images; his profession as a barrister, eminent author and officer of the court; and, his frequent attendance at prisons in a voluntary capacity as a visitor during which time he became aware of the prospects of incarcerated paedophiles, yet continued to offend.

**CARL FRANCIS WALKER****OVERSEAS CHILD EXPLOITATION**

In June 2006 the defendant travelled to Indonesia for 3 weeks. Whilst in Indonesia the defendant approached a sleeping 13 year old boy, placed his hands inside the child's shorts and felt his penis. The defendant then pushed the child's shorts up so as to expose the child's penis and took photographs with a digital camera while the child slept.

In December 2006 to January 2007 the defendant again travelled to Indonesia and this time was in the presence of two 13 year old boys who were asleep. The defendant again placed his hands inside one of the boy's shorts and felt his penis. The defendant then again pushed the shorts down, exposed the child's penis and took photographs with his digital camera. The defendant emailed the images to himself from an internet cafe in Indonesia before he returned to Australia and later saved them to the hard drive of his computer.

In March 2007 the defendant was arrested and charged with 2 counts of possessing child abuse material pursuant to section 125B(1) of the *Criminal Code* (NT); 2 counts of committing an act of indecency on a child under 16 whilst outside Australia pursuant to section 50BC of the *Crimes Act*; and 17 counts of using a carriage service to access child pornography material pursuant to section 474.19(1)(a) of the *Criminal Code*.

The defendant was granted bail on those charges and his computer was held as evidence. In August 2007 a search of the defendant's home revealed a new laptop containing software enabling the user to delete traces of user activity. Further examination of the laptop confirmed that the defendant had used the laptop to access child abuse websites whilst on bail. He was further charged with 7 counts of using a carriage service to access child pornography material pursuant to section 474.19(1)(a) of the *Criminal Code*.

On 8 October 2007 in the Supreme Court of the Northern Territory in Darwin the defendant was sentenced to a total effective penalty of 14 years imprisonment with a non-parole period of 7 years.

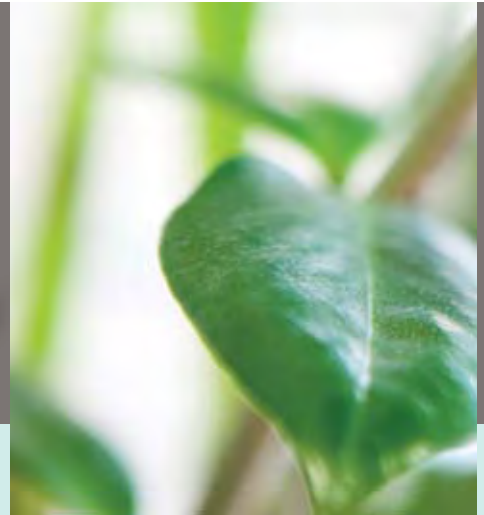
The defendant appealed against the excessiveness of the sentence to the Northern Territory Court of Criminal Appeal. On 4 July 2008 the appeal was upheld and the defendant's sentence was reduced to a total of 8 years imprisonment with a non-parole period of 5 years.

Section Redacted

Section Redacted

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## 2.9 Environment, safety and general prosecutions



The prosecution of Commonwealth offences that have an impact on the environment and public safety are an important part of the practice of the CDPP. Due to the breadth of Commonwealth criminal legislation, the CDPP is also responsible for prosecuting a range of offences that do not fall within the areas addressed in the previous sub-chapters.

With respect to crime impacting upon the environment and safety, the CDPP works closely with a number of investigative agencies. These include the Australian Customs Service (ACS); the Australian Fisheries Management Authority (AFMA); the Australian Maritime Safety Authority (AMSA); the Australian Quarantine and Inspection Service (AQIS); the Civil Aviation Safety Authority (CASA); the Department of the Environment, Water, Heritage and the Arts (DEWHA); the Great Barrier Reef Marine Park Authority (GBRMPA) and the National Offshore Petroleum Safety Authority (NOPSA).

Offences in these areas can raise novel factual, technical and evidential issues and have cross-jurisdictional and transnational aspects, all of which give rise to challenges in prosecuting.

Offences prosecuted this year cover a diverse range of subject areas including illegal foreign fishing; unlawfully importing seahorse powder which contains a listed specimen under the *Convention on International Trade in Endangered Species* (CITES); maritime safety in failing to take reasonable steps to protect health and safety; and civil aviation breaches.

The CDPP has also prosecuted in other areas such as corruption, offences involving therapeutic goods and unauthorised access to restricted data.

### Crime Impacting upon Safety

#### TIMOTHY LESLIE McCORMACK

CIVIL AVIATION

FABRICATED EVIDENCE

THE *CIVIL AVIATION ACT 1988* AND THE *CIVIL AVIATION REGULATIONS 1988* SEEK TO ENSURE THAT AIRCRAFT MAINTENANCE AND CERTIFICATION IS CONDUCTED TO VERY HIGH STANDARDS TO ENSURE THE SAFETY OF THE FLYING PUBLIC. THE DEFENDANT WAS NOT LICENSED TO CARRY OUT MAINTENANCE ON AIRCRAFT AS HE CLAIMED. EACH AIRCRAFT THAT THE DEFENDANT WORKED ON HAD THE CAPACITY TO CARRY UP TO 405 PASSENGERS AND WAS ASSIGNED TO QANTAS' LONG HAUL ROUTES TO INTERNATIONAL DESTINATIONS. THOSE DESTINATIONS INCLUDED JOHANNESBURG, HONG KONG, SINGAPORE, BANGKOK, LOS ANGELES AND SAN FRANCISCO.

The defendant was employed by Qantas Airways Ltd as an Aircraft Maintenance Engineer (AME). An AME is responsible for carrying out maintenance on aircraft under the supervision of a Licensed Aircraft Maintenance Engineer (LAME). A LAME is responsible for providing a 'release to service' of an aircraft.

Over a period of 10 months from September 2006 to July 2007 the defendant regularly carried out substantial and significant work maintaining and repairing Qantas Boeing 747's. That work included repairing engines; inspecting and monitoring damage to the body of the aircraft, including damage to the wings; inspecting and repairing fuel leaks and oil leaks; checking and repairing the landing gear, brakes and tyres; certifying that all transit maintenance had been correctly carried out prior to the aircraft's next flight; and responding to reports from Captains concerning warning messages displayed in the cockpit during flights. These reports included issues relating to decreasing fuel levels; engine operation; the auxiliary power system; and the operation of the fuel control system. These procedures are certifying maintenance procedures and the defendant was not qualified to carry out or certify those maintenance procedures.

On 20 July 2007 the defendant provided Qantas supervisors with a fraudulent document purporting to be his CASA issued LAME licence. He was never issued with a CASA issued LAME licence.

To obtain a CASA issued LAME licence, a person must undertake CASA basic exams and pass training courses. The defendant only ever passed one CASA basic exam and did not complete and pass all training courses. The defendant created CASA basic exam results notifications purporting to establish that he had passed each exam and provided them to Qantas.

The defendant was charged with 1 count of possessing a forged Commonwealth document, namely a licence purported to be issued by CASA, intending to use it to induce a third person to accept it as genuine and to dishonestly obtain a gain pursuant to section 145.2(5) of the *Criminal Code*; 5 counts of using a false Commonwealth document, namely 5 basic exam results purportedly issued by CASA, to induce a third person to accept them as genuine and to dishonestly obtain a gain pursuant to section 145.1(5) of the *Criminal Code*; 6 counts of making a false Commonwealth document, namely five basic exam results purportedly issued by CASA and the false CASA licence, to induce a third person to accept them as genuine and to dishonestly obtain a gain pursuant to section 144.1(5) of the *Criminal Code*; and 30 counts of carrying out maintenance on Australian aircraft without a licence pursuant to section 20AB(2)(a) of the *Civil Aviation Act 1988*. A further 24 counts for similar offences were taken into account in sentencing the defendant pursuant to section 16BA of the *Crimes Act*.

On 17 December 2008 in the District Court of New South Wales in Sydney the defendant was sentenced to a total effective penalty of 3 years and 5 months imprisonment to be released after serving 2 years on condition that he be of good behaviour for 2 years.

At sentence the defendant presented to the court 4 testimonials/character references and then subsequently conceded that each had been forged. This resulted in the defendant then being charged with 1 count of making use of fabricated evidence pursuant to section 36(b) of the *Crimes Act* and 1 count of attempting to pervert the course of justice pursuant to section 43 of the *Crimes Act*. The defendant pleaded guilty to these offences.

On 28 August 2009 in the District Court of New South Wales in Sydney the defendant was further sentenced to 2 years imprisonment to be released after serving 8 months on condition that he be of good behaviour for 16 months.

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### **ADRIAN SIDNEY DUNGEY**

#### **CIVIL AVIATION**

IT IS A REQUIREMENT OF THE *CIVIL AVIATION ACT 1988* AND REGULATION 92.095 OF THE *CIVIL AVIATION SAFETY REGULATIONS 1988* THAT ALL ACTIVE FLIGHT CREW MUST HAVE COMPLETED AN APPROVED DANGEROUS GOODS COURSE AND MUST COMPLETE FURTHER SUCH TRAINING EVERY 2 YEARS. THIS REQUIREMENT EXISTS TO MINIMISE RISKS TO PUBLIC SAFETY IN RELATION TO AIR TRAFFIC.

In August 2006, during his induction process as a commercial pilot, the defendant provided a copy of a Dangerous Goods Flight Crew Certificate with an expiry date of 20 April 2008.

Following a routine audit by CASA in January 2008 it was discovered that the defendant had not completed dangerous goods training since 2004 and that the certificate he had provided to his employer was false.

The defendant was charged with 1 count of producing a false document pursuant to section 137.2(1) of the *Criminal Code*.

On 19 March 2009 in the Local Court of New South Wales in Port Macquarie the defendant was convicted and fined \$2,000 and ordered to pay court costs of \$73.

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### **INCO SHIPS PTY LTD**

#### **MARITIME SAFETY**

The defendant was the operator of an Australian registered container vessel called the *ANL Bass Trader*. In June 2007 a heavy wire rope on the vessel was replaced when it was docked at Bell Bay. This rope was used in connection with one of that vessel's cranes and was attached to a new rope by means of 2 stainless steel cable socks to pull the new rope into position. On 2 occasions the socks parted and the end of a rope fell from a great height to the wharf below.

On the first occasion the falling rope narrowly missed an employee of the defendant working on the wharf. On the second, 2 employees and a contractor were working on the wharf to replace the old rope when the cable socks parted. All 3 men were in danger of being struck by the falling rope. One man, an employee of the defendant, was hit and his left arm was injured resulting in it being amputated at the shoulder as a result.

The defendant was charged with 2 counts of failing to take reasonable steps to protect the health and safety of an employee pursuant to section 11 of the *Occupational Health & Safety (Maritime Industry) Act 1993* and 1 count of failing to take reasonable steps to protect the health and safety of a contractor pursuant to sections 13 and 11 of the *Occupational Health & Safety (Maritime Industry) Act 1993*.

On 29 April 2009 in the Tasmanian Court of Petty Sessions in Hobart the defendant was convicted and ordered to pay a penalty of \$100,000.

The defendant appealed against the excessiveness of the sentence to the Supreme Court of Tasmania. The Supreme Court of Tasmania affirmed the penalty and dismissed the appeal.

## Crimes Impacting upon the Environment

### **MUSLIMIN AKA MIMING**

#### **FOREIGN FISHING**

On 23 April 2008 Royal Australian Navy Patrol Boat HMAS Broome sighted and apprehended an Indonesian flagged fishing vessel named 'Segara 07' at a position that was 3.1 nautical miles south of the Australian/Indonesian Seabed Boundary Line (AISBL) in waters above a part of the Australian continental shelf not within the Australian Fishing Zone (AFZ). There were 7 persons onboard including the defendant who was the master of the vessel. A search of the vessel revealed that the vessel was equipped for fishing for sedentary organisms, namely trepang (sea cucumber), and had a GPS navigational unit, a wet compass, and two navigational charts. HMAS Broome then brought the vessel and crew to Darwin. The defendant admitted that he was the master of the Segara 07 and that the vessel was equipped to fish for sedentary species, but said that he had only come south of the AISBL to look for another vessel after they were separated in a storm.

The defendant was charged with being at a place in the waters above a part of the Australian continental shelf in possession or charge of a foreign vessel equipped for fishing for sedentary species pursuant to section 101(2) of the *Fisheries Management Act 1991*. The defendant elected to proceed to trial and in October 2008 was found guilty by a jury in the Supreme Court of the Northern Territory in Darwin, the jury rejecting his claim that he had crossed the line as a result of an emergency.

On 9 December 2002 in the Supreme Court of the Northern Territory the defendant was convicted and fined \$1,500 and ordered, pursuant to section 26(2) of the *Sentencing Act (NT)*, that if the fine was not paid within 28 days, the defendant was to be imprisoned until his liability to pay the fine was discharged.

The defendant then appealed to the Northern Territory Court of Criminal Appeal against the conviction, arguing that section 12 of the *Fisheries Management Act 1991*, which extends the operation of section 101(2) into the waters above the Australian continental shelf outside the AFZ, was ambiguous and should be read subject to international law, and if so read, could only constitute an offence in cases where the master was proven to have had an intention to take sedentary species from the Australian continental shelf. By a majority of 2:1 the Northern Territory Court of Criminal Appeal dismissed the appeal, holding that section 12 was not ambiguous or contrary to international law and no such intention was necessary.

The defendant is now applying for special leave to appeal to the High Court of Australia against the conviction on the same grounds that were argued before the Northern Territory Court of Criminal Appeal.

**R & T AUSTRALIA PTY LTD****ENDANGERED SPECIES**

These offences related to *Hippocampus* (seahorse) which is an endangered species. *Hippocampus* is listed in Appendix II to CITES, which means that the species, although not threatened with extinction now, might become so unless trade is subject to strict regulation. This species was included at the instigation of Australia due to the effect that wild harvesting was having on the survival of the species.

The defendant is a company that supplies vitamins and fine chemicals to local contract manufacturers. On about 23 May 2006 the defendant imported 25kgs of seahorse powder from China into Australia without permission. On about 26 May 2006 the defendant exported the seahorse powder from Australia to an unrelated company in New Zealand, known as 'RMF', without permission. On the shipping documentation in relation to the import and export, the goods were falsely described as 'plant extract'. The New Zealand authorities intercepted the consignment, identified its true contents, and subsequently prosecuted RMF in relation to the import of the substance into New Zealand.

The defendant was charged with 1 count of importing a CITES specimen pursuant to section 303CD(1) of the *Environment Protection and Biodiversity Conservation Act 1999* and 1 count of exporting a CITES specimen pursuant to section 303CC(1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

On 8 April 2009 in the Local Court of New South Wales the defendant was fined a total of \$15,000 and ordered to pay court costs of \$146. The defendant received a discount on sentence for the early plea of guilty and assisting authorities.



## General Prosecutions

### **ALOE VERA OF AUSTRALIA PTY LTD, JENNIFER MCDUGALL AND JENNIFER MILLIN**

#### **THERAPEUTIC GOODS**

The defendant, McDougall was the managing director of Aloe Vera of Australia Pty Ltd and the defendant, Millin, was McDougall's assistant. The defendants added food dyes to products to alter colours; deleted and replaced expiry dates before resupplying products; and performed numerous 'manufacturing' steps in unlicensed premises. A former employee reported the company's contraventions of the *Therapeutic Goods Act 1989* and was subsequently granted an indemnity pursuant to section 9(6) *DPP Act*.

Whilst the investigators had obtained evidence of offending between 2002 and 2005, due to a 3 year limitation for prosecutions to be commenced contained in the *Therapeutic Goods Act 1989*, the charges ultimately laid were only for a 6 month period.

Aloe Vera Australia Pty Ltd was charged with 7 counts of manufacturing or supplying therapeutic goods pursuant to section 20(1)(a) of the *Therapeutic Goods Act 1989*; 10 counts of manufacturing or supplying therapeutic goods pursuant to section 20(1B) of the *Therapeutic Goods Act 1989*; 1 count of incorrectly using a registration number pursuant to section 22 of the *Therapeutic Goods Act 1989*; and 6 counts of manufacturing therapeutic goods without exemption or licence pursuant to section 35 of the *Therapeutic Goods Act 1989*.

The defendants McDougall and Millin were each charged with 6 counts of manufacturing therapeutic goods without exemption or licence pursuant to section 35 of the *Therapeutic Goods Act 1989* and 1 count of incorrectly using a registration number pursuant to section 22 of the *Therapeutic Goods Act 1989*.

On 3 June 2009 in the Magistrates Court of Victoria in Melbourne Aloe Vera of Australia Pty Ltd was fined \$10,000, McDougall was fined \$3,000 and Millin was released without conviction pursuant to section 19B of the *Crimes Act*. Aloe Vera of Australia Pty Ltd had been prosecuted in 1996 for similar offending.

### **AARON DEAN MONK**

#### **OFFENSIVE BEHAVIOUR**

On 27 October 2008 the defendant boarded a Qantas flight in Darwin bound for Perth. The defendant boarded the aircraft at about 4:35pm in a heavily intoxicated state and throughout the flight was continuously disruptive to other passengers. The defendant used offensive language on board the aircraft and had a disagreement with flight crew regarding the service of alcohol. He was told during the flight he would not be served any more alcoholic drinks.

As the aircraft descended into Perth the defendant used his mobile phone and was requested by a female passenger to turn it off. The defendant yelled back and abused the passenger. On hearing this, a flight attendant spoke to the defendant and informed him to lower his voice.

After the aircraft landed in Perth and taxied to the terminal a male passenger seated a couple of rows in front of the defendant stood up and told him to stop acting like an idiot. The defendant replied 'Do you want to have a go?' and a fight ensued causing

passengers to become upset and scream. The defendant and the male passenger were eventually separated by flight attendants with the defendant yelling 'You are a dead man walking, my boys will be waiting for you'.

Airport uniformed police were contacted and on boarding the aircraft escorted the defendant from the plane.

The defendant was charged with 1 count of offensive and disorderly behaviour on an aircraft pursuant to section 256AA(1) of the *Civil Aviation Regulations 1988*.

On 9 March 2009 in the Magistrates Court of Western Australia in Perth the defendant was convicted and fined \$1,500.

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### **EDWARD JAMES BALL**

#### **CORRUPTION**

The defendant was the ACT State Manager of National 1 Pty Ltd, a publicly listed company operating primarily as a stationary supplier to business and government. National 1 Pty Ltd marketed itself as a 'one stop supplier' as it would source and on-sell any product a customer requested, but at a profit percentage mark up. On 15 separate occasions between April 2002 and April 2004 the defendant either provided, or caused to be provided, corrupting benefits to 2 Commonwealth public officials. The benefits were in the form of diverse goods and services and it was alleged would tend to influence them in the exercise of their duties as public officials.

The defendant also produced 2 false 'National 1 Office Products Cheque Register Forms ACT' as they purported to show payments made in respect of stock when the cheques were payable for items purchased for the defendant's personal use.

The defendant was charged with 15 counts of giving a corrupting benefit pursuant to section 142.1(1) of the *Criminal Code*, 1 count of false accounting pursuant to section 100 of the *Crimes Act* and 1 count of false accounting pursuant to section 350(3) of the *Criminal Code 2002* (ACT).

On 28 April 2009 in the Supreme Court of the Australian Capital Territory the defendant was sentenced to a total effective penalty of 9 months imprisonment to be released forthwith on condition that he be of good behaviour for 3 years. He was ordered to perform a total of 300 hours of community service. The defendant made full reparation to the Commonwealth government departments prior to sentence.

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### **MICHAEL BARNES**

#### **ABS PROSECUTION**

The defendant was randomly selected to participate in a Monthly Population Survey conducted by the Australian Bureau of Statistics (ABS). A Monthly Population Survey is a sample survey conducted by the completion of a form in conjunction with a personal interview with the occupants of 22,000 households across Australia. After numerous letters and visits from the ABS the defendant refused to participate in the survey or to complete the survey form.

On 9 October 2007 the Assistant Statistician issued a Notice of Direction to the defendant requiring him to complete and return the survey within 15 days. The defendant failed to do so.

The defendant was charged with failing to comply with a notice or direction pursuant to section 14(1) of the *Census and Statistics Act 1905*.

On 18 February 2009 in the Local Court of New South Wales in Burwood the defendant was convicted in his absence and fined \$550.

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### **PRIME FUEL DISTRIBUTORS PTY LTD**

#### **FUEL STANDARDS BREACH**

THIS WAS THE FIRST PROSECUTION OF OFFENCES PURSUANT TO SECTIONS 12 AND 12A OF THE *FUEL QUALITY STANDARDS ACT 2000* IN NEW SOUTH WALES AND THE SECOND ONLY IN AUSTRALIA.

The defendant owned and operated service stations known as Speedway Meadows and Speedway Mount Pritchard. In order to comply with the fuel quality information standard, petrol containing more than 1% ethanol must have clearly displayed on the petrol pump, words required by the *Fuel Quality Information Standard (Ethanol) Determination 2003* to the effect that the fuel ‘contains up to 10% ethanol’.

On 21 February 2007 and 24 April 2007, Department of Environment, Water, Heritage and the Arts (DEWHA) officers took fuel samples at the Speedway Meadows and Speedway Mount Pritchard service stations. On these days, no information was affixed to the petrol pump indicating the presence of ethanol.

Further, on 21 February 2008 Speedway Mount Pritchard was selling diesel to the public that failed to meet standards set out in the *Fuel Standard (Automotive Diesel) Determination 2001*. The fuel samples taken by DEWHA officers contained a sulphur level of 103 mg/kg, which is in excess of the maximum prescribed content of 50 mg/kg.

The defendant was charged with 8 counts of not complying with a fuel quality information standard pursuant to section 12A(1) of the *Fuel Quality Standards Act 2000* and 1 count of not complying with a fuel quality standard regarding the supply of diesel pursuant to section 12(1) of the *Fuel Quality Standards Act 2000*.

On 2 March 2009 in the Local Court of New South Wales the defendant was fined a total of \$121,000 and ordered to pay court costs of \$210.

## Unlawful Disclosure

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### **SHANE PETER EDWARDS**

#### **UNAUTHORISED ACCESS TO RESTRICTED DATA**

In November 2002 the defendant commenced work as an employment consultant with a Job Network Member (JNM) contracted by the Department of Employment and Workplace Relations (DEWR) as it was then. In the course of his work the defendant had access to the EA3000 software application developed and supported by DEWR. Data recorded in the EA3000 system included the personal details of individual jobseekers. One morning in December 2005 the defendant’s contract with the JNM was terminated and his access to the EA3000 was revoked just before 9am. However, at 7:30am that morning the defendant had logged on to the JNM computer system from a remote site and reset the password for the UserID of a former employee who had left the JNM in December 2004. The defendant also reset high level security access to the DEWR site for that UserID.

Between January 2006 and October 2006 the defendant adopted the former employee's UserID and, without authority, accessed the records of 75 jobseekers. During that period 83 instances of unauthorised access were recorded on 19 separate days. DEWR investigators and the AFP executed a search warrant at the defendant's residence in October 2006. A number of documents and images on the defendant's computers were found to relate to the EA3000. The defendant made some equivocal admissions to having utilised the former employee's UserID to access the EA3000.

The defendant was charged with 19 counts of unauthorised access to restricted data pursuant to section 478.1 of the *Criminal Code*.

On 17 December 2008 in the Local Court of New South Wales in Sydney the defendant was sentenced to a total effective penalty of 12 months imprisonment to be released forthwith on condition that he be of good behaviour for 3 years. The offender appealed the severity of the sentence to the District Court of New South Wales.

In February 2009 the defendant gave evidence and the court found he had not appreciated the gravity of his conduct at the time and that he had maintained access to the EA3000 to keep his knowledge in the field 'up-to-date' for his own business as an employment consultant. The Court found the offences were not at the highest range of criminality because the defendant derived no personal benefit. However, considering the persistent nature of the offending, release on recognizance was considered insufficient to provide general deterrence.

The appeal was allowed. The convictions were confirmed but in place of the Magistrate's orders the defendant was sentenced to a total effective penalty of 50 hours community service.

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## **THERESE AZZI**

### **UNAUTHORISED ACCESS TO RESTRICTED DATA**

The defendant commenced employment as a customer service officer with Medicare Australia in March 2005. About a month later she started to access and view Medicare computer records of 12 people personally known to her or associated with people she knew. The defendant continued viewing these records on numerous occasions until an internal audit and investigation in August 2007. When questioned by investigators, the defendant admitted accessing the data without authority and described herself as a 'sticky beak'. A transaction was recorded each time the defendant viewed personal details in a consumer's file. A total of 4,069 transactions were recorded. In September 2007 the defendant resigned from her position with Medicare.

The defendant was charged with 12 counts of unauthorised access to restricted data pursuant to section 478.1 of the *Criminal Code*.

In September 2008 the defendant indicated a plea of guilty to all counts in the Local Court of New South Wales in Sydney. She made an unsuccessful application to have the matters dismissed pursuant to section 20BQ of the *Crimes Act* on the basis that she was suffering anxiety and depression. The defendant then applied to have the charges dismissed pursuant to section 19B of the *Crimes Act*. The Court granted that application on the basis that although the defendant was not suffering a 'mental illness' she did have a 'mental condition'. The court also found the offences had flowed from the break-up of a

violent relationship, the unauthorised access did not involve any modification of data and the data had not been used for any purpose other than to satisfy the defendant's curiosity.

The Director appealed against the inadequacy of the sentence to the District Court of New South Wales.

In November 2008 the District Court found that the sentencing court had placed the offences towards the 'bottom of the range' but agreed there was only 'emotional gain' in the commission of the offences. The District Court held that the objective seriousness of the offences and the need for general deterrence in such a position of trust did require a higher penalty than dismissing the charges and effectively releasing the defendant 'scot-free'. However, the appeal court also considered it appropriate to deal with this defendant without conviction.

The appeal was allowed and the defendant was discharged without conviction on condition that she be of good behaviour and continue treatment with her psychologist for 6 months pursuant to section 19B(1)(d) of the *Crimes Act*.

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### **TIANARA GORENG GORENG**

#### **UNLAWFUL DISCLOSURE**

The defendant was a senior public servant in the Indigenous Policy area of the Department of Families and Community Services and Indigenous Affairs. In that capacity she forwarded an e-mail outlining draft talking points for Australian Government diplomatic efforts in relation to the Draft Declaration of Rights for Indigenous People to her daughter. She also forwarded 4 e-mails on topics of dysfunction in outback indigenous communities to a long-standing family friend in Mutitjulu at a time when issues of indigenous dysfunction were topical and the Australian Government was considering its response.

It was also alleged that the defendant had disclosed draft talking points for her superior's Senate testimony prior to the information being in the public domain and that whilst the defendant was in Mutitjulu she unlawfully disclosed to a long-standing family friend allegations of wrongdoing made against that family friend.

The defendant was charged with 7 counts of unlawful disclosure by a Commonwealth officer pursuant to section 70(1) of the *Crimes Act*. On 28 August 2008, following a trial in the Supreme Court of the Australian Capital Territory, a jury found the defendant guilty of 5 counts. The defendant was acquitted on the count relating to the disclosure of her superior's Senate testimony and the jury were unable to reach a verdict on the count relating to the disclosure of allegation of wrongdoing made against a family friend. That count was later discontinued by the prosecution.

On 14 October 2008 in the Supreme Court of the Australian Capital Territory the defendant was convicted and released on the condition that she be of good behaviour for 3 years and pay a pecuniary penalty of \$2,000 within 6 months.

**JAMES PAUL SEIVERS AND FRANCIS MATTHEW O'RYAN****UNLAWFUL DISCLOSURE**

The defendants shared a house in Canberra. Seivers was employed by the Australian Security Intelligence Organisation (ASIO) when he removed 3 security classified documents from the ASIO building where he worked in Canberra.

On 1 October 2004 O'Ryan travelled from Canberra to the New South Wales coastal town of Batemans Bay where he posted the classified documents to *The Australian* newspaper. The documents were received by *The Australian* newspaper days prior to the 2004 Federal election.

Seivers had obtained access to the leaked documents in April and May 2003 while he worked on a team preparing a submission to a Senate inquiry in relation to what information had been available to ASIO prior to the terrorist bombing in Bali. His role was largely to photocopy the documents and to place them on various files. The documents were subject to a high level of security and strict protocols were in place to ensure that the documents were safely secured at all times. Seivers denied knowingly removing the documents from his workplace. He gave evidence at trial to the effect that if he had removed the documents he had done so inadvertently when taking home some personal documents.

O'Ryan also gave evidence at trial and admitted sending the documents to *The Australian*, though he denied that Seivers had known about his actions and claimed to have come across the documents stored in a cupboard at the house he shared with Seivers. He gave evidence that he sent the documents to *The Australian* because he was angry that ASIO may have known about the Bali bombings prior to them occurring.

Seivers was charged with 1 count of communicating information in his possession by reason of being an officer of ASIO which had been prepared or acquired on behalf of that organisation in connection with its functions or performance pursuant to section 18(2) of the *Australian Security Intelligence Organisation Act 1979*. O'Ryan was charged with 1 count of aiding, abetting or procuring the commission of the offence pursuant to section 11.2(1) of the *Criminal Code* and section 18(2) of the *Australian Security Intelligence Organisation Act 1979*.

A trial was conducted in the Supreme Court of the Australian Capital Territory. Given the sensitive nature of the classified documents, parts of the trial were conducted in closed court and a number of confidential exhibits were tendered.

In April 2009 a jury found both defendants guilty of the offences charged. An earlier trial had resulted in a hung jury.

On 10 June 2009 in the Supreme Court of the Australian Capital Territory Seivers was sentenced to 12 months imprisonment to be served by periodic detention for 6 months and O'Ryan was sentenced to 12 months imprisonment to be served by periodic detention for 3 months.

Seivers has lodged an appeal against his conviction.

**ALLAN ROBERT KESSING**

This case was reported in the 2006-2007 Annual Report at pages 29-30.

Two reports entitled '*Threat Assessment of Airport Security Screening Personnel Sydney Kingsford Smith Airport*' and '*Sydney Airport – Air Border Security – Risk Analysis 2003*' also known as '*Tarmac Report 2003*' were compiled within the Air Border Security (ABS) team of the ACS at Sydney Kingsford Smith Airport (SKSA). The reports were protected reports as they contained sensitive information relating to security matters, internal conspiracies and criminal activity at the SKSA. Disclosure of the contents of the reports had the potential to compromise ongoing security, intelligence and enforcement operations conducted by the ACS and other law enforcement agencies.

On 31 May 2005 two articles appeared in *The Australian* entitled '*Airport Staff “smuggling drugs” Secret Customs Report Exposes Criminal Links*' and '*Security Operation Rife With Criminals*'. Contents from the two reports were quoted or paraphrased in the articles.

The defendant was a member of the ABS team and undertook research for the first report. The defendant resigned from the ACS on 10 May 2005. Telecommunications service records established that the defendant had been in telephone contact with one of the journalists. When the AFP executed search warrants on premises associated with the defendant, a copy of each of the reports was located as well as a business card for 1 of the journalists and notes of contact details for the journalist and News Limited. Evidence was given at the trial from ACS officers who were members of the ABS unit, and other ACS officers who had access to the two reports, that they did not disclose contents of the reports to the media.

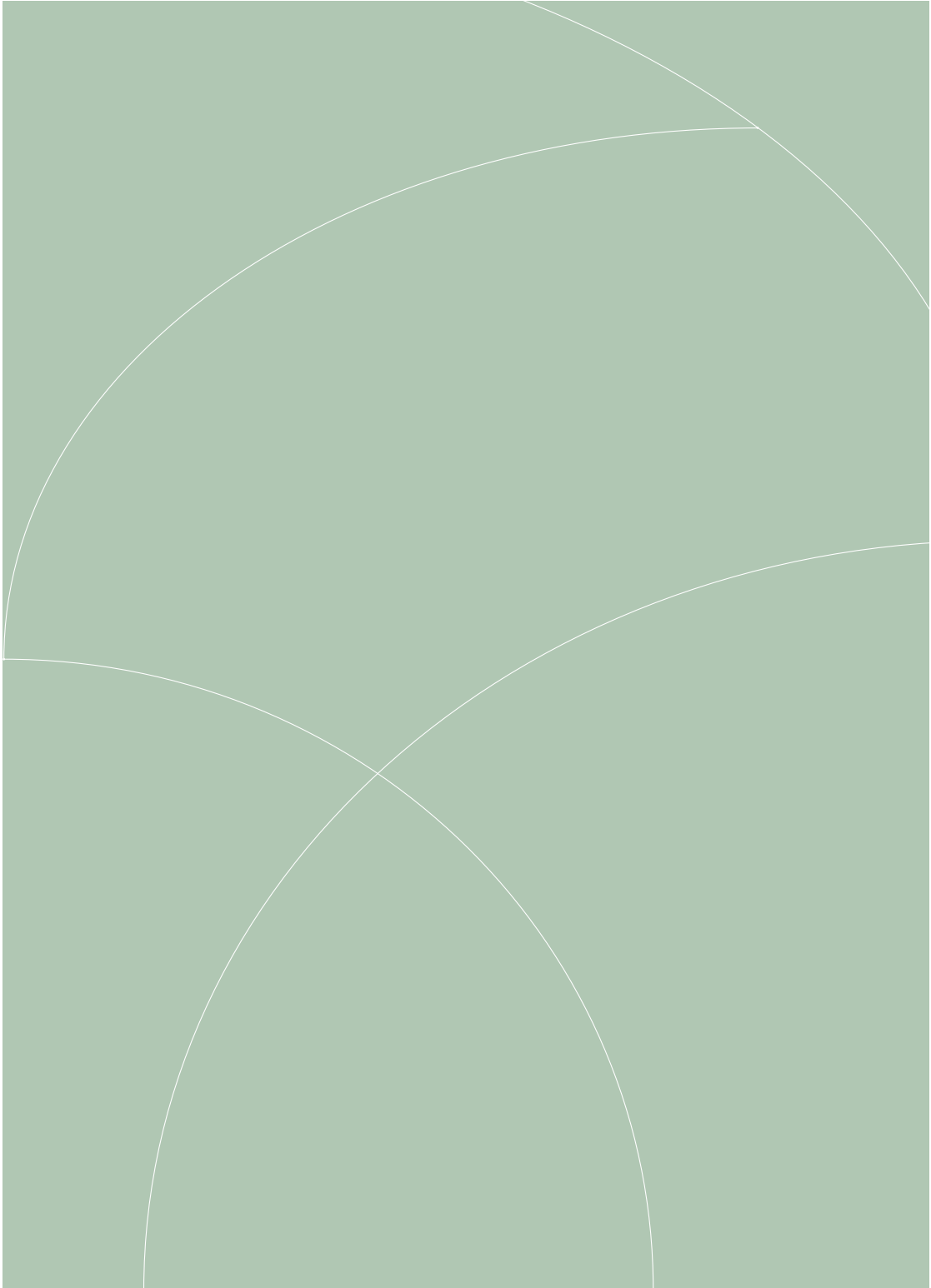
The defendant was charged with 1 offence of disclosing information as a former Commonwealth officer contrary to section 70(2) of the *Crimes Act*. He entered a plea of not guilty and was tried in the District Court of New South Wales. The trial commenced on 6 March 2007. The defendant did not give or call any evidence at the trial and after 16 days the jury returned a guilty verdict.

On 22 June 2007 the defendant was sentenced to 9 months imprisonment to be released forthwith. The defendant appealed against his conviction and sentence on 10 grounds to the New South Wales Court of Criminal Appeal.

On 19 December 2008 the appeal was dismissed. The New South Wales Court of Criminal Appeal stated that they were '*satisfied that the Crown established the appellant's guilt of the offence beyond reasonable doubt*' and that '*no substantial miscarriage of justice actually occurred*'.

On 20 January 2009 the defendant filed an application for special leave to appeal to the High Court of Australia. On 25 July 2009 the application to the High Court was discontinued.







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# statistics and performance indicators

# Statistics and performance indicators



## 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 CDPP. A submission made to the Director to discontinue such a matter is known as a 'no bill' application.

In the past year, there were 13 no bill applications received from defendants or their representatives. Of these, 7 were granted, and 6 were refused. A further 18 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 25.

Of the 25 cases which were discontinued, in 13 cases the primary reason for discontinuing was because there was insufficient evidence. Two cases were discontinued because the public interest did not warrant the continuation of the prosecution. In the remaining ten cases, the reason for discontinuing the prosecution was both the insufficiency of evidence and the public interest.

Five of the 25 discontinued cases involved fraud offences, 1 involved drug offences, 5 involved corporations offences and 14 involved other types of offences.

Four of the 25 cases were discontinued after a previous trial.

### **INDEMNITIES**

The *DPP Act* empowers the Director to give 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 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 CDPP gave indemnities under sections 9(6) and 9(6D) to 11 people. The CDPP gave 2 indemnities under section 9(6B). Four witnesses were indemnified in drugs prosecutions, 8 in a prosecution for fraud and 1 in a prosecution for another offence.

**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*, 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, to discontinue it. The Director did not exercise this power in 2008-2009.

**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 2008-2009 the Director exercised this power on 2 occasions. 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 2008-2009 the Director consented to the commencement of conspiracy proceedings against 46 defendants in relation to 28 alleged conspiracies. Fifteen of the alleged conspiracies related to drug offences, 12 of the alleged conspiracies related to fraud offences and 1 consent related to a conspiracy for another offence.

## Performance Indicators 2008–2009

In 2008-2009 the CDPP met all prosecution performance targets.

The *Prosecution Policy* provides that the prosecution right to appeal against sentence should be exercised

with appropriate restraint. In deciding whether to appeal, consideration is to be given as to whether there is a reasonable prospect that the appeal will be successful. Factors which may be considered when deciding to appeal include whether:

- (a) the sentence is manifestly inadequate;
- (b) the sentence reveals an inconsistency in sentencing standards;
- (c) the sentence proceeded on the basis of a material error of law or fact requiring appellate correction;
- (d) the sentence is substantially and unnecessarily inconsistent with other relevant sentences;
- (e) an appeal to a Court of Appeal would enable the Court to lay down some general principles for the governance and guidance of sentencers;
- (f) an appeal will enable the Court to establish and maintain adequate standards of punishment for crime;
- (g) an appeal will ensure, so far as the subject matter permits, uniformity in sentencing; and whether
- (h) an appeal will enable an appellate court to correct an error of legal principle.

In 2008-2009, 12 prosecution appeals against sentence in indictable matters were decided. In 6 cases the CDPP appeal was upheld. In 4 of the 6 dismissed appeals, the appeal court agreed with the CDPP that the sentences imposed at first instance were too low but declined to allow the appeals because of the principle of double jeopardy and other factors. These appeals are regarded as being successful for the purposes of the below prosecution performance indicators as the outcome of these appeal decisions is that the sentences at first instance do not become precedents for future sentences in comparable cases.

The following table lists the CDPP's performance indicators for the conduct of all prosecutions for 2008-2009 and compares them with figures for the previous year.

**Prosecution performance indicators for 2008-2009 – National Total**

| Description  | Target | Outcome | Details<br>[successful (total)] |
|--|--------|---------|---------------------------------|
| Prosecutions resulting in a conviction*                            | 90%    | 99%     | 5505 (5587)                     |
| Figures for 2007 – 2008  | 90%    | 98%     | 5009 (5106)                     |
| Defendants in defended summary hearings resulting in conviction    | 60%    | 73%     | 143 (196)                       |
| Figures for 2007 – 2008  | 60%    | 64%     | 123 (192)                       |
| Defendants in defended committals resulting in a committal order   | 80%    | 95%     | 251 (263)                       |
| Figures for 2007 – 2008  | 80%    | 97%     | 233 (241)                       |
| Defendants tried and convicted                                     | 60%    | 71%     | 71 (100)                        |
| Figures for 2007 – 2008  | 60%    | 72%     | 73 (101)                        |
| Successful prosecution sentence appeals in summary prosecutions    | 60%    | 71%     | 5 (7)                           |
| Figures for 2007 – 2008  | 60%    | 67%     | 6 (9)                           |
| Prosecution sentence appeals in a prosecution on indictment upheld | 60%    | 83%     | 10 (12)                         |
| Figures for 2007 – 2008  | 60%    | 39%     | 9 (23)                          |

\* The conviction rate is calculated by taking the number of defendants convicted as a percentage of defendants convicted or acquitted. The calculation ignores defendants where the CDPP discontinued the prosecution against them in its entirety, when a jury was unable to reach a verdict or where a prosecution has commenced and the court has issued a warrant to bring the defendant before the court.

## Prosecution Statistics

In the course of the year the CDPP dealt with 6,514 people. The cases were referred by over 40 investigative agencies as well as a number of State and Territory agencies. The following tables set out details of the prosecutions conducted in 2008-2009.

**Table 1: Outcomes of successful prosecutions in 2008-2009**

| Description   | No.  |
|---|------|
| Defendants convicted of offences prosecuted summarily     | 4947 |
| Defendants convicted of offences prosecuted on indictment | 558  |
| Defendants committed for trial or sentence                | 571  |

**Table 2: Summary Prosecutions in 2008-2009**

| Description                                     | No.         |
|---|-------------|
| Defendants convicted after a plea of guilty     | 4804        |
| Defendants convicted after a plea of not guilty | 143         |
| Total defendants convicted                      | 4947        |
| Defendants acquitted after a plea of not guilty | 53          |
| <b>Total</b>                                    | <b>5000</b> |

**Table 3: Committals in 2008-2009**

| Description                                      | No.        |
|--|------------|
| Defendants committed after a plea of guilty      | 320        |
| Defendants committed after a plea of not guilty  | 251        |
| Total defendants committed                       | 571        |
| Defendants discharged after a plea of not guilty | 12         |
| <b>Total</b>                                     | <b>583</b> |

**Table 4: Prosecutions on indictment in 2008-2009**

| Description                                     | No.        |
|---|------------|
| Defendants convicted after a plea of guilty     | 487        |
| Defendants convicted after a plea of not guilty | 71         |
| Total defendants convicted                      | 558        |
| Defendants acquitted after a plea of not guilty | 29         |
| <b>Total</b>                                    | <b>587</b> |

**Table 5: Prosecutions on indictment – duration of trials in 2008-2009**

| Length       | No.       |
|--------------|-----------|
| 1-5 days     | 25        |
| 6-10 days    | 34        |
| 11-15 days   | 9         |
| 16-20 days   | 5         |
| 21-25 days   | 8         |
| 16-30 days   | 8         |
| over 31 days | 7         |
| <b>Total</b> | <b>96</b> |

**Table 6: Prosecution appeals against sentence in 2008-2009**

| Appeal Type              | Outcome   | Summary  | Indictable |
|--------------------------|-----------|----------|------------|
| Appeals against sentence | Upheld    | 5        | 6          |
|                          | Dismissed | 2        | 6          |
| <b>Total</b>             |           | <b>7</b> | <b>12</b>  |

**Table 7: Defence appeals in 2008-2009**

| Appeal Type             | Outcome   | Summary    | Indictable |
|-------------------------|-----------|------------|------------|
| Against Conviction Only | Upheld    | 7          | 5          |
|                         | Dismissed | 4          | 10         |
| Against Sentence Only   | Upheld    | 111        | 17         |
|                         | Dismissed | 36         | 28         |
| Conviction & Sentence   | Upheld    | 11         | 3          |
|                         | Dismissed | 2          | 11         |
| <b>Total</b>            |           | <b>171</b> | <b>74</b>  |

**Table 8: Legislation under which charges were dealt with in 2008-2009**

| Legislation  | Summary (Charges) | Indictable (Charges) |
|--|-------------------|----------------------|
| A New Tax System (Family Assistance) (Administration) Act 1999   | 5                 |                      |
| Airports (Control of On-Airport Activities) Regulations 1997     | 2                 |                      |
| Anti-Money Laundering and Counter-Terrorism Financing Act 2006   | 9                 | 67                   |
| Australian Citizenship Act 1948                                  | 2                 |                      |
| Australian Crime Commission Act 2002                             | 1                 | 39                   |
| Australian Federal Police Act 1979                               | 6                 |                      |
| Australian Passports Act 2005                                    | 59                | 5                    |
| Australian Securities and Investment Commission Act 2001         | 1                 |                      |
| Australian Security Intelligence Organisation Act 1979           |                   | 2                    |
| Australian Transport Security Regulations 2005                   | 35                |                      |
| Aviation Transport Security Act 2004                             | 35                |                      |
| Bankruptcy Act 1966  | 408               | 21                   |
| Building and Construction Industry Improvement Act 2005          | 1                 |                      |
| Census and Statistics Act 1905                                   | 26                |                      |
| Civil Aviation Act 1988  | 40                | 30                   |
| Civil Aviation Regulations 1988                                  | 82                |                      |
| Classification (Publications, Films and Computer Games) Act 1995 | 36                |                      |
| Commonwealth Authorities and Companies Act 1997                  |                   | 2                    |
| Commonwealth Electoral Act 1918                                  | 17                |                      |
| Copyright Act 1968   | 504               | 40                   |
| Corporations Act 1989  |                   | 20                   |
| Corporations Act 2001  | 63                | 186                  |
| Crimes (Aviation) Act 1991                                       | 63                | 1                    |
| Crimes (Currency) Act 1981                                       | 97                | 11                   |

| Legislation   | Summary (Charges) | Indictable (Charges) |
|---|-------------------|----------------------|
| Crimes Act 1914   | 119               | 164                  |
| Criminal Code Act 1995  | 13164             | 1226                 |
| Customs Act 1901  | 196               | 72                   |
| Dairy Produce Act 1986  | 10                |                      |
| Environment Protection and Biodiversity Conservation Act 1999       | 17                | 1                    |
| Environment Protection and Biodiversity Regulations 2000            | 2                 |                      |
| Excise Act 1901   | 5                 | 14                   |
| Financial Management and Accountability Act 1997                    | 316               |                      |
| Financial Transaction Reports Act 1988                              | 9                 | 48                   |
| Fisheries Management Act 1991                                       | 121               | 16                   |
| Foreign Passports (Law Enforcement and Security) Act 2005           | 27                | 51                   |
| Fuel Quality Standards Act 2000                                     | 9                 |                      |
| Great Barrier Reef Marine Park Act 1975                             | 22                |                      |
| Great Barrier Reef Marine Park Regulations 1983                     | 18                |                      |
| Health Insurance Act 1973   | 1026              | 3                    |
| Historic Shipwrecks Act 1976  | 2                 |                      |
| Income Tax Assessment Act 1936                                      | 110               |                      |
| Migration Act 1958  | 22                | 15                   |
| National Health Act 1953  | 54                | 1                    |
| Navigation Act 1912   | 12                |                      |
| Non Commonwealth Legislation  | 215               | 489                  |
| Occupational Health and Safety (Maritime Industry) Act 1993         | 4                 |                      |
| Passports Act 1938  | 24                | 12                   |
| Petroleum (Submerged Lands) Act 1967                                | 1                 |                      |
| Primary Industries Levies and Charges Collection Act 1991           | 13                |                      |
| Proceeds of Crime Act 1987  |                   | 2                    |
| Proceeds of Crime Act 2002  | 2                 |                      |
| Protection of the Sea (Prevention of Pollution from Ships) Act 1983 | 6                 |                      |
| Public Order (Protection of Persons and Property) Act 1971          | 20                |                      |
| Quarantine Act 1908   | 10                | 1                    |
| Radiocommunications Act 1992  | 1                 |                      |
| Social Security (Administration) Act 1999                           | 1452              |                      |
| Social Security Act 1991  | 189               |                      |
| Statutory Declarations Act 1959                                     |                   | 2                    |
| Student Assistance Act 1973   | 1                 |                      |
| Superannuation Industry (Supervision) Act 1993                      |                   | 1                    |
| Sydney Airport Curfew Act 1995                                      | 1                 |                      |

| Legislation                      | Summary (Charges) | Indictable (Charges) |
|----------------------------------|-------------------|----------------------|
| Taxation Administration Act 1953 | 816               |                      |
| Therapeutic Goods Act 1989       | 73                | 50                   |
| Torres Strait Fisheries Act 1984 | 22                |                      |
| Trade Marks Act 1955             | 15                |                      |
| Trade Marks Act 1995             | 56                | 6                    |
| Trade Practices Act 1974         | 56                | 11                   |
| Workplace Relations Act 1996     | 7                 |                      |
| <b>Total</b>                     | <b>19737</b>      | <b>2609</b>          |

Note: The CDDP reported last year it was reviewing the way in which it calculates the number of charges dealt with. As a result of these changes in methodology the figures in this table are not directly comparable to published figures for previous years.

**Table 8a: Legislation under which charges were dealt with in 2007-2008**

| Legislation  | Summary (Charges) | Indictable (Charges) |
|--|-------------------|----------------------|
| A New Tax System (Family Assistance) (Administration) Act 1999   | 3                 | 1                    |
| Air Navigation Regulations                                       | 2                 |                      |
| Airports (Control of On-Airport Activities) Regulations 1997     | 4                 |                      |
| Anti-Money Laundering and Counter-Terrorism Financing Act 2006   | 38                |                      |
| Australian Citizenship Act 1948                                  | 1                 |                      |
| Australian Crime Commission Act 2002                             | 2                 | 99                   |
| Australian Federal Police Act 1979                               | 1                 |                      |
| Australian Passports Act 2005                                    | 84                | 3                    |
| Australian Postal Corporation Act 1989                           | 5                 |                      |
| Australian Securities and Investment Commission Act 2001         | 2                 | 13                   |
| Australian Transport Security Regulations 2005                   | 34                |                      |
| Aviation Transport Security Act 2004                             | 21                |                      |
| Bankruptcy Act 1966  | 317               | 27                   |
| Census and Statistics Act 1905                                   | 1000              |                      |
| Civil Aviation Act 1988  | 22                | 1                    |
| Civil Aviation Regulations 1988                                  | 50                |                      |
| Classification (Publications, Films and Computer Games) Act 1995 | 23                |                      |
| Commonwealth Authorities and Companies Act 1997                  |                   | 2                    |
| Commonwealth Electoral Act 1918                                  | 3                 |                      |
| Copyright Act 1968   | 530               |                      |
| Corporations Act 1989  | 1                 | 167                  |
| Corporations Act 2001  | 71                | 823                  |
| Crimes (Aviation) Act 1991                                       | 20                | 3                    |
| Crimes (Currency) Act 1981                                       | 95                | 24                   |



| Legislation   | Summary (Charges) | Indictable (Charges) |
|---|-------------------|----------------------|
| Crimes Act 1914   | 129               | 254                  |
| Criminal Code Act 1995  | 10947             | 1071                 |
| Customs Act 1901  | 180               | 82                   |
| Defence Act 1903  | 3                 |                      |
| Environment Protection and Biodiversity Conservation Act 1999 | 17                | 1                    |
| Environment Protection and Biodiversity Regulations 2000      | 10                |                      |
| Excise Act 1901   | 59                | 24                   |
| Financial Management and Accountability Act 1997              | 85                | 8                    |
| Financial Transaction Reports Act 1988                        | 33                | 70                   |
| Fisheries Management Act 1991                                 | 635               | 2                    |
| Foreign Passports (Law Enforcement and Security) Act 2005     | 10                | 7                    |
| Fuel Quality Standards Act 2000                               | 3                 |                      |
| Great Barrier Reef Marine Park Act 1975                       | 13                |                      |
| Great Barrier Reef Marine Park Regulations 1983               | 10                |                      |
| Health Insurance Act 1973                                     | 1159              | 5                    |
| Historic Shipwrecks Act 1976                                  | 1                 |                      |
| Income Tax Assessment Act 1936                                | 45                |                      |
| Industrial Chemicals (Notification and Assessment) Act 1989   | 4                 |                      |
| Marriage Act 1961   | 4                 |                      |
| Migration Act 1958  | 38                | 11                   |
| Migration Regulations 1994                                    | 1                 |                      |
| National Health Act 1953                                      | 73                |                      |
| Navigation Act 1912   | 1                 |                      |
| Non Commonwealth Legislation                                  | 426               | 530                  |
| Passports Act 1938  | 28                | 2                    |
| Petroleum (Submerged Lands) Act 1967                          | 1                 |                      |
| Primary Industries Levies and Charges Collection Act 1991     | 10                |                      |
| Proceeds of Crime Act 1987                                    |                   | 4                    |
| Proceeds of Crime Act 2002                                    | 1                 |                      |
| Public Order (Protection of Persons and Property) Act 1971    | 2                 |                      |
| Quarantine Act 1908   | 13                | 1                    |
| Radiocommunications Act 1992                                  | 2                 |                      |
| Social Security (Administration) Act 1999                     | 3223              |                      |
| Social Security Act 1991                                      | 201               |                      |
| Social Services Act 1947                                      | 2                 |                      |
| Statutory Declarations Act 1959                               | 3                 |                      |
| Student Assistance Act 1973                                   | 43                |                      |
| Superannuation Industry (Supervision) Act 1993                |                   | 2                    |
| Sydney Airport Curfew Act 1995                                | 2                 |                      |

| Legislation                      | Summary (Charges) | Indictable (Charges) |
|----------------------------------|-------------------|----------------------|
| Taxation Administration Act 1953 | 931               | 3                    |
| Telecommunications Act 1997      | 1                 |                      |
| Therapeutic Goods Act 1989       | 23                | 12                   |
| Torres Strait Fisheries Act 1984 | 36                |                      |
| Trade Marks Act 1995             | 89                | 107                  |
| Trade Practices Act 1974         | 58                |                      |
| Veterans' Entitlements Act 1986  | 1                 |                      |
| Workplace Relations Act 1996     | 6                 |                      |
| <b>Total</b>                     | <b>20891</b>      | <b>3359</b>          |

Note: As last year the CDPP was reviewing the way in which it calculates the number of charges dealt with, this information was not included in the 2007-2008 Annual Report and is now provided in this table using the same methodology as in Table 8.

**Table 9: Crimes Act 1914: charges dealt with in 2008-2009**

| Section      | Title  | Summary (Charges) | Indictable (Charges) |
|--------------|--|-------------------|----------------------|
| 3V(2)(d)     | Requirement to furnish name etc.                           | 1                 |                      |
| 20A          | Failure to comply with condition of discharge or release   | 1                 |                      |
| 20A(1)       | Failure to comply with condition of discharge or release   | 2                 |                      |
| 20A(5)       | Failure to comply with condition of discharge or release   | 1                 |                      |
| 23XWP(4)     | Carrying out forensic procedure following conviction       | 1                 |                      |
| 29B          | False representation (repealed)                            | 27                | 25                   |
| 29C          | Statements in applications for grant of money (repealed)   |                   | 3                    |
| 29D          | Fraud (repealed)   | 44                | 108                  |
| 35(1)        | Giving false testimony                                     | 1                 |                      |
| 43           | Attempting to pervert justice                              |                   | 6                    |
| 67(B)        | Forgery of Commonwealth documents etc. (repealed)          |                   | 15                   |
| 70(1)        | Disclosure of information by Commonwealth officers         |                   | 7                    |
| 73           | Corruption and bribery of Commonwealth officers (repealed) | 1                 |                      |
| 85U          | Obstructing carriage of articles by post                   | 6                 |                      |
| 85ZE(1)(A)   | Improper use of carriage services (repealed)               | 26                |                      |
| 89(1)        | Trespassing on Commonwealth land                           | 7                 |                      |
| 89(2)        | Trespassing on Commonwealth land                           | 1                 |                      |
| <b>Total</b> |  | <b>119</b>        | <b>164</b>           |

**Table 10a: Criminal Code 1995: charges dealt with under Parts of the Criminal Code in 2008-2009**

| Part  | Summary (Charges) | Indictable (Charges) |
|---|-------------------|----------------------|
| Part 5.3—Terrorism  |                   | 42                   |
| Part 7.2—Theft and other property offences  | 26                | 21                   |
| Part 7.3—Fraudulent conduct   | 12359             | 588                  |
| Part 7.4—False or misleading statements   | 78                |                      |
| Part 7.6—Bribery and related offences   | 1                 | 18                   |
| Part 7.7—Forgery and related offences   | 102               | 38                   |
| Part 7.8—Causing harm to, and impersonation and obstruction of, Commonwealth public officials | 37                | 5                    |
| Part 7.20—Miscellaneous   |                   | 26                   |
| Part 9.1—Serious drug offences  | 36                | 208                  |
| Part 10.2—Money laundering  | 5                 | 44                   |
| Part 10.5—Postal services   | 145               | 7                    |
| Part 10.6—Telecommunications Services   | 325               | 226                  |
| Part 10.7—Computer offences   | 47                | 1                    |
| Part 10.8—Financial information offences  | 3                 | 2                    |
| <b>Total</b>  | <b>13164</b>      | <b>1226</b>          |

**Table 10b: Criminal Code 1995: charges dealt with in 2008-2009**

| Section | Title   | Summary (Charges) | Indictable (Charges) |
|---------|---|-------------------|----------------------|
| 101.4   | Possessing things connected with terrorist acts                 |                   | 11                   |
| 101.6   | Other acts done in preparation for, or planning, terrorist acts |                   | 8                    |
| 102.2   | Directing the activities of a terrorist organisation            |                   | 1                    |
| 102.3   | Membership of a terrorist organisation                          |                   | 11                   |
| 102.6   | Getting funds to, from or for a terrorist organisation          |                   | 7                    |
| 102.7   | Providing support to a terrorist organisation                   |                   | 4                    |
| 131.1   | Theft   | 26                | 15                   |
| 132.1   | Receiving   |                   | 6                    |
| 134.1   | Obtaining property by deception                                 | 44                | 68                   |
| 134.2   | Obtaining a financial advantage by deception                    | 131               | 418                  |
| 135.1   | General dishonesty  | 82                | 78                   |
| 135.2   | Obtaining financial advantage                                   | 12102             | 17                   |
| 135.4   | Conspiracy to defraud   |                   | 7                    |
| 136.1   | False or misleading statements in applications                  | 57                |                      |
| 137.1   | False or misleading information                                 | 9                 |                      |
| 137.2   | False or misleading documents                                   | 12                |                      |

| Section | Title  | Summary (Charges) | Indictable (Charges) |
|---------|--|-------------------|----------------------|
| 142.1   | Corrupting benefits given to, or received by, a Commonwealth public official   |                   | 16                   |
| 142.2   | Abuse of public office   | 1                 | 2                    |
| 144.1   | Forgery  | 39                | 12                   |
| 145.1   | Using forged document  | 58                | 24                   |
| 145.2   | Possession of forged document  | 1                 | 2                    |
| 145.3   | Possession, making or adaptation of devices etc. for making forgeries  | 2                 |                      |
| 145.4   | Falsification of documents etc.  | 2                 |                      |
| 147.1   | Causing harm to a Commonwealth public official etc.  | 8                 |                      |
| 147.2   | Threatening to cause harm to a Commonwealth public official etc.   | 4                 |                      |
| 148.1   | Impersonation of an official by a non official   | 2                 |                      |
| 149.1   | Obstruction of Commonwealth public officials   | 23                | 5                    |
| 270.3   | Slavery offences   |                   | 24                   |
| 271.2   | Offence of trafficking in persons  |                   | 2                    |
| 302.2   | Trafficking commercial quantities of controlled drugs  |                   | 4                    |
| 302.3   | Trafficking marketable quantities of controlled drugs  |                   | 6                    |
| 302.4   | Trafficking controlled drugs   |                   | 4                    |
| 305.3   | Manufacturing commercial quantities of controlled drugs  |                   | 5                    |
| 305.4   | Manufacturing marketable quantities of controlled drugs  |                   | 2                    |
| 306.2   | Pre trafficking commercial quantities of controlled precursors   |                   | 1                    |
| 307.1   | Importing and exporting commercial quantities of border controlled drugs or border controlled plants                         |                   | 21                   |
| 307.2   | Importing and exporting marketable quantities of border controlled drugs or border controlled plants                         | 4                 | 96                   |
| 307.3   | Importing and exporting border controlled drugs or border controlled plants  | 4                 |                      |
| 307.4   | Importing and exporting border controlled drugs or border controlled plants—no defence relating to lack of commercial intent | 13                | 5                    |
| 307.5   | Possessing commercial quantities of unlawfully imported border controlled drugs or border controlled plants                  |                   | 20                   |
| 307.6   | Possessing marketable quantities of unlawfully imported border controlled drugs or border controlled plants                  | 2                 | 13                   |

| Section | Title   | Summary (Charges) | Indictable (Charges) |
|---------|---|-------------------|----------------------|
| 307.7   | Possessing unlawfully imported border controlled drugs or border controlled plants  | 2                 |                      |
| 307.8   | Possessing commercial quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported |                   | 1                    |
| 307.9   | Possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported |                   | 5                    |
| 307.11  | Importing and exporting commercial quantities of border controlled precursors   |                   | 8                    |
| 307.12  | Importing and exporting marketable quantities of border controlled precursors   |                   | 1                    |
| 307.13  | Importing and exporting border controlled precursors  | 1                 |                      |
| 308.1   | Possessing controlled drugs   | 10                | 8                    |
| 308.2   | Possessing controlled precursors  |                   | 5                    |
| 308.4   | Possessing substance, equipment or instructions for commercial manufacture of controlled drugs  |                   | 2                    |
| 309.8   | Procuring children for trafficking controlled drugs   |                   | 1                    |
| 400.3   | Dealing in proceeds of crime etc.—money or property worth \$1,000,000 or more   |                   | 16                   |
| 400.4   | Dealing in proceeds of crime etc.—money or property worth \$100,000 or more   | 1                 | 13                   |
| 400.5   | Dealing in proceeds of crime etc.—money or property worth \$50,000 or more  | 1                 | 5                    |
| 400.6   | Dealing in proceeds of crime etc.—money or property worth \$10,000 or more  |                   | 4                    |
| 400.8   | Dealing in proceeds of crime etc.—money or property of any value  | 1                 | 1                    |
| 400.9   | Possession etc. of property reasonably suspected of being proceeds of crime etc.  | 2                 | 5                    |
| 471.1   | Theft of mail receptacles, articles or postal messages  | 23                | 6                    |
| 471.3   | Taking or concealing of mail receptacles, articles or postal messages   | 81                |                      |
| 471.6   | Damaging or destroying mail receptacles, articles or postal messages  | 13                |                      |
| 471.7   | Tampering with mail receptacles   | 11                |                      |
| 471.8   | Dishonestly obtaining delivery of articles  | 2                 |                      |
| 471.10  | Hoaxes—explosives and dangerous substances  | 4                 | 1                    |

| Section      | Title  | Summary (Charges) | Indictable (Charges) |
|--------------|--|-------------------|----------------------|
| 471.12       | Using a postal or similar service to menace, harass or cause offence   | 11                |                      |
| 474.2        | General dishonesty with respect to a carriage service provider   | 1                 |                      |
| 474.15       | Using a carriage service to make a threat  | 17                | 6                    |
| 474.16       | Using a carriage service for a hoax threat   | 5                 | 14                   |
| 474.17       | Using a carriage service to menace, harass or cause offence  | 201               | 17                   |
| 474.18       | Improper use of emergency call service   | 31                | 3                    |
| 474.19       | Using a carriage service for child pornography material  | 55                | 137                  |
| 474.20       | Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service | 4                 | 5                    |
| 474.22       | Using a carriage service for child abuse material  | 4                 | 10                   |
| 474.23       | Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service       |                   | 1                    |
| 474.26       | Using a carriage service to procure persons under 16 years of age  | 2                 | 18                   |
| 474.27       | Using a carriage service to “groom” persons under 16 years of age  | 5                 | 15                   |
| 477.1        | Unauthorised access, modification or impairment with intent to commit a serious offence                                  | 13                | 1                    |
| 478.1        | Unauthorised access to, or modification of, restricted data  | 34                |                      |
| 480.4        | Dishonestly obtaining or dealing in personal financial information   | 1                 | 2                    |
| 480.5        | Possession or control of thing with intent to dishonestly obtain or deal in personal financial information               | 1                 |                      |
| 480.6        | Importation of thing with intent to dishonestly obtain or deal in personal financial information                         | 1                 |                      |
| <b>Total</b> |  | <b>13164</b>      | <b>1226</b>          |

Notes: Some of the charges shown as dealt with summarily were indictable charges discontinued at an early stage. Some other charges shown as dealt with summarily were indictable charges which resulted in a warrant for the arrest of the defendant. Some of the charges listed in Tables 10a and 10b included attempt, complicity and common purpose and conspiracy charges.

**Table 11: Reparation orders and fines and costs**

|                             | Actual 2008-2009 \$'000 | Actual 2007-2008 \$'000 |
|-----------------------------|-------------------------|-------------------------|
| Reparation orders made      | 38,616                  | 39,346                  |
| Fines and costs orders made | 5,487                   | 4,879                   |

**Table 12: Referring Agencies: defendants dealt with in 2008-2009**

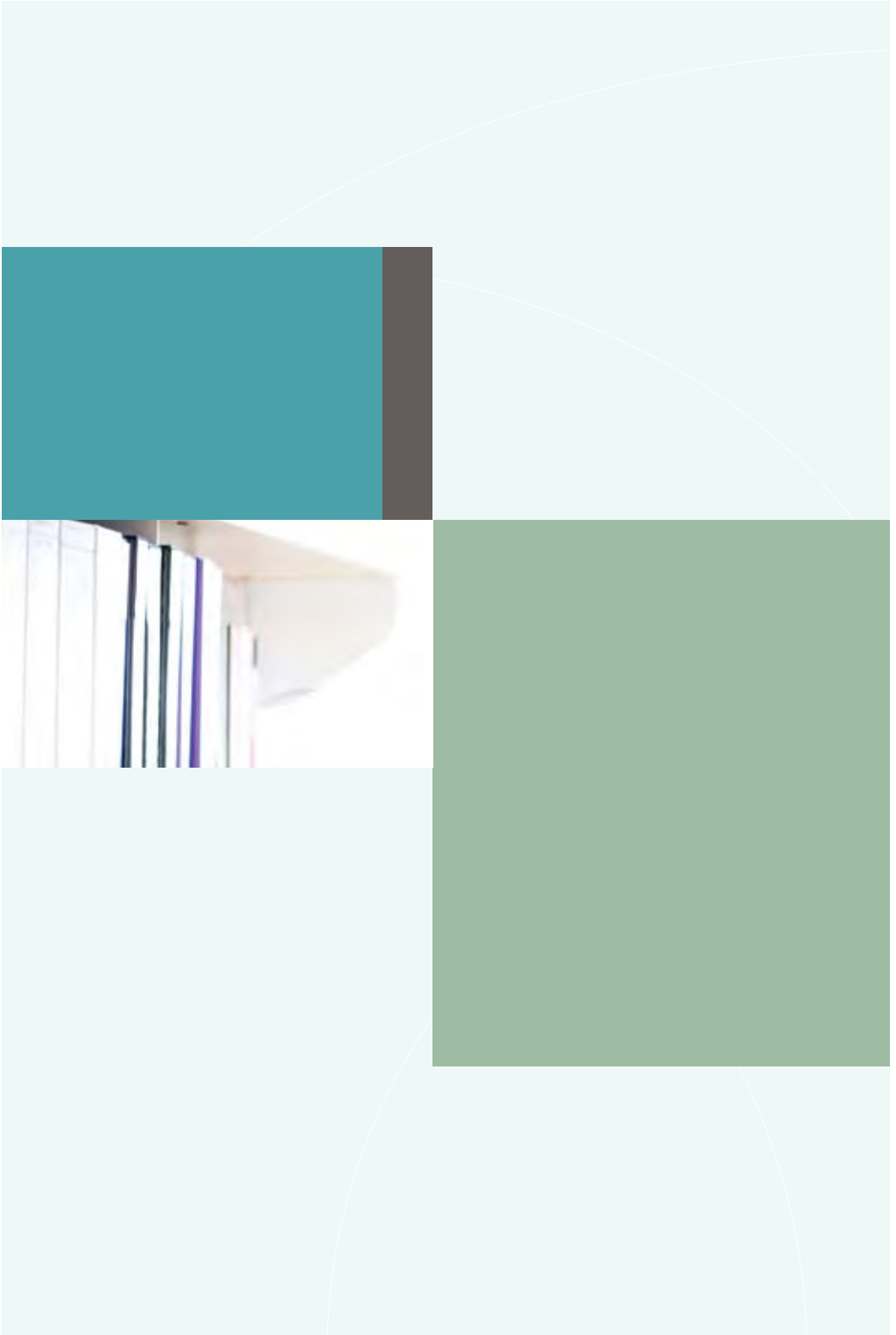
| Referring Agency   | Summary (Defendants) | Indictable (Defendants) |
|--|----------------------|-------------------------|
| Aboriginal and Torres Strait Islander Commission                                   |                      | 1                       |
| Attorney-General's Department  |                      | 2                       |
| Australian Bureau of Statistics  | 3                    |                         |
| Australian Competition and Consumer Commission                                     | 4                    | 1                       |
| Australian Crime Commission  | 1                    | 31                      |
| Australian Customs and Border Protection Service                                   | 4                    | 1                       |
| Australian Customs Service   | 77                   | 23                      |
| Australian Electoral Commission  | 15                   |                         |
| Australian Federal Police  | 365                  | 310                     |
| Australian Fisheries Management Authority  | 77                   | 12                      |
| Australian Maritime Safety Authority   | 8                    |                         |
| Australian Postal Corporation  | 49                   | 2                       |
| Australian Quarantine and Inspection Service                                       | 5                    |                         |
| Australian Securities and Investments Commission                                   | 31                   | 42                      |
| Australian Taxation Office   | 121                  | 44                      |
| Australian Trade Commission  | 1                    | 1                       |
| Centrelink   | 4416                 | 78                      |
| Civil Aviation Safety Authority  | 11                   |                         |
| ComSuper   | 1                    |                         |
| CRS Australia  | 1                    |                         |
| Department of Agriculture, Fisheries and Forestry                                  | 7                    |                         |
| Department of Defence  | 8                    | 1                       |
| Department of Education, Employment and Workplace Relations                        | 7                    | 2                       |
| Department of Families, Housing, Community Services and Indigenous Affairs         | 1                    |                         |
| Department of Foreign Affairs and Trade  | 45                   | 1                       |
| Department of Health and Ageing  | 1                    |                         |
| Department of Immigration and Citizenship  | 14                   |                         |
| Department of Infrastructure, Transport, Regional Development and Local Government | 1                    |                         |
| Department of the Environment, Water, Heritage and the Arts                        | 6                    |                         |
| Department of Veterans' Affairs  | 5                    | 2                       |
| Family Court of Australia  | 1                    |                         |

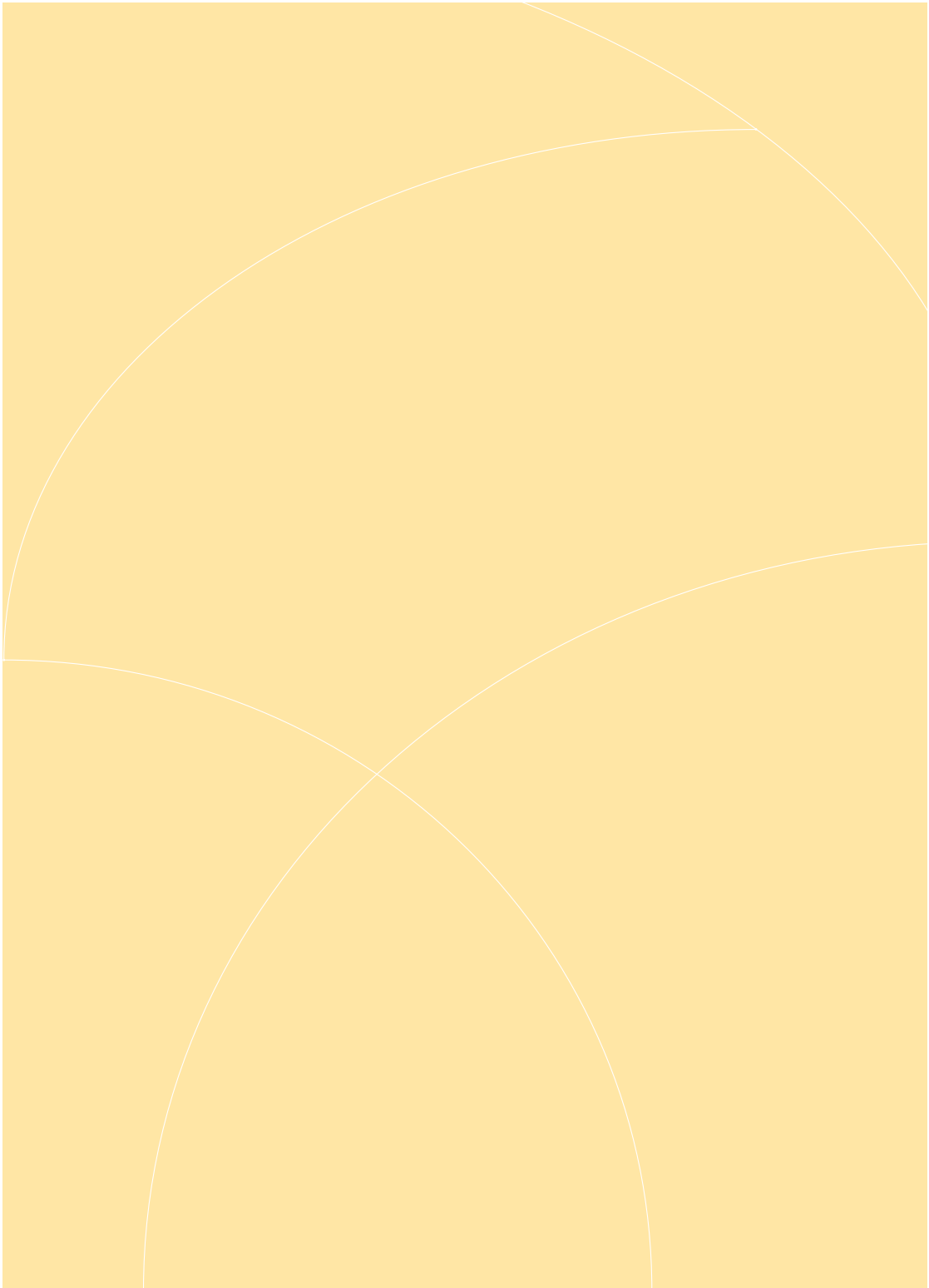
| Referring Agency  | Summary<br>(Defendants) | Indictable<br>(Defendants) |
|---|-------------------------|----------------------------|
| Great Barrier Reef Marine Park Authority                        | 37                      |                            |
| Insolvency and Trustee Service, Australia                       | 283                     | 2                          |
| Medicare Australia  | 57                      | 5                          |
| National Offshore Petroleum Safety Authority                    | 1                       |                            |
| Non-Commonwealth Agencies                                       | 5                       | 4                          |
| Office of the Australian Building and Construction Commissioner | 1                       |                            |
| Royal Australian Navy   | 2                       |                            |
| State DPP   | 3                       |                            |
| State or Territory Police                                       | 182                     | 76                         |
| Therapeutic Goods Administration                                | 4                       | 8                          |
| Workplace Ombudsman   | 4                       |                            |
| <b>Total</b>  | <b>5865</b>             | <b>649</b>                 |

Notes: In 2008-2009 the CDPP reviewed the way in which it calculates the number of defendants dealt with. As a result of these changes in methodology, the figures in this table are not directly comparable to published figures for previous years.

This list contains names of only current Commonwealth agencies. Where an agency's name has changed over time, all the cases emanating from that agency, whatever its name, are included under the most current agency that has assumed the function. For example, under Australian Crime Commission are included prosecutions that were originally referred by the National Crime Authority.



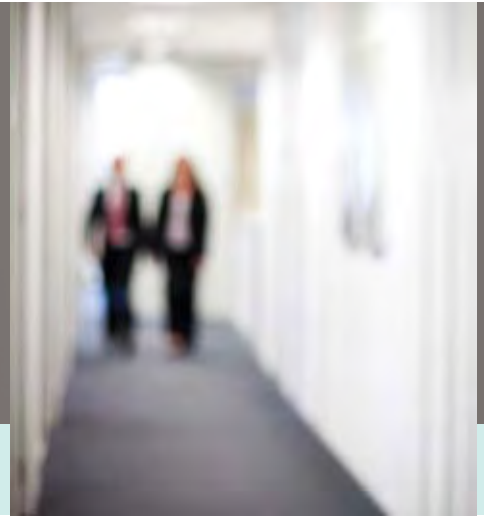




# 4

## criminal confiscation

# Criminal confiscation



## Overview

CONFISCATING THE PROCEEDS OF CRIME IS A CRITICAL MEASURE IN COMBATING THE WIDE RANGE OF FINANCIALLY MOTIVATED OFFENCES AND MAINTAINING PUBLIC CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM. THE CDPP HAS THE KEY FUNCTION OF TAKING CRIMINAL CONFISCATION ACTION UNDER COMMONWEALTH LEGISLATION.

CRIMINAL CONFISCATION LEGISLATION IS AIMED AT DEPRIVING CRIMINALS OF THE PROCEEDS OF OFFENCES AGAINST COMMONWEALTH LAWS AND PUNISHING AND DETERRING OFFENDERS. IT PREVENTS THE REINVESTMENT OF PROCEEDS OF CRIME IN FURTHER CRIMINAL ACTIVITIES AND GIVES EFFECT TO AUSTRALIA'S OBLIGATIONS UNDER INTERNATIONAL CONVENTIONS AND AGREEMENTS REGARDING PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING.

CONFISCATION ACTION IS TAKEN IN A WIDE RANGE OF AREAS INCLUDING FRAUD, CORPORATIONS, MONEY LAUNDERING AND SERIOUS DRUGS.

## Legislation

### **PROCEEDS OF CRIME ACT 2002**

The *Proceeds of Crime Act 2002* (*POC Act 2002*) is the principal legislation under which the CDPP currently operates in the area of criminal confiscation. The *POC Act 2002* came into effect on 1 January 2003 and provides a regime for the tracing, restraint and confiscation of the proceeds and instruments of crime against Commonwealth law. In some cases

it may also be used to confiscate the proceeds of crime against foreign law or State and Territory law.

Under the *POC Act 2002*, confiscation action may be taken either in conjunction with the prosecution process ('conviction based action'), or independently from that process ('civil action').

Conviction based action depends upon a person being convicted by a court of a Commonwealth indictable offence, which in turn involves proof of all elements of the offence beyond reasonable doubt. Civil action may be taken whether or not a person has been charged with or convicted of an offence, and involves proof of the offence to a lower standard, 'the balance of probabilities'. Civil action is available in relation to a narrower range of cases.

There are 3 types of final confiscation orders which may be made under the *POC Act 2002*:

- ▶ *Forfeiture orders* – where the court orders that property which is the proceeds or an instrument of crime be forfeited to the Commonwealth;
- ▶ *Pecuniary penalty orders* – where the court orders an offender to pay an amount equal to the benefit derived by the person from the commission of an offence; and
- ▶ *Literary proceeds orders* – where the court orders an offender to pay an amount calculated by reference to benefits the person has derived through commercial exploitation of his or her notoriety resulting from the commission of an offence.

Statutory or automatic forfeiture (i.e. forfeiture of restrained property without express order of the court) is also available in certain circumstances. This can occur where a person has been convicted of a 'serious offence' within the meaning of the *POC Act 2002*, and involves the forfeiture of restrained property, after a waiting period, without further order of the court.

In order to preserve property pending the outcome of confiscation proceedings, the *POC Act 2002* provides for restraining orders over property to be made early on in an investigation. Restraining orders can be made either in reliance on the charging (or proposed charging) of a person, or on a civil basis.

The *POC Act 2002* contains a range of provisions which protect the rights of owners of restrained property and also third parties. These provisions facilitate access to restrained property for the purpose of paying reasonable living or business expenses; exclusion of property from restraint or from forfeiture in appropriate circumstances; and payment of compensation or hardship amounts out of the proceeds of forfeited property. In addition, a court can require the CDPP to give an undertaking as to costs and damages as a condition for the making of a restraining order.

Confiscated money and money derived from the realisation of other types of confiscated assets are paid into the Confiscated Assets Account, established under Part 4-3 of the *POC Act 2002*.

## Other Legislation

The *Proceeds of Crime Act 1987 (POC Act 1987)* applies to cases in which confiscation action was commenced prior to 1 January 2003. There is only a minimal amount of residual litigation under the *POC Act 1987*.

The CDPP also has statutory duties under the *Crimes (Superannuation Benefits) Act 1989 (the CSB Act)* and Part VA of the *Australian Federal Police Act 1979 (the AFP Act)*. The CDPP has the function of bringing applications to forfeit the employer-funded component of superannuation payable to

Commonwealth and AFP employees who have been convicted of corruption offences.

The CDPP has two further responsibilities in this area which are now used infrequently following the enactment of proceeds of crime legislation, namely:

- ▶ Under Division 3 of Part XIII of the *Customs Act* the CDPP is vested with power to bring proceedings to recover profits earned from 'prescribed narcotic dealings'; and
- ▶ Under the *DPP Act 1983*, the CDPP has power to take traditional civil remedies action on behalf of the Commonwealth in cases where there is a connection with a prosecution.

Each State and Territory in Australia has legislation dealing with the confiscation of property derived from State and Territory offences. The CDPP is not involved in proceedings pursuant to State and Territory proceeds of crime legislation.

## Operating Structure

The CDPP's criminal assets work is coordinated nationally by a senior lawyer in Head Office. Each of the larger regional offices has a Criminal Assets Branch whilst the other offices have criminal assets lawyers to conduct this specialised work.

Criminal assets lawyers consider the appropriateness of criminal confiscation action in particular matters, decide on the type of action which ought to be taken and, where appropriate, commence and conduct confiscation litigation. In large and complex cases the CDPP may also be involved in the provision of advice during the investigative phase of a criminal confiscation matter.

The CDPP's confiscation work relies on referrals from, and close cooperation with, relevant Commonwealth law enforcement agencies. Key responsibility in this area rests with the AFP, the ACC, the ACS, the ASIC, and the ATO. Each is an enforcement agency under the *POC Act 2002* and exercises specific investigative and other powers under this Act. All Commonwealth agencies with the capacity to investigate crime, particularly fraud, play a role in identifying and referring proceeds of



crime matters and supporting proceeds of crime litigation.

The CDPP also works closely with the Insolvency and Trustee Service of Australia (ITSA). ITSA has specific responsibilities under the *POC Act 2002* in relation to the management of restrained property, the realisation of confiscated property, and management of the Confiscated Assets Account.

## 2008-2009 Financial Year

2008-2009 saw the resolution of a number of significant, long-running criminal confiscation matters, including the *Mare* and *Lane* matters in Queensland, and the *Li* matter in New South Wales (see the case notes later in this Chapter). These matters demonstrate both the very detailed financial investigations which can be required in order to successfully litigate proceeds of crime matters, and also the potential for civil confiscation legislation to achieve highly effective law enforcement outcomes.

THE OVERALL NUMBER OF MATTERS REFERRED TO THE CDPP FOR CRIMINAL CONFISCATION WORK DURING 2008-2009 DECREASED IN COMPARISON WITH PREVIOUS YEARS, WITH 52 NEW RESTRAINING ORDERS APPLIED FOR AND OBTAINED (COMPARED TO 75 NEW ORDERS IN 2007-08 AND 73 NEW ORDERS IN 2006-07). IN ADDITION, THE OVERALL NUMBER OF RESTRAINING ORDERS IN FORCE AT THE END OF THE FINANCIAL YEAR DECREASED, (WITH 134 RESTRAINING ORDERS IN FORCE AS AT 30 JUNE 2009, COMPARED TO 173 AS AT 30 JUNE 2008 AND 182 AS AT 30 JUNE 2007).

FORFEITURE APPLICATIONS IN CONNECTION WITH EQUIPMENT USED IN THE COMMISSION OF ONLINE CHILD EXPLOITATION OFFENCES CONTINUE TO BE A GROWING AREA OF THE CDPP'S CONFISCATION WORK. FIFTY-SEVEN APPLICATIONS OF THIS TYPE WERE MADE IN 2008-2009, REPRESENTING A SIGNIFICANT INCREASE FROM 2007-2008, AND COMPRISED MORE THAN TWO-THIRDS OF THE OVERALL NUMBER OF CONVICTION-BASED FORFEITURE APPLICATIONS MADE BY THE CDPP.

During 2008-2009 the CDPP liaised with the Attorney-General's Department concerning the development of criminal confiscation legislative reform proposals. Some of this work follows the review of the first 3 years of the operation of the *POC Act 2002* carried out by Mr Tom Sherman AO in 2006. The Sherman Report recommended changes to the *POC Act 2002*. On 24 June 2009 legislation was introduced into Parliament which, if enacted, includes amendments to the *POC Act 2002* to remove the limitation period for civil confiscation action; allow for non-conviction-based restraint and forfeiture of instruments of serious offences; improve the operation of the legal aid provisions in the Act; and streamline the Act's information disclosure provisions.

In 2008-2009 the CDPP participated in activities designed to strengthen proceeds of crime activities internationally. Some of the CDPP's work in this area is set out in Chapter 6 of this Report.



## Statistics

A detailed breakdown of the CDPP's criminal confiscation activities for 2008-2009 is provided in the tables at the end of this Chapter, however the following is a summary of key data.

Under the *POC Act 2002*:

- ▶ 52 new restraining orders were obtained;
- ▶ 134 restraining orders were in force at as 30 June 2009;
- ▶ 20 pecuniary penalty orders were obtained;
- ▶ 111 forfeiture orders were obtained;
- ▶ automatic forfeiture occurred in 17 matters;
- ▶ 33 compulsory examinations were undertaken;
- ▶ the total estimated value of confiscation orders (including automatic forfeiture) obtained was \$18.82 million; and
- ▶ the total amount recovered as a result of litigation under the *POC Act 2002* was \$18.31 million.

In relation to matters still continuing under the *POC Act 1987*, no new confiscations occurred however a total of \$0.89 million was recovered in relation to previously finalised matters.

Four superannuation orders were obtained under the *CSB Act*. There were no orders under Part VA of the *AFP Act*.

## POC Act 2002 Performance Indicators

The CDPP's performance in cases under the *POC Act 2002* during 2008-2009 is measured against the following performance indicators.

| Description   | Number     | Target     | Outcome         |
|---|------------|------------|-----------------|
| <b>Applications for restraining orders that succeeded</b>       | <b>52</b>  | <b>90%</b> | <b>100%</b>     |
| Figures for 2007–2008   | 75         | 90%        | 100%            |
| <b>Applications for pecuniary penalty orders that succeeded</b> | <b>20</b>  | <b>90%</b> | <b>100%</b>     |
| Figures for 2007–2008   | 17         | 90%        | 100%            |
| <b>Applications for forfeiture orders that succeeded</b>        | <b>111</b> | <b>90%</b> | <b>100%</b>     |
| Figures for 2007–2008   | 62         | 90%        | 100%            |
| <b>Damages awarded against undertakings</b>                     | <b>0</b>   |            | <b>\$0</b>      |
| Figures for 2007–2008   | 1          | \$150,000  |                 |
| <b>Number of cases where costs awarded against CDPP</b>         | <b>1</b>   |            | <b>\$14,000</b> |
| Figures for 2007–2008   | 5          |            | \$100,701       |

## Case Reports

### **SCHAPELLE CORBY**

#### **LITERARY PROCEEDS ORDER**

In October 2004 the defendant was convicted in Indonesia of an offence of importing 4.1kgs of cannabis.

In November 2006 the book *'My Story'* was published in Australia by Pan Macmillan Australia. The book stated that it had been co-authored by Corby and Ms Kathryn Bonella, a former television producer. The book contained among other things an account by Corby of the events leading up to her arrest in Indonesia and her subsequent trial and imprisonment. A New Idea article describing Corby's experiences was separately published by Pacific Magazines Pty Ltd in late 2006.

Investigations by the AFP established that, under the contract relating to *'My Story'*, certain payments had been made by Pan Macmillan to an account in Indonesia held in the name of Corby's brother-in-law. These payments had been made prior to the publication of the book. Further payments were to be made depending among other things on the volume of sales. A separate sum of \$15,000 was to be paid to the same bank account in relation to the New Idea article.

In December 2006 the CDPP applied to the District Court of Queensland for a restraining order over past and future payments to Corby pursuant to the literary proceeds provisions of the *POC Act 2002*. At first instance the Court refused the application on the basis that it was not satisfied that there were reasonable grounds to suspect that the relevant literary proceeds had been derived 'in Australia', as required by the *POC Act 2002*.

In March 2007 the Queensland Court of Appeal set aside the decision of the District Court and granted the literary proceeds restraining order sought by the CDPP. Orders



were made for the Official Trustee in Bankruptcy to take custody of any future payments to be made in respect of the book and the New Idea article. Orders were also made for the examination of various people regarding the affairs of Corby. Examinations of 4 persons were conducted in September 2007.

On 24 March 2009 an order was made by consent in the Supreme Court of Queensland requiring Corby to pay a literary proceeds amount under the *POC Act 2002* in the sum of \$128,800. This sum was paid out of the amounts which had been held in the custody of the Official Trustee.

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### **ALEXANDER MALCOLM LANE**

#### **PECUNIARY PENALTY ORDER**

In May 2006 the defendant was arrested following a joint operation between the ACC and Queensland Police. It was suspected that Lane had been involved in the cultivation of cannabis crops in remote areas of Far North Queensland between 1996 and 2005, and that he had facilitated the importation of high potency cannabis seeds from Amsterdam between 2002 and 2004.

Also in May 2006, the CDPP obtained a civil person-directed restraining order under the *POC Act 2002* in respect of approximately \$2 million in property held in the name of Lane. Applications were subsequently made for forfeiture of Lane's property, and for Lane to pay a pecuniary penalty order in respect of benefits derived by him from Commonwealth and State offences committed within the 6 years preceding the making of the restraining order.

Following Lane's arrest his wife commenced divorce proceedings and sought a property adjustment order under the *Family Law Act 1975* in respect of the restrained property. The family law proceedings were stayed pending the outcome of the proceedings under the *POC Act 2002*. Mrs Lane subsequently applied to exclude Lane's property from restraint and forfeiture, claiming that she held an interest in the property pursuant to a constructive trust, based on her financial and non-financial contributions to the property.

On 30 March 2009 Lane consented to the making of a pecuniary penalty order against him in the sum of \$1,983,940.80. That amount was subsequently paid in full from restrained funds held by the Official Trustee in Bankruptcy, being funds derived from the sale of Lane's properties. Mrs Lane's exclusion application was also dismissed by consent.

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### **WING CHEONG LI**

#### **CIVIL FORFEITURE ORDER**

In April 2005, following an investigation by the AFP, Wing Cheong Li and his wife, Oi Ling Lee, were arrested in Sydney and charged with money laundering offences under the *Criminal Code*. It was alleged that Li and Lee, who were Venezuelan nationals, had travelled to Australia for the specific purpose of collecting proceeds of crime derived from the previous importation into Australia and trafficking of cocaine.

Li was arrested outside his hotel in possession of \$285,300 in cash. His wife Lee was arrested outside a branch of the Bank of China with a bag containing \$715,000 cash. A search warrant executed on the couple's hotel room resulted in seizure of a further \$449,950 in cash, whilst a further \$809,950 cash was located in a safety deposit box held in Li's name with the Commonwealth Bank of Australia. On 22 April 2005 civil-based

restraining orders were made pursuant to section 19 of the *POC Act 2002* in respect of the total amount of \$2,260,000 in seized cash.

Two criminal trials were held. The first trial resulted in a hung jury in relation to each defendant, and the second trial resulted in Lee being acquitted and Li being found guilty of a money laundering offence under section 400.3(1) of the *Criminal Code*. The CDPP has lodged an appeal against the sentence imposed on Li, whilst Li has filed an appeal against his conviction and sentence.

In March 2009 final orders were made by the Supreme Court of New South Wales by consent which provide that the sum of \$1.99 million cash is forfeited to the Commonwealth pursuant to a civil forfeiture order made under section 49 of the *POC Act 2002*. The civil proceeds of crime proceedings were able to be resolved in favour of the Commonwealth notwithstanding Lee's acquittal and notwithstanding that Li's appeal against conviction had not yet been resolved.

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### **JOHN DALZELL MARE**

#### **PECUNIARY PENALTY ORDER**

John Dalzell Mare was the holder of a licence permitting him to manufacture petroleum products and was the director and shareholder of a company named Oil Recyclers Australia Pty Ltd which operated a refinery in Queensland. Petroleum products are subject to the payment of excise duty. Any such products capable of being used in a combustion engine attract payment of duty at the full rate.

In July 2005 the CDPP applied for civil person-directed restraining orders in relation to property alleged to be subject to the effective control of Mare. It was alleged that there were reasonable grounds to suspect that between September and December 2000 Mare had committed an offence of defrauding the Commonwealth by the lodging of false returns and misdescribing petroleum products produced at the refinery in order to evade excise duty. It was alleged that the refinery had been selling products for use as fuel or for the purposes of fuel, but was falsely declaring the nature of the products in order to attract no or reduced rates of excise duty.

Despite the fact that no property was held in Mare's own name, property in Australia, Hong Kong and Vanuatu was able to be restrained on the basis that it was suspected of being subject to Mare's effective control.

Subsequently, applications were made by the CDPP for forfeiture of the restrained property and for Mare to pay a pecuniary penalty amount to the Commonwealth in respect of the benefits derived from his alleged offence.

In 2008 the respondents to the CDPP proceedings applied to the District Court of Queensland to have the CDPP's forfeiture application struck out on the basis of a misdescription contained in the application and for a declaration that the restraining order obtained by the CDPP had ceased. This application was initially successful in the District Court, however the decision was set aside by the Queensland Court of Appeal in November 2008.

In May 2009 the proceedings against Mare were resolved by a court order made by consent requiring Mare to pay a pecuniary penalty under the *POC Act 2002* in the sum of

\$1.1 million. This amount was fully paid from restrained funds being held by the Official Trustee in Bankruptcy. In addition, the sum of \$60,826, being the legal costs incurred by the CDPP in connection with the respondents' strike-out application and the associated appeal, was recovered from the restrained funds.

The CDPP's proceedings were able to be initiated and resolved notwithstanding the fact that Mare has not been charged with any criminal offence and notwithstanding that Mare held no property in his own name.

## Proceeds of copyright offences

In December 2008 the CDPP obtained a civil asset-directed restraining order over funds in excess of \$50,000 contained in an Australian bank account. It was alleged that the funds represented proceeds from the sale of memberships to a particular website allowing users to download movies. Neither the website nor its operators held copyright in relation to the movies being offered for download.

In March 2009 the funds contained in the bank account were forfeited to the Commonwealth by consent.

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**X**

### FORFEITURE ORDER

In July 2008 officers from the AFP and Centrelink executed a search warrant at the premises of X, based on a suspicion that X had defrauded Centrelink through simultaneously claiming and obtaining social security payments in 2 different names. The amount suspected to have been fraudulently obtained by X was more than \$138,000.

On the same day that search warrants were executed, the CDPP obtained a civil restraining order over a bank account held in X's false name which had been used by X in the commission of the fraud. The balance of the account was more than \$250,000.

In November 2008 the matter was resolved by way of a court order forfeiting a sum of \$190,375.40 to the Commonwealth. This sum represented the fraud amount obtained by X plus an adjustment to take account of the benefit which X had enjoyed through having had use of the funds over time. The matter was able to be resolved notwithstanding that at the time no criminal charges had yet been laid against X.

## Criminal Assets Confiscation Tables

The tables below set out details relating to the criminal confiscation work conducted by the CDPP in 2008-2009.

**Table 1: POC Act 2002: new orders and forfeitures in 2008-2009**

|                                       | No. | Value        |
|---------------------------------------|-----|--------------|
| Restraining orders                    | 52  | \$26,170,307 |
| Pecuniary penalty orders              | 20  | \$7,632,881  |
| Forfeiture orders                     | 110 | \$9,937,821  |
| Automatic forfeiture under section 92 | 17  | \$1,119,985  |
| Literary proceeds orders              | 1   | \$128,800    |

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

**Table 2: POC Act 2002: restraining orders obtained by reference to enforcement agency**

|  | No. | Value        |
|--|-----|--------------|
| Australian Crime Commission                    | 3   | \$869,114    |
| Australian Customs Service                     | 3   | \$41,080     |
| Australian Federal Police                      | 45  | \$24,900,113 |
| Australian Securities & Investments Commission | 1   | \$360,000    |

**Table 3: POC Act 2002: restraining orders obtained by offence type**

|                  | No. | Value        |
|------------------|-----|--------------|
| Corporations     | 2   | \$1,181,019  |
| Drugs            | 27  | \$17,093,486 |
| Fraud            | 13  | \$2,988,985  |
| Money laundering | 6   | \$2,525,654  |
| Other            | 4   | \$2,381,163  |

**Table 4: POC Act 2002: restraining orders in force as at 30 June 2009**

|                                       | No. | Value        |
|---------------------------------------|-----|--------------|
| Number of restraining orders in force | 134 | \$91,833,401 |

**Table 5: POC Act 2002: money recovered in 2008-2009**

|   | <b>Amount Recovered</b> |
|---|-------------------------|
| Pecuniary penalty orders                                | \$10,045,090            |
| Forfeiture orders                                       | \$4,843,392             |
| Automatic forfeiture under section 92                   | \$3,280,406             |
| Literary proceeds orders                                | \$126,628               |
| Matters where money recovered but no formal orders made | \$18,000                |
| <b>Total recovered</b>                                  | <b>\$18,313,516</b>     |

**Table 6: POC Act 1987: restraining orders in force as at 30 June 2009**

|                                       | <b>No.</b> | <b>Value</b> |
|---------------------------------------|------------|--------------|
| Number of restraining orders in force | 5          | \$1,648,306  |

**Table 7: POC Act 1987: money recovered in 2008 – 2009**

|   | <b>Amount recovered</b> |
|---|-------------------------|
| Pecuniary penalty orders                                | \$373,145               |
| Forfeiture orders                                       | –                       |
| Automatic forfeiture                                    | \$514,858               |
| Matters where money recovered but no formal orders made |                         |
| <b>Total recovered</b>                                  | <b>\$888,003</b>        |

**Table 8: Criminal assets: summary of recoveries for 2008-2009**

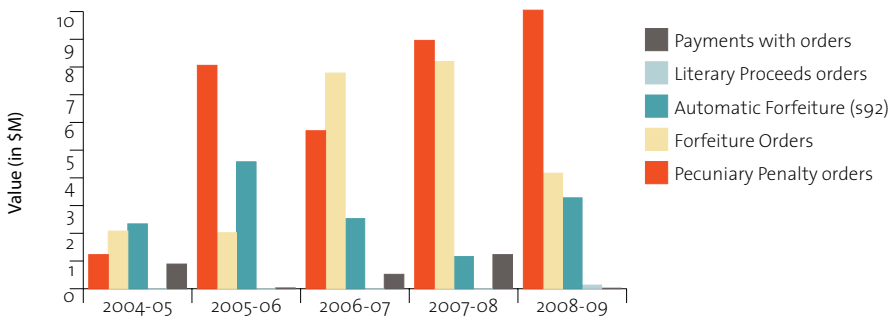
|   |                     |
|---|---------------------|
| <i>POC Act 1987</i> pecuniary penalty orders            | \$375,145           |
| <i>POC Act 1987</i> forfeiture orders                   | –                   |
| <i>POC Act 1987</i> automatic forfeiture                | \$514,858           |
| Matters where money recovered but no formal orders made |                     |
| <b><i>POC Act 1987</i> total</b>                        | <b>\$888,003</b>    |
| <i>POC Act 2002</i> pecuniary penalty orders            | \$10,045,090        |
| <i>POC Act 2002</i> forfeiture orders                   | \$4,843,392         |
| <i>POC Act 2002</i> automatic forfeiture                | \$3,280,406         |
| <i>POC Act 2002</i> literary proceeds orders            | \$128,800           |
| Matters where money recovered but no formal orders made | \$18,000            |
| <b><i>POC Act 2002</i> total</b>                        | <b>\$18,313,516</b> |
| <i>Customs Act</i> condemnation                         | –                   |
| <b><i>Customs Act</i> total</b>                         | <b>–</b>            |
| <b>Grand total</b>                                      | <b>\$19,201,519</b> |

**Table 9: CSB Act: orders made in 2008-2009**

| Name   | State | Date             |
|--------|-------|------------------|
| Turyn  | ACT   | 17 February 2009 |
| Dawson | SA    | 17 February 2009 |
| Mannah | NSW   | 30 April 2009    |
| Moon   | NSW   | 12 May 2009      |

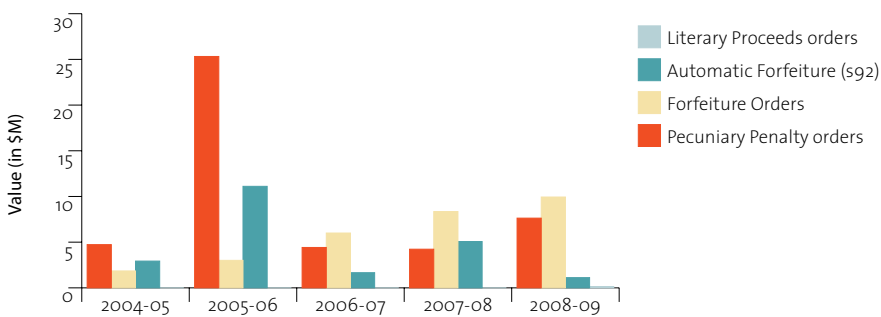
**Money recovered POC Act 2002**

2004-05 to 2008-09



**Value of Confiscation Orders recovered POC Act 2002**

2004-05 to 2008-09





4





5

international  
crime  
cooperation

# International crime cooperation



THERE IS A GROWING RECOGNITION OF THE IMPORTANCE OF INTERNATIONAL COOPERATION IN THE PROSECUTION OF SERIOUS CRIME. PROMPT COOPERATION AND TIMELY ASSISTANCE BOTH TO AND FROM OTHER COUNTRIES IS VITAL TO ENSURE THAT CASES WITH AN INTERNATIONAL DIMENSION ARE INVESTIGATED AND PROSECUTED EFFICIENTLY AND EFFECTIVELY. INCREASINGLY, MANY OF THE OFFENCES PROSECUTED BY THE CDPP, INCLUDING TERRORIST OFFENCES, PEOPLE SMUGGLING, SEXUAL SERVITUDE, DRUG TRAFFICKING AND FRAUD ON THE REVENUE INVOLVE COOPERATION AND ASSISTANCE FROM OTHER COUNTRIES.

AUSTRALIAN INVESTIGATIVE AGENCIES AND THE CDPP ARE ALSO INCREASINGLY BEING CALLED ON TO PROVIDE COOPERATION TO FOREIGN COUNTRIES TO ASSIST THEM TO INVESTIGATE AND PROSECUTE TRANSNATIONAL CRIME AND TO APPREHEND AND EXTRADITE FUGITIVES.

THE CDPP IS INVOLVED IN 2 MAIN AREAS OF INTERNATIONAL CRIMINAL COOPERATION: EXTRADITION AND MUTUAL ASSISTANCE. BOTH AREAS INVOLVE THE DEDICATION OF SPECIALISED RESOURCES AND THIS REFLECTS THE PRIORITY PLACED BY THE CDPP ON THIS IMPORTANT AREA OF WORK.

## Mutual Assistance

MUTUAL ASSISTANCE IS A FORMAL PROCESS USED BY COUNTRIES TO PROVIDE ASSISTANCE TO EACH OTHER TO INVESTIGATE AND PROSECUTE CRIMINAL OFFENCES, AND TO RECOVER THE PROCEEDS OF CRIME.

The mutual assistance regime rests on a network of international relations and obligations, together with the willingness of participating countries to provide assistance to each other.

This international network is underpinned by a number of bilateral treaties and multilateral conventions. Australia has ratified 27 bilateral mutual assistance treaties, and a number of multilateral conventions, which bind the signatories to provide mutual assistance to each other, including:

- ▶ *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*
- ▶ *United Nations Convention Against Transnational Organized Crime*
- ▶ *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*

Countries which are not signatories to mutual assistance treaties or conventions also request mutual assistance from, and provide mutual assistance to, each other. This is done under the principle of reciprocity whereby the countries agree to provide assistance to each other on a case by case basis on the understanding they will receive similar assistance in return.

The formal mutual assistance regime runs parallel with the less formal system of international cooperation between investigating agencies, known as ‘agency to agency’ requests. The formal mutual assistance channel is used when required by the local law or custom, when a request for assistance requires the use of coercive powers in the requested country, or when the material requested is required in a form that may be admissible in criminal proceedings in the requesting country.

In relation to requests from other countries, the main types of assistance provided under the mutual assistance regime involve the use of coercive powers, and include:

- ▶ compelling witnesses to attend court to give evidence for use in foreign criminal proceedings;
- ▶ executing search warrants and notices to produce material; and
- ▶ locating, restraining and recovering proceeds of crime.

The CDPP generally becomes involved in the execution of requests by foreign countries to Australia where the execution of the request requires the use of coercive powers. The CDPP assists members of the AFP in obtaining search warrants authorised under the *Mutual Assistance in Criminal Matters Act 1987*, and appears in court proceedings to obtain evidence requested by foreign countries. The CDPP also conducts applications authorised under the *Mutual Assistance in Criminal Matters Act 1987* to register and enforce orders made by foreign courts to restrain and forfeit the proceeds of crime.

In the past year, the CDPP provided assistance in executing 47 requests made by 22 countries.

The CDPP was also involved in 125 outgoing requests made by Australia to 40 foreign countries. The outgoing requests were generally made in conjunction with Commonwealth investigative agencies, or joint taskforces comprising law enforcement officers from Commonwealth, State and Territory agencies. The CDPP is generally not involved in mutual assistance requests initiated by State and Territory agencies where Commonwealth officers are not involved.

During the course of 2008-2009 there was a change in the role of the CDPP in assisting in the drafting of requests made by Australia to foreign countries. As part of the 2009-2010 Budget measures it was decided that the CDPP will no longer assist in drafting mutual assistance requests on behalf of Commonwealth investigative agencies when the matters are in the investigative or pre-charge stage apart from those cases where the CDPP has received a brief of evidence or where the CDPP has received specific funding to draft mutual assistance requests in respect of a particular matter or type of matter.

The CDPP continues to assist in drafting mutual assistance requests once charges have been laid and a brief of evidence has been received from a Commonwealth investigative agency.

The CDPP also continues to provide mutual assistance training to Commonwealth investigative agencies, and to participate in capacity building forums with other countries in the region.

The number and complexity of incoming mutual assistance requests and the complexity of outgoing mutual assistance requests increased over the past year, and 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 basis.



**GREGORY JOHN DUNN AND MISTY MOUNTAIN PTY LTD****MUTUAL ASSISTANCE**

This matter was reported in the 2007-2008 Annual Report at page 106.

On 16 March 2005, a delegate of the Attorney-General made a request to Switzerland in accordance with the *Mutual Assistance in Criminal Matters Act 1987* (the *Assistance Act*) and the *Treaty between Australia and Switzerland on Mutual Assistance in Criminal Matters done at Berne in Switzerland on 25 November 1991* (the *Treaty*).

The Mutual Assistance Request asked the Swiss authorities to obtain business records from Strachans SA, an accountancy services firm in Geneva, and from a private banking institution. The Mutual Assistance Request stated that the records were required for ‘the investigation into, and possible prosecution of’ 17 named individuals who were suspected of tax fraud and conspiracy offences against laws of the Commonwealth. The applicants were clients of Strachans named in the Mutual Assistance Request.

Under both the *Administrative Decisions (Judicial Review) Act 1977* and the *Judiciary Act 1903*, the applicants sought judicial review of various acts they asserted were decisions and/or conduct relating to the making of the Mutual Assistance Request. They sought, among other things, that the Mutual Assistance Request be quashed, and challenged the statutory authority of the CDPP to participate in the making of the Mutual Assistance Request.

On 24 April 2008, the judgement in the appeal was delivered and the application was dismissed with costs. The Court held that the CDPP played a ‘*limited, but nonetheless, an important role in Operation Wickenby*’; and supported the actions undertaken by the CDPP in the course of Operation Wickenby as conducive to the performance of one or more of the prosecutorial functions of the CDPP.

The defendants lodged an appeal against this judgement to the Full Federal Court. On 24 February 2009, the Full Court of the Federal Court of Australia delivered judgement and the appeal was dismissed with costs. The Appellant abandoned grounds of appeal relating to the role of the CDPP in Operation Wickenby or the mutual assistance request.

The Appellants have lodged an application for Special Leave to Appeal against this judgement in the High Court of Australia.

## Extradition

The CDPP regards extradition as an important mechanism in law enforcement. The use of available extradition procedures challenges the perception that offenders can avoid being dealt with by law enforcement authorities by fleeing the jurisdiction. This has important consequences, not only for global law enforcement cooperation, but also in terms of domestic law enforcement, especially in terms of the deterrence of crime. The CDPP has an

important role to play in the effective operation of the extradition system in Australia.

The CDPP is involved in the execution of all incoming extradition requests and the preparation of supporting documentation for outgoing extradition requests relating to Commonwealth offences. In the case of incoming requests, the CDPP appears in the court proceedings in Australia and in any appeals arising from those proceedings. The CDPP appears for the foreign country in the

proceedings, receiving instructions from the Attorney-General's Department.

In the case of outgoing extradition requests, the CDPP prepares requests for extradition in serious cases where a person is wanted for prosecution for an offence against Commonwealth law and is found to be in a foreign country. The CDPP has no role in cases where a person is wanted for prosecution for an offence against State or Territory law. In such cases, the authorities of the relevant State or Territory deal directly with the Commonwealth Attorney-General's Department.

### **INCOMING REQUESTS**

In the past year, the CDPP received instructions from the Attorney-General's Department to act in relation to 5 new requests from foreign countries. All 5 of those matters have resulted in proceedings in Australia, with 4 of the people consenting to extradition, and 1 person being found eligible for surrender after contested proceedings before a Magistrate. The CDPP also appeared on behalf of New Zealand in relation to 7 requests for extradition received this year. All 7 people sought consented to their surrender.

In the last year, proceedings were able to be commenced in respect of 4 matters which had been referred in previous financial years. Those proceedings resulted in 1 person consenting to extradition and 1 person being found eligible for surrender after a contested hearing. Two matters are currently listed before a Magistrate for proceedings to be conducted to determine eligibility for surrender.

The CDPP has continued to appear on behalf of foreign countries in a number of ongoing complex extradition matters before the courts throughout the year. Four matters have been finalised and resulted in 2 persons consenting and 2 persons being found eligible for surrender. A further 4 matters remain the subject of appeals before the courts. The number and extent of legal challenges results in significant delay in extradition proceedings being finalised.

In addition to the CDPP's role in formal cases referred to it, the CDPP also provides advice to the Attorney-General's Department on a preliminary basis on matters referred to it as the Central Authority from foreign countries. The technical nature of extradition proceedings requires that 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, assistance is often provided to foreign countries to ensure that requests meet the standard required.

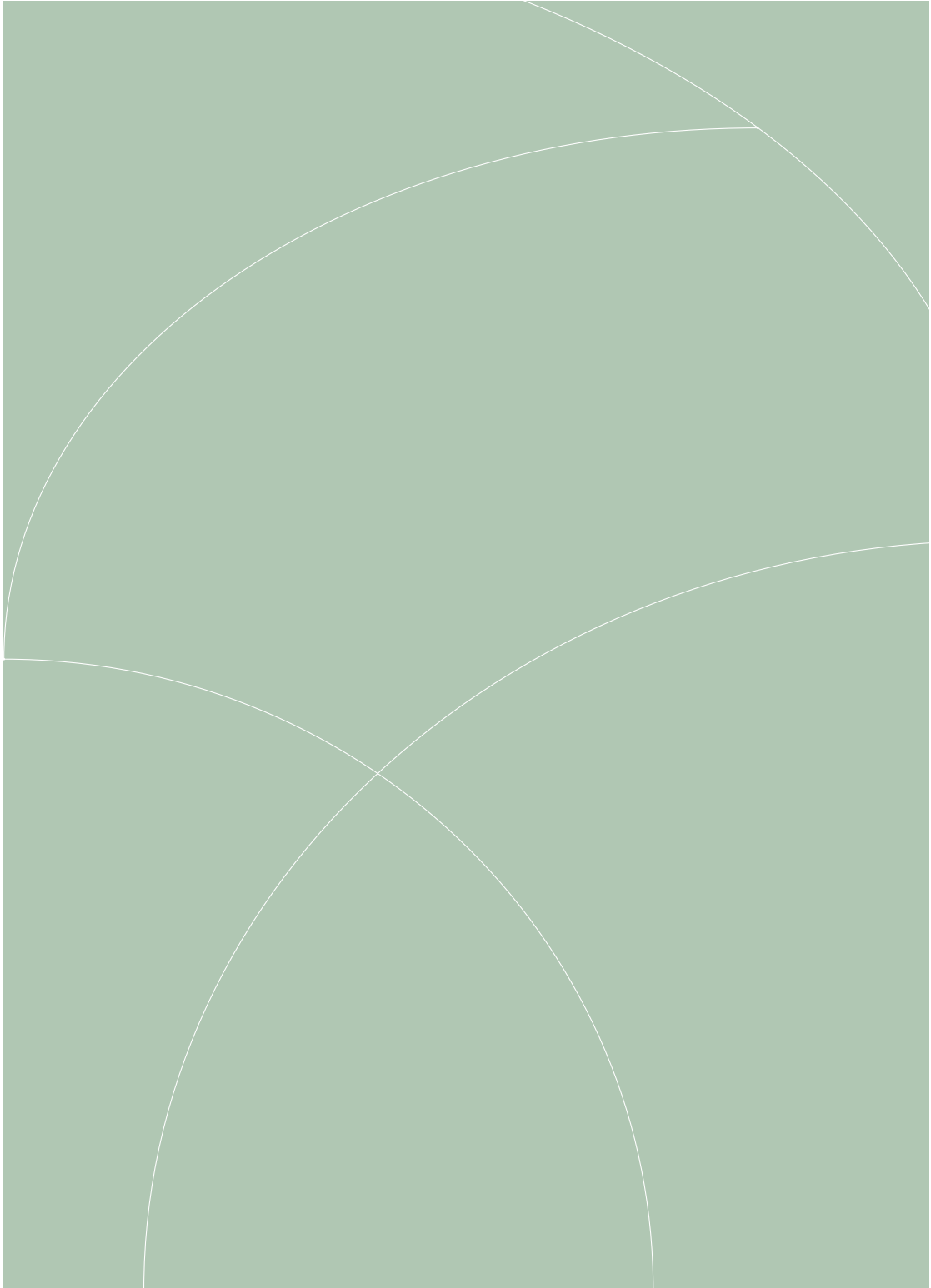
### **OUTGOING REQUESTS**

During the course of the year, the CDPP asked the Attorney-General's Department to make 10 extradition requests to foreign countries in relation to prosecutions being conducted by the CDPP. These requests were either formal requests or requests for provisional arrest pending the submission of a formal request. Two persons have been returned to Australia as a result of the requests. A further request is the subject of extradition proceedings before the courts of the relevant foreign country and 2 people have been arrested in response to requests. One person has been found eligible for surrender but has not yet returned. Two requests were refused by the relevant foreign country. Two requests had not been dealt with by the foreign country as at the end of the financial year.

One person was also surrendered to Australia during the year as a result of a request made in a previous financial year.

Court proceedings in the relevant foreign countries continue in respect of 4 requests made in previous years, including 1 to New Zealand.







# 6

## international contribution

# International contribution



THE CDPP ACTIVELY CONTRIBUTES INTERNATIONALLY BY ATTENDING AND ORGANISING CONFERENCES AND PROVIDING EDUCATION AND TRAINING WITH A PARTICULAR FOCUS ON INITIATIVES IN THE ASIA PACIFIC REGION. THE CDPP SEEKS TO SHARE KNOWLEDGE AND EXPERIENCE, PARTICULARLY IN SPECIALISED AREAS, WITH OTHER COUNTRIES TO ASSIST IN BUILDING THEIR CAPACITY TO PROSECUTE AND TAKE PROCEEDS OF CRIME ACTION.

IN 2008-2009 THE CDPP'S INTERNATIONAL ACTIVITIES INCLUDED SEEKING TO DEVELOP AND STRENGTHEN REGIONAL AND BILATERAL TECHNICAL COOPERATION PROGRAMS IN THE ASIA PACIFIC REGION. MANY OF THESE ACTIVITIES INVOLVED THE CDPP COLLABORATING WITH OTHER COMMONWEALTH AGENCIES. A NUMBER OF PROGRAMS HAVE BEEN DELIVERED THROUGH THE FRAMEWORK OF THE AUSTRALIAN GOVERNMENT'S DEVELOPMENT COOPERATION PROGRAM ADMINISTERED BY AUSAID AND ASSISTED BY EXTERNAL FUNDING.

THE CDPP'S INTERNATIONAL WORK REFLECTS A COMMITMENT TO STRENGTHENING PROSECUTION SERVICES IN OTHER COUNTRIES AND BUILDING MUTUALLY BENEFICIAL RELATIONSHIPS. THIS IS VERY IMPORTANT GIVEN THE INCREASINGLY INTERNATIONAL CHARACTER OF CONTEMPORARY CRIMINAL ACTIVITY AND THE NEED TO RESPOND BY COORDINATED INTERNATIONAL LAW ENFORCEMENT.

THE CDPP'S INTERNATIONAL ENGAGEMENT PROVIDES A VALUABLE WAY TO KEEP UP TO DATE WITH INTERNATIONAL DEVELOPMENTS AND MODELS OF BEST PRACTICE FOR NATIONAL PROSECUTION SERVICES.

## International Association of Prosecutors Standards

In December 2008 the CDPP formally endorsed the International Association of Prosecutors Standards of *Professional Responsibility and Statement of the Essential Duties and Right of Prosecutors* (the IAP Standards).

At the 17th session of the United Nations Commission on Crime Prevention and Criminal Justice in April 2008, UN Resolution 17/2 requested the UN Office on Drugs and Crime to circulate the Standards to Member States for their consideration and comments. The resolution also invited Member States, consistent with their domestic legal systems, to encourage their prosecution services to take into consideration the IAP Standards when reviewing or developing rules with respect to the professional and ethical conduct of members of prosecution services.

In making the decision to endorse the IAP Standards, the Director said:

'I AM DELIGHTED TO ENDORSE THE IAP STANDARDS. ALTHOUGH CO-EXTENSIVE WITH PRINCIPLES UNDERPINNING THE PROSECUTION POLICY OF THE COMMONWEALTH, OUR ENDORSEMENT IS AN IMPORTANT PUBLIC STATEMENT OF COMMITMENT TO THE HIGHEST STANDARDS IN ETHICAL PROSECUTION. THE ENDORSEMENT IS ALSO REFLECTIVE OF OUR ENGAGEMENT IN INTERNATIONAL CAPACITY BUILDING. THE LATTER ADVANCES AND MAINTAINS THE RULE OF LAW, WHICH IS IN THE NATIONAL INTEREST AND CONSISTENT WITH A LONG STANDING INTERACTION WITH AND SUPPORT OF FELLOW INDEPENDENT PROSECUTORS IN THE PACIFIC REGION.'

The IAP Standards have been endorsed by many prosecution services internationally as well as by a number of the State and Territory DPPs.





## International Crime Cooperation Workshops

In November 2008 the CDPP and AFP participated in an International Crime Cooperation Workshop focussing on proceeds of crime in Honiara, Solomon Islands. The 2 week workshop was sponsored by AMLAT and opened by the Solomon Islands Director of Public Prosecutions, Mr Ronald Bei Talasasa and the Australian High Commissioner, Mr Peter Hooton.

The workshop aimed to increase awareness of money laundering and to enhance the capacity of the Solomon Islands to initiate and respond in proceeds of crime matters. The 35 participants included the Solomon Islands Director of Public Prosecutions and representatives from his office, the Solomon Islands Police Force and the Attorney-General's Chambers.

The workshop was based around a hypothetical scenario involving illegal logging, official corruption and money laundering, where participants launched proceeds of crime action. A CDPP criminal assets lawyer and 2 AFP officers presented sessions on technical aspects of proceeds of crime action and trained participants in the practical skills required to investigate, prepare and conduct proceeds of crime action using their *Money Laundering and Proceeds of Crime Act 2002* and the *Solomon Islands Court (Civil Procedure) Rules 2007*.

Police officers charted the scenario, developed an investigation plan and worked with prosecutors in drafting an affidavit in support of a restraining order application. The prosecutors prepared legal documents in support of the restraining order. The workshop culminated in the prosecutors making an application for a restraining order before a sitting judge of the High Court of Solomon Islands.

The workshop also provided the opportunity for the CDPP to work with Solomon Islands' prosecutors in relation to current cases, develop precedent court documents and assist the Attorney-General's Chambers in considering potential legislative reform to the *Money Laundering and Proceeds of Crime Act 2002*.

A further International Crime Cooperation Workshop and a Judicial Workshop also focussing on proceeds of crime was hosted by the CDPP in Brisbane in March 2009.

## Asia Pacific Group on Money Laundering

The CDPP is an active contributor to the work of the Asia Pacific Group on Money Laundering (APG). The APG is an autonomous and collaborative international organisation committed to reducing serious crime in the Asia Pacific through the adoption, implementation and enforcement of international standards against money laundering and the financing of terrorism. In August 2008 the CDPP participated as Australia's legal expert to an international Assessment Team responsible for preparing the APG Mutual Evaluation of Bangladesh. The Assessment Team met with over 50 government agencies, financial institutions, regulators and non-government organisations to evaluate the effectiveness of their anti-money laundering and tax fraud measures.

The APG evaluation process has proved an excellent opportunity to apply the CDPP's knowledge and to observe more broadly the development of anti-money laundering and combating of financing of terrorism regimes by Australia's regional neighbours.

## Prosecutors' Pairing Program

The Prosecutors' Pairing Program is a joint initiative of the CDPP and the Anti-Money Laundering Assistance Team (AMLAT) within the Attorney-General's Department. A prosecutor from a Pacific Island Forum country is placed in 1 of the CDPP's proceeds of crime teams. The purpose of the program is, through practical experience, training and mentoring, to strengthen the capacity of prosecution services in Pacific countries to conduct effective proceeds of crime action.

This year the program facilitated the placement of a prosecutor from the Samoan Attorney-General's Office to the Criminal Assets Branch of Head Office in Canberra for a period of 2 months. The placement provided the opportunity to gain experience in the preparation and presentation of proceeds of crime applications and to observe court proceedings in New South Wales and Queensland. One of the

significant benefits of the placement was the preparation of a draft proceeds of crime manual for use in Samoa.

## APEC Colloquium for Public Prosecutors and the Judiciary on Intellectual Property Rights Enforcement

In June 2009 the CDPP attended and participated in the APEC Colloquium for Public Prosecutors and the Judiciary on Intellectual Property Rights Enforcement in Kuala Lumpur. In a joint session with presenters from the United States, the CDPP provided information about Australia's intellectual property laws and criminal enforcement action that is taken in Australia.

## Visits by Delegations



In October 2008 a delegation of Thai judges visited the CDPP in Canberra. The delegation was very interested in the investigation and prosecution of narcotic offences and Australian legislative responses.

In May 2009 the CDPP hosted a Nepalese delegation in the CDPP office in Canberra. The 8 person delegation was headed by Justice Kaylan Shrestha of the Supreme Court of Nepal. Presentations were provided by senior CDPP lawyers in relation to subject areas of particular interest to the delegation including people trafficking and proceeds of crime.

## Indonesian Legal Training Seminar Series

This year the CDPP provided assistance to the Attorney-General's Department in delivering 2 AusAID funded seminars in Indonesia. The first seminar, *'Fighting Crime Through Legal Cooperation'*, was aimed to assist Indonesia's capacity to make and respond to requests for international legal cooperation. The program was delivered in conjunction with Indonesia's Department of Law and Human Rights and was attended by Indonesian Government officials with responsibility for international legal cooperation.

The second seminar, *'Prosecuting Transnational Crimes in Indonesia'*, was designed for Indonesian judges and prosecutors and was jointly delivered by the CDPP and Indonesia's Attorney-General's Office.

These seminars contributed significantly to building linkages between Australian and Indonesian Government agencies to facilitate future cooperation to fight transnational crime.

## International Conference of the International Society for the Reform of Criminal Law, Dublin

In July 2008 CDPP officers attended the 22nd International Conference of the International Society for the Reform of Criminal Law in Dublin, Ireland. The conference theme was the codification of criminal law and the CDPP presented papers entitled *'Australia's Commonwealth Criminal Code - Codification of General Principles of Criminal Responsibility'* and *'Criminal Liability of Organisations'*.

## Meeting of Australian and Pacific Chief Prosecutors

In June last year the CDPP co-hosted with the New South Wales DPP the second meeting of Australian and Pacific Chief Prosecutors in Sydney. The

meeting brought together the heads of prosecution services and senior prosecutors from 10 Pacific Island Forum countries, as well as the heads of 4 of Australia's State and Territory prosecution services. Participants committed to maintaining and strengthening a Pacific Prosecutor's Network, recognising the benefits of closer liaison between prosecutors, particularly in relation to emerging areas such as money laundering and proceeds of crime action.

The next meeting of Australian and Pacific Chief Prosecutors will be held in Brisbane in October 2009.

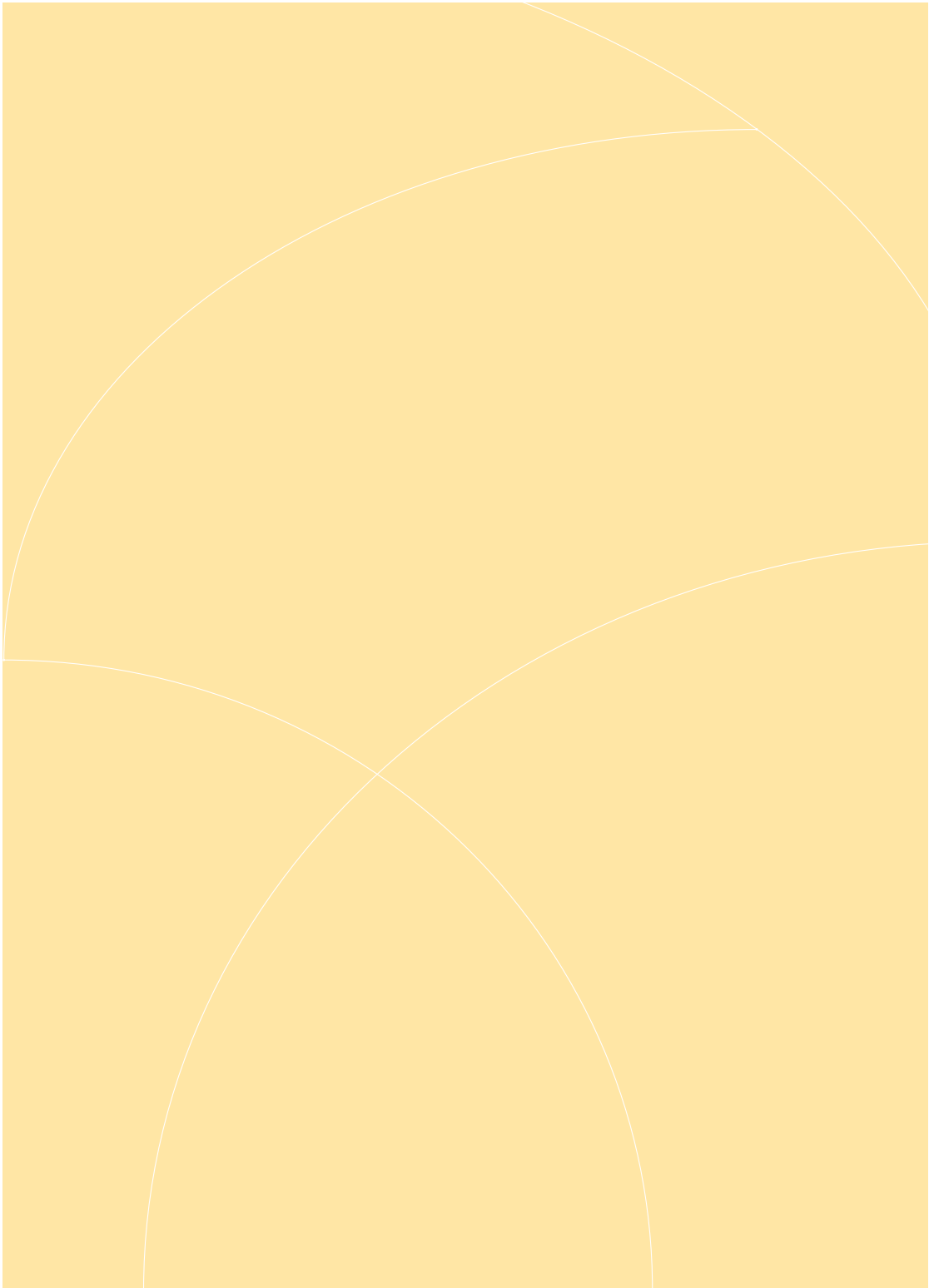
## Other International Activities

CDPP lawyers are active participants in a number of international fora for prosecutors. These include meetings of the International Association of Prosecutors (IAP) and the International Society for the Reform of Criminal Law.

The CDPP participates in international meetings of prosecution agencies from countries with criminal justice systems based on the common law. The Heads of Prosecutors Agencies Conference (HOPAC) brings together the heads of prosecution services. The Managing Officers, Prosecutors and Executive Directors meeting (MOPED) is an international meeting of key operational officers from prosecution agencies in England, Scotland, New Zealand, Canada, Australia and the Republic of Ireland. This meeting focuses on management and areas such as professional development and information technology.

The CDPP's international activities provide valuable opportunities to contribute to strengthening prosecution capacity and to benefit from international experience.







# 7

## law reform

# Law reform



## THE CDPP'S CONTRIBUTION TO LAW REFORM INCLUDES PROVIDING ADVICE ABOUT THE PRACTICAL IMPLICATIONS OF:

- ▶ EXISTING LEGISLATION,
- ▶ NEW POLICY PROPOSALS, AND
- ▶ PROPOSED LEGISLATION.

## THE CDPP'S ONGOING CONTRIBUTION TO LAW REFORM STEMS FROM ITS PRACTICAL EXPERIENCE CONDUCTING CRIMINAL PROSECUTIONS AND TAKING PROCEEDS OF CRIME ACTIONS IN COURTS ACROSS AUSTRALIA.

As the agency responsible for the conduct of prosecutions against the laws of the Commonwealth in all Australian jurisdictions, the CDPP is in a unique position to provide feedback to policy formulators and law-makers about the operation of Commonwealth laws and the CDPP's experience working with these laws in the courts.

The CDPP also has an interest in ensuring that Commonwealth legislation regarding the criminal law is clear, consistent and practical. However, it is important to recognise that the CDPP does not develop criminal law policy.

The Policy Branch in Head Office coordinates the CDPP's work in the area of law reform. The Policy Branch acts as a coordination point for the various areas of specialist expertise within the CDPP, as well as between branches within the office, including the Commercial, International and Counter-Terrorism Branch and the Criminal Assets Branch. The Policy Branch operates within the Legal, Practice Management and Policy Branch to establish

and maintain links between prosecutors in regional offices and Commonwealth law-makers.

The CDPP has contributed to law reform in the following areas:

## Legislative Proposals

The CDPP commented on a wide range of legislative proposals and draft legislation during the course of the year, including:

- ▶ the *Law and Justice Amendment (Identity Crimes and Other Measures) Bill 2008*, containing amendments to the *DPP Act* to assist with the joint trial agreements that the CDPP has with the each of the State and Territory Directors of Public Prosecutions;
- ▶ the *Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008*, providing for the procedural rules for the Federal Court of Australia to exercise the limited indictable criminal jurisdiction given to the Federal Court of Australia in relation to the cartel offences in the *Trade Practices Act 1974*;
- ▶ the *Treasury's exposure draft Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009*, which, amongst other things, seeks to clarify the use of taxation information for investigations and prosecutions of offences other than taxation offences;
- ▶ the draft *Information Commissioner Bill 2009* and the draft *Freedom of Information*

*Amendment (Reform) Bill 2009* released by The Honourable Senator Faulkner; and

- ▶ the *Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009*, containing provision for the concept of joint criminal enterprise in the *Criminal Code*, called joint commission. In previous Annual Reports the CDPP has indicated that the lack of joint commission in the *Criminal Code* has impacted on Commonwealth prosecutions and accordingly, the proposed addition of joint commission into the *Criminal Code* is welcomed by the CDPP.

The CDPP has also contributed to the policy development of a number of law reform proposals which have not at this stage been introduced into Parliament.

## Reviews

The CDPP has participated in a number of reviews this year providing submissions or comments on discussion papers.

Participating in reviews is an important part of the CDPP's contribution to law reform because it is a mechanism to discuss how the law currently operates or to comment on proposed changes to the law.

The CDPP was invited to provide a submission to the review of Chapter 2 of the *Criminal Code* conducted by the Model Criminal Law Officers Committee. The CDPP raised a number of issues that have emerged with the operation of the General Principles of Criminal Responsibility in Chapter 2 of the *Criminal Code*. The application of those principles has now been considered in prosecutions involving different offences and fact situations. In particular, the CDPP again raised that the concept of joint criminal enterprise was not included in the *Criminal Code*. As discussed above, we note that joint commission has been included in the *Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009*.

This year the Australian Law Reform Commission (ALRC) released Issues Paper 34 entitled *Review of Secrecy Laws*. The CDPP provided submissions on the Issues Paper and raised the complications that secrecy provisions in Commonwealth legislation

can create in sharing information across law enforcement agencies for investigative and prosecution purposes.

The CDPP has also provided submissions to a number of reviews relating to criminal law and procedure conducted by the States and Territories. Each of our regional offices has considerable expertise in the practical operation of the State and Territory laws that apply in prosecuting Commonwealth matters. This year the CDPP has provided comments to the reviews of jury directions conducted in New South Wales, Victoria and Queensland. In addition, detailed submissions were provided on various criminal procedure issues to the *Review of the Civil and Criminal Justice System in Queensland* conducted by Martin Moynihan AO QC.

## Liaison and Committees

The CDPP's input on legislative reform is facilitated by a close working relationship with the Attorney-General's Department, in particular the Criminal Justice Division and the Security and Critical Infrastructure Division. It is also facilitated by close liaison relationships with the Commonwealth departments and agencies which investigate Commonwealth offences or develop legislative proposals.

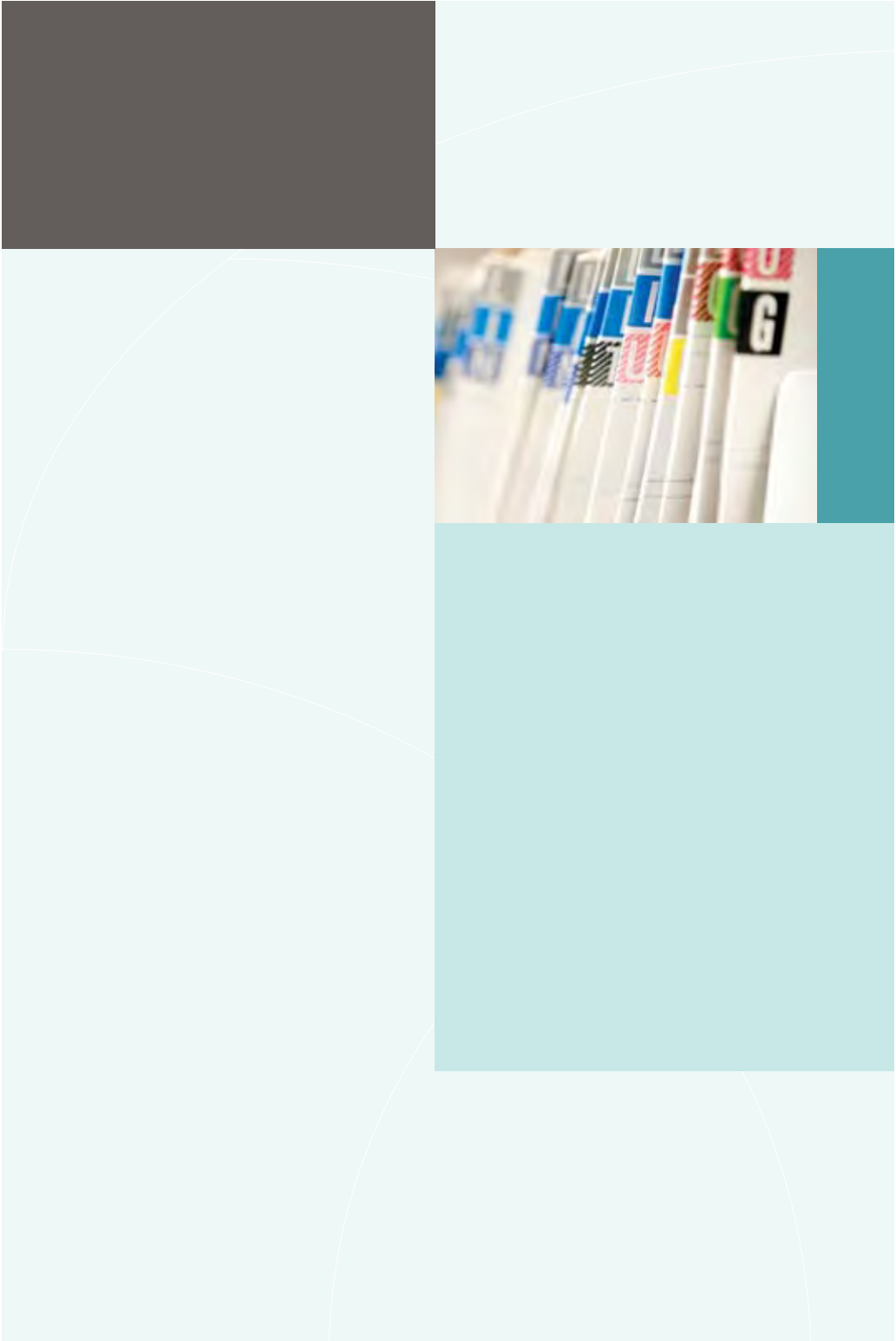
This year the CDPP participated as a member on a number of committees concerned with the criminal law and possible legislative reform. By way of example, the CDPP was a member of the steering committee for the Federal Criminal Law Forum held in September 2008. Members of the CDPP also participated at that Forum. The CDPP was represented on the Criminal Trials Efficiencies Working Group in New South Wales which handed down its report concerning reforms to criminal procedure in New South Wales in 2009. In Victoria, the CDPP participated in working parties on state procedural reforms and the County Koori Court reference group. The CDPP also participates in courts liaison groups which involve raising and discussing suggestions for reform in areas of practice and procedure.

Where the CDPP identifies deficiencies in laws or aspects of laws that in the view of the CDPP should

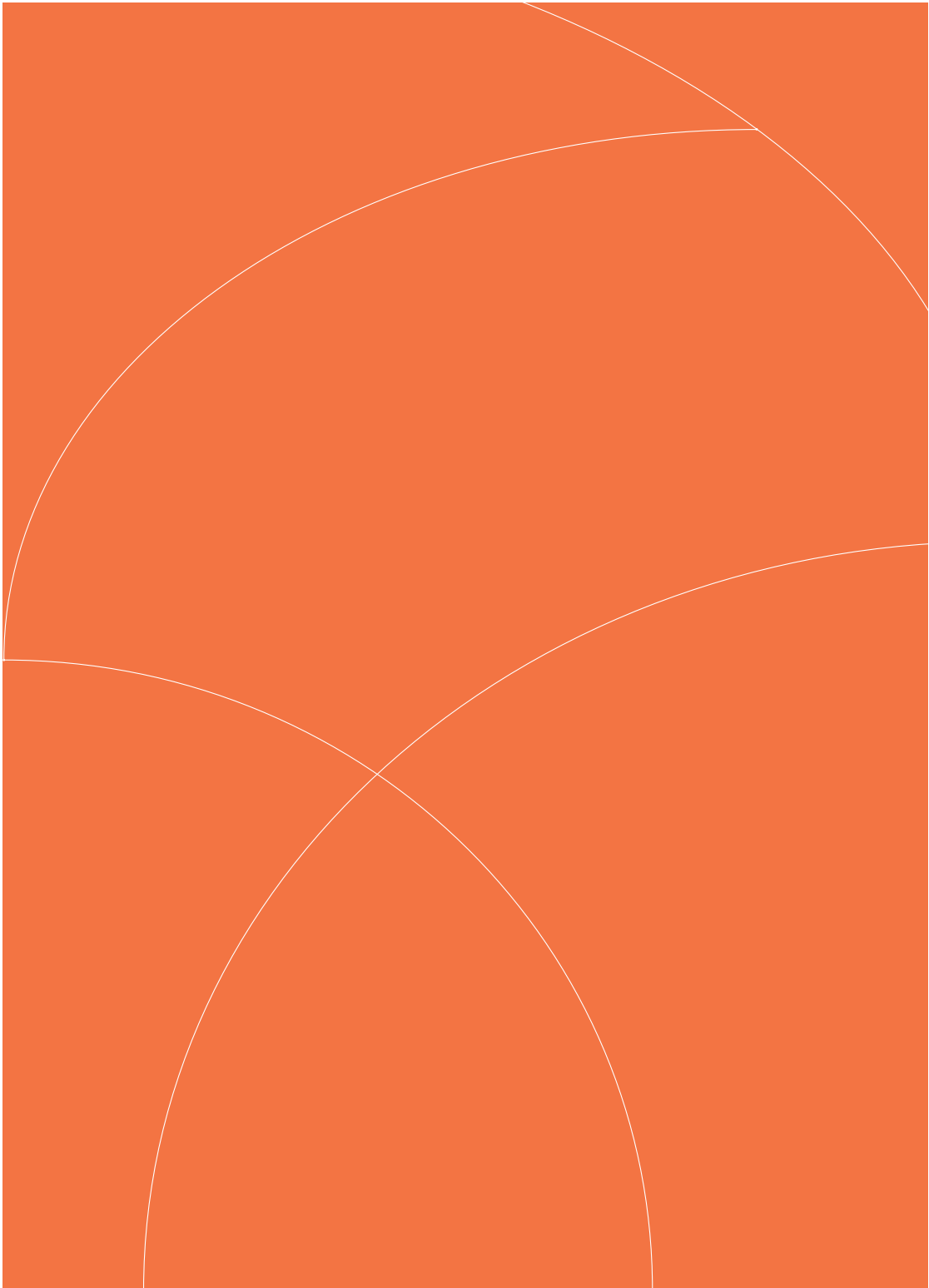
be clarified, these are brought to the attention of the Attorney-General's Department or another department or agency that has responsibility for the administration of the legislation involved. The CDPP may also raise possible legislative changes for consideration.

In addition, the CDPP is active in law reform through its discussions with departments and agencies, particularly through its liaison function, and at various interdepartmental committees where law reform issues are raised.





7





# 8

## practice management

the CDPP seeks to provide  
professional assistance  
to referring agencies

# Practice management



**THE CDPP PROSECUTES A WIDE RANGE OF CRIMINAL OFFENCES REFERRED BY OVER 40 DIFFERENT INVESTIGATIVE AGENCIES IN 8 STATES AND TERRITORIES. THE LEGAL AND PRACTICE MANAGEMENT BRANCH IN HEAD OFFICE PLAYS AN IMPORTANT ROLE IN IMPLEMENTING THE STRATEGIC PRIORITIES OF THE CDPP THAT ARE CRITICAL TO ENSURING THAT THE CDPP DELIVERS AN EFFICIENT, EFFECTIVE AND INDEPENDENT FEDERAL PROSECUTION SERVICE TO THE AUSTRALIAN COMMUNITY.**

The Branch deals with a broad range of legal, policy and liaison responsibilities and supports the CDPP's Regional Offices and Executive in connection with the work of the General Prosecution, Taxation and Centrelink Branches around Australia. This includes providing legal and strategic advice in significant and sensitive prosecutions; responsibility for national liaison with referring agencies; coordinating the review of national policies and guidelines; and designing and implementing national training programs for prosecutors.

The Branch provides specialist coordination, advice and training in specific areas of the CDPP's practice, particularly in new areas, and assists with the sharing of knowledge and experience within the CDPP. It also monitors and seeks to enhance CDPP performance.

The CDPP works hard to maintain effective working relationships with investigative agencies and departments. A system of national liaison with the CDPP's major referring client agencies complements liaison conducted at the regional level. The CDPP maintains a number of manuals and policies

designed to assist law enforcement agencies in their role in investigating Commonwealth offending. The CDPP also provides a valuable system of training and other support to investigators.

The Branch contributes to policy development and law reform in the Commonwealth criminal justice system through a close liaison relationship with the Commonwealth Attorney-General's Department. The CDPP is closely involved in the development of offences and legislation relating to criminal law.

## Advice to the Director

One of the key areas of the CDPP's work is the provision of high-level legal advice to the Director on the exercise of the Director's statutory functions in accordance with the Prosecution Policy. This includes consideration of no bills, *ex officio* indictments, appeals against sentence, reference appeals, conspiracy consents and taking over and discontinuing prosecutions.

## National Coordination

**THE LEGAL AND PRACTICE MANAGEMENT BRANCH ASSISTS IN COORDINATING AND SUPPORTING THE CDPP'S NATIONAL PRACTICE.**

The Branch seeks to build expertise within the CDPP and develop national consistency including facilitating the sharing of information around Australia, establishing networks for prosecutors working in specialised areas, providing on-line legal resources, and arranging national meetings.

For example, there are networks in the areas of Centrelink prosecutions, people trafficking, child pornography and money laundering.

There is liaison between Commonwealth and State prosecuting authorities at national and regional level. The Conference of Australian Directors of Public Prosecutions provides a forum for Directors of Public Prosecutions to discuss best practice in prosecuting, professional standards, training and liaison. The National Executive Officers' Meeting of the heads of legal practice and corporate services of the Commonwealth and State and Territory prosecution services provides a valuable opportunity to share information and discuss the management of prosecuting agencies.

The CDPP also gains from international experience in areas such as the management of prosecution agencies, professional development and information technology by attending the Managing Officers, Prosecutors and Executive Directors meeting (MOPED).

## Liaison with Investigative Agencies

THE CDPP WORKS CLOSELY WITH COMMONWEALTH AGENCIES THAT REFER MATTERS FOR PROSECUTION.

The CDPP has in place *General Guidelines for Dealing with Investigative Agencies* and also Memoranda of Understanding with some agencies. The CDPP holds regular meetings at the national and regional level with many Commonwealth agencies. It also maintains relationships with other investigative agencies that from time to time refer briefs of evidence to the CDPP.

To support liaison relationships, on occasion the CDPP hosts national conferences addressing specific areas of work. These conferences provide a useful opportunity for prosecutors and investigators to discuss issues involved in dealing with specific types of criminal conduct and to strengthen prosecution action.

In May 2009, the CDPP held its annual prosecutors' conference on Centrelink prosecutions. Prosecutors from all CDPP offices attended. A range of matters

were discussed including witness statements and sentencing submissions. Continued discussion of these issues promotes national consistency in dealing with prosecutions across Australia in this important area.

Other national conferences held throughout the year which have been attended by representatives of investigative agencies have focussed on areas such as people smuggling prosecutions, money laundering and prosecutions pursuant to the *ACC Act*.

## Victims

The CDPP is prosecuting an increasing number of matters that involve individual victims of crime as the nature of Commonwealth crime changes. The CDPP recognises the importance of keeping victims informed about matters and providing appropriate support to victims participating in the criminal justice process.

The revised *Prosecution Policy* states that it is important in all prosecution action that victims are treated with respect for their dignity. In the context of the *Prosecution Policy* a victim of crime is an identified individual who has suffered harm as the direct result of an offence or offences committed against Commonwealth law or prosecuted by Commonwealth authorities. 'Harm' includes physical or mental injury, emotional suffering and economic loss.

The *Prosecution Policy* provides for the views of any victims, where those views are available, and where it is appropriate, to be considered and taken into account when deciding whether it is in the public interest to:

- ▶ commence a prosecution;
- ▶ discontinue a prosecution;
- ▶ agree to a charge negotiation; or
- ▶ decline to proceed with a prosecution after a committal.

The *Prosecution Policy* also provides that the CDPP will comply with its *Victims of Crime Policy* in its dealings with victims.





## CDPP Victims of Crime Policy

In response to the growing practice of the CDPP involving individual victims, the CDPP issued its Victims of Crime Policy, which was approved by the Director on 15 June 2009. A copy of that policy is Appendix 4 to this report. The CDPP has allowed 6 months from the Director's approval to fully implement this Policy including establishing appropriate systems and procedures.

The CDPP Victims of Crime Policy states that it is important that all CDPP staff treat victims with courtesy, dignity and respect. The CDPP recognises that in matters where there is a victim, that person has an important role in the prosecution process. The CDPP does not act on behalf of a victim as solicitors act for their clients. In carrying out its functions, the CDPP acts on behalf of the whole community. The role of the victim in the prosecution will depend on the circumstances of the case.

The Victims of Crime Policy addresses a number of matters including that victims should, on request, be kept informed of the progress of the prosecution in a timely manner, including:

- ▶ the charges laid;
- ▶ the date and place of hearing of any charges laid;
- ▶ the outcome of any bail proceedings; and
- ▶ the outcome of proceedings, including appeal proceedings.

Victims should be advised about the prosecution process, that is, the various stages in a matter being heard before a court. Where a victim may be required to give evidence, any inconvenience to the victim should be minimised, as far as possible. Victims should also be advised in relation to their role as a witness.

In people trafficking matters the Commonwealth has established the Support for Victims of People Trafficking Programme coordinated by the Office for Women. In relation to participating in the court process the CDPP has engaged appropriate support services when required.

## Witness Assistance Service Pilot Project

In November 2008 the CDPP established a 12-month Witness Assistance Service (WAS) Pilot Project with the engagement of a Witness Assistance Officer located in the Sydney Office. This officer has provided assistance to witnesses in the Sydney Office and acted as a resource for other offices. In addition this Witness Assistance Officer has assisted in developing resources and materials for witnesses nationally and in the implementation of the *Victims of Crime Policy*. A range of information and support services were provided to those who were referred to the WAS including court tours; support at court; referrals to support services; and assistance with Victim Impact Statements.

## Training

**TRAINING IS AN INTEGRAL PART OF THE CDPP'S OPERATIONS, WITH TRAINING BEING PROVIDED FOR CDPP OFFICERS AND THE CDPP PROVIDING TRAINING FOR REFERRING AGENCIES AND INVESTIGATORS.**

The CDPP recognises the importance of developing skills within the office through structured training. The CDPP has appointed a National Training and Development Coordinator responsible for assessing the training needs of the Office and implementing structured programs. This year the CDPP has been conducting leadership training to facilitate career development and at the same time enhance the efficiency and capability of the CDPP as the prosecuting authority for the Commonwealth. This is in addition to training such as Continuing Legal Education training.

The CDPP provides national online induction material for officers as they join the CDPP. This program has been developed to provide a comprehensive introduction to the Office and to cover all relevant procedures and policies to ensure that prosecutors are skilled for the work they perform. This includes areas such as the *Prosecution Policy*, the Guidelines and Directions Manual, and the respective roles and responsibilities of the CDPP

and other agencies. This on-line resource is provided in addition to the training provided by supervisors.

The CDPP is a regular contributor to the training courses for investigative officers conducted by referring agencies. These cover a range of areas such as the *Prosecution Policy*, prosecution disclosure and proceeds of crime, as well as training addressing particular offences. For example, the CDPP has continued to contribute as presenters for AFP investigator training courses.

## Manuals

The CDPP continues to maintain and update the Search Warrants Manual, the Telecommunications (Interception & Access) Manual and the Surveillance Devices Manual. These manuals provide guidance on the legal requirements for obtaining and executing warrants under Commonwealth law. Given the technical nature of this area of law, the CDPP 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 CDPP officers and relevant Commonwealth investigators. The CDPP has also produced a Copyright Prosecutions Outline and a Trademark Prosecutions Outline which provide guidance regarding the investigation and prosecution of offences relating to intellectual property.

## Statistics

An important element of the CDPP's practice management is the collection and analysis of statistical information regarding Commonwealth prosecutions. Statistical information is collected in the CDPP's Case Recording Information Management System (CRIMS) and is used internally and externally to measure the work of the CDPP against performance indicators and provide information to referring agencies. CRIMS is a very important resource for the CDPP and is under continuous development.



## On-Line Resources

The CDPP provides an *Information Service* to its Client Agencies via its Client Agencies website to update them on criminal law issues. The website covers Commonwealth criminal cases, new legislation, and recently published books, articles, conference papers and Government reports. This is in addition to the CDPP's online manuals for search warrants and electronic surveillance warrants.

This website also includes offence breakdowns and draft charges so that investigators are able to readily identify the physical and fault elements that must be proven in order to establish an offence and to assist in charges being formulated.

The *Commonwealth Sentencing Database* is a joint project of the CDPP, the National Judicial College of Australia and the Judicial Commission of NSW, based on sentencing information provided by the CDPP. The purpose of the Database is to provide judicial officers and other users with rapid and easy access to information about sentencing for Commonwealth offences and to assist judicial officers with their sentencing decisions. The Database is designed to provide primary research sources, such as judgments and legislation, linked to secondary resources including commentary on sentencing principles and sentencing statistics.

Contemporary prosecuting increasingly involves the management and presentation to court of voluminous evidential material. The CDPP has adopted the Ringtail computer litigation support system. Ringtail has replaced the previous LSS system as the method of handling electronic briefs of evidence and the innovative presentation of evidence using computers in court. This system enables the effective electronic management of large numbers of documents and is a particularly valuable resource in complex and protracted litigation.

## Joint Trials – State and Territory DPPs

The Director is empowered to prosecute indictable offences against State and Territory laws where the Director holds an authority to do so under the laws of the relevant State or Territory. In addition, the Director is empowered to conduct committal proceedings and summary prosecutions for offences against State or Territory law where a Commonwealth officer is the informant.

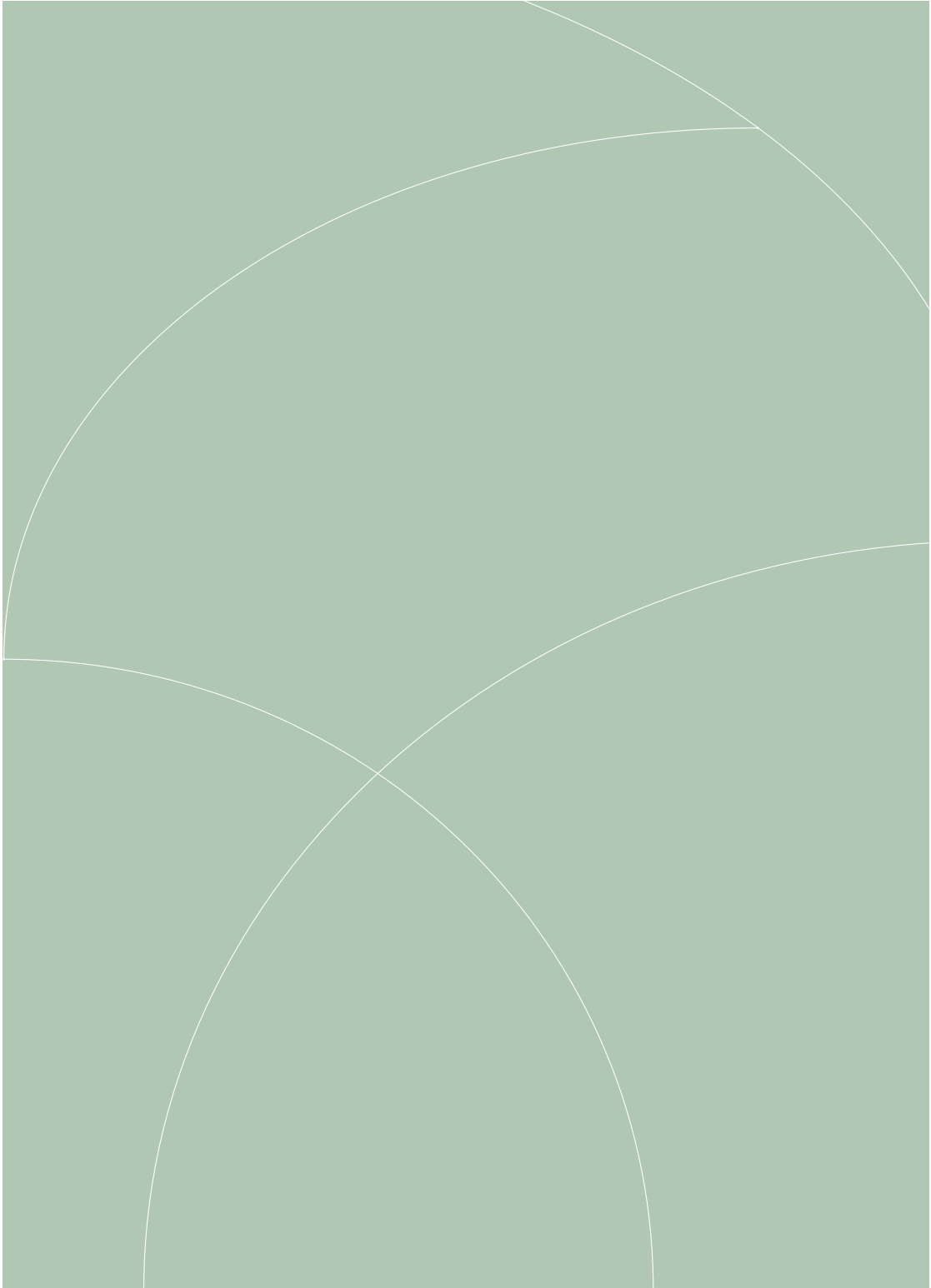
The CDPP has arrangements in place with each of the Directors of Public Prosecutions in Australia concerning procedures for conducting trials which involve both Commonwealth and State or Territory offences. These arrangements are kept under review and the CDPP has entered into new joint trial arrangements with the Directors of Public Prosecutions for Queensland and the Australian Capital Territory. Consultations are continuing with other jurisdictions.

## Disclosure

An important and ongoing issue in the CDPP's practice and in its work with Commonwealth investigative agencies is ensuring proper disclosure in prosecutions, as provided for in the CDPP's *Statement on Prosecution Disclosure*. The CDPP is continuing to work with agencies to assist them to meet disclosure obligations by producing resources for investigators. The CDPP's *Statement on Prosecution Disclosure* is available at [www.cdpp.gov.au](http://www.cdpp.gov.au).









# corporate management

# Corporate management



## Human Resources

There is a central Human Resource (HR) section in Head Office supplemented by staff in all regions who deal with HR issues at a local level.

The Head Office section is responsible for providing policy direction and guidelines to the Regional Offices to ensure consistency of practice throughout the CDPP. The section also provides national payroll services, advice on entitlements and conditions of service, and is responsible for negotiating and implementing Collective Agreements and other employment instruments.

The Regional HR representatives provide day to day HR services on local matters. They also contribute to national HR initiatives through a forum of Executive Officers and HR practitioners that meets regularly.

## Staffing Profile

The employees of the CDPP are the most valuable resource of the Office. Fifty-four percent of staff members are lawyers. 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 2009 the total number of staff was 661. A breakdown of this figure appears in the tables at the end of this Chapter. The average staffing level for the year was 605.49. All staff members

are employed under the *Public Service Act 1999* or section 27 of the *DPP Act 1983*.

## Workforce Planning and Staff Retention and Turnover

In 2008-2009 the CDPP altered the emphasis of its workforce planning activities away from externally focussed recruitment campaigns to internally focused staff retention.

Initiatives have included the roll-out of tailored leadership and management training and the introduction of a more holistic employee wellbeing program. These initiatives are discussed in more detail under the Learning and Development section below.

## Workplace Agreements

### **COLLECTIVE AGREEMENT**

The CDPP Workplace Agreement for 2006-2009 came into effect on 30 November 2006. The nominal expiry date of the Agreement is 29 November 2009. The Agreement covers employees of the CDPP employed under the *Public Service Act 1999* except for Senior Executive Service (SES) employees and employees whose salaries are not paid by the CDPP.

The main features of the collective Workplace Agreement are innovative and flexible employment and leave provisions.

As at 30 June 2009, there were 577 employees covered by the Agreement.

The CDPP has recently commenced providing information and entered into preliminary discussions with employees in relation to developing a new enterprise agreement.

### **AUSTRALIAN WORKPLACE AGREEMENTS**

The CDPP has an Australian Workplace Agreement (AWA) in place for each substantive SES employee and for some employees selected to act as SES employees for a period of 6 months or more. As at 30 June 2009 there were 33 AWAs in place.

Options for replacing AWAs are presently being considered as part of a broader discussion of the terms and conditions of employment that can be made available to SES employees and the appropriate instrument to give effect to them under the new legislative and policy environment.

### **COMMON LAW CONTRACTS**

The CDPP has entered into 1 common law contract in 2008-2009.

### **SECTION 24(1) DETERMINATION**

In 2008-2009 the CDPP made 2 Determinations pursuant to section 24(1) of the *Public Service Act 1999*.

### **WORKPLACE PARTICIPATION**

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

## **Learning and Development**

A key strategic theme for the CDPP is ‘to recruit, develop and retain high quality people’ and core values of the CDPP are ‘knowledge, skills and commitment of our people’ and ‘leadership from senior lawyers and managers’. The CDPP is rolling out a number of initiatives to translate this theme and values into tangible learning and development programmes for all staff at all levels.

The first stage was the implementation of a more integrated, accessible and nationally consistent induction program designed to provide employees with a comprehensive introduction to the CDPP. The first review process for the new induction programme is presently underway.

Senior management leadership training was provided to SES staff in 2008-2009. This training focused on identified strategic themes that included the role of leaders, attracting and retaining staff, supporting employee wellbeing and working with client agencies.

A pilot course similar to the SES leadership training was conducted for Principal Legal Officers and Executive Level 2 employees in early April 2009. A training investment of a similar kind is proposed for all non-SES staff across all regions.

Staff awareness and education programs on the CDPP Risk Management Framework and Security Guidelines are being offered to all staff.

The CDPP conducts in-house legal training to ensure that CDPP lawyers comply with any continuing legal education requirements which apply to them. The CDPP also runs an in-house advocacy training course for CDPP lawyers.

Direct expenditure on external training for the year was \$370,958. There was also considerable in-house training and ‘on the job’ training, which was not costed.

## **Employee Wellbeing Program**

A range of measures were implemented by the CDPP in 2008-2009 in relation to employee wellbeing including the rollout of the CDPP Employee Wellbeing Programme (EWP). The EWP is a broader, more holistic approach to employee wellbeing and replaces the former Trauma Management Programme. The practical implementation of the EWP has encompassed the provision of mental health literacy and education workshops for staff and managers across the CDPP and access to wellbeing assessments and counselling for employees working with potentially offensive or traumatic case materials. The CDPP also conducts regular and appropriate short courses

related to employee wellbeing through its Employee Assistance Programme (EAP).

## Occupational Health and Safety

In August 2008 the CDPP finalised and published Health and Safety Management Arrangements (HSMAs) in accordance with the *Occupational Health and Safety Act 1991*. The release of the arrangements followed a development and consultation process spanning 12 months. Updates and refinements to the HSMAs is a continuing process and included the development of draft Rehabilitation and Return to Work Arrangements. The first formal review of the HSMAs is scheduled for the second half of 2010.

The CDPP managed 17 non-compensable cases and 10 compensable cases during 2008-2009.

No accidents or dangerous occurrences under section 68 of the *Occupational Health and Safety Act 1991* were reported during the year. There were no investigations under sections 29, 46 or 47 of that Act reported during the year.

## Workplace Diversity

The CDPP aims to integrate the principles of workplace diversity into all aspects of human resource 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 CDPP's workplace diversity 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 status. Accordingly the information may not be complete.

### STATUS OF WOMEN

As at 30 June 2009, women made up 67.47% of CDPP employees, and 63.89% of lawyers.

Of the 44 full-time members of the SES, 14 were women. There were 4 part-time members of the

SES, 3 of whom were women. In percentage terms, 35.42% of SES positions were filled by women.

As at 30 June 2009, there were 43 women working as legal officers on a part-time basis.

The CDPP 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.

### COMMONWEALTH DISABILITY STRATEGY

The CDPP reviews its employment practices to ensure that they comply with the requirements of the *Disability Discrimination Act 1992*. The tables at the end of this Chapter include a report on the implementation of the Commonwealth Disability Strategy.

## Privacy

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

## 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 1 July 2008)* issued by the Minister for Finance and Administration. Detailed information on the accounting policies used to prepare the audited financial statements is at Note 1 in the financial statements.

Under current budget arrangements, the CDPP has only 1 outcome with 1 output. Further information about the CDPP's budget is in the Attorney-General's Portfolio Budget Statements.

### FINANCIAL PERFORMANCE

The CDPP'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 CDPP.

In accordance with the *DPP Act*, the CDPP 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 the Consolidated Revenue Fund.

## Operating Results

Operating revenues for 2008-2009 were \$4.677m (4.5%) more than 2007-2008. This increase is largely due to increased appropriations from government for increased prosecutions as a result of the measures announced in the 2008-2009 Budget, 2008-2009 Additional Estimates and from phased increases for measures announced in previous Budgets.

Operating expenses for 2008-2009 were \$11.697m (12.8%) more than 2007-2008. This increase is largely due to expenses for the above Budget measures and their impacts on CDPP's activities:

- ▶ increased salaries and an increase in the average staffing levels in 2008-2009 lead to an increase in employee expenses of \$7.041m; and
- ▶ supplier expenses for prosecution legal costs increased by \$1.667m as a result of increased prosecution activity; and
- ▶ supplier expenses for property increased by \$1.504m as a result of additional space being leased; and
- ▶ depreciation expenses increased by \$1.280m as a result of additional fitout and furniture acquired for the additional space and the June 2008 revaluation; and
- ▶ supplier expenses for other items increased by \$0.205m as a result of the overall increase in activity, including on information and communications technology services.

## Cost Recovery Arrangements

The CDPP has a Memorandum of Understanding with the ATO. The ATO transfers part of their appropriation to the CDPP to cover the cost for the prosecutions of offences under GST legislation. The amount received under this arrangement was \$2m (2007-2008: \$1.250m).

## Purchasing

The CDPP adheres to the principles of value for money; encouraging competition amongst actual and potential suppliers; efficient, effective and ethical use of resources; and accountability and transparency during the procurement process. These policies and principles are set out in the *Commonwealth Procurement Guidelines* (CPGs).

## Competitive Tendering and Contracting

Competitive tendering and contracting is the contracting out of the delivery of government activities, previously performed by a Commonwealth agency, to another organisation. It may be undertaken for the provision of either goods or services. No such contracts were entered into during the year.

## Consultancy Services

Many individuals, partnerships and corporations provide services to agencies under contracts for services. However, not all such contractors are categorised as consultants for the purposes of annual reporting. Consultants are distinguished from other contractors by the nature of the work they perform.

As a general rule, consultancy services involve the development of an intellectual output that assists with the CDPP's decision making, and the output reflects the independent views of the service provider. For more information on what constitutes a consultancy, refer to [http://www.finance.gov.au/procurement/identifying\\_consultancies.html](http://www.finance.gov.au/procurement/identifying_consultancies.html).



The methods of selection used for consultancies are categorised as follows:

|                         |  |
|-------------------------|--|
| <b>Open Tender:</b>     | A procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are sought from the Australian Government AusTender internet site.  |
| <b>Select Tender:</b>   | A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. This procurement process may only be used under defined circumstances.  |
| <b>Direct Sourcing:</b> | A form of restricted tendering, available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and/or services sought.  |
| <b>Panel:</b>           | An arrangement under which a number of suppliers, initially selected through an open tender process, may each supply property or services to an agency as specified in the panel arrangements. Quotes are sought from suppliers that have pre-qualified on agency panels to supply the government. This category includes standing offers and supplier panels where the supply of goods and services may be provided for a pre-determined length of time, usually at a pre-arranged price. |

All consultancies with a value over \$80,000 are publicly advertised. Consultancies with a value of less than \$80,000 are either publicly advertised or sought by quote. Information on expenditure on contracts and consultancies is also available on the AusTender website [www.tenders.gov.au](http://www.tenders.gov.au).

During 2008-2009, the CDPP entered into 2 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.

In addition, 6 ongoing consultancy contracts were active during 2008-2009, involving total actual expenditure of \$0.248m.

## Asset Management

The CDPP's major assets are office fit-out, office furniture, purchased software and library holdings. A stocktake was conducted during the year to ensure the accuracy of asset records. The CDPP reviewed its assets management procedures and guidelines during the year. The CDPP leases most of the desktop and notebook computers, servers and printers. This has resulted in cost savings to the CDPP and a reduction in the administrative work involved in acquiring and maintaining ICT equipment.

During the year, the CDPP:

- vacated a small area of office space in Darwin; and
- occupied additional office space in Canberra, Sydney CBD and Parramatta.

## Audit Committee

The *Financial Management and Accountability Act 1997* requires chief executives to establish an audit committee to assist them in the financial governance of their agency. The Committee reviews, monitors and recommends improvements to the CDPP's corporate governance framework, with a focus on risk management, internal controls, compliance and financial reporting. As part of this role it oversees CDPP's internal and external audit processes. Through internal audits, the Committee reviews key processes, systems and financial accountabilities across the whole CDPP.

The CDPP's Audit Committee is appointed by the Director. It comprises 4 members: the First Deputy Director, the Deputy Director, Legal, Practice Management and Policy, Deputy Director, Corporate Management and the Deputy Director, Melbourne Office. In addition, there is a standing invitation



to the Australian National Audit Office to observe committee meetings.

## Internal Audit and Fraud Control

Internal audits are carried out every year. Internal audit work is outsourced to provide an independent review of CDPP's processes and procedures. The Internal Audit was carried out by Deloitte Touche Tohmatsu. They reviewed Head Office and 3 Regional Offices (Sydney, Brisbane and Darwin). The following areas were reviewed:

- ▶ Asset Management
- ▶ Purchases and Payables (including credit cards)
- ▶ Travel
- ▶ Revenue and Receivables
- ▶ Human Resources and Payroll functions
- ▶ Nomination of Counsel
- ▶ Certificate of Compliance process
- ▶ Management of Property Leases
- ▶ Management of Property Projects
- ▶ Management of Software Licences.

The overall results of the internal audit were good with minor procedural changes recommended which CDPP will take action to implement during 2009-2010.

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

In accordance with the *Commonwealth Fraud Control Guidelines 2002*, the CDPP has in place a Fraud Risk Assessment and a Fraud Control Plan. Agencies subject to the *Financial Management and Accountability Act 1997* are only required to undertake a total review of the effectiveness of fraud control arrangements, including conducting a fresh risk assessment, at least every 2 years providing that there is no major change in functions. The Fraud Control Plan and Fraud Risk Assessment were updated during 2008-2009.

All fraud control related material is made available to staff via DPP-Net.

## External Scrutiny

The Auditor-General issued an unqualified audit report for the CDPP's 2008-2009 financial statements.

During the reporting period, the Auditor-General issued only one report which includes information on the operations of the CDPP:

- ▶ ANAO Audit Report No. 14 2008-09 *'Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2008'*.

The CDPP provided a response to the report and agreed with the recommendations made. The report, and the CDPP's response, is available on the Australian National Audit Office website: <http://www.anao.gov.au>.

In addition, the CDPP were referred to in ANAO Report No. 30, 2008-2009 *'Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons'*.

The CDPP was not referred to in any report by the Parliamentary Committee or by the Ombudsman. There were no judicial decisions or decisions by administrative tribunals that have had, or may have, a significant impact on the operations of the CDPP.

## Advertising and Market Research

Payments to media and creative advertising organisations during 2008-2009 totalled \$0.216m including GST (\$0.224m for 2007-2008). The CDPP did not use the services of any direct mailing or polling organisations.

Details of payments of \$10,900 (including GST) and above, as required under section 311A of the *Commonwealth Electoral Act 1918*, are in table 10 at the end of this Chapter.

## Legal Services Expenditure

The Legal Services Directions 2005 require agencies to report on expenditure on legal services.

The Legal Services Directions are not intended to cover the handling of criminal prosecutions and related proceedings (see General Note 4 to the

Directions). The CDPP's report therefore relates to the CDPP's administrative activities only.

The total expenditure by the CDPP on legal services (excluding the handling of criminal prosecutions and related proceedings) during 2008-2009 was \$0.273m. Further details are in table 11 at the end of this Chapter.

## Other Areas

### **INFORMATION TECHNOLOGY**

The CDPP 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 Vista and Office 2007. Most IT assets are leased.

All CDPP 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'.

All staff have 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 CDPP provides access to remaining resources on the Internet through stand alone computers. Libraries and some IT staff have full desktop access to the Internet.

The CDPP maintains the following in-house systems:

- ▶ Case Recording and Information Management System (CRIMS), which records details of prosecutions conducted by the CDPP;
- ▶ Criminal Assets Recording System (CARS), which records actions by the Criminal Assets Branches; and
- ▶ File Registry System (FILE), which keeps a record of general and administrative files.

The CDPP runs an SAP R/3 Resource Management Information System to support finance, payroll and human resource management functions. The system operates on Windows 2003 servers using an MS SqlServer database. The Office also operates the FIRST library system which also uses an MS SqlServer database on the Windows 2003 server.

During the year the CDPP implemented Ringtail Legal 2005 for selected legal matters. The CDPP completed its implementation of a new backup solution. The solution allows the CDPP to utilise its offices for business continuity purposes.

The CDPP issued a RFT for replacement of its ageing PABX. At the time of writing, the evaluation process was well advanced.

### **Intranet and Internet**

The CDPP continues its development of a Portal based platform to provide access to CDPP's legal and administrative information. This year's work was focused on providing legal and administrative reporting. The CDPP continued with development of administrative and legal tasks based on CDPP's case workflow and accessible via the Portal.

The CDPP has an online recruitment site on the CDPP Internet home page. The site provides potential applicants with electronic access to information relating to current vacancies and to CDPP policies and procedures. The site has been very successful and experience has shown that it has been used effectively.

During the year the CDPP implemented a more user friendly design of its Internet site with information targeting both the general public and Commonwealth investigators.

### **LIBRARIES**

The CDPP has a library in each Regional Office. Each library is managed by a qualified librarian. CDPP libraries provide valuable research, reference and information services to CDPP officers. The libraries operate as a network with shared responsibility for 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 CDPP. Every CDPP officer has access, through the library network, to the combined resources of all the CDPP's libraries. This includes access to high quality current awareness services.

When the office moved to Portal software the librarians developed user friendly legal resource pages to provide access to in-house and external legal information. In-house legal information

includes databases containing CDPP materials. External access includes direct links to commercial legal publishers' services as well as to free legal information sites on the Internet. Responsibility for updating the legal resources pages is shared across the CDPP library network. Regular training sessions are provided by library staff on the use of these electronic resources.

The Head Office library has a national coordinating and management role. National services include updating CDPP in-house databases, distributing in-house materials, disseminating information, cataloguing, and managing the library system. Regular librarians' meetings provide an opportunity for all librarians to participate in the development of library network policies and procedures.

In addition to current awareness services produced in each office, the Head Office library issues an external service for client agencies and a national service for CDPP staff. In response to a CDPP client survey of referring agencies the office launched the CDPP Legal Information Service in December 2007 to assist investigators and client agencies to keep up-to-date with legal developments. The service is updated regularly and access to current and archive documents is via the CDPP Internet page. The national library current awareness service for CDPP staff, initiated in March 2008, is issued weekly and is available online.

The CDPP uses the FIRST library management system. The system is customised to meet the needs of the CDPP legal environment. Records for new material including all court decisions of interest to the office are added to the system by library staff in all offices. Links to electronic copies are included on records when the material is available in an electronic format. The library catalogue provides access to bibliographic and full text material through basic, advanced and specific material type search screens. The catalogue was upgraded during the year and the new version was rolled out to all staff in June. The search engine is more powerful, providing more efficient access to material, and general improvements to functionality make the catalogue more user-friendly.

### **PUBLIC RELATIONS**

All media inquiries are handled by a media contact officer in Head Office, Canberra, who can be contacted on (02) 6206 5606 during office hours.

The CDPP 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 CDPP officers via the CDPP computer network. The summary forms the basis of a database that can be used for research purposes.

### **ECOLOGICALLY SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL PERFORMANCE**

The CDPP endeavours to use energy saving methods in its operations and to make the best use of resources. The CDPP uses technology to minimise energy use, including automatic switch-off devices on electrical equipment. All computer equipment used by the CDPP 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 CDPP 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 CDPP has no direct role in business regulation other than to prosecute criminal offences in appropriate cases. The CDPP's activities in the area of Commercial Prosecutions are reported in Chapter 2.3 of this Report.

### **PUBLIC COMMENT**

Any person is free to write to the CDPP about any matter at the addresses shown at the front of this Report or email any comments, suggestions or queries about the office of the CDPP and its functions to [inquiries@cdpp.gov.au](mailto:inquiries@cdpp.gov.au).



**Table 1(a): Staff as at 30 June 2009\***

|              | ACT       | NSW        | VIC        | QLD        | SA        | WA        | TAS       | NT        | TOTAL      |
|--------------|-----------|------------|------------|------------|-----------|-----------|-----------|-----------|------------|
| Director     | 1         |            |            |            |           |           |           |           | 1          |
| SES Band 3   | 1         |            |            |            |           |           |           |           | 1          |
| SES Band 2   | 4         | 1          | 1          | 1          |           | 1         |           |           | 8          |
| SES Band 1   | 6         | 11         | 7          | 7          | 1         | 5         | 1         | 1         | 39         |
| PLO          | 13        | 23         | 26         | 17         | 5         | 11        |           | 1         | 96         |
| SLO          | 7         | 36         | 24         | 21         | 5         | 7         | 1         | 2         | 103        |
| LO 2         | 10        | 21         | 8          | 5          | 4         | 5         | 2         | 1         | 56         |
| LO 1         |           | 13         | 16         | 14         | 4         | 8         | 2         |           | 57         |
| Exec 2       | 9         | 2          | 1          | 1          |           |           |           |           | 13         |
| Exec 1       | 11        | 5          | 3          | 3          | 2         | 2         |           |           | 26         |
| APS 6        | 8         | 5          | 2          | 2          | 1         | 2         |           | 1         | 21         |
| APS 5        | 9         | 8          | 8          | 4          |           | 5         | 1         | 1         | 36         |
| APS 4        | 12        | 15         | 9          | 17         | 3         | 13        | 1         |           | 70         |
| APS 3        | 3         | 41         | 26         | 18         | 6         | 14        | 2         | 3         | 113        |
| APS 2        | 1         | 12         | 1          | 1          |           | 5         |           |           | 20         |
| APS 1        |           | 1          |            |            |           |           |           |           | 1          |
| <b>Total</b> | <b>95</b> | <b>194</b> | <b>132</b> | <b>111</b> | <b>31</b> | <b>78</b> | <b>10</b> | <b>10</b> | <b>661</b> |

\* Includes inoperative staff

**Table 1(b): Staffing summary 2008-2009\***

| Category  | Number     |
|---|------------|
| Statutory Office Holders                                      | 1          |
| Total Staff Employed under the <i>Public Service Act 1999</i> | 611        |
| Total Staff Employed under the <i>DPP Act</i>                 | 49         |
| <b>Total</b>  | <b>661</b> |

\* Includes inoperative staff  
The Total number of non-ongoing staff in this table is 108

**Table 2: Staff as at 30 June 2009 by gender and category\***

| Category            | Full-Time  |            | Part-Time |           |            |
|---------------------|------------|------------|-----------|-----------|------------|
|                     | Male       | Female     | Male      | Female    |            |
| Director            | 1          |            |           |           | 1          |
| Senior Executives - |            |            |           |           |            |
| Band 3              | 1          |            |           |           | 1          |
| Band 2              | 5          | 2          | 1         |           | 8          |
| Band 1              | 24         | 12         |           | 3         | 39         |
| Legal Officers      | 98         | 171        |           | 43        | 312        |
| Executive Officers  | 19         | 17         | 1         | 2         | 39         |
| APS 1-6             | 64         | 159        | 1         | 37        | 261        |
| <b>Total</b>        | <b>212</b> | <b>361</b> | <b>3</b>  | <b>85</b> | <b>661</b> |

\* Includes inoperative staff

**Table 3: Staff usage by Office**

| Office       | Actual Average Staffing 2008-2009 |
|--------------|-----------------------------------|
| ACT          | 89.43                             |
| NSW          | 178.47                            |
| VIC          | 122.40                            |
| QLD          | 99.04                             |
| SA           | 29.62                             |
| WA           | 68.73                             |
| TAS          | 8.06                              |
| NT           | 9.74                              |
| <b>Total</b> | <b>605.49</b>                     |

**Table 4: Workplace diversity profile as at 30 June 2009\***

| Classification     | Male       | Female     | ATSI     | PWD       | First Language English Plus Another | First Language Other Than English |
|--------------------|------------|------------|----------|-----------|-------------------------------------|-----------------------------------|
| Director           | 1          |            |          |           |                                     |                                   |
| SES Band 3         | 1          |            |          |           |                                     |                                   |
| SES Band 2         | 6          | 2          |          |           |                                     | 2                                 |
| SES Band 1         | 24         | 15         |          |           | 3                                   | 1                                 |
| Legal Officers     | 98         | 214        | 3        | 4         | 30                                  | 17                                |
| Executive Officers | 20         | 19         |          |           | 3                                   | 5                                 |
| APS Employees      | 65         | 196        | 5        | 10        | 35                                  | 21                                |
| <b>Total</b>       | <b>215</b> | <b>446</b> | <b>8</b> | <b>14</b> | <b>71</b>                           | <b>46</b>                         |

\* Includes Inoperative Staff **Legend:** ATSI – Aboriginal and Torres Strait Islander PWD – Person with Disability

**Table 5: Salary Scales as at 30 June 2009**

| Classification          | Salary                |
|-------------------------|-----------------------|
| SES Band 3              | \$205,082 - \$219,204 |
| SES Band 2              | \$164,720 - \$187,401 |
| SES Band 1              | \$149,885 - \$158,364 |
| Principal Legal Officer | \$107,890 - \$112,536 |
| Executive Level 2       | \$98,882 - \$109,749  |
| Senior Legal Officer    | \$81,379 - \$98,882   |
| Executive Level 1       | \$81,379 - \$87,825   |
| APS 6                   | \$63,618 - \$72,986   |
| Legal Officer 2         | \$59,333 - \$71,023   |
| APS 5                   | \$58,949 - \$62,472   |
| Legal Officer 1         | \$52,917 - \$57,403   |
| APS 4                   | \$52,917 - \$57,403   |
| APS 3                   | \$47,544 - \$51,266   |
| APS 2                   | \$42,952 - \$46,307   |
| APS 1                   | \$22,215 - \$40,856   |

**Table 6: Consultancy services let during 2008-2009, of \$10,000 or more**

| Consultant Name                   | Description                     | Contract Price<br>(inc. GST)* | Selection<br>Process ** | Justification ** |
|-----------------------------------|---------------------------------|-------------------------------|-------------------------|------------------|
| Ernst and Young                   | Review of FMIS/<br>HRMIS        | \$79,750                      | 3                       | C                |
| Synercon Management<br>Consulting | Records<br>Management<br>Review | \$99,264                      | 3                       | B                |
| <b>Total:</b>                     |                                 | <b>\$179,014</b>              |                         |                  |

Notes:

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

\*\* Procurement Method

1. Publicly advertised and an open tender process was adopted.
2. Not publicly advertised. Firms may be approached through a selective tender process.
3. Direct sourcing and receive an extension of an existing contract.
4. Quotes sought from suppliers who were previously selected through an open tender process

++ Reason for Contract

- A. Skills currently unavailable within CDPP
- B. Need for specialised or professional skills
- C. Need for independent research or assessment

**Table 7: Resources for Outcome**

|  | Budget*<br>2008-2009<br>\$'000<br>(1) | Actual<br>2008-2009<br>\$'000<br>(2) | Variation<br>\$'000<br>(2 - 1) | Budget**<br>2009-2010<br>\$'000 |
|--|---------------------------------------|--------------------------------------|--------------------------------|---------------------------------|
| <b>Administered Expenses</b>   |                                       |                                      |                                |                                 |
| Total Administered Expenses  | 2,300                                 | 3,048                                | 748                            | 2,300                           |
| Price of Departmental Outputs  |                                       |                                      |                                |                                 |
| <b>Output 1.1:</b>   |                                       |                                      |                                |                                 |
| Revenue from Government (Appropriations) for Departmental Outputs                | 107,356                               | 106,783                              | (573)                          | 108,318                         |
| Revenue from other sources   | 2,250                                 | 2,628                                | 378                            | 2,250                           |
| Total Price of Departmental Outputs  | 109,606                               | 109,412                              | (194)                          | 110,568                         |
| <b>Total for Outcome 1</b><br>(Total Price of Outputs and Administered Expenses) | <b>109,606</b>                        | <b>102,412</b>                       | <b>(194)</b>                   | <b>110,568</b>                  |

\* Full year budget, including additional estimates.

\*\* Budget prior to additional estimates.

**Table 8: Agency Resource Statement**

|   | Actual Available<br>Appropriations for<br>2008-2009<br>\$'000 | Payments Made<br>2008-2009<br>\$'000 | Balance Remaining<br>\$'000 |
|---|---|--------------------------------------|-----------------------------|
| <b>Ordinary Annual Services</b>               |   |                                      |                             |
| Departmental appropriation                    |   |                                      |                             |
| Prior year departmental appropriation         | 58,167  | 0                                    | 58,167                      |
| Departmental appropriation 1                  | 106,783   | 96,143                               | 10,640                      |
| s. 30 Repayments to the Commonwealth          | 504   | 504                                  | 0                           |
| s. 30A GST Recoverable                        | 3,874   | 3,874                                | 0                           |
| s. 31 Relevant agency receipts                | 5,554   | 5,554                                | 0                           |
| Total   | 174,882   | 106,075                              | 68,807                      |
| <b>Administered expenses</b>                  |   |                                      |                             |
| s. 28 Repayments required or permitted by law | 250   | 50                                   |                             |
| Total   | 250   | 50                                   |                             |

1 Appropriation Act (No.1) 2008-09

**Table 9: Average Staffing Level**

|   | 2008-2009 (actual) | 2009-2010 (estimate) |
|---|--------------------|----------------------|
| Average staffing level, on a full time equivalent basis | 622                | 614                  |

Note: This table includes staff on payroll as well as those employed through employment agencies.

**10: Advertising and Market Research Payments**

| Organisation      | Purpose                                      | Payments<br>\$ (inc. GST) |
|-------------------|--|---------------------------|
| HMA Blaze Pty Ltd | Recruitment and Procurement<br>Advertising   | 148,591                   |
| CRE8TIVE          | Annual Report and Publications<br>Production | 67,222                    |

**Table 11: Legal Services Expenditure**

This is a statement of legal services expenditure published in compliance with paragraph 11.1(ba) of the Legal Services Directions 2005.

|   | No. | \$ (GST inc.) |
|---|-----|---------------|
| Agency's total legal services expenditure                           |     | 272,853       |
| Agency's total external legal services expenditure                  |     | 272,853       |
| External expenditure on solicitors                                  |     | 272,853       |
| External expenditure on counsel                                     |     | 0             |
| Number of male counsel briefed                                      | 0   |               |
| Value of briefs to male counsel                                     |     | 0             |
| Number of female counsel briefed                                    | 0   |               |
| Value of briefs to female counsel                                   |     | 0             |
| Other disbursements on external legal services                      |     | 0             |
| Agency's total internal legal services expenditure                  |     | 0             |
| Salaries  |     | 0             |
| Overheads (includes administrative support and accommodation costs) |     | 0             |



**COMMONWEALTH DISABILITY STRATEGY REPORT**

| Performance Indicator   | Performance Measure   | Current level of performance   | Goals for 2009-2010   | Actions for 2009-2010  |
|---|---|--|---|--|
| 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> .   | During 2008-2009 the following employment policies and programs were developed and/or implemented:<br><br>OH&S policies and procedures;<br><ul style="list-style-type: none"> <li>▶ Mental health awareness training;</li> <li>▶ Eliminating bullying and harassment training;</li> <li>▶ Learning and development programme.</li> </ul> | Ongoing assessment of existing policies to ensure that they are relevant for all employees of the DPP.<br><br>All new employment policies and practices to be consistent with the <i>Disability Discrimination Act 1992</i> . | Amend or update policies, procedures and practices if necessary and in line with legislative regulatory and case law developments.<br><br>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:<br><ul style="list-style-type: none"> <li>▶ accessible electronic format; and</li> <li>▶ accessible formats other than electronic.</li> </ul> Average time taken to provide accessible information in:<br><ul style="list-style-type: none"> <li>▶ electronic format; and</li> <li>▶ formats other than electronic.</li> </ul> | 100% available via fax, email, online and mail.<br><br>Email and online requests provided within 48 hours.<br><br>Phone requests dispatched within 48 hours of request.  | 100% of customer requests processed via desired medium within 48 hours of receipt.<br><br>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 within agreed timeframes.   |



| Performance Indicator   | Performance Measure   | Current level of performance   | Goals for 2009-2010  | Actions for 2009-2010   |
|---|---|--|--|---|
| 3 Agency recruiters and managers apply the principle of reasonable adjustment.  | Percentage of recruiters and managers provided with information on reasonable adjustment.         | Reasonable adjustment principles are applied and workplaces are appropriately modified as necessary to accommodate staff with disabilities.  | Formal training for selection committee members during 2009 – 2010 including covering the principles of reasonable adjustment. | Maintain staff awareness of principles and practices.   |
| 4 Complaint/grievance mechanism, including access to external mechanism in place to address issues and concerns by staff. | Established complaints/grievance mechanisms, including access to external mechanism in operation. | The DPP has a well established process for complaints and grievance handling including a promulgated and readily accessible Director's Personnel Instruction on "Review of Actions".<br><br>Employees also have access to external mechanisms, e.g. the Employee Assistance Program and the Merit Protection Commission.<br><br>The network of Workplace Harassment Contact Officers is regularly reviewed and appropriate training conducted. | All employees will be provided with access to Employee Assistance Program services and complaints/grievance mechanisms.        | New employees have access to a comprehensive induction program that includes Values and Code of Conduct.<br><br>Information on complaints and grievance mechanisms will be reviewed as necessary. |



# Appendix one

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

Under section 8(1)(b) of the *Freedom of Information Act 1982* the CDPP 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 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(i)(b) or 12 (1)(c) of the *Freedom of Information Act 1982*; or
  - (ii) Documents that are customarily made available to the public, otherwise than under the *Freedom of Information Act 1982*, free of charge on request.

The following categories of documents are made available (otherwise than under the *Freedom of Information Act 1982*) upon request:

- ▶ CDPP Annual Report;
- ▶ The *Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process*;
- ▶ The *Prosecution Disclosure Policy*;
- ▶ *Guidelines on Brief Preparation*;
- ▶ *Guide to Witnesses of Commonwealth Crimes: Giving Evidence in Court*;
- ▶ *Steps in the Commonwealth Prosecution Process*; and
- ▶ Budget Statements.

- (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 requires, are provided at each CDPP 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. Some documents may also be viewed on the CDPP website at [www.cdpp.gov.au](http://www.cdpp.gov.au).

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

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

# Appendix two

## Commonwealth Director of Public Prosecutions Strategic Directions

### A. CORPORATE PROFILE

#### Vision:

A fair, safe and just society where the laws of the Commonwealth are respected and maintained and there is public confidence in the justice system.

#### Purpose:

To operate an ethical, high quality and independent prosecution service for Australia in accordance with the *Prosecution Policy of the Commonwealth*.

#### Core values:

We value:

- ▶ applying the highest ethical standards to prosecutions and proceeds of crime action;
- ▶ applying the highest professional standards of competence, commitment and hard work to prosecutions and proceeds of crime action;
- ▶ maintaining the CDPP's prosecutorial independence;
- ▶ providing, and being recognised as providing, a high quality, timely, efficient and cost effective prosecution service;
- ▶ treating everyone with courtesy, dignity and respect;
- ▶ giving due recognition to the status of victims;
- ▶ the knowledge, skills and commitment of our people;

- ▶ leadership from senior lawyers and managers;
- ▶ accountability and excellence in governance within the CDPP; and
- ▶ protecting the natural environment.

#### Outcomes:

A contribution to the safety and well-being of the people of Australia by assisting in the protection of the resources of the Commonwealth through the maintenance of law and justice and by combating crime.

#### 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.

### B. STRATEGIC THEMES

1. Conduct cases ethically and professionally;
2. Recruit, develop and retain high quality people;
3. Continuously improve CDPP performance;
4. Provide professional assistance to referring agencies; and
5. Actively contribute to law reform and whole of Government law enforcement initiatives.

## C. STRATEGIC PRIORITIES

| 1 Conduct cases ethically and professionally   | 2 Recruit, develop and retain high quality people   | 3 Continuously improve CDDP performance  | 4 Provide professional assistance to referring agencies   | 5 Actively contribute to law reform & whole of Govt law enforcement initiatives  |
|--|---|--|---|--|
| <p><b>PRIORITIES</b></p> <p>1.1 Adopt the highest professional and ethical standards in prosecutions and in dealing with proceeds of crime</p> <p>1.2 Make all case decisions in accordance with:</p> <ul style="list-style-type: none"> <li>– the law;</li> <li>– the <i>Prosecution Policy of the Commonwealth</i>; and</li> <li>– CDDPP policy</li> </ul> <p>1.3 Ensure compliance with the Director's Instructions and CDDP policies</p> <p>1.4 Capture and share important corporate knowledge amongst our people</p> <p>1.5 Undertake case reviews</p> <p>1.6 Ensure processes and programs maintain our people's adherence to ethical standards</p> <p>1.7 Treat victims with respect and dignity</p> <p>1.8 Decisions to be made:</p> <ul style="list-style-type: none"> <li>– in a timely fashion; and</li> <li>– by people at the appropriate level</li> </ul> <p>1.9 Use our people's expertise throughout and between our offices</p> <p>1.10 Meet challenges arising from changing technology</p> | <p><b>PRIORITIES</b></p> <p>2.1 Recruit and retain high quality people</p> <p>2.2 Implement strategies to build and sustain the CDDP as an employer of choice</p> <p>2.3 Develop skilled people through:</p> <ul style="list-style-type: none"> <li>– training courses;</li> <li>– on the job experience;</li> <li>– mentoring;</li> <li>– the CDDP's performance management scheme; and</li> <li>– other innovative ways.</li> </ul> <p>2.4 Foster and acknowledge good quality performance</p> <p>2.5 Manage people effectively and professionally and have regard to feedback on performance</p> | <p><b>PRIORITIES</b></p> <p>3.1 Monitor CDDP performance against standards and goals to improve quality, efficiency and effectiveness</p> <p>3.2 Continue to develop national consistency recognising that the CDDP operates in different jurisdictions</p> <p>3.3 Continuously review and adopt the highest professional and ethical standards in:</p> <ul style="list-style-type: none"> <li>– prosecutions;</li> <li>– proceeds of crime action;</li> <li>– resource management;</li> <li>– the use of technology; and</li> <li>– personnel management</li> </ul> <p>including:</p> <ul style="list-style-type: none"> <li>• workforce planning;</li> <li>• performance management; and</li> <li>• employment practices</li> </ul> <p>3.4 Provide a safe, secure and healthy workplace</p> <p>3.5 Adhere to and promote:</p> <ul style="list-style-type: none"> <li>– Australian Public Service values;</li> <li>– APS and CDDP Codes of Conduct; and</li> <li>– diversity principles</li> </ul> <p>3.6 Value our people's ideas</p> <p>3.7 Ensure that the CDDP's library, IT and administrative people and systems continue to provide high level support</p> | <p><b>PRIORITIES</b></p> <p>4.1 Provide professional and timely legal advice to investigators and agencies</p> <p>4.2 Liaise effectively with referring agencies at regional and national level</p> <p>4.3 Identify and co-operate with referring agencies' enforcement strategies</p> <p>4.4 Advise on investigator training needs and assist Commonwealth agencies with training investigators on areas of CDDPP legal expertise</p> <p>4.5 Develop and provide high quality materials on areas of CDDPP legal expertise</p> <p>4.6 Conduct regular referring agency surveys</p> <p>4.7 Continue to develop nationally consistent approaches to assistance for referring agencies</p> | <p><b>PRIORITIES</b></p> <p>5.1 Assist with development of law reform proposals and whole of Government law enforcement initiatives by providing:</p> <ul style="list-style-type: none"> <li>– timely, high quality legal and strategic advice; and</li> <li>– useful, timely and accurate statistical reports</li> </ul> <p>5.2 Encourage prosecutors to identify deficiencies in the application of Commonwealth law</p> <p>5.3 Review and identify prosecutions and proceed related issues requiring law reform and/or whole of Government law enforcement initiatives and contribute to solutions and strategies to address them</p> |

# Appendix three

## Prosecution Policy of the Commonwealth





Commonwealth  
Director of Public  
Prosecutions



# Prosecution Policy of the Commonwealth

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Guidelines for the making of decisions  
in the prosecution process

# Prosecution Policy of the Commonwealth

Guidelines for the making of decisions  
in the prosecution process

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# Foreword

The Hon. Robert McClelland M.P.  
Parliament House  
Canberra ACT 2600

In February 1986 the then Attorney-General presented to the Parliament a Statement prepared by the Office of the Director of Public Prosecutions setting out the guidelines to be followed in the making of decisions relating to the prosecution of Commonwealth offences. That document, the *Prosecution Policy of the Commonwealth*, reflected the significant changes to the Commonwealth prosecution process effected by the *Director of Public Prosecutions Act 1983*. The *Prosecution Policy of the Commonwealth* was revised in 1990 and has recently been reviewed and revised again.

Although this revised version of the *Prosecution Policy of the Commonwealth* deals with some new areas, including victims, mental health of the alleged offender and prosecution disclosure, in most respects it represents a refinement of the 1986 and 1990 Statements.

The test in the *Prosecution Policy of the Commonwealth* in relation to the decision to commence or continue a prosecution remains the same and this test is contained in the Prosecution Policies of all the Australian States and Territories.

The *Prosecution Policy of the Commonwealth* will continue to serve two main purposes. The first is to promote consistency in the making of the various decisions which arise in the institution and conduct of prosecutions. The second is to inform the public of the principles upon which the Office of the Director of Public Prosecutions performs its statutory functions.



**Robert McClelland**  
Attorney-General of Australia

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# General Principles

The Prosecution Policy of the Commonwealth provides guidelines for the making of decisions regarding the prosecution process.

The Policy is a public document based on the principles of fairness, openness, consistency, accountability and efficiency that the Office of the Director of Public Prosecutions (DPP) seeks to apply in prosecuting offences against the laws of the Commonwealth.

The Policy does not attempt to cover all questions that may arise in the prosecution process and the role of the prosecutor in their determination. It is sufficient to state that throughout a prosecution the prosecutor must conduct himself or herself in a manner which will maintain, promote and defend the interests of justice. In the final analysis the prosecutor is not a servant of government or individuals - he or she is a servant of justice.

It is also important not to lose sight of the fact that prosecutors discharge their responsibilities in an adversarial context and seek to have the prosecution case sustained. Accordingly, while that case must at all times be presented to the Court fairly and justly, the community is entitled to expect that it will also be presented fearlessly, vigorously and skilfully.

The Policy will be reviewed regularly, and any changes will be made public.

# 1. Introduction

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**1.1** On 5 March 1984 the *Director of Public Prosecutions Act 1983* (the Act) came into operation. It established an Office of the Director of Public Prosecutions (DPP) controlled by the Director of Public Prosecutions (the Director)

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**1.2** The Act effected a number of significant changes to the Commonwealth prosecution process. Perhaps the most significant change is the effective removal of the prosecution process from the political arena by affording the Director an independent status in that process. The Attorney-General as First Law Officer is responsible for the Commonwealth criminal justice system and remains accountable to Parliament for decisions made in the prosecution process, notwithstanding that those decisions are now in fact made by the Director and lawyers of the DPP, subject to any guidelines or directions which may be given by the Attorney-General pursuant to section 8 of the Act. Such guidelines or directions may only be issued after consultation with the Director, and must be published in the Gazette and tabled in each House of the Parliament. Although the power under section 8 may be exercised in relation to particular cases, in his second reading speech to the Director of Public Prosecutions Bill the then Attorney-General, Senator Evans QC, indicated that it would be very unusual for that to be done in relation to a particular case. Directions under section 8 occur very rarely and have not been provided in relation to a particular case.

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**1.3** The Act has also ensured that there is a separation of the investigative and prosecutorial functions in the Commonwealth criminal justice system. Prosecution decisions will be made independently of those who were responsible for the investigation. If a prosecution is commenced by arrest and charge, once it has been referred to the DPP, the decision whether to proceed with that prosecution is made by the DPP.

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## 1.4

The DPP seeks to meet standards of fairness, openness, consistency, accountability and efficiency in prosecuting offences against the laws of the Commonwealth and in meeting these standards maintain the confidence of the public it serves.

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## 1.5

The DPP has regional offices in New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania and the Northern Territory. Prosecutions in the Australian Capital Territory for offences against Commonwealth law are conducted by DPP Head Office.

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## 2. The decision to prosecute

### CRITERIA GOVERNING THE DECISION TO PROSECUTE

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- 2.1** It has long been recognised that not all criminal offences must automatically result in a criminal prosecution. The resources available for prosecution action are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue with appropriate vigour those cases worthy of prosecution.
- 
- 2.2** The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system.
- 
- 2.3** It follows that the objectives previously stated - especially fairness and consistency are of particular importance. However, fairness need not mean weakness and consistency need not mean rigidity. The criteria for the exercise of this discretion cannot be reduced to something akin to a mathematical formula; indeed it would be undesirable to attempt to do so. The breadth of the factors to be considered in exercising this discretion indicates a candid recognition of the need to tailor general principles to individual cases.
- 
- 2.4** The initial consideration in the exercise of the discretion to prosecute or not prosecute is whether the evidence is sufficient to justify the institution or continuation of a prosecution. A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the alleged offender.
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## 2.5

When deciding whether the evidence is sufficient to justify the institution or continuation of a prosecution the existence of a bare prima facie case is not sufficient to justify the prosecution. Once it is established that there is a prima facie case it is then necessary to give consideration to the prospects of conviction. **A prosecution should not proceed if there is no reasonable prospect of a conviction being secured.** In indictable matters this test presupposes that the jury will act in an impartial manner in accordance with its instructions. This test will not be satisfied if it is considered to be clearly more likely than not that an acquittal will result.

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## 2.6

The decision as to whether there is a reasonable prospect of a conviction requires an evaluation of how strong the case is likely to be when presented in Court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence which are plainly open to, or have been indicated by, the alleged offender and any other factors which in the view of the prosecutor could affect the likelihood or otherwise of a conviction. This assessment may be a difficult one to make, and of course there can never be an assurance that a prosecution will succeed. Indeed it is inevitable that some will fail. However, application of this test dispassionately, after due deliberation by a person experienced in weighing the available evidence, is the best way of seeking to avoid the risk of prosecuting an innocent person and the useless expenditure of public funds.

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## 2.7

When evaluating the evidence regard should be had to the following matters:

- (a) Are there grounds for believing the evidence might be excluded bearing in mind the principles of admissibility at common law and under statute? For example, prosecutors will wish to satisfy themselves that confession evidence has been properly obtained. The possibility that any evidence might be excluded should be taken into account and, if it is crucial to the case, may substantially affect the decision whether or not to institute or proceed with a prosecution.
- (b) If the case depends in part on admissions by the defendant, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the defendant?
- (c) Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the defendant, or may be otherwise unreliable?

- (d) Has a witness a motive for telling less than the whole truth?
- (e) Are there matters which might properly be put to a witness by the defence to attack his or her credibility?
- (f) What impression is the witness likely to make on the arbiter of fact? How is the witness likely to stand up to cross-examination? Does the witness suffer from any physical or mental disability which is likely to affect his or her credibility?
- (g) If there is conflict between eye witnesses, does it go beyond what one would expect and hence materially weaken the case?
- (h) If there is a lack of conflict between eye witnesses, is there anything which causes suspicion that a false story may have been concocted?
- (i) Are all the necessary witnesses available and competent to give evidence, including any who may be abroad?
- (j) Where child witnesses are involved, are they likely to be able to give sworn evidence?
- (k) If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the defendant?
- (l) Where two or more defendants are charged together, is there a reasonable prospect of the proceedings being severed? If so, is the case sufficiently proved against each defendant should separate trials be ordered?

This list is not exhaustive, and of course the matters to be considered will depend upon the circumstances of each individual case, but it is introduced to indicate that, particularly in borderline cases, the prosecutor must be prepared to look beneath the surface of the statements.

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## 2.8

Having satisfied himself or herself that the evidence is sufficient to justify the institution or continuation of a prosecution, the prosecutor must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences brought to the attention of the authorities must be prosecuted.

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## 2.9

The factors which can properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. While many public interest factors militate against a decision to proceed with a prosecution, there are public interest factors which operate in favour of proceeding with a prosecution (for example, the seriousness of the offence, the need for deterrence). In this regard, generally speaking the more serious the offence the less likely it will be that the public interest will not require that a prosecution be pursued.

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## 2.10

Factors which may arise for consideration in determining whether the public interest requires a prosecution include the following non-exhaustive matters:

- (a) the seriousness or, conversely, the relative triviality of the alleged offence or that it is of a 'technical' nature only;
- (b) mitigating or aggravating circumstances impacting on the appropriateness or otherwise of the prosecution;
- (c) the youth, age, intelligence, physical health, mental health or special vulnerability of the alleged offender, a witness or victim;
- (d) the alleged offender's antecedents and background;
- (e) the passage of time since the alleged offence when taken into account with the circumstances of the alleged offence and when the offence was discovered;
- (f) the degree of culpability of the alleged offender in connection with the offence;
- (g) the effect on community harmony and public confidence in the administration of justice;
- (h) the obsolescence or obscurity of the law;
- (i) whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;
- (j) the availability and efficacy of any alternatives to prosecution;
- (k) the prevalence of the alleged offence and the need for deterrence, both personal and general;

- (l) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- (m) whether the alleged offence is of considerable public concern;
- (n) any entitlement of the Commonwealth or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;
- (o) the attitude of the victim of the alleged offence to a prosecution;
- (p) the actual or potential harm, occasioned to an individual;
- (q) the likely length and expense of a trial;
- (r) whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
- (s) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the Court;
- (t) whether the alleged offence is triable only on indictment;
- (u) the necessity to maintain public confidence in the rule of law and the administration of justice through the institutions of democratic governance including the Parliament and the Courts;
- (v) the need to give effect to regulatory or punitive imperatives;
- (w) the efficacy, as an alternative to prosecution, of any disciplinary proceedings that have been found proven against the alleged offender to the extent that they encompass the alleged offence; and
- (x) the adequacy in achieving any regulatory or punitive imperatives, of relevant civil penalty proceedings, either pending or completed, and whether these proceedings may result, or have resulted, in the imposition of a financial penalty.

The applicability of and weight to be given to these and other factors will depend on the particular circumstances of each case.

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**2.11** As a matter of practical reality the proper decision in many cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution.

Although there may be mitigating factors present in a particular case, often the proper decision will be to proceed with a prosecution and for those factors to be put to the Court at sentence in mitigation. Nevertheless, where the alleged offence is not so serious as plainly to require prosecution the prosecutor should always apply his or her mind to whether the public interest requires a prosecution to be pursued.

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**2.12** In the case of some offences, the legislation provides an enforcement mechanism which is an alternative to prosecution. Examples are the customs prosecution procedure under the *Customs Act 1901* and the administrative penalties that can be levied under various taxation Acts. The fact that a mechanism of this kind is available does not necessarily mean that criminal proceedings should not be instituted. The alleged offence may be of such gravity that prosecution is the appropriate response.

However, in accordance with paragraph 2.10(j) above, the availability of an alternative enforcement mechanism is a relevant factor to be taken into account in determining whether the public interest requires a prosecution.

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**2.13** A decision whether or not to prosecute must clearly not be influenced by:

- (a) the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;
- (b) personal feelings concerning the alleged offender or the victim;
- (c) possible political advantage, disadvantage or embarrassment to the Government or any political group or party; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

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**2.14** A prosecution should only proceed in accordance with this Policy. A matter which does not meet these requirements, for example, a matter which tests the law but which does not have a reasonable prospect of conviction, should not be proceeded with.

## PROSECUTION OF JUVENILES

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### 2.15

The welfare of the juvenile must be considered when prosecutorial discretion is exercised in relation to an offence alleged to have been committed by a juvenile. Prosecution of a juvenile should always be regarded as a severe step, and generally speaking a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the alleged offence or the circumstances of the juvenile concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a juvenile who is a first offender in circumstances where the alleged offence is not serious.

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### 2.16

In deciding whether or not the public interest warrants the prosecution of a juvenile regard should be had to such of the factors set out in paragraph 2.10 as appear to be relevant, but particularly to:

- (a) the seriousness of the alleged offence;
  - (b) the age and apparent maturity and mental capacity of the juvenile;
  - (c) the available alternatives to prosecution, such as a caution, and their efficacy;
  - (d) the sentencing options available to the relevant Childrens Court if the matter were to be prosecuted;
  - (e) the juvenile's family circumstances, particularly whether the parents of the juvenile appear able and prepared to exercise effective discipline and control over the juvenile;
  - (f) the juvenile's antecedents, including the circumstances of any previous caution the juvenile may have been given, and whether they are such as to indicate that a less formal disposal of the present matter would be inappropriate; and
  - (g) whether a prosecution would be likely to have an unduly harsh effect on the juvenile or be inappropriate, having regard to such matters as the vulnerability of the juvenile and his or her family circumstances.
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**2.17** Under no circumstances should a juvenile be prosecuted solely to secure access to the welfare powers of the Court.

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**2.18** The practice of the DPP is for any decision to proceed with a prosecution in respect of a juvenile to be made by a senior lawyer.

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### **CHOICE OF CHARGES**

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**2.19** In many cases the evidence will disclose an offence against several different laws.

Care must therefore be taken to choose a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the Court with an appropriate basis for sentence.

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**2.20** In the ordinary course the charge or charges laid or proceeded with will be the most serious disclosed by the evidence. Nevertheless, when account is taken of such matters as the strength of the available evidence, the probable lines of defence to a particular charge, and the considerations set out later in this Policy under Mode of Trial, it may be appropriate to lay or proceed with a charge which is not the most serious revealed by the evidence.

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**2.21** Under no circumstances should charges be laid with the intention of providing scope for subsequent charge negotiation.

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**2.22** A decision concerning a choice of charge may arise where the available evidence will support a charge under both a provision of a specific Act and an offence of general application, such as under the Criminal Code. The decision in relation to which offence should be charged in this circumstance is made in accordance with paragraphs 2.19 and 2.20.

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**2.23** A number of judgments have highlighted the need for restraint in laying conspiracy charges. Whenever possible, substantive charges should be laid. However, there are occasions when a conspiracy charge is the only one which is adequate and appropriate on the available evidence. Where it is proposed to lay or proceed with conspiracy charges against a number of defendants jointly, those responsible for making the necessary decision must guard against the risk of the joint trial being unduly complex or lengthy, or otherwise causing unfairness to defendants.

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### **CONSENT TO PROSECUTION**

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**2.24** A small number of Commonwealth Acts provide that a prosecution for an offence under the Act cannot be commenced or, if commenced, cannot proceed except with the consent of the responsible Minister or some specified officer. There are a variety of reasons for the inclusion of such consent requirements in legislation, but all are basically intended to ensure that prosecutions are not brought in inappropriate circumstances.

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**2.25** The Director has been authorised to give consent to prosecutions for offences under a number of Acts. In appropriate cases the power to give consent has been delegated to senior DPP lawyers where that course has been available.

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**2.26** Often the reason for the requirement for consent is a factor which will ordinarily be taken into account in deciding whether to prosecute. For example, consent may be required to ensure that mitigating factors are taken into account or to prevent prosecutions in trivial matters. In such cases the question of consent is really bound up in the decision whether to prosecute. In some cases the consent provision will have been included as it was not possible to define the offence so precisely that it covered the mischief aimed at and no more. Other cases may involve a use of the criminal law in sensitive or controversial areas, or must take account of important considerations of public policy. In appropriate cases the decision whether to consent to a prosecution is made after consultation with a relevant department or agency.

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**2.27**

Mention should be made of those prosecutions which require the consent of a Minister or some officer other than the Director or a DPP lawyer. Although there are unlikely to be any differences of view between the person authorised to give consent and the DPP on a question whether a prosecution is required in the public interest, it is clearly desirable that there be prior consultation with the DPP where there appear to be difficult questions of fact or law involved.

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## 3. The institution and conduct of Commonwealth Prosecutions

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**3.1** As a general rule any person has the right at common law to institute a prosecution for a breach of the criminal law. That right is recognised in section 13 of the *Crimes Act 1914* (Cth). Nevertheless, while that is the position in law, in practice all but a very small number of Commonwealth prosecutions are instituted by Commonwealth officers.

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**3.2** The decision to initiate investigative action in relation to possible or alleged criminal conduct ordinarily rests with the department or agency responsible for administering the relevant legislation. The DPP is not usually involved in such decisions, although it may be called upon to provide legal advice. The DPP may be consulted where, for example, there is doubt whether alleged misconduct constitutes a breach of Commonwealth law.

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**3.3** The DPP does not investigate allegations that offences have been committed. Investigations are carried out by the Australian Federal Police (AFP) or another Government investigation agency or agency with investigative capabilities (“investigative agency”). The DPP may provide advice to the investigative agency on legal issues during the investigation.

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**3.4** If as a result of the investigation an offence appears to have been committed the established practice (subject to the exceptions referred to in paragraphs 3.5 and 3.6 below) is for a brief of evidence to be forwarded to the DPP where it will be examined to determine whether a prosecution should be instituted and, if so, on what charge or charges. Although an AFP or other Commonwealth officer has authority to make the initial decision to prosecute, the Director has the responsibility under the Act to determine whether a prosecution, once commenced, should proceed. It is therefore generally desirable wherever practicable that matters be referred to the DPP prior to the institution of a prosecution.

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**3.5** Inevitably cases will arise where it will be necessary and appropriate that a prosecution be instituted by way of arrest and charge without an opportunity for consultation with the DPP. However, in cases where difficult questions of fact or law are likely to arise it is most desirable that there be consultation on those issues before the arrest provided the exigencies of the situation permit. The decision to arrest is a decision of the investigating official.

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**3.6** 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. This policy will be observed by those agencies in the conduct of such prosecutions and the DPP will be consulted when difficult questions of fact or law arise.

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**3.7** If an investigation has disclosed sufficient evidence for prosecution but the department or agency concerned considers that the public interest does not require prosecution, or requires some action other than prosecution, the DPP should still be consulted in any matter which involves alleged offences of particular seriousness. The DPP should also be consulted whenever a department or agency has any doubt about what course of action is most appropriate in the public interest. The decision to refer a matter for prosecution is a matter for the investigative agency concerned.

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**3.8** In deciding whether or not a prosecution is to be instituted or continued and, if so, on what charge or charges, any views put forward by the AFP, or the department or agency responsible for the administration of the law in question, are carefully taken into account. Ultimately, however, the decision is to be made by the DPP having regard to the considerations set out earlier.

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**3.9** Pursuant to section 6(1) of the Act the Director may either institute summary or committal proceedings in the Director's own name or carry on such proceedings that have been instituted by another. In virtually all cases the DPP in fact carries on proceedings in which an AFP or other Commonwealth officer is the informant or complainant as the case may be. Only in exceptional cases will summary or committal proceedings be instituted in the Director's own name.

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**3.10** The Act does not in fact require that a prosecution, once commenced, must be carried on by the Director. Nevertheless, it is most unusual for that not to happen in the case of a prosecution instituted by an AFP or other Commonwealth officer, except in the limited circumstances mentioned above. The Director possesses sufficient statutory powers to assume control of prosecutions sought to be carried on by others.

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## 3.11

Mention should be made of a prosecution for a Commonwealth offence instituted by a State or Territory public officer. While ordinarily Commonwealth prosecutions should be carried on or, if necessary, taken over by the Director, there are exceptions to that general rule. If a person has been charged with both State/Territory and Commonwealth offences it may be appropriate for the matter to remain with the State/Territory authorities. That will require consideration of:

- (a) the relative seriousness of the State/Territory and Commonwealth charges;
- (b) the degree of inconvenience or prejudice to either the defendant or the prosecution if the prosecution is split; and
- (c) if the charges are to proceed on indictment, any arrangements between the Director and the relevant State/Territory authorities making provision for a joint trial on an indictment containing both Commonwealth and State/Territory counts.

There may also be cases where the balance of convenience dictates that a prosecution for a Commonwealth offence should remain with State/Territory authorities notwithstanding that no State/Territory charge is involved, for example, where a prosecution relates to a minor Commonwealth offence brought in a remote locality and it would be impracticable for a DPP lawyer to attend.

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# 4. Control of prosecutions for a Commonwealth offence

## INTRODUCTION

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### 4.1

Under the Act the Director is given a supervisory role as to the prosecution of offences against Commonwealth law, and is empowered to intervene **at any stage** of a prosecution for a Commonwealth offence instituted by another. In particular, pursuant to section 9(5) of the Act the Director may take over a proceeding instituted by another person for commitment or for summary conviction. Having taken over the proceeding the Director may continue it as the informant or decline to carry it on further. This provision encapsulates in a statutory form one of the main purposes in establishing the DPP - that the decision whether and how a prosecution proceeds should be made by the DPP independently of those who were responsible for the investigation.

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## DISCONTINUANCE OF A PROSECUTION INSTITUTED BY A COMMONWEALTH OFFICER

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### 4.2

This section is concerned with discontinuing a proceeding for either summary conviction or committal for trial. The discontinuance of a proceeding on indictment is dealt with later in this Policy.

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### 4.3

The final decision whether or not a prosecution proceeds rests with the DPP. Consistent with the objective of ensuring that only fit and proper cases are brought before the Courts, the DPP will discontinue a prosecution if appropriate.

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**4.4** Where a prosecution is instituted by an AFP or other Commonwealth officer in circumstances where there was no prior consultation with the DPP, that decision should be reviewed as soon as practicable after the case has been referred to the DPP.

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**4.5** However, it is important that cases should be kept under continuous review whether or not there was consultation with the DPP prior to the institution of the prosecution. New evidence or information may become available which makes it no longer appropriate for the prosecution to proceed.

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**4.6** Whenever the DPP is contemplating discontinuing a prosecution the practice is for the DPP to first consult the AFP or responsible department or agency. In this regard, the independence of the DPP in the prosecution process does not mean that those who investigated the matter should be excluded from the decision-making process. Indeed, where the DPP is contemplating discontinuing a prosecution close liaison is vital to the maintenance of a harmonious relationship between the Office and the relevant Commonwealth agency. Of course, the extent of that consultation will depend on the circumstances of the case in question, and in particular on the reasons why the DPP is contemplating discontinuing the prosecution. If it is considered the available evidence is insufficient, it can be expected the AFP or responsible department or agency will accept the DPP's assessment of the evidence, and the consultation will be largely confined to the prospects of obtaining additional evidence. On the other hand, the AFP or responsible department or agency can legitimately expect to have its views taken into account if discontinuance on public interest grounds is contemplated. The more finely balanced the factors involved, the greater is the need for discussion. In determining the public interest the views of the victim may also be taken into consideration if those views are available and if it is appropriate to take those views into account.

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### **INTERVENTION IN A PRIVATE PROSECUTION**

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**4.7** In a formal sense all prosecutions in the summary Courts are private prosecutions, even if the informant holds an official position. For the purposes of the following paragraphs a private prosecution means any prosecution where the informant is a private individual as distinct from a police officer or some other official acting in the course of a public office or duty.

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## 4.8

The right of a private individual to institute a prosecution for a breach of the law has been said to be “a valuable constitutional safeguard against inertia or partiality on the part of authority” (per Lord Wilberforce in *Gouriet -v- Union of Post Office Workers* [1978] AC 435 at 477). Nevertheless, the right is open to abuse and to the intrusion of improper personal or other motives. Further, there may be considerations of public policy why a private prosecution, although instituted in good faith, should not proceed, or at the least should not be allowed to remain in private hands. The power under section 9(5) of the Act therefore constitutes an important safeguard against resort to this right in what may be broadly described as inappropriate circumstances.

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## 4.9

The question whether the power under section 9(5) should be exercised to take over a private prosecution will usually arise at the instance of one or other of the parties to the prosecution, although clearly the Director may determine of his or her own motion that a private prosecution should not be allowed to proceed. Alternatively, some public authority, such as a government department or agency, may be concerned that to proceed with the prosecution would be contrary to the public interest and refer the matter to the Director.

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## 4.10

Where a question arises whether the power under section 9(5) should be exercised to intervene in a private prosecution, and the private prosecutor has indicated that he or she is opposed to such a course, the private prosecutor will be permitted to retain conduct of the prosecution unless one or more of the following applies:

- (a) there is insufficient evidence to justify the continuation of the prosecution, that is to say, there is no reasonable prospect of a conviction being secured on the available evidence;
- (b) there are reasonable grounds for suspecting that the decision to prosecute was actuated by improper personal or other motives, or otherwise constitutes an abuse of the prosecution process such that, even if the prosecution were to proceed it would not be appropriate to allow it to remain in the hands of the private prosecutor;
- (c) to proceed with the prosecution would be contrary to the public interest - law enforcement is necessarily a discretionary process, and sometimes it is appropriate for subjective considerations of public policy, such as the preservation of order or the maintenance of international relations, to take precedence over strict law enforcement considerations;

- (d) the nature of the alleged offence, or the issues to be determined, are such that, even if the prosecution were to proceed, it would not be in the interests of justice for the prosecution to remain in private hands;
  - (e) the nature of the charges do not disclose an offence under any Commonwealth law; or
  - (f) the Court in which the private prosecutor has commenced proceedings has no jurisdiction.
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#### 4.11

A private individual may institute a prosecution in circumstances where he or she disagrees with a previous decision of the DPP. If, upon reviewing the case, it is considered the decision not to proceed with a prosecution was the proper one in all the circumstances, the appropriate course may be to take over the private prosecution with a view to discontinuing it.

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#### 4.12

In some cases the reason for intervening in the private prosecution will necessarily result in its discontinuance once the Director has assumed responsibility for it. In this regard, once the decision is made to take over responsibility for a private prosecution the same criteria should be applied at all stages of the proceeding as would be applied in any other prosecution being conducted by the DPP.

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#### 4.13

If it is considered that it may be appropriate to intervene in a private prosecution, it may be necessary for the DPP to request police assistance with enquiries before a final decision can be made whether or not to do so, and if so, whether or not to continue the prosecution. In addition, pursuant to section 12 of the Act, the person who instituted or is carrying on the private prosecution can be required to furnish to the Director a full report of the circumstances of the matter the subject of the proceeding together with other relevant information or material.

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# 5. Victims of Crime

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**5.1** It is important in all prosecution action that victims are treated with respect for their dignity.

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**5.2** In the context of this Policy, a victim of crime is an identified individual who has suffered harm as the direct result of an offence or offences committed against Commonwealth law or prosecuted by Commonwealth authorities. 'Harm' includes physical or mental injury, emotional suffering or economic loss.

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**5.3** This Policy provides for the views of any victims where those views are available, and where it is appropriate, to be considered and taken into account when deciding whether it is in the public interest to:

- (a) commence a prosecution;
  - (b) discontinue a prosecution;
  - (c) agree to a charge negotiation; or
  - (d) decline to proceed with a prosecution after a committal.
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**5.4** The DPP will also comply with the DPP's *Victims of Crime Policy* in its dealings with victims.

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## 6. Some other decisions in the prosecution process

### UNDERTAKINGS UNDER SECTION 9(6), 9(6B) OR 9(6D) OF THE DPP ACT

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- 6.1** This section is concerned with the broad considerations involved in deciding whether to give an accomplice an undertaking under the Act in order to secure that person's testimony for the prosecution.
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- 6.2** A decision whether to call an accomplice to give evidence for the prosecution frequently presents conflicting considerations calling for the exercise of careful judgment in the light of all the available evidence. Inevitably, however, there will be instances where there is a weakness in the prosecution evidence that makes it desirable, or even imperative, to call an accomplice for the prosecution if that accomplice appears to be the only available source of the evidence needed to strengthen the weakness.
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- 6.3** In conjunction with the question whether to call an accomplice the question may arise whether that accomplice should also be prosecuted. In this regard, unless the accomplice has been dealt with in respect of his or her own participation in the criminal activity the subject of the charge against the defendant, he or she will be in a position to claim the privilege against self-incrimination in respect of the very matter the prosecution wishes to adduce into evidence. Where, however, an accomplice has been given an undertaking under the Act that undertaking will override what would otherwise be an allowable claim of privilege.
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**6.4** As a general rule an accomplice should be prosecuted irrespective of whether he or she is to be called as a witness, subject of course to the usual evidentiary and public interest considerations being satisfied. Upon pleading guilty the accomplice who is prepared to co-operate in the prosecution of another can expect to receive a reduction in the sentence that would otherwise have been appropriate. Such a reduction may be substantial. However, this course may not be practicable in all cases.

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**6.5** In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who participated in alleged offences in order to secure their evidence in the prosecution of others (for example, by granting them immunity from prosecution). However, it has long been recognised that in some cases granting an immunity from prosecution may be appropriate in the interests of justice.

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**6.6** An undertaking under the Act will only be given provided the following conditions are met:

- (a) the evidence that the accomplice can give is considered necessary to secure the conviction of the defendant or is essential to fully disclose the nature and scope of the offending and that evidence is not available from other sources. In this regard, the stronger the case without the evidence the accomplice can give, the less appropriate it will be to grant an undertaking to the accomplice; and
- (b) the accomplice can reasonably be regarded as significantly less culpable than the defendant.

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**6.7** The central issue in deciding whether to give an accomplice an undertaking under the Act is whether it is in the overall interests of justice that the opportunity to prosecute the accomplice in respect of his or her own involvement in the crime in question should be foregone in order to secure that person's testimony in the prosecution of another. In determining where the balance lies, account should be taken of the following matters:

- (a) the degree of involvement of the accomplice in the criminal activity in question compared with that of the defendant;
- (b) the strength of the prosecution evidence against the defendant without the evidence it is expected the accomplice can give and, if some charge or charges could be established against the defendant without the accomplice's evidence, the extent to which those charges would reflect the defendant's criminality;

- (c) the extent to which the prosecution's evidence is likely to be strengthened if the accomplice testifies - apart from taking into account such matters as the availability of corroborative evidence, and the weight that the arbiter of fact is likely to give to the accomplice's testimony, it will also be necessary to consider the likely effect on the prosecution case if the accomplice does not come up to proof;
- (d) the need to assess whether the prosecution's evidence is likely to be strengthened if an accomplice testifies, which requires the prosecution to consider a range of factors, including examination of corroborative evidence; assessment of the weight the fact finder will place on the evidence; and an assessment of whether the evidence itself is cogent, complete and truthful;
- (e) the likelihood of any weakness in the prosecution case being strengthened other than by relying on the evidence the accomplice can give (for example, the likelihood of further investigations disclosing sufficient independent evidence to remedy the weakness);
- (f) whether there is or is likely to be sufficient admissible evidence to substantiate charges against the accomplice, and whether it would be in the public interest that the accomplice be prosecuted but for his or her preparedness to testify for the prosecution if given an undertaking under the Act; and
- (g) whether, if the accomplice were to be prosecuted and then testify, there is a real basis for believing that his or her personal safety would be at risk while serving any term of imprisonment.

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## 6.8

Where an accomplice receives any concession from the prosecution in order to secure his or her evidence, for example, whether as to choice of charge or the grant of an undertaking under the Act, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the Court and to the defence.

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## 6.9

In the course of an investigation the investigative agency may identify a participant in the criminal activity under investigation as a person who is likely to be of more value as a prosecution witness than as a defendant. Thereafter the investigation may be directed to constructing a case against the remaining participants based on the evidence it is expected this person will give. Unless for some reason it is not practicable to do so, the investigative agency should always seek advice from the DPP as to the appropriateness of such a course. This will minimise the potential for an otherwise meritorious prosecution being abandoned as a consequence of the Director deciding that it would not be in the interests of justice to grant the accomplice an undertaking under the Act in order to secure his or her testimony.

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## 6.10

Annexure B to this Policy and the Memorandum of Understanding between the Australian Competition and Consumer Commission and DPP make provision with respect to the circumstances in which the DPP will consider applications for immunity in respect of the offences in sections 44ZZRF and 44ZZRG of the *Trade Practices Act 1974* (including a relevant ancillary liability offence). Annexure B and the Memorandum of Understanding deal with applications for immunity by the first participant in the cartel activity to seek immunity. Subsequent applications for immunity will be dealt with in accordance with this Policy.

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### MODE OF TRIAL

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## 6.11

Where an indictable offence can be determined by a Court of summary jurisdiction the prosecution plays a major role in the decision as to mode of trial; indeed, under some Acts the request or the consent of the prosecution is a pre-condition to summary disposition.

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**6.12** In determining whether or not a case is appropriate for trial on indictment regard should be had to:

- (a) the nature of the case, and whether the circumstances make the alleged offence one of a serious character;
- (b) any implied legislative preference for a particular mode of trial;
- (c) the adequacy of sentencing options and available penalties if the case were determined summarily;
- (d) any delay, cost and adverse effect upon witnesses likely to be occasioned by proceeding on indictment;
- (e) in situations where a particular type of criminal activity is widespread, the desirability of a speedy resolution of some prosecutions by proceeding summarily in order to deter similar breaches;
- (f) the greater publicity, and accordingly the greater deterrent effect, of a conviction obtained on indictment;

as well as such of the criteria relevant to the decision whether to prosecute as appear to be significant.

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**6.13** The prosecution's attitude on the question of mode of trial should be made and communicated to the defendant and the Court at the earliest possible stage.

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### **CHARGE NEGOTIATION**

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**6.14** Charge negotiation involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the defendant pleading guilty to fewer than all of the charges he or she is facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.

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**6.15** The considerations in this section in relation to charge negotiations should be read with reference to the general principle in paragraph 2.21 that under no circumstances should charges be laid with the intention of providing scope for subsequent charge negotiations.

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**6.16** Charge negotiation is to be distinguished from private consultations with the trial judge as to the sentence the judge would be likely to impose in the event of the defendant pleading guilty to a criminal charge. As to such consultations the Full Court of the Supreme Court of Victoria in *R -v- Marshall* [1981] VR 725 at 732 said:

Anything which suggests an arrangement in private between a judge and counsel in relation to the plea to be made or the sentence to be imposed must be studiously avoided. It is objectionable because it does not take place in public, it excludes the person most vitally concerned, namely the defendant, it is embarrassing to the Crown and it puts the judge in a false position which can only serve to weaken public confidence in the administration of justice.

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**6.17** Negotiations between the defence and the prosecution are to be encouraged, may occur at any stage of the progress of a matter through the Courts and may be initiated by the prosecution. Negotiations between defence and the prosecution as to charge or charges and plea can be consistent with the requirements of justice subject to the following constraints:

- (i) the charges to be proceeded with should bear a reasonable relationship to the nature of the criminal conduct of the defendant;
- (ii) those charges provide an adequate basis for an appropriate sentence in all the circumstances of the case; and
- (iii) there is evidence to support the charges.

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**6.18** Any decision whether or not to agree to a charge negotiation proposal must take into account all the circumstances of the case and other relevant considerations including:

- (a) whether the defendant is willing to co-operate in the investigation or prosecution of others, or the extent to which the defendant has done so;
- (b) whether the sentence that is likely to be imposed if the charges are varied as proposed (taking into account such matters as whether the defendant is already serving a term of imprisonment) would be appropriate for the criminal conduct involved;
- (c) the desirability of prompt and certain dispatch of the case;
- (d) the defendant's antecedents;
- (e) the strength of the prosecution case;

- (f) the likelihood of adverse consequences to witnesses;
  - (g) whether it will save a witness, particularly a victim or other vulnerable witness from the stress of testifying in a trial;
  - (h) in cases where there has been a financial loss to the Commonwealth or any person, whether the defendant has made restitution or arrangements for restitution;
  - (i) the need to avoid delay in the dispatch of other pending cases;
  - (j) the time and expense involved in a trial and any appeal proceedings;
  - (k) the views of the referring department or agency; and
  - (l) the views of the victim, where those views are available and if it is appropriate to take those views into account.
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## 6.19

The prosecution should not agree to a charge negotiation proposal initiated by the defence if the defendant continues to assert his or her innocence with respect to a charge or charges to which the defendant has offered to plead guilty.

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## 6.20

Where the relevant legislation permits an indictable offence to be dealt with summarily, a proposal by the defence that a plea be accepted to a lesser number of charges or a lesser charge or charges may involve a request that the proposed charges be dealt with summarily and that the prosecution either consent to or not oppose (as the legislation requires) summary disposition of the matter. Alternatively, the defence may indicate that the defendant will plead guilty to an existing charge or charges if the matter is dealt with summarily. While the decision of the prosecution in respect of such a request should be determined having regard to the above considerations, reference should also be made to the considerations set out earlier under Mode of Trial.

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**6.21** A proposal by the defence that a plea be accepted to a lesser number of charges or a lesser charge or charges may include a request that the prosecution not oppose a defence submission to the Court at sentence that the penalty fall within a nominated range. Alternatively, the defence may indicate that the defendant will plead guilty to an existing charge or charges if the prosecution will not oppose such a submission. The prosecution may consider agreeing to such a request provided the penalty or range of sentence nominated is considered to be within acceptable limits to a proper exercise of the sentencing discretion.

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### **DECLINING TO PROCEED FURTHER AFTER COMMITMENT**

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**6.22** After the defendant has been committed for trial the question may arise, either on the initiative of the DPP lawyer involved in the prosecution or as a result of an application by the defence, whether the defendant should be indicted, or, if an indictment has already been presented, whether the trial on that indictment should proceed. In this regard, pursuant to section 9(4) of the Act the Director may decline to proceed further in the prosecution of a person under commitment or who has been indicted.

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**6.23** Notwithstanding that a committal order has been obtained, events may have occurred after the committal that make it no longer appropriate for the prosecution to proceed. Alternatively, the strength of the prosecution case may have to be reassessed having regard to the course of the committal proceedings. Where a question arises as to the exercise of the power under section 9(4), it is determined on the basis of the criteria governing the decision to prosecute set out earlier in this Policy. In the normal course the AFP or relevant department or agency is consulted before any decision is made. In determining the public interest the views of the victim may also be taken into consideration if those views are available and if it is appropriate to take those views into account.

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**6.24** A defence application that the Director decline to proceed further in the prosecution may be based on the fact that the offence charged is a relatively minor one and does not warrant the time and expense involved in a trial on indictment.

Such an application is most unlikely to receive favourable consideration if the alleged offence is one that could have been determined summarily but the defendant refused to consent to the matter being dealt with in that way.

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**6.25** Where a decision has been made not to proceed with a trial on indictment, that decision will not be reversed unless:

- (a) significant fresh evidence has been produced that was not previously available for consideration;
- (b) the decision was obtained by fraud; or
- (c) the decision was based on a mistake of fact;

and in all the circumstances it is in the interests of justice that the decision be reversed.

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**6.26** Where a trial has ended with the disagreement of the jury consideration should always be given to whether the circumstances require a retrial, and whether a second jury is likely to be in a better position to reach a verdict. The seriousness of the alleged offence and the cost to the community and the defendant should be taken into account. If it is decided to proceed with a retrial and the second jury also disagrees, it will only be in rare and exceptional circumstances that the defendant will be required to stand trial a third time.

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**6.27** Special mention should be made of no bill applications addressed to the Attorney- General. Shortly after the establishment of the Office the then Attorney-General indicated that such applications should be determined by the Director and further stated that he would consider such applications addressed to him following an earlier refusal by the Director only in exceptional circumstances, and only after consultation with the Director. This practice has been invariably followed.

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#### **EX-OFFICIO INDICTMENT**

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**6.28** Pursuant to section 6(2D) of the Act the Director “may institute a prosecution of a person for an indictable offence against the laws of the Commonwealth in respect of which the person has not been examined or committed for trial”.

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**6.29** The holding of committal proceedings, and the committal of the defendant for trial, are not by law obligatory steps in the prosecution of an indictable offence. For example, committal hearings are no longer held in Tasmania and Western Australia, although the prosecution in those States is required to meet stringent pre-trial disclosure obligations. In other jurisdictions, committals have taken on a less substantial, paper form. Nevertheless in practice almost all prosecutions on indictment are preceded by a committal of the defendant for trial. The following paragraphs set out the criteria applied by the DPP in determining whether the circumstances of a particular case are such as to justify a departure from the usual course.

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**6.30** A decision to indict in the absence of prior committal proceedings will only be justified if any disadvantage to the defendant that may thereby ensue will nevertheless not be such as to deny the defendant a fair trial. Further, such a decision will only be justified if there are strong and powerful grounds for so doing. Needless to say, an ex-officio indictment should not be presented in the absence of committal proceedings unless the usual evidentiary and public interest considerations are satisfied.

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**6.31** It should be noted that where an ex-officio indictment is presented in the absence of committal proceedings the defendant will be provided with disclosure in accordance with the Statement on Prosecution Disclosure.

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**6.32** On the other hand, a decision to indict notwithstanding the defendant was discharged at the committal proceedings will not constitute as great a departure from accepted practice. The result of committal proceedings has never been regarded as binding on those who have the authority to indict. The magistrate may have erred in discharging the defendant, and in such a case the filing of an ex-officio indictment may be the only feasible way that that error can be corrected. Nevertheless, a decision to indict following a discharge at the committal proceedings should never be taken lightly. An ex-officio indictment should not be presented in such cases unless it can be confidently asserted that the magistrate erred in declining to commit, or fresh evidence has since become available and it can be confidently asserted that, if that evidence had been available at the time of the committal proceedings, the magistrate would have committed the defendant for trial.

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## PROSECUTION APPEALS AGAINST SENTENCE

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**6.33** The prosecution right to appeal against sentence should be exercised with appropriate restraint. In deciding whether to appeal, consideration is to be given as to whether there is a reasonable prospect that the appeal will be successful. Factors which may be considered include whether:

- (a) the sentence is manifestly inadequate;
- (b) the sentence reveals an inconsistency in sentencing standards;
- (c) the sentence proceeded on the basis of a material error of law or fact requiring appellate correction;
- (d) the sentence is substantially and unnecessarily inconsistent with other relevant sentences;
- (e) an appeal to a Court of Appeal would enable the Court to lay down some general principles for the governance and guidance of sentencers;
- (f) an appeal will enable the Court to establish and maintain adequate standards of punishment for crime;
- (g) an appeal will ensure, so far as the subject matter permits, uniformity in sentencing; and whether
- (h) an appeal will enable an appellate Court to correct an error of legal principle.

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**6.34** A prosecution appeal against sentence should also be instituted promptly, even where no time limit is imposed by the relevant legislation. Undue delay by the prosecution in the institution of an appeal may render oppressive the substitution of an increased sentence, and the appeal Courts have indicated on numerous occasions that in such cases they will not intervene although the prosecution's appeal is otherwise meritorious.

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## 7. Mental health of the alleged offender

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### 7.1

Issues concerning the mental health of the alleged offender may arise in considering the commencement and conduct of a prosecution. This Policy provides that in determining whether the public interest requires a prosecution, factors which may arise for consideration include the intelligence, mental health or special vulnerability of the alleged offender. Where these factors arise for consideration, other factors that may also arise for consideration in determining whether the public interest requires a prosecution include the seriousness or relative triviality of the alleged offence, the need for general and/or specific deterrence and whether the alleged offence is of considerable public concern.

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### 7.2

The issue of unfitness to be tried is usually raised with the Court by the defence. However, the issue can also be raised by the defendant personally or the prosecution. In the unusual circumstances where there is an obvious fitness issue and it is not raised by the defence then it should be raised by the prosecution.

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# 8. Prosecution Disclosure

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## 8.1

The Statement on Prosecution Disclosure is a publicly available document produced by the DPP concerning prosecution disclosure. The requirements imposed by the Statement on Prosecution Disclosure will be complied with, subject to any laws which are applicable in the prosecution of Commonwealth offences, by the DPP in conjunction with investigative agencies in prosecutions conducted by the DPP.

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## Annexure A

### Note on prosecutions for the bribery of foreign public officials under Division 70 of the Criminal Code

At paragraph 2.13 the Prosecution Policy of the Commonwealth states that a decision whether or not to prosecute must clearly not be influenced by:

- (a) the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;
- (b) personal feelings concerning the alleged offender or the victim;
- (c) possible political advantage or disadvantage to the Government or any political group or party; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

The Director of Public Prosecutions has issued the following to prosecutors to clarify this in relation to prosecutions for foreign bribery.

#### **ASSESSING MATTERS INVOLVING ALLEGATIONS OF FOREIGN BRIBERY CONTRARY TO SECTION 70.2 OF THE CRIMINAL CODE**

When deciding whether to prosecute a person for bribing a foreign public official under Division 70 of the Criminal Code, the prosecutor must not be influenced by:

- considerations of national economic interest;
- the potential effect upon relations with another State; or
- the identity of the natural or legal persons involved.

This is because the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which Australia implemented in 1999, provides at Article 5 that:

#### Article 5 – Enforcement

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

# Annexure B

## Immunity from Prosecution in Serious Cartel Offences

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### 1.

#### PREFACE

- 1.1 This document outlines the policy of the Commonwealth Director of Public Prosecutions (DPP), in considering an application for immunity from prosecution by a person implicated in a serious cartel offence. A serious cartel offence refers to the offences in sections 44ZZRF and 44ZZRG of the *Trade Practices Act 1974* (TPA) and the corresponding offences in the State and Territory Competition Codes.
  - 1.2 This policy is based on a recognition by Government that, in respect of serious cartel offences, it is in the public interest to offer immunity from prosecution to a person who is willing to break ranks with other cartel participants by exposing the illegal conduct and fully cooperating with the Australian Competition and Consumer Commission (ACCC) and the DPP.
  - 1.3 Following a recommendation from the ACCC, the Director will decide whether to grant immunity from prosecution by applying the same criteria as contained in the ACCC's immunity policy. The decision of the Director whether to grant immunity will be communicated to the applicant at the same time as the ACCC's decision whether to grant conditional immunity.
  - 1.4 If the Director decides to grant immunity, an undertaking under the *Director of Public Prosecutions Act 1983* (DPP Act) will be given to the applicant in writing. The undertaking will be subject to conditions and on-going obligations on the applicant throughout the period of the ACCC investigation until the conclusion of any criminal proceedings against other cartel participants.
  - 1.5 This policy is to be read in conjunction with Memorandum of Understanding Between the ACCC and the DPP.
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## 2.

### ROLES OF THE ACCC AND THE DPP

- 2.1 The DPP is an independent statutory agency established under the DPP Act and is responsible for prosecuting offences against Commonwealth laws.
  - 2.2 The DPP is not an investigative agency and does not investigate criminal offences. The decision to investigate an alleged offence under the TPA and refer the matter to the DPP for prosecution is made by the ACCC. The DPP may however provide advice to the ACCC on legal and related issues during investigations.
  - 2.3 The ACCC is an independent Commonwealth statutory authority established under the TPA. The ACCC is responsible for investigating alleged contraventions of the TPA including contraventions of the serious cartel provisions. Where it is alleged that a person has contravened a civil provision of the TPA the ACCC is also responsible for deciding whether to commence Court proceedings.
  - 2.4 Applications for immunity are made to the ACCC and subject to the conditions set out in paragraphs 3.1 and 3.2 below, the ACCC may make a recommendation to the Director to grant immunity to a person implicated in a serious cartel offence. Only the Director can grant a person immunity from prosecution.
  - 2.5 An undertaking provided by the Director to grant immunity from prosecution to a person implicated in a serious cartel offence can only operate in accordance with its terms and the DPP Act.
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## 3.

**OBTAINING IMMUNITY**

ACCC's criteria for conditional immunity

- 3.1 The ACCC's immunity policy outlines a number of mandatory conditions that must be satisfied before conditional immunity will be granted namely:
1. That the corporation or individual:
    - i. is or was a party to a cartel or is or was a director, officer or employee of a corporation that was a party to a cartel;
    - ii. admits that its / their conduct in respect of the cartel may constitute a contravention of the TPA;
    - iii. is the first corporation / individual to apply for immunity in respect of the cartel;
    - iv. provides full cooperation to the ACCC during the investigation period;
    - v. is not the clear leader, and has not coerced others to participate in the cartel;
    - vi. have either ceased involvement in the cartel or indicates to the ACCC that it / they will cease its / their involvement in the cartel
    - vii. undertakes to the ACCC to provide full disclosure and cooperation
    - viii. (for corporate applicants only) that the corporation's admissions are a truly corporate act; and
  2. At the time the ACCC receives the application, the ACCC has not received written legal advice that it has sufficient evidence to commence proceedings in relation to at least one contravention of the TPA arising from the conduct in respect of the cartel.
- 3.2 In addition to satisfying the above conditions, an applicant must provide full disclosure and cooperation to the ACCC for conditional immunity to remain in place and to be eligible for final immunity.

DPP's criteria for granting immunity from prosecution

- 3.3 Where the ACCC is of the view that the applicant satisfies the conditions for conditional immunity it may make a recommendation to the Director that immunity from prosecution be granted to the applicant. This recommendation will provide as much information as possible in relation to the criteria listed in paragraph 3.1.

- 3.4 The Director will exercise an independent discretion when considering a recommendation by the ACCC. Where the Director is satisfied that the applicant meets the ACCC's criteria for conditional immunity contained in the ACCC's immunity policy the Director will grant immunity. The decision of the Director whether to grant immunity from prosecution will be communicated to the applicant at the same time as the ACCC's decision whether to grant conditional immunity.
  - 3.5 If the Director decides to grant immunity, the Director will provide to the applicant a written undertaking pursuant to section 9(6D) of the DPP Act that, subject to fulfilment of on-going obligations and conditions, the applicant will not be prosecuted for the cartel offence for which immunity is sought.
  - 3.6. The conditions for immunity will include that the applicant provide on going full cooperation during the ACCC investigation and, in respect of an individual:
    - i. that they will appear as a witness for the prosecution as and where requested in any proceedings against the other cartel participants; and
    - ii. that any evidence they are called upon to give will be given truthfully, accurately and withholding nothing of relevance.
  - 3.7 Any undertaking granted under section 9(6D) will remain in place unless revoked and therefore an undertaking granting final immunity is not required.
  - 3.8 Cartel participants who cooperate with the ACCC pursuant to the Cooperation Policy rather than the Immunity Policy will have their request for immunity from criminal prosecution determined in accordance with the Prosecution Policy of the Commonwealth per se, rather than pursuant to the Annexure to that policy.
-

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## 4.

### CORPORATE IMMUNITY/DERIVATIVE IMMUNITY

- 4.1 The ACCC's immunity policy provides that where a corporate applicant is granted conditional immunity by the ACCC all past and present directors, officers and employees who request immunity, admit their involvement in the conduct of the corporation in respect of the cartel and provide full disclosure and co-operation to the ACCC will be eligible for a grant of immunity in the same form as the corporation.
  - 4.2 Similarly if a corporate applicant is granted immunity from prosecution by the DPP all past and present directors, officers and employees who request immunity, admit their involvement in the conduct of the corporation in respect of the cartel and undertake to provide full disclosure and co-operation to the ACCC will be eligible for a grant of immunity from prosecution in the same form as the corporation.
  - 4.3 Where the ACCC recommends to the Director that a corporate applicant should be granted immunity from prosecution the ACCC will also make a recommendation to the Director in relation to granting immunity to all past and present directors, officers and employees who meet the criteria in paragraph 4.2. This recommendation will set out all relevant information in relation to a grant of immunity for these persons. The Director will exercise an independent discretion when deciding whether to grant immunity pursuant to the criteria set out in paragraph 4.2.
  - 4.4 If immunity is granted a written undertaking, pursuant to section 9(6D) of the DPP Act will be provided, which will be subject to fulfilment of on going obligations and conditions. The Director's decision in relation to the grant of immunity to these persons will be communicated to the applicant at the same time as the ACCC's decision whether to grant immunity.
  - 4.5 Directors, officers or employees of a corporation that cooperates with the ACCC pursuant to the Cooperation Policy rather than the Immunity Policy will have their request for immunity from criminal prosecution determined in accordance with the *Prosecution Policy of the Commonwealth per se*, rather than pursuant to the Annexure to that policy.
-

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## 5.

### REVOCATION OF IMMUNITY BY DIRECTOR

- 5.1 The Director may revoke immunity at any time during the investigation and prior to the conclusion of criminal proceedings if:
1. the ACCC makes a recommendation to revoke immunity, and the Director, exercising independent discretion, agrees with that recommendation; or
  2. the Director believes on reasonable grounds:
    - i. that the recipient of the undertaking has provided information to the DPP that is false or misleading in a relevant matter; or
    - ii. that the recipient of the undertaking has not fulfilled the conditions of the undertaking.
- 5.2 The Director will notify the recipient in writing if an undertaking is to be revoked, and the recipient will be afforded a reasonable opportunity to make representations.

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## 6.

### DISCLOSURE ISSUES

- 6.1 The DPP has a published policy in relation to the prosecution's obligation to disclose relevant material to the defendant. Reference should be made to that policy.
- 6.2 Where an applicant is granted immunity from prosecution, the terms of the undertaking between the DPP and the applicant, will be disclosed to the court in accordance with the Disclosure Policy of the Commonwealth.
-

# Appendix four

## CDPP's Victims of Crime Policy

1. It is important that all CDPP staff treat victims with courtesy, dignity and respect.
2. In the context of this policy, a victim of crime is an identified individual who has suffered harm as a direct result of an offence or offences committed, or apparently committed, against Commonwealth law or prosecuted by Commonwealth authorities. 'Harm' includes physical or mental injury, pregnancy, emotional suffering or economic loss.
3. The CDPP is an independent agency created by the Parliament of the Commonwealth of Australia to prosecute alleged offences against Commonwealth law. The CDPP recognises that in matters where there is a victim, that person has an important role in the prosecution process. The CDPP does not act on behalf of a victim as solicitors act for their clients. In carrying out its functions, the CDPP acts on behalf of the whole community. The role of the victim in the prosecution will depend on the circumstances of the case.
4. Victims should, on request, be kept informed of the progress of the prosecution in a timely manner, including:
  - a. the charges laid;
  - b. the date and place of hearing of any charges laid;
  - c. the outcome of any bail proceedings; and
  - d. the outcome of proceedings, including appeal proceedings.
5. Victims should be advised about the prosecution process, that is, the various stages in a matter being heard before a court. Where a victim may be required to give evidence, any inconvenience to the victim should be minimised, as far as possible. Victims should also be advised in relation to their role as a witness.
6. The *Prosecution Policy of the Commonwealth* provides for the views of any victims where those views are available, and where it is appropriate, to be considered and taken into account when deciding whether it is in the public interest to:
  - a. commence a prosecution;
  - b. discontinue a prosecution;
  - c. agree to a charge negotiation; or
  - d. decline to proceed with a prosecution after a committal.

Victims should be consulted, as appropriate, and kept informed of these decisions in a timely manner.

7. A victim's need or perceived need for security as provided by the investigation agency and/or the victim will be put before the court in determining bail where appropriate.
8. The views of victims specified in paragraphs 6 and 7 are not required to be sought when the victim has indicated that they do not want to be consulted or when the whereabouts of the victim cannot be ascertained after reasonable inquiry.
9. In prosecutions which involve a large number of victims, it may be appropriate for the CDPP to communicate information and seek views of the victims through electronic means, such as the CDPP's website or through the relevant investigative agency.
10. A victim's privacy and personal information will be protected as appropriate and as far as possible.
11. The CDPP will comply with this policy in its dealings with victims.

# Financials



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

**FINANCIAL STATEMENTS 2008-2009**

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

**FINANCIAL STATEMENTS 2008-2009**

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Notes to and forming part of the Financial Statements

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

**INDEPENDENT AUDIT REPORT 2008-2009**



## INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

### Scope

I have audited the accompanying financial statements of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2009, which comprise: a Statement by the Commonwealth Director of Public Prosecutions and Deputy Director of Corporate Management; Income Statement; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Schedule of Administered Items and Notes to and forming part of the Financial Statements.

### *The Responsibility of the Commonwealth Director of Public Prosecutions for the Financial Statements*

The Commonwealth Director of Public Prosecutions is responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards (which include the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### *Auditor's Responsibility*

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor

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considers internal control relevant to the Office of the Commonwealth Director of Public Prosecution's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office of the Commonwealth Director of Public Prosecution's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Commonwealth Director of Public Prosecutions, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

#### ***Independence***

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

#### **Auditor's 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*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Office of the Commonwealth Director of Public Prosecution's financial position as at 30 June 2009 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



Simon Kidman  
Executive Director  
Delegate of the Auditor-General  
Canberra

15 October 2009

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

**FINANCIAL STATEMENTS 2008-2009**

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

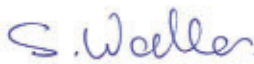
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In our opinion, the attached financial statements for the year ended 30 June 2009 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Chris Craigie SC  
Director

15/10  
October 2009



Stela Walker  
Deputy Director Corporate Management

15 October 2009

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**  
**INCOME STATEMENT**

For the period ended 30 June 2009

|  | Notes | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|--|-------|---------------------|---------------------|
| <b>INCOME</b>  |       |                     |                     |
| <b>Revenue</b>   |       |                     |                     |
| Revenue from government                                  | 3     | 106,783             | 102,797             |
| Sale of goods and rendering of services                  | 4     | 2,099               | 1,346               |
| Other revenue  | 5     | 398                 | 384                 |
| <b>Total revenue</b>                                     |       | <b>109,280</b>      | <b>104,527</b>      |
| <b>Gains</b>   |       |                     |                     |
| Other gains  | 6     | 131                 | 208                 |
| <b>Total gains</b>                                       |       | <b>131</b>          | <b>208</b>          |
| <b>TOTAL INCOME</b>                                      |       | <b>109,411</b>      | <b>104,735</b>      |
| <b>EXPENSES</b>  |       |                     |                     |
| Employee benefits  | 7     | 59,553              | 52,518              |
| Suppliers  | 8     | 37,681              | 34,052              |
| Depreciation and amortisation                            | 9     | 5,077               | 3,797               |
| Write-down and impairment of assets                      | 10    | 1                   | 11                  |
| Losses from sale of assets                               | 11    | 8                   | 34                  |
| Other expenses   | 12    | 722                 | 932                 |
| <b>TOTAL EXPENSES</b>                                    |       | <b>103,042</b>      | <b>91,344</b>       |
| <b>Surplus</b>   |       | <b>6,369</b>        | <b>13,391</b>       |
| <b>Surplus attributable to the Australian Government</b> |       | <b>6,369</b>        | <b>13,391</b>       |

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

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**  
**BALANCE SHEET**  
As at 30 June 2009

|   | Notes | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|---|-------|---------------------|---------------------|
| <b>ASSETS</b>                                 |       |                     |                     |
| <b>Financial Assets</b>                       |       |                     |                     |
| Cash and cash equivalents                     | 13    | 230                 | 1,664               |
| Trade and other receivables                   | 14    | 69,043              | 57,174              |
| <b>Total Financial Assets</b>                 |       | <b>69,273</b>       | <b>58,838</b>       |
| <b>Non-Financial Assets</b>                   |       |                     |                     |
| Land and buildings                            | 15,17 | 11,895              | 11,953              |
| Infrastructure, plant and equipment           | 16,17 | 4,800               | 4,807               |
| Intangibles                                   | 18    | 700                 | 858                 |
| Other non-financial assets                    | 19    | 293                 | 958                 |
| <b>Total Non-Financial Assets</b>             |       | <b>17,688</b>       | <b>18,576</b>       |
| <b>TOTAL ASSETS</b>                           |       | <b>86,961</b>       | <b>77,414</b>       |
| <b>LIABILITIES</b>                            |       |                     |                     |
| <b>Payables</b>                               |       |                     |                     |
| Suppliers                                     | 20    | 1,592               | 2,003               |
| Other payables                                | 21    | 5,168               | 4,896               |
| <b>Total payables</b>                         |       | <b>6,760</b>        | <b>6,899</b>        |
| <b>Non-interest bearing liabilities</b>       |       |                     |                     |
| Lease incentives                              | 22    | 832                 | 802                 |
| <b>Total non-interest bearing liabilities</b> |       | <b>832</b>          | <b>802</b>          |
| <b>Provisions</b>                             |       |                     |                     |
| Employee provisions                           | 23    | 13,876              | 12,449              |
| Other provisions                              | 24    | 5,198               | 5,383               |
| <b>Total Provisions</b>                       |       | <b>19,074</b>       | <b>17,832</b>       |
| <b>TOTAL LIABILITIES</b>                      |       | <b>26,666</b>       | <b>25,533</b>       |
| <b>NET ASSETS</b>                             |       | <b>60,295</b>       | <b>51,881</b>       |
| <b>EQUITY</b>                                 |       |                     |                     |
| <b>Parent Entity Interest</b>                 |       |                     |                     |
| Contributed equity                            |       | 360                 | 360                 |
| Reserves                                      |       | 10,262              | 8,217               |
| Retained surpluses                            |       | 49,673              | 43,304              |
| <b>Total Parent entity interest</b>           |       | <b>60,295</b>       | <b>51,881</b>       |
| <b>TOTAL EQUITY</b>                           |       | <b>60,295</b>       | <b>51,881</b>       |
| <b>Total liabilities and equity</b>           |       | <b>86,961</b>       | <b>77,414</b>       |
| <b>Current Assets</b>                         |       | <b>69,561</b>       | <b>59,795</b>       |
| <b>Non-Current Assets</b>                     |       | <b>17,400</b>       | <b>17,619</b>       |
| <b>Current Liabilities</b>                    |       | <b>18,641</b>       | <b>18,060</b>       |
| <b>Non-Current Liabilities</b>                |       | <b>8,025</b>        | <b>7,473</b>        |

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

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**  
**STATEMENT OF CHANGES IN EQUITY**  
As at 30 June 2009

|  | Retained Earnings   |                     | Asset Revaluation Reserves |                     | Contributed Equity/Capital |                     | Total Equity        |                     |
|--|---------------------|---------------------|----------------------------|---------------------|----------------------------|---------------------|---------------------|---------------------|
|  | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 | 2008-2009<br>\$'000        | 2007-2008<br>\$'000 | 2008-2009<br>\$'000        | 2007-2008<br>\$'000 | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
| <b>Opening balance</b>   |                     |                     |                            |                     |                            |                     |                     |                     |
| Balance carried forward from previous period                       | 43,304              | 29,913              | 8,217                      | 8,177               | 360                        | 909                 | 51,881              | 38,999              |
| Adjustment for errors  | -                   | -                   | -                          | -                   | -                          | -                   | -                   | -                   |
| Adjustment for changes in accounting policies                      | -                   | -                   | -                          | -                   | -                          | -                   | -                   | -                   |
| <b>Adjusted opening balance</b>                                    | <b>43,304</b>       | <b>29,913</b>       | <b>8,217</b>               | <b>8,177</b>        | <b>360</b>                 | <b>909</b>          | <b>51,881</b>       | <b>38,999</b>       |
| <b>Income and Expenses</b>   |                     |                     |                            |                     |                            |                     |                     |                     |
| Revaluation adjustment (a)   | -                   | -                   | 2,045                      | 40                  | -                          | -                   | 2,045               | 40                  |
| <b>Sub-total income and expenses recognised directly in Equity</b> | <b>-</b>            | <b>-</b>            | <b>2,045</b>               | <b>40</b>           | <b>-</b>                   | <b>-</b>            | <b>2,045</b>        | <b>40</b>           |
| Surplus (Deficit) for the period                                   | 6,369               | 13,391              | -                          | -                   | -                          | -                   | 6,369               | 13,391              |
| <b>Total income and expenses</b>                                   | <b>6,369</b>        | <b>13,391</b>       | <b>2,045</b>               | <b>40</b>           | <b>-</b>                   | <b>-</b>            | <b>8,414</b>        | <b>13,431</b>       |
| <b>Transactions with owners</b>                                    |                     |                     |                            |                     |                            |                     |                     |                     |
| <i>Distributions to owners</i>                                     |                     |                     |                            |                     |                            |                     |                     |                     |
| Returns of capital:  |                     |                     |                            |                     |                            |                     |                     |                     |
| Appropriation  | -                   | -                   | -                          | -                   | -                          | (549)               | -                   | (549)               |
| <b>Sub-total transactions with owners</b>                          | <b>-</b>            | <b>-</b>            | <b>-</b>                   | <b>-</b>            | <b>-</b>                   | <b>(549)</b>        | <b>-</b>            | <b>(549)</b>        |
| <b>Closing balance at 30 June</b>                                  | <b>49,673</b>       | <b>43,304</b>       | <b>10,262</b>              | <b>8,217</b>        | <b>360</b>                 | <b>360</b>          | <b>60,295</b>       | <b>51,881</b>       |

(a) The change to the asset revaluation reserve in 2008-2009 comprises an increase from the revaluation of assets of \$2.174m (as per note 18 table A), offset by the increase in restoration obligations liability of minus \$0.129m.

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

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**  
**CASH FLOW STATEMENT**

For the period ended 30 June 2009

|   | Notes | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|---|-------|---------------------|---------------------|
| <b>OPERATING ACTIVITIES</b>   |       |                     |                     |
| <b>Cash received</b>  |       |                     |                     |
| Goods and services  |       | 2,207               | 1,166               |
| Appropriations  |       | 94,995              | 88,415              |
| Net GST received  |       | 3,587               | 3,468               |
| Other (a)   |       | 3,556               | 1,968               |
| <b>Total cash received</b>  |       | <b>104,345</b>      | <b>95,017</b>       |
| <b>Cash used</b>  |       |                     |                     |
| Employees   |       | 58,916              | 51,802              |
| Suppliers   |       | 43,508              | 38,035              |
| Cost awarded (b)  |       | 1,121               | 529                 |
| <b>Total cash used</b>  |       | <b>103,545</b>      | <b>90,366</b>       |
| <b>Net cash flows from (used by) operating activities</b>           | 25    | <b>800</b>          | <b>4,651</b>        |
| <b>INVESTING ACTIVITIES</b>   |       |                     |                     |
| <b>Cash received</b>  |       |                     |                     |
| Proceeds from sales of property, plant and equipment                |       | 9                   | 6                   |
| Lease incentives receipt (c)  |       | 285                 | -                   |
| <b>Total cash received</b>  |       | <b>294</b>          | <b>6</b>            |
| <b>Cash used</b>  |       |                     |                     |
| Purchase of property, plant and equipment                           |       | 2,528               | 3,237               |
| <b>Total cash used</b>  |       | <b>2,528</b>        | <b>3,237</b>        |
| <b>Net cash flows from (used by) investing activities</b>           |       | <b>(2,234)</b>      | <b>(3,231)</b>      |
| <b>FINANCING ACTIVITIES</b>   |       |                     |                     |
| <b>Cash used</b>  |       |                     |                     |
| Return of contributed equity  |       | -                   | -                   |
| <b>Total cash used</b>  |       | <b>-</b>            | <b>-</b>            |
| <b>Net cash flows from (used by) financing activities</b>           |       | <b>-</b>            | <b>-</b>            |
| <b>Net increase (decrease) in cash held</b>                         |       | <b>(1,434)</b>      | <b>1,420</b>        |
| Cash and cash equivalents at the beginning of the reporting period  |       | 1,664               | 244                 |
| <b>Cash and cash equivalents at the end of the reporting period</b> | 13    | <b>230</b>          | <b>1,664</b>        |

(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 DIRECTOR OF PUBLIC PROSECUTIONS**  
**SCHEDULE OF COMMITMENTS**

As at 30 June 2009

|   | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|---|---------------------|---------------------|
| <b>BY TYPE</b>                                |                     |                     |
| <b>Capital commitments</b>                    |                     |                     |
| Land and buildings (1)                        | -                   | 692                 |
| Infrastructure, plant and equipment (2)       | 42                  | 5                   |
| <b>Total capital commitments</b>              | <b>42</b>           | <b>697</b>          |
| <b>Other commitments</b>                      |                     |                     |
| Operating leases (3)                          | 44,909              | 44,636              |
| Legal services                                | 11,412              | 12,938              |
| Goods and services (excluding legal services) | 4,111               | 5,337               |
| <b>Total other commitments</b>                | <b>60,432</b>       | <b>62,911</b>       |
| <b>Commitments receivable</b>                 |                     |                     |
| Sub-lease rental                              | (190)               | (248)               |
| Legal services                                | (2,000)             | -                   |
| Other   | (56)                | -                   |
| Net GST receivable on commitments             | (5,471)             | (5,760)             |
| <b>Total commitments receivable</b>           | <b>(7,717)</b>      | <b>(6,008)</b>      |
| <b>Net commitments by type</b>                | <b>52,757</b>       | <b>57,600</b>       |
| <b>BY MATURITY</b>                            |                     |                     |
| <b>Net commitments</b>                        |                     |                     |
| <b>Capital commitments</b>                    |                     |                     |
| One year or less                              | 42                  | 619                 |
| From one to five years                        | -                   | 78                  |
| Over five years                               | -                   | -                   |
| <b>Total capital commitments</b>              | <b>42</b>           | <b>697</b>          |
| <b>Operating lease commitments</b>            |                     |                     |
| One year or less                              | 11,625              | 10,606              |
| From one to five years                        | 33,284              | 29,641              |
| Over five years                               | -                   | 4,389               |
| <b>Total operating lease commitments</b>      | <b>44,909</b>       | <b>44,636</b>       |
| <b>Other commitments</b>                      |                     |                     |
| One year or less                              | 13,423              | 13,348              |
| From one to five years                        | 2,080               | 4,927               |
| Over five years                               | 20                  | -                   |
| <b>Total other commitments</b>                | <b>15,523</b>       | <b>18,275</b>       |
| <b>Commitments receivable</b>                 |                     |                     |
| One year or less                              | (4,401)             | (2,459)             |
| From one to five years                        | (3,314)             | (3,150)             |
| Over five years                               | (2)                 | (399)               |
| <b>Total commitments receivable</b>           | <b>(7,717)</b>      | <b>(6,008)</b>      |
| <b>Net commitments by maturity</b>            | <b>52,757</b>       | <b>57,600</b>       |

NB: Commitments are GST inclusive where relevant.

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS  
SCHEDULE OF COMMITMENTS**As at 30 June 2009

---

- (1) Land and building commitments are primarily contracts related to fitout under construction.
- (2) Plant and equipment commitments are primarily contracts for purchase of communications equipment.
- (3) Operating leases included are effectively non-cancellable and comprise:

**Nature of lease/General description****Leases for office accommodation.**

Lease payments are subject to annual increases in accordance with 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).**

No contingent rentals exist. There are no renewal or purchase options available to the CDPP.

**Leases in relation to computer and printing equipment.**

There are two separate agreements, the first master planned rental agreement commenced on 1 July 2001 and the second commenced on 1 Oct 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.**

Lease payments are subject to increase in accordance with the terms and conditions of the head-lease.

There is an option to renew in the head-lease.

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

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS  
 SCHEDULE OF CONTINGENCIES  
 As at 30 June 2009

|  | Guarantees       |                  | Indemnities      |                  | Claims for damages or costs |                  | Total            |                  |
|--|------------------|------------------|------------------|------------------|-----------------------------|------------------|------------------|------------------|
|  | 2008-2009 \$'000 | 2007-2008 \$'000 | 2008-2009 \$'000 | 2007-2008 \$'000 | 2008-2009 \$'000            | 2007-2008 \$'000 | 2008-2009 \$'000 | 2007-2008 \$'000 |
| <b><u>Contingent Assets</u></b>            |                  |                  |                  |                  |                             |                  |                  |                  |
| Balance from previous period               | -                | -                | -                | -                | 137                         | -                | 137              | -                |
| New  | -                | -                | -                | -                | -                           | 137              | -                | 137              |
| Re-measurement                             | -                | -                | -                | -                | (69)                        | -                | (69)             | -                |
| Assets recognised                          | -                | -                | -                | -                | -                           | -                | -                | -                |
| Expired                                    | -                | -                | -                | -                | -                           | -                | -                | -                |
| <b>Total Contingent Assets</b>             | <b>-</b>         | <b>-</b>         | <b>-</b>         | <b>-</b>         | <b>68</b>                   | <b>137</b>       | <b>68</b>        | <b>137</b>       |
| <b><u>Contingent Liabilities</u></b>       |                  |                  |                  |                  |                             |                  |                  |                  |
| Balance from previous period               | -                | -                | -                | -                | 443                         | 9                | 443              | 9                |
| New  | -                | -                | -                | -                | 318                         | 443              | 318              | 443              |
| Re-measurement                             | -                | -                | -                | -                | -                           | -                | -                | -                |
| Liabilities crystallised                   | -                | -                | -                | -                | -                           | (9)              | -                | (9)              |
| Obligations expired                        | -                | -                | -                | -                | (206)                       | -                | (206)            | -                |
| <b>Total Contingent Liabilities</b>        | <b>-</b>         | <b>-</b>         | <b>-</b>         | <b>-</b>         | <b>555</b>                  | <b>443</b>       | <b>555</b>       | <b>443</b>       |
| <b>Net Contingent Assets (Liabilities)</b> |                  |                  |                  |                  |                             |                  |                  |                  |
|  |                  |                  |                  |                  |                             |                  | <b>(487)</b>     | <b>306</b>       |

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 27: Contingent liabilities and assets.

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



| <b>OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS</b>                     |       |                         |                  |
|--|-------|-------------------------|------------------|
| <b>SCHEDULE OF ADMINISTERED ITEMS</b>                                    |       |                         |                  |
| As at 30 June 2009   |       |                         |                  |
|  | Notes | <b>2008-2009</b>        | 2007-2008        |
|  |       | \$                      | \$               |
| <b>Income administered on behalf of Government</b>                       |       |                         |                  |
| <i>For the period ended 30 June 2009</i>                                 |       |                         |                  |
| <b>Revenue</b>   |       |                         |                  |
| Non-taxation   |       |                         |                  |
| Fees and fines   | 31    | <b>5,486,603</b>        | 4,879,095        |
| Other administered revenue   | 32    | <b>850</b>              | -                |
| Reversal of previous asset write-downs                                   | 33    | <b>302,296</b>          | 272,274          |
| Total non-taxation   |       | <u><b>5,789,749</b></u> | <u>5,151,369</u> |
| <b>Total income administered on behalf of Government</b>                 |       | <u><b>5,789,749</b></u> | <u>5,151,369</u> |
| <b>Expenses administered on behalf of Government</b>                     |       |                         |                  |
| <i>For the period ended 30 June 2009</i>                                 |       |                         |                  |
| Write-down of assets   | 34    | <b>3,047,643</b>        | 2,431,247        |
| <b>Total expenses administered on behalf of Government</b>               |       | <u><b>3,047,643</b></u> | <u>2,431,247</u> |
| This schedule should be read in conjunction with the accompanying notes. |       |                         |                  |

| <b>OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS</b>                    |      |                  |           |
|---|------|------------------|-----------|
| <b>SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)</b>                       |      |                  |           |
| As at 30 June 2009  |      |                  |           |
|   | Note | <b>2008-2009</b> | 2007-2008 |
|   |      | \$               | \$        |
| <b>Assets administered on behalf of Government</b>                      |      |                  |           |
| <i>As at 30 June 2009</i>   |      |                  |           |
| <b>Financial Assets</b>   |      |                  |           |
| Cash and cash equivalents   | 35   | <b>932</b>       | -         |
| Receivables   | 36   | <b>1,539,755</b> | 1,065,006 |
| <b>Total financial assets</b>   |      | <b>1,540,687</b> | 1,065,006 |
| <b>Total assets administered on behalf of Government</b>                |      | <b>1,540,687</b> | 1,065,006 |
| <b>Liabilities administered on behalf of Government</b>                 |      |                  |           |
| <i>As at 30 June 2009</i>   |      |                  |           |
| <b>Payables</b>   |      |                  |           |
| Other payables  | 37   | <b>4,920</b>     | 5,645     |
| <b>Total Payables</b>   |      | <b>4,920</b>     | 5,645     |
| <b>Total liabilities administered on behalf of Government</b>           |      | <b>4,920</b>     | 5,645     |
| <b>Current assets</b>   |      | <b>1,214,146</b> | 538,259   |
| <b>Non-current assets</b>   |      | <b>326,541</b>   | 526,747   |
| <b>Current liabilities</b>  |      | <b>4,920</b>     | 5,645     |
| <b>Non-current liabilities</b>  |      | -                | -         |
| The schedule should be read in conjunction with the accompanying notes. |      |                  |           |

| <b>OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS</b>                    |      |                  |           |
|---|------|------------------|-----------|
| <b>SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)</b>                       |      |                  |           |
| As at 30 June 2009  |      |                  |           |
|   | Note | <b>2008-2009</b> | 2007-2008 |
|   |      | \$               | \$        |
| <b>Administered Cash Flows</b>  |      |                  |           |
| <i>For the period ended 30 June 2009</i>                                |      |                  |           |
| <b>Operating Activities</b>   |      |                  |           |
| <b>Cash received</b>  |      |                  |           |
| Fines and costs   |      | 2,315,717        | 2,717,883 |
| Cash from Official Public Account - refunds                             |      | 49,934           | 41,572    |
| Other   |      | 850              | -         |
| <b>Total cash received</b>  |      | <b>2,366,501</b> | 2,759,455 |
| <b>Cash used</b>  |      |                  |           |
| Cash to Official Public Account   |      | 2,315,635        | 2,717,883 |
| Refund of fines and costs   |      | 49,934           | 41,572    |
| <b>Total cash used</b>  |      | <b>2,365,569</b> | 2,759,455 |
| <b>Net cash flows from (used by) operating activities</b>               |      | <b>932</b>       | -         |
| <b>Net increase / (decrease) in cash held</b>                           |      | <b>932</b>       | -         |
| Cash and cash equivalents at the beginning of the reporting period      |      | -                | -         |
| <b>Cash and cash equivalents at the end of the reporting period</b>     |      | <b>932</b>       | -         |
| The schedule should be read in conjunction with the accompanying notes. |      |                  |           |

| <b>OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS</b>  |      |                  |            |
|---|------|------------------|------------|
| <b>SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)</b>   |      |                  |            |
| As at 30 June 2009  |      |                  |            |
|   | Note | <b>2008-2009</b> | 2007-2008  |
|   |      | \$               | \$         |
| <b>Administered Commitments</b>   |      |                  |            |
| <i>As at 30 June 2009</i>   |      |                  |            |
|   |      | <u>Nil</u>       | <u>Nil</u> |
| <b>Administered Contingencies</b>   |      |                  |            |
| <i>As at 30 June 2009</i>   |      |                  |            |
|   |      | <u>Nil</u>       | <u>Nil</u> |
| <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 39: Administered contingent liabilities and assets.</p> |      |                  |            |
| <p>The schedule should be read in conjunction with the accompanying notes.</p>  |      |                  |            |

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| <b>Note</b> | <b>Description</b>                                  |
|-------------|---|
| 1           | Summary of significant accounting policies          |
| 2           | Events after the balance sheet date                 |
| 3           | Revenue from government                             |
| 4           | Sale of goods and rendering of services             |
| 5           | Other revenue                                       |
| 6           | Other gains   |
| 7           | Employee benefits                                   |
| 8           | Suppliers   |
| 9           | Depreciation and amortisation                       |
| 10          | Write-down and impairment of assets                 |
| 11          | Losses from asset sales                             |
| 12          | Other expenses                                      |
| 13          | Cash and cash equivalents                           |
| 14          | Trade and other receivables                         |
| 15          | Land and buildings                                  |
| 16          | Infrastructure, plant and equipment                 |
| 17          | Analysis of property, plant and equipment           |
| 18          | Intangibles assets                                  |
| 19          | Other non-financial assets                          |
| 20          | Suppliers   |
| 21          | Other payables                                      |
| 22          | Non-interest bearing liabilities                    |
| 23          | Employee provisions                                 |
| 24          | Other provisions                                    |
| 25          | Cash flow reconciliation                            |
| 26          | Contingent liabilities and assets                   |
| 27          | Senior executive remuneration                       |
| 28          | Remuneration of auditors                            |
| 29          | Average staffing level                              |
| 30          | Financial instruments                               |
| 31          | Administered fees and fines revenue                 |
| 32          | Administered other revenue                          |
| 33          | Reversal of previous administered asset write-downs |
| 34          | Write-down of administered assets                   |
| 35          | Administered cash                                   |
| 36          | Administered receivables                            |
| 37          | Administered payables                               |
| 38          | Administered reconciliation table                   |
| 39          | Administered contingent liabilities and assets      |
| 40          | Administered financial instruments                  |
| 41          | Appropriations                                      |
| 42          | Special accounts                                    |
| 43          | Compensation and debt relief                        |
| 44          | Reporting of outcomes                               |

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**Note 1 - Summary of Significant Accounting Policies**

**1.1 Objectives of the Office of the Director of Public Prosecutions**

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

The CDPP is structured to meet one outcome:

*Maintenance of law and order for the Australian community through an independent and ethical prosecution service in accordance with the Prosecution Policy of the Commonwealth.*

Agency activities contributing toward the outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Agency in its own right. Administered activities involve the management or oversight by the Agency, on behalf of the Government, of items controlled or incurred by the Government.

Departmental activity is identified under 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.*

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

**1.2 Basis of Preparation of the Financial Report**

The Financial Statements and notes are required by section 49 of the *Financial Management and Accountability Act 1997 (FMA)* and are a General Purpose Financial Report.

The Financial Statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMOs) for reporting periods ending on or after 1 July 2008; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Boards (AASB) that apply for the reporting period.

The Financial Report has been prepared on an accrual basis and is in accordance with historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The Financial Report is presented in Australian dollars. The values disclosed in the departmental statements are rounded to the nearest thousand dollars unless otherwise specified. The values disclosed in the administered statements are rounded to the nearest dollar except for Notes 41, 42 and 44 where the administered amounts are rounded to the nearest thousand dollars.

Unless an alternative treatment is specifically required by an Accounting Standard or the FMOs, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the Entity or a future sacrifice of economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets

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and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrealised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the income statement when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for departmental items, except where otherwise stated at Note 1.19.

### 1.3 Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in this note, CDPP has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- the fair value of land and buildings has been taken to be the market value of similar items as determined using an index that reflects building cost price movements as published by the Australian Institute of Quantity Surveyors.

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

In applying the accounting policies in this note, the CDPP has made a judgement that has a significant impact on the amount recorded as administered receivables. The collectability of fines and costs debts are assessed at balance date by reviewing the debt, by age and amount, against the past payments history of similar debts. A provision for doubtful debt is then made based on that judgement.

### 1.4 Statement of Compliance

#### Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standard.

The following new standards, amendments to standards or interpretations that were issued and are applicable to the current financial year did not have a material financial impact, and are not expected to have a future financial impact on the CDPP:

*AASB 1 – First-time Adoption of Australian Equivalents to International Financial Reporting Standards*

*AASB 3 – Business Combinations*

*AASB 5 – Non-current Assets Held for Sale and Discontinued Operations*

*AASB 7 – Financial Instruments: Disclosures*

*AASB 101 – Presentation of Financial Statements*

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*AASB 114 – Segment Reporting*

*AASB 116 – Property, Plant and Equipment*

*AASB 127 – Consolidated and Separate Financial Statements*

*AASB 137 – Provisions, Contingent Liabilities and Contingent Assets*

*AASB 139 – Financial Instruments: Recognition and Measurement*

*AASB 1004 – Contributions*

*AASB 1048 – Interpretation and Application of Standards*

*AASB 1049 – Whole of Government and General Government Sector Financial Reporting*

*AASB 1050 – Administered items*

*AASB 1051 – Land Under Roads*

*AASB 1052 – Disaggregated Disclosures*

*AASB 2007-2 – Amendments to Australian Accounting Standards arising from AASB Interpretation 12 [AASB 1, AASB 117, AASB 118, AASB 120, AASB 121, AASB 127, AASB 131 & AASB 139]*

*AASB 2007-9 - Amendments to Australian Accounting Standards arising from the review of AASs 27, 29 and 31 [AASB 3, AASB 5, AASB 8, AASB 101, AASB 114, AASB 116, AASB 127 & AASB 137]*

*AASB 2008-10 - Amendments to Australian Accounting Standards – Reclassification of Financial Assets*

*AASB 2008-12 - Amendments to Australian Accounting Standards – Reclassification of Financial Assets – Effective Date and Transition [AASB 7, AASB 139 & AASB 2008-10]*

*AASB 2009-3 - Amendments to Australian Accounting Standards – Embedded Derivatives [AASB 139 and Interpretation 9]*

*Interpretation 4 – Determining whether an Arrangement contains a Lease*

*Interpretation 12 – Service Concession Arrangements*

*Interpretation 13 – Customer Loyalty Programmes*

*Interpretation 14 – AASB 119 – The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction*

*Interpretation 129 – Service Concession Arrangements: Disclosure*

*Interpretation 1038 – Contributions by Owners Made to Wholly-Owned Public Sector Entities*



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Future Australian Accounting Standard requirements

The following amendment to the standards was issued by the Australian Accounting Standards Board and is applicable to the future reporting period is expected to have a future financial impact on the entity:

*AASB 2008-5 – Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 5, 7, 101, 102, 107, 108, 110, 116, 118, 119, 120, 123, 127, 128, 129, 131, 132, 134, 136, 138, 139, 140, 141, 1023 & 1038]. Although this amendment relates to numerous Standards, a material impact is expected for only one Standard – AASB 116 Employee Benefits. Discounting of non-current short-term employee benefits will no longer be required. It is anticipated that this will probably increase the value of the liability in 2009-2010.*

The following standards, new standards, amendments to standards or interpretations have been issued but are not applicable to the operations of CDPP:

*AASB 1 – First-time Adoption of Australian Equivalents to International Financial Reporting Standards*

*AASB 3 – Business Combinations*

*AASB 8 – Operating Segments*

*AASB 101 – Presentation of Financial Statements*

*AASB 123 – Borrowing Costs*

*AASB 127 – Consolidated and Separate Financial Statements*

*AASB 1039 – Concise Financial Reports*

*AASB 2008-5 – Amendments to Australian Accounting Standards arising from AASB 8 [AASB 5, AASB 6, AASB 102, AASB 107, AASB 119, AASB 127, AASB 134, AASB 136, AASB 1023 & AASB 1038]*

*AASB 2007-6 – Amendments to Australian Accounting Standards arising from AASB 123 [AASB 1, AASB 101, AASB 107, AASB 111, AASB 116 & AASB 138 and Interpretations 1 & 12]*

*AASB 2007-8 – Amendments to Australian Accounting Standards arising from AASB 101*

*AASB 2007-10 – Further Amendments to Australian Accounting Standards arising from AASB 101*

*AASB 2008-1 – Amendments to Australian Accounting Standard – Share-based Payments: Vesting conditions and Cancellations [AASB 2]*

*AASB 2008-2 – Amendments to Australian Accounting Standards – Puttable Financial Instruments and Obligations arising on Liquidation [AASB 7, AASB 101, AASB 132, AASB 139 & Interpretation 2]*

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*AASB 2008-3 – Amendments to Australian Accounting Standards arising from AASB 3 and AASB 127 [AASBs 1, 2, 4, 5, 7, 101, 107, 112, 114, 116, 121, 128, 131, 132, 133, 134, 136, 137, 138 & 139 and Interpretations 9 & 107]*

*AASB 2008-6 – Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 1 & AASB 5]*

*AASB 2008-7 – Amendments to Australian Accounting Standards – Costs of an Interments in a Subsidiary, Jointly Controlled Entity or Associate [AASB 1, AASB 118, AASB 121, AASB 127 & AASB 136]*

*AASB 2008-8 – Amendments to Australian Accounting Standards – Eligible Hedged Items [AASB 139]*

*AASB 2008-9 - Amendments to AASB 1049 for Consistency with AASB 101*

*AASB 2008-11 – Amendments to Australian Accounting Standard – Business Combinations Among Not-for-Profit Entities [AASB 3]*

*AASB 2008-13 – Amendments to Australian Accounting Standards arising from AASB Interpretation 17 – Distributions of Non-cash Assets to Owners [AASB 5 & AASB 110]*

*AASB 2009-1 - Amendments to Australian Accounting Standards – Borrowing costs of Not-for-Profit Public Sector Entities [AASB 1, AASB 111 & AASB 123]*

*AASB 2009-2 - Amendments to Australian Accounting Standards – Improving Disclosures about Financial Instruments [AASB 4, AASB 7, AASB 1023 & AASB 1038]*

*AASB 2009-4 - Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 2 and AASB 138 and AASB Interpretations 9 & 16]*

*AASB 2009-5 – Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 5, 8, 101, 107, 117, 118, 136 & 139]*

*AASB 2009-6 - Amendments to Australian Accounting Standards*

*AASB 2009-7 - Amendments to Australian Accounting Standards [AASB 5, 7, 107, 112, 136 & 139]*

*Interpretation 1 – Changes in Existing Decommissioning, Restoration and Similar Liabilities*

*Interpretation 12 – Service Concession Arrangements*

*Interpretation 15 – Agreements for the Construction of Real Estate*

*Interpretation 16 – Hedges of a Net Investment in a Foreign Operation*

*Interpretation 17 – Distributions of Non-cash Assets to Owners*

*Interpretation 18 – Transfers of Assets from Customers*

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## 1.5 Revenue

### Revenue from Government

Amounts appropriated for departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the agency gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

### Other Types of Revenue

Revenue from the sale of goods is recognised when:

- the risks and rewards of ownership have been transferred to the buyer;
- the seller retains no managerial involvement nor effective control over the goods;
- the revenue and transaction costs incurred can be reliably measured; and
- it is probable that the economic benefits associated with the transaction will flow to the Entity.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- the probable economic benefits with the transaction will flow to the Entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debt is reviewed at balance date. Provisions are made when collectability of the debt is no longer probable.

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement*.

## 1.6 Gains

### Other Resources Received Free of Charge

Resources received free of charge are recognised as gains 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.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements (Refer to Note 6).

Resources received free of charge are recorded as either revenue or gains depending on their nature.

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Sale of Assets

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

**1.7 Transactions with the Government as Owner**

Other distributions to owners

The FMOs require that distributions to owners be debited to Contributed Equity unless in the nature of a dividend. In 2007-2008, by agreement with the Department of Finance and Deregulation, CDPP relinquished control of surplus output appropriation funding of \$549,000 which was returned to the Official Public Account. No distributions to owners were returned to the Department of Finance and Deregulation during 2008-2009.

**1.8 Employee Benefits**

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

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

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.

Leave

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

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

The liability for long service leave has been determined by reference to the work of an actuary carried out during 2004-2005. The estimate of the present value of the liability takes into account attrition rates and pay increase through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The CDPP recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

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Superannuation

Staff of CDPP are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap). The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

CDPP makes employer contributions to the employee superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government of the superannuation entitlements of the Agency's employees. CDPP accounts for the contributions as if they were contributions to defined contribution plans.

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

**1.9 Leases**

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Lease assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is the representative of the pattern of benefits derived from the leased assets.

The CDPP has no finance leases.

**1.10 Cash**

Cash and cash equivalents include notes and coins held and any deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

**1.11 Financial Assets**

CDPP classifies its financial assets in the following categories:

- financial assets 'at fair value through profit or loss';
- 'held-to-maturity investments';
- 'available-for sale' financial assets; and
- 'loans and receivables'.

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The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition.

Financial assets are recognised and derecognised upon 'trade date'.

*Effective interest method*

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts over the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets 'at fair value through profit or loss'.

*Financial assets at fair value through profit or loss*

Financial assets are classified as financial assets at fair value through profit or loss where the financial assets:

- have been acquired principally for the purpose of selling in the near future;
- are a part of an identified portfolio of financial instruments that the agency manages together and has a recent actual pattern of short-term profit-taking; or
- are derivatives that are not designated and effective as hedging instrument.

Assets in this category are classified as current assets.

Financial assets at fair value through profit or loss are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest earned on the financial asset.

*Available-for-sale financial assets*

Available-for-sale financial assets are non-derivatives that are either designated in this category or not classified in any of the other categories. They are included in non-current assets unless management intends to dispose of the asset within 12 months of the balance sheet date.

Available-for-sale financial assets are recorded at fair value. Gains and losses arising from changes in fair value are recognised directly in the reserves (equity) with the exception of impairment losses. Interest is calculated using the effective interest method and foreign exchange gains and losses on monetary assets are recognised directly in profit or loss. Where the asset is disposed of or is determined to be impaired, part (or all) of the cumulative gain or loss previously recognised in the reserve is included in profit for the period.

Where a reliable fair value cannot be established for unlisted investments in equity instruments, cost is used. CDPP has no such instruments.

*Held-to-maturity investments*

Non-derivative financial assets with fixed or determinable payments and fixed maturity dates that the group has the positive intent and ability to hold a maturity are classified as held-to-maturity investments. Held-to-maturity investments are recorded at amortised cost using the effective interest method less impairment, with revenue recognised on an effective yield basis.

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Loans and receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. They are included in current assets, except for maturities greater than 12 months after the balance sheet date. These are classified as non-current assets. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

Impairment of financial assets

Financial assets are assessed for impairment at each balance date.

- *Financial Assets held at amortised cost* - If there is objective evidence that an impairment loss has been incurred on loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the income statement.
- *Available-for-sale financial assets* – If there is objective evidence that an impairment loss on an available-for-sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to the income statement.
- *Available-for-sale financial assets (held at cost)* – If there is objective evidence that an impairment loss has been incurred the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

**1.12 Financial liabilities**

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities.

Financial liabilities are recognised and derecognised upon 'trade date'.

Financial liabilities at fair value through profit or loss

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

Other financial liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

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The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a short period.

Supplier and other payables

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

**1.13 Contingent Liabilities and Contingent Assets**

Contingent Liabilities and Contingent Assets are not recognised in the balance sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

**1.14 Financial Guarantee Contracts**

Financial guarantee contracts are accounted for in accordance with AASB 139 *Financial Instruments: Recognition and Measurement*. They are not treated as a contingent liability, as they are regarded as financial instruments outside the scope of AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*.

**1.15 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. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

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 of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring.

**1.16 Property, Plant and Equipment**

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the balance sheet, 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 fitout, furniture, library holdings, original artworks and limited edition prints.

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by CDPP where there exists an obligation to restore the property to its original condition. These costs are included in the value of CDPP's leasehold improvements with a corresponding provision for the 'makegood' recognised.



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Revaluations

Fair values for each class of asset are determined as shown below:

| <b>Asset class</b>                  | <b>Fair value measured at</b> |
|-------------------------------------|-------------------------------|
| Leasehold improvements              | Depreciated replacement cost  |
| Infrastructure, plant and equipment | Market selling price          |

Following initial recognition at cost, property plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets. Formal revaluations are carried out at least every three years. As the value of leasehold improvements is significant, in years when a formal revaluation is not undertaken an in-house revaluation is undertaken using an appropriate index.

During 2007-2008 an independent valuation of all land and buildings and infrastructure, plant and equipment, excluding library holdings, was carried out by Nigel Spoljaric, Certified Practising Valuer AVAA, of Pickles Valuation Services.

During 2008-2009:

- an in-house revaluation was undertaken and land and building values were adjusted in line with movements in the Building Economist Cost Index published by the Australian Institute of Quantity Surveyors.
- all other asset classes were reviewed and were deemed to be at fair value.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through operating result. Revaluation decrements for a class of assets are recognised directly through the operating result except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is restated proportionately with the change in the gross carrying amount of the asset so that the carrying amount of the asset after revaluation equals the revalued amount.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to CDPP using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

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

| <u>Class</u>           | <u>2008-2009</u>    | <u>2007-2008</u> |
|------------------------|---------------------|------------------|
| Leasehold improvements | <b>Lease Term</b>   | Lease Term       |
| Plant and equipment    | <b>2 – 30 years</b> | 2 – 30 years     |

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Impairment

All assets were assessed for impairment at 30 June 2009. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if CDPP were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

**1.17 Intangibles**

CDPP's intangibles comprise software licenses and configuration costs of purchased software. These assets are carried at cost less accumulated amortisation and accumulated impairment losses. Purchases of intangibles are recognised initially at cost in the balance sheet, 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).

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the CDPP's software are 3 to 20 years (2007-2008: 3 to 20 years).

All software assets were assessed for indications of impairment as at 30 June 2009.

**1.18 Taxation / Competitive Neutrality**

CDPP is exempt from all forms of taxation except fringe benefits tax (FBT) and the goods and services tax (GST).

Revenues, expenses 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.

Competitive Neutrality

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

**1.19 Reporting of Administered Activities**

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 departmental items, including the application of Australian Accounting Standards.

Administered Cash Transfers to and from the Official Public Account

Revenue collected by CDPP for use by the Government rather than the Agency is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make

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payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Agency on behalf of the Government and reported as such in the Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 36. The Schedule of Administered Items largely reflects the Government's transactions, through the Agency, with parties outside the Government.

Revenue

All administered revenues are revenues relating to the ordinary activities performed by the CDPP on behalf of the Australian Government.

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.

Expenses

All expenses described in this note are expenses relating to the course of ordinary activities performed by the CDPP on behalf of the Australian Government.

*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.

*B. Allowance for doubtful debts*

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. At 30 June 2009 the value of the Fines and Cost debts is recognised at fair value which is based upon the actuary assessment methodology developed by the Australian Government Actuary.

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. Provisions are raised against receivables for any doubtful debts and are based on a review of outstanding accounts as at year end. This includes examination of individual large debts over \$50,000.

**Note 2 - Events after the Balance Sheet Date**

In 2009-2010 a change in AASB 119 *Employee Benefits* will result in a change in the method of measurement of non-current short-term employee benefits. It is anticipated that this will increase the value of the liability in 2009-2010.

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There were no other events occurring after balance date that has any material effect on the 2008-2009 Financial Statements.

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|  | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|--|---------------------|---------------------|
| <b>Note 3 - Revenue from government</b>  |                     |                     |
| Appropriations:  |                     |                     |
| Departmental outputs   | 106,783             | 102,797             |
| <b>Total revenue from Government</b>   | <b>106,783</b>      | <b>102,797</b>      |
| <b>Note 4 - Sale of goods and rendering of services</b>  |                     |                     |
| Goods  | 1                   | 2                   |
| Services   | 2,098               | 1,344               |
| <b>Total sales of goods and services</b>   | <b>2,099</b>        | <b>1,346</b>        |
| Provision of goods to:   |                     |                     |
| Provision of goods - related entities  | -                   | -                   |
| Provision of goods - external entities   | 1                   | 2                   |
| Rendering of services - related entities   | 2,097               | 1,344               |
| Rendering of services - external entities  | 1                   | -                   |
| <b>Total sale of goods and rendering of services</b>   | <b>2,099</b>        | <b>1,346</b>        |
| <b>Note 5 - Other revenue</b>  |                     |                     |
| Resources received free of charge - External entities  | 398                 | 384                 |
| <b>Total other revenue</b>   | <b>398</b>          | <b>384</b>          |
| Due to the nature of the receipts, the Resources received free of charge - External entities have been reclassified as Other Revenues from Other Gains as reported in 2007-2008. |                     |                     |
| <b>Note 6 - Other gains</b>  |                     |                     |
| Grants   | -                   | 46                  |
| Resources received free of charge - Related entities   | 80                  | 106                 |
| Other  | 51                  | 56                  |
| <b>Total other gains</b>   | <b>131</b>          | <b>208</b>          |
| An amount of \$46,007 was recognised in 2007-2008 as a subsidy gain. It has now been reclassified as a Grant gain.   |                     |                     |
| Refer to Note 5 Other Revenue for reclassification of Resources received free of charge - External entities.   |                     |                     |

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|                                   | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|-----------------------------------|---------------------|---------------------|
| <b>Note 7 - Employee benefits</b> |                     |                     |
| Wages and Salaries                | 43,773              | 38,586              |
| Superannuation                    |                     |                     |
| Defined contribution plans        | 2,686               | 1,621               |
| Defined benefit plans             | 5,395               | 5,583               |
| Leave and other entitlements      | 6,078               | 4,702               |
| Separation and redundancies       | 3                   | 93                  |
| Other employee benefits           | 192                 | 96                  |
| Other employee cost               | 1,426               | 1,837               |
| <b>Total employee benefits</b>    | <b>59,553</b>       | <b>52,518</b>       |

A No defined superannuation benefit plans were disclosed in 2007-2008 in error. Correct disclosure for 2008-2009 and 2007-2008 have now been disclosed.

**Note 8 - Suppliers**

|   |               |               |
|---|---------------|---------------|
| Provision of goods - related entities     | 13            | 37            |
| Provision of goods - external entities    | 2,900         | 2,449         |
| Rendering of services - related entities  | 1,261         | 1,289         |
| Rendering of services - external entities | 23,676        | 21,439        |
| Operating lease rentals:                  |               |               |
| Minimum lease payments                    | 9,378         | 8,392         |
| Rental expense for sub-leases             | 65            | 64            |
| Workers' compensation premiums            | 388           | 382           |
| <b>Total supplier expenses</b>            | <b>37,681</b> | <b>34,052</b> |

**Note 9 - Depreciation and amortisation**

|  |              |              |
|--|--------------|--------------|
| Depreciation:                              |              |              |
| Leasehold improvements                     | 3,895        | 2,632        |
| Other infrastructure, plant and equipment  | 1,016        | 1,049        |
| <b>Total depreciation</b>                  | <b>4,911</b> | <b>3,681</b> |
| Amortisation                               |              |              |
| Intangibles :                              |              |              |
| Computer software                          | 166          | 116          |
| <b>Total amortisation</b>                  | <b>166</b>   | <b>116</b>   |
| <b>Total depreciation and amortisation</b> | <b>5,077</b> | <b>3,797</b> |

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|  | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|--|---------------------|---------------------|
| <b>Note 10 - Write-down and impairment of assets</b> |                     |                     |
| Asset write-downs from                               |                     |                     |
| Financial assets                                     | -                   | 3                   |
| Non-financial assets - write-off                     |                     |                     |
| Plant and equipment                                  | 1                   | 8                   |
| Sub-total  | <u>1</u>            | <u>8</u>            |
| <b>Total write-down and impairment of assets</b>     | <u><u>1</u></u>     | <u><u>11</u></u>    |
| <b>Note 11 - Losses from asset sales</b>             |                     |                     |
| Infrastructure, plant and equipment:                 |                     |                     |
| Proceeds from disposal                               | (1)                 | (6)                 |
| Carrying value of assets sold                        | 9                   | 40                  |
| Selling expense                                      | -                   | -                   |
| <b>Net loss from sale of assets sold</b>             | <u>8</u>            | <u>34</u>           |
| <b>Note 12 - Other expenses</b>                      |                     |                     |
| Costs awarded against the Commonwealth               | 722                 | 932                 |
| <b>Total other expenses</b>                          | <u>722</u>          | <u>932</u>          |
| <b>Note 13 - Cash and cash equivalents</b>           |                     |                     |
| Cash at bank   | 201                 | 1,639               |
| Cash on hand   | 29                  | 25                  |
| <b>Total cash and cash equivalents</b>               | <u>230</u>          | <u>1,664</u>        |
| <b>Note 14 - Trade and other receivables</b>         |                     |                     |
| Goods and services - related entities                | A 308               | 281                 |
| Goods and services - external entities               | A 93                | 147                 |
| <b>Total goods and services receivables</b>          | <u>401</u>          | <u>428</u>          |
| Appropriations receivable:                           |                     |                     |
| - for existing outputs                               | 68,200              | 56,412              |
| GST receivable from the Australian Taxation Office   | 378                 | 264                 |
| Other  | 64                  | 71                  |
| <b>Total trade and other receivables (gross)</b>     | <u>69,043</u>       | <u>57,175</u>       |
| Less impairment allowance account:                   |                     |                     |
| Goods and services                                   | -                   | (1)                 |
| <b>Total trade and other receivables (net)</b>       | <u>69,043</u>       | <u>57,174</u>       |

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|   | <b>2008-2009</b> | 2007-2008     |
|---|------------------|---------------|
|   | <b>\$'000</b>    | \$'000        |
| <b>Note 14 - Trade and other receivables (Cont)</b>   |                  |               |
| Receivables are represented by:   |                  |               |
| Current   | B <b>69,038</b>  | 57,169        |
| Non-current   | B <b>5</b>       | 5             |
| <b>Total trade and other receivables (net)</b>  | <b>69,043</b>    | <b>57,174</b> |
| A Due to a change in the interpretation of the Australian Accounting Standards, Goods and services receivables have been reclassified into related and external entities. |                  |               |
| B No Non-current receivables were disclosed in 2007-2008 in error. Correct disclosure for 2008-2009 and 2007-2008 have now been disclosed.                                |                  |               |
| Receivables are aged as follows:  |                  |               |
| Not overdue   | <b>69,009</b>    | 57,066        |
| Overdue by:   |                  |               |
| Less than 30 days   | <b>21</b>        | -             |
| 30 to 60 days   | <b>1</b>         | -             |
| 61 to 90 days   | <b>12</b>        | -             |
| More than 90 days   | -                | 109           |
| <b>Total receivables (gross)</b>  | <b>69,043</b>    | <b>57,175</b> |
| The impairment allowance account is aged as follows:  |                  |               |
| Not overdue   | -                | -             |
| Overdue by:   |                  |               |
| Less than 30 days   | -                | -             |
| 30 to 60 days   | -                | -             |
| 61 to 90 days   | -                | -             |
| More than 90 days   | -                | (1)           |
| <b>Total impairment allowance account</b>   | <b>-</b>         | <b>(1)</b>    |



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|  | <b>2008-2009</b>      | 2007-2008        |
|--|-----------------------|------------------|
|  | <b>\$'000</b>         | \$'000           |
| <b>Note 14 - Trade and other receivables (Cont)</b>        |                       |                  |
| <b>Reconciliation of the impairment allowance account:</b> |                       |                  |
|  | Goods and<br>services | Total            |
| Movements in relation to 2008-2009                         | <b>2008-2009</b>      | <b>2008-2009</b> |
|  | <b>\$'000</b>         | <b>\$'000</b>    |
| Opening balance  | (1)                   | (1)              |
| Amounts written off  | 1                     | 1                |
| Amounts recovered and reversed                             | -                     | -                |
| Increase/decrease recognised in net surplus                | -                     | -                |
| <b>Closing balance</b>                                     | <b>-</b>              | <b>-</b>         |
|  | Goods and<br>services | Total            |
| Movements in relation to 2007-2008                         | 2007-2008             | 2007-2008        |
|  | \$'000                | \$'000           |
| Opening balance  | -                     | -                |
| Amounts written off  | -                     | -                |
| Amounts recovered and reversed                             | -                     | -                |
| Increase/decrease recognised in net surplus                | (1)                   | (1)              |
| <b>Closing balance</b>                                     | <b>(1)</b>            | <b>(1)</b>       |
| <b>Note 15 - Land and buildings</b>                        |                       |                  |
| Leasehold improvements                                     |                       |                  |
| Fair value   | <b>33,537</b>         | 30,390           |
| Accumulated amortisation                                   | <b>(21,642)</b>       | (18,437)         |
| <b>Total leasehold improvements</b>                        | <b>11,895</b>         | 11,953           |
| <b>Total land and buildings (non-current)</b>              | <b>11,895</b>         | 11,953           |

No indicators of impairment were found for land and buildings.

All revaluations are conducted in accordance with the revaluation policy stated at Note 1.

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|  | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|--|---------------------|---------------------|
| <b>Note 16 - Infrastructure, plant and equipment</b>           |                     |                     |
| Infrastructure, plant and equipment                            |                     |                     |
| Computer equipment at fair value                               | 1,358               | 939                 |
| Accumulated depreciation                                       | <u>(767)</u>        | <u>(635)</u>        |
|  | 591                 | 304                 |
| Furniture at fair value  | 6,565               | 6,071               |
| Accumulated depreciation                                       | <u>(4,553)</u>      | <u>(3,978)</u>      |
|  | 2,012               | 2,093               |
| Office equipment at fair value                                 | 2,023               | 1,954               |
| Accumulated depreciation                                       | <u>(1,757)</u>      | <u>(1,588)</u>      |
|  | 266                 | 366                 |
| Artwork at fair value  | 153                 | 153                 |
| Accumulated depreciation                                       | <u>(135)</u>        | <u>(127)</u>        |
|  | 18                  | 26                  |
| Library holdings at fair value                                 | 3,169               | 3,168               |
| Accumulated depreciation                                       | <u>(1,256)</u>      | <u>(1,150)</u>      |
|  | 1,913               | 2,018               |
| Total plant and equipment                                      | <u>4,800</u>        | <u>4,807</u>        |
| <b>Total infrastructure, plant and equipment (non-current)</b> | <u><b>4,800</b></u> | <u><b>4,807</b></u> |

All revaluations are conducted in accordance with the revaluation policy stated at Note 1.

Revaluation increments of \$2.174m for leasehold improvements [\$1.524m in 2007-2008] and no revaluation movement for plant and equipment [\$0.548m decrement in 2007-2008] were credited/debited to the asset revaluation reserve by asset class and included in the equity section of the balance sheet. No decrements were expensed in either year.

No indicators of impairment were found for infrastructure, plant and equipment.

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For the year ended 30 June 2009

**Note 17 - Analysis of property, plant and equipment**

*Table A. Reconciliation of the opening and closing balances of property, plant and equipment (2008-2009)*

| Item   | Buildings-<br>Leasehold<br>Improve-<br>ments<br>\$'000 | Other<br>Infrastructure,<br>plant and<br>equipment<br>\$'000 | Total<br>\$'000 |
|--|--|--|-----------------|
| <b>As at 1 July 2008</b>                                     |  |  |                 |
| Gross book value   | 30,390   | 12,285   | 42,675          |
| Accumulated depreciation/amortisation<br>and impairment      | (18,437)   | (7,478)  | (25,915)        |
| <b>Net Book Value 1 July 2008</b>                            | <b>11,953</b>  | <b>4,807</b>   | <b>16,760</b>   |
| Additions:   |  |  |                 |
| by purchase  | 1,662  | 1,018  | 2,680           |
| Net revaluation increment/(decrement)                        | 2,175  | -  | 2,175           |
| Depreciation / amortisation expense                          | (3,895)  | (1,016)  | (4,911)         |
| Other movements  | -  | -  | -               |
| Disposals:   |  |  |                 |
| Write-offs   | -  | (1)  | (1)             |
| Other disposals  | -  | (8)  | (8)             |
| <b>Net Book Value 30 June 2009</b>                           | <b>11,895</b>  | <b>4,800</b>   | <b>16,695</b>   |
| <b>Net book value as of 30 June 2009<br/>represented by:</b> |  |  |                 |
| Gross book value   | 33,537   | 13,268   | 46,805          |
| Accumulated depreciation / amortisation<br>and impairment    | (21,642)   | (8,468)  | (30,110)        |
| <b>Net Book Value 30 June 2009</b>                           | <b>11,895</b>  | <b>4,800</b>   | <b>16,695</b>   |

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**Note 17 - Analysis of property, plant and equipment (Cont)**

*Table B. Reconciliation of the opening and closing balances of property, plant and equipment (2007-2008)*

| Item   | Buildings-<br>Leasehold<br>Improve-<br>ments<br>\$'000 | Other<br>Infrastructure,<br>plant and<br>equipment<br>\$'000 | Total<br>\$'000 |
|--|--|--|-----------------|
| <b>As at 1 July 2007</b>                                     |  |  |                 |
| Gross book value   | 23,921   | 11,432   | 35,353          |
| Accumulated depreciation/amortisation<br>and impairment      | (12,306)   | (5,579)  | (17,885)        |
| <b>Net Book Value 1 July 2007</b>                            | <b>11,615</b>  | <b>5,853</b>   | <b>17,468</b>   |
| Additions:   |  |  |                 |
| by purchase  | 1,446  | 632  | 2,078           |
| Net revaluation increment/(decrement)                        | 1,524  | (547)  | 977             |
| Depreciation / amortisation expense                          | (2,632)  | (1,049)  | (3,681)         |
| Other movements  | -  | (34)   | (34)            |
| Disposals:   |  |  |                 |
| Write-offs   | -  | (8)  | (8)             |
| Other disposals  | -  | (40)   | (40)            |
| <b>Net Book Value 30 June 2008</b>                           | <b>11,953</b>  | <b>4,807</b>   | <b>16,760</b>   |
| <b>Net book value as of 30 June 2008<br/>represented by:</b> |  |  |                 |
| Gross book value   | 30,390   | 12,285   | 42,675          |
| Accumulated depreciation / amortisation<br>and impairment    | (18,437)   | (7,478)  | (25,915)        |
| <b>Net Book Value 30 June 2008</b>                           | <b>11,953</b>  | <b>4,807</b>   | <b>16,760</b>   |

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|  | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|--|---------------------|---------------------|
| <b>Note 18 - Intangibles assets</b>    |                     |                     |
| Computer software:                     |                     |                     |
| Purchased software at cost             | 2,972               | 2,964               |
| Accumulated amortisation               | <u>(2,272)</u>      | <u>(2,106)</u>      |
|  | <u>700</u>          | <u>858</u>          |
| <b>Total intangibles (non-current)</b> | <b><u>700</u></b>   | <b><u>858</u></b>   |

No indicators of impairment were found for intangible assets

**Table C. Reconciliation of the opening and closing  
balances of intangibles (2008-2009)**

| Item   | Computer<br>software<br>purchased<br>\$'000 |
|--|---|
| <b>As at 1 July 2008</b>                                 |   |
| Gross book value   | 2,964                                       |
| Accumulated depreciation/amortisation and<br>impairment  | <u>(2,106)</u>                              |
| <b>Net Book Value 1 July 2008</b>                        | <b><u>858</u></b>                           |
| Additions:   |   |
| by purchase  | 8   |
| Amortisation   | (166)                                       |
| Other movements  | -   |
| Disposals:   |   |
| Write-offs   | -   |
| <b>Net Book Value 30 June 2009</b>                       | <b><u>700</u></b>                           |
| <b>Net book value as of 30 June 2009 represented by:</b> |   |
| Gross book value   | 2,972                                       |
| Accumulated depreciation/amortisation and<br>impairment  | <u>(2,272)</u>                              |
| <b>Net Book Value 30 June 2009</b>                       | <b><u>700</u></b>                           |

No indicators of impairment were found for intangible assets

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|   | 2008-2009<br>\$'000 | 2007-2008<br>\$'000                           |
|---|---------------------|---|
| <b>Note 18 - Intangibles assets (Cont)</b>  |                     |   |
| <i>Table D. Reconciliation of the opening and closing balances of intangibles (2007-2008)</i> |                     |   |
| <b>Item</b>   |                     | <b>Computer software purchased<br/>\$'000</b> |
| <b>As at 1 July 2007</b>  |                     |   |
| Gross book value  |                     | 2,324   |
| Accumulated depreciation/amortisation and impairment  |                     | (1,990)                                       |
| <b>Net Book Value 1 July 2007</b>   |                     | <b>334</b>                                    |
| Additions:  |                     |   |
| by purchase   |                     | 640   |
| Amortisation  |                     | (116)   |
| Other movements   |                     | -   |
| Disposals:  |                     |   |
| Write-offs  |                     | -   |
| <b>Net Book Value 30 June 2008</b>  |                     | <b>858</b>                                    |
| <b>Net book value as of 30 June 2008 represented by:</b>                                      |                     |   |
| Gross book value  |                     | 2,964   |
| Accumulated depreciation/amortisation and impairment  |                     | (2,106)                                       |
| <b>Net Book Value 30 June 2008</b>  |                     | <b>858</b>                                    |

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|   | <b>2008-2009</b> | 2007-2008 |
|---|------------------|-----------|
|   | <b>\$'000</b>    | \$'000    |
| <b>Note 19 - Other non-financial assets</b> |                  |           |
| Prepayments                                 | <b>293</b>       | 958       |
| <b>Total other non-financial assets</b>     | <b>293</b>       | 958       |

- A Due to a change in the interpretation of the Australian Accounting Standards, unpaid prepayments can no longer be recognised. Other Other non-financial assets have been restated for both 2008-2009 and 2007-2008. See Note 21.

All other non-financial assets are current assets.

No indicators of impairment were found for other non-financial assets.

**Note 20 - Suppliers**

|  |   |              |       |
|--|---|--------------|-------|
| Trade Creditors  | A | <b>1,592</b> | 2,003 |
| <b>Total supplier payables</b>                           | B | <b>1,592</b> | 2,003 |
| Supplier payables - related entities are represented by: |   |              |       |
| Current  |   | <b>50</b>    | 47    |
| Supplier payables - external parties are represented by: |   |              |       |
| Current  |   | <b>1,542</b> | 1,956 |
| <b>Total supplier payables</b>                           |   | <b>1,592</b> | 2,003 |

Settlement is usually made net 30 days.

- A Due to a change in the interpretation of the Australian Accounting Standards, an amount of \$0.068m owing to Comcare for employees in 2008-2009 has been reclassified to Other Suppliers Payables from Trade Creditors Payable. An amount of \$0.066m for 2007-2008 has been also been reclassified.

- B See Note 19.

**Note 21 - Other payables**

|                             |   |              |       |
|-----------------------------|---|--------------|-------|
| Accrued expenses            |   | <b>2,542</b> | 2,685 |
| Salaries and wages          | A | <b>740</b>   | 480   |
| Superannuation              | A | <b>1,500</b> | 1,402 |
| Other                       | A | <b>386</b>   | 329   |
| <b>Total other payables</b> |   | <b>5,168</b> | 4,896 |

All other payables are current liabilities.

- A Due to a change in the interpretation of the Australian Accounting Standards, amounts owing to employees for salaries and wages, superannuation, and separations and redundancies, and other amounts more in the nature of payables, rather than provisions, have been reclassified to Other Payables from Employee Provisions. Comparative amounts for 2007-2008 have been changed accordingly. Refer to Note 23.

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|  | <b>2008-2009</b> | 2007-2008 |
|--|------------------|-----------|
|  | <b>\$'000</b>    | \$'000    |
| <b>Note 22 - Non-interest bearing liabilities</b>    |                  |           |
| Lease incentives                                     | <b>832</b>       | 802       |
| <b>Total non-interest bearing liabilities</b>        | <b>832</b>       | 802       |
| Non-interest bearing liabilities are represented by: |                  |           |
| Current  | <b>245</b>       | 212       |
| Non-current  | <b>587</b>       | 590       |
| <b>Total non-interest bearing liabilities</b>        | <b>832</b>       | 802       |
| <b>Note 23 - Employee provisions</b>                 |                  |           |
| Leave  | A <b>13,876</b>  | 12,449    |
| <b>Total employee provisions</b>                     | B <b>13,876</b>  | 12,449    |
| Employee provisions are represented by:              |                  |           |
| Current  | <b>11,682</b>    | 10,626    |
| Non-current  | <b>2,194</b>     | 1,823     |
| <b>Total employee provisions</b>                     | <b>13,876</b>    | 12,449    |

A The classification of current employee provisions includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date is \$5,196,089 (2007-2008 \$4,402,000), in excess of one year \$11,208,619 (2007-2008 \$10 192 000).

B Due to a change in the interpretation of the Australian Accounting Standards, amounts owing to employees for salaries and wages, superannuation, and separations and redundancies, and other amounts more in the nature of payables, rather than provisions, have been reclassified to Other Payables from Employee Provisions. Comparative amounts for 2007-2008 have been changed accordingly. Refer to Note 21.



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|   | <b>2008-2009</b> | 2007-2008    |
|---|------------------|--------------|
|   | <b>\$'000</b>    | \$'000       |
| <b>Note 24 - Other provisions</b>                     |                  |              |
| Restoration obligations                               | A 2,447          | 2,048        |
| Provision for surplus office rent                     | -                | 24           |
| Provision for lease payment under straight-line basis | 2,751            | 3,311        |
| <b>Total other provisions</b>                         | <b>5,198</b>     | <b>5,383</b> |
| Other provisions are represented by:                  |                  |              |
| Current   | 183              | 24           |
| Non-current   | 5,015            | 5,359        |
|   | <b>5,198</b>     | <b>5,383</b> |

- A The CDPP currently has 15 agreements for the leasing of premises which have provisions requiring the CDPP to restore the premises to their original condition at the conclusion of the lease. The CDPP has made a provision to reflect the present value of this obligation.

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**Note 24 - Other provisions (Cont.)**

Movement Table

|                                     | Provision for<br>restoration | Provision for<br>surplus space | Provision for<br>lease<br>payment<br>under straight-<br>line basis | Total        |
|-------------------------------------|------------------------------|--------------------------------|--|--------------|
|                                     | \$'000                       | \$'000                         | \$'000   | \$'000       |
| <b>Carrying amount 1 July 2008</b>  | <b>2,048</b>                 | <b>24</b>                      | <b>3,311</b>   | <b>5,383</b> |
| Additional provisions made:         |                              |                                |  |              |
| Additions                           | 276                          | -                              | -  | 276          |
| Revaluation                         | -                            | -                              | -  |              |
| Amounts used                        | -                            | (24)                           | (560)  | (584)        |
| Change in discount rate             | 123                          | -                              | -  | 123          |
| <b>Closing balance 30 June 2009</b> | <b>2,447</b>                 | <b>-</b>                       | <b>2,751</b>   | <b>5,198</b> |

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|  | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|--|---------------------|---------------------|
| <b>Note 25 - Cash flow reconciliation</b>  |                     |                     |
| <b>Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement</b> |                     |                     |
| <b>Report cash and cash equivalents as per:</b>  |                     |                     |
| Cash flow statement  | 230                 | 1,664               |
| Balance sheet  | 230                 | 1,664               |
| <b>Reconciliation of operating result to net cash from operating activities:</b>               |                     |                     |
| Operating result   | 6,369               | 13,391              |
| Depreciation /amortisation   | 5,077               | 3,797               |
| Loss on disposal of assets   | 8                   | 34                  |
| Net write-down of non-financial assets   | 1                   | 8                   |
| (Increase) / decrease in net receivables   | (11,869)            | (13,970)            |
| (Increase) / decrease in prepayments   | 664                 | (562)               |
| Increase / (decrease) in incentives  | 30                  | (212)               |
| Increase / (decrease) in employee provisions   | 1,426               | 579                 |
| Increase / (decrease) in supplier payables   | (961)               | 541                 |
| Increase (decrease) in other payables  | 240                 | 511                 |
| Increase / (decrease) in other provisions  | (185)               | 534                 |
| <b>Net cash from / (used by) operating activities</b>  | <b>800</b>          | <b>4,651</b>        |

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**Note 26 – Contingent liabilities and assets**

**Quantifiable contingencies**

The Schedule of Contingencies reports contingent asset in respect of claims for damages/costs of \$68,646 (2007-2008: \$137,291). The CDPP is expecting to lodge a claim with Comcover. The estimate is based on the current claim from other party.

The Schedule also reports contingent liabilities in respect of claims for damages/costs of \$555,488 (2007-2008: \$442,800). The amount represents an estimate of the CDPP's liability based on precedent cases. The CDPP is defending the claims.

**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.

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|  | 2008-2009       | 2007-2008     |
|--|-----------------|---------------|
| <b>Note 27 - Senior executive remuneration</b>   |                 |               |
| The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:   | <b>Number</b>   | Number        |
| \$130,000 to \$144,999   | -               | 5             |
| \$145,000 to \$159,999   | 2               | 4             |
| \$160,000 to \$174,999   | 2               | 7             |
| \$175,000 to \$189,999   | 11              | 14            |
| \$190,000 to \$204,999   | 14              | 11            |
| \$205,000 to \$219,999   | 8               | 2             |
| \$220,000 to \$234,999   | 4               | 1             |
| \$235,000 to \$249,999   | 2               | 3             |
| \$250,000 to \$264,999   | 2               | -             |
| \$265,000 to \$279,999   | 1               | 1             |
| \$280,000 to \$294,999   | 1               | -             |
| \$295,000 to \$309,999   | 1               | 1             |
| \$325,000 to \$339,999   | -               | 1             |
| \$430,000 to \$444,999   | 1               | -             |
|  | <b>49</b>       | <b>50</b>     |
|  | <b>\$'000</b>   | <b>\$'000</b> |
| The aggregate amount of total remuneration of senior executives shown above.   | A <b>10,362</b> | 9,529         |
| A Total remuneration consists of all consideration paid, payable or provided by, or on behalf of, CDPP in exchange for services rendered, and includes wages, salaries, paid annual and long service leave, superannuation, and non-monetary benefits such as the provision of parking, mobile phones, FBT, relocation and housing expenses. |                 |               |
| The aggregate amount of separation and redundancy/ termination benefit payments during the year to executives shown above.   | <b>Nil</b>      | Nil           |

**Note 28 - Remuneration of auditors**

Financial statement audit services are provided free of charge to the CDPP.

|  |           |     |
|--|-----------|-----|
| The fair value of services provided was: | <b>80</b> | 106 |
| <b>Total</b>                             | <b>80</b> | 106 |

No other services were provided by the Auditor-General.

**Note 29 - Average staffing level**

|   | Number     | Number |
|---|------------|--------|
| The average full-time equivalent staffing level during each year was: | <b>622</b> | 556    |

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For the year ended 30 June 2009

|  | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
|--|---------------------|---------------------|
| <b>Note 30 - Financial instruments</b>   |                     |                     |
| <b>(a) Categories of financial instruments</b>   |                     |                     |
| <b>Loans and receivables</b>   |                     |                     |
| Cash and cash equivalent   | 230                 | 1,664               |
| Trade receivables  | 401                 | 428                 |
| <b>Carrying amount of financial assets</b>   | <b>631</b>          | <b>2,092</b>        |
| <b>Financial Liabilities</b>   |                     |                     |
| Payables - suppliers   | 1,592               | 2,003               |
| Other payables   | 5,168               | 4,896               |
| Non-interest bearing liabilities   | 832                 | 802                 |
| <b>Carrying amount of financial liabilities</b>  | <b>7,592</b>        | <b>7,701</b>        |
| <b>(b) Net income and expense from financial assets</b>  |                     |                     |
| <b>Loans and receivables</b>   |                     |                     |
| Interest revenue   | -                   | -                   |
| <b>Net gain/(loss) from financial assets</b>   | <b>-</b>            | <b>-</b>            |
| <i>There is no interest income from financial assets not at fair value through profit or loss in the year ending 2009.</i>       |                     |                     |
| <b>(c) Net income and expense from financial liabilities</b>   |                     |                     |
| <b>Other liabilities</b>   |                     |                     |
| Interest expense   | -                   | -                   |
| <b>Net gain/(loss) from financial liabilities</b>  | <b>-</b>            | <b>-</b>            |
| <i>There is no interest expense from financial liabilities not at fair value through profit or loss in the year ending 2009.</i> |                     |                     |

**(d) Credit risk**

The CDPP is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The CDPP has policies and procedures that guide debt recovery techniques that are to be applied. The CDPP holds no collateral to mitigate against credit risk. Credit quality of financial instruments not past due or individually determined as impaired.

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For the year ended 30 June 2009

**Note 30 - Financial instruments (cont)**

**(d) Credit risk**

|                              | <b>2008-2009</b>                         | 2007-2008                    | <b>2008-2009</b>                | 2007-2008               |
|------------------------------|--|------------------------------|---------------------------------|-------------------------|
|                              | <b>Not Past<br/>Due Nor<br/>Impaired</b> | Not Past Due<br>Nor Impaired | <b>Past due or<br/>impaired</b> | Past due or<br>impaired |
|                              | <b>\$'000</b>                            | \$'000                       | <b>\$'000</b>                   | \$'000                  |
| <b>Loans and receivables</b> |  |                              |                                 |                         |
| Cash and cash equivalents    | 230                                      | 1,664                        | -                               | -                       |
| Trade receivables            | 367                                      | 319                          | 34                              | 109                     |
| <b>Total</b>                 | <b>597</b>                               | <b>1,983</b>                 | <b>34</b>                       | <b>109</b>              |

Ageing of financial assets that are past due but not impaired for 2009.

|                              | <b>2008-2009</b> | 2007-2008  |
|------------------------------|------------------|------------|
|                              | <b>\$'000</b>    | \$'000     |
| <b>Loans and receivables</b> |                  |            |
| Trade receivables            |                  |            |
| 0 to 30 days                 | 21               | -          |
| 31 to 60 days                | 1                | -          |
| 61 to 90 days                | 12               | -          |
| Over 90 days                 | -                | 109        |
| <b>Total</b>                 | <b>34</b>        | <b>109</b> |

**(e) Liquidity risk**

The CDPP's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the CDPP will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the CDPP (eg. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

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For the year ended 30 June 2009

**Note 30 - Financial instruments (cont)**

**(e) Liquidity risk (cont)**

The following tables illustrates the maturities for financial liabilities:

| Financial Instrument     | On demand           |                     | within 1 year       |                     | 1 to 5 years        |                     | > 5 years           |                     | Total               |                     |
|--------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
|                          | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 | 2008-2009<br>\$'000 | 2007-2008<br>\$'000 |
| <b>Other Liabilities</b> |                     |                     |                     |                     |                     |                     |                     |                     |                     |                     |
| Payables - Suppliers     | -                   | -                   | 1,592               | 2,003               | -                   | -                   | -                   | -                   | 1,592               | 2,003               |
| <b>Total</b>             | -                   | -                   | <b>1,592</b>        | <b>2,003</b>        | -                   | -                   | -                   | -                   | <b>1,592</b>        | <b>2,003</b>        |

The CDPP is appropriated funding from the Australian Government. The CDPP manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the CDPP has policies in place to ensure timely payments are made when due and has no past experience of default.

**(f) Market risk**

The CDPP holds basic financial instruments that do not expose the CDPP to certain market risks. The CDPP is not exposed 'Currency risk' or 'Other price risk'.

**Interest Rate Risk**

The CDPP does not have any interest-bearing items on the balance sheet. The CDPP is not exposed interest rate risk.



| OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS<br>NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS<br>For the year ended 30 June 2009 |                  |                  |
|---|------------------|------------------|
|   | 2008-2009<br>\$  | 2007-2008<br>\$  |
| <b>Note 31 - Administered fees and fines revenue</b>  |                  |                  |
| Fines and Costs   | 5,486,603        | 4,879,095        |
| <b>Total administered fees and fines revenue</b>  | <b>5,486,603</b> | <b>4,879,095</b> |
| <b>Note 32 - Administered other revenue</b>   |                  |                  |
| Other   | 850              | -                |
| <b>Total administered other revenues</b>  | <b>850</b>       | <b>-</b>         |
| <b>Note 33 - Reversal of previous administered asset write-downs</b>  |                  |                  |
| Reinstate receivable previously written-off   | 302,296          | 272,274          |
| <b>Total reversal of previous administered asset write-downs</b>  | <b>302,296</b>   | <b>272,274</b>   |
| <b>Note 34 - Write-down of administered assets</b>  |                  |                  |
| Financial Assets  |                  |                  |
| Write-off   | 6,069,396        | 11,922,392       |
| Prison sentence   | 36,198           | 251,786          |
| Community service orders  | 45,617           | 35,231           |
| Received by other agencies  | 70,600           | 94,739           |
| (Decrease) Increase in provision for doubtful debts   | (3,174,168)      | (9,872,901)      |
| <b>Total write-down of administered assets</b>  | <b>3,047,643</b> | <b>2,431,247</b> |
| <b>Note 35 - Administered cash</b>  |                  |                  |
| Cash and Cash Equivalents   | 932              | -                |
| <b>Total cash and cash equivalents</b>  | <b>932</b>       | <b>-</b>         |

| <b>OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS</b>  |                     |              |
|---|---------------------|--------------|
| <b>NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS</b>  |                     |              |
| For the year ended 30 June 2009   |                     |              |
|   | <b>2008-2009</b>    | 2007-2008    |
|   | \$                  | \$           |
| <b>Note 36 - Administered receivables</b>   |                     |              |
| Fines and Costs   | <b>8,561,306</b>    | 11,260,725   |
| Less : Impairment allowance account   | <b>(7,021,551)</b>  | (10,195,719) |
| <b>Total receivables (net)</b>  | <b>1,539,755</b>    | 1,065,006    |
| Fines and costs receivable (gross) are aged as follows:   |                     |              |
| Not overdue   | <b>375,201</b>      | 879,126      |
| Overdue by:   |                     |              |
| Less than 30 days   | <b>369,013</b>      | 236,935      |
| 30 to 60 days   | <b>290,322</b>      | 274,910      |
| 61 to 90 days   | <b>231,611</b>      | 1,997,066    |
| More than 90 days   | <b>7,295,159</b>    | 7,872,688    |
| <b>Total receivable (gross)</b>   | <b>8,561,306</b>    | 11,260,725   |
| Fines and costs receivables are with entities external to the Australian Government. Credit terms are net 30 days (2007-2008: 30 days). |                     |              |
| The impairment allowance account is aged as follows:  |                     |              |
| Not overdue   | <b>(220,917)</b>    | -            |
| Overdue by:   |                     |              |
| Less than 30 days   | <b>(156,049)</b>    | (362,591)    |
| 30 to 60 days   | <b>(135,889)</b>    | (263,089)    |
| 61 to 90 days   | <b>(162,128)</b>    | (176,459)    |
| More than 90 days   | <b>(6,346,568)</b>  | (9,393,580)  |
| <b>Total impairment allowance account</b>   | <b>(7,021,551)</b>  | (10,195,719) |
| Reconciliation of the impairment allowance account  |                     |              |
| Opening balance   | <b>(10,195,719)</b> | (20,068,620) |
| Increase/decrease recognised in net surplus   | <b>3,174,168</b>    | 9,872,901    |
| Closing balance   | <b>(7,021,551)</b>  | (10,195,719) |
| <b>Note 37 - Administered payables</b>  |                     |              |
| Other payables  | <b>4,920</b>        | 5,645        |
| <b>Total administered payables</b>  | <b>4,920</b>        | 5,645        |
| All payables are entities that are not part of the Australian Government. Settlement is usually made net 30 days.                       |                     |              |

| <b>OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS</b>                                  |                    |             |
|---|--------------------|-------------|
| <b>NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS</b>                          |                    |             |
| For the year ended 30 June 2009   |                    |             |
|   | <b>2008-2009</b>   | 2007-2008   |
|   | \$                 | \$          |
| <b>Note 38 - Administered reconciliation table</b>                                    |                    |             |
| <b><i>Opening administered assets less administered liabilities as at 1 July</i></b>  | <b>1,059,361</b>   | 1,015,550   |
| Plus: Administered revenues   | <b>5,789,750</b>   | 5,151,369   |
| Less: Administered expenses   | <b>(3,047,643)</b> | (2,431,247) |
| Administered transfers to/from Australian Government:                                 |                    |             |
| Less: Transfers to OPA  | <b>(2,315,635)</b> | (2,717,883) |
| Plus: Transfers from OPA  | <b>49,934</b>      | 41,572      |
| <b><i>Closing administered assets less administered liabilities as at 30 June</i></b> | <b>1,535,767</b>   | 1,059,361   |

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the period ended 30 June 2009

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**Note 39 – Administered contingent liabilities and 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.

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 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.

| OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS  |            |           |
|--|------------|-----------|
| NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  |            |           |
| For the year ended 30 June 2009  |            |           |
|  | 2008-2009  | 2007-2008 |
|  | \$         | \$        |
| <b>Note 40 Administered financial instruments</b>  |            |           |
| The administered assets and liabilities of the CDPP, other than cash, do not constitute as financial instruments.  |            |           |
| <b><u>(a) Categories of financial instruments</u></b>  |            |           |
| <b>Loans and receivables</b>   |            |           |
| Cash and cash equivalent   | 932        | -         |
| <b>Carrying amount of financial assets</b>   | <b>932</b> | <b>-</b>  |
| <b>Financial Liabilities</b>   |            |           |
| Nil  | -          | -         |
| <b>Carrying amount of financial liabilities</b>  | <b>-</b>   | <b>-</b>  |
| <b><u>(b) Net income and expense from financial assets</u></b>   |            |           |
| <b>Loans and receivables</b>   |            |           |
| Nil  | -          | -         |
| <b>Net gain/(loss) from financial assets</b>   | <b>-</b>   | <b>-</b>  |
| <i>There is no interest income from financial assets not at fair value through profit or loss in the year ending 2009.</i>   |            |           |
| <b><u>(c) Net income and expense from financial liabilities</u></b>  |            |           |
| <b>Other liabilities</b>   |            |           |
| Nil  | -          | -         |
| <b>Net gain/(loss) from financial liabilities</b>  | <b>-</b>   | <b>-</b>  |
| <i>There is no interest expense from financial liabilities not at fair value through profit or loss in the year ending 2009.</i>   |            |           |
| <b><u>(d) Credit risk</u></b>  |            |           |
| The CDPP is exposed to minimal credit risk as loans and receivables are cash. CDPP holds no collateral to mitigate against credit risk. Credit quality of financial instruments not past due or individually determined as impaired. |            |           |

| <b>OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS</b>                    |  |                              |                                 |                         |
|---|--|------------------------------|---------------------------------|-------------------------|
| <b>NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS</b>            |  |                              |                                 |                         |
| For the year ended 30 June 2009   |  |                              |                                 |                         |
| <b>Note 40 - Administered financial instruments (cont)</b>              |  |                              |                                 |                         |
| <b>(d) Credit risk</b>  |  |                              |                                 |                         |
|   | <b>2008-2009</b>                         | 2007-2008                    | <b>2008-2009</b>                | 2007-2008               |
|   | <b>Not Past<br/>Due Nor<br/>Impaired</b> | Not Past Due<br>Nor Impaired | <b>Past due or<br/>impaired</b> | Past due or<br>impaired |
|   | \$                                       | \$                           | \$                              | \$                      |
| <b>Loans and receivables</b>  |  |                              |                                 |                         |
| Cash and cash equivalents   | <b>932</b>                               | -                            | -                               | -                       |
| <b>Total</b>  | <b>932</b>                               | -                            | -                               | -                       |
| Ageing of financial assets that are past due but not impaired for 2009. |  |                              |                                 |                         |
|   |  |                              | <b>2008-2009</b>                | 2007-2008               |
|   |  |                              | \$                              | \$                      |
| <b>Loans and receivables</b>  |  |                              |                                 |                         |
| Nil   |  |                              | -                               | -                       |
| <b>Total</b>  |  |                              | -                               | -                       |
| <b>(e) Liquidity risk</b>   |  |                              |                                 |                         |
| The CDPP does not have any administered financial liabilities.          |  |                              |                                 |                         |

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

For the year ended 30 June 2009

**Note 40 - Administered financial instruments (cont)**

**(e) Liquidity risk (cont)**

The following tables illustrates the maturities for financial liabilities:

| Financial Instrument     | On demand |           | within 1 year |           | 1 to 5 years |           | > 5 years |           | Total |
|--------------------------|-----------|-----------|---------------|-----------|--------------|-----------|-----------|-----------|-------|
|                          | 2008-2009 | 2007-2008 | 2008-2009     | 2007-2008 | 2008-2009    | 2007-2008 | 2008-2009 | 2007-2008 |       |
| <b>Other Liabilities</b> |           |           |               |           |              |           |           |           |       |
| N/A                      | \$ -      | \$ -      | \$ -          | \$ -      | \$ -         | \$ -      | \$ -      | \$ -      | \$ -  |
| <b>Total</b>             | \$ -      | \$ -      | \$ -          | \$ -      | \$ -         | \$ -      | \$ -      | \$ -      | \$ -  |

The CDPP is appropriated funding from the Australian Government. The CDPP manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the CDPP has policies in place to ensure timely payments are made when due and has no past experience of default.

**(f) Market risk**

The CDPP holds basic financial instruments that do not expose the CDPP to certain market risks. The CDPP is not exposed 'Currency risk' or 'Other price risk'.

**Interest Rate Risk**

The CDPP does not have any interest-bearing items on the administered balance sheet. The CDPP is not exposed interest rate risk.

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**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2009

|   | 2008-2009<br>\$'000  | 2007-2008<br>\$'000  |
|---|----------------------|----------------------|
| <b>Note 41 - Appropriations</b>   |                      |                      |
| <b>Table A: Acquittal of authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations</b>      |                      |                      |
| Balance carried from previous period  | 58,167               | 42,939               |
| Appropriations Acts:  |                      |                      |
| <i>Appropriations Act (No. 1) 2008-2009</i>   | 107,356              | 104,862              |
| <i>Appropriations Act (No. 3) 2008-2009</i>   | -                    | 898                  |
| Reductions:   |                      |                      |
| Departmental appropriations reduced<br>( <i>Appropriation Act s.10</i> )  | (573)                | (3,512)              |
| FMA Act:  |                      |                      |
| Repayments to the Commonwealth ( <i>FMA Act s.30</i> )  | 504                  | 444                  |
| Appropriations to take account of recoverable<br>GST ( <i>FMA Act s.30A</i> )   | 3,874                | 3,443                |
| Relevant agency receipts ( <i>FMA Act s.31</i> )  | 5,554                | 2,696                |
| Total appropriations available for payments   | <u>174,882</u>       | <u>151,770</u>       |
| Cash payments made during the year (GST inclusive)  | <u>106,074</u>       | <u>93,603</u>        |
| Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and as represented by: | <u>68,808</u>        | <u>58,167</u>        |
| Cash at bank and on hand  | 230                  | 1,664                |
| Departmental appropriations receivable  | 68,200               | 56,412               |
| GST receivable from the ATO   | 378                  | 91                   |
| <b>Total</b>  | <u><u>68,808</u></u> | <u><u>58,167</u></u> |



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**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2009

| <b>2008-2009</b> | 2007-2008 |
|------------------|-----------|
| <b>\$'000</b>    | \$'000    |

**Note 41 - Appropriations (Cont)**

**Table B: Acquittal of authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations**

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

**Table C: Acquittal of authority to Draw Cash from the Consolidated Revenue Fund - Special Appropriations (Refund Provisions)**

***Financial Management and Accountability Act 1997 - Section 28***

Purpose: A section to allow for the expenditure of amounts the Commonwealth is legally required to pay, but for which there is no other appropriation.

All transactions under this Act are recognised as administered items.

|   |            |     |
|---|------------|-----|
| Cash payments made during the year          | <b>50</b>  | 42  |
| <i>Budget estimate (FMA Act section 28)</i> | <b>250</b> | 250 |

Note: Cash payments made are refunds of amounts paid to the CDPP in error.

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**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2009

| 2008-2009 | 2007-2008 |
|-----------|-----------|
| \$'000    | \$'000    |

**Note 42 - Special accounts**

**A. Other Trust Monies Special Account**

Legal authority - *Financial Management and Accountability Act 1997*; s20

Purpose - (a) for expenditure of moneys temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth, and (b) to credit another Special Account to which amounts held on trust or otherwise for the benefit of a person other than the Commonwealth may be credited.

This account is non-interest bearing.

**(i) Administered Component**

There were no transactions during either year.

**(ii) Comcare Component (Departmental)**

There were no transactions during either year.

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

Legal authority - *Financial Management and Accountability Act 1997*; s20

Purpose - (a) for expenditure for expenditure in connection with services performed on behalf of other Governments and bodies that are not Agencies under the FMA Act, and (b) to credit another Special Account to which amounts held on trust or otherwise for the benefit of a person other than the Commonwealth may be credited.

This account is non-interest bearing.

There were no transactions during either year.

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For the year ended 30 June 2009

|  | <b>2008-2009</b> | 2007-2008 |
|--|------------------|-----------|
|  | <b>\$'000</b>    | \$'000    |
| <b>Note 43 - Compensation and debt relief</b>  |                  |           |
| <b>Departmental</b>  |                  |           |
| No payments were made under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme. (2007-2008: No payments made) | <b>Nil</b>       | Nil       |
| No payments were made under s73 of the <i>Public Service Act 1999</i> during the reporting period (2007-2008: No payments made)            | <b>Nil</b>       | Nil       |
| Total  | <u>-</u>         | <u>-</u>  |

|   | <b>2008-2009</b> | 2007-2008 |
|---|------------------|-----------|
|   | <b>\$</b>        | \$        |
| <b>Administered</b>   |                  |           |
| No 'Act of Grace' expenses were incurred during the reporting period. (2007-2008: No payments made)   | <b>Nil</b>       | Nil       |
| No waivers of amount owing to the Australian Government were made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> . (2007-2008: No payments made) | <b>Nil</b>       | Nil       |
| No ex-gratia payments were provided for during the reporting period. (2007-2008: No payments made)  | <b>Nil</b>       | Nil       |
| Total   | <u>-</u>         | <u>-</u>  |

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**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2009

2008-2009      2007-2008  
 \$'000            \$'000

**Note 44 - Reporting of outcomes**

**(a) Net Cost of Outcome Delivery**

The CDPP has only one outcome. Therefore no attribution is required.

|   | <b>Outcome 1</b> |        |
|---|------------------|--------|
| <b>Expenses</b>                           |                  |        |
| Administered                              | <b>3,048</b>     | 2,431  |
| Departmental                              | <b>103,042</b>   | 91,344 |
| <b>Total expenses</b>                     | <b>106,090</b>   | 93,775 |
| <b>Other external revenues</b>            |                  |        |
| Administered                              |                  |        |
| Fee and fines                             | <b>5,487</b>     | 4,879  |
| Other administered revenue                | <b>1</b>         | -      |
| Reversal of previous asset write-downs    | <b>302</b>       | 272    |
| <b>Total Administered</b>                 | <b>5,790</b>     | 5,151  |
| Departmental                              |                  |        |
| Goods and services revenue                | <b>2,099</b>     | 1,346  |
| Gains from disposal of assets             | <b>-</b>         | -      |
| Other revenues                            | <b>398</b>       | 384    |
| Other gains                               | <b>131</b>       | 208    |
| <b>Total Departmental</b>                 | <b>2,628</b>     | 1,938  |
| <b>Total other external revenues</b>      | <b>8,418</b>     | 7,089  |
| <b>Net cost/(contribution) of outcome</b> | <b>97,672</b>    | 86,686 |

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget Outcome.

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**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2009

|  | 2008-2009 | 2007-2008 |
|--|-----------|-----------|
|  | \$'000    | \$'000    |

**Note 44 - Reporting of outcomes (Cont)**

**(b) Major Classes of Departmental Revenues & Expenses by Output Groups and Outputs**

The CDPP has only one output.

|                                    | Outcome 1      | Output 1       |
|------------------------------------|----------------|----------------|
| <b>Departmental expenses</b>       |                |                |
| Employees                          | 59,553         | 52,518         |
| Suppliers                          | 37,681         | 34,052         |
| Depreciation and amortisation      | 5,077          | 3,797          |
| Other expenses                     | 731            | 977            |
| <b>Total departmental expenses</b> | <b>103,042</b> | <b>91,344</b>  |
| <b>Funded by:</b>                  |                |                |
| Revenues from government           | 106,783        | 102,797        |
| Sales of goods and services        | 2,099          | 1,346          |
| Other non-taxation revenues        | 529            | 592            |
| <b>Total departmental revenues</b> | <b>109,411</b> | <b>104,735</b> |
|                                    | 2008-2009      | 2007-2008      |
|                                    | \$'000         | \$'000         |

**(c) Major Classes of Departmental Assets and Liabilities by Outcomes**

|                                       | Outcome 1     |               |
|---------------------------------------|---------------|---------------|
| <b>Departmental assets</b>            |               |               |
| Cash                                  | 230           | 1,664         |
| Receivables                           | 69,043        | 57,174        |
| Land and buildings                    | 11,895        | 11,953        |
| Infrastructure, plant and equipment   | 4,800         | 4,807         |
| Intangibles                           | 700           | 858           |
| Other non-financial assets            | 293           | 958           |
| <b>Total departmental assets</b>      | <b>86,961</b> | <b>77,414</b> |
| <b>Departmental liabilities</b>       |               |               |
| Suppliers                             | 1,592         | 2,003         |
| Other payables                        | 5,168         | 4,896         |
| Non-interest bearing liabilities      | 832           | 802           |
| Employee provisions                   | 13,876        | 12,449        |
| Other provisions                      | 5,198         | 5,383         |
| <b>Total departmental liabilities</b> | <b>26,666</b> | <b>25,533</b> |

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 NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
 For the year ended 30 June 2009

2008-2009      2007-2008  
 \$'000      \$'000

**Note 44 - Reporting of outcomes (Cont)**

**(d) Major Classes of Administered Revenues, Expenses,  
 Assets and Liabilities by Outcomes**

|                                    | Outcome 1    |              |
|------------------------------------|--------------|--------------|
| <b>Administered Revenues</b>       |              |              |
| Fees and Fines                     | 5,487        | 4,879        |
| Other administered revenues        | 1            | -            |
| Other non-taxation revenues        | 302          | 272          |
| <b>Total administered income</b>   | <b>5,790</b> | <b>5,151</b> |
| <b>Administered Expenses</b>       |              |              |
| Write-down of assets               | 3,048        | 2,431        |
| <b>Total Administered Expenses</b> | <b>3,048</b> | <b>2,431</b> |
| <b>Administered Assets</b>         |              |              |
| Cash                               | 1            | -            |
| Receivables                        | 1,540        | 1,065        |
| <b>Total administered income</b>   | <b>1,541</b> | <b>1,065</b> |
| <b>Administered Liabilities</b>    |              |              |
| Payables                           | 5            | 6            |
| <b>Total Administered Expenses</b> | <b>5</b>     | <b>6</b>     |



# Acronyms & Abbreviations

|                     |  |
|---------------------|--|
| <b>ABN</b>          | Australian Business Number   |
| <b>ABS</b>          | Australian Bureau of Statistics  |
| <b>ABS team</b>     | Australian Border Security team  |
| <b>ACC</b>          | Australian Crime Commission  |
| <b>ACC Act</b>      | <i>Australian Crime Commission Act 2002 (Cth)</i>  |
| <b>ACCC</b>         | Australian Competition and Consumer Commission   |
| <b>ACS</b>          | Australian Customs Service (former) or Australian Customs and Border Protection Service          |
| <b>ACS officers</b> | Australian Customs Service officers or Australian Customs and Border Protection Service officers |
| <b>AEC</b>          | Australian Electoral Commission  |
| <b>AFMA</b>         | Australian Fisheries Management Authority  |
| <b>AFP</b>          | Australian Federal Police  |
| <b>AFZ</b>          | Australian Fishing Zone  |
| <b>AISBL</b>        | Australian/Indonesian Seabed Boundary Line   |
| <b>AME</b>          | Aircraft Maintenance Engineer  |
| <b>AMSA</b>         | Australian Maritime Safety Authority   |
| <b>APS</b>          | Australian Public Service  |
| <b>AQIS</b>         | Australian Quarantine and Inspection Service   |
| <b>ASIC</b>         | Australian Securities and Investments Commission   |
| <b>ASIC Act</b>     | <i>Australian Securities and Investments Commission Act 2001 (Cth)</i>                           |



|                                |   |
|--------------------------------|---|
| <b>ASIO</b>                    | Australian Security Intelligence Organisation                     |
| <b>ASX</b>                     | Australian Stock Exchange   |
| <b>ATO</b>                     | Australian Taxation Office  |
| <b>ATSIC</b>                   | Aboriginal and Torres Strait Islander Commission (former)         |
| <b>AUSTRAC</b>                 | Australian Transaction Reports and Analysis Centre                |
| <b>AWA</b>                     | Australian Workplace Agreement                                    |
| <b>BAS</b>                     | Business Activity Statement                                       |
| <b>CARS</b>                    | Criminal Assets Recording System                                  |
| <b>CASA</b>                    | Civil Aviation Safety Authority                                   |
| <b>CCB</b>                     | Child Care Benefit  |
| <b>CDPP</b>                    | Commonwealth Director of Public Prosecutions                      |
| <b>CITES</b>                   | Convention on International Trade in Endangered Species           |
| <b>COAG</b>                    | Council of Australian Governments                                 |
| <b><i>Corporations Act</i></b> | <i>Corporations Act 2001</i> (Cth)                                |
| <b>CPG</b>                     | Commonwealth Procurement Guideline                                |
| <b><i>Criminal Code</i></b>    | <i>Commonwealth Criminal Code (Criminal Code Act 1995)</i> (Cth)) |
| <b><i>Crimes Act</i></b>       | <i>Crimes Act 1914</i> (Cth)                                      |
| <b>CRIMS</b>                   | Case Reporting and Information Management System                  |
| <b><i>CSB Act</i></b>          | <i>Crimes (Superannuation Benefits) Act 1989</i> (Cth)            |
| <b><i>Customs Act</i></b>      | <i>Customs Act 1901</i> (Cth)                                     |

|                                  |  |
|----------------------------------|--|
| <b>Defendant</b>                 | a person who has been charged with an offence              |
| <b>DEWHA</b>                     | Department of Environment, Water, Heritage and the Arts    |
| <b>DEWR</b>                      | Department of Employment and Workplace Relations (former)  |
| <b>DPP</b>                       | Director of Public Prosecutions                            |
| <b><i>DPP Act</i></b>            | <i>Director of Public Prosecutions Act 1983</i> (Cth)      |
| <b>EAP</b>                       | Employee Assistance Program                                |
| <b>EEO</b>                       | Equal Employment Opportunity                               |
| <b>ESS</b>                       | Employee Self Service Scheme                               |
| <b>EWP</b>                       | Employee Wellbeing Program                                 |
| <b>FAO</b>                       | Family Assistance Office                                   |
| <b>GBRMPA</b>                    | Great Barrier Reef Marine Park Authority                   |
| <b>GST</b>                       | Goods and Services Tax                                     |
| <b>HOCOLEA</b>                   | Heads of Commonwealth Law Enforcement Agencies             |
| <b>HR</b>                        | Human Resource   |
| <b>HSMA</b>                      | Health and Safety Management Arrangement                   |
| <b>IT</b>                        | Information Technology                                     |
| <b>ITSA</b>                      | Insolvency and Trustee Service Australia                   |
| <b>LAME</b>                      | Licensed Aircraft Maintenance Engineer                     |
| <b>LSS</b>                       | Litigation Support System                                  |
| <b>MDMA</b>                      | methylenedioxymethamphetamine (otherwise known as ecstasy) |
| <b>NOPSA</b>                     | National Offshore Petroleum Safety Authority               |
| <b>PBS</b>                       | Pharmaceutical Benefit Scheme                              |
| <b><i>POC Act 1987</i></b>       | <i>Proceeds of Crime Act 1987</i> (Cth)                    |
| <b><i>POC Act 2002</i></b>       | <i>Proceeds of Crime Act 2002</i> (Cth)                    |
| <b>PPO</b>                       | Pecuniary Penalty Order                                    |
| <b><i>Prosecution Policy</i></b> | <i>Prosecution Policy of the Commonwealth</i>              |
| <b>RAAF</b>                      | Royal Australian Air Force                                 |
| <b>SES</b>                       | Senior Executive Service                                   |
| <b>SKSA</b>                      | Sydney Kingsford Smith Airport                             |

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