



Commonwealth  
Director of Public  
Prosecutions



# Annual Report

2011 – 2012





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Commonwealth  
Director of Public  
Prosecutions

10 October 2012

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 2012, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'J. Jolliffe'.

JAMES JOLLIFFE

*A/g Commonwealth Director of Public Prosecutions*



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## *Compliance Statement*

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

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

The Report has been prepared in accordance with the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* issued on 28 June 2012 by the Department of the Prime Minister and Cabinet.

As aids to access, the Report includes a table of contents, glossaries referred to as ‘Acronyms and Abbreviations’ and ‘Legislation Abbreviations’, and an alphabetical index.

Anyone interested in knowing more about the CDPP should have regards 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 at CDPP Head Office on (02) 6206 5606.





## Director's Overview

This Annual Report coincides with the conclusion of my term as Commonwealth Director of Public Prosecutions.

There have been many notable achievements by the Office over the past 5 years. These have included the significant number of convictions obtained in several major terrorism trials before juries in Sydney and Melbourne. We also undertook a prosecution that was unprecedented and important for the justice system in the prosecution of a senior law enforcement official in NSW who was tried and convicted at trial for offences related to a major drug importation conspiracy and for perverting the course of justice.

There have been successful prosecutions in money laundering and in other developing areas, such as child exploitation, sexual servitude and people smuggling. These prosecutions have been undertaken whilst the Office continued its long-standing commitment to the vigorous and effective prosecution of drug-trafficking and all categories of fraud, including taxation fraud. The latter has been an important contribution to the success of Operation Wickenby and a particular subject of my own professional interest and commitment.

We have contributed practical insights to law reform and to significant policy initiatives of the Commonwealth – such as the Commonwealth Organised Crime Strategic Framework and in the development of other important policies, including the Victims of Crime Policy.

A number of highly controversial and sensitive matters have arisen from time to time within the remit of the Office during my term as Director, not least of all in the past year. These matters have in every instance been handled with professional detachment by the Office and in a manner consistent with both the interests of the Australian community and in accord with the independence of the Office.

I take considerable satisfaction in these and the many other achievements of the Office and am particularly admiring of the service of the officers who have worked alongside me in our joint endeavours in the provision of a fair and effective prosecution service for the people of our Commonwealth. I commend and thank my Deputies and all of the legal and support staff across Australia for the dedication and skill they have exhibited throughout my term.



I express my thanks for the support of each Attorney-General alongside whom I have worked. I thank the Attorney-General, the Honourable Nicola Roxon MP and the Honourable Jason Clare MP Minister for Home Affairs, Minister for Justice, Minister for Defence Materiel for their ongoing support for the Office.

I have enjoyed productive relationships with the past, and current, Commissioner of the AFP, Commissioner Tony Negus, and with the heads of each of the many agencies with whom the CDPP works on a daily basis. I thank them all for the respect that has been demonstrated for the CDPP's independent role and for the assistance and support that has been provided to the Office.

This year the CDPP received briefs of evidence from 43 Commonwealth, State and Territory investigative agencies. I would like to acknowledge the important contribution made to Commonwealth law enforcement and regulatory activity by these agencies. May I again thank all referring agencies for their cooperation and effort as they investigate alleged offences and refer matters to the CDPP and support their prosecution.

Prosecuting in accordance with the *Prosecution Policy of the Commonwealth* is important, sensitive work and it is a responsibility that we are charged with on behalf of the community. The provision of an ethical, high quality and independent prosecution service for Australia is vital.

In previous overviews I have referred to the challenges posed by the continuing need for adaptation to the budgetary environment facing the public sector and declines in the CDPP's appropriation. It remains vitally important that the CDPP is adequately funded in order to carry out this work on behalf of the Australian community.

In recent years there has been considerable uncertainty as to the adequacy and stability of the CDPP's funding. This has required me to make some difficult decisions in response to budgetary reality. For much of my term the Office has found itself unable to continue to provide the range and level of assistance previously provided, particularly in relation to training and pre-brief advice. I am strongly aware that these services were valued by agencies when we were able to provide them in the past.

In 2011–2012 the CDPP has been required to rely on interim funding arrangements and to operate with a deficit of \$10.4m. This uncertainty as to funding arrangements for the Office over a considerable period has been difficult for staff. Continued uncertainty has also affected the ability of the Office to appropriately plan for future needs.

As I write, considerable work is being done on the development of a funding model. It is hoped that this will result in sustainable funding for the Office and provide the certainty that will be essential to resourcing the work of the Office in coming years.

Aside from meeting the several challenges that are inherent in the current fiscal environment, the past year has seen considerable success in many areas. One such area is criminal confiscation, with the largest annual amount of proceeds of crime, \$45,620,134, being recovered this financial year and \$174,118,468 being recovered since the introduction of the legislation in 2002.

Following the establishment of the Permanent Criminal Assets Confiscation Task Force



operated by the AFP, the CDPP's role in criminal confiscation is now limited as the AFP is taking responsibility for the majority of proceedings under the *Proceeds of Crime Act 2002*. From 2 April 2012 the CDPP no longer commenced criminal confiscation action in non-conviction based matters or conviction based matters commenced by restraining order.

Each year I have recorded my thanks to the senior management of the CDPP in Head Office, particularly First Deputy Director John Thornton, for their ongoing support and leadership within the Office. John has recently retired from the Office and in this, my last overview, I acknowledge the tremendous support provided to me by John throughout my appointment. It has been a privilege to work with John and I placed on the public record at Senate Estimates on 24 May my recognition of John's distinguished service, stating:

*"Twenty-seven years is a good enough reason to look forward to another kind of life after the DPP, but I cannot let tonight pass without marking a very distinguished period of service by someone who has been absolutely indispensable to me, to the office, to my predecessors and, I must say, in every sense, a very fine servant of the Commonwealth. So I would bring that matter to the committee's attention and I am very pleased to place it on the public record."*

On John leaving as First Deputy, I have been privileged to work with Jim Jolliffe in a new capacity, as acting First Deputy Director. I have worked very closely with Jim, as Deputy Director of Sydney Office, throughout my term. I am grateful for Jim kindly agreeing to contribute to the Office as First Deputy on an interim basis.

This Annual Report reflects the significance and breadth of the Office's work and involves the contribution of many. For its compilation I thank James Carter, Deputy Director Legal, Penny McKay and Toni O'Keefe. I also thank all the CDPP staff who in various quiet and efficient ways contributed to the quality and detail of a report that reflects the workings of the fine institution whose custodian I have had the good fortune to be over the past five years.

It has been a great honour and privilege to serve the Commonwealth and its people in the capacity of Commonwealth Director of Public Prosecutions.

I am pleased to present the Annual Report for 2011–2012.

CHRISTOPHER CRAIGIE SC  
Commonwealth Director of Public Prosecutions





# 1

Office of the CDPP



## 1 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.

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 seven years.

The current Commonwealth Director of Public Prosecutions, Christopher Craigie SC, was appointed on 13 October 2007 for a term of five years. Mr Craigie SC concludes his term in September 2012.

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 2011–2012.

## Role

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

The CDPP has a wide and varied practice including the prosecution of offences for the importation of serious drugs, fraud on the Commonwealth (including tax and social security fraud) 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. The CDPP also prosecutes 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 criminal activity continues to evolve and expand. The focus of Commonwealth offending reflects contemporary society and includes areas such as identity crime, cybercrime and serious and organised crime.

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 assessing evidence, drafting charges and providing legal advice and assistance to investigators.

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 the majority of State and Territory DPPs 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 straightforward regulatory offences by arrangement with the CDPP. In 2011–2012, the ATO conducted over 2,200 prosecutions of more than 1,620 individuals and 570 companies. Fines totalling \$7 million were imposed. ASIC prosecuted 405 offenders for 825 offences, and obtained fines and costs totalling \$1,055,884. The AEC 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, where resources permit, provides assistance to other agencies including in the form of online aids, guides and manuals. These resources address a range of topics relevant to the work of investigatory agencies, including obtaining search warrants, listening device or telephone interception warrants and the use of surveillance devices to gather evidence. They also provide commentary on a number of Commonwealth offences.

The CDPP can only prosecute 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 investigative role and the CDPP receives briefs of evidence from, and provides legal advice to, a wide range of agencies. In 2011–2012, the CDPP received briefs of evidence from 43 Commonwealth, State and Territory investigative agencies.

## 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 conduct from its employees 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. All CDPP employees have 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 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 has implemented 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.

## Prosecution Policy

The *Prosecution Policy of the Commonwealth* is a public document which sets out guidelines for the making of decisions in the prosecution process. It applies to all Commonwealth prosecutions. The *Prosecution Policy* is publicly available from any of the CDPP offices listed at the front of this Report or at [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 matters such 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; and
- 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.

As noted above, the main function of the Director is to prosecute offences against Commonwealth law. 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.

Up until 1 January 2012, the CDPP had sole responsibility for conducting criminal confiscation action under Commonwealth legislation. Following the establishment of the Permanent Criminal Assets Confiscation Task Force operated by the AFP, the CDPP's role in criminal confiscation is now limited. The AFP is taking responsibility for the

majority of proceedings under the POC Act 2002. From 2 April 2012 the CDPP no longer commenced criminal confiscation action in non-conviction based matters or conviction based matters commenced by restraining order.

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 two basic types of prosecution action conducted by the CDPP.

Offences dealt with by a Magistrates or Local Court, 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.

Offences before superior courts are dealt with 'on indictment'. 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. Where Commonwealth matters on indictment are contested, these are heard before a judge and jury.

In this Report, a reference to a committal proceeding is a reference to a preliminary hearing before a Magistrate to determine whether a case 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 prosecutions in central and north Queensland.

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

The CDPP has staff located throughout its Offices Australia-wide, the largest being Sydney. The Deputy Director in Melbourne has the senior management responsibility for the Tasmania office. The Deputy Director in Brisbane has a similar role in relation to the Northern Territory and North Queensland offices.

The larger offices (Sydney, Melbourne, Brisbane and Perth) 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. The Director and the Deputy Directors meet at least twice annually to discuss policy and management issues.

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

## Outcome and Program Chart 2011–2012

### DIRECTOR OF PUBLIC PROSECUTIONS

Director: Christopher Craigie SC

Total price of outputs	\$105.034 million
------------------------	-------------------

Departmental outcome appropriation	\$86.224 million
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### Outcome 1:

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*.

Total price	\$105.034 million
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Departmental output appropriation	\$86.224 million
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### Program 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	\$105.034 million
-------------	-------------------

Appropriation	\$86.224 million
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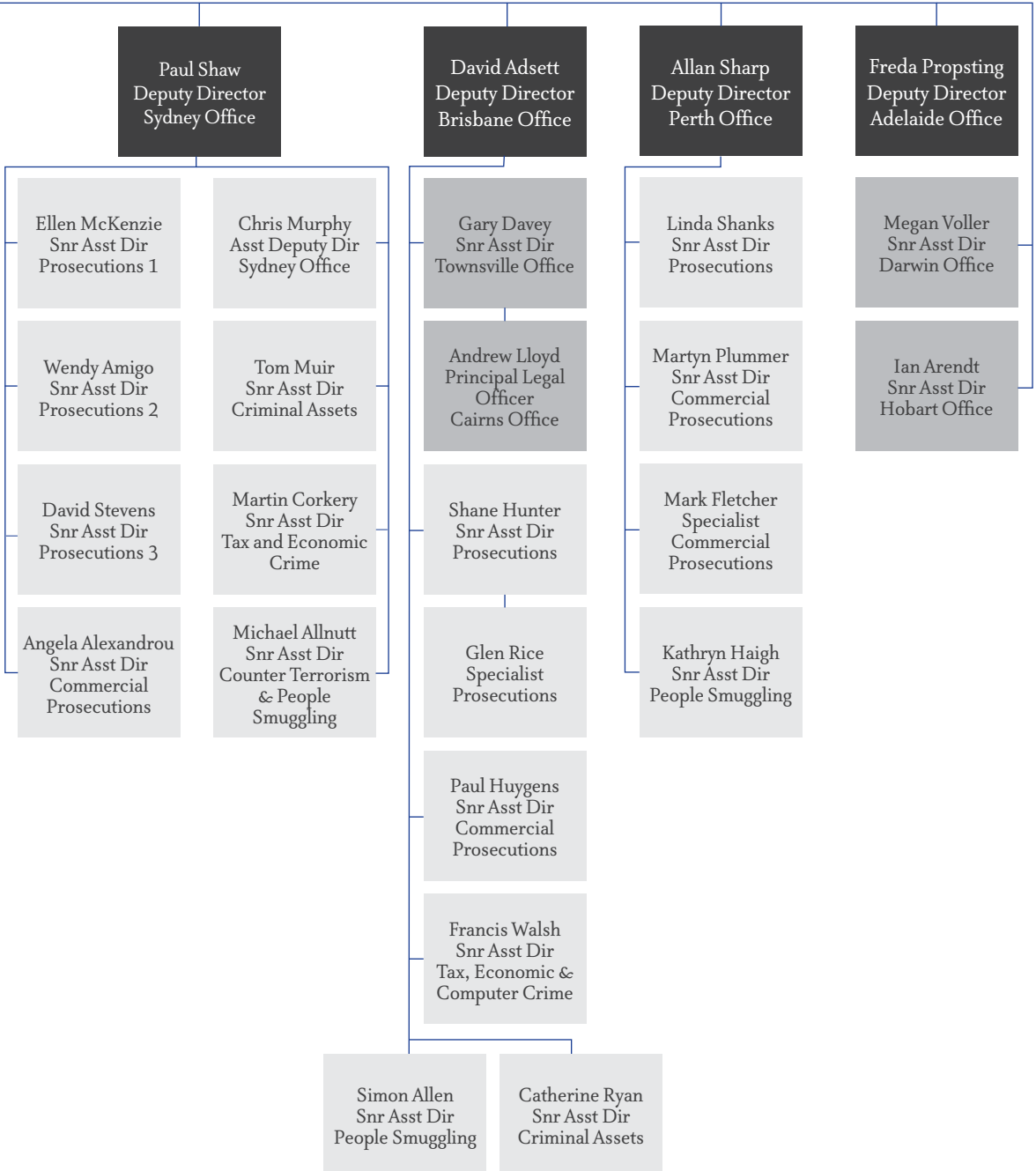




# Commonwealth Director of Public Prosecutions

## SENIOR MANAGEMENT ORGANISATION CHART

30 June 2012









# 2

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## 2.1 Fraud

Fraud offences play a major role in the practice of the CDPP. The CDPP assists in protecting the resources of the Commonwealth through the prosecution of fraud offences. Given the broad range of Commonwealth programmes and assistance available to the Australian community, fraud prosecutions are diverse and often involve complex mechanisms such as financial structures and multiple identities.

### *Aged Care Fraud*

KERRY MARIE BISHOP AND PENINSULA CARE PTY LTD

*This case was the first prosecution involving an offence under section 10A-2 of the Aged Care Act 1997.*

.....

Peninsula Care Pty Ltd, a company responsible for the operation of a number of aged care facilities, was in 1999 convicted of defrauding the Commonwealth in respect of multiple false claims for nursing and personal care staff costs and was fined \$75,000. Bishop was convicted at the same time of being knowingly concerned in this offence and was sentenced to 4 years imprisonment with a non-parole period of 9 months. As a result of this conviction Bishop became a 'disqualified individual'

under the *Aged Care Act*. Under this Act it is an offence for a 'disqualified individual' to be a 'key personnel' of an approved aged care provider.

After being convicted of this offence Bishop handed directorship of the company to 3 others. She remained at all times a 50% shareholder of Peninsula Care Pty Ltd.

After her release from prison Bishop became a 'key personnel' for Peninsula Care Pty Ltd and played a significant role in recruitment for the position of Director of Nursing, a role responsible for managing nursing services in 5 nursing homes.

Bishop was charged with 1 count of being a key personnel of an approved provider whilst being a disqualified individual pursuant to section 10A-2 of the *Aged Care Act*. After a plea of not guilty and a 10 day trial in the District Court of Brisbane, Bishop was convicted and sentenced to 9 months imprisonment to be released forthwith on the condition that she be of good behaviour for a period of 2 years. In passing sentence Shanahan DCJ stated:

*“The offence obviously has been drafted to ensure that people in control and management positions of approved providers are not disqualified because of prior misconduct. That serves a number of functions including ensuring proper nursing services to aged care patients, ensuring the integrity of the funding*

*system through the Commonwealth and also ensuring that persons who make decisions in these companies are appropriate in terms of their character.”*

Peninsula Care Pty Ltd was also charged with 1 count of being a corporation, which is an approved provider, being reckless that a disqualified individual is a key personnel pursuant to section 10A-2 of the *Aged Care Act*. Peninsula Care Pty Ltd pleaded guilty and was fined \$16,500.

Since this prosecution was conducted the *Aged Care Act* has been amended and the definition of ‘key personnel’ has been extended to include ‘any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the entity at that time’.

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## Australia Post Fraud

FRANK PETER DIERCKE

The defendant was employed as the Licensee of Woodford Licensed Post Office (LPO) between 8 March 1995 and 5 August 2011. On or about 16 May 2011, Australia Post Retail Audit and Compliance Group noticed that the LPO had several irregularities in its Australia Post Datawarehouse system. Members of Australia Post Corporate Security Group then conducted an unannounced audit.

The defendant advised investigators that he believed there to be about \$17,000 missing from the LPO. The defendant stated that he took money from the LPO in cash and deposited it into his bank account to pay the stamp duty for the incoming purchaser of the LPO, who did not have sufficient funds to cover this cost. The audit revealed a total deficiency of \$15,788.63

The defendant agreed with investigators that he was not authorised and had no permission from Australia Post to remove any money from the LPO. The defendant also agreed that he made false entries into the Australia Post Datawarehouse system on 13 May 2011 and 16 May 2011 claiming that he had deposited a total of \$16,800.00 into the wallet to be kept in the security company’s safe.

The defendant repaid the \$15,788.63 to Australia Post on the day it was discovered missing.

The defendant pleaded guilty to 1 count of dishonestly obtaining a gain from another person, namely the Australian Postal Corporation which is a Commonwealth entity, pursuant to section 135.1(1) *Criminal Code 1995*.

Previously in 2008, the defendant was charged pursuant to section 134.2(1) *Criminal Code 1995* for dishonestly obtaining a financial advantage of \$61,320.04 from Australia Post. On that occasion, the defendant was convicted and sentenced to 9 months imprisonment to be released forthwith upon entering into

a recognizance to be of good behaviour for 2 years. He was also ordered to pay reparation to Australia Post in the sum of \$43,423.54.

On 10 April 2012 in the Katoomba Local Court the defendant was convicted and ordered to perform 250 hours of community service.

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## *Medicare Fraud*

### SARAH EVON SIDIROPOULOS

From 2007 to 2009 the defendant was employed as a secretary at a medical practice. During this period, and for 5 months after her employment was terminated, she used the EFTPOS facility at the medical practice to make false claims to Medicare, taking the receipts generated by the EFTPOS machine so that her conduct would not be detected. She also used a key to the practice which she obtained during her employment to access the practice after hours so as to avoid detection.

The defendant made a total of 208 false claims for Medicare benefits for consultations with doctors that did not occur. She used the provider numbers of the doctors who worked at the surgery to make the claims. The claims were made mostly in the defendant's own name (138) and the remainder were made in the names of family members. The defendant also made 2 false claims in person at the Gosford and Tuggerah Medicare Offices. The false claims resulted in the payment of \$30,603.25 in Medicare benefits.

The defendant pleaded guilty to dishonestly causing a loss to Medicare pursuant to section 135.1(5) of the *Criminal Code*. She was sentenced in the Gosford District Court on 14 October 2011 to 18 months imprisonment to be released forthwith on condition that she be of good behaviour for a period of 3 years. She was also ordered to pay reparation of \$30,063.25.

In August 2010 the defendant had also been convicted for Social Security fraud relating to her failure to inform DHS of her employment.

## 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 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 Prosecution and Criminal Law Capability area of the ATO. By arrangement with the CDPP, the Prosecution and Criminal Law Capability area prosecutes most regulatory offences relating to taxation matters. If a matter becomes a defended hearing, the Prosecution and Criminal Law Capability 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.

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### *GST Fraud*

DEAN ROGER BOZZETTO

The defendant was a chartered accountant who registered a fictitious business and then lodged 29 false Business Activity Statements (BAS) with the ATO. He obtained \$559,506 in GST refunds to which he was not entitled and lodged 5 more BAS statements in an attempt to obtain a further \$25,476.

The ATO undertook 3 audits of the defendant's business in which he provided extensive false documentation. During the final audit the ATO found that invoices supplied by the defendant were false. The defendant cooperated with the ATO investigation, admitting his involvement in the offence and he repaid a significant proportion of the debt through the sale of his house.

The defendant pleaded guilty to 1 count of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code*, 5 counts of attempting to obtain a financial advantage by deception pursuant

to sections 11.1 and 134.2(1) of the *Criminal Code* and 3 counts of using a forged document pursuant to section 145.1 of the *Criminal Code*.

On 1 December 2011 in the Townsville District Court the defendant was sentenced to 5 years imprisonment with a non-parole period of 18 months. The defendant was also ordered to pay reparation of \$304,299.30.

When passing sentence Durward DCJ stated:

*“It is very sad to see a man with a professional background in accounting and who has been a practising accountant to come to the Court on a charge that involves dishonesty to the gross extent that exists here, and it seems to me that the only sentence that I can impose is one which involves a significant period of imprisonment.”*

## Tax Fraud

ROBIN DAVID HUSTON, IAN SIDNEY HENKE AND BRIAN FRANCIS FOX

*This case was reported in the 2010–2011 Annual Report at page 24.*

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Between July 1999 and May 2001, the defendants (and others) devised, promoted and implemented a complex and sophisticated round-robin tax avoidance scheme that was mass marketed to owners of successful small businesses. Henke helped devise the scheme, whilst Fox and Huston were accountants who promoted and sold the scheme to some of their high wealth clients.

The scheme was designed to strip companies of their assets so that the companies were unable to meet their tax obligations. It involved the use of offshore entities and bank accounts based in Vanuatu set up specifically for the scheme. The scheme was structured to avoid detection and the ATO only became aware of it when a concerned accountant forwarded promotional material relating to the scheme to the ATO.

Over the period of the offending, 15 companies had their assets stripped by the scheme, resulting in tax of \$4.59 million being unavailable to the ATO.

### SUPREME COURT OF QUEENSLAND (QLD)

On 24 April 2008 the defendants were each charged with 1 count of conspiracy to defraud the Commissioner of Taxation pursuant to sections 29D and 86(1) of the *Crimes Act*. The defendants pleaded not guilty in the Supreme Court of QLD. On 11 March 2011 the jury returned guilty verdicts against each defendant. The defendants received the following sentences:

- **FOX:** 3 years and 9 months imprisonment with a non-parole period of 9 months;
- **HENKE:** 4 ½ years imprisonment with a non-parole period of 12 months; and
- **HUSTON:** 4 years imprisonment with a non-parole period of 10 months.

### QLD COURT OF APPEAL

In April 2011 each of the defendants appealed against their conviction. The CDPP also lodged an appeal against the inadequacy of the sentences of each defendant. The appeal was heard in the QLD Court of Appeal and on 6 December 2011 the Court dismissed Fox's appeal against conviction and upheld the CDPP's appeal against the sentences imposed in the Supreme Court. Fox was re-sentenced to 5 years imprisonment with a non-parole period of 2 ½ years. Both Henke and Huston were re-sentenced to 6 years imprisonment with non-parole periods of 3 years.

*Over the period of the offending, 15 companies had their assets stripped by the scheme, resulting in tax of \$4.59 million being unavailable to the ATO.*

The Court of Appeal noted in a joint judgment:

*“Sentences in these cases must do more than pay lip service to the need for general deterrence. They must be effective deterrents, and address the reality that conspiracy to evade tax is a form of corruption which has an insidious corroding effect on society. They must as well vindicate honest taxpayers.”*

#### HIGH COURT

On 27 January 2012, Fox filed an application for Special Leave to Appeal to the High Court. It was argued that section 80 of the Constitution required that for a charge of conspiracy to be completed, there must have been an agreement between 2 or more parties and the commission of 1 overt act. It was also argued that once the first overt act had been committed the offence was complete and the trial should therefore take place in the State in which it occurred and any further overt acts were essentially surplus and not required.

The CDPP submitted that the Court of Appeal correctly concluded that the offence charged was one “not committed within any State”, within the meaning of the second venue provision of section 80 of the Constitution. Thus the trial was required to be held at “such place or places as the Parliament prescribed”. Accordingly, the relevant provision was section 70A of the *Judiciary Act 1903*, which applies to an offence “not committed within any State” and accordingly as the trial could have been conducted in any State of Australia it was properly held in QLD.

On 7 June 2012, the application for Special Leave to Appeal was heard and dismissed by the High Court.



## *Tax Fraud – Energy Grants Credit Scheme*

CLINTON ALEXANDER HOOD

During the period from June 2001 to August 2004, the defendant lodged 130 claims for grants under the Commonwealth's Diesel and Alternative Fuels Grant Scheme and its successor, the Energy Grants Credit Scheme. The claims were lodged in the names of 3 different business entities and were consistent with the businesses being very active in the transport industry.

When the ATO reviewed the defendant's businesses a total of \$1,374,533.28 in grants had been paid and the defendant had attempted to claim an additional \$29,474.59.

During the ATO's review, officers invited the defendant to produce any evidence he had to support the claims that he had made. However, no evidence that supported the claims was produced or discovered during the review. When the defendant was interviewed he claimed that his businesses had owned trucks and also rented or leased trucks and had conducted substantial transport operations. During the subsequent investigation, however, statements were obtained from former employees and business associates revealing that the entities conducted transport operations only on a very

small scale. Searches with motor registration authorities revealed that the defendant and his entities owned only 1 or 2 transport vehicles at any time.

The defendant pleaded guilty to 6 counts of obtaining a financial advantage by a deception pursuant to section 134.2(1) of the *Criminal Code* and 3 counts of attempting to obtain a financial advantage by a deception pursuant to sections 11.1(1) and 134.2(1) of the *Criminal Code*.

On 4 May 2012 the defendant was sentenced in the District Court at Brisbane to 6 years imprisonment with a non-parole period of 2 years. He was also ordered to make reparation of \$1,374,533.28. At sentencing the defendant made no suggestions that he was entitled to even a small amount of the grants and he gave no explanation for his fraud.



## Social Security Fraud

The Department of Human Services (DHS) refers the largest number of briefs of any agency to the CDPP and these generally relate to people allegedly receiving social security benefits knowing that they were not entitled to receive them. Cases typically involve a person receiving benefits that have been calculated on a false premise, such as the person was unemployed when in fact they were receiving income from paid employment or was a single parent when in fact s/he was a member of a couple.

Cases can also involve fraud where a person has received benefits on behalf of a person who is deceased or a person has used multiple false identities to obtain multiple benefits. Prosecutions may involve significant sums where there has been a continuing fraud over many years.

General deterrence is particularly important when considering the prosecution of social security fraud offences.

DHS prosecutions can be very complex and demanding. Prosecuting social security fraud involves technical evidence of DHS's benefits systems, often using electronic transactions. The CDPP and DHS work closely together to seek to achieve best practice in investigating and prosecuting in this important area.



## *Social Security Fraud – Undisclosed income and assets*

WARWICK ANGELL

Between 5 May 1998 and 8 June 2010 the defendant obtained Disability Support Pension and Rent Assistance of \$180,914.20 to which he was not entitled. The defendant was not entitled to these benefits because he owned assets in excess of the limit and because the defendant was not renting the property in which he was living. At the time that the defendant applied for Disability Support Pension and Rent Assistance on 5 May 1998 he owned his principal place of residence as well as 2 commercial properties in Melbourne. When he made his application the commercial properties were valued at a total of \$600,000 and were unencumbered.

During the period of the fraud the 2 commercial properties owned by the defendant increased in total value to \$1,350,000. Between October 2003 and March 2010 the defendant received rental income from these 2 properties which averaged in excess of \$5000 per month. The defendant also held significant savings in a bank account and on 21 October 2004 he purchased a unit in a retirement village. The defendant did not disclose any of these assets or income to DHS.

The defendant was charged with 2 counts of defrauding a public authority under the Commonwealth pursuant to section 29D of the *Crimes Act 1914* and 2 counts of obtaining property by deception from a Commonwealth entity pursuant to section 134.1(1) of the *Criminal Code*.

After pleading guilty the defendant was sentenced in the County Court of Victoria on 18 June 2012 to 3 years imprisonment to be released after 9 months on the condition that he be of good behaviour for 3 years. Prior to being prosecuted the defendant repaid the full amount of the fraud to DHS.

In handing down the sentence Dean J stated:

*“In DPP (Cth) v. Milne [2001] VSCA 93, Acting Chief Justice Winneke said, “An actual sentence of imprisonment is ordinarily likely to be required in cases of sustained and deliberate cheating of the social welfare system, because it is unlikely that mitigating factors will be of sufficient significance to outweigh the primary purpose for the imposition of a sentence in such cases, namely general deterrence.”*



*At the time that the defendant applied for Disability Support Pension and Rent Assistance on 5 May 1998 he owned his principal place of residence as well as 2 commercial properties in Melbourne.*

*Generally speaking, persons in receipt of a disability pension will suffer from physical or psychological disabilities. But in my opinion, those disabilities cannot mean that where a disability pension and other associated benefits, such as rental assistance, are obtained fraudulently, the principle of general deterrence referred by Acting Chief Justice Winneke should be moderated in a way that leads to a term of imprisonment not actually having to be served.*

*I accept that your physical and psychological disabilities are significant, and I have taken these disabilities into account in arriving at a significantly shorter term of imprisonment to be actually served than would otherwise be required in cases of this type.”*

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## *Social Security Fraud – Multiple Identities*

ROBERT HAUKE

The defendant, a German national, arrived in Australia in 2007 and overstayed his Visa. He used the identities of persons who had died between 1961 and 1969 to claim benefits in the names of Halkitis, Boni, De Labio and he attempted to obtain benefits in the name of Ardelean. At no stage did he receive benefits in his own name. The defendant claimed these benefits between December 2009 and December 2011. The total amount overpaid to the defendant as a result of obtaining payments using the ‘stolen’ identities was \$75,984.21.

On 7 November 2011, DHS undertook a data matching exercise which identified discrepancies in the payments claimed by the defendant. On 6 December 2011, search warrants were executed at the defendant’s place of residence. Investigators seized numerous documents in the names of the stolen identities, including some photo identification in various names each containing a photo of the defendant.

The defendant was charged with 3 counts of obtaining property by deception pursuant to section 134.1(1) of the *Criminal Code* and 1 count of attempting to obtain property by deception pursuant to sections 11.1(1) and 134.1(1) of the *Criminal Code*.

The defendant entered a plea of guilty and on 22 March 2012 he was sentenced in the Melbourne Magistrates Court to 18 months imprisonment to be released after serving 12 months on the condition that he be of good behaviour for 12 months. The Court also ordered that he make reparation of \$75,984.21.

The defendant lodged an appeal to the Melbourne County Court on the basis that the sentence was manifestly excessive. The defendant’s appeal was successful and on 20 April 2012 he was resentenced to 15 months imprisonment to be released after serving 7 months on condition that he be of good behaviour for 15 months. The reparation order of \$75,984.21 remained unchanged.

The defendant will be deported upon the completion of his sentence.

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## *Social Security Fraud – Bushfire Relief*

GEORGE HEBAITER

*Disaster relief payments were administered by DHS and were designed to provide immediate relief to the people who had been directly impacted by bushfires.*

•••••

The defendant used 112 fictitious identities to lodge claims for disaster relief payments in the aftermath of the Victorian bushfires in February 2009.

The defendant claimed to be a victim of the bushfires whose house had been destroyed or damaged. He claimed payments for himself and for fictitious spouses. The defendant had not, in fact, been affected by the bushfires. The defendant was arrested on 4 March 2009 and charged with offences in relation to these fraudulent claims. Upon being released on bail he then proceeded to make further fraudulent claims.

Ultimately the defendant claimed payments of Australian Government Disaster Relief Payment and Income Recovery Subsidy Assistance totalling \$116,800.28 and he attempted to obtain a further \$9000.

The defendant was charged with 1 count of obtaining property by deception pursuant to section 134.1(1) of the *Criminal Code* and 1 count of attempting to obtain property by deception pursuant to sections 11.1(1) and 134.1(1) of the *Criminal Code*.

The defendant pleaded guilty and on 21 October 2011 was sentenced in the County Court of Victoria to 3 years and 9 months imprisonment with a non-parole period of 2 years and 3 months. A reparation

order in the amount of \$116,270.45 was also made.

In sentencing, Tinney J took into account the defendant's numerous prior convictions for dishonesty offences and stated:

*“The rorting of a scheme such as this set up to help those who are in need and urgent need, would be to most right-minded people in the community an abhorrent and serious activity committed even on a single basis, much less with the repetition involved in your offending and the continuation of your conduct in the face of being interviewed, charged and bailed.”*

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## *Social Security Fraud – Dead beneficiary*

DAVID LANGDON

On 26 June 1978, the defendant's aunt applied to the Department of Social Security (now known as DHS) for payment of the Age Pension. Payment of the pension proceeded to be paid into his aunt's bank account.

On 8 March 1995 the defendant's aunt lodged a form with DHS requesting that the defendant become her nominee for the purposes of dealing with DHS and managing her payments.

The aunt died on 1 July 1995. DHS did not become aware of this fact until approximately 1 April 2008 and continued to make payments of the aunt's pension into her bank account up until this date. A review of bank statements from the aunt's bank account showed that the payments of the aunt's pension had continued to be withdrawn from her bank account for the period after her death.

On 2 April 2008 a search warrant was executed by members of the AFP on the residence of the defendant. During this

search warrant the AFP located the debit card associated with the aunt's bank account and 2 bank statements relating to her bank account.

On 9 April 2008 the defendant participated in a recorded interview with DHS officers in which he admitted that he was responsible for making the withdrawals from his aunt's bank account after her death from 1 July 1995 to 13 March 2008. The total amount of the fraud was \$149,450.96.

The defendant was charged with 1 count of theft pursuant to section 74(1) of the *Crime Act 1958* (Vic) and 1 count of theft pursuant to section 131.1(1) of the *Criminal Code*.

On 8 June 2012 in the County Court at Melbourne the defendant pleaded guilty and was sentenced to 12 months imprisonment to be released after serving 4 months on condition that he be of good behaviour for 8 months.

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## *Social Security Fraud – Dual identities and falsified disability*

ADAM PEACOCK

In 2004, the Identity Fraud section of DHS conducted a computer selection exercise to detect customers who may have been receiving more than 1 payment. This exercise identified the record of David Griffiths who was in receipt of Disability Support Pension. The Disability Support Pension was being paid because Griffiths had been assessed by medical officers as having very poor vision due to bilateral congenital glaucoma. The medical report stated that Griffiths could not drive or operate machinery or read or write properly.

Further investigation revealed that the birth certificate provided by Griffiths when he claimed benefits did not match records with the Registry of Birth, Deaths and Marriages. A letter was sent to Griffiths requesting that he attend an interview at DHS on 9 February 2005. Griffiths did not attend this interview, however, after a number of further letters and further investigation by DHS, Griffiths finally attended an interview on 21 March 2007. This interview was video recorded and Griffiths was followed by private enquiry agents when he left the interview until he got into a car. He drove himself from the area in the car which was registered in the name of the defendant, Adam Peacock.

Further enquiries by DHS revealed that the defendant had been receiving benefits in his own name and also in the name of David Griffiths for various periods between 25 March 1996 and 15 May 2007. The defendant had posed as Griffiths for the purposes of dealing with DHS and had convinced doctors that he was legally blind for the purpose of claiming the Disability Support Pension. The evidence showed that the birth certificate of Griffiths had been falsified and had been derived from a copy of the birth certificate of the defendant.

The defendant was charged with 1 count of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act*, 4 counts of defrauding a public authority under the Commonwealth pursuant to section 29D of the *Crimes Act* and 3 counts of dishonestly causing a loss to the Commonwealth pursuant to section 135.1(5) of the *Criminal Code*. The total amount of the fraud was \$105,379.63.

On 14 December 2011 in the County Court at Melbourne the defendant pleaded guilty and was sentenced to 2 years imprisonment to be released after serving 6 months on condition that he be of good behaviour for 18 months. The defendant was also ordered to make reparation of \$50,705.97.

## Social Security Fraud

MALGORZATA PONIATOWSKA

*This matter was reported in the 2010–2011 Annual Report at pages 29–30.*

.....

The defendant had been receiving fortnightly payments of Parenting Payment Single intermittently since 1995. Parenting Payment Single is a means tested benefit. The defendant was regularly sent notices reminding her of the requirement that she inform DHS of any change to her circumstances, including financial circumstances.

The defendant was employed from January 2005 to February 2006 and was paid commission. In April 2005 the defendant was placed on a requirement to report fortnightly any income she received. In September 2005 that requirement was dispensed with because in the preceding months she had reported that she received no income. When the requirement was removed she was advised of her continuing obligation to report any change of circumstances, including income.

Between August 2005 and May 2007 the defendant received 17 payments of commission totalling approximately \$71,000. (The commission payments continued after her employment ceased.) The defendant did not notify DHS of receipt of any of that income.

As a consequence, during the relevant period the defendant continued to receive the payment of Parenting Payment Single to which she was not entitled (or was only partly entitled). The total amount the defendant obtained to which she was not entitled was \$20,000.<sup>17</sup>

The defendant was charged with 17 counts of obtaining a financial advantage pursuant to section 135.2(1) of the *Criminal Code*.

### SOUTH AUSTRALIAN (SA) MAGISTRATES COURT

The defendant pleaded guilty and on 16 October 2009 was sentenced in the SA Magistrates Court to 21 months imprisonment to be released immediately on condition that she be of good behaviour for 24 months. The defendant appealed against the severity of this sentence.

### SUPREME COURT OF SA

On 15 January 2010 the defendant's appeal against sentence was dismissed by a single Judge of the Supreme Court of SA.

The defendant then lodged a further appeal against sentence, and later conviction, to the Full Court of the Supreme Court of SA. On 2 August 2010 that appeal was allowed.

### HIGH COURT OF AUSTRALIA

The Director filed an Application for Special Leave to Appeal to the High Court of Australia. In November 2010 the Application for Special Leave was referred to the Full Court of the High Court for consideration. The High Court heard the matter on 3 March 2011.

On 26 October 2011 the High Court delivered its decision. Special Leave to appeal was granted. In dismissing the Director's appeal, the majority of the High Court stated:

*“The majority in the Full Court were right to consider that the Code incorporates the general law principle that criminal liability does not attach to an omission, save the omission of an act that a person is under a legal obligation to perform.”*

## Project Wickenby

In February 2006, a Commonwealth cross agency taskforce was set up to combat international tax evasion which posed a serious threat to the integrity of Australia's tax and other regulatory systems.

Project Wickenby is a joint project 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 confidence that steps are taken to address serious non-compliance with tax laws and reform of administrative practice, policy and legislation.

As well as the office of the CDPP, Project Wickenby involves a number of Commonwealth agencies including the ATO, ACC, ASIC, AFP and AUSTRAC. It is also supported by the Attorney-General's Department (AGD) and the Australian Government Solicitor. The CDPP has a significant and important role to play in the prosecution of offences which arise out of the investigations.

The CDPP has continued its participation in regular meetings of the Project Wickenby Chief Executive Officers and the Project Wickenby Cross Agency Advisory Committee, committees which were established to oversee the project. The CDPP plays a valuable advisory role in providing information about prosecutions arising out of Project Wickenby. The CDPP also participates in many of the other cross agency governance processes which have been established around Project Wickenby.

During the period 1 July 2011 to 30 June 2012, 8 defendants were convicted and sentenced to terms of imprisonment as a result of Project Wickenby prosecutions undertaken in various States. In addition, 3 defendants were found guilty by a jury during this period but are yet to be sentenced. In the same period, 1 defendant was found not guilty by a jury.

As at the end of June 2012, the CDPP was prosecuting 28 defendants for indictable offences arising out of investigations conducted as part of Project Wickenby. These matters are currently at different stages of the court process in various jurisdictions.





The CDPP has taken action to restrain property valued at approximately \$25 million in relation to a number of Wickenby matters.

In 1 prosecution concluded in April 2010, the Crown made an application by consent for a Pecuniary Penalty Order (PPO) in the amount of \$27,441.57. In addition, the CDPP has successfully obtained a civil pecuniary penalty in the sum of \$900,000 in 1 matter. In a related matter a civil forfeiture order for real property with an estimated value of \$212,000 was made. Also, consent orders were made by the QLD District Court 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*. The requests have been to several different jurisdictions and have resulted in important evidence being obtained.

Since the commencement of Project Wickenby the CDPP has prosecuted 36 defendants:

- 21 pleaded guilty to indictable charges and were convicted and sentenced to terms of imprisonment;
- 8 pleaded not guilty to indictable charges and were convicted and sentenced to terms of imprisonment;
- 4 pleaded guilty to summary charges;
- 2 pleaded not guilty to indictable charges and were acquitted; and
- 1 was discharged at committal by a Magistrate.

It is anticipated that over the coming year many Project Wickenby prosecutions will proceed to trial. The flow of new work under Project Wickenby is also expected to continue. This work is difficult and complex and conduct of these matters continue to require specialist legal expertise.





## *Project Wickenby – Tax Fraud*

MICHAEL BOUGHEN AND WAYNE FRANCIS CAMERON

The defendants worked in the entertainment industry writing and producing television programmes which they marketed to television networks through their partnership, Concept Television Productions Pty Ltd (Concept).

The defendants engaged an accountant to manage their business and taxation affairs. In around 1990 the accountant advised the offenders of a ‘legal loophole’ they could utilise to maximise their profits and minimise their taxation liabilities.

The tax minimisation scheme recommended by the accountant involved each defendant and Concept claiming false business expenses as deductions to offset their declared income. This scheme was facilitated by an accounting firm in Vanuatu.

The defendants and Concept were provided with false invoices for services such as management fees and licence fees, which in reality were never provided or issued. Despite this the defendants and Concept paid these invoices, with the money going to a company registered in Vanuatu. These funds were returned to the defendants and Concept, but were falsely accounted for in their business records as loans, not income and therefore not liable to taxation.

By 1997, the defendants were aware the arrangement was fraudulent, however, they continued to participate in the scheme until 2004 when they dissolved their partnership. As a result of the arrangement Boughen evaded income tax of \$520,000, Cameron evaded income tax of \$506,000 and Concept evaded income tax of \$727,000.

### SYDNEY DISTRICT COURT

The defendants each pleaded guilty and were convicted of 1 count of conspiracy to defraud the Commonwealth pursuant to sections 29D and 86 of the *Crimes Act 1914* and 1 count of conspiracy to dishonestly cause a loss to the Commonwealth pursuant to s.135.4(3) of the *Criminal Code*.

On 29 July 2011, Boughen was sentenced in the Sydney District Court to 2 years imprisonment to be served by way of an Intensive Correction Order. Cameron received an identical sentence on 9 September 2011.

*By 1997, the defendants were aware the arrangement was fraudulent, however, they continued to participate in the scheme until 2004 when they dissolved their partnership.*

#### NSW COURT OF CRIMINAL APPEAL

The Director appealed to the NSW Court of Criminal Appeal against the manifest inadequacy of the sentences given that they were to be served by way of Intensive Correction Orders.

On 27 February 2012, the Court of Criminal Appeal allowed the appeal and quashed the sentences imposed by the District Court. The defendants were re-sentenced to 3 years imprisonment to be released after 18 months on condition that they be of good behaviour for 18 months.

In deciding the appeal the Court of Criminal Appeal considered the disparity between sentences for tax fraud and social security fraud and the appropriate circumstances for the use of an Intensive Correction order.

In re-sentencing the defendants the Court stated:

*“... Appellate courts have consistently insisted that tax evasion offences ought to attract significantly deterrent sentences. This properly puts tax evasion in to the same class of offending as social security fraud, which has an even longer history of insistence on custodial sentences”.*

The Court further stated:

*“The community cannot afford judges to be squeamish about discharging their duty, however personally painful it may sometimes be. To fail to sentence middle class offenders commensurately with social security offenders risks bringing the administration of justice into disrepute as perpetrating class bias”.*

## *Project Wickenby – Tax Fraud*

TATSUO JO

The defendant, as the director of 2 companies namely Investa Consultancy Services Pty Ltd (Investa) and Sacos Equipment Pty Ltd (Sacos), entered a taxation minimisation scheme promoted by his accountant to reduce each of his company's tax liability. Over a 5 ½ year period between February 1997 and November 2002 he defrauded the ATO of \$1,120,102.02.

The defendant is a Japanese national who has resided in Australia since 1989 and ran a successful heavy machinery importing business. Under the scheme the defendant's companies paid large sums of money to Auspac Finance Corporation Ltd, a Hong Kong based company controlled by his accountant. The payments were in general for 'commissions' in respect of machinery deals allegedly brokered by Auspac. Auspac was not a broker and no services were provided for these payments. Investa and Sacos falsely claimed deductions in their tax returns for the commissions paid to Auspac, thereby reducing their taxable income.

The money paid to Auspac was then returned to the defendant personally, less a 10% fee, by his accountant. The defendant did not declare the money received by him in his personal tax returns.

In May 2003, the ATO commenced an audit of the defendant's accountant. This investigation was part of Project Wickenby and unveiled the tax evasion scheme of which the defendant was a participant.

The defendant was charged with 3 counts of being knowingly concerned in defrauding the Commonwealth pursuant to section 29D of the *Crimes Act*, 1 count of aiding in general dishonestly causing a loss pursuant to section

135.1(3) of the *Criminal Code*, 1 count of aiding in obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code* and 4 counts of obtaining a financial advantage by deception. He pleaded not guilty to all counts.

Prior to the trial commencing a lengthy pre-trial application was heard by the District Court of QLD regarding the admissibility of information gathered by ATO auditors during 2 voluntary interviews with the defendant during the audit. The defence argued it would be unfair to admit this evidence because: (1) given the state of the Auditors knowledge about the illegal scheme promoted by the accountant, the defendant should have received a warning about answering questions, (2) the notes taken at the meeting were unreliable, and (3) the defendant did not understand all of the questions and answers because English was his second language.

The pre-trial proceedings were lengthy with both sides calling a number of witnesses. The defendant gave evidence via an interpreter during the pre-trial application and was cross examined for 2 ½ days. The trial judge ruled the evidence admissible and this evidence went on to be a central part of the Crown case.

The defendant was subsequently convicted of all counts in the District Court of QLD and was sentenced to 4 years imprisonment with a non-parole period of 2 years.

The defendant has lodged an appeal against his conviction and sentence.

## *Project Wickenby – Tax Fraud*

ADAM JOHN HARGRAVES AND DANIEL ARAN STOTEN

*This case was reported in the 2008–09 Annual Report at pages 32–33 and the 2009–10 Annual Report at pages 24–25.*



This was the first Project Wickenby matter 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 case was presented electronically using e-trial, a system created and developed by the QLD courts.

The defendants engaged the services of Strachans SA (Strachans), a Swiss based accounting firm, to provide an offshore structure for tax avoidance purposes. The structure was promoted to the defendants by Philip Egglshaw. The day-to-day administration of the structure was managed by Philip de Figueiredo, a Senior Trusts Manager within Strachans.

The structure was perpetuated by the use of offshore trusts and in-house Strachans' companies. Strachans, upon direction from Adam Hargraves and Daniel Stoten, created false invoices for data listing services purportedly provided to Phone Directories Co. Pty Ltd (PDC).

The defendants were Directors of PDC. PDC produces telephone directories for major regional cities in QLD, NT and NSW. Genuine data-listing expenses had been incurred by PDC with a Chinese company, QH Data.

The false invoices created by Strachans were issued through an in-house company, Amber Rock. The invoices issued by Amber Rock were identical to the invoices issued by QH Data, but for inflated amounts incurred for services purportedly delivered by Amber Rock. In reality, Amber Rock did not perform any services and the ultimate control over Amber Rock was exercised by the defendants.

The funds paid to Amber Rock were repatriated to the defendants by way of cash withdrawals via ATMs in Australia from credit and debit cards issued to them. The credit and debit cards were linked to trusts administered by Strachans on the defendants' behalf.

The total amount of funds made available to the defendants by these means exceeded \$6,000,000 over a period of nearly 6 years. The scheme also enabled PDC to minimise its tax liability as PDC also claimed, as deductions for expenses, the hugely inflated amount charged by Amber Rock for purported directory listings services.

On 1 July 2005 restraining orders were obtained over all the property of the directors. Applications for PPOs were filed in relation to PDC and the defendants. Forfeiture applications were filed in relation to restrained property.

The proceeds from the sale of a Porsche owned by Adam Hargraves were traced to his friend's account in Norway. A restraining order was obtained and enforced in Norway. With the consent of Adam Hargraves and the account holder, orders were made for the funds to be returned to Australia and deposited in an account under the control of the Official Trustee where they continued to be restrained pending the hearing of the applications for pecuniary penalties and forfeiture.

The applications for forfeiture and pecuniary penalties were civil proceedings to recover the benefits derived from the alleged offences and were separate and independent of the criminal prosecution although both related to the same conduct. On 5 December 2006 orders were made staying the civil proceedings until determination by verdict of the criminal proceedings. On 24 December 2009 the restraining order was varied by consent to permit restrained property to be used to pay assessments including penalties and interests issued by the ATO to Adam and Glenn Hargraves, Daniel Stoten and PDC, attributable to the conduct that was the subject of the confiscation proceedings. The assessments, penalties and interest imposed by the ATO relating to these transactions were paid in full and the confiscation proceedings were withdrawn.

The defendants were charged with 1 count of defrauding the Commonwealth pursuant to sections 29D and 86 of the *Crimes Act*

and 1 count of conspiring to dishonestly cause a loss to a Commonwealth entity pursuant to section 135.4(3) of the *Criminal Code*.

#### SUPREME COURT OF QLD

The defendants entered a plea of not guilty in the Supreme Court of QLD. 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.

Following a second trial, Adam Hargraves and Daniel Stoten were convicted on 8 March 2010 of the second count only. Glenn Hargraves was acquitted on both counts. On 8 June 2010 Adam Hargraves and Daniel Stoten were sentenced to 6 ½ years' imprisonment with a non-parole period of 3 years and 9 months.

#### QLD COURT OF APPEAL

The defendants each lodged an appeal against conviction and sentence and that appeal was heard by the QLD Court of Appeal in June 2010.

As part of their appeals against conviction, the defendants submitted that the trial judge erred in directing the jury with respect to assessing the credit of witnesses. The Court of Appeal concluded that the trial judge's direction breached the prohibition against the giving of a direction, directly or indirectly, to evaluate the reliability of the evidence of a defendant on the basis of the defendants' interest in the outcome of the trial.

However, the Court of Appeal, applying the proviso, concluded that it was proven beyond reasonable doubt that the defendants were guilty of the offence. The Court was of the opinion that no miscarriage of justice,

substantial or otherwise, had occurred. The appeals against conviction were dismissed.

In respect of the appeals against sentence, leave to appeal against sentence was allowed and the original sentences imposed were set aside. The defendants were re-sentenced to 5 years imprisonment with a non-parole period of 2½ years. Time spent in pre-sentence custody was declared to be time served.

#### APPLICATION FOR SPECIAL LEAVE TO THE HIGH COURT OF AUSTRALIA

On 13 May 2011 the defendants' application for Special Leave to Appeal was heard by the High Court of Australia. One of the grounds for special leave was that:

*“In applying the proviso, the Court of Appeal did not take into account whether the ‘interest’ direction constituted a significant denial of procedural fairness as described in Weiss at [45], and whether, given that this was an offence under Commonwealth law, the provisions of Section 80 of the Constitution are inconsistent with the application of the proviso (see Weiss at [46])”*

The High Court of Australia granted Special Leave to Appeal in respect of this ground.

#### HIGH COURT OF AUSTRALIA

On 26 October 2011, the High Court of Australia dismissed the appeals.

The High Court directed attention to whether the directions that were given at trial constituted a miscarriage of justice because they affected the fairness of the trial and, in particular, did so by undermining ‘the benefit’ which the presumption of innocence gives to a defendant.

The High Court said that a jury must act on the basis that the defendant is innocent of the acts which are the subject of the indictment until they are satisfied beyond reasonable doubt that he or she is guilty of those acts. A judge’s instructions to a jury must accord with these fundamental features of a criminal trial and departure from them would be a miscarriage of justice.

The High Court also said that inviting a jury to test the evidence given by a defendant according to the interest that the defendant has in the outcome of the trial, or suggesting that the defendant’s evidence should be scrutinised more carefully than the evidence of other witnesses, deflects the jury from recognising and applying the requisite onus and standard of proof. It is for the prosecution to prove its case, not for the defendant to establish any contrary proposition. The instructions which a trial judge gives to a jury must not, whether by way of legal direction or judicial comment on the facts, deflect the jury from its fundamental task of deciding whether the prosecution has proved the elements of the charged offence beyond reasonable doubt.

The High Court said in respect of the trial judge’s summing up that, taken in the context of the whole of the instructions from the trial judge, they would have been understood by the jury as directed to the evidence of a witness, not to either of the appellants. At no point did the trial judge refer to the outcome of the case as a matter in which a witness could have an interest. The High Court noted that almost immediately after giving the impugned direction the trial judge told the jury that “a lie by an accused person does not prove guilt” and that “the Crown always carries the onus of proving the case even against a liar”.



## 2.2 Serious Drugs

The prosecution of serious drug offences is a significant part of the CDPP's practice. Drug offences 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.

### Cocaine

#### *Import, Possess, and Traffic Cocaine*

JUAN CARLOS CARDONA-OSSA, PABLO JOSE PUCCIARELLI AND MICHAEL COSTA

Cardona-Ossa was a Colombian national who settled in Australia in 1997. In about 2008 in the course of a visit to South America, Cardona-Ossa met an individual named Raoul who represented himself as being able to ship cocaine from Colombia on a commercial basis. Raoul was actually a US Drug Enforcement Agency undercover operative.

Upon his return to Sydney, as well as continuing to communicate with Raoul regarding a possible importation

of up to 50kg of cocaine, Cardona-Ossa also arranged for the involvement of Pucciarelli, a person who apparently had established expertise in trafficking cocaine.

In April 2009, Cardona-Ossa and Pucciarelli were introduced to Raoul's local representative, Marko, an AFP undercover operative, who took over further discussions regarding supply of the cocaine. Marko in turn introduced Rob who was also an undercover operative deployed by the AFP in about June 2009.



Meetings and negotiations between the parties continued until agreement was achieved for an initial supply of 5kg at \$90,000 (US) per kilo and then repeated until all of Rob's stock – believed to be 50kg – had been acquired.

In the meantime, Cardona-Ossa busied himself on the side with the separation and manufacture of a small quantity of cocaine impregnated in plastic sheeting that he had acquired. Pucciarelli continued with his own ongoing cocaine trafficking business that he had established in the Sydney area. Costa was a customer and friend who occasionally assisted Pucciarelli by delivering cocaine to other customers; by making available his home for the sale of cocaine; and by acting as lookout for Pucciarelli when he was personally transacting sales.

On 17 July 2009, as previously agreed, Cardona-Ossa and Pucciarelli met with Rob at a suburban self-storage facility for the purpose of concluding the purchase of the first 5kg of cocaine. Cardona-Ossa remained with Rob while Pucciarelli departed then returned a short time later with \$340,000 which he proposed to give to Rob in exchange for 3 x 1kg blocks of cocaine and which he intended to take away for testing. If the results were satisfactory he intended to return with sufficient cash for the remaining 2kg. A few moments later Cardona-Ossa and Pucciarelli were placed under arrest.

Costa was arrested at his place of employment later that morning.

Cardona-Ossa was charged with 1 count of conspiracy to traffic in a commercial quantity of a controlled drug, cocaine pursuant to sections 11.5 and 302.2(1) of the *Criminal Code*, 1 count of conspiracy to deal with money intending it to become an instrument of crime worth more than \$100,000 pursuant to sections 11.5 and 400.4(1) of the

*Criminal Code*, 1 count of manufacturing a controlled drug for a commercial purpose pursuant to section 305.5(1) of the *Criminal Code* and 1 count of trafficking a controlled drug pursuant to section 302.4(1) of the *Criminal Code*.

After entering a plea of guilty Cardona-Ossa was convicted and sentenced in the NSW District Court on 10 November 2011 to 9 years imprisonment with a non-parole period of 5 ½ years.

Pucciarelli was charged with 1 count of conspiracy to traffic in a commercial quantity of a controlled drug, namely cocaine, pursuant to sections 11.5 and 302.2(1) of the *Criminal Code*, 1 charge of conspiracy to deal with money intending it to become an instrument of crime worth more than \$100,000 pursuant to sections 11.5 and 400.4(1) of the *Criminal Code*, 1 charge of trafficking in a marketable quantity of a controlled drug in the course of organised commercial activity pursuant to sections 302.3(1) and 311.2 of the *Criminal Code* and 1 charge of possession of cocaine pursuant to section 308.1(1) of the *Criminal Code*.

Pucciarelli also entered a plea of guilty and on 3 February 2012 in the NSW District Court he was sentenced to 9 years and 9 months imprisonment with a non-parole period of 6 years and 3 months. An order was also made against Pucciarelli for forfeiture of the \$340,000 being the money that was in his possession at the time of his arrest and which was related to the money laundering charge.

Costa was charged with 1 count of trafficking cocaine pursuant to section 302.4(1) of the *Criminal Code*. He pleaded guilty and was sentenced to 12 months imprisonment to be released immediately on condition that he be of good behaviour for 2 years.

## *Conspiracy to Import Cocaine*

JUAN ANTONIO VELEZ, VILIAMA FAINGATA'A AND TEMISI TELEFONI

This case involved an investigation by the AFP into the importation of large quantities of cocaine from Columbia to Australia via Tonga. The defendants, with others, entered into an agreement to import cocaine into Australia, firstly 190kg and then 500kg. The defendants engaged in a number of acts to further this agreement.

Some time prior to November 2009, a commercial quantity of cocaine was transported into Tonga from South America. Part of that cocaine remained in Tonga and part was imported into Australia. The cocaine left in Tonga was said to have been stored by associates of Telefoni and Faingata'a and pursuant to the agreement arrangements were made to access this leftover.

By March 2010 at least 4kg of cocaine had been imported into Australia and by approximately September 2010, arrangements had been made for 500kg of cocaine to be imported into Australia in the latter part of 2010.

Other evidence supporting the agreement between the defendants included communications involving the use of coded language; 'draft emails'; Telefoni's travel to Tonga; the assistance provided to a co-conspirator so he could travel to Tonga; and the plans made by Velez to travel to Columbia.

As a result of the AFP investigation, the defendants were arrested and charged with 1 count of conspiracy to import a commercial quantity of a border controlled drug pursuant to sections 11.5(1) and 307.1(1) of the *Criminal Code*.

After a 10 week trial in the Sydney District Court the defendants were found guilty of the offence. Velez was sentenced to 18 years imprisonment with a non-parole period of 10 years and 10 months. Faingata'a was sentenced to 18 years and 1 month imprisonment with a non-parole period of 10 years and 10 months and Telefoni was sentenced to 18 years and 2 months imprisonment with a non-parole period of 11 years.

## *Attempt to Import Cocaine*

FARIDAH BTE RASHID

On 18 September 2011 the defendant arrived in Australia on board a flight from Johannesburg, South Africa. ACBPS officers conducted an examination of the defendant's luggage and travel documents and she consented to an internal search.

The defendant was taken to St George Hospital where a CT scan was taken of her abdomen and pelvis. The scan revealed that the defendant was internally concealing objects. Between 18 September and

21 September she subsequently passed 24 objects containing a white crystalline substance with a total net weight of 356.6g.

The substance was at first suspected to be cocaine and the defendant was charged with importing a marketable quantity of a border controlled drug pursuant to s 307.2 of the *Criminal Code*. However on 14 October 2011, analysis by the NMI confirmed the substance to be diphenylhydramine – an antihistamine and not cocaine.

In an interview with the AFP on 22 September 2011, the defendant initially stated that she was asked to transport some goods by a Nigerian that she had met over the internet and that she consented because she needed the money for her daughter's education. She said she didn't know what she would be required to do. She later changed her story, however, stating that she thought the pellets she was carrying contained 'drugs' and that they were 'probably cocaine'. The defendant said that she expected to receive between \$10,000 and \$15,000 for the 'job'.

Relying upon admissions made by her during her record of interview, a charge of attempting to import cocaine pursuant to sections 307.3 and 11.1 of the *Criminal Code* was substituted.

The defendant pleaded guilty and on 10 May 2012 was sentenced to 3 years and 9 months imprisonment with a non-parole period of 2 years.

This case applied the law as set out in the case of *Onuorah v R* [2009] NSWCCA 238 in which the NSW Court of Criminal Appeal held that where an element of an offence is that a border-controlled drug has been imported into Australia, then for an attempt offence there must be an intention to import the border-controlled drug but that the substance actually imported need not be that border-controlled drug.

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## *Import Cocaine*

ARTUR JERZY WOJCIK

On 28 October 2009, the defendant, a Polish citizen who had been residing in Bolivia for several years, arrived at Sydney International Airport on an incoming flight from Argentina. In the course of a routine check of his luggage, a swab by ACBPS officers indicated it had come into contact with cocaine. A search of the defendant's suitcase then ascertained that approximately 3kg of powdered substance was concealed inside hidden compartments in the base and lid of the suitcase. The defendant was arrested and charged by police with 1 count of importing a commercial quantity of a border controlled drug pursuant to section 307.1(1) of the *Criminal Code*.

A subsequent analysis of the substance ascertained that it contained approximately 2.3kg of pure cocaine. The estimated wholesale value was almost AU\$700,000.

Approximately 1 week after his arrest, the defendant asked to participate in a recorded

interview with police. The defendant claimed that he and his 18 year old daughter had been abducted by a group of men in Bolivia and held captive for over a month. He claimed that whilst his daughter was held captive in Bolivia, he was forced to travel to Peru to attempt to obtain a visa for travel to Australia and he was then forced to travel to Australia with the suitcase containing the drugs. The defendant claimed his daughter had been sexually assaulted whilst held captive and that he had believed she would not be released and may be harmed if he did not cooperate with his captors. He told the police that since his arrest he had learned his daughter had subsequently been released. About 6 months later, the defendant's daughter, who had returned to Poland, provided a written statement and then participated in a telephone interview with police, substantially corroborating the defendant's story.

*A subsequent analysis of the substance ascertained that it contained approximately 2.3kg of pure cocaine. The estimated wholesale value was almost AU\$700,000.*

The defendant pleaded not guilty to the charge, relying upon a defence of duress. The matter proceeded by way of a 3 week trial before a jury at Sydney District Court in May–June 2011. The prosecution presented evidence which indicated that the defendant and his daughter may have fabricated the story that the defendant had performed the importation whilst under duress. The evidence presented by the prosecution included:

- computer forensic material extracted from a mobile telephone seized from the defendant upon his arrest, including SMS messages received and photographs depicting the defendant and his daughter in social situations taken shortly prior to his departure for Australia;
- recordings of telephone calls between the defendant and his daughter made by Corrective Services whilst the offender was in custody awaiting trial;
- information that the defendant’s daughter had been charged with attempted exportation of a similar quantity of cocaine from Brazil to Europe just months after the defendant’s arrest – although she was acquitted by a Brazilian court as it was not proven that she knew there were drugs in her luggage.

The jury found the defendant guilty. He was sentenced on 2 September 2011 to 10 years and 8 months imprisonment with a non-parole period of 6 years and 8 months. In sentencing the defendant the court rejected the entirety of his account as to how he came to commit the offence.

## Heroin

### *Import Heroin*

SAM ISAAC, LEONARD VAGA, ARAM YOUNAN, AKRAM HANNA AND SCOTT MEKSAVANH

Operations Dayton and Ellipsis concerned AFP investigations in relation to a heroin importation enterprise in which Isaac and Vaga organised and facilitated the importation by couriers of quantities of heroin from Thailand into Australia. Heroin was concealed inside shoes worn by Meksavanh and Younan in January 2009 and Hanna in April 2009 on their return flights to Australia. Each defendant was prosecuted separately.

#### MEKSAVANH

On 12 January 2009, then 19 year old Meksavanh was detected by ACBPS officers at Sydney International Airport wearing shoes concealing, beneath the inner soles, packages containing heroin (531g pure weight). He admitted to the AFP that he was aware that the substance he was smuggling inside in his shoes might be an illicit drug.

Meksavanh 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*. He entered a plea of guilty and on 13 November 2009 was sentenced in the Sydney District Court to 6 ½ years imprisonment with a non-parole period of 3 years and 3 months.

#### YOUNAN

On 12 January 2009, then 47 year old Younan returned to Australia from a trip to Thailand on the same incoming flight as Meksavanh and Vaga.

Younan wore a similar pair of shoes to Meksavanh, also concealing packages beneath their inner soles, on the incoming flight. Vaga sat with Younan on the flight into Sydney and directed Younan to pass through Customs separately from Meksavanh. Younan avoided detection by the ACBPS at Sydney International Airport and subsequently arranged for the shoes and heroin to be provided to Vaga, whereupon he was paid by Vaga.

Younan was subsequently charged in relation to the importation of heroin on 12 January 2009 and his involvement in Hanna's importation on 3 April 2009.

In relation to the January importation Younan was charged with 1 count of importing a marketable quantity of a border controlled drug, namely heroin pursuant to section 307.2(1) of the *Criminal Code*. Younan entered a not guilty plea and proceeded to trial. Younan maintained that he had genuinely believed that he had been smuggling diamonds into Australia. The heroin imported by Younan was not detected upon its arrival in Australia,

however police investigations gathered a large quantity of compelling circumstantial evidence successfully proving its existence and importation by Younan and the jury found him guilty. In sentencing Younan, the Judge found that the shoes Younan wore on his return to Australia had contained a similar quantity of heroin to that found by the ACBPS in Meksavanh's shoes, that Younan had been criminally reckless, and that the contents of his shoes were illicit drugs.

Younan was also charged with 1 count of aid, abet, counsel or procure the import by Hanna of a marketable quantity of a border controlled drug pursuant to sections 307.2(1) and 11.2(1) of the *Criminal Code*. Younan also entered a not guilty plea to that count, however the jury also found Younan guilty of that further offence.

On 18 November 2010, Younan was sentenced in the District Court of Sydney to 7 years and 5 months imprisonment with a non-parole period of 4 ½ years.

#### HANNA

On 3 April 2009, then 45 year old Hanna, a friend of Younan, returned to Australia from a trip to Thailand. At Sydney International Airport, Hanna was detected to be wearing shoes concealing beneath the inner soles packages containing heroin (with a pure weight of 642.1g). Hanna told ACBPS that he believed he was importing "maybe diamonds".

Hanna 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*. After initially pleading not guilty, Hanna ultimately pleaded guilty. On 27 May 2011, he was sentenced at the Sydney District Court to 7 years and 2 months imprisonment with a non-parole period of 5 years and 4 months.

#### ISAAC

Isaac was charged with 3 counts of aid, abet, counsel or procure the importation by Meksavanh, Younan and Hanna of a marketable quantity of a border controlled drug pursuant to sections 307.2(1) and 11.2(1) of the *Criminal Code*.

After initially pleading guilty to 1 charge and not guilty to the other charges, immediately prior to his trial Isaac entered guilty pleas to the remaining charges.

On 16 August 2011, at the Sydney District Court Isaac was sentenced to 11 years and 8 months imprisonment with a non-parole period of 8 ½ years. In handing down this sentence the Court found that Isaac had been the principal organiser in the heroin importation enterprise, assisted by Vaga, and that Isaac, contrary to his assertions, had known Meksavanh, Younan and Hanna had been smuggling illicit drugs, and not some other type of smuggled good, into Australia.

#### VAGA

Vaga was charged with 2 counts of aid, abet, counsel or procure the import by Younan and Meksavanh of a marketable quantity of a border controlled drug pursuant to sections 307.2(1) and 11.2(1) of the *Criminal Code*.

Vaga entered not guilty pleas to both charges. After a trial of approximately 7 weeks, a jury found Vaga guilty of both offences.

On 28 October 2011 at the Sydney District Court, Vaga was sentenced to 10 ½ years imprisonment with a non-parole period of 6 years. In handing down this sentence the Court found that Vaga, as an organiser in the heroin importation enterprise, had known that what Meksavanh and Younan had been smuggling into Australia were illicit drugs.

Younan and Isaac have appealed against their sentences to the NSW Court of Criminal Appeal.

## Gammabutyrolactone

### *Import Gammabutyrolactone (GBL)*

YASSAR BAKIR, STEVEN MILTON HILL, CANDICE RUTH GRAY AND ANTHONY KEITH BROAD

In 2005 and 2006, an indemnified witness was involved in the drug trade on the Gold Coast. He was involved with a colleague in the process of ‘cooking’ and selling the drug gammahydroxybutyrate (GHB), also known as ‘Fantasy’. Hill was a customer of the colleague.

On 16 March 2006, the colleague was arrested by police and found to be in possession of almost 4g of GBL. The indemnified witness then stopped selling Fantasy.

On 23 April 2006, Bakir and Hill physically assaulted, robbed and threatened the witness. They told him that he was required to arrange for the importation of GBL into Australia. The witness contacted Gray and Broad who then assisted with and financed the importation respectively.

In June 2006, the package containing the GBL arrived in Australia and was given to Broad for safe-keeping. Bakir and Hill abducted and threatened the indemnified witness further in an attempt to gain possession of the package. Bakir and Hill only released the witness when they were satisfied that he was unable to assist them with getting the package back from Broad.

On 5 July 2006, the police attended a Gold Coast hotel room where Broad was found with 3 bottles of GBL, cooking implements and a large quantity of manufactured GHB.

#### SUPREME COURT OF QLD

Bakir and Hill were each charged with 1 count of importing a commercial quantity of a border controlled drug contrary to section 307.1(1) of the *Criminal Code* and 1 count of attempting to possess a commercial quantity of an unlawfully imported border controlled drug pursuant to sections 307.5(1) and 11.1(1) of the *Criminal Code*.

Both pleaded not guilty and after a 10 day trial in the Qld Supreme Court in Brisbane were convicted on both counts on 27 October 2010.

Gray was also found guilty of 1 count of importing a commercial quantity of a border controlled drug pursuant to section 307.1(1) of the *Criminal Code*.

Broad pleaded guilty on the first day of trial to 1 count of importing a commercial quantity of a border controlled drug pursuant to section 307.1(1) of the *Criminal Code*, 1 count of possessing a commercial quantity of a border controlled drug pursuant to section 307.5(1) of the *Criminal Code*, 1 count of unlawfully producing a dangerous drug pursuant to section 8(d) of the *Drugs Misuse Act 1986 (Qld)* and 1 count of possessing a dangerous drug pursuant to section 9(c) of the *Drugs Misuse Act 1986 (Qld)*.

On 19 November 2010 the defendants were sentenced as follows:

- **BAKIR:** 6 years imprisonment with a non-parole period of 3 years and 3 months.
- **HILL:** 6 years imprisonment with a non-parole period of 3 years and 7 months.
- **GRAY:** 5 years imprisonment with a non-parole period of 2 ½ years.
- **BROAD:** 5 years imprisonment with a non-parole period of 2 years.

#### QLD COURT OF APPEAL

Bakir, Hill and Gray appealed against their convictions to the Court of Appeal. The CDPP sought leave to appeal against the sentences imposed on all 4 defendants.

On 28 October 2011 the Court of Appeal dismissed the CDPP’s and the defendants’ appeals.

#### HIGH COURT OF AUSTRALIA

On 7 June 2012 the High Court of Australia refused Bakir and Hill Special Leave to Appeal.



## Ecstasy (MDMA)

### *Trafficking MDMA*

PASQUALE BARBARO AND SAVERIO ZIRILLI

This case involved the seizure of 15 million MDMA tablets – the largest ever seizure of MDMA by law enforcement officers in the world at the time. It resulted from an extensive investigation by the AFP involving electronic monitoring and surveillance of a drug trafficking/money laundering syndicate involving a large number of individuals.

A shipping container arrived in Melbourne on 28 June 2007 from Naples, Italy. It contained 15 million MDMA tablets secreted into tins of tomatoes. The total weight of the MDMA tablets was 4.4 tonnes (total pure weight of 1.4 tonnes). The defendants arrived in Melbourne from Griffith 2 days before the arrival of the container. The role of the defendants was to receive and transport the narcotics with the intention to traffic the MDMA tablets either personally or in combination with other parties. Barbaro was the head of the trafficking syndicate and was a close, trusted associate of Zirilli.

The defendants discovered through contacts that the shipping container had been flagged for examination by the authorities and later that the police were likely involved and aware of the contents of the container. Although attempts were made to determine the whereabouts of the contents of the container, no attempt was ever made to obtain possession of it by the defendants.

Barbaro and others accepted responsibility for the failed importation and Barbaro was in regular

contact with persons overseas involved in the organisation of the importation. Barbaro twice travelled to Europe in 2007 in order to attempt to deal with the commercial stresses that arose as a consequence of the loss of the consignment.

The defendants were also prosecuted in relation to a separate trafficking of 1.2 million MDMA tablets and attempting to possess 150kg of cocaine from South America. Barbaro also admitted involvement in a conspiracy to import a commercial quantity of pseudoephedrine from India to Australia as well as money laundering offences.

Barbaro pleaded guilty and was convicted on 1 count of conspiracy to traffic a commercial quantity of a controlled drug pursuant to sections 11.5(1) and 302.2(1) of the *Criminal Code*, 1 count of trafficking a commercial quantity of a controlled drug pursuant to section 302.2(1) of the *Criminal Code* and 1 count of attempting to possess a commercial quantity of an unlawfully imported border controlled drug, namely cocaine, pursuant to sections 11.1(1) and 307.5(1) of the *Criminal Code*. Barbaro also admitted to a number of other offences which were placed on a schedule pursuant to section 16BA of the *Crimes Act 1914* and taken into account on sentencing.

Zirilli pleaded guilty and was convicted on 1 count of conspiracy to traffic a commercial quantity of a controlled drug pursuant to sections 11.5(1) and 302.2(1) of the *Criminal Code*, 1 count of





trafficking a commercial quantity of a controlled drug pursuant to section 302.2(1) of the *Criminal Code* and 1 count of aiding and abetting an attempt to possess a commercial quantity of an unlawfully imported border controlled drug, namely cocaine, pursuant to sections 11.1(1) and 307.5(1) of the *Criminal Code*.

The defendants were sentenced in the Supreme Court of Victoria on 23 February 2012. Barbaro was sentenced to life imprisonment with a non-parole period of 30 years. The sentencing judge indicated that had Barbaro not pleaded guilty he would have received a sentence of life imprisonment with no minimum term.

Zirilli was sentenced to 26 years imprisonment with a non-parole period of 18 years. The sentencing judge indicated that Zirilli would have received a sentence of 30 years imprisonment with a non-parole period of 24 years had he not pleaded guilty.

When handing down the sentence King J stated:

*“It is my view that it falls into the highest possible category of offending. The amount that you sought to possess was the largest amount of ecstasy ever seized in this country. It was, at the time of the seizure, the highest amount of ecstasy seized in the world. The cost of the tablets was multiple millions. The profit expected to be garnered from the possession and sale of those drugs ran into the hundreds of millions.*”

*You Barbaro were at the apex of that criminality – the very top of the tree in this country. Whilst others may possibly be at a level just below you, it is clear that you were the one that took on the debt and gave the orders. Your purpose in attempting to possess the goods was to ensure financial riches of a quite astronomical order. The offence and the manner in which it was prepared was exceedingly professional and difficult in terms of detection. The money trail involved was sophisticated and bespoke a very professional worldwide organised criminal group. To conclude that this crime fell anywhere other than at the highest level of criminality for offending of this nature would be absurd and insulting and, accordingly, I make that finding in respect of this offence in relation to you Barbaro. The nature and categorisation of the offending does not change for you Zirilli and the offence itself remains in the most serious offence category, but your involvement is a lesser involvement than that of Barbaro and the sentences will reflect that. The sentence must also reflect that you were Barbaro’s right hand man and trusted lieutenant, such that he would send you to represent him in Europe in his dealings with the syndicate.”*

## Methamphetamine

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### *Import Methamphetamine*

HOOI HEE NG, KWING WONG, CHOI HUNG LAM, WING CHEONG LAM, CHIU LUI CHAN

*This case was reported in the 2010–2011 Annual Report at pages 42–43.*

.....

**Correction:** *In last year’s report the charges against Wong were incorrectly reported. Rather than being charged with 1 count of possessing a marketable quantity of methamphetamine reasonably suspected of being unlawfully imported pursuant to section 400.5(1) of the Criminal Code, Wong was charged with 1 count*

*of possessing a marketable quantity of methamphetamine reasonably suspected of being unlawfully imported pursuant to section 307.9(1) of the Criminal Code and 1 count of money laundering under section 400.5(1) of the Criminal Code.*

*The reference to sentencing remarks directed to Wong was incorrectly reported. Rather than being sentenced by Stong DCJ, Wong was sentenced by Stone DCJ.*

### *Traffick Methamphetamine*

SJORD ROGIER SEGAAR

In this case the defendant transported 14kg of methylamphetamine from Sydney to Perth in a hired campervan while he posed as a tourist. Segaar packaged the methylamphetamine and secured it out of sight in the campervan and purchased a boogie board and fishing rods to support his story that he was a tourist. He used none of the equipment and never slept in the campervan.

The defendant then drove across Australia, apparently unaware that he was under surveillance by the AFP.

When he arrived in Scarborough, WA, the defendant parked the campervan and did not use it again. Instead, he almost immediately commenced contacting people to secure a buyer for the drugs. At one point the defendant visited a travel agent to make a casual enquiry about possibilities for travel. The defendant left the travel agent and the AFP then asked the travel agent about the defendant. When the defendant went back to the travel agent a few days later the travel agent mentioned that the police had been enquiring after him.

*When he arrived in Scarborough, WA, the defendant parked the campervan and did not use it again. Instead, he almost immediately commenced contacting people to secure a buyer for the drugs.*

The defendant immediately returned to the van and drove it to a multi-storey car park, leaving it unattended for a week. He then proceeded to make a conspicuous effort to look like a tourist.

AFP officers went to the van and substituted the methylamphetamine with a harmless substance. Later that day the defendant went to the van and took out 2 backpacks containing the substance. When the defendant was next seen by the police the backpacks were gone, one having been dumped in Queens Park.

The defendant was arrested later that evening and charged with trafficking a commercial quantity of a controlled drug pursuant to section 302.2(1) of the *Criminal Code*.

The defendant entered a plea of not guilty but after a 10 day trial in the Supreme Court of WA was convicted and sentenced to 18 years imprisonment with a non-parole period of 11 years and 4 months. In sentencing the defendant, McKechnie J stated:

*“Specific deterrence also has a part to play. You came as a visitor to Australia and, for the prospect of great reward, trafficked drugs worth more – considerably more than \$3 million, and you were prepared to unload them in the West Australian community without regard to the effect and misery on hundreds of people had you succeeded. You played the game for high stakes and you lost. Now it is time for the price to be paid.”*



## Pseudoephedrine

### *Import Pseudoephedrine*

MARK WILLIAM STANDEN

During the period of this offence the defendant held the senior position of Assistant Director – Investigations, at the NSW Crime Commission. The NSW Crime Commission was set up to investigate illegal drug trafficking, serious organised crime and to confiscate proceeds derived from serious criminal activity. The defendant had attained this very senior investigative position after a long career in law enforcement. He used his extensive knowledge of law enforcement, his experience and his contacts to minimise the prospect of the importation being detected and the drugs being seized by law enforcement agencies. The defendant's senior position and duties in law enforcement were focused on combating serious drug crime.

In January 2006, an agreement was entered into by co-conspirators being the defendant, Jalalaty and Kinch who was associated with a Dutch drug syndicate. They agreed to import into Australia a large quantity of pseudoephedrine, a precursor used in the manufacture of illicit amphetamine drugs. At least 300kgs of pseudoephedrine was to be concealed in a container of rice from Pakistan and consigned to an established food importing and distribution business conducted by Jalalaty.

The defendant knew that Jalalaty was attempting to obtain possession of the pseudoephedrine and took steps to assist him. The defendant's role in the agreement relied on his position as a senior investigator with the NSW Crime Commission, by which he could obtain information and knowledge from his contacts in law enforcement to prevent criminal proceedings being instituted or successfully prosecuted.

Kinch was based in Portugal and the Netherlands, and travelled widely on behalf of the Dutch drug syndicate. In 2003, he was arrested and charged for his involvement with international drug trafficking and money laundering. He provided assistance and became a registered informer with the NSW Crime Commission where he was being handled by the defendant. There were many communications between the defendant and Kinch which had gone beyond being a legitimate relationship of law enforcement officer and informer.

In December 2005, Kinch transferred \$47,192.17 into Jalalaty's bank account, most of which was further transferred into the defendant's account in smaller instalments from December 2005 to February 2006. This was said to have been a gift to the defendant from Kinch, but acceptance of this money from his informer meant that the defendant was irretrievably and corruptly compromised.



In January 2007, the defendant, Kinch and Jalalaty all travelled separately to meet in Dubai in furtherance of the conspiracy. In March 2007, Kinch and Jalalaty were both in Bangkok.

In May 2007, a facsimile purportedly from a company in India, but actually from the Dutch drug syndicate, was sent to Jalalaty. This was intercepted by law enforcement authorities and was the point at which the lengthy investigation commenced. The next 18 months were spent by Kinch, Jalalaty and the defendant covertly planning and arranging the illicit importation of pseudoephedrine.

Contrary to the expectations of the conspirators, the pseudoephedrine was not actually sent when the rice shipment left Pakistan and arrived in Sydney in late May 2008 as they had been defrauded by their Pakistani suppliers.

The Crown case consisted largely of evidence of communications in the form of coded email messages; telephone conversations; SMS's; and meetings between the conspirators, which were captured by authorised covert surveillance over many months. The importation offence involved sophisticated planning on large scale including extensive levels of covert communication between the conspirators and dealing with established international drug traffickers and their overseas contacts.

The defendant was arrested on 2 June 2008 and charged with the following offences:

- conspiracy to import a commercial quantity of a border controlled precursor pursuant to sections 307.11(1) and 11.5 *Criminal Code*;
- knowingly take part in supply of an amount of prohibited drug, being 300kg pseudoephedrine, an amount not less than the large commercial quantity applicable to that prohibited drug, pursuant to s25(2) *Drug Misuse and Trafficking Act 1985* (NSW); and
- conspiracy to pervert the course of justice pursuant to section 42 *Crimes Act*.

The defendant maintained pleas of not guilty to each of the 3 counts from the time of his arrest. He was convicted of all 3 counts after a 5 month trial in the Supreme Court of NSW. On 8 December 2011 the defendant was sentenced to 22 years imprisonment with a non-parole period of 16 years. At sentencing the court took into account the onerous conditions of the defendant's custody.

At sentencing, James J stated:

*“A matter seriously aggravating the prisoner’s criminality was his misuse of knowledge and contacts he had acquired in his career as a law enforcement officer and the abuse of his position with the New South Wales Crime Commission.”*

## Other Drugs

### *Importing Steroids*

KRISTIAN JON HANCOCK

On 13 March 2011 a package was intercepted by ACBPS upon its arrival in Australia from Hong Kong. The package was addressed to 'Kristy Handcox' at the defendant's home address. The package contained 'Essential Nuance Airy' brand shampoo and conditioner bottles filled with a colourless liquid which, upon analysis by the NMI, were found to contain 390.36g of pure testosterone propionate and 388.36g of pure testosterone enanthate. Both are steroids which are sometimes used medicinally in hormone replacement therapy but their use is banned in sport by the World Anti-Doping Agency and they pose a variety of health risks. Their importation into Australia, in the absence of required permits, is prohibited.

On 18 March 2011 ACBPS officers executed a search warrant at the defendant's home address and located various items including a second opened package from Hong Kong and a quantity of sealed glass vials containing a clear yellow liquid and labelled 'Sustanon 250' or 'Testosterone Propionate'. Analysis of the vials by the NMI identified the substance as 506.79g of pure testosterone propionate and 501.16g of pure testosterone enanthate.

During the search and later in a recorded interview the defendant made full admissions including how he ordered the substance from a Chinese supplier; arranged for the substance to be sent to a hotel in Hong Kong; travelled to Hong Kong to convert the steroids from a powdered form to a liquid form; repackaged the substance to appear like shampoo and conditioner and posted both packages back

to his own address in Australia. The defendant also admitted to having used and sold steroids previously and that he intended to sell the imported steroids for financial gain in order to pay for his gambling debts.

The defendant was charged with 4 counts of importing prohibited Tier 1 goods pursuant to section 233BAA(4) of the *Customs Act* and was convicted of the offences.

The defendant presented evidence in the sentence proceedings satisfying the Court that, following the detection of the crimes; he had taken the initiative to reform his life; re-enrolling in and completing a Bachelor of Science; obtaining a highly paid graduate position with a mining company; undertaking counselling to overcome his gambling addiction; signing a Deed of Self-Exclusion from venues with gambling facilities; and abstaining from steroid abuse.

After taking into account this evidence and discounting his head sentence by 25% due to his early plea of guilty, the Sydney District Court sentenced the defendant on 14 June 2012 to 18 months imprisonment to be released immediately on condition that he be of good behaviour for 2 years. A further condition was imposed requiring the defendant to enter into a Deed of Self-Exclusion in relation to gambling venues located within 50km of any place of which he may reside or work.





## 2.3 Commercial Prosecutions

There are specialist Commercial Prosecutions branches in each of the CDPP's larger regional offices. Those branches prosecute offences under the *Corporations Act*, *National Consumer Credit Protection Act 2009* and the *Australian Securities and Investments Commission Act 2001* and comparable State or Territory offences. The smaller regional offices have prosecutors who specialise in commercial prosecutions.

Responsibility for investigating alleged breaches of the *Corporations Act*, the NCCP Act and the ASIC Act rests with the Australian Securities and Investments Commission (ASIC). 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.

If an investigation conducted by ASIC appears to disclose the commission of a serious offence, ASIC will, where appropriate, refer a brief of evidence to the CDPP for consideration and prosecution action. Where ASIC's 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*, the NCCP Act and the ASIC Act.



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

The CDPP's Commercial Prosecutions branches also deal with large fraud matters where there is a corporate element and all prosecutions for offences against the *Competition and Consumer Act 2010*, including the serious cartel offences in sections 44ZZRF and 44ZZRG and the consumer protection offences in the Australian Consumer Law.

Responsibility for investigating alleged breaches of the *Competition and Consumer Act 2010* rests with the Australian Competition and Consumer Commission (ACCC). The CDPP meets regularly with the ACCC to discuss specific case and general liaison issues.

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 of the Commonwealth*.

Commercial Prosecutions Branches also conduct prosecutions pursuant to the *Bankruptcy Act 1966*. 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 level to discuss issues relevant to offences under the *Bankruptcy Act 1966*.

The statistics that appear in Chapter 3 of this Report include statistics for prosecutions conducted by the Commercial Prosecutions Branches.

## *Insider Trading*

JOHN JOSEPH HARTMAN

The defendant was employed as an equities dealer where his role included buying and selling listed securities on the Australian Stock Exchange in accordance with instructions provided to him by portfolio managers. Between mid-2008 and January 2009 the defendant used inside information to engage in front running using off-market trading in Contracts for Difference (CFDs). From mid-2007 to mid-2008 the defendant communicated inside information including targets for the acquisition and disposal of shares set by portfolio managers to a close friend, knowing that the friend would acquire CFDs in the relevant stock.

The defendant pleaded guilty to 19 counts of insider trading pursuant to section 1043A(1) of the *Corporations Act* and 6 counts of communicating inside information to another, commonly referred to as ‘tipping’ pursuant to section 1043A(2) of the *Corporations Act*. A further 20 offences were included in a section 16BA of the *Crimes Act* schedule and were taken into account on sentencing.

On 2 December 2010 the NSW District Court sentenced the defendant to 4½ years imprisonment with a non-parole period of 3 years. A forfeiture order pursuant to section 49 of the *POC Act 2002* was made in the amount of \$ 1,575,949.43.

The defendant successfully appealed the severity of this sentence and on 7 December 2011 the NSW Court of Criminal Appeal re-sentenced the defendant to 3 years imprisonment to be released after 15 months on condition that he be of good behaviour for 18 months. The sentence was reduced to take into account the substantial assistance provided by the defendant, including the fact that he had voluntarily admitted the offences to ASIC and had participated in a record of interview where he had made full admissions and disclosed the tipping offences.

*...the defendant used inside information to engage in front running using off-market trading in Contracts for Difference (CFDs).*

## Commercial Fraud

STUART KARIM ARIFF

*This case involved fraudulent conduct by a liquidator and a breach of trust to the shareholders of the company involved.*

.....

On 9 June 2006 the defendant, a registered liquidator, was appointed as a liquidator of an investment company. In this capacity, the defendant had control over the liquidation of the company's assets and was responsible for their conversion to cash, the payment of creditors and distribution to members. To effect the liquidation of the company the defendant opened bank accounts in the company's name to which he was the sole signatory.

Between June 2006 and April 2008, on 13 separate occasions the defendant drew upon company funds for bank cheques and transferred them for payment to third parties or Stuart Ariff Insolvency Administrators (SAIA), for purposes unrelated to the company's liquidation. In total the defendant misappropriated \$1,183,260.05.

As a liquidator the defendant was also required by section 539 of the *Corporations Act* to provide ASIC with a proper account, at 6 monthly intervals, of receipts and payments in the liquidation by lodging a Form 524, being a Presentation of Accounts and Statement. Once lodged these forms were thereafter available to the public to view the particulars of all receipts of funds and the payment of funds during the relevant period.

On or about 25 March 2009 the defendant lodged 6 Form 524s which contained false information and so prevented ASIC and the company shareholders from being appraised of the true, dire financial situation of the company. The forms also concealed the defendant's fraudulent conduct.

The defendant was charged with 13 counts pursuant to section 176A of the *Crimes Act 1900* (NSW) for being an officer of a body corporate and acting with intent to defraud and 6 counts pursuant to section 1308(2) of the *Corporations Act* for making a false statement in a document lodged with ASIC.

Following a trial, the defendant was found guilty by a jury. On 19 December 2011 in the District Court at Parramatta, the defendant was sentenced to total effective sentence of 6 years imprisonment with a non-parole period of 3½ years. The court found that the defendant in committing the offences was motivated primarily by a concern to keep his own company, SAIA, afloat as it had mounting and significant business debts, but he did so at the expense of the company's shareholders.

The defendant was banned for life as a liquidator. The defendant was declared bankrupt in October 2009, less than 2 months after ASIC obtained a civil judgment for \$5 million as compensation for 16 administrations and liquidations, including this company's liquidation.

## Commercial Fraud

GABRIAL NEIL PENNICOTT

The defendant dishonestly used his position as a director in relation to share transfers at inflated prices as well as making false representations to investors regarding share prices. By the time this matter had been fully investigated the defendant was no longer in Australia, having moved to Canada. He was the subject of extradition proceedings.

The defendant was charged with 23 counts:

- 6 counts pursuant to section 184(2)(a) of the *Corporations Act* of dishonest use of position as a director or officer of a company with the intention of directly or indirectly gaining an advantage for himself or someone else (counts 1–6);
- 6 counts pursuant to section 82(1) of the *Crimes Act 1958* (Vic) of dishonestly obtaining a financial advantage by deception (counts 7–12);
- 7 counts pursuant to sections 82(1) and 321M of the *Crimes Act 1958* (Vic) of attempt to obtain a financial advantage by deception (counts 13–19); and
- 4 counts contrary to section 81 of the *Crimes Act 1958* (Vic) of dishonestly obtaining property belonging to another by deception (counts 20–23).

The defendant pleaded not guilty and following a 10 week trial was convicted on all counts.

On 28 October 2011 the defendant was sentenced in the County Court of Victoria to the following sentences:

- Counts 1–6: 20 months imprisonment to be released after serving 9 months on condition that he be of good behaviour for 2 years; and
- Counts 7–23: 4 years and 7 months with a non-parole period of 2½ years.

The overall effective sentence was 4 years and 7 months imprisonment with a non-parole period of 3 years and 3 months. A period of 130 days was determined to be imprisonment already served.

In sentencing, His Honour stated that the defendant betrayed the trust of decent and honest hardworking people who had put their trust and faith in him, with dishonesty, connivance and barefaced lies. His Honour further stated that the defendant continued that dishonesty in court and that the jury rejected the defendant’s version and assertion that at all times he had acted honestly and with honest intentions.

His Honour stated that it was plain that the defendant was not remorseful for his criminality. In this context, he stated that the defendant’s testimony “*generally created a picture of a person obsessed with self-importance, success and wealth*”, and rejected his explanation that his behaviour was a mistake or due to stress and substance abuse.

His Honour took into account the fact that general deterrence is the principal sentencing factor in relation to white collar crime.

His Honour stated:

*“White collar crimes, like in your case, are grave manipulations and betrayal of trust and undermine the security and confidence which the world of finance, commerce and investment must be able to rely on.”*

His Honour stated that the defendant had reasonably good prospects of rehabilitation; that there was some delay not attributable to him since his return to Australia in late 2007; that the network of family support and the faith-based life to which he had turned augured well for the future; and that the likelihood of further offending was minimal.

## Commercial Fraud

ERIC KRECICHWOST

The defendant was the principal of the Fincorp Group during 2003 (the period of the charges). Fincorp Investments Ltd was the corporate vehicle through which the Fincorp Group obtained investments from the public by offering secured and unsecured notes through prospectuses issued in 2002, 2003 and 2005. Fincorp Investments Ltd (via a related service company Guardian Mortgages Pty Ltd), lent most of the funds it raised through the prospectuses to a number of property development companies beneficially owned and controlled by the defendant and members of his family.

On or about 1 September 2003, the defendant in his position as a director of Fincorp Investments Ltd signed a cheque in the amount of \$900,000 payable to one of the property development companies (Bridgewater Developments Pty Ltd) for the purpose of enabling Bridgewater Pty Ltd to pay himself or his private company Crest Capital Pty Ltd purportedly for ‘commission and management fees’. Neither he nor anyone associated with Crest Capital Pty Limited had provided any such services in relation to those properties to justify the payment of such a fee.

On or about 27 October 2003, the defendant in his position as a director of Fincorp Investments Ltd, co-signed a cheque in the amount of \$1,980,000 payable to Prime Consulting Group Pty Ltd, a company owned and controlled by his brother, purportedly for services provided in relation to the identification of a property. Neither the offender nor anyone associated with Prime Consulting Group Pty Ltd had provided any such services to justify the payment of such a fee.

The total financial advantage obtained by the defendant from the transactions was \$2,310,000 for himself and \$495,000 for his family.

The defendant was charged with 3 counts of intentionally directly or indirectly gaining an advantage for himself or someone else or causing detriment to the corporation pursuant to section 184(2)(a) of the *Corporations Act*.

### NSW DISTRICT COURT

The defendant pleaded not guilty and was found guilty by a jury on 16 February 2011. He was sentenced on 8 April 2011 in the NSW District Court to a total sentence of 3 years and 7 months imprisonment with a non-parole period of 8 months.

### NSW COURT OF CRIMINAL APPEAL

The defendant appealed against his conviction to the NSW Court of Criminal Appeal. On 25 May 2012 the appeal was dismissed.

### HIGH COURT OF AUSTRALIA

The defendant has filed an application for Special Leave to Appeal to the High Court of Australia.



## *Commercial Fraud*

SHAWN DARRELL RICHARD

Between November 2005 and September 2010, whilst a director of Astarra Asset Management Pty Ltd and other companies in the Trio Capital Group, the defendant dishonestly operated the business in a manner involving a complex web of corporate structures designed to divert \$26.6 million of superannuation funds held by investors in Australia into overseas funds located in tax havens in the Caribbean. The overseas funds were inappropriate superannuation investments.

The defendant obtained a significant financial benefit as a result. He was paid a net annual salary of over \$110,000 and \$1.3 million in extra payments. Astarra received \$5.3 million. None of the \$26.6 million has been recovered.

The defendant was charged with 2 counts of dishonestly conducting financial services pursuant to section 1041G(1) of the *Corporations Act* with 1 count of making a misleading statement pursuant to section 1041E(1) of the *Corporations Act* being taken into account on a section 16BA of the *Crimes Act* schedule.

On 12 August 2011 the defendant was sentenced to 3 years and 9 months imprisonment to be released after serving 2½ years.

*The defendant obtained a significant financial benefit as a result. He was paid a net annual salary of over \$110,000 and \$1.3 million in extra payments.*





## 2.4 Counter-Terrorism

The CDPP continues to prosecute counter-terrorism matters and retains assigned counter-terrorism prosecutors in each regional office and counter-terrorism branches in the Sydney, Melbourne and Head Offices. Those branches are staffed by senior experienced prosecutors.

As with other matters, the CDPP assesses counter-terrorism prosecution briefs of evidence from investigative agencies in accordance with the *Prosecution Policy of the Commonwealth*. Additionally, the CDPP provides legal assistance to investigative agencies prior to the compilation of those briefs of evidence. The CDPP contributes to Australian Government projects relating to counter-terrorism.

As at 30 June 2012, one defendant was facing charges for counter-terrorism offences, who was also the subject of an appeal. Another eight defendants were involved in appeals arising from counter-terrorism prosecutions.



## Counter Terrorism

SANEY EDWO AWEYS, WISSAM MAHMOUD FATTAL, & NAYEF EL SAYED

*This case was reported in the 2009–2010 Annual Report at page 47 and in the 2010–2011 Annual Report at page 70.*

.....

Each of the defendants in this matter were alleged to be part of a plan for a number of men, armed with high powered weapons, to enter the Holsworthy Army Barracks and fire at whoever they saw until they themselves were killed or overwhelmed. The AFP arrested the defendants in Melbourne on 4 August 2009.

On 16 December 2011, the 3 defendants were convicted and sentenced to serve 18 years imprisonment with non-parole periods of 13½ years.

The Director lodged appeals against the leniency of the sentences imposed. Each defendant has made an application for leave to appeal against conviction and sentence. Those appeals are yet to be heard.

*Each of the defendants in this matter were alleged to be part of a plan for a number of men, armed with high powered weapons, to enter the Holsworthy Army Barracks and fire at whoever they saw until they themselves were killed or overwhelmed.*

The defendants were charged with conspiring to do acts in preparation for, or planning, a terrorist act pursuant to sections 11.5(1) and 101.6(1) of the *Criminal Code*.

On 23 December 2010, following a trial lasting some 5 months in the Supreme Court of Victoria, a jury found Fattal, Aweys and El Sayed guilty of conspiring to do acts in preparation for, or planning, such a terrorist act. The remaining defendants, Khayre and Ahmed, were acquitted.



## Counter Terrorism

BELAL SAADALLAH KHAZAAL

*This case was reported in the 2008–2009 Annual Report at page 59 and in the 2010–2011 Annual Report at pages 71 and 72.*

.....

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 22 day 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. The jury was discharged.

### SUPREME COURT OF NSW

Sentence proceedings were heard over 14 November 2008, 20 February 2009 and 31 July 2009. On 25 September 2009 in the Supreme Court of NSW the defendant was sentenced to 12 years imprisonment with a non-parole period of 9 years. The defendant was due for parole on 31 August 2017.



*...the defendant compiled a ‘book’ titled “Provisions on the Rules of Jihad – Short Judicial Rulings for Fighters and Mujahideen Against Infidels” using a pseudonym.*

#### NSW COURT OF CRIMINAL APPEAL

On the same day as the defendant was sentenced, he lodged a notice of appeal against conviction and sentence. Appeal arguments were heard in the NSW Court of Criminal Appeal on 6 October 2010 and judgment was reserved.

On 9 June 2011 the majority of the NSW Court of Criminal Appeal found that the evidential burden in relation to the defence that the making of the document was not intended to facilitate assistance in a terrorist act had been satisfied. The appeal against conviction in relation to the fourth ground of appeal was allowed, the conviction was quashed and a new trial ordered.

#### HIGH COURT OF AUSTRALIA

On 6 July 2011 the CDPP filed an application for Special Leave to Appeal to the High Court. On 7 October 2011 the High Court granted special leave. The appeal was heard on 2 March 2012 and the Court reserved its decision.

On 10 August 2012 the High Court upheld the Crown appeal, restored the conviction and remitted the matter to the NSW Court of Criminal Appeal to determine the sentence appeal. The sentence appeal has not yet been determined.

## Counter Terrorism

OMAR BALADJAM, KHALED CHEIKHO, MOUSTAFA CHEIKHO, MOHAMMED ALI ELOMAR, ABDUL RAKIB HASAN, MOHAMMED OMAR JAMAL, MIRSAJ MULAHALILOVIC, KHALED SHARROUF, MAZEN TOUMA

This operation involved a multi-agency investigation into the activities of 9 Sydney men. All defendants were arrested and charged with 1 offence of conspiring to do an act in preparation or planning for a terrorist act pursuant to sections 11.5(1) and 101.6(1) of the *Criminal Code*. The prosecution case alleged that each of the 9 defendants entered into an agreement to do acts in preparation for a terrorist act (or acts). It was alleged that in accordance with this agreement the defendants sourced chemicals and materials that could be used either directly or indirectly in the preparation of an explosive device; possessed or attempted to purchase firearms and ammunition; and possessed large quantities of ‘extremist’ and instructional material.

Pre-trial proceedings before the Supreme Court of NSW commenced in February 2008 and concluded in October 2008. During the course of the pre-trial proceedings and the trial, Whealy J handed down 100 rulings which dealt with matters such as exclusion of evidence; presentation of admissible evidence; applications to discharge the jury; applications relating to the fitness of 1 of the defendants; subpoena issues; and Constitutional arguments. In addition, the defendants made 3 interlocutory applications to the NSW Court of Criminal Appeal.

Four of the defendants entered pleas of guilty to various counter-terrorism offences and received sentences of imprisonment with head sentences ranging between 4 years and 8 months and 18 years and 8 months.

The conspiracy trial in relation to the remaining 5 defendants was conducted over 12 months between October 2008 and October 2009. The Crown called a total of 231 witnesses, including expert witnesses in the fields of DNA, fingerprinting, handwriting, ballistics and computer forensic evidence. All defendants were found guilty by the jury. In February 2010 the defendants were sentenced to periods of imprisonment ranging from 23 to 28 years, with non-parole periods ranging from 17 years and 3 months to 23 years. The defendants have lodged appeals against their convictions and the severity of their sentences.

The appeals will be heard in the NSW Court of Criminal Appeal on 3 June 2013.





## 2.5 Money Laundering

Money laundering prosecutions are typically complex prosecutions, involving complicated factual circumstances. These often involve overseas conduct requiring international cooperation and evidence to assist investigation and prosecution. The prosecution of these offences often requires detailed financial analysis and evidence. The CDPP 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 *POC Act 1987*. The Act included two 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 *POC 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.

## Money Laundering

KAI CHEUNG LI

Between 1997 and 2003, the defendant was the general manager of 2 government owned development and housing construction companies in southern China. The defendant had a close working relationship with the director and loans manager of a government owned finance company.

Between 1998 and 2000 the defendant used 3 private companies to obtain 28 loans. The loans, each for the specific purpose of constructing ‘low-cost housing’, were approved by the director. The loans totalled ¥82 million or approximately AUD\$15 million.

No properties were constructed. Instead, ¥30 million was funnelled via a series of foreign currency conversions to a shell company in Hong Kong owned 50/50 by the defendant and the director. The defendant subsequently directed a total of AUD\$2.8 million of the misappropriated funds to be transferred to Australia in 7 instalments.

The defendant came to reside in Australia in 2003, shortly after the misappropriation was detected by Chinese authorities. Between 2003 and 2007 the misappropriated funds were further dealt with as various investments. At the time of the defendant’s arrest in 2007, \$70,000 of the capital in his residence and \$120,000 in a term deposit in the defendant’s name could be traced to the misappropriated funds.

The defendant was charged with 1 count of dealing in proceeds of crime with a value of \$100,000 or more pursuant to section 400.4(1) of the *Criminal Code*, 1 count of dealing in proceeds of crime with a value of \$50,000 or more pursuant to section 400.5(1) of the *Criminal Code* and 7 counts of money laundering pursuant to section 81(2) of the *POC Act 1987*.

The defendant pleaded not guilty and after a trial before the Supreme Court in Brisbane he was found guilty by the jury on all counts. The defendant was sentenced on 14 September 2011 to 14 years imprisonment with a non-parole period of 9 years.

In sentencing, Daubney J made the following comments:

*“It is relevant for me to note, however, that one of the factors that section 16A requires me to take into account is the degree to which you have shown contrition for having committed these offences, and I observe that you have not shown a skerrick of remorse. This offending entailed very serious aspects. You defrauded a public utility in China; you fostered illegal currency transactions. By any objective standards of propriety, your conduct in bringing this money into Australia and applying it in the way you have constituted serious anti-social behaviour.”*

AUD \$4,160,259.81 was also forfeited and returned to Chinese authorities on 18 November 2009 as a result of the equitable sharing provisions under the *POC Act*.



## *Money Laundering and Tax Fraud*

MICHAEL MILNE

This was a Project Wickenby matter investigated by the AFP that involved significant co-operation between the AGD, CDPP, AFP and ATO.

In May 2003 the defendant, using a company he controlled in the British Virgin Islands, purchased a debt of \$11 million owed by an Australian public company to another entity, for \$1. In November 2003 the defendant sold \$2,236,459 of the debt to Barat Advisory Pty Limited, the defendant's company in Australia, for \$1.5 million which Barat Advisory did not pay to the British Virgin Islands company.

In April 2004 the Australian public company repaid the debt of \$2,236,459 to the defendant's company, Barat Advisory by issuing to it a parcel of 55,911,475 shares at 4c a share.

In May 2004 the defendant engaged the services of a tax lawyer at a Sydney law firm to set up an offshore structure to which the defendant could transfer the shares. The structure included 5 companies set up in St Vincent and the Grenadines and 5 foundations known as 'stichtings' set up in the Netherlands – each of the offshore companies was owned by one of the Dutch stichtings. The offshore companies held a number of bank accounts in Switzerland.

The defendant's interest in the assets of the offshore structure was secured by documents prepared by the tax lawyer, including a deed of charge and a separate contract titled a Master Investment Futures Agreement (MIFA)

between the defendant and each of the offshore companies, and by way of a deed of charge between the defendant and each of the Dutch stichtings. The effect of the MIFA was to entitle the defendant to 99% of the value of the offshore companies upon termination of the MIFA in exchange for the defendant making an annual payment of \$10 to each of the stichtings.

The tax lawyer travelled to the Netherlands and Switzerland to set up the structure. Documents obtained by way of Mutual Assistance from the Netherlands and Switzerland identified the defendant as the beneficial owner of the Dutch stichtings and of the Swiss bank accounts of the 5 offshore companies. The structure was managed out of Switzerland by a financial services agent located in Zurich at the defendant's direction.

The prosecution case, which was accepted by the jury, was that the transfer of the 55,911,475 shares to the offshore companies involved the transfer of the legal title only. The beneficial ownership to the shares remained with Barat Advisory in circumstances where the defendant was the controlling mind of the companies and it was his intention that the companies hold the shares on trust for Barat Advisory.

Once the shares were transferred offshore, 6,062,180 of the shares were sold between July and November 2004. Forty-eight million of the shares were disposed of by swapping them





in February 2005 with 1 million shares in a Swiss technology company held by a former colleague of the defendant's valued at between \$8.5 million and \$10.1 million. The disposal of the 48 million shares resulted in a net capital gain to Barat Advisory of at least \$6.5 million.

The 1 million shares in the Swiss technology company were then held by 1 of the offshore companies in a Swiss bank account and sold between February 2005 and June 2005 for \$8.4 million. Amounts totalling \$5.6 million were transferred from Switzerland to the Australian bank account of Barat Advisory and used to make purchases of jewellery (\$100,000), a yacht (\$270,000), the deposit (\$200,000) and stamp duty (\$269,492) for a residential property in Neutral Bay Sydney, payment towards a motor vehicle (\$71,534) and to pay out 3 loan accounts (\$2,389,200). Other transfers were made directly to third parties for the purchase of artwork (totalling \$704,753) and to pay for membership fees to an exclusive resorts group (\$495,141).

Between May 2005 and November 2006 the defendant engaged an accounting firm to prepare financial documents and the tax returns of Barat Advisory. During that period, the defendant failed to advise his accountants about the offshore structure set up to hold the parcel of shares issued to Barat Advisory, their disposal and the correct source

of the \$5.6 million received by Barat Advisory's Australian bank account.

The tax return for Barat Advisory lodged with the ATO for 2005 failed to disclose the net capital gain of between \$6,549,090 and \$8,221,331 made on the disposal in February 2005 of the 48 million shares issued to Barat Advisory in April 2004. The tax properly payable to the Commonwealth on the net capital gain was between \$1,964,727 and \$2,466,399.

The defendant was charged with 1 count of dealing in proceeds of crime worth \$1,000,000 or more pursuant to section 400.3(1) of the *Criminal Code* and 1 count of doing an act with the intention of dishonestly obtaining a gain from the Commonwealth pursuant to section 135.1(1) of the *Criminal Code*.

The defendant pleaded not guilty. In November 2010, following a 4 week trial, the jury found the defendant guilty of both charges. On 17 December 2010 the Supreme Court of NSW sentenced the defendant to 8½ years imprisonment with a non-parole period of 4 years and 9 months.

In April 2011 the defendant appealed to the NSW Court of Criminal Appeal against his convictions and sentence. In March 2012 the NSW Court of Criminal Appeal dismissed his appeal.

## Money Laundering – Skimming

ALEXANDRU STROIA

The defendant attached electronic card skimming devices to 4 bank automatic teller machines (ATMs) and placed covert cameras over the keypads, in order to capture details of cards used by ATM customers. He also caused damage to a further 2 bank ATMs.

On executing search warrants, the Queensland Police located further card skimming equipment in various stages of readiness at the defendant's home and in a storage unit at the Gold Coast. Between January 2009 and July 2010, the defendant also dealt in the proceeds of crime from the card skimming operation by making 22 transactions transferring a total of \$88,372 from Australia to Romania and the UK. None of the transferred funds were recovered.

The defendant pleaded guilty to 6 counts of possessing a thing with intent to dishonestly obtain or deal in personal financial information pursuant to section 480.5 of the *Criminal Code*, 1 charge

of dealing in the proceeds of crime, money or property worth \$50,000 or more pursuant to section 400.5(2) of the *Criminal Code* and 2 charges of wilful damage pursuant to section 469 of the *Criminal Code* (Qld).

The defendant was sentenced on 3 June 2011 in the District Court at Brisbane to 3 years imprisonment to be released after 18 months on condition that he be of good behaviour for 3 years.

Pursuant to section 48(1) of the *POC Act 2002*, \$2,500 located during the search of the premises was forfeited. Pursuant to section 701 of the *Police Powers and Responsibilities Act 2000* (Qld) the forfeiture and/or destruction of property used in the card skimming and money laundering activities was also ordered.

The defendant appealed against his sentence on the ground that it was manifestly excessive. The application for leave to appeal against the sentence was heard by the Qld Court of Appeal on 18 October 2011. On 8 November 2011, the Court of Appeal refused the application.

## Money Laundering

LAI YEAN WONG

The defendant arrived in Australia in March 2011. Between June and November 2011 he deposited a total of \$6,297,187.90 cash in 34 transactions through international currency exchange companies in Melbourne, Sydney and Perth. The cash was transferred to bank accounts in China, and was reasonably suspected to be proceeds of crime. The defendant was arrested on 17 November 2011 with \$63,500 cash in his possession, together with a laptop which contained records of the cash transactions and the defendant's commission.

During a subsequent search of the defendant's residential premises, AFP officers located an office set up for the manufacture of counterfeit credit and debit cards. Police located 973 completed counterfeit credit cards, thousands of incomplete and blank cards, as well as printers, presses and embossers for their manufacture.

The defendant possessed a counterfeit Hong Kong passport containing his photograph with a false name.

*Between June and November 2011 he deposited a total of \$6,297,187.90 cash in 34 transactions through international currency exchange companies in Melbourne, Sydney and Perth.*

The defendant pleaded guilty to the following counts:

- 5 counts of dealing with money, being \$100,000 or more, which is reasonably suspected of being proceeds of crime pursuant to section 400.9(1) of the *Criminal Code*;
- 1 count of dealing with money, being less than \$100,000, which is reasonably suspected of being proceeds of crime pursuant to section 400.9(1A) of the *Criminal Code*;
- 1 count of possessing a false foreign travel document pursuant to section 22(1) of the *Foreign Passports (Law Enforcement and Security) Act 2005*;
- 1 charge of possessing false documents pursuant to section 83A(5) of the *Crimes Act 1958* (Vic); and
- 1 charge of possessing a thing to falsify documents pursuant to section 83A(5A) of the *Crimes Act 1958* (Vic).

On 29 May 2012 the defendant was sentenced at the County Court of Victoria to 5 years and 9 months imprisonment with a non-parole period of 4 years.

In passing sentence His Honour Judge Gullaci stated:

*“Money laundering even when the allegation is that the money was reasonably suspected of being the proceeds of crime is a serious crime. International crime syndicates could not operate unless people like you were prepared to perform crucial roles in return for the expected payment of money.”*

*“Those who are minded to come in to this country for the sole purpose of committing serious crimes must be made aware that the courts will impose condign punishment such as to deter others who are minded to take the risk. The message must be set out loud and clear. If you come in to this country to commit serious crimes you had better be prepared to serve significant terms of imprisonment if you are caught.”*



## 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*. While the majority of prosecutions to date have focused on trafficking for the purposes of sexual exploitation, labour trafficking is an emerging issue.

Since the commencement of Divisions 270 and 271 of the *Criminal Code*, 15 people have been convicted of people trafficking related offences. Ten of those defendants were convicted of slavery offences, three of sexual servitude offences and two of trafficking in persons. As at 30 June 2012, five people trafficking matters, involving six defendants, were before the courts. Two of those five matters (relating to three defendants) were at the appeal stage.

The CDPP has considerable experience in the area of people trafficking, which is a challenging one given the factual situations involved, the need for interpreters and reliance on overseas witnesses. Given the challenges in this area an effective and coordinated whole of government response is required in investigating, prosecuting and supporting victims. The CDPP works closely with government departments in the area of people trafficking and is a member of the Anti-People Trafficking Interdepartmental Committee.

These prosecutions rely on evidence from victims of the alleged offences. These victims require considerable support. The CDPP Victims of Crime Policy recognises the importance of treating victims with courtesy, dignity and respect.

## Labour Trafficking

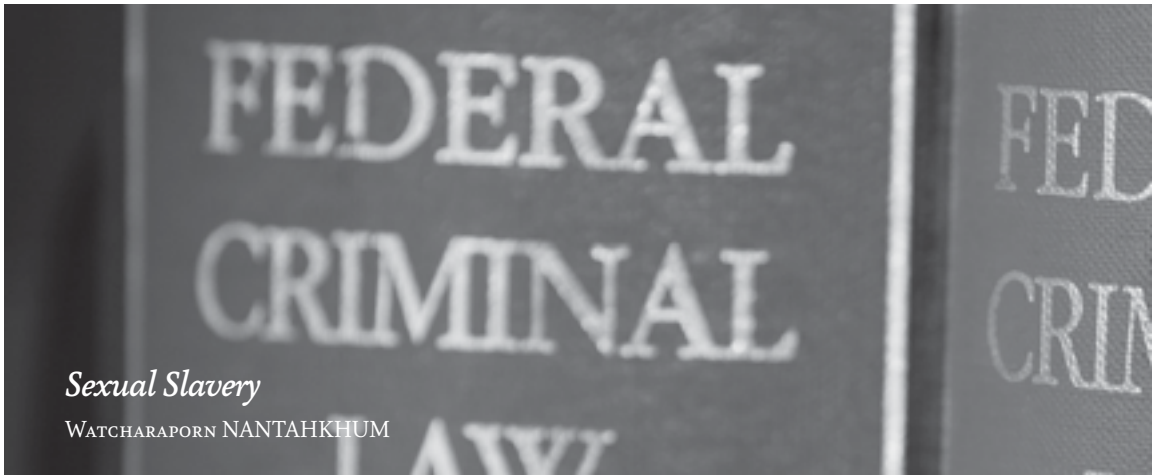
DIVYE KUMAR TRIVEDI

On 3 August 2007, the victim, an Indian national, arrived in Australia on a subclass 457 temporary business (long stay) visa to work as a chef for the defendant in his restaurant at Eastwood in NSW. Upon his arrival the victim worked in the defendant's restaurant for approximately 16 months. During this period the victim was told that he could not leave Australia unless he repaid the defendant \$7,000, being the cost of bringing him to Australia. The victim was not able to pay that sum and because of this threat the victim was not free to stop working or leave the restaurant. The defendant also took possession of the victim's passport to prevent him from leaving the country.

The defendant pleaded guilty to 1 count of organising or facilitating the entry or receipt of a person into Australia being reckless as to whether that person would be exploited pursuant to section 271.2(1B) of the *Criminal Code*.

On 8 May 2012 the defendant was sentenced in the NSW District Court to 250 hours of community service and fined \$1000. In passing sentence the Court agreed with the Crown submission that “*general and specific deterrence were of relevance in order to deter the offender and those that may contemplate bringing others to Australia in circumstances of forced labour*”.

... because of this threat the victim was not free to stop working or leave the restaurant. The defendant also took possession of the victim's passport to prevent him from leaving the country.



## *Sexual Slavery*

WATCHARAPORN NANTAKHUM

This was the first sexual slavery prosecution in the Australian Capital Territory. The defendant came to Australia from Thailand in 2004 to work in the sex industry in Sydney. She subsequently established a brothel in Canberra.

Prior to her arrival in Australia, the first victim was told by the defendant that she would have a debt of \$45,000 which she would repay to the defendant by providing sexual services to paying clients. The victim was told that it would not take long to repay the debt and she would see at most 5 clients per day.

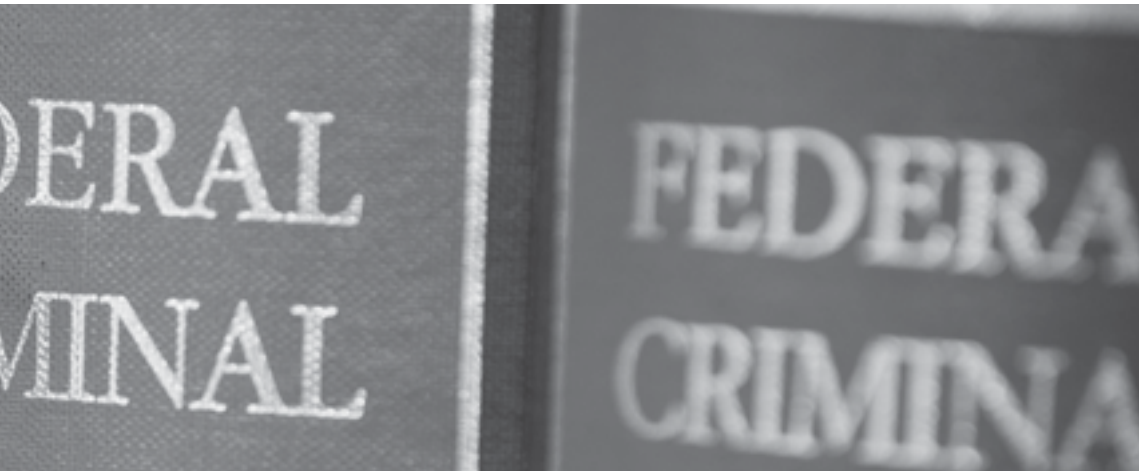
The first victim arrived in Australia on a visa with conditions which did not permit her to work. Her passport and return ticket were taken from her. She was not given a key to the unit where she stayed and she was not permitted to leave the unit except in the company of the defendant or the defendant's friend. She was given minimal instructions about how to provide sexual services and was not instructed on safe sex practices. The first victim was required to work for 6 days every week and could work on the 7<sup>th</sup> if she wished to do so. She had to pay a proportion of the fee for each sexual service to the defendant

as rent and other expenses and the rest went to reduce her debt. Until the debt was repaid she retained no money, except that part that she earned on her 'free' day which would otherwise reduce her debt.

The first victim kept a careful record of the number of clients to whom she provided sexual services and the amounts paid. That showed that, to repay the debt, she had to provide such services to some 700 clients. She was required to see up to 14 clients a day and, save on 12 occasions between 19 June and 1 October 2007, never less than 5 clients each day. She was also required to work while menstruating and when feeling ill.

On 18 June 2008 the first victim received a telephone call on behalf of the defendant offering her 500,000 Baht to return to Thailand and not say anything.

The second victim, a Thai national, was also looking for work and initially intended to go to France, but ultimately agreed to go to Australia to perform massage work only. She was not initially told that she would be undertaking sex work. A visa was obtained and travel arrangements completed for her though



she paid for the airfare herself from money that she borrowed. The visa did not permit the second victim to work whilst in Australia.

On arrival she was accommodated at the same apartment block with the first victim and agreed to share half of the receipts for her sex work with the defendant. Later, when she and the first victim moved out of the apartment block and into a house, she was also charged \$200 per day for rent and other services provided by the defendant such as advertising and reception services.

The second victim's visa expired on 28 November 2007 but she continued to work for the defendant until April 2008 when she left with the first victim to establish their own sex work business.

The defendant was charged with the following offences:

- 1 count of intentionally possessing a slave pursuant to section 270.3(1)(a) of the *Criminal Code*;
- 2 counts of allowing a person to work in breach of their visa conditions pursuant to section 245AC of the *Migration Act 1958*;
- 2 counts of allowing an unlawful non-citizen to work contrary to section 245AB of the *Migration Act 1958*; and
- 1 counts of attempting to pervert the course of justice in relation to the judicial power of the Commonwealth pursuant to section 43 of the *Crimes Act 1914*.

She pleaded not guilty and after an 8 day trial in the ACT Supreme Court the jury found her guilty of all 6 charges.

On 24 May 2012, the defendant was convicted and sentenced to 8 years and 10 months imprisonment with a non-parole period of 4 years and 9 months.

The defendant has lodged an appeal against sentence to the ACT Court of Appeal.



## 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.

As at 30 June 2012 there were 152 people smuggling prosecutions involving organisers, captain and crew before the courts.

This is a challenging practice area where there have been a number of developments including changes to assessments by courts of evidence relating to age and a number of legal issues have emerged during prosecution. The CDPP gives careful consideration to all matters referred to the Office and each is assessed on its own merits and facts in accordance with the *Prosecution Policy of the Commonwealth* as to whether there is a reasonable prospect of a conviction being secured and whether prosecution is in the public interest.

This year, the CDPP contributed to the inquiry conducted by the Australian Human Rights Commission into the treatment of individuals suspected of people smuggling offences who say that they are children. The CDPP's response to the Inquiry Report of July 2012 is at Appendix 6 to that Report.

Since the end of the financial year, on 27 August 2012, the Attorney-General gave a Direction pursuant to section 8 of the *DPP Act* that the Director must not institute, carry on or continue to carry on a prosecution for an offence under section 233C



of the *Migration Act 1958* against a crew member of a people smuggling venture other than in certain specified circumstances. The Direction also requires the CDPP to consider instituting, carrying on or continuing to carry on a prosecution against the person pursuant to section 233A of the *Migration Act 1958* in accordance with the *Prosecution Policy of the Commonwealth*.

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## People Smuggling

AHMAD

A vessel subsequently designated as SIEV 146, was boarded by the ACBPS officers on 11 May 2010, south west of Scott Reef. Towards the end of the voyage a second crew member left the vessel leaving the defendant and 49 asylum seekers on board. There were no life jackets or other safety equipment on board the vessel.

The defendant was arrested and charged with 1 count of facilitating the bringing to Australia of a group of 5 or more people to whom subsection 42(1) of the *Migration Act* applied being reckless as to whether they had a lawful right to come to Australia pursuant to section 232A of the *Migration Act*.

### NT SUPREME COURT

The defendant pleaded not guilty and the first trial commenced in the NT Supreme Court on 19 September 2011 with pre-trial legal argument. Submissions by the defence were accepted and on 22 September 2011 Blokland J stayed the prosecution.

### COURT OF CRIMINAL APPEAL

The Crown appealed Her Honour's decision and the appeal was heard before the NT Court of Criminal Appeal on 1 November 2011. The appeal was upheld on 1 November 2011 and the stay was overturned. Reasons for this decision were delivered on 18 January 2012.

### NT SUPREME COURT

The matter was relisted for trial in the NT Supreme Court before Southwood J. Following a trial the defendant was found guilty of the offence. On 3 February 2012 the defendant was sentenced to the mandatory minimum of 5 years imprisonment with a non-parole period of 3 years. Amounts of 342,800 Rupiah and USD20 were also forfeited to the Crown pursuant to section 48 of the *POC Act 2002*.

### NT COURT OF CRIMINAL APPEAL

The defendant lodged an appeal to the NT Court of Criminal Appeal against his conviction which was heard on 4 June 2012. The appeal was dismissed with the Court unanimously upholding that proof that the passengers entered Australia is not required and that section 232A of the *Migration Act* has extra-territorial effect by virtue of section 228A.

### HIGH COURT

An Application for Special Leave to the High Court was filed by the defendant on 29 June 2012. On 5 October 2012 the defendant's application was refused.

## *Extradition and People Smuggling*

HADI AHMADI

*This case was reported in the 2009–2010 Annual Report at pages 60–61 and the 2010–2011 Annual Report at page 85. It was the first trial of an extradited people smuggler involving multiple boats.*

• • • • •

The defendant, an Iraqi national, facilitated the travel of people from Indonesia to Australia on board 4 separate vessels carrying a total of 911 passengers. The vessels arrived at Christmas Island on 25 March 2001, 22 April 2001, 4 August 2001 and 22 August 2001. The defendant was extradited to Australia from Indonesia on 26 May 2009.

The defendant was charged with 4 counts of facilitating the bringing of a group of 5 or more non-citizens to Australia pursuant to section 232A of the *Migration Act 1958*. In the alternative, the defendant was charged with 17 counts of taking part in bringing to Australia a non-citizen in circumstances where it might reasonably have been inferred that the non-citizen intended to enter Australia in contravention of the *Migration Act 1958*, pursuant to section 233(1)(a) of the *Migration Act 1958*.

Prior to the commencement of the trial, the defence argued that before their journey to Australia, the lives and safety of the passengers were threatened and the defendant's behaviour was the only reasonable way to respond to that threat. The trial judge rejected the prosecution's pre-trial application to remove the availability of the common law defence of necessity. His Honour was not prepared to make a determination as to whether the defence of necessity should be considered by the jury until all the evidence had been led.

### DISTRICT COURT OF WA

The trial commenced in the District Court of Western Australia (WA) on 31 May 2010. After all the evidence had been led, the Judge revisited the prosecution's application and withdrew the defence of necessity from the jury.

On 11 August 2010 the defendant was found guilty of 2 of the 4 counts of facilitating the bringing of a group of 5 or more non-citizens to Australia.



*The defendant, an Iraqi national, facilitated the travel of people from Indonesia to Australia on board 4 separate vessels carrying a total of 911 passengers.*

On 24 September 2010 the defendant was sentenced to 7½ years imprisonment with a non-parole period of 4 years. The offences related to ventures prior to the mandatory sentencing regime.

#### WA COURT OF APPEAL

Ahmadi appealed against his conviction to the WA Court of Appeal on grounds including that the trial judge erred in law by failing to allow the defence of necessity to be considered by the jury and, in consequence, there was a substantial miscarriage of justice.

On 1 November 2011 the WA Court of Appeal held that the trial judge was correct in ruling that the defence of necessity should not be left to the jury. The Court confirmed that for the defence of necessity to be available it is insufficient for the peril to be likely or merely foreseeable, the peril must be imminent.

Buss J stated:

*“In addition, I note, for completeness, that there is no doubt, on the evidence, that being arrested by the Indonesian authorities and sent to an Indonesian detention centre would not involve or constitute the infliction of ‘irreparable evil’ upon the passengers for the purposes of the defence of necessity.*

*The trial judge was correct in ruling that the defence of necessity should not be left to the jury”.*

## *People Smuggling – ‘bringing or coming to Australia’*

JEKY PAYARA

It was alleged that between 14 and 20 September 2010 the defendant facilitated the bringing to Australia of 49 people who were non-citizens. The boat was intercepted at about 11.25am on 20 September 2010. The majority of the passengers said that the journey to Christmas Island took about 5 days and that the boat left Indonesia in the very early morning, but they boarded the boat very late at night at a remote beach location.

The defendant was charged with 1 count of facilitating the bringing or coming to Australia of a group of 49 persons, each of whom were non-citizens and doing so reckless as to whether the persons had a lawful right to come to Australia pursuant to section 233C of the *Migration Act*. The defendant pleaded not guilty.

### VICTORIAN COURT OF APPEAL

The defendant raised the meaning of “no lawful right to come to Australia” in section 233C of the *Migration Act*. This issue was referred to the Victorian Court of Appeal for consideration. This challenge was subsequently abandoned following the enactment of the *Deterring People Smuggling Bill 2011*.

### VICTORIAN COUNTY COURT

Prior to a trial commencing, there was legal argument regarding the correct interpretation of the first element of the offence, namely that the defendant organised or facilitated the bringing or coming to Australia, or the entry or proposed entry into Australia of a group of at least 5 persons. The trial judge ruled that it was sufficient for the prosecution to prove

that the defendant intended to take passengers to ‘a place’ (which as a matter of law was part of Australia) and that it was not necessary to prove that the accused was aware ‘a place’ was part of Australia. The defendant lodged an interlocutory appeal to the Victorian Court of Appeal against this ruling.

### VICTORIAN COURT OF APPEAL

In June 2012 the Court of Appeal delivered judgment in favour of the defendant. The Court of Appeal found that the fault element of intention in subsection 233C(a) requires proof that the defendant intended to organise or facilitate a conveyance of the relevant persons to, or into, Australia therefore an awareness that Australia is the destination is required to be proved. The Court of Appeal stated ‘*it must be shown not only that the accused intended to organise or facilitate a conveyance of the relevant persons, but that he intended that they be taken to Australia*’.

### VICTORIAN COUNTY COURT

The trial in the County Court in Melbourne was then listed. Following the Direction to the CDPP by the Attorney-General pursuant to section 8 of the *DPP Act*, the prosecution was discontinued on 3 September 2012.

## *People Smuggling*

ANDI ALIMUDDIN AND TAMRIN

Alimuddin was the captain and Tamrin was the crew of SIEV 195. SIEV 195 left Indonesia on about 7 October 2010 and was intercepted by the Royal Australian Navy on 11 October 2010 approximately 3 nautical miles north of Rocky Point, Christmas Island. SIEV 195 was carrying 10 passengers who were all of Palestinian–Iraqi descent.

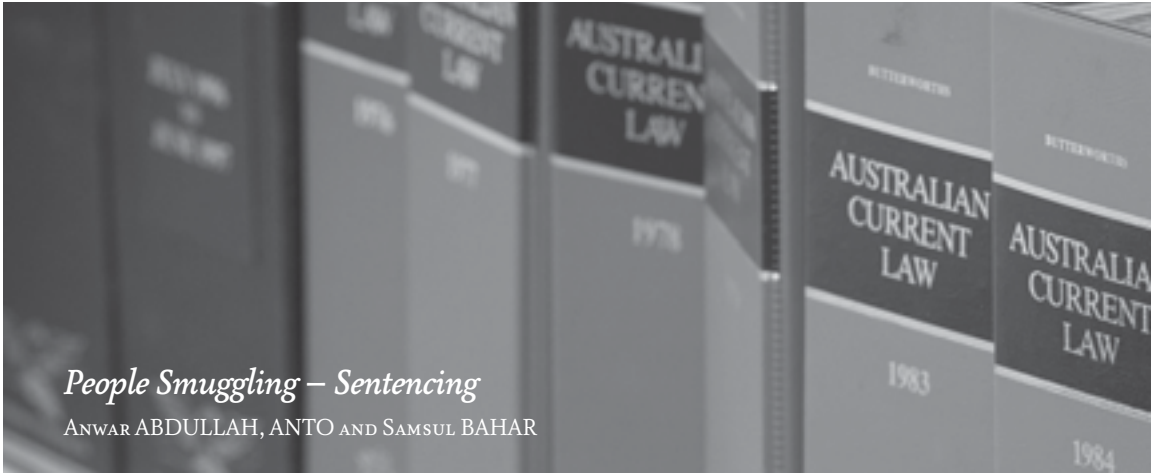
Alimuddin steered the boat with reference to a GPS and compass. He also had a notebook and diary which contained the coordinates for Christmas Island. Tamrin assisted Alimuddin as crew, taking turns to steer the vessel. When the vessel was stopped by Indonesian police late at night during the journey, the 2 crew hid the passengers in a cramped area below the deck where the engine was located. All the passenger witnesses gave evidence that they left Iraq because they feared for their lives.

The defendants were charged with 1 count each of facilitating the bringing or coming to Australia of a group of 10 persons, each of whom were non–citizens and doing so reckless as to whether the persons had a lawful right to come to Australia pursuant to section 233C of the *Migration Act*.

The defendants pleaded not guilty and at their trial they claimed that they had been hired to take the passengers to Christmas Island to work for Pertamina, an Indonesian oil company.

Following an 8 day trial in the District Court of Perth the defendants were acquitted on 21 March 2012.

*Alimuddin steered the boat with reference to a GPS and compass. He also had a notebook and diary which contained the coordinates for Christmas Island.*



## *People Smuggling – Sentencing*

ANWAR ABDULLAH, ANTO AND SAMSUL BAHAR

*This case was reported in the 2010–2011 Annual Report at page 87.*

.....

On 23 June 2009, a vessel carrying 50 passengers was intercepted near Ashmore Reef.

The defendants were each charged with 1 count of facilitating the bringing or coming to Australia of a group of 5 or more people to whom subsection 42(1) of the *Migration Act 1958* applied pursuant to section 232A of the *Migration Act 1958*.

### DISTRICT COURT OF WA

The defendants pleaded not guilty and were tried by jury in the District Court of WA between 6 and 23 September 2010. The jury returned verdicts of guilty in relation to the defendants and 1 not guilty in relation to a further defendant.

On 8 October 2010 the defendants were sentenced to the mandatory minimum sentence of 5 years imprisonment to be released after serving 3 years pursuant to section 236B(3)(c) of the *Migration Act 1958*.

The defendants appealed against their convictions on the grounds that the trial Judge erred in law and fact and that there was a miscarriage of justice when he failed to direct the jury with regard to the defence of ‘mistake’ pursuant to section 9.1 of the *Criminal Code*. The purported mistake of fact claimed by the defendants was that they ‘did not know’ that the boat they were on would be used to transport passengers to Australia. Instead, they claim they were ‘duped’ or ‘tricked by other men’ and were under the mistaken belief that they had been hired to transport cargo, such as sugar syrup and crockery, to other parts of Indonesia and that by the time they realised this was not the case, it was too late to disembark.

The defendants claimed that there was evidence capable of supporting a defence of mistake of fact but the trial Judge failed to leave that defence to the jury for consideration and failed to direct that the prosecution had to disprove this defence beyond reasonable doubt. Leave to appeal was granted.

The prosecution also lodged an appeal against sentence on the grounds that the trial Judge erred as to the correct approach to sentencing



in the context of the application of section 233C of the *Migration Act 1958* and that the trial judge erred by imposing a sentence which was manifestly inadequate having regard to all of the circumstances of the case.

Leave to appeal was granted in relation to the prosecution's first ground of appeal. The application for leave to appeal on ground 2 was referred to the hearing of the appeal.

#### WA COURT OF APPEAL

Both the defence appeal against conviction and Crown appeal against sentence were heard before in the WA Court of Appeal on 16 September 2011.

Both the defence appeal against conviction and Crown appeal against sentence were dismissed on 15 November 2011.

The Court of Appeal accepted the Crown's submission that the mandatory minimum should be construed as a 'floor', just as the maximum is treated as a 'ceiling'. However, the Court of Appeal did not accept the Crown's submission that the defendants were not at the lowest end of the scale of offending, because they did not have the benefit of a guilty plea.

The Court accepted that it was open on the facts to fall into the least serious category and accordingly there was no error at law.

McLure J stated:

*"It would be positively inconsistent with the statutory scheme for a sentencing judge to make his or her own assessment as to the 'just and appropriate' sentence ignoring the mandatory minimum or mandatory maximum penalty and then to impose something other than a 'just and appropriate' sentence (whether as to type or length) in order to bring it up to the statutory minimum or down to the statutory maximum, as the case may be. The statutory minimum and statutory maximum penalties are the floor and ceiling respectively within which the sentencing judge has a sentencing discretion to which the general sentencing principles are to be applied."*

The reasoning in the *Bahar* appeal judgment was then applied by sentencing courts in other cases when considering whether to impose a sentence above the mandatory minimum.

## People Smuggling

WIJARATHNE THEJAGE TERRENCE FERNANDO

The defendant was the captain of SIEV 59. SIEV 59 left the south west coast of Sri Lanka on 11 September 2009 and was intercepted by the ACBPS on 29 September 2009 near Cocos Keeling Islands. The vessel was carrying 41 passengers. The passengers were all Sri Lankan Tamils.

The defendant steered the boat toward Australia with reference to a GPS, compass and navigational charts. When the engine failed after the first few days at sea, the defendant made arrangements using a satellite phone for another boat to come and fix the engine. After the boat was fixed, it continued for a few more days in rough weather. Two passengers became so fearful for their lives that they asked the defendant for the satellite phone and they made several distress calls to AMSA. The ACBPS intercepted the boat later that afternoon. All the passenger witnesses gave evidence that they left Sri Lanka because they feared for their lives.

The defendant was charged with 1 count of facilitating the bringing or coming to Australia of a group of 5 or more people to whom

subsection 42(1) of the *Migration Act* applied and did so recklessly as to whether they had a lawful right to come to Australia pursuant to section 232A of the *Migration Act*.

The defendant pleaded not guilty and after a trial in the WA District Court in March 2011 the jury was unable to reach a verdict. The defence claimed that another passenger was actually in charge of the vessel. The AFP were able to locate this passenger and he gave evidence at the re-trial.

The defendant was retried in the WA District Court and was found guilty on 30 August 2011. He was sentenced on 20 December 2011 to 6 years imprisonment with a non-parole period of 3½ years. The sentence was backdated to the date of interception of SIEV 59.

In sentencing the defendant, Sweeney DCJ applied the reasoning in *Bahar v The Queen* [2011] 255 FLR 80 and considered that the defendant was above the lowest category of offending. She therefore imposed a sentence above the mandatory minimum.

## People Smuggling – Lawful Boarding

ANDRI MAULANA AND TALIB

Maulana was the captain of SIEV 153, assisted by Talib who acted as the mechanic. Whilst both crew took turns steering the vessel, Maulana was considered to be the captain of the vessel because he was primarily responsible for steering and he gave orders to Talib.

SIEV 153 left Indonesia in late May 2010 and was initially intercepted by ACBPS officers from ACV Storm Bay on 2 June 2010.

At that point, SIEV 153 was about 26 nautical miles outside the Australian Contiguous Zone surrounding Ashmore Reef. Those on board SIEV 153 gave permission to ACBPS officers to board the vessel and following boarding the passengers from SIEV 153, namely 28 Afghan asylum seekers, came aboard ACV Storm Bay. At that time, the 2 Indonesian crew, Maulana and Talib, elected to remain on the vessel and were given compass headings to enable them to sail back to Indonesia.



ACBPS personnel continued to monitor SIEV 153 because they had concerns for the vessel's safety. Later that night, ACBPS provided the crew of SIEV 153 with assistance in the form of a torch, buckets, life-jackets and engine oil.

At about 6:30pm the next day, 3 June 2010, officers from ACV Triton approached SIEV 153 and told the 2 crew that their vessel would be leaving the Australian Search and Rescue Zone in about 4 hours and once SIEV 153 left that Zone, ACBPS would cease to monitor them. After being told this, the crew gave permission to the ACBPS officers to board their vessel and they voluntarily decided to abandon their vessel.

Following an investigation by the AFP, the defendants were both charged with 1 count of facilitating the bringing or coming to Australia of a group of 5 or more people, each of whom were non-citizens and did so reckless as to whether the persons had a lawful right to come to Australia, contrary to section 233C of the *Migration Act*.

The defendants entered a plea of not guilty to the charges. Prior to the trial commencing, a directions hearing was held which considered whether the interception and boarding of the vessel by officers of ACV Storm Bay and Triton

was lawful and whether the prosecution was an abuse of process. The judge accepted that the boarding was lawful.

At the trial in the District Court of WA, both defendants claimed that they were not aware that the purpose of the voyage was to take the passengers to Australia and Maulana claimed that he had never heard of Australia. Both defendants also claimed that they were not reckless because they didn't know the voyage was to Australia and therefore were not aware of the risk that the passengers did not have a lawful right to come to Australia.

The defendants were found guilty on 14 February 2012. Maulana was sentenced to 6 years imprisonment with a non-parole period of 3 ½ years. Talib was sentenced to 5 years and 8 months imprisonment with a non-parole period of 3 years and 4 months. Both sentences were backdated to 3 June 2010, the date the defendants went aboard ACV Triton and were effectively placed in detention by Australian authorities.

In sentencing the defendants, the trial judge considered the roles played by both on SIEV 153 and sentenced them to terms above the mandatory minimum term prescribed by the *Migration Act*.

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## *People Smuggling – Resist Commonwealth Public Official*

### ARMAN ALI BRAHIMI

On 15 Apr 2009 SIEV 36 was intercepted at Ashmore Reef by HMAS *Albany*. ADF personnel boarded the vessel. On the morning of 16 April 2009 some of the passengers became agitated, the engine of SIEV 36 stopped, and investigations revealed a possible sabotage of the engine. Fuel was able to be smelt and ADF personnel declared a 'high threat' situation.

The defendant was seen at the bow of the SIEV 36 by ADF personnel, apparently attempting to ignite a cigarette lighter. Two ADF personnel were directed to move to the bow and dispossess the defendant of the lighter. As they arrived at the bow an ADF officer instructed the defendant in English to surrender the lighter. The defendant resisted attempts by ADF officers to take the lighter

from him. A struggle ensued and ended when the defendant was wrestled to the ground by the ADF personnel who retrieved the lighter.

The defendant was charged with 2 counts of resisting a Commonwealth public official pursuant to section 149.1(1) of the *Criminal Code*. He pleaded guilty and was convicted in the SA District Court. On 29 February 2012 the defendant was sentenced to 4 months and 2 weeks imprisonment to be released after serving 21 days on condition that he be of good behaviour for 2 years.

In passing sentence Clayton J stated:

*“The prosecutor submitted that the circumstances in which the offending occurred mean that the conduct viewed objectively is serious enough to attract an immediate sentence of imprisonment. She argued that the offending occurred in what can be described as an extremely high risk scenario. I accept that submission. You were in possession of the cigarette lighter which appeared you had been trying to light. You refused to give up possession of the lighter to the ADF personnel and resisted them. At that time the smell of fuel was apparent to each of the ADF personnel whom you resisted. You have not explained why you were in possession of the lighter or what you were attempting to do with it. It appeared*

*that the vessel or at least the engine had been sabotaged, and ADF personnel had declared a high threat situation.*

*The prosecutor submitted that the court should protect defence personnel who are carrying out their duties in the same way that police officers must be protected. I accept that submission.*

*I also accept the submission that the penalty should act as a general deterrent for others who might engage in similar conduct.”*

Approximately 10 minutes after the defendant was dispossessed of the lighter an explosion occurred on board SIEV 36, resulting in the death of 5 passengers and injuring others on board. A coronial inquest was subsequently held. The defendant was not charged with any offences relating to this explosion nor does this event form part of the offences for which he was prosecuted. It could not be established that the defendant necessarily knew of the presence of petrol the ignition of which is believed to have caused the explosion. The fact of the explosion was relevant as its proximity in time to the defendant resisting the ADF personnel provided further context for the reasonableness of the actions of the ADF personnel in dispossessing the defendant of the lighter and removing a potential open flame in circumstances where ADF personnel had smelt petrol.

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## *Detention Centre Riots*

HABIBURAHMAN (AKA AUNG SOE NAING) AND ABDUL BASIR

On 11 August 2011 detainees at the Northern Immigration Detention Centre were engaging in a rooftop protest. At about midnight officers of Serco Australia Pty Ltd (Serco) employed at the Detention Centre were instructed to conduct checks on the detainees to ensure that they were down from the rooftop and in their rooms.

When a Serco Officer entered the defendants’ shared room, he saw someone on the top bunk of the bed and a light on underneath the bathroom door. As no-one answered, he opened the door, to find that no-one was inside. Upon turning around, he found Habiburahman standing in front of him, asking “Why are you disturbing me?” and “Why are you in my room?”

Serco officers nearby heard raised voices and went into the room. Inside the room, Habiburahman punched the first Serco officer in the head, causing him to lose consciousness. A 'Code Black' was called for officer assistance and more Serco officers came to the room to assist. Habiburahman was restrained and Basir entered the room. Basir was alleged to have bitten the first Serco officer on the chest and was then restrained by the other Serco officers.

A group of detainees were crowded outside the room and incidents occurred which escalated the situation such that Serco officers were directed to evacuate the compound. During the evacuation, detainees threw rocks at the officers. As officers made their way toward the compound exit gate, it was alleged that Basir threw a rock in the direction of a second Serco officer. It was also alleged that after the second Serco officer exited the compound gate, Habiburahman threw a rock over the gate, which made contact with the officer.

In addition to this, on 30 October 2012 Habiburahman caused damage to the roof of the medical centre at the Northern Immigration Detention Centre by striking the roof with a metal pole which he removed from the electrical security fence. The damage was valued at \$3500.

Habiburahman was charged with 2 counts of causing harm to a Commonwealth Public Official pursuant to section 147.1(1) of the *Criminal Code*. He pleaded not guilty to these 2 counts. Habiburahman was also charged with 1 count of damaging Commonwealth property pursuant to section 29(1) of the *Crimes Act* to which he pleaded guilty.

Basir was charged with 1 count of causing harm to a Commonwealth public official pursuant to section 147.1(1) of the *Criminal Code* and 1 count of unlawful assault with a dangerous weapon pursuant to section 188(2)(M) of the *Criminal Code Act* (NT). Basir pleaded not guilty to both charges.

After a 15 day hearing in the Darwin Court of Summary Jurisdiction, Habiburahman was found guilty of 1 count against section 147.1(1) *Criminal Code*, for punching the first Serco officer. He was acquitted of the other charge against section 147.1(1) *Criminal Code*, for throwing a rock at the second Serco officer due to the inconsistent identification evidence of the various witnesses. Further, the court could not identify the defendant on the CCTV footage as the person throwing the rock. Habiburahman was also convicted of the offence of damaging property to which he pleaded guilty.

Basir was acquitted of both charges. The court could not be satisfied beyond a reasonable doubt as to the sequence of events before Basir bit the first Serco officer and could not exclude the possibility that Basir considered it necessary to defend himself in the circumstances. The court also considered the CCTV footage to be of extremely poor quality and of limited value and could not be satisfied that the person on the footage was Basir.

Habiburahman was sentenced on 18 June 2012 to 3 months imprisonment to be released immediately on condition that he be of good behaviour for 12 months. Habiburahman has lodged an appeal against his sentence.



## 2.8 Child Exploitation

Commonwealth legislation creates a number of offences 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. These Commonwealth offences focus on use of telecommunication services such as the internet and telephone and postal services.

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. It also includes offences for using a carriage service to engage in sexual activity with a child, or causing a child to engage in sexual activity with another person.

The grooming and procuring offences are targeted at adult offenders, who use the anonymity of the internet 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.

High maximum penalties for some of these offences reflect the community's abhorrence of this conduct. There are higher maximum penalties for aggravated offences, such as where the offending conduct occurs on three or more occasions and involves two or more people, or where the sexual activity involves a child with a mental impairment or a child who is under the care, supervision or authority of the defendant.

These offences are increasingly becoming more sophisticated through the use of networks to distribute material, the protection of material by encryption and on-line access to the material. 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. Prosecuting these offences often involves complex technical and evidentiary issues. The CDPP works closely with the AFP, ACBPS and other law enforcement agencies in this area.

Dealing with such material requires investigators, prosecutors and courts 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.

Division 272 of the *Criminal Code* focuses on child sex offences committed outside Australia by Australian citizens and permanent residents, ranging from possessing child pornography and child abuse material to engaging in sexual activity overseas with children under the age of 16. It is also an offence to encourage or benefit from these types of offences or to do an act preparatory to committing a child sex tourism offence.

## Online Child Pornography

### *Child Pornography & Abuse*

GREGORY JOHN COUPLAND

*This case involved the first conviction under section 474.24A(1)(a)(i) of the Criminal Code.*

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The defendant was a teacher at The Kings School and a Scout Leader at the 1<sup>st</sup> Forestville Scout Group. He was identified by the AFP to be a user of a peer-to-peer program, Gigatribe, which he used to access and make available child pornography material.

When the AFP executed a search warrant at his premises, they located child pornography on compact discs, an external hard drive, and also in hard copy print form. A search warrant of the Scout Hall located a laptop which also contained offending material.

Forensic examination of the computer devices identified that the defendant had accessed a total of 23,946 files, possessed 35,489 files and had made available 511 files, all classified

as child pornography material depicting mainly young boys. This examination also revealed that he had made available this material on 118 separate occasions to 106 different users on Gigatribe.

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*, 1 count of possession of child abuse material pursuant to section 91H(2) of the *Crimes Act 1900* (NSW) and 1 count of using a carriage service to make available child pornography with a circumstance of aggravation pursuant to section 474.24A(1)(a)(i) of the *Criminal Code*.

The defendant pleaded guilty and on 22 June 2012 at District Court of NSW he was sentenced to 3 years and 8 months imprisonment with a non-parole period of 2 years and 8 months.



## *Online Child Pornography*

ROGER ALLEN RIVO

*This is the first case of its type prosecuted in Australia.*

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In 2010 the defendant engaged in online chat sessions with people in the Philippines who ran live sex shows involving children for fees. The defendant instructed the people to have the children perform sexual acts while he watched via webcam and transferred money to them in return. The defendant sought to procure children between the ages of 7 to 16 years to perform a variety of sexual acts over 13 days between July 2010 and May 2011 while he watched via webcam. The defendant transferred money in return.

On 17 February 2011, the AFP executed a search warrant on the defendant's residence and seized computer equipment which revealed that the defendant had engaged in chat sessions where he procured live sex shows involving children. On 14 May 2011 the AFP executed a further search warrant and seized computer equipment which revealed that the defendant had again procured live sex shows involving an 8 year old girl. Although the sex shows were not recorded, the information

from chat sessions located on the computer between the defendant and persons in the Philippines provided detail about the nature of the shows.

The defendant was charged with 1 count of using a carriage service to cause child pornography material to be transmitted pursuant to section 474.19(1) of the *Criminal Code* and 1 count of procuring a child to engage in sexual activity outside Australia pursuant to section 272.14(1) of the *Criminal Code*.

The defendant pleaded guilty and on 28 October 2011 he was sentenced in the County Court of Victoria to 7 years imprisonment with a non-parole period of 5 years. When handing down the sentence the Court noted that but for the defendant's plea of guilty the sentence imposed would have been 10 years imprisonment with a non-parole period of 7 years. Under Schedule 2 of the *Sex Offender's Registration Act 2004* (Vic) the defendant is required to report to authorities for 15 years.



The Court made the following comments when sentencing the defendant:

*“The young age of the children involved, the fact that both adults and children were involved, the likely psychological consequences to the children and the lack of insight on the applicant’s part into the impact on the welfare of the children all bore on aspects of the offending which required a penalty reflecting adequate denunciation and general deterrence of like offending. Again, the ongoing lack of insight involved bore on the need for specific deterrence.”*

*It is submitted on behalf of the applicant that neither offence is directed towards actual sexual conduct. We accept that this is so, (Western Australia v Collier (2009) 178 A Crim R 310) but the character of the pornography forming the subject of the first count and of the sexual activity forming the subject matter of the second count, must be relevant considerations. So must the proximity of the offender’s activity with those responsible for bringing the pornographic material into existence and the directness of the offender’s involvement in procuring the relevant sexual activity (Minehan v The Queen (2010) 201 A Crim R 243, 260–1).”*

The defendant applied to the Victorian Court of Appeal for leave to appeal against the sentence. On 30 May 2012 that application was refused.

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## *Website Administrator*

TRENT ANDREW WILLIAMSON

Over approximately 1 year the defendant from his Gold Coast home was the administrator and overall controller of a website which made available child pornography material. The defendant had the ability to control the architecture and the content of the entire website. The website was primarily dedicated to posting images of and discussion about child pornography. The defendant checked the website daily and controlled the content of the website.

Forensic analysis of the defendant's computer revealed that material deleted from the website was mainly posts which were unrelated to child pornography or dated posts. The website was organised and sophisticated. It had discrete sections or 'boards' which were organised mostly by the defendant for user's sexual predilections. The website also carried editorial comment or posts from thousands of users from around the world on uploaded images of child pornography.

At the time of the defendant's arrest, there were 88,542 messages and, of these, 44,047 messages contained an image which had been uploaded. When police captured and examined the entire website soon after the defendant's arrest, they located and categorised 15,375 images of child pornography material. In addition to images of child pornography, the website also carried hyperlinks to other file sharing websites carrying images or videos of similar child pornography material. Often the hyperlinks would lead to further images or videos of a featured child victim.

The defendant was the registered owner (albeit under a false name) of the website and, by his own admissions, financed the server host company which hosted the website. The defendant created the website in 2006 and used other similar websites as a template. The defendant had also knowingly possessed 1,202 images and 5 videos of child pornography material, with only one image being the same as that captured by police from the website. When QLD Police arrested him in January 2010 and interviewed him, he claimed, amongst other things, that in terms of popularity the website was in the top 5000 websites in the world and while he knew posting child pornography was wrong, he did not shut the website down because he felt pressured to keep it running due to its popularity. The defendant did not financially profit from the website. At the time of the offences the defendant was between 21 and 22 years of age and had no criminal history.

The defendant was charged with 1 count of using a carriage service to make available child pornography material pursuant to section 474.19(1) of the *Criminal Code* and 1 count of knowingly possessing child exploitation material pursuant to section 228D of the *Criminal Code 1899 (Qld)*.



The defendant pleaded guilty and on 12 December 2011 he was sentenced by the District Court at Brisbane to 3 ½ years imprisonment with a non-parole period of 12 months. In passing sentence Martin SC DCJ stated:

*“One would hope that a large part of the community does feel revulsion by your conduct and denounces it. However, it was also submitted on your behalf that administering this website gave you a sense of self-worth and popularity, at least within some parts*

*of the community. You have sought self-worth at the expense of children. You have exploited many, many children with an average age of 10 to 14 years, but there were children younger and older. Your sustained conduct encouraged in a very real way further corruption and exploitation of innocent children.”*

The detection and investigation of the defendant’s website enabled police to locate a number of other offenders and child victims around the world.

## Sexting

### ‘M’

This case involved the activity of ‘sexting’, that is the transmission of pornographic text messages. Between 15 June 2011 and 17 June 2011 the defendant sent the victim a total of 135 text messages. He represented himself as a 19 year old student who was an acquaintance of one of her classmate’s brothers. He was actually a 52 year old man. The victim responded to the texts in an attempt to identify the sender. Throughout the following 2 days the messages became increasingly sexually explicit.

Fourteen of the messages sent by the defendant fell within the definition of ‘child pornography’ and made direct reference to the victim’s genitals and to her engaging in sexual acts.

Forty-six of the other messages were offensive in nature as they related to whether she engaged in sexual activities, her underwear and whether she would engage in any sexual activities with the message sender. The remaining messages were harassing in nature.

The defendant was charged with 1 count of using a carriage service to transmit child pornography material pursuant to section 474.19(1)(a)(iii) of the *Criminal Code*. A notice under section 16BA of the *Crimes Act* was also filed relating to 1 count of using a carriage service to menace, harass or cause offence pursuant to section 474.17 of the *Criminal Code*.

The defendant pleaded guilty and was sentenced in the District Court of South Australia on 30 April 2012. He was convicted and sentenced pursuant to section 20(1)(b) of the *Crimes Act* to 15 months imprisonment to be released immediately on the condition that he be of good behaviour for a period of 2 years.



## Child Sex Tourism

JOHANNES ZWEERUS VAN DER ZYDEN

Between 1996 and 1999 the defendant had been posted by the Australian Navy as a Lieutenant Commander in the position of Maritime Surveillance adviser to the pacific island of Kiribati. Over the course of 3 separate incidents the defendant engaged in sexual conduct with 4 victims aged between approximately 11 and 14 years of age. Two of the complainants, aged 13 to 14 years, also had sexual acts performed on them by the defendant. The offending occurred over a 1 to 2 year period.

### BRISBANE DISTRICT COURT

The defendant was charged with 8 counts of engaging in sexual conduct involving a child under 16 whilst overseas pursuant to section 50BC(1)(a) of the *Crimes Act* and a further 7 counts of engaging in sexual intercourse involving a child under 16 whilst overseas pursuant to section 50BA of the *Crimes Act*.

The defendant pleaded not guilty and was tried in the Brisbane Supreme Court. On 8 August 2011, after a 5 day trial and 3 days of jury deliberations, the defendant was found guilty.

On 9 August 2011 the defendant was sentenced to 3½ years imprisonment with a non-parole period of 21 months.

### QLD COURT OF APPEAL

The defendant lodged an appeal against his conviction and sentence to the QLD Court of Appeal. The CDPP appealed against the sentence imposed.

Prior to the appeal hearing, the defendant abandoned his appeal against sentence but continued with the appeal against conviction. The defendant relied on a number of grounds of appeal including that the conviction was unsafe and unsatisfactory.

On 13 April 2012 the Court of Appeal dismissed the defendant's appeal on all grounds. In dismissing the CDPP's appeal the court concluded that the sentences were within range given the circumstances of the offending and the imposition of concurrent sentences was appropriate.





## 2.9 Environment, Safety, Cybercrime 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 and Border Protection Service (ACBPS); the Australian Competition and Consumer Commission (ACCC); the Australian Quarantine and Inspection Service (AQIS); and the Civil Aviation Safety Authority (CASA).

Cybercrime is now a sophisticated transnational threat that operates on a significant scale and has become an increasingly important issue for the global community. Criminal activity is increasingly being committed utilising the internet. There are specific Commonwealth computer offences relating to the unauthorised access and modification of data and the impairment of electronic communications.

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 and possessing live specimens; carriage of dangerous goods in an aircraft; computer hacking; failure to vote; and corruption.

## Crimes Impacting Upon the Environment

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### *Illegal Foreign Fishing*

JAIDAN (AKA JAIDIN OR LAJAIDIN) AND FERANKI (AKA FRANGKI)

On 19 November 2011, the defendants were apprehended 6 nautical miles south of the Provisional Fisheries Surveillance Enforcement Line (PSFEL), 29.5nm south of the AFZ, on a Type III Indonesian shark vessel, fishing for shark. Jaidan was the master of the vessel and Feranki was the crew. The vessel, identified as the *Rahmat Ilahi*, was inside the AFZ and in an area of waters where unlicensed Indonesian fishing vessels are not permitted to fish for swimming species.

ACBPS officers boarded the *Rahmat Ilahi*, upon which they found dead sharks with the fins removed and a range of commercial fishing long line and other fishing equipment and supplies, including supplies of salt, diesel, dry fish, and rice. Navigational equipment found on the vessel included 1 working compass; 1 GPS unit; and 2 Indonesian Charts.

Jaidan pleaded not guilty to 1 count of using a foreign boat for fishing in the AFZ pursuant to section 100(2) of the *Fisheries Management Act 1991* and 1 count of having a foreign boat equipped for fishing in the AFZ pursuant to section 101(2) of the *Fisheries Management Act 1991*.

Feranki pleaded not guilty to 1 count of using a foreign boat for fishing in the AFZ pursuant to section 100(2) of the *Fisheries Management Act 1991*.

On 14 March 2012, after a hearing at the Darwin Court of Summary Jurisdiction, the defendants were convicted of the offences against section 100(2). His Honour found that Jaidan did not have an honest or reasonable belief that he was at a place in Indonesian waters where he could lawfully fish for shark, on the basis that Jaidan had a working and accurate GPS and that the evidence he gave at his hearing was not credible. Jaidan was acquitted of the count against section 101(2) on the basis that this offence related to the same conduct as the count under section 100(2).

The defendants were sentenced on 14 March 2012. Jaidan was convicted and released immediately on condition that he be of good behaviour for 4 years. Feranki was convicted and released immediately on the condition that he be of good behaviour for a period of 2 years. If the defendants do not comply with the sentence they could be imprisoned for 3 months or 20 days respectively pursuant to section 33B of the *Justices Act (NT)*.

## *Importing Live Specimens*

KAREN NILSSON

The defendant was a director of Aquatic Solutions (Balsino Pty Ltd), a Sydney based company which imports and sells ornamental fish. In February 2010 Aquatic Solutions placed an order with their Indonesian supplier by email including a request for 240 *Synodontis eruptus* known as Feather Fin Catfish. *Synodontis eruptus* cannot be imported into Australia as it is not included in the list of specimens suitable for live import in the *Environmental Protection and Biodiversity Conservation Act 1999*. No import risk assessment on this species of fish has been conducted and therefore these particular fish pose a high quarantine risk.

In a reply email, the supplier asked Aquatic Solutions how this species should be described in the order. Aquatic Solutions informed the supplier it should be labelled as *Synodontis*

*nigriventris*, which is a species permitted for import into Australia. The supplier inadvertently forwarded this email chain to AQIS when providing details of the order, thereby alerting AQIS to the illegal importation of the *Synodontis eruptus*.

The defendant had a previous conviction for a similar offence, also involving circumstances of an illegal importation where the species had been described incorrectly to AQIS.

The defendant pleaded guilty to 1 count of aiding, abetting, counselling or procuring the import of a live specimen by Balsino Pty Ltd pursuant to section 303EK of the *Environmental Protection and Biodiversity Conservation Act 1999* and section 11.2 of the *Criminal Code* that. On 27 September 2011 at the Downing Centre Local Court the defendant was convicted and fined \$5,000.

## Crimes Impacting Upon Safety

### *Carriage of Dangerous Goods*

MARK SULLIVAN

On 30 March 2010, the defendant was contracted to fly a charter in a helicopter carrying 2 Council employees to Numbulwar in the NT. The defendant flew the helicopter with an 80kg power generator which contained fuel on the seat next to 1 of the passengers and a chainsaw containing fuel in an unapproved compartment of the aircraft. The generator was secured only by a seatbelt. This contravened the Operator's Operations Manual.

The defendant also failed to comply with the Operations Manual in several other respects including failure to give adequate passenger briefing; failure to weigh the passengers; failure to plan the flight in accordance

with weather conditions from an approved source; and failure to carry required fuel.

Shortly after take-off the helicopter crashed. Upon impact, 1 of the passengers blacked out after being hit from behind by the generator. The generator then crashed down on top of the other passenger. The generator landed on the passengers throat and fuel from the generator leaked into his eyes and mouth.

The day after the accident the defendant provided a report to the Australian Transport Safety Bureau containing false or misleading information which impeded the subsequent investigation by CASA.

After his hearing in the Darwin Court of Summary Jurisdiction had been part heard, the defendant pleaded guilty to 1 count of non-compliance with the operations manual pursuant to regulation 215(9) of the *Civil Aviation Regulations 1988*, 1 count of providing false or misleading information pursuant to section 137.1(1) of the *Criminal Code* and 1 count of carriage of dangerous goods pursuant to sections 23(1) and 29(5)

of the *Civil Aviation Act 1988*. The defendant was convicted and sentenced on 24 May 2012 to 3 months imprisonment to be released immediately on condition that he be of good behaviour for 18 months and fined \$6,500. The defendant's license was suspended for 12 months pursuant to section 30A of the *Civil Aviation Act*.

At sentencing, Magistrate Cavanagh described the defendant's conduct as blatant, outrageous and seriously dangerous.

## Cybercrime

### *Illegal Access*

DAVID NOEL CECIL

The defendant obtained illegal access to an internet service provider and obtained the username and password of the managing director of the internet service provider company. Over a period of 10 days he accessed the company system on 48 occasions. On 1 occasion the defendant amended a file structure in the company's network that resulted in the company's internal system going off line. The defendant also executed a number of commands on the system which resulted in a compromise to the security of the system.

The defendant pleaded guilty to 2 counts of unauthorised modification of data to cause impairment pursuant to section 477.2 of the *Criminal Code* and 18 counts of unauthorised access to data pursuant to section 478.1 of the *Criminal Code*.

The defendant was sentenced on 22 June 2012 in the Orange District Court to 2½ years imprisonment to be released after 18 months. A forfeiture order was made in relation to computer equipment.

*On 1 occasion the defendant amended a file structure in the company's network that resulted in the company's internal system going off line.*



## *Hacking Conspiracy*

RICHARD PETER LARKIN AND ANPING STEVEN SHEE

The defendants conspired to upload malicious software onto the WA Department of Health (DoHWA) computer network which would allow remote, untraceable access to that network. Shee, who was contracted to a consultant company to the DoHWA, was to write the program and Larkin, who was contracted to DoHWA, was to upload it.

There were extensive text, email and SMS communications between Larkin and Shee, which indicated they knew they were acting wrongly. Both defendants took steps to effect the upload of the virus but Larkin withdrew from the conspiracy before the virus was actually uploaded. The AFP intervened before Shee had the opportunity to upload it.

The defendants were charged with 1 count of conspiring to cause an unauthorised modification of data held on a computer pursuant to sections 11.5(1) and 477.2(1) of the *Criminal Code*. Both defendants pleaded not guilty.

At trial, Larkin claimed that his purpose was legitimate and he only did what he was authorized to do. This explanation was rejected by the jury and both defendants were found guilty.

On 20 April 2012 the defendants were sentenced in the WA District Court. Larkin was sentenced to 30 months imprisonment to be released after serving 10 months on condition that he be of good behaviour for 20 months. Shee was sentenced to 3 years imprisonment to be released after serving 12 months on condition that he be of good behaviour for 24 months.

In sentencing the defendants the court found that the defendants' motivation was commercial gain and that their actions were premeditated, sophisticated and done, or intended to be done, covertly. The court also stated that computer hacking is a serious property offence and difficult to detect. There was no loss or damage resulting from the conspiracy, but there was potential harm if it was successful. The court regarded Shee to be the driving force and an aggravating feature for Larkin was that he was in a position of trust with DoHWA.





The court stated:

*“The members of the community must know that offences of this kind are very serious and will, by their nature, generally warrant imprisonment. Indeed, I would think that it would be an exceptional case only of this kind in which imprisonment were not imposed. The persons who may be inclined to this form of dishonesty are likely to be highly intelligent. Deliberation and planning is required.*”

*Offences such as the subject offence are the very types of offences where the imposition of imprisonment is likely to be effective as a means of deterring others.”*

The defendants’ appeals against sentence were heard in the WA Court of Appeal on 12 September 2012. The court’s decision is reserved.

*...computer hacking is a serious property offence and difficult to detect. There was no loss or damage resulting from the conspiracy, but there was potential harm if it was successful.*



## General Prosecutions

### *Corruption*

KEVIN JOHN DICKSON AND PHILIP JAMES ROPER

Roper, an ex-AFP Officer, was employed as an Excise Investigator with the ATO from June 2000 to November 2004. Dickson, also an ex-AFP officer, was an Excise Investigator from September 2000 to April 2002.

The defendants investigated the illicit trade in tobacco or chop chop. Traders in chop chop sold it without paying excise or income tax and could make large profits.

During his employment at the ATO, Roper formed a corrupt relationship with people involved in the illicit trade of chop chop. Roper used his ATO position to obtain favours from them. He warned 1 dealer about planned ATO raids at premises where chop chop was sold and turned a blind eye to illicit tobacco dealing carried on by his accomplices. In return, Roper received benefits including a paid overseas trip and information such as names and addresses about other chop chop dealers. Roper wanted the names and addresses so that his co-offenders, including Dickson, could steal the tobacco from the other dealers and then sell it for profit and the proceeds divided amongst the defendants and their accomplices.

The defendants participated in a pretend ATO raid on the premises of a dealer in chop chop whose address was provided to the defendants

by an accomplice. The accomplice approached the dealer on the pretence of purchasing bales of tobacco leaf and the defendants then ‘arrested’ the accomplice whilst another accomplice took away the tobacco bales as part of the false ATO raid. The accomplice subsequently sold the bales and divided the proceeds with the defendants.

Roper was charged with the following offences:

- 1 count of dishonestly asking for a benefit with the intention that the exercise of his duties as a Commonwealth public official would be influenced pursuant to section 141.1(3) of the *Criminal Code*;
- 4 counts of dishonestly receive a benefit for himself, with the intention that the exercise of his duties as a Commonwealth public official would be influenced, contrary to section 141.1(3) of the *Criminal Code*
- 2 counts of theft of Commonwealth property pursuant to section 131.1(1) of the *Criminal Code*; and
- 1 count of using information obtained in his capacity as a Commonwealth public official with the intention of dishonestly obtaining a benefit pursuant to section 142.2(1) of the *Criminal Code*.



Roper pleaded guilty to 1 count pursuant to section 141.1(3) of the *Criminal Code* and 1 count pursuant to section 142.2(1) of the *Criminal Code*. He pleaded not guilty and proceeded to trial on the remaining counts. On 23 February 2012 a jury found Roper guilty of 2 counts pursuant to section 141.1(3) of the *Criminal Code* and 1 count pursuant to section 131.1(1) of the *Criminal Code*. On 19 March 2012 he was sentenced to 29 months imprisonment to serve a period of 14 months.

Dickson was charged with 1 count of theft of Commonwealth property pursuant to section 131.1(1) of the *Criminal Code*. He pleaded guilty to the charge and was sentenced to 12 months imprisonment to be released forthwith on account that the Court had regard to the fact that Dickson had, whilst awaiting trial on the count of theft pursuant to section 131.1(1) spent 2 years and 7 months in custody serving a sentence on an unrelated matter which sentence was subsequently quashed in the High Court.

In sentencing Dickson the court stated:

*“... those who are entrusted as ATO investigators have special obligations. They have been entrusted with serious responsibilities in investigating offences committed against the*

*Australian Taxation Office. They have a requirement to conduct themselves with professionalism and integrity. You failed miserably. You breached the trust that your job entailed. You engaged in conduct which brought shame and disgrace not only on yourself but others who did a good day’s work with integrity and professionalism. You attracted suspicion to all ATO investigators who were not corrupt like you were, who were not motivated by greed like you were and who were not attracted to the lure of easy money like you were. I want to make it abundantly clear to you and to the members of this community that if it were not for the fact that you had served two years and seven months in prison I would, despite the delay and despite the mitigating factors that you are able to rely on, have imposed a term of imprisonment to be immediately served. Let there be no doubt about that. However, I am obliged to consider the dead time of two years and seven months and that is a powerful matter for me to take into account.”*

## *Failing to vote*

NILS ANDERS HOLMDAHL

The defendant admitted that he did not vote at the 2010 Federal Election. Further, he admitted he deliberately did not attend a polling booth, he did not have his name marked off the roll and he did not receive the ballot papers and deposit them in the ballot box. He also did not pay the pecuniary penalty of \$20 for failing to vote.

Voting at federal elections has been compulsory since 1924. The validity of compulsory voting in federal elections has been upheld by the High Court, in particular, in *Judd v McKeon* (1926) CLR 380.

The defendant challenged the validity of the compulsory voting system in Australia. He asserted that forcing a person to vote is contrary to the basic meaning of the word ‘vote’

as it forces a person to make a choice. He further asserted that voting is a ‘right’, not a ‘duty’.

The defendant was charged with one count of failing to vote pursuant to section 245(15) of the *Commonwealth Electoral Act 1918*.

Following a summary trial involving legal argument in the Adelaide Magistrates Court on 7 December 2011, the defendant was convicted and fined \$45 on 3 February 2012.

The defendant’s appeal against his conviction was heard on 4 April 2012 in the Supreme Court of South Australia. The appeal was then referred to the Full Court for hearing and determination. The appeal was heard by the Full Court on 13 June 2012 and was dismissed on 24 September 2012.

## *Use postal service to cause offence*

MAN HARON MONIS AND AMIR DROUDIS

Monis used Australia Post to send offensive or in one instance, harassing, letters to relatives of Australian Defence Force members killed in combat in Afghanistan. Another letter was sent to relatives of an Austrade official who had been killed in the bombing of the Marriot Hotel in Jakarta in 2009. Droudis assisted Monis to send the letters.

Monis was charged with 12 counts of using a postal service in a way that reasonable persons would regard as being, in all the circumstances, offensive pursuant to section 471.12 of the *Criminal Code* and 1 count of using a postal service in a way that reasonable persons would regard as being, in all the circumstances, harassing pursuant to section 471.12 of the *Criminal Code*.

Droudis was charged with 8 counts of aiding and abetting the commission of an offence by Monis in relation to the offensive letters pursuant to sections 11.2(1) and 474.12 of the *Criminal Code*.

### NSW DISTRICT COURT – INTERLOCUTORY APPLICATION

In the NSW District Court the defendants challenged the validity of the offence provision arguing that it was invalid as it infringed the implied Constitutional freedom of communication regarding government and political matters. Notices of motion were filed seeking to quash the joint indictment. On 18 April 2011 Tupman J refused to make these orders and found the offence provision valid.

## NSW COURT OF CRIMINAL APPEAL

The defendants lodged appeals to the NSW Court of Criminal Appeal. The appeals were heard on 23 August 2011. On 6 December 2011, the court held that section 471.12 of the *Criminal Code* did not infringe the implied freedom of communication.

## HIGH COURT OF AUSTRALIA

On 3 January 2012 the defendants applied for Special Leave to Appeal to the High Court of Australia. The applications were heard on 22 June 2012 and special leave was granted to appeal to the Full Court.

## Copyright

### HITESH RAMA AND MONEEL RAMA

The defendants, who are brothers, administered a peer to peer file sharing website – www.movix.info – from their home. The website allowed paying members access to high-speed downloadable torrent movie files including latest releases, children’s movies and foreign movies according to their subscription level.

The defendants came to the attention of investigators in 2007 when several infringement notices were served on them by ACBPS for importing trade mark infringing DVD movies. This then led investigators to their website which offered VIP membership access for between USD\$6 for one month’s access and USD\$75 for 2 years access.

The website, which was hosted and registered to a person in Sweden, had electronic payment portals; online registration forms; membership support systems including a tutorial video featuring the defendants; email support; prize raffles; and instant messenger support. When police executed a search warrant they located and seized approximately 1000 infringing copies of movie DVDs. At the time of the offences Moneel Rama was aged between 20 and 21 and Hitesh Rama was aged between 27 and 28.

The defendants pleaded guilty to 1 count of distributing infringing copies of copyright works for a commercial advantage or profit pursuant to section 132.AI(1) of the *Copyright Act 1968*

and 1 count of dealing in proceeds of crime worth \$10,000 or more pursuant to section 400.6(1) of the *Criminal Code*.

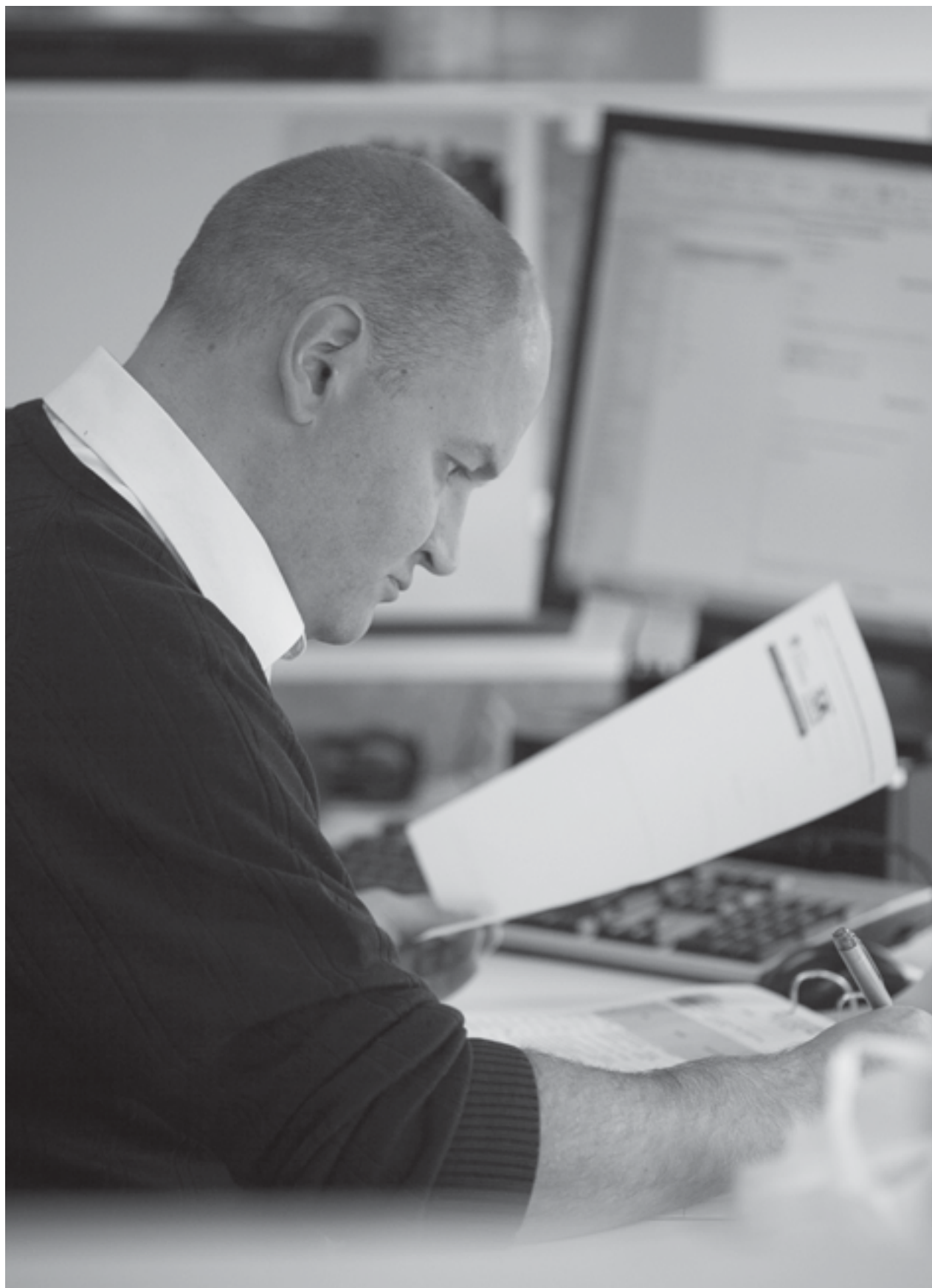
On 13 September 2011 in the Qld District Court the defendants received the following sentences:

- **MONEEL RAMA:** Convicted and sentenced to 15 months imprisonment to be released forthwith on condition that he be of good behaviour for a period of 3 years. He was also ordered to perform 125 hours of unpaid community service.
- **HITESH RAMA:** Convicted and sentenced to 18 months imprisonment to be released forthwith on condition that he be of good behaviour for a period of 3 years. He was also ordered to perform 200 hours of unpaid community service.

Proceeds of crime restraining orders for \$52,748 were made against the defendants.

In sentencing, Jones DCJ stated:

*“I should commence by noting that these crimes are in no way – should in no way be seen as victimless crimes. The purpose of copyright is to protect the effort and intellectual thought that has been brought to bear by the creators of the original material. People like you simply ride on the back of the efforts of others and wrongly and, in my view, quite unashamedly take advantage of the efforts of others.”*





# 3

## Statistics and Performance Indicators



## 3 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 45 no bill applications received from defendants or their representatives. Of these, 23 were granted and 22 were refused. A further 40 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 63.

Of the 63 cases which were discontinued, in 20 cases the primary reason for discontinuing was because there was insufficient evidence. Twenty-three cases were discontinued because the public interest did not warrant the continuation of the prosecution. In the remaining 20 cases, the reason for discontinuing the prosecution was both the insufficiency of evidence and the public interest.

Two of the 63 discontinued cases involved fraud offences, 9 involved drugs offences, 2 involved corporations offences, 43 involved people smuggling offences and 7 involved other types of offences. Five of the 63 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 indemnity 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 indemnity 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 indemnity 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 98 people. The CDPP gave 1 indemnity under section 9(6B). Nine witnesses were indemnified in drugs prosecutions, 4 in prosecutions for fraud, 2 in prosecutions for a corporations offence and 84 in prosecutions for people smuggling offences.

### *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 exercised this power in 2011–2012 in relation to 2 people who had commenced the prosecution of 2 defendants.

### *Ex Officio Indictments*

The Director has the power under section 6(2D) of the *DPP Act* to file an indictment against a person who has not been committed for trial. In 2011–2012 the Director exercised this power 6 times. 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 2011–2012 the Director consented to the commencement of conspiracy proceedings against 127 defendants in relation to 40 alleged conspiracies. Thirteen of the alleged conspiracies related to drugs offences, 5 of the alleged conspiracies related to a fraud offence and 22 of the alleged conspiracies related to other offences.

## Prosecution Performance Indicators 2011–2012

In 2011–2012 the CDPP met the following prosecution performance indicators: prosecutions resulting in a conviction; defendants in defended summary hearings resulting in conviction; and defendants in defended committals resulting in a committal order.

In 2011–2012 the CDPP did not meet the following prosecution performance indicators: defendants tried on indictment and convicted; prosecution sentence appeals in summary prosecutions upheld; and prosecution sentence appeals in a prosecution on indictment upheld. These outcomes were affected by factors including changes to the type and number of matters tried on indictment with an increased number of people smuggling trials and the small numbers of appeals involved. The sentence appeal outcomes on indictment are discussed below.

*Table 1: Prosecution performance indicators for 2011–2012  
– National Totals*

Description	Target	Outcome	Details [successful (total)]
Prosecutions resulting in a conviction*	90%	96%	2803 (2932)
Defendants in defended summary hearings resulting in conviction	60%	75%	85 (114)
Defendants in defended committals resulting in a committal order	80%	99%	476 (480)
Defendants tried on indictment and convicted	60%	59%	144 (244)
Prosecution sentence appeals in summary prosecutions upheld	60%	0%	0 (2)
Prosecution sentence appeals in a prosecution on indictment upheld	60%	56%	10 (18)

\* The conviction rate is calculated by taking the number of defendants convicted as a percentage of defendants convicted or acquitted. The calculation does not include defendants where the CDPP discontinued the prosecution against them in its entirety or where a prosecution has commenced and the defendant failed to appear before a court.

*Table 2: Prosecution performance indicators for 2008–2011  
– National Totals*

Description	Target	2008–09 Outcome	2009–10 Outcome	2010–11 Outcome
Prosecutions resulting in a conviction*	90%	99%	99%	99%
Defendants in defended summary hearings resulting in conviction	60%	73%	79%	70%
Defendants in defended committals resulting in a committal order	80%	95%	98%	99%
Defendants tried on indictment and convicted	60%	71%	81%	80%
Prosecution sentence appeals in summary prosecutions upheld	60%	71%	67%	100%
Prosecution sentence appeals in a prosecution on indictment upheld	60%	83%	68%	61%

\* The conviction rate is calculated by taking the number of defendants convicted as a percentage of defendants convicted or acquitted. The calculation does not include defendants where the CDPP discontinued the prosecution against them in its entirety or where a prosecution has commenced and the defendant failed to appear before a court.

In Table 2 the number of cases upon which the percentages were calculated is published in the CDPP's Annual Reports for those years. Copies of the reports are available from the CDPP's website at [www.cdpp.gov.au](http://www.cdpp.gov.au).

In 2008–2011 the CDPP met all its targets for prosecution performance.

## Prosecution appeals against sentence

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.

## 2011–2012

In 2011–2012, 18 prosecution appeals against sentence in indictable matters were decided. In 8 out of the 18 indictable appeals, the CDPP's appeals were upheld and in the other 10 appeals, the CDPP's appeals were dismissed.

In 2 of the 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.

In one of the appeals concerning a defendant convicted of drug offences, the Victorian Court of Appeal found that notwithstanding that the original sentence was manifestly inadequate, the circumstances of the case were such that the appeal should not be allowed. The Court *'declined to now require the respondent to serve an immediate period of imprisonment'* given that the respondent had been at liberty since the original sentence was imposed. The Court was satisfied that this was an appropriate case in which to exercise the Court's residual discretion to decline to intervene and accordingly dismissed the appeal.

The SA Court of Appeal also considered the sentence imposed upon a defendant convicted of child exploitation offences. The Court found that although the sentencing Judge erred in making the original sentence the Court was persuaded to dismiss the appeal on the grounds of the hardship to the respondent if he were to be immediately imprisoned.

The figures for dismissed prosecution appeals dealt with on indictment in Table 1 are affected by a joint prosecution sentence appeal in which the Qld Court of Appeal considered sentences for drug offences imposed upon 4 defendants. Muir JA, with whom White JA agreed, stated that although the respondents had each been dealt with leniently, the CDPP's appeals should be dismissed due to mitigating factors.

Atkinson J in Her Honour’s dissenting judgment was of the opinion that *“the sentences were so manifestly inadequate that an error in the exercise of the sentencing discretion is demonstrated.”*

## 2010–2011

In 2010–2011, appeal courts decided 23 prosecution appeals against sentence in indictable matters. In 10 out of the 23 indictable appeals, the CDPP’s appeals were upheld and in the other 13 appeals, the CDPP’s appeals were dismissed.

In 2 of the dismissed appeals the appeal court agreed with the CDPP that the sentences imposed at first instance were manifestly inadequate but declined to allow the appeals. In 1 appeal involving a defendant convicted of drug offences, the Court of Criminal Appeal of NT found that notwithstanding that the original sentence was manifestly inadequate, the circumstances of the case were such that the appeal should not be allowed. The Court noted that this was a case where the purposes of the Crown appeal can be satisfactorily achieved by the court indicating that the sentence was manifestly inadequate and should not be regarded as a precedent. The other appeal concerned the sentence imposed upon a defendant who was a prominent solicitor and conspirator in a scheme to evade tax described by the original sentencing judge as a *“sophisticated deceit”*. The Supreme Court of Victoria Court of Appeal found that the original sentence that the defendant be released after serving 12 months imprisonment was manifestly inadequate. However, the Court was satisfied that this was an appropriate case in which to exercise the Court’s residual discretion to decline to intervene and accordingly dismissed the appeal.

In a joint prosecution sentence appeal the NSW Court of Criminal Appeal considered sentences for drugs offences imposed upon 2 defendants.

Simpson J with whom the other members of the Court of Criminal Appeal agreed, stated, *“I am left with the uncomfortable feeling that the sentences here imposed were inadequate. But to allow a Crown appeal and increase a sentence involves a very serious step, and one which this Court does not undertake lightly.”* Her Honour stated that it was unnecessary finally to decide that as Her Honour concluded that the Crown appeal should be dismissed given the Court’s discretion to dismiss a Crown appeal, even where error, whether by manifest inadequacy or otherwise, is established. Her Honour referred to the unusual history of the case and that the respondents, through no fault of their own, had suffered an inordinate delay in the resolution of the appeals and that their potential release date was a few months away.

## 2009–2010

In 2009–2010, appeal courts decided 19 prosecution appeals against sentence in indictable matters. In 9 out of the 19 indictable appeals, the CDPP’s appeals were upheld. In 4 of the 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. Two of the appeals concerned child sex crime offences and the other 2, who were co-offenders, concerned corporation offences. Six other prosecution appeals were dismissed.

Also in 2009–2010, in 1 of the 3 dismissed prosecution appeals against sentence following summary prosecution, the appeal judge found that the sentence imposed was manifestly inadequate but declined to intervene because of double jeopardy.

## 2008–2009

In 2008–2009, 12 prosecution appeals against sentence in indictable matters were decided. In 6 cases the CDPP appeals were 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.

The effect of these appeal court findings is that the sentences at first instance are not precedents for future sentences in comparable cases given the comments and guidance provided by the Courts. The CDPP regards these as being successful outcomes for the purposes of CDPP prosecution performance indicators.

## Prosecution Statistics

In the course of the year, apart from ongoing matters, the CDPP dealt with 3,623 people in Court. The cases were referred by 43

Commonwealth, State and Territory investigative agencies. The following tables set out details of prosecutions conducted in 2011–2012.

Following on from last year, there was again a significant increase in the number of defendants committed for trial or sentence. This was largely due to the significant increase in people smuggling prosecutions dealt with under the *Migration Act 1958*. Overall, the CDPP prosecuted 217 trials, of which 18 exceeded 31 days in duration. The decision in *Poniatowska* discussed in last year's Annual Report and in Chapter 2.1 and legal challenges following that matter have continued to impact upon the CDPP summary prosecution practice and affected the number of matters dealt with this year.

*Table 3: Outcomes of successful prosecutions in 2011–2012*

Description	No.
Defendants convicted of offences prosecuted summarily	2075
Defendants convicted of offences prosecuted on indictment	728
Defendants committed for trial or sentence	811

*Table 4: Summary Prosecutions in 2011–2012*

Description	No.
Defendants convicted after a plea of guilty	1990
Defendants convicted after a plea of not guilty	85
Total defendants convicted	2075
Defendants acquitted after a plea of not guilty	29
<b>Total</b>	<b>2104</b>

*Table 5: Committals in 2011–2012*

Description	No.
Defendants committed after a plea of guilty	335
Defendants committed after a plea of not guilty	476
Total defendants committed	811
Defendants discharged after a plea of not guilty	4
<b>Total</b>	<b>815</b>

*Table 6: Prosecutions on indictment in 2011–2012*

Description	No.
Defendants convicted after a plea of guilty	584
Defendants convicted after a plea of not guilty	144
Total defendants convicted	728
Defendants acquitted after a plea of not guilty	100
<b>Total</b>	<b>828</b>

*Table 7: Prosecutions on indictment – duration of trials in 2011–2012*

Length	No.
1–5 days	75
6–10 days	63
11–15 days	31
16–20 days	10
21–25 days	13
26–30 days	7
over 31 days	18
<b>Total</b>	<b>217</b>

\*Prosecutions resulting in convictions in Tables 1–7 may have been subsequently quashed following a defence appeal against conviction.

*Table 8: Prosecution appeals against sentence in 2011–2012*

Appeal Type	Outcome	Summary	Indictable
Appeals against sentence	Upheld	0	8
	Dismissed	2	10
<b>Total</b>		<b>2</b>	<b>18</b>

*Table 9: Defence appeals in 2011–2012*

Appeal Type	Outcome	Summary	Indictable
Against Conviction Only	Upheld	2	2
	Dismissed	4	8
Against Sentence Only	Upheld	70	30
	Dismissed	17	21
Conviction & Sentence	Upheld	4	8
	Dismissed	6	13
<b>Total</b>		<b>103</b>	<b>82</b>

*Table 10: Legislation under which charges were dealt with in 2011–2012*

Legislation	Summary (Charges)	Indictable (Charges)
Aged Care Act 1997	73	0
Airports (Control of On-Airport Activities) Regulations 1997	6	0
Anti-Money Laundering and Counter-Terrorism Financing Act 2006	18	2
Australian Citizenship Act 1948	4	0
Australian Crime Commission Act 2002	0	34
Australian Federal Police Act 1979	19	0
Australian Passports Act 2005	88	43
Australian Postal Corporation Act 1989	2	0
Australian Securities and Investments Commission Act 2001	0	2
Aviation Transport Security Act 2004	18	0
Aviation Transport Security Regulations 2005	29	0
Bankruptcy Act 1966	272	33
Child Support (Assessment) Act 1989	14	0
Child Support (Registration and Collection) Act 1988	87	0
Civil Aviation Act 1988	15	6
Civil Aviation Regulations 1988	98	0
Civil Aviation Safety Regulations 1998	2	0
Classification (Publications, Films and Computer Games) Act 1995	2	0
Common law offence	0	5
Commonwealth Electoral Act 1918	35	0
Commonwealth Places (Application of Laws) Act 1970	1	0
Copyright Act 1968	113	10
Corporations (Aboriginal and Torres Strait Islander) Act 2006	66	0
Corporations Act 2001	51	129
Crimes (Aviation) Act 1991	37	0
Crimes (Currency) Act 1981	92	6
Crimes Act 1914	59	164
Criminal Code Act 1995	4849	1873
Customs Act 1901	97	43

Legislation	Summary (Charges)	Indictable (Charges)
Defence Act 1903	3	0
Environment Protection and Biodiversity Conservation Act 1999	39	30
Excise Act 1901	6	0
Financial Management and Accountability Act 1997	9	0
Financial Transaction Reports Act 1988	5	7
Fisheries Management Act 1991	90	0
Foreign Passports (Law Enforcement and Security) Act 2005	9	4
Great Barrier Reef Marine Park Act 1975	35	0
Great Barrier Reef Marine Park Regulations 1983	36	0
Health Insurance Act 1973	63	4
Historic Shipwrecks Act 1976	4	0
Historic Shipwrecks Regulations 1978	2	0
Income Tax Assessment Act 1936	29	0
Marriage Act 1961	2	1
Migration Act 1958	59	253
National Health Act 1953	32	0
National Parks & Wildlife Regulations	1	0
Passports Act 1938	24	5
Primary Industries Levies and Charges Collection Act 1991	14	0
Proceeds of Crime Act 1987	0	7
Protection of the Sea (Prevention of Pollution from Ships) Act 1983	9	0
Public Order (Protection of Persons and Property) Act 1971	15	0
Quarantine Act 1908	16	0
Quarantine Regulations 2000	1	0
Quarantine (Plants) Regulations	1	0
Radiocommunications Act 1992	14	0
Social Security (Administration) Act 1999	329	0
Social Security Act 1991	41	0
Statutory Declarations Act 1959	1	1
Superannuation Industry (Supervision) Act 1993	0	4



Legislation	Summary (Charges)	Indictable (Charges)
Taxation Administration Act 1953	482	0
Therapeutic Goods Act 1989	2	0
Torres Strait Fisheries Act 1984	2	0
Trade Marks Act 1995	39	32
Non Commonwealth Legislation	276	491
<b>Total</b>	<b>7837</b>	<b>3189</b>

*Table 11: Crimes Act 1914 charges dealt with in 2011–2012*

Sections	Title	Summary (Charges)	Indictable (Charges)
3LA(3)	Person with knowledge of a computer or a computer system to assist access etc. (repealed)	1	1
3V(2)(d)	Refuse or fail to comply with request	1	0
20A(5)(c)	Fail to comply with condition of order under s20(1)(b)	1	0
23XWP(4)	Carrying out forensic procedure following conviction – offender refuses or fails to permit	1	0
29(1)	Destroying or damaging Commonwealth property	33	2
29B	False representation (repealed)	3	14
29D	Fraud (repealed)	2	97
35(1)	Giving false testimony	1	0
42(1)	Conspiring to pervert justice	0	1
43(1)	Attempting to pervert justice	1	1
50BA(1)	Engage in sexual intercourse with child under 16 outside Australia (repealed)	0	19
50BC(1)(a)	Sexual conduct involving child under 16 (repealed)	0	23
67(b)	Forgery of Commonwealth documents (repealed)	5	0
71(1)	Stealing Commonwealth property (repealed)	1	0
76(1)(b)(i)	Obstructing person exercising duty on behalf of Commonwealth (repealed)	1	0
76B(1)(a)	Unauthorised access (repealed)	1	0
83(1)(a)	Take unlawful soundings (repealed)	0	6
85U	Obstructing carriage of articles by post	3	0

Sections	Title	Summary (Charges)	Indictable (Charges)
85W(1)	Causing controlled drugs or controlled plants to be carried by post	3	0
85ZE(a)	Using carriage service to menace or harass (repealed)	1	0
<b>Total</b>		<b>59</b>	<b>164</b>

*Table 12: Criminal Code 1995 charges dealt with in 2011–2012*

Part	Section	Description	Summary (Charges)	Indictable (Charges)
Part 5.3 – Terrorism			<b>0</b>	<b>9</b>
	101.4(1)	Possessing things connected with terrorist acts	0	1
	101.5(1)	Collecting or making documents likely to facilitate terrorist acts	0	1
	101.6(1)	Other acts done in preparation for, or planning, terrorist acts	0	6
	102.7(1)	Providing support to a terrorist organisation	0	1
Part 7.2 – Theft and Other property offences			<b>15</b>	<b>8</b>
	131.1(1)	Theft	15	7
	132.4(1)	Burglary	0	1
Part 7.3 – Fraudulent conduct			<b>4139</b>	<b>405</b>
	134.1(1)	Obtaining Commonwealth property by deception	23	5
	134.2(1)	Obtaining a financial advantage by deception	125	270
	135.1(1)	Dishonestly intending to obtain a gain	18	8
	135.1(3)	Dishonestly intending to cause a loss	206	86
	135.1(5)	Dishonestly causing a loss or risk of loss	10	24
	135.1(7)	Dishonestly intending to influence a Commonwealth public official	47	0
	135.2(1)	Obtains financial advantage from a Commonwealth entity	3705	4
	135.2(2)	Obtaining a financial advantage for another person	5	0
	135.4(3)	Conspiracy to defraud	0	6
	135.4(5)	Conspires with another person to cause a loss or risk of loss	0	2

Part	Section	Description	Summary (Charges)	Indictable (Charges)
Part 7.4 – False or misleading statements			243	0
	136.1(1)	False or misleading statements in applications	153	0
	136.1(4)	False or misleading statements (recklessness)	73	0
	137.1(1)	False or misleading information	14	0
	137.2(1)	False or misleading documents	3	0
Part 7.6 – Bribery and related offences			3	6
	141.1(3)	Receiving a bribe by a Commonwealth public official	0	5
	142.2(1)	Abuse of public office	3	1
Part 7.7 – Forgery and related offences			48	31
	144.1(1)	Making forged document with intention is it accepted as genuine by Commonwealth public official	8	0
	144.1(5)	Making forged Commonwealth document with intention it is accepted as genuine by a third person	2	0
	145.1(1)	Using forged document with intention that is accepted as genuine by Commonwealth public official	34	23
	145.1(5)	Using forged Commonwealth document with intention it is accepted as genuine by a third person	1	0
	145.2(5)	Possession of forged document	0	2
	145.4(2)	Falsification of documents with intention	3	6
Part 7.8 – Causing harm to, and impersonation and obstruction of, Commonwealth public officials			60	5
	147.1(1)	Cause harm to a Commonwealth public official etc.	22	0
	147.2(1)	Threatening to cause harm to a Commonwealth public official etc.	15	0
	147.2(2)	Threatening to cause harm	3	0
	149.1(1)	Obstruction of Commonwealth public officials	20	5
Chapter 8 – Offences against humanity and related offences			0	6
	270.3(1)	Slavery offences	0	1
	270.6(1)	Sexual servitude	0	2

Part	Section	Description	Summary (Charges)	Indictable (Charges)
	271.2(1B)	Trafficking in persons	0	1
	271.8(1)	Offence of debt bondage	0	1
	272.14(1)	Procuring child to engage in sexual activity outside Australia	0	1
Part 9.1 – Serious drug offences			<b>58</b>	<b>404</b>
	302.2(1)	Trafficking commercial quantities of controlled drugs	0	13
	302.3(1)	Trafficking marketable quantities of controlled drugs	0	7
	302.4(1)	Trafficking controlled drugs	3	24
	303.6(1)	Cultivating controlled plants	1	1
	305.3(1)	Manufacture commercial quantity controlled drugs	0	1
	305.4(1)	Manufacturing marketable quantities of controlled drugs	0	1
	306.4(1)	Pre trafficking controlled precursors	0	1
	307.1(1)	Importing and exporting commercial quantities of border controlled drugs or border controlled plants	0	44
	307.2(1)	Importing and exporting marketable quantities of border controlled drugs or border controlled plants	0	105
	307.3(1)	Importing and exporting border controlled drugs or border controlled plants	1	17
	307.4(1)	Importing and exporting border controlled drugs or plants, no commercial intent	23	4
	307.5(1)	Attempt to possess commercial quantity unlawfully imported border controlled drug/plant	0	47
	307.6(1)	Possessing marketable quantities of unlawfully imported border controlled drugs or plants	0	35
	307.7(1)	Possessing unlawfully imported border controlled drugs or border controlled plants	1	1
	307.8(1)	Possessing commercial quantities of border controlled drugs or plants, suspected unlawful importation	0	4

Part	Section	Description	Summary (Charges)	Indictable (Charges)
	307.9(1)	Possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported	0	3
	307.10(1)	Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported	1	1
	307.11(1)	Importing and exporting commercial quantities of border controlled precursors	0	20
	307.12(1)	Importing and exporting marketable quantities of border controlled precursors	1	57
	307.13(1)	Importing and exporting border controlled precursors	0	5
	308.1(1)	Possessing controlled drugs	24	5
	308.2(1)	Possessing controlled precursors	2	8
	308.3	Possessing plant material, equipment or instructions for commercial cultivation of controlled plants	1	0
<b>Part 10.2 – Money laundering</b>			<b>58</b>	<b>82</b>
	400.3(1)	Dealing in proceeds of crime etc. – money or property worth \$1,000,000 or more: knowing/believing	0	3
	400.3(2)	Dealing in proceeds of crime etc. – money or property worth \$1,000,000 or more: reckless	0	4
	400.4(1)	Dealing in proceeds of crime etc. – money or property worth \$100,000 or more: knowing/believing	0	13
	400.4(2)	Dealing in proceeds of crime etc. – money or property worth \$100,000 or more: reckless	0	4
	400.4(3)	Dealing in proceeds of crime etc. – money or property worth more than \$100,000: negligence	0	1
	400.5(1)	Dealing in proceeds of crime etc. – money or property worth \$50,000 or more: knowing/believing	0	1
	400.5(2)	Dealing in proceeds of crime etc. – money or property worth \$50,000 or more: reckless	0	1

Part	Section	Description	Summary (Charges)	Indictable (Charges)
	400.6(1)	Dealing in proceeds of crime etc. – money or property worth \$10,000 or more: knowing/believing	2	3
	400.6(2)	Dealing in proceeds of crime etc. – money or property worth \$10,000 or more: reckless	1	2
	400.7(1)	Dealing in proceeds of crime etc. – money or property worth \$1,000 or more: knowing/believing	1	0
	400.8(1)	Dealing in proceeds of crime etc. – money or property of any value	33	0
	400.8(2)	Dealing in proceeds of crime etc. – money or property of any value	4	0
	400.9(1)	Dealing with money/other property reasonably suspected of being proceeds of crime \$100,000 or more	8	48
	400.9(1A)	Dealing with money/other property reasonably suspected of being proceeds of crime under \$100,000	9	2
Part 10.5 – Postal services			52	27
	471.1(1)	Theft of mail receptacles, articles or postal messages	43	11
	471.3(a)	Taking or concealing of mail receptacles, articles or postal messages	2	0
	471.3(b)	Taking or concealing of mail receptacles, articles or postal messages in the course of posting	1	0
	471.6(1)	Damaging or destroying mail receptacles, articles or postal messages	1	0
	471.8	Dishonestly obtaining delivered articles	1	0
	471.10(1)	Hoaxes – explosives and dangerous substances	2	0
	471.12	Using a postal service to menace/harass/cause offence	2	12
	471.16(1)	Using a postal or similar service for child pornography material	0	4
Part 10.6 – Telecommunications services			94	884
	474.14(1)	Using a telecommunications network with intention to commit a serious offence	2	0
	474.15(1)	Using a carriage service to make a threat to kill	11	5

Part	Section	Description	Summary (Charges)	Indictable (Charges)
	474.15(2)	Use carriage service to threaten serious harm	5	0
	474.16	Using a carriage service for a hoax threat	9	1
	474.17(1)	Use carriage service to menace, harass or cause offence	41	17
	474.18(1)	Improper use of emergency call service	1	2
	474.18(2)	Vexatious call to emergency service number	7	16
	474.19(1)	Use a carriage service for child pornography material	11	684
	474.20(1)(a)(i)	Possess/control/produce/supply/obtain child pornography material for use through carriage service	1	5
	474.22(1)(a)(i)	Using a carriage service to access child abuse material	0	11
	474.24A(1)	Aggravated offence – offence involving conduct on 3 or more occasions and 2 or more people	1	1
	474.25A(1)	Engaging in sexual activity with child using a carriage service	0	6
	474.26(1)	Use carriage service to procure persons under 16 years of age	0	48
	474.27(1)	Use carriage service to ‘groom’ person under 16 years of age	0	49
	474.27A(1)	Using a carriage service to transmit indecent communication to person under 16 years of age	5	39
Part 10.7 – Computer offences			<b>60</b>	<b>2</b>
	477.1(1)	Intention to commit a serious Commonwealth, State or Territory offence	2	0
	477.2(1)	Unauthorised modification of data to cause impairment	0	2
	478.1(1)	Unauthorised access to, or modification of, restricted data	58	0
Part 10.8 – Financial information offences			<b>18</b>	<b>1</b>
	480.4	Dishonestly obtain or deal in personal financial information	18	1
<b>Total</b>			<b>4848</b>	<b>1870</b>

**NOTE:** 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 summary charges were dealt with on indictment as they were scheduled under s16BA of the *Crimes Act 1914*.

*Table 13: Charges dealt with involving extensions of criminal responsibility under the Crimes Act 1914 and Criminal Code 1995*

Extension of Criminal Responsibility Act and Section		Principal Act and Section		Charges	
Act	Section	Act	Section	Summary	Indictable
Crimes Act 1914	5(1) Aid & Abet	Crimes Act 1914	29D	0	3
	6 Accessory	Customs Act 1901	233BAA(4)	0	1
	7(1) Attempt	Crimes Act 1914	29D	0	8
Criminal Code 1995	11.1(1) Attempt	Crimes Act 1914	29D	0	6
		Australian Passports Act 2005	35(1)	5	0
		Aviation Transport Security Act 2004	47(1)	2	0
		Bankruptcy Act 1966	265(5)(b)	1	0
		Crimes Act 1914	29(1)	1	0
		Criminal Code 1995	134.1(1)	1	1
			134.2(1)	3	45
			135.2(1)	9	0
			302.2(1)	0	1
			307.1(1)	0	3
			307.2(1)	0	9
			307.3(1)	0	1
			307.4(1)	1	0
	307.5(1)	0	42		
	307.6(1)	0	30		
	307.8(1)	0	2		
	307.11(1)	0	1		
	307.12(1)	0	5		
	308.2(1)	1	2		
	Customs Act 1901	233B(1)(a)		0	1



Extension of Criminal Responsibility Act and Section		Principal Act and Section		Charges	
Act	Section	Act	Section	Summary	Indictable
		Environment Protection and Biodiversity Conservation Act 1999	303DD(1)	0	6
			303GP(2)	0	19
	11.2(1) Complicity	Australian Passports Act 2005	31(1)	0	6
		Corporations Act 2001	206A(1)	1	0
		Crimes (Currency) Act 1981	6	0	1
		Criminal Code 1995	134.2(1)	0	2
			135.1(3)	0	1
			135.1(7)	2	0
			135.2(1)	1	0
			145.1(1)	1	0
			307.2(1)	0	17
			307.3(1)	0	3
			307.9(1)	0	1
			307.11(1)	0	2
			307.12(1)	0	4
			474.17(1)	1	0
		Customs Act 1901	233BAA(4)	0	4
		Environment Protection and Biodiversity Conservation Act 1999	303EK(1)	1	0
		Fisheries Management Act 1991	95(1)(a)	4	0
			95(1)(d)	4	0

Extension of Criminal Responsibility Act and Section		Principal Act and Section		Charges	
Act	Section	Act	Section	Summary	Indictable
		Quarantine Act 1908	67(1)	1	0
			67(3)	1	0
	11.3 Commission	Criminal Code 1995	134.2(1)	0	1
			135.1(1)	0	1
			474.18(2)	1	0
	11.4(1) Incitement	Migration Act 1958	234(1)(a)	1	0
			234(1)(b)	1	0
	11.5(1) Conspiracy	Criminal Code 1995	101.6(1)	0	6
			302.2(1)	0	4
			302.3(1)	0	1
			302.4(1)	0	1
			305.3(1)	0	1
			307.1(1)	0	11
			307.2(1)	0	10
			307.3(1)	0	1
			307.11(1)	0	4
			400.3(2)	0	1
			400.4(1)	0	2
			477.2(1)	0	2
		Customs Act 1901	233B(1)(b)	0	1
<b>Totals</b>				<b>46</b>	<b>275</b>

NOTE: These charges are also included in tables 10, 11 and 12.

*Table 14: Reparation orders and fines*

	Actual 2011–2012 \$'000	Actual 2010–2011 \$'000
Reparation orders made	19,211	51,694
Fines and costs orders made	2,028	2,946

*Table 15: Referring Agencies: defendants dealt with in 2011–2012*

Referring Agency	Summary (Defendants)	Indictable (Defendants)
Australian Communications and Media Authority	2	0
Australian Crime Commission	0	8
Australian Customs & Border Protection Service	56	66
Australian Electoral Commission	30	0
Australian Federal Police	413	657
Australian Fisheries Management Authority	44	0
Australian Maritime Safety Authority	4	0
Australian National Parks & Wildlife Service	1	0
Australian Postal Corporation	31	4
Australian Prudential Regulation Authority	1	1
Australian Quarantine and Inspection Service	14	0
Australian Securities & Investments Commission	19	30
Australian Taxation Office	62	26
Australian Trade Commission	2	0
Civil Aviation Safety Authority	11	1
Comcare	1	0
Department of Agriculture, Fisheries and Forestry	8	0
Department of Defence	8	0
Department of Education, Employment and Workplace Relations	26	1
Department of Families, Housing, Community Services and Indigenous Affairs	2	0
Department of Foreign Affairs and Trade	49	0
Department of Health and Ageing	1	0
Department of Human Services – Centrelink	1461	27
Department of Human Services – Child Support Agency	17	0
Department of Human Services – Medicare	4	1
Department of Immigration and Citizenship	13	1
Department of Sustainability, Environment, Water, Population and Communities	2	0

Referring Agency	Summary (Defendants)	Indictable (Defendants)
Department of the Environment, Water, Heritage and the Arts	2	0
Department of Veterans' Affairs	0	1
Family Court of Australia	1	0
Great Barrier Reef Marine Park Authority	47	0
Insolvency and Trustee Service, Australia	204	3
Medicare Australia	7	1
Office of the Registrar of Indigenous Corporations	24	0
Therapeutic Goods Administration	1	0
Non-Commonwealth Agencies including State or Territory Police	78	149
<b>Total</b>	<b>2646</b>	<b>977</b>

**NOTE:** 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, prosecutions that were originally referred by the National Crime Authority are included under the Australian Crime Commission.

**NOTE:** The CDPP reviewed the methodology used to calculate the number of defendants dealt with. As a result, the figures in this table are not directly comparable to figures reported in the 2008–2009 and 2009–2010 versions of this table.







# 4

## Criminal Confiscation



## 4 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 *Proceeds of Crime Act 2002* (*POC Act 2002*) is the principal legislation under which Commonwealth confiscation action is taken. Between 1 January 2003 and 31 July 2012 over \$195 million has been recovered through action taken by the CDPP under this Act and its predecessor the *Proceeds of Crime Act 1987* (*POC Act 1987*).

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.

In 2010, the Government announced it would establish a Criminal Assets Confiscation Taskforce led by the AFP. The interim task force was launched in March 2011 and consisted of the AFP, CDPP, ATO and ACC. Each agency in the taskforce exercised its own roles and functions in accordance with its legislative mandate. No change in statutory function was involved.

On 1 January 2012, the interim task force was replaced by the Permanent Criminal Assets Confiscation Taskforce (the Taskforce) which is led by the AFP and includes ATO and ACC. At the same time legislative amendments to the *POC Act 2002* came into force so as to enable the Commissioner of the AFP to take criminal confiscation action under that Act. Up until that date the CDPP had the sole responsibility for taking criminal confiscation action under the *POC Act 2002*. The purpose of these amendments was to effect a change in the way the *POC Act 2002* was enforced so as to facilitate the conduct by the AFP of the majority of Commonwealth criminal confiscation action.



## Legislation

### *Proceeds of Crime Act 2002*

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 (non-conviction 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. Non-conviction 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’.

Non-conviction action is available in relation to a narrower range of cases.

There are 4 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
- **UNEXPLAINED WEALTH ORDERS** – where the court orders a person to pay an amount calculated by reference to that part of the person’s wealth which the person cannot demonstrate was lawfully acquired; 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 non-conviction 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 of making 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*.

## *The amendments*

As noted above the *POC Act 2002* is the principal legislation under which the CDPP currently operates in the area of criminal confiscation. The *Crimes Legislation Amendment Act (No2) 2011* which commenced on 1 January 2012 amended the *POC Act 2002* to provide for *POC Act* proceedings to be conducted by a “proceeds of crime authority”.

A proceeds of crime authority is defined to be the CDPP or the Commissioner of the AFP. The explanatory memorandum for the *Crimes Legislation Amendment Act (No2) 2011* stated that:

*“It is envisaged that the AFP will take responsibility for litigating all proceeds of crime matters relevant to the investigations undertaken by the Taskforce, and all non-conviction based proceeds of crime matters. While it is likely that the Taskforce will take responsibility for the majority of proceeds of crime matters, it is expected that the DPP will continue with a limited number of matters that are closely connected with criminal prosecutions. The division of responsibilities between the two authorities will be subject to administrative arrangements outlined in a Memorandum of Understanding.”*

Under the agreed division of responsibilities, the CDPP will seek forfeiture orders and pecuniary penalty orders on the conviction of an offender for a Commonwealth offence where no restraining order has been sought at the time of the application for orders. The AFP has responsibility for taking all other action under the *POC Act 2002*.

The *POC Act 2002* was also amended to allow for existing applications for principal orders and principal orders in proceedings to be transferred between the proceeds of crime authorities.

In accordance with the division of responsibilities existing matters commenced by the CDPP have been transferred or are being transferred to the Commissioner of the AFP. From 1 January 2012 to 2 April 2012 by arrangement with the AFP, the CDPP only sought restraining orders in urgent matters where there was a risk of dissipation of assets. From 2 April 2012 by arrangement with the AFP the CDPP no longer commenced *POC Act 2002* action in non-conviction based matters or conviction based matters commenced by restraining order.

## Other Legislation

The *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*. No amendments have been made to the *POC Act 1987* to enable the Commissioner of the AFP to conduct matters under this Act.

The CDPP also has statutory duties under the *Crimes (Superannuation Benefits) Act 1989* (*CSB Act*) and Part VA of the *Australian Federal Police Act 1979* (*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 brought pursuant to State and Territory proceeds of crime legislation.

## Operating Structure

The CDPP criminal assets work has been coordinated nationally by a senior lawyer in Head Office. Each of the larger regional offices had a Criminal Assets Branch whilst the other offices had criminal assets lawyers to conduct this specialised work.

In light of the changes effected by the legislation and the division of responsibilities the CDPP will no longer retain Criminal Asset Branches but will continue to conduct a limited number of POCA proceedings in accordance with the division of responsibilities.

CDPP lawyers will continue to consider the appropriateness of criminal confiscation action in particular matters, and if the matter falls within the CDPP's responsibilities, where appropriate, will commence and conduct confiscation litigation.

## 2011–2012 Financial Year

During 2011–2012 a total sum of \$45.62 million was recovered as a result of litigation commenced by the CDPP under the *POCA Act 2002*. This figure is up from the \$13.81 million recovered in 2010–2011 and \$18.31 million in 2009–2010. This is the largest amount recovered in a financial year since the *POCA Act 2002* commenced.

### Statistics

A detailed breakdown of the CDPP's criminal confiscation activities for 2011–2012 is provided by the tables at the end of this Chapter. In summary:

Under the *POCA Act 2002*:

- 35 new restraining orders were obtained;
- 11 pecuniary penalty orders were obtained;
- 80 forfeiture orders were obtained;
- automatic forfeiture occurred in 7 matters;
- 6 compulsory examinations were undertaken;
- the total estimated value of confiscation orders (including automatic forfeiture) obtained was \$45.645 million; and
- the total amount recovered as a result of litigation (including automatic forfeiture) was \$45.620 million.

In relation to matters still continuing under the *POCA Act 1987* a total of \$0.185 million was recovered.

Three superannuation orders were obtained under the CSB Act. There were no orders under Part VA of the AFP Act.

No new action was taken pursuant to the DPP's civil remedies powers or pursuant to the provisions of Division 3 of Part XIII of the *Customs Act 1901*.

## POC Act 2002 Performance Indicators

The CDPP's performance in cases under the *POC Act 2002* during 2011–2012 is measured against the following performance indicators. Information in relation to the previous three years is included and in each instance the CDPP has met or exceeded the applicable performance indicator.

Description	Number	Target	Outcome
Applications for restraining orders that succeeded	35	90%	100%
Figures for 2010 – 2011	48	90%	100%
Figures for 2009 – 2010	44	90%	98%
Figures for 2008 – 2009	52	90%	100%
Applications for pecuniary penalty orders that succeeded	11	90%	100%
Figures for 2010 – 2011	14	90%	100%
Figures for 2009 – 2010	18	90%	100%
Figures for 2008 – 2009	20	90%	100%
Applications for forfeiture orders that succeeded	80	90%	97.5%
Figures for 2010 – 2011	107	90%	100%
Figures for 2009 – 2010	104	90%	99%
Figures for 2008 – 2009	111	90%	100%
Damages awarded against undertakings	0		\$0
Figures for 2010 – 2011	0		\$0
Figures for 2009 – 2010	0		\$0
Figures for 2008 – 2009	1		\$150,000
Number of cases where costs awarded against DPP	0		\$0
Figures for 2010 – 2011	1		\$35,000
Figures for 2009 – 2010	4		\$2,319
Figures for 2008 – 2009	1		\$14,000

## Case Reports

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### STEVEN IRVINE HART

This case was reported in the 2005–2006 Annual Report at page 81 and the 2010–2011 Annual Report at page 153.

Hart was a tax agent and the owner of a large accounting practice in Queensland. Following a joint investigation by the ATO and the AFP, Hart was charged with offences relating to an alleged tax minimisation scheme known as the Employment Retention Plan.

Hart was charged with 9 fraud offences in October 2001. In May 2003 restraining orders were obtained under the *POC Act 2002* over property including a motor vehicle, 11 aeroplanes, several residential properties, a farm and hangar leases. Part of the property was restrained on the basis that, though legally owned by other entities, it was subject to the effective control of Hart.

Hart was convicted of the 9 fraud offences in May 2005 and sentenced to a term of imprisonment. Subsequent appeals by Hart and by the CDPP against sentence were dismissed.

In April 2006, as a result of the above convictions, all of the property still under restraint was forfeited to the Commonwealth. A number of post-forfeiture applications have been made seeking recovery of a number of items of the forfeited property, and the litigation relating to these aspects is ongoing.

On 19 November 2010 the Supreme Court of Qld ordered Hart to pay a pecuniary penalty order in the amount of \$14,757,287.35. Hart appealed against the pecuniary penalty order to the Qld Court of Appeal. On 6 December 2011, this appeal was dismissed and Hart was ordered to pay costs.

Hart sought Special Leave to Appeal this decision to the High Court. This application was refused on 8 June 2012 and again Hart was ordered to pay costs. Hart also sought leave to challenge the Constitutional validity of Part 2–4 of the *POC Act 2002* which provides for the making of pecuniary penalty orders. This application was also refused.

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### KHAC CUONG DUONG

In 2009, the AFP commenced an investigation into a group of remittance agents operating in Sydney suspected of laundering large amounts of cash believed to be the proceeds of crime. During the investigation the AFP identified an unregistered provider of alternative remittance services who operated the business from both her home and a travel agency in Sydney. Her husband, Duong, was alleged to act as a sub-agent of the unregistered remittance service.

The AFP alleged that the alternative remittance service operated by Duong's wife involved collecting large quantities of cash from customers and arranging for the cash to be deposited into numerous bank accounts in Sydney and Melbourne. During the execution of a search warrant at Duong's house the AFP located approximately \$8 million in cash secreted around the house in various bags and locations.

Duong was charged with a money laundering offence but upon his death in early 2011, the charge against him was withdrawn.

In November 2010, the CDPP obtained a restraining order over the cash seized by the AFP from the defendant's home on the basis there were reasonable grounds to suspect it was the proceeds of crime. In late 2010 Duong applied for an order excluding a part

of the cash from the restraining order and this application was pursued by the Duong's estate following his death.

Notwithstanding Duong's death, the proceedings were resolved by consent and on 1 May 2012 orders were made that \$7,735,295 forfeit to the Commonwealth pursuant to section 49 of the *POC Act 2002*.

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#### ARTURO EDUARDO GALMEZ

Galmez, a Chilean-born Australian citizen was charged in Germany with organising the transportation of approximately 3000kg of cocaine from Ecuador to Germany. German authorities discovered a bank account in Australia and a residential property in Sydney belonging to Galmez.

Australian authorities commenced an investigation to determine whether proceedings under the *POC Act 2002* to recover the proceeds of crime could be commenced. On 18 March 2004, a restraining order was obtained under the *POC Act 2002* over the funds

in the bank account and the residential property on the basis the property was suspected of being the proceeds of a foreign indictable offence.

On 26 January 2006, Galmez was convicted and sentenced to 15 years imprisonment in Germany for illegally dealing in narcotics in substantial amounts.

The proceedings were settled in 2012 and \$1.175 million was forfeited to the Commonwealth.

## Criminal Assets Confiscation Tables

The tables below set out details relating to the criminal confiscation work conducted by the CDPP in 2011–2012.

*Table 1: POC Act 2002: new orders and forfeitures in 2011 – 2012*

	Number	Value
Restraining orders	35	\$25,812,432*
Pecuniary penalty orders	11	\$23,197,134
Forfeiture orders	80	\$19,560,553
Automatic forfeiture under section 92	7	\$2,887,38
Literary proceeds orders	–	–

\*This is the current estimated net value of the property covered by restraining orders.

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	0	\$0
Australian Federal Police	34	\$25,629,468
Australian Securities & Investments Commission	1	\$182,964

*Table 3: POC Act 2002: restraining orders obtained by offence type*

	No.	Value
Corporations	1	\$182,964
Drugs	16	\$11,146,356
Fraud	7	\$4,605,329
Laundering	9	\$7988143
Other	2	\$1,889,640

*Table 4: POC Act 2002: restraining orders in force as at 30 June 2012*

	Number	Value
Number of restraining orders in force	107	\$64,964,333

*Table 5: POC Act 2002: money recovered in 2011 – 2012*

	Amount Recovered
Pecuniary penalty orders	\$23,194,619
Forfeiture orders	\$19,590,612
Automatic forfeiture under section 92	\$2,830,425
Literary proceeds orders	\$4,478
Matters where money recovered but no formal orders made	\$0
<b>Total recovered</b>	<b>\$45,620,134</b>

*Table 6: POC Act 2002 new post forfeiture orders in 2011 – 2012\**

	Number	Value
Post forfeiture orders under section 102	0	\$0

\*Post forfeiture orders are court orders made in restricted circumstances requiring the Commonwealth to return property previously forfeited.

*Table 7: POC Act 1987: restraining orders in force as at 30 June 2012*

	Number	Value
Number of restraining orders in force	1	\$88,613

*Table 8: POC Act 1987: Money recovered in 2011 – 2012*

	Amount recovered
Pecuniary penalty orders	\$152,975
Forfeiture orders	\$32,630
Automatic forfeiture	\$0
Matters where money recovered but no formal orders made	-
<b>Total recovered</b>	<b>\$185,605</b>



*Table 9: Criminal assets: summary of recoveries for 2011 – 2012*

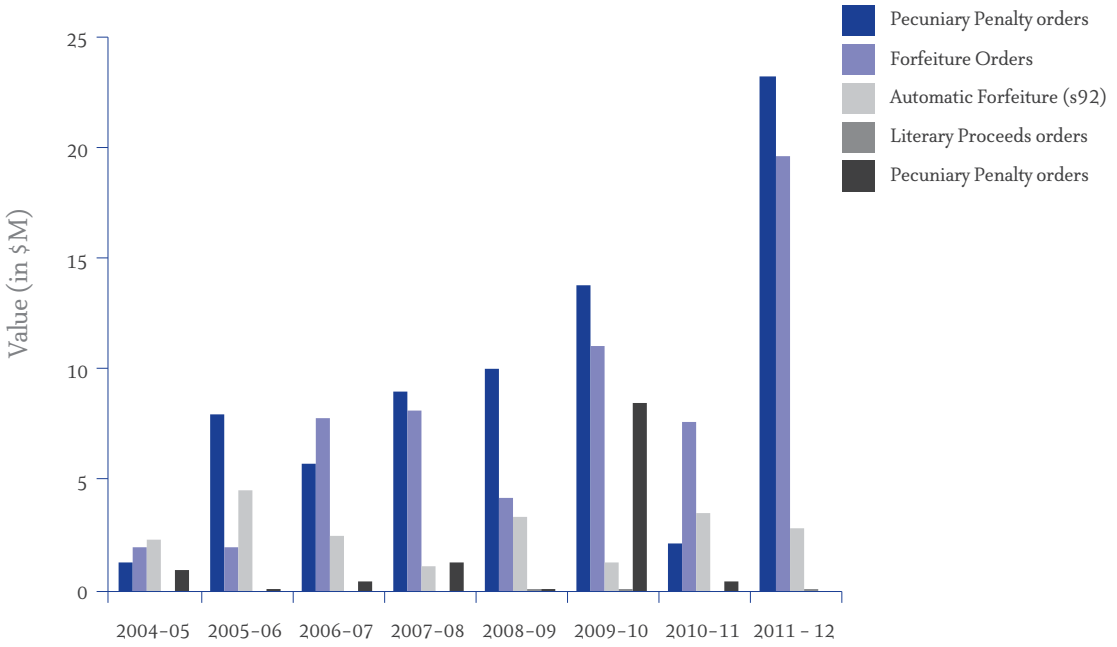
POC Act 1987 pecuniary penalty orders	\$152,975
POC Act 1987 forfeiture orders	\$32,630
POC Act 1987 automatic forfeiture	
Matters where money recovered but no formal orders made	
<b>POC Act 1987 total</b>	<b>\$185,605</b>
POC Act 2002 pecuniary penalty orders	\$23,194,619
POC Act 2002 forfeiture orders	\$19,590,612
POC Act 2002 automatic forfeiture	\$2,830,425
POC Act 2002 literary proceeds orders	\$4,478
Matters where money recovered but no formal orders made	\$0
<b>POC Act 2002 total</b>	<b>\$45,620,134</b>
Customs Act condemnation	-
Customs Act total	-
<b>Grand total</b>	<b>\$45,805,739</b>

*Table 10: CSB Act – orders made in 2011 – 2012*

Name	State	Date
QUETCHER	NSW	3 August 2011
GOK	WA	5 January 2012
MONYENYE	WA	5 January 2012

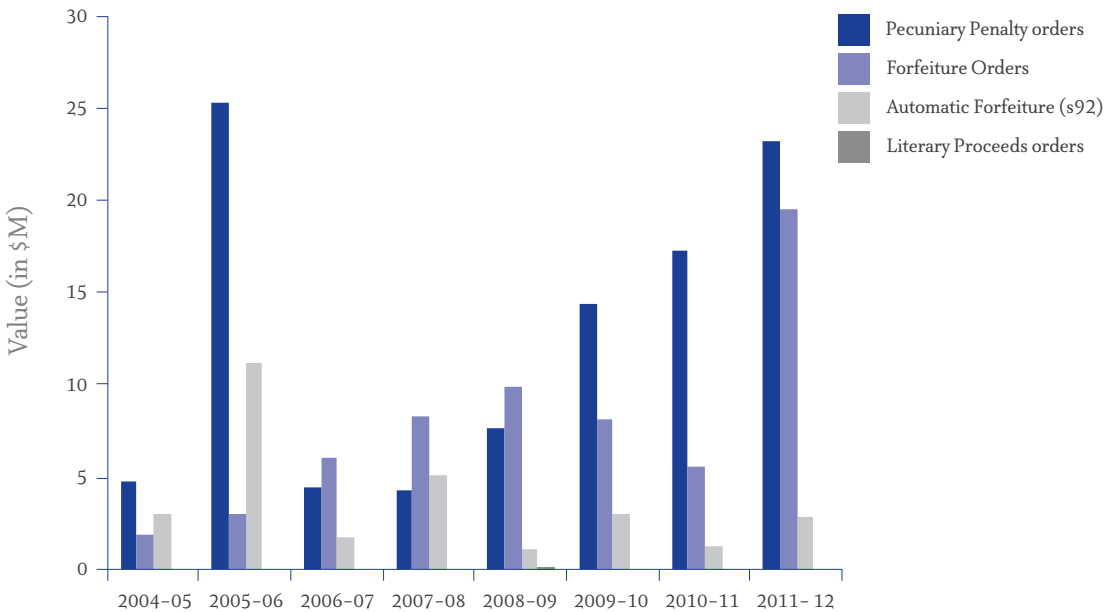
### Money Recovered POC Act 2002

2004-05 to 2011-12



### Value of Confiscation Orders POC Act 2002

2004-05 to 2011-12









# 5

## International Crime Cooperation





## 5 International Crime Cooperation

The CDPP views international crime cooperation as an important tool in the successful prosecution of transnational crime. The proliferation of cases with an international aspect requires assistance and cooperation from other countries in order to effectively investigate and prosecute serious offences such as people smuggling, sexual servitude, drug trafficking, money laundering and the dissemination of child pornography.

The CDPP increasingly seeks cooperation from other countries to assist in the prosecution of transnational crime and to apprehend and extradite fugitives.

The CDPP is involved in two main areas of international criminal cooperation: Extradition and Mutual Assistance. Primary responsibility for both these areas rests with the AGD, Australia's Central Authority for mutual assistance in criminal matters and extradition.

### 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 formal mutual assistance regime runs parallel with the less formal system of international cooperation between investigating agencies, known as 'agency to agency' assistance. Formal mutual assistance channels are most commonly used when the request for assistance involves the use of coercive powers or when the material requested is required to be in a form that is admissible in criminal proceedings.

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 28 bilateral mutual assistance treaties, and a number of multilateral conventions, which bind the signatories to provide mutual assistance to each other, including the:

- *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,*
- *United Nations Convention Against Transnational Organized Crime, and*
- *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.*

Countries which are not signatories to mutual assistance treaties or conventions may also request mutual assistance from, and provide mutual assistance to, each other. This is done under the principle of reciprocity whereby countries agree to provide assistance to each other on a case by case basis on the understanding that they will receive similar assistance in return.

In relation to requests from other countries, the CDPP 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. On 1 January 2012, the Permanent Criminal Assets Confiscation Taskforce (the Taskforce) which is operated by the AFP was established. At the same time legislative amendments to the *POC Act 2002* came into force so as to enable the Commissioner of the AFP to take criminal confiscation action under that Act.

Amendments were also made to the *Mutual Assistance in Criminal Matters Act 1987*. Until 1 January 2012 the CDPP had the sole responsibility for making applications to register and enforce orders made by foreign courts to restrain and forfeit the proceeds of crime. The purpose of these amendments was to effect a change in the way the Commonwealth criminal confiscation regime was enforced so as to facilitate the conduct by the AFP of the majority of Commonwealth criminal confiscation action including responsibility for the registration and enforcement of foreign criminal confiscation orders.

By arrangement with AGD, the CDPP provides drafts of requests to AGD to facilitate the making of mutual assistance requests. This year the CDPP was involved in assisting in the drafting of 66 outgoing requests made by Australia to 30 foreign countries in relation to matters where charges have been laid by a Commonwealth investigative agency or where the CDPP has received specific funding to draft mutual assistance requests in respect of a particular matter or type of matter. These outgoing requests were generally made in conjunction with Commonwealth investigative agencies or joint taskforces comprising law enforcement officers from Commonwealth, State and Territory agencies.

## Extradition

Extradition is a formal process whereby offenders who are outside the jurisdiction are returned to Australia to be prosecuted or to serve a sentence of imprisonment. Extradition is an important and effective mechanism in law enforcement. Modern advances in technology have led to an increase in transnational crime. Effective global law enforcement cooperation enhances the ability to bring to justice

offenders who seek to avoid being dealt with for serious criminal conduct by fleeing the jurisdiction, or by committing offences against Australian law from outside the jurisdiction.

AGD has sole responsibility for international extradition for all countries except New Zealand. The CDPP's role in extradition is confined to requesting that extradition be sought in Commonwealth matters and the execution of incoming requests from New Zealand.

In the case of outgoing extradition requests, the CDPP prepares documents in support of requests for extradition in serious cases where a person is wanted for prosecution for an offence against Commonwealth law or to serve a sentence of imprisonment and is found to be in a foreign country. The CDPP has no role in cases where a person is wanted for prosecution by State or Territory authorities. In such cases, the authorities of the relevant State or Territory deal directly with AGD.

Requests from New Zealand are made on a police to police basis and referred to the CDPP by the AFP. The CDPP appears on behalf of New Zealand in proceedings before a Magistrate to determine whether a person will be surrendered, and in any review or appeal arising from those proceedings.

### *Outgoing Requests*

During the course of the year, the CDPP asked AGD to make eight formal extradition requests to foreign countries in relation to prosecutions being conducted by the CDPP. The CDPP also asked AGD to make one request for provisional arrest pending the submission of a formal request. The requests resulted in one person being surrendered to Australia following extradition proceedings

in the foreign country. Contested extradition proceedings in relation to two people arrested in response to requests are continuing before the Courts of the relevant foreign country.

The CDPP made one formal request to New Zealand resulting in the arrest of the person. Proceedings to determine whether the person will be surrendered are continuing.

Two people were surrendered to Australia during the year as a result of requests made in previous financial years, and a further four persons continue to challenge their extradition in proceedings in the relevant foreign country, including one in New Zealand.

The CDPP asked AGD to formally withdraw two requests which had been made in previous years following a reassessment of the prospects of conviction.

### *Incoming Requests*

In the past year, the CDPP appeared on behalf of New Zealand in relation to three requests for extradition received this year. In each case the person consented to surrender.

The CDPP also appeared in appeal proceedings commenced by two persons whose surrender was ordered in the previous financial year. In one matter the Magistrates order was confirmed by the Federal Court. An appeal to the Full Federal Court by the person was dismissed, resulting in his surrender. In the other matter, the Supreme Court of Qld confirmed the Magistrates Order. An appeal to the Full Federal Court is the subject of a reserved judgment.









# 6

## International Contribution



## 6 International Contribution

Strengthening prosecuting capacity is important given the increasingly international character of contemporary criminal activity and the need to respond with coordinated international law enforcement.

The CDPP is in a unique position to contribute to training and development programmes relating to prosecuting in Australia and internationally, based on its expertise and practical experience. This contribution is significant in building linkages between Australia and other countries and facilitating future cooperation. However, resource constraints have impacted on the CDPP's capacity to provide this assistance.

### Prosecutors' Pairing Program

The Prosecutors' Pairing Program is part of the Strengthening Legal Frameworks to Counter-Terrorism Program administered by the AGD and Indonesian partners. The purpose of the Prosecutors' Pairing Program is to strengthen the capacity of prosecution services in Indonesia through practical experience training and mentoring.

The Sydney Office's Counter Terrorism and People Smuggling Branch hosted two prosecutors from the Indonesian Attorney-General's Office in December 2011. They were provided the opportunity to gain experience in the preparation and prosecution of terrorism and people smuggling matters. They also visited Head Office where they had the opportunity to discuss the role of the CDPP in combatting terrorism, challenges in prosecuting terrorism matters, and the *Prosecution Policy of Commonwealth*.

### Visits by Delegations

The CDPP hosts visits by international delegations and these provide an opportunity to share experiences and to provide information about prosecuting in the Australian criminal justice system.

The Brisbane Office was visited by a delegation of five judges from Guizhou Province in China in July 2011. The purpose of the delegation's visit was to learn about the role of the CDPP within the Australian legal system.

In September 2011, the CDPP provided assistance to ANAO in hosting a delegation from the Indonesian Government. The delegation included representatives from the Indonesian Audit Committee of the Parliament; Indonesian Audit Office; the Anti-Corruption Commission; and the Attorney-General's Department. The CDPP participated in discussion and presented on Australia's approach to combatting fraud and corruption and the role that policy plays in assisting with investigating and prosecuting fraud and corruption.

In November 2011, the CDPP assisted DHS in hosting a delegation from the Hong Kong Social Welfare Department. The CDPP provided a presentation on the role of the CDPP, the working relationship with DHS and the challenges encountered in prosecuting Social Security offences.

In February 2012, the Director met with a delegation from the Supreme Prosecutors Office of South Korea, including the Deputy Prosecutor-General. During their visit to Australia, the delegation also met with the AFP Deputy Commissioner. The purpose of the visit was to develop cooperation and collaboration in combating transnational crime.

The Attorney-General of Bhutan and six representatives from his office visited the Brisbane Office in May 2012. The visit provided the delegation with the opportunity to gather information in relation to the prosecution of criminal offences and to discuss the decision-making process involved.

In June 2012, the CDPP attended a meeting with the AFP and a delegation of Chinese officials from the Guangdong People's Procuratorate. A senior representative from the Brisbane Office facilitated discussion and presented on the role of the CDPP within the legal framework of Australia.

Also in June 2012, Head Office met with a second delegation from China. The delegation which included representatives from China's Ministry of Supervision; Ministry of Justice; Supreme People's Procuratorate; Ministry of Public Security; and Ministry of Foreign Affairs. Discussion included the CDPP's role and jurisdiction, Australia's legislation and practice in relation to crime corruption, and the confiscation of proceeds of crime.

## Assistance to International Counterparts and Agencies

In February 2012, the CDPP participated in a study tour of Indonesia's Counter Terrorism Law Drafting Team as part of the Strengthening Legal Frameworks to Counter Terrorism Program administered by AGD and Indonesian partners. The Drafting Team included officers from the Ministry of Law and Human Rights; the Attorney-General's Office; the Indonesian National Police and other agencies. Representatives from Sydney's Counter Terrorism & People Smuggling Branch presented and facilitated discussion in relation to the prosecution of counter terrorism matters. The study tour assisted the Drafting Team in refining amendments to Indonesia's Counter Terrorism Bill.

Five prosecutors from Indonesia's Attorney-General's Office visited the Sydney Office in December 2011 as part of a United Nations Office on Drugs and Crime study tour for the Jakarta Centre for Law Enforcement Cooperation. The purpose of the study tour was to develop training expertise in the area of transnational crime. The CDPP facilitated discussion on transnational criminal matters including terrorism, human trafficking, people smuggling, money laundering, and asset forfeiture.

In December 2011, the Melbourne Office hosted a meeting with Dr Magnus Ranstorp, Research Director at the Center for Asymmetric Threat Studies (CATS) at the Swedish National Defence College. Dr Ranstorp was invited to Australia by DFAT to provide expert commentary on terrorist targeting and European thinking regarding community-based approaches to violent extremism. Dr Ranstorp was also part of a research delegation from CATS during his visit.

## Deployment of CDPP Prosecutors

Officers from the CDPP have made a significant contribution to the work of the Office of the Public Prosecutor in Papua New Guinea. The CDPP currently has one prosecutor on placement in Papua New Guinea.

## Malaysia Australia Bilateral Technical Legal Working Group

In November 2011, the CDPP provided assistance to AGD in discussions regarding the prosecution of people smuggling offences with the Malaysia Australia Bilateral Technical Legal Working Group on People Smuggling, Human Trafficking and Transnational Crime. The CDPP also presented on Australia's approach to the prosecution of terrorism matters.

## Regional Workshop

In March 2012, the CDPP participated in the Regional Workshop for Police Officers, Prosecutors and Judges of South Asia on Effectively Countering Terrorism which was jointly hosted by India and the United Nations Counter-Terrorism Committee Executive Directorate, and organised by the Centre on Global Counter Terrorism Cooperation. The CDPP provided an expert to help facilitate workshop discussions on domestic interagency cooperation in terrorism and transnational crime

## Other International Activities

The CDPP continues its association and involvement with 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.

In March 2012, the Director addressed the 11<sup>th</sup> HOPAC convened in Singapore, on an approach to ethical issues for lawyers in Government service.

In September 2011, the Director addressed the *Australasian Institute of Judicial Administration Incorporated Criminal Justice in Australia and New Zealand – Issues and Challenges for Judicial Administration* conference held in Sydney, on managing lengthy and complex counter terrorism trials.









# 7

## Law Reform



## 7 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 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 Legal, Policy and Law Reform Branch in Head Office coordinates the CDPP’s work in the area of law reform. The Legal, Policy and Law Reform 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. The Legal, Policy and Law Reform Branch operates within the Legal Division to establish and maintain links between prosecutors in Regional Offices and Commonwealth law-makers.

The CDPP contributes to law reform through commenting on legislative proposals, contributing to reviews, considering discussion papers and maintaining liaison relationships with Government departments and agencies.

### Legislative proposals

The CDPP commented on a wide range of legislative proposals and draft legislation during the course of the year, including:

- **DETECTING PEOPLE SMUGGLING ACT 2011**  
The Bill was introduced into the House of Representatives on 1 November 2011, passed both houses on 25 November 2011 and received Royal Assent on 29 November 2011.

The Act inserts section 228B into the *Migration Act*, to clarify when a non-citizen has no lawful right to come to Australia

for the purposes of Part 2, Division 12, Subdivision A of the *Migration Act*.

This provision operates from 16 December 1999.

- **CRIMES LEGISLATION AMENDMENT (SLAVERY, SLAVERY-LIKE CONDITIONS AND PEOPLE TRAFFICKING) BILL 2012 WHICH IS CURRENTLY BEFORE THE PARLIAMENT;**
- **CUSTOMS AMENDMENT (SMUGGLED TOBACCO) BILL 2012 WHICH IS CURRENTLY BEFORE THE PARLIAMENT;**
- **EXPOSURE DRAFT OF THE CLEAN ENERGY PACKAGE WHICH WAS RELEASED IN 2011;**
- **WORK HEALTH AND SAFETY ACT WHICH COMMENCED ON 1 JANUARY 2012.**

The Act contains a number of offences and, in particular, three offences which relate to the failure to comply with a health and safety duty:

- category 1 offence, which relates to a person engaging in conduct that exposes an individual to whom a duty is owed to a risk of death or serious injury being reckless to the risk;
  - category 2 offence, which relates to a person failing to comply with a duty which exposes an individual to risk of death or serious injury; and
  - category 3 offence, which relates to a person failing to comply with a duty.
- **CRIMES LEGISLATION AMENDMENT (POWERS AND OFFENCES) ACT 2012**  
The *Crimes Legislation Amendment (Powers and Offences) Act 2012* amends the *Criminal Code* to ensure that substances and quantities that are temporarily prescribed in the *Criminal Code Regulations 2002* are listed in the Code and remain subject to the Commonwealth serious drug offences.

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.

## Discussion papers and reviews

The CDPP provided comments in relation to a number of Government public discussion papers throughout the year. Discussion papers are one of the forms of consultation with respect to issues under consideration by Government.

The CDPP also participated in a number of reviews throughout this year. 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 or Commonwealth guidelines or standards.

## Liaison and Committees

The CDPP's input on legislative reform is facilitated by a close working relationship with AGD, in particular the Criminal Law and Law Enforcement Division and the National Security Law and Policy Division. It is also facilitated by close liaison relationships with the Commonwealth departments and agencies which investigate Commonwealth offences or develop legislative proposals.

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 AGD or the 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.





# 8

## Practice Management



## 8 Practice Management

This year the CDPP prosecuted a wide range of criminal offences referred by 43 Commonwealth, State and Territory investigative agencies. The Legal Branches in Head Office play 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 Legal Branches deal with a broad range of legal, policy and liaison responsibilities and support the CDPP's Regional Offices and Executive in relation to the prosecution work of the Office. 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 assisted with training programs for prosecutors.

The Legal Branches provide specialist coordination, advice and training in specific areas of the CDPP's practice, particularly in new areas, and assist 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 Legal Branches contribute to policy development and law reform in the Commonwealth criminal justice system through a liaison relationship with AGD. The CDPP is 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 Branches assist in coordinating and supporting the CDPP's national practice. The Legal Branches seek to build expertise within the CDPP and develop national consistency including by 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 people smuggling, Centrelink prosecutions, people trafficking, child exploitation and money laundering.

This year the Office established the Litigation Best Practice Committee as a key CDPP committee. This committee reviews internal arrangements and practices for the conduct of prosecutions that require a national approach. The Committee consists of senior lawyers with significant litigation experience. An important part of the work of this committee will be the development of Director's Litigation Instructions in core areas of practice.

There is liaison between Commonwealth and State prosecuting authorities at national and regional levels. 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. This year the CDPP hosted this meeting at Head Office.

## 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 a range of 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. This year, conferences included the CDPP jointly hosting a two day national conference on people smuggling with the AFP in October 2011. In June 2012 the CDPP also participated in a national conference with DHS in relation to Social Security fraud.

## 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 *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.

The CDPP has produced a number of documents about the prosecution process which may be of assistance to victims, such as a step by step guide to the prosecution process, a guide to witnesses giving evidence in court, a glossary of commonly used terms and questions and answers for victims and witnesses. These resources are available at [www.cdpp.gov.au](http://www.cdpp.gov.au).

The CDPP now has two Witness Assistance Service officers located in the Sydney Office. These officers provide assistance to witnesses in the Sydney Office and act as a resource for other offices. A range of information and support services are provided to those referred to the Witness Assistance Service Officers including court tours; support at court; referrals to support services; and assistance with Victim Impact Statements.

## Training

The CDPP recognises the importance of developing skills within the office through structured training. This year the CDPP has maintained its Continuing Legal Education training program.

The CDPP provides national online induction material for the use of new 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 in 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 online resource is provided in addition to the training provided by supervisors.

Due to resourcing constraints the CDPP has not been able to contribute to the extent that it has previously to training courses for investigative officers conducted by referring agencies. Our contribution has been focussed on the role of the CDPP and the *Prosecution Policy of the Commonwealth*.

## Manuals

The CDPP continues to maintain and update the Search Warrants Manual, the Telecommunications (Interception and Access) Manual and the Surveillance Devices Warrants 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.

## 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.

## Online 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 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.

## 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 *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).





# 9

## Corporate Management



## 9 Corporate Management

### Human Resources

At 30 June 2012 the CDPP comprised of 574 persons (head count). A breakdown of this figure appears in the tables at the end of this Chapter. The average staffing level for the year was 506.27. The majority of staff members are lawyers. The remaining staff provide a range of services including litigation support; accountancy; IT services; library services; human resource services; finance and administrative support.

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

### Workforce Planning and Staff Retention and Turnover

In 2011–2012 the CDPP continued the emphasis of its workforce planning activities away from externally focussed recruitment campaigns to internally focused staff retention.

Commitments to developing and retaining high quality people expressed in the Strategic Directions continue to be realised across all

regions through a range of developmental opportunities including professional development activities and varying job experiences that support the enhancement of the skills base and more competitive recruitment and selection processes.

### Workplace Agreements

#### *Enterprise Agreement*

The CDPP Enterprise Agreement for 2011–2014 came into effect on 21 December 2011. The nominal expiry date of the Agreement is 30 June 2014. The Agreement covers all employees of the CDPP except for Senior Executive Service (SES) employees and employees whose salaries are not paid by the CDPP.

The main features of the current Enterprise Agreement are flexible employment and leave provisions; a focus on developing our people; and recognition of those employees with additional responsibilities in providing a safe, secure and healthy workplace.

As at 30 June 2012, there were 543 employees covered by the Agreement.

## Common Law Contracts

The CDPP has a Common Law Contract (CLC) in place for each substantive SES employee. As at 30 June 2012 there were 30 CLCs in place.

### Section 24(1) Determination

In 2011–2012 the CDPP made ten determinations pursuant to section 24(1) of the *Public Service Act 1999*.

### Workplace Participation

The CDPP Enterprise Agreement includes provision for employees and their representatives to be consulted in relation to the implementation of major change. Consultation occurs mainly through regular workplace participation meetings, special purpose meetings called to discuss specific issues, or all staff communications.

## Human Resource Management Information System (HRMIS)

Phase one of the Aurion HRMIS implementation project was completed in 2011–2012, culminating in the publishing of electronic ATO payment summaries for the first time at the CDPP. Implementation of phase two has commenced with the design and configuration of modules that will provide systems support for other important areas of human resource activity such as e-recruitment, more automated performance management, learning and development, and WHS functionality.

The HRMIS is the prime source of data on employee history, information and entitlements. It reduces duplication of employee information across corporate systems, minimises manual processing and improves reporting capability. The medium term aim is for the system

to facilitate the holistic human resource management model envisioned by the Strategic Directions. It is expected to become a significant enabler of ongoing measures that support transparent and effective recruitment and selection and employee performance and development.

## 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 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 in-house advocacy training courses for CDPP lawyers. Key staff from regional offices have participated in various workshops and training sessions held in Head Office that provided practical skills in the use of the newly implemented HRMIS and FMIS.

Direct expenditure on training for the year was \$229,654.78. There was also considerable ‘on the job’ training, which was not costed.

## Employee Wellbeing Program (EWP)

The CDPP recognises that a supportive work environment is an important factor in protecting employees against psychological harm and promoting psychological resilience. The EWP incorporates a range of positive employment practices and support services that promote and protect employee wellbeing within the CDPP.

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).

The EWP is reviewed to ensure its continued application and relevance. In particular, changes have been made to the content of recruitment and selection materials and the Wellbeing Check Program. Recruitment and selection materials provide clearer information to applicants about work in areas that deal with offensive or traumatic materials. The Wellbeing Check Program is now more clearly defined in terms of the nature and level of service available to an employee.

## Work Health and Safety

Information about the CDPP Work Health and Safety arrangements in accordance with Schedule 2, Part 4 of the *Work Health and Safety Act 2011* is at Appendix 3.

## 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 current Workplace Diversity Program builds on earlier workplace diversity plans and programs. The program recognises and incorporates developments and progress the CDPP has made as an organisation in this area.

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 officers can choose not to disclose their status. Accordingly the information may not be complete.

### *Reconciliation Action Plan (RAP)*

The CDPP's RAP was officially launched by the Director on 4 August 2010 following a period of development in consultation with employees, management and Reconciliation Australia.

The RAP working group included representatives from CDPP Aboriginal and Torres Strait Islander employees, human resources and senior management with support from the Director.

The CDPP's RAP contains achievable targets to enable the organisation to implement the Plan.

The RAP was reviewed in February 2011.

The review found that progress had been made on 15 of the 17 agency specific action items included in the RAP. We expect to review the RAP in early 2013.

### *Status of Women*

As at 30 June 2012, women comprised 68.82% of CDPP employees and 67.89% of lawyers.

Of the 42 full-time members of the SES, 13 were women. There were also four part-time members of the SES, all of whom were women. In percentage terms, 36.96 % of SES positions were filled by women.

As at 30 June 2012, there were 54 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.

## National Disability Strategy

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy.

In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service Report* and the *APS Statistical Bulletin*. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au). From 2010–11, departments and agencies are no longer required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by a new National Disability Strategy which sets out a ten year national policy framework for improving life for Australians with disability, their families and carers. A high level report to track progress for people with disability at a national level will be produced by the Standing Council on Community, Housing and Disability Services to the Council of Australian Governments and will be available at [www.fahcsia.gov.au](http://www.fahcsia.gov.au).

The Social Inclusion Measurement and Reporting Strategy agreed by the Government in December 2009 will also include some reporting on disability matters in its regular *How Australia is Faring* report and, if appropriate, in strategic change indicators in agency Annual Reports. More detail on social inclusion matters can be found at [www.socialinclusion.gov.au](http://www.socialinclusion.gov.au).

## 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.

## Performance Pay

The CDPP does not pay performance pay.

## Financial Management

### *Financial Statements*

The audited financial statements included in this Report were prepared in accordance with the *Financial Management and Accountability (Financial Statements for reporting periods ending on or after 1 July 2011) Orders* issued by the Minister for Finance and Deregulation. 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 one government outcome with one program of activities to achieve this outcome. Further information about the CDPP's budget is in the Attorney-General's Portfolio Budget Statements.

### *Financial Performance*

The CDPP's operations are primarily funded through Parliamentary appropriations. A small component (3.5%) 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 Consolidated Revenue. The CDPP ceased its function regarding the recovery of fines and costs from 1 October 2011 – this is now undertaken by the relevant referring agency.

## Operating Results

Operating revenue for 2011–2012 was \$89.724m. This is \$9.884m (9.9%) less than 2010–2011 revenue. This decrease is largely due to reduced appropriations from Government.

Operating expenses for 2011–2012 were \$100.117m (excluding depreciation and amortisation expenses). This is an increase of \$6.888m, or 7.4%, in expenses when compared to 2010–2011. The largest single contributing factor is the increase in employee liabilities associated with the decrease in the Government bond rate.

The operating result for 2011–12 was a deficit of \$10.393m excluding depreciation and amortisation expenses in line with Government's net cash appropriation arrangements. The operating deficit is due to the combined impact of reduced revenue for 2011–12 and marginally higher operating expenses, as stated above.

In summary, the major items contributing to CDPP's operating result were:

- the CDPP was not funded for people smuggling prosecution activities in 2011–12; and
- CDPP's expenses increased by \$2.6m for the change to government's bond rate.

## 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 of prosecutions for offences under GST legislation. The amount receipted in 2011–2012 under this arrangement was \$2.9 million, the same as in 2010–2011.

## Purchasing

The CDPP adheres to the core purchasing policies and principles of value for money. The CDPP encourages competition amongst actual and potential suppliers, promotes the use of resources in an efficient, effective, economical and ethical manner and is accountable and transparent 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 that 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/>.

The methods of selection used for consultancies are categorised as follows:



Open Tender:	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.
Select Tender:	A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders (this includes tenders submitted through Multi-Use Lists). This procurement process may only be used under defined circumstances.
Direct Sourcing:	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.
Panel:	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. Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website [www.tenders.gov.au](http://www.tenders.gov.au).

During 2011–2012, the CDPP entered into two new consultancy contracts with \$23,560 (inclusive of GST) total actual expenditure for these. In addition, three ongoing consultancy contracts were active during the 2011–2012 year, with total actual expenditure of \$619,273 (inclusive of GST).

The CDPP engages consultants where it lacks specialist expertise or when independent research, review or assessment is required. Consultants are typically engaged to investigate or diagnose a defined issue or problem; carry out defined reviews or evaluations; or provide independent advice, information or creative solutions to assist in the CDPP's decision making.

Prior to engaging consultants, the CDPP takes into account the skills and resources required for the task, the skills available internally, and the cost-effectiveness of engaging external expertise. The decision to engage a consultant is made in accordance with the *FMA Act* and related regulations including the Commonwealth Procurement Guidelines (CPGs) and relevant internal policies.

### *Australian National Audit Office Access Clauses*

During the reporting period, the CDPP did not let any contracts for \$100,000 or more (inclusive of GST) that do not provide for the Auditor-General to have access to the contractor's premises.

### *Exempt Contracts*

The CDPP has exempted the publication of details of legal counsel on the basis that to do so would disclose exempt matters under the *Freedom of Information Act 1982*.

## Asset Management

The CDPP's major assets are office fit-out, office furniture, computer equipment, purchased software and library holdings. The annual stocktake was conducted during the year to ensure the accuracy of asset records. The CDPP completed several major asset replacement projects during 2011–2012, these included: printers/multi-function devices (MFDs), human resource management information system (HRMIS), financial management information system (FMIS), computer servers and the fit-out of new premises for the Perth office. It is expected that these replacements will result in cost savings to the CDPP over the life of the assets.

## 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 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 Committee reviewed its functions and responsibilities during 2011–2012 and drafted a new governance charter based on the ANAO Better Practice Guide for Public Sector Audit Committees. The CDPP's Audit Committee is appointed by the Director. As at 30 June 2012 it comprised of four members: the First Deputy Director, the Deputy Director Legal, Deputy Director Corporate Management and an independent Audit Committee Member. In addition, there is a standing invitation to the ANAO to observe Committee meetings.

## Internal Audit

To assist the Director in discharging his accountability, internal audits are carried out each year. Internal audit work is outsourced, and provides an independent review of CDPP's key risk areas.

During 2011–2012, the CDPP engaged the services of a new provider, Ernst and Young. The engagement of the new internal auditors provided an opportunity to review the internal audit program. The main change to the program was to introduce reviews of business areas based more closely on internal risk assessments.

Two internal audits were performed:

- Post Implementation Review of Aggresso Financials; and
- Certificate of Compliance Review.

The overall results of both reviews were good with minor procedural changes recommended that the CDPP will implement.

## Fraud Control

The CDPP has an integrated risk management framework that standardises all risk assessment methods and documentation.

Using this framework, the CDPP has prepared and implemented a Fraud Risk Assessment and Fraud Control Plan, which is in accordance with the *Commonwealth Fraud Control Guidelines 2011*. Agencies subject to the *Financial Management and Accountability Act 1997* are required to undertake a total review of the effectiveness of fraud control arrangements, including conducting a fresh risk assessment, at least every two years providing that there is no major change in functions. The CDPP Fraud Control Plan and Fraud Risk Assessment were last updated in September 2011.

The CDPP has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet its specific needs. The CDPP has also taken all reasonable measures to minimise the incidence of fraud and to investigate and recover the proceeds of fraud.

All fraud control related material is made available to all staff via the CDPP intranet.

There were no reported instances of fraud in 2011–2012.

## Certification of Fraud Control Arrangements

In accordance with the *Commonwealth Fraud Control Guidelines*, I, James Jolliffe, certify that I am satisfied that for the year ended 30 June 2012, the Office of the Commonwealth Director of Public Prosecutions (CDPP) has:

- prepared fraud risk assessments and fraud control plans;
- in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the CDPP; and
- taken all reasonable measures to minimise the incidence of fraud in the CDPP and to investigate and recover to proceeds of fraud against the CDPP.



JAMES JOLLIFFE

A/g Commonwealth Director of Public Prosecutions

## External Scrutiny

The Auditor-General issued an unqualified audit report for the CDPP's 2011–2012 financial statements.

During the reporting period, the Auditor-General did not issue any report that included information on the operations of the CDPP.

The CDPP was referred to in the Australian Human Rights Commission Report of July 2012 following the Commission's Inquiry into the treatment of individuals suspected of people smuggling offences who say that they are children. The CDPP's response to the Inquiry Report is at Appendix 6 to that Report.

## Advertising and Market Research

See Appendix 4 to this Report.

## 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 2011–2012 was \$587,802. Further details are in Table 8 at the end of this Chapter.

## Other Areas

### *Information Technology*

The CDPP has a computer installation comprising 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 7 and Office 2010.

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 recently moved from SAP R/3 HR modules to Aurion Resource Information Management System to support payroll and human resource management functions. SAP R/3 Financials has been replaced by Agresso Finance management system to support our financial functions. The Office also operates the FIRST library management system. Ringtail Legal 2005 provides support for litigation. All systems are based on Microsoft technology.

The AGIMO ICT Panels have been used for re-equipment projects. The CDPP recently replaced personal computers using the desktop panel. The re-equipment of personal computers provided the opportunity to incorporate AGIMO's core operating environment and move from Microsoft Vista to Windows 7. The CDPP's Major Office Machines (MOM)

were rationalised and replaced with modern Konica equipment utilising 'Follow Me' printing that increases efficiency, reduces paper consumption and improves security.

### *Intranet and Internet*

The CDPP continues to maintain a Microsoft Sharepoint-based Portal platform to provide access to the CDPP's legal and administrative information. Work is underway to incorporate document management into the Portal.

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 secure access to the internet from their desktops.

The CDPP maintains an online presence through its website. Client agencies have access to a secure website through which they can gain 24/7 access to procedural and guidance documentation.

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.

### *Telecommunications*

The CDPP has implemented the Microsoft Lync communications suite integrated with Polycom video conferencing equipment to improve communications. CDPP staff can make phone calls, participate in internal video conferences and collaborate on shared documents from their desktops. Further planned improvements will add external video conferences to the suite of services available at the desktop.

## *Libraries*

The CDPP has a library collection in each Regional Office and access to an extensive range of online resources is provided. CDPP libraries provide valuable research, reference, information and training services to CDPP officers. Each library provides support to the office in which it is based and library staff contribute nationally to the online reference enquiry system introduced in 2011. Every CDPP officer has access, through the library network, to the combined resources of all the CDPP's libraries. This includes the national current awareness service sent electronically each week.

The library provides access to both external legal information resources and in-house materials on the CDPP Portal Legal Resources page. Regular training sessions are provided by library staff on these electronic resources.

The Head Office library has a national coordination and management role. National services include policy development in conjunction with the Deputy Directors; updating CDPP in-house databases; distributing in-house materials; disseminating information; cataloguing; managing the library system; and managing library subscriptions. Regular meetings of librarians are held to coordinate activities and develop shared procedures.

The Library Strategic Directions and Information Access Policy was approved by the Deputy Directors in 2011 and is being implemented. This document will be reviewed in 2012–13. The CDPP Library continues to make significant progress towards the digitisation of materials.

Additionally, Head Office Library undertook responsibility for records management with a preliminary proposal being developed for the implementation of an electronic records management system.

## *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*

Information about the CDPP's ecologically sustainable development and environmental performance is at Appendix 5 to this Report.

## *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 2012\**

	ACT	NSW	VIC	QLD	SA	WA	TAS	NT	Total
DIR	1								1
SES3	1								1
SES2	3	1	1	1		1			7
SES1	8	9	7	7	1	4	1	1	38
PLO	10	25	17	19	5	13		1	90
SLO	6	35	20	15	5	12	1	2	96
LO2	4	31	15	5	4	1	3	2	65
LO1		11	1	12	1	5			30
EL2	10	2	1	1					15
EL1	9	5	2	3	2	2			23
APS6	8	4	3	2	1	1		1	20
APS5	10	6	7	3		7	1	1	34
APS4	8	11	7	16	2	16			60
APS3	4	33	18	14	4	6	2	2	83
APS2		3	3			4			10
APS1		1							1
<b>Total</b>	<b>82</b>	<b>177</b>	<b>102</b>	<b>98</b>	<b>25</b>	<b>72</b>	<b>8</b>	<b>10</b>	<b>574</b>

\*Includes inoperative staff. Staff on Temporary Assignment of Duties (TAD) for 3 months or more at 30 June 2012 reported at their TAD classification.

*Table 1(b): Staffing Summary 2011–2012\**

Category	Number
Total Staff Employed under the <i>Public Service Act 1999</i>	518
Total Staff Employed under the <i>DPP Act</i>	55
Statutory Office Holders	1
<b>Total</b>	<b>574</b>

\*Includes inoperative staff

The total number of non-ongoing staff in this table is 88.

*Table 2: Staff as at 30 June 2012 by gender and category\**

Category	Full-Time		Part-Time		
	Female	Male	Female	Male	
DIR		1			1
SES Band 3		1			1
SES Band 2		6	1		7
SES Band 1	13	22	3		38
Legal Officers	152	75	54		281
Executive Officers	17	19	2		38
APS 1-6	120	54	33	1	208
<b>Total</b>	<b>302</b>	<b>178</b>	<b>93</b>	<b>1</b>	<b>574</b>

\*Includes inoperative staff. Staff on Temporary Assignment of Duties (TAD) for 3 months or more at 30 June 2012 reported at their TAD classification.

*Table 3: Staffing by Office*

Office	Actual Average Staffing 2011-2012
ACT	73.34
NSW	154.19
VIC	91.44
QLD	87.65
SA	21.47
WA	61.22
TAS	7.38
NT	9.58
<b>Total</b>	<b>506.27</b>

*Table 4: Workplace diversity profile as at 30 June 2012\**

Classification	Male	Female	ATSI**	PWD***	First Language English Plus Another	First Language Other than English
DIR	1					
SES3	1					
SES2	6	1				1
SES1	22	16			3	2
LO	75	206	2	6	39	23
EL	18	18		1	2	3
APS	56	154	1	8	26	21
<b>Total</b>	<b>179</b>	<b>395</b>	<b>3</b>	<b>15</b>	<b>70</b>	<b>50</b>

\* Includes inoperative staff. Staff on Temporary Assignment of Duties (TAD) for 3 months or more at 30 June 2012 reported at their TAD classification.

\*\* Aboriginal and Torres Strait Islander

\*\*\* Person with a Disability

*Table 5: Salary Scales as at 30 June 2012*

Classification	Salary
SES Band 3	\$226,274 – \$264,861
SES Band 2	\$181,742 – \$229,771
SES Band 1	\$165,374 – \$189,654
Principal Legal Officer	\$117,584 – \$122,648
Executive Level 2	\$107,767 – \$119,610
Senior Legal Officer	\$89,440 – \$107,767
Executive Level 1	\$89,440 – \$95,716
APS 6	\$70,616 – \$79,544
Legal Officer 2	\$64,665 – \$77,777
APS 5	\$64,246 – \$68,086
Legal Officer 1	\$57,672 – \$62,561
APS 4	\$57,672 – \$62,561
APS 3	\$51,816 – \$55,872
APS 2	\$46,811 – \$50,468
APS 1	\$24,319 – \$44,528



*Table 6: Agency Resource Statement*

	Actual Available Appropriation for 2011-12 \$'000 (a)	Payments Made 2011-12 \$'000 (b)	Balance Remaining 2011-12 \$'000 (a)-(b)
Ordinary Annual Services Departmental appropriation			
Prior year departmental appropriation	74,180	6,034	68,146
Departmental appropriation <sup>1</sup>	89,199	89,199	0
s.31 Relevant agency receipts	3,846	3,846	0
<b>Total</b>	<b>167,225</b>	<b>99,079</b>	<b>68,146</b>
Administered Expenses			
s.28 Repayments required or permitted by law <sup>2</sup>	-	60	-
<b>Total</b>	<b>-</b>	<b>60</b>	<b>-</b>

**NOTES:**1. *Appropriation Act (No. 1) 2011-2012.*

2. Represents refunds of overpayments of fines and costs under FMA Act Section 28 during 2011-12.

*Table 7: Expenses by Outcome*

Expenses and Resources for Outcome 1			
Outcome 1: 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.	Budget 2011-12 \$'000 (a)	Actual Expenses 2011-12 \$'000 (b)	Variation 2011-12 \$'000 (b)-(a)
Program 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.			
<b>Administered Expenses</b>	<b>1,100</b>	<b>439</b>	<b>661</b>
<b>Total Administered Expenses<sup>1</sup></b>			

Expenses and Resources for Outcome 1			
Price Of Departmental Outputs Program 1.1: Revenue from Government (Appropriations) for Departmental Outputs <sup>2</sup>	89,374	96,349	(6,975)
Expenses not requiring appropriation <sup>3</sup>	5,713	5,185	528
<b>Total Price of Departmental Outputs</b>	<b>95,087</b>	<b>101,534</b>	<b>(6,447)</b>
<b>(Total price of Outputs and Administered Expenses)</b>	<b>96,187</b>	<b>101,973</b>	<b>(5,786)</b>

## NOTES:

1. Administered expenses consist of the writing off of administered debts.
2. Departmental outputs combine Revenue from Government and Revenue from independent sources (s31).
3. Departmental expenses not requiring appropriation in the budget year are made up of services received free of charge, depreciation and amortisation.

### Table 8: 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*.

Totals	
Total Costs Recovered	\$0
Total External Legal Services Expenditure	\$587,802
Total Internal Legal Services Expenditure	\$0
<b>Total (External + Internal) Expenditure</b>	<b>\$587,802</b>
Summary of External Legal Services Expenditure	
Total value of briefs to Counsel (A)	\$0
Total value of disbursements (excluding counsel) (B)	\$0
Total value of professional fees paid (C)	\$587,802
<b>Total External Legal Services Expenditure (A + B + C)</b>	<b>\$587,802</b>

<b>Counsel</b>	
Number of briefs to male counsel	0
Number of briefs to female counsel	0
<b>Total number of briefs to counsel</b>	<b>0</b>
Number of direct briefs to male counsel	0
Number of direct briefs to female counsel	0
<b>Total number of direct briefs to counsel</b>	<b>0</b>
Total value of briefs to male counsel (including direct briefs)	\$0
Total value of briefs to female counsel (including direct briefs)	\$0
<b>Total value of briefs to Counsel (A)</b>	<b>\$0</b>
<b>Disbursements</b>	
<b>Total value of disbursements (excluding counsel) (B)</b>	<b>\$0</b>
<b>Professional Fees</b>	
Australian Government Solicitor	\$587,802
<b>Total value of professional fees paid (C)</b>	<b>\$587,802</b>

**NOTE:** Excludes the handling of criminal prosecutions and related proceedings.

## Appendix 1 Information Publication Scheme

The CDPP is subject to the *Freedom of Information Act 1982* (FOI Act) and is required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the FOI Act and has replaced the former requirement to publish a section 8 statement in an annual report. The CDPP displays on its website a plan showing what information is published in accordance with the IPS requirements.

## Appendix 2 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 CDPP 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>- CDPP policy</li> </ul> <p>1.3 Ensure compliance with the Director's Instructions and CDPP 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 CDPP 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 CDPP'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 CDPP performance against standards and goals to improve quality, efficiency and effectiveness</p> <p>3.2 Continue to develop national consistency recognising that the CDPP 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 including:               <ul style="list-style-type: none"> <li>• workforce planning;</li> <li>• performance management; and</li> <li>• employment practices</li> </ul> </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 CDPP 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 CDPP'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 CDPP legal expertise</p> <p>4.5 Develop and provide high quality materials on areas of CDPP 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 proceeds related issues requiring law reform and/or whole of Government law enforcement initiatives and contribute to solutions and strategies to address them</p>

## Appendix 3 Work Health and Safety

The CDPP continues to develop its health and safety management arrangements in line with the provisions of the *Work Health and Safety Act 2011 (WHS Act)*.

In 2011–12 the CDPP took a number of practical steps to consolidate, review and/or introduce measures to ensure alignment with the new legislation. Steps included conducting awareness raising and training sessions for key staff and managers with particular emphasis on engaging our most senior managers at an early stage of the change and implementation process. Briefing sessions were held for members of relevant governance bodies such as the Audit Committee and National Health and Safety Committee. A comprehensive risk review of CDPP operations was undertaken and will inform the next tranche of enhancements to work health and safety policy and practices.

The CDPP managed 10 non-compensable and 9 compensable cases during 2011–12.

There were no notifiable incidents of which the CDPP is aware during 2011–12 that arose out of the conduct of businesses or undertakings of the CDPP.

There were no investigations conducted during 2011–12 that relate to the businesses or undertakings conducted by the CDPP or any notices given to the CDPP during the year under Part 10 of the *Work Health and Safety Act 2011*.

## Appendix 4 Advertising and Market Research

The CDPP has not paid any amounts to advertising agencies that are required to be reported pursuant to section 311A of the *Commonwealth Electoral Act 1918*.

No advertising campaigns were undertaken during 2011-12.

The CDPP did not use the services of any creative advertising agencies to develop advertising campaigns. The CDPP also did not use the services of market research organisations, polling organisations, or direct mailing organisations.



## Appendix 5 Ecologically Sustainable Development and Environmental Performance

One of the CDPP's priorities is the ongoing efficient and effective management of resources. In this context, the CDPP is in the process of developing a number of initiatives which will contribute to a more sustainable environment.

The CDPP uses various energy saving methods in its operations including:

- use of technology to minimise energy use, including automatic power down devices on electrical equipment;
- all computer equipment used by the CDPP is energy star enabled;
- a component of electricity costs for Sydney, Melbourne and Head Office is sourced from green energy options;
- waste paper is recycled and preference is given to environmentally sound products when purchasing office supplies; and
- the CDPP provides staff with access to video and teleconferencing facilities in its offices and sub-offices with the aim of reducing the overall amount of air travel undertaken.

### Environmental Performance

The following tables summarises the environmental performance of CDPP sites during 2010–2011:

Performance 2010–2011	
Office – Tenant Light and Power	
Electricity	1,714,829 (kWh)
Green power	274,821 (kWh)
Total	6,173 (GJ)
Total electricity consumed per employee	11,491 (MJ)
Passenger Vehicles	
Petrol	18,388 (L)
Total	629 (GJ)
Distance	220,678 (km)
MJ/km	2.8
<b>Total Agency Consumption</b>	<b>6,802 (GJ)</b>

**NOTES:** CDPP sites for the reporting period included Canberra (Head Office), Sydney, Melbourne, Brisbane, Perth, Adelaide, Hobart and Darwin. There are also sub-offices of the Brisbane office in Townsville and Cairns.

**Correction:** The table at Appendix 5 in last year's Annual Report should have referred to performance in 2009–10 rather than in 2010–11.

## Appendix 6 List Of Requirements

Ref*	Location of Information	Description	Requirement
8(3) & A.4	<i>Preliminary</i>	Letter of transmittal	Mandatory
A.5	<i>Preliminary</i>	Table of contents	Mandatory
A.5	<i>Following Financials</i>	Index	Mandatory
A.5	<i>Following Financials</i>	Glossary	Mandatory
A.5	<i>Compliance Statement &amp; Preliminary</i>	Contact officer(s)	Mandatory
A.5	<i>Compliance Statement -Preliminary</i>	Internet home page address and Internet address for report	Mandatory
Review by Secretary			
9(1)	<i>Director's Overview - Preliminary</i>	Review by departmental secretary	Mandatory
9(2)	<i>Director's Overview &amp; Chapters 1-9</i>	Summary of significant issues and developments	Suggested
9(2)	<i>Chapters 3 &amp; 9</i>	Overview of department's performance and financial results	Suggested
9(2)	-	Outlook for following year	Suggested
9(3)	<i>Not applicable</i>	Significant issues and developments - portfolio	Portfolio departments – suggested
Departmental Overview			
10	<i>Chapter 1</i>	Overview	Mandatory
10(1)	<i>Chapter 1</i>	Role and functions	Mandatory
10(1)	<i>Chapter 1</i>	Organisational structure	Mandatory

Ref*	Location of Information	Description	Requirement
10(1)	<i>Chapter 1</i>	Outcome and program structure	Mandatory
10(2)	<i>Not applicable</i>	Where outcome and program structures differ from PB Statements/PAES or other portfolio statements accompanying any other additional appropriation bills (other portfolio statements), details of variation and reasons for change	Mandatory
10(3)	<i>Not applicable</i>	Portfolio structure	Portfolio departments – Mandatory
<b>Report on Performance</b>			
11(1)	<i>Chapter 1</i>	Review of performance during the year in relation to programs and contribution to outcomes	Mandatory
11(2)	<i>Chapter 3</i>	Actual performance in relation to deliverables and KPIs set out in PB Statements/PAES or other portfolio statements	Mandatory
11(2)	<i>Not applicable</i>	Where performance targets differ from the PBS/PAES, details of both former and new targets, and reasons for the change	Mandatory
11(2)	<i>Chapter 3</i>	Narrative discussion and analysis of performance	Mandatory
11(2)	<i>Chapter 3</i>	Trend information	Mandatory
11(3)	<i>Chapters 1 &amp; 4</i>	Significant changes in nature of principal functions/services	Suggested
11(3)	<i>Not applicable</i>	Performance of purchaser/provider arrangements	If applicable, suggested
11(3)	<i>Chapter 3</i>	Factors, events or trends influencing departmental performance	Suggested
11(3)	<i>Chapter 9</i>	Contribution of risk management in achieving objectives	Suggested

Ref*	Location of Information	Description	Requirement
11(4)	<i>Not applicable</i>	Social inclusion outcomes	If applicable, mandatory
11(5)	<i>Not applicable</i>	Performance against service charter customer service standards, complaints data, and the department's response to complaints	If applicable, mandatory
11(6)	<i>Chapter 9</i>	Discussion and analysis of the department's financial performance	Mandatory
11(7)	<i>Director's Overview &amp; Chapter 9</i>	Discussion of any significant changes from the prior year, from budget or anticipated to have a significant impact on future operations.	Mandatory
11(8)	<i>Chapter 9</i>	Agency resource statement and summary resource tables by outcomes	Mandatory
Management and Accountability			
<i>Corporate Governance</i>			
12(1)	<i>Chapter 9</i>	Agency heads are required to certify that their agency complies with the <i>Commonwealth Fraud Control Guidelines</i>	Mandatory
12(2)	<i>Chapters 1, 8 &amp; 9</i>	Statement of the main corporate governance practices in place	Mandatory
12(3)	<i>Chapter 1</i>	Names of the senior executive and their responsibilities	Suggested
12(3)	<i>Chapters 1, 8 &amp; 9</i>	Senior management committees and their roles	Suggested
12(3)	<i>Chapter 1 &amp; Appendix 2</i>	Corporate and operational planning and associated performance reporting and review	Suggested
12(3)	<i>Chapter 9</i>	Approach adopted to identifying areas of significant financial or operational risk	Suggested
12(3)	<i>Chapter 1 &amp; Appendix 2</i>	Policy and practices on the establishment and maintenance of appropriate ethical standards	Suggested
12(3)	-	How nature and amount of remuneration for SES officers is determined	Suggested

Ref*	Location of Information	Description	Requirement
<i>External Scrutiny</i>			
12(4)	<i>Chapter 9</i>	Significant developments in external scrutiny	Mandatory
12(4)	<i>Chapters 1-9</i>	Judicial decisions and decisions of administrative tribunals	Mandatory
12(4)	<i>Chapter 9</i>	Reports by the Auditor-General, a Parliamentary Committee or the Commonwealth Ombudsman	Mandatory
<i>Management of Human Resources</i>			
12(5)	<i>Chapter 9</i>	Assessment of effectiveness in managing and developing human resources to achieve departmental objectives	Mandatory
12(6)	<i>Chapter 9</i>	Workforce planning, staff turnover and retention	Suggested
12(6)	<i>Chapter 9</i>	Impact and features of enterprise or collective agreements, individual flexibility arrangements (IFAs), determinations, common law contracts and AWAs	Suggested
12(6)	<i>Chapters 8 &amp; 9</i>	Training and development undertaken and its impact	Suggested
12(6)	<i>Appendix 3</i>	Work health and safety performance	Suggested
12(6)	-	Productivity gains	Suggested
12(7)	<i>Chapter 9</i>	Statistics on staffing	Mandatory
12(8)	<i>Chapter 9</i>	Enterprise or collective agreements, IFAs, determinations, common law contracts and AWAs	Mandatory
12(9) & B	<i>Chapter 9</i>	Performance pay	Mandatory
<i>Assets Management</i>			
12(10)-(11)	<i>Chapter 9</i>	Assessment of effectiveness of assets management	If applicable, mandatory
<i>Purchasing</i>			
12(12)	<i>Chapter 9</i>	Assessment of purchasing against core policies and principles	Mandatory

Ref*	Location of Information	Description	Requirement
<i>Consultants</i>			
12(13)-(24)	<i>Chapter 9</i>	The annual report must include a summary statement detailing the number of new consultancy services contracts let during the year; the total actual expenditure on all new consultancy contracts let during the year (inclusive of GST); the number of ongoing consultancy contracts that were active in the reporting year; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST). The annual report must include a statement noting that information on contracts and consultancies is available through the AusTender website.	Mandatory
<i>Australian National Audit Office Access Clauses</i>			
12(25)	<i>Chapter 9</i>	Absence of provisions in contracts allowing access by the Auditor-General	Mandatory
<i>Exempt Contracts</i>			
12(26)	<i>Chapter 9</i>	Contracts exempt from the AusTender	Mandatory
<i>Financial Statements</i>			
13	<i>Financials</i>	Financial Statements	Mandatory

Ref*	Location of Information	Description	Requirement
<i>Other Mandatory Information</i>			
14(1)& C.1	<i>Appendix 3</i>	Work health and safety (Schedule 2, Part 4 of the <i>Work Health and Safety Act 2011</i> )	Mandatory
14(1)& C.2	<i>Appendix 4</i>	Advertising and Market Research (Section 311A of the <i>Commonwealth Electoral Act 1918</i> ) and statement on advertising campaigns	Mandatory
14(1)& C.3	<i>Appendix 5</i>	Ecologically sustainable development and environmental performance (Section 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> )	Mandatory
14(1)	<i>Not applicable</i>	Compliance with the agency's obligations under the <i>Carer Recognition Act 2010</i>	If applicable, mandatory
14(2)& D.1	<i>Not applicable</i>	Grant programs	Mandatory
14(3)& D.2	<i>Chapter 9</i>	Disability reporting – explicit and transparent reference to agency-level information available through other reporting mechanisms	Mandatory
14(4) & D.3	<i>Appendix 1</i>	Information Publication Scheme statement	Mandatory
14(5)	<i>Chapter 2.2 &amp; Appendix 5</i>	Correction of material errors in previous annual reports	If applicable, mandatory
F	<i>Appendix 6</i>	List of Requirements	Mandatory

\* The reference is to the location of the item in the Department of Prime Minister and Cabinet Requirements for Annual Reports.



## Financial Statements

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

**FINANCIAL STATEMENTS 2011-2012**



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

**FINANCIAL STATEMENTS 2011-2012**

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

**INDEPENDENT AUDIT REPORT 2011-2012**



## INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

### Report on the Financial Statements

I have audited the accompanying financial statements of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2012, which comprise: a Statement by the Chief Executive and Chief Financial Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Administered Schedule of Comprehensive Income; Administered Schedule of Assets and Liabilities; Administered Reconciliation Schedule; Administered Cash Flow Statement; Schedule of Administered Commitments; and Notes to and Forming Part of the Financial Statements, comprising a Summary of Significant Accounting Policies and other explanatory information.

#### *Chief Executive's Responsibility for the Financial Statements*

The Chief Executive of the Office of the Commonwealth Director of Public Prosecutions is responsible for the preparation of financial statements that give a true and fair view in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards, and for such internal control as is necessary to enable the preparation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error.

#### *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 about 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 considers internal control relevant to the Office of the Commonwealth Director of Public Prosecutions' preparation of the financial statements that give a true and fair view 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 Prosecutions' internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Chief Executive, 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 my audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

#### *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 Prosecutions' financial position as at 30 June 2012 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office



John McCullough  
Executive Director  
Delegate of the Auditor-General

Canberra  
26 September 2012

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**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**STATEMENT BY THE CHIEF EXECUTIVE AND CHIEF FINANCIAL OFFICER**  
*For the period ended 30 June 2012*

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In our opinion, the attached financial statements for the year ended 30 June 2012 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.

Signed

  
Jim Jolliffe  
A/g Director  
(A/g Chief Executive)

Date 26/9/12.

Signed

  
Karel Havlat  
A/g Deputy Director Corporate Management  
(A/g Chief Financial Officer)

Date 26/9/2012



**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**STATEMENT OF COMPREHENSIVE INCOME**

*For the period ended 30 June 2012*

	Notes	2012 \$'000	2011 \$'000
<b>EXPENSES</b>			
Employee benefits	3A	59,960	56,042
Supplier	3B	39,505	35,987
Depreciation and amortisation	3C	4,917	4,924
Finance costs	3D	117	106
Write-down and impairment of assets	3E	1	6
Losses from sale of assets	3F	42	5
Other	3G	492	1,083
<b>Total expenses</b>		<b>105,034</b>	<b>98,153</b>
<b>LESS:</b>			
<b>OWN-SOURCE INCOME</b>			
<b>Own-source revenue</b>			
Sale of goods and rendering of services	4A	3,030	3,164
Other	4B	215	334
<b>Total own-source revenue</b>		<b>3,245</b>	<b>3,498</b>
<b>Gains</b>			
Sale of assets	4C	7	9
Other	4D	248	174
<b>Total gains</b>		<b>255</b>	<b>183</b>
<b>Total own-source income</b>		<b>3,500</b>	<b>3,681</b>
<b>Net cost of (contribution by) services</b>		<b>101,534</b>	<b>94,472</b>
Revenue from Government	4E	86,224	95,927
<b>Surplus (Deficit) attributable to the Australian Government</b>		<b>(15,310)</b>	<b>1,455</b>
<b>OTHER COMPREHENSIVE INCOME</b>			
Changes in asset revaluation surplus		2,265	-
<b>Total other comprehensive income (loss) after income tax</b>		<b>(13,045)</b>	<b>1,455</b>
<b>Total comprehensive income (loss) attributable to the Australian Government</b>		<b>(13,045)</b>	<b>1,455</b>

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

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**BALANCE SHEET**  
*As at 30 June 2012*

	Notes	2012 \$'000	2011 \$'000
<b>ASSETS</b>			
<b>Financial Assets</b>			
Cash and cash equivalents	5A	218	241
Trade and other receivables	5B	68,981	74,809
<b>Total financial assets</b>		<b>69,199</b>	<b>75,050</b>
<b>Non-Financial Assets</b>			
Land and buildings	6A	6,272	8,488
Property, plant and equipment	6B, 6C	8,592	5,845
Intangibles	6D, 6E	1,251	1,175
Other	6F	970	991
<b>Total non-financial assets</b>		<b>17,085</b>	<b>16,499</b>
<b>Total Assets</b>		<b>86,284</b>	<b>91,549</b>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	7A	7,242	6,900
Other	7B	1,531	1,490
<b>Total payables</b>		<b>8,773</b>	<b>8,390</b>
<b>Interest Bearing Liabilities</b>			
Other	8	1,038	904
<b>Total interest bearing liabilities</b>		<b>1,038</b>	<b>904</b>
<b>Provisions</b>			
Employee provisions	9A	19,304	15,108
Other	9B	2,793	2,701
<b>Total provisions</b>		<b>22,097</b>	<b>17,809</b>
<b>Total Liabilities</b>		<b>31,908</b>	<b>27,103</b>
<b>Net Assets</b>		<b>54,376</b>	<b>64,446</b>
<b>EQUITY</b>			
<b>Parent Entity Interest</b>			
Contributed equity		(3,026)	(6,001)
Reserves		14,332	12,067
Retained surplus		43,070	58,380
<b>Total parent entity interest</b>		<b>54,376</b>	<b>64,446</b>
<b>Total Equity</b>		<b>54,376</b>	<b>64,446</b>

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

## OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

## STATEMENT OF CHANGES IN EQUITY

For the period ended 30 June 2012

	Retained earnings		Asset revaluation surplus		Contributed equity/capital		Total equity	
	2012	2011	2012	2011	2012	2011	2012	2011
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Opening balance</b>								
Balance carried forward from previous period	58,380	56,009	12,067	12,983	(6,001)	(9,296)	64,446	59,696
<b>Adjusted opening balance</b>	<b>58,380</b>	<b>56,009</b>	<b>12,067</b>	<b>12,983</b>	<b>(6,001)</b>	<b>(9,296)</b>	<b>64,446</b>	<b>59,696</b>
<b>Comprehensive income</b>								
Other comprehensive income	-	-	2,265	-	-	-	2,265	-
Surplus (Deficit) for the period	(15,310)	1,455	-	-	-	-	(15,310)	1,455
<b>Total comprehensive income</b>	<b>(15,310)</b>	<b>1,455</b>	<b>2,265</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(13,045)</b>	<b>1,455</b>
<b>Transactions with owners</b>								
Contributions by owners	-	-	-	-	2,975	3,295	2,975	3,295
Departmental capital budget	-	-	-	-	2,975	3,295	2,975	3,295
<b>Sub-total transactions with owners</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(916)</b>	<b>2,975</b>	<b>3,295</b>	<b>2,975</b>	<b>3,295</b>
Transfers between equity components	-	916	-	-	-	-	-	-
<b>Closing balance as at 30 June</b>	<b>43,070</b>	<b>58,380</b>	<b>14,332</b>	<b>12,067</b>	<b>(3,026)</b>	<b>(6,001)</b>	<b>54,376</b>	<b>64,446</b>

An amount of \$916k was transferred from the Computer Software Asset Revaluation Reserve to Retained Earnings during the 2010-2011 financial year. This amount relates to a reserve balance for computer software previously revalued as permissible under the Australian Accounting Standards.

However, due to a change in AASB 116: *Property, Plant and Equipment*, computer software is now to be recognised at amortised cost, resulting in the transfer

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

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

*For the period ended 30 June 2012*

	Notes	2012 \$'000	2011 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations		92,234	94,179
Sales of goods and rendering of services		2,815	2,871
Net GST received		3,634	3,435
Other		33	104
<b>Total cash received</b>		<b>98,716</b>	<b>100,589</b>
<b>Cash used</b>			
Employees		55,748	57,987
Suppliers		37,947	39,243
Other		492	1,135
Appropriation cash returned to the OPA		3,846	3,916
<b>Total cash used</b>		<b>98,033</b>	<b>102,281</b>
<b>Net cash from (used by) operating activities</b>	10	<b>683</b>	<b>(1,692)</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of property, plant and equipment		13	31
<b>Total cash received</b>		<b>13</b>	<b>31</b>
<b>Cash used</b>			
Purchase of property, plant and equipment		3,400	1,639
Other		294	192
<b>Total cash used</b>		<b>3,694</b>	<b>1,831</b>
<b>Net cash from (used by) investing activities</b>		<b>(3,681)</b>	<b>(1,800)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Contributed equity		2,975	3,295
<b>Total cash received</b>		<b>2,975</b>	<b>3,295</b>
<b>Cash used</b>			
<b>Total cash used</b>		<b>-</b>	<b>-</b>
<b>Net cash from (used by) financing activities</b>		<b>2,975</b>	<b>3,295</b>
<b>Net increase (decrease) in cash held</b>		<b>(23)</b>	<b>(197)</b>
Cash and cash equivalents at the beginning of the reporting period		241	438
<b>Cash and cash equivalents at the end of the reporting period</b>	5A	<b>218</b>	<b>241</b>

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

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

*As at 30 June 2012*

	Notes	2012 \$'000	2011 \$'000
<b>BY TYPE</b>			
<b>Commitments receivable</b>			
Sublease rental income		-	(27)
Net GST recoverable on commitments		<u>(2,247)</u>	<u>(3,363)</u>
<b>Total commitments receivable</b>		<u>(2,247)</u>	<u>(3,390)</u>
<b>Commitments payable</b>			
<b>Capital commitments</b>			
Land and buildings	A	-	2,106
Property, plant and equipment	B	<u>-</u>	<u>201</u>
<b>Total capital commitments</b>		<u>-</u>	<u>2,307</u>
<b>Other commitments</b>			
Operating leases	C	<b>23,517</b>	32,919
Goods and services		<b>1,193</b>	1,794
<b>Total other commitments</b>		<u><b>24,710</b></u>	<u>34,713</u>
<b>Net commitments by type</b>		<u><b>22,463</b></u>	<u>33,630</u>
<b>BY MATURITY</b>			
<b>Commitments receivable</b>			
<b>Operating lease income</b>			
One year or less		-	(27)
<b>Total operating lease income</b>		<u>-</u>	<u>(27)</u>
<b>Other commitments receivable</b>			
One year or less		<b>(932)</b>	(1,227)
From one to five years		<b>(1,048)</b>	(1,780)
Over five years		<u><b>(267)</b></u>	<u>(356)</u>
<b>Total other commitments income</b>		<u><b>(2,247)</b></u>	<u>(3,363)</u>

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

*As at 30 June 2012*

	<b>2012</b>	2012
	<b>\$000</b>	\$000
<b>Commitments payable</b>		
<b>Capital commitments</b>		
One year or less	-	2,307
<b>Total capital commitments</b>	<u>-</u>	<u>2,307</u>
<b>Operating lease commitments</b>		
One year or less	<b>9,533</b>	9,922
From one to five years	<b>11,051</b>	19,087
Over five years	<b>2,933</b>	3,910
<b>Total operating lease commitments</b>	<u><b>23,517</b></u>	<u>32,919</u>
<b>Other commitments</b>		
One year or less	<b>714</b>	1,269
From one to five years	<b>479</b>	525
<b>Total other commitments</b>	<u><b>1,193</b></u>	<u>1,794</u>
<b>Net commitments by maturity</b>	<u><b>22,463</b></u>	<u>33,630</u>

**Note:** Commitments are GST inclusive where relevant.

- A** Land and building commitments in 2011 were primarily contracts related to fitout under construction
- B** Plant and equipment commitments in 2011 were primarily contracts for purchase of IT Equipment
- C** Operating leases to which the CDPP is a lessee were effectively non-cancellable and comprise:

***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. Some leases contain options to extend, and no purchase options are available to the CDPP.

***Leases for motor vehicles (for general office use)***

No contingent rentals exist. There are no renewal or purchase options available to the CDPP.

This schedule should be read in conjunction with the accompanying notes.

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

*As at 30 June 2012*

	<b>2012</b>	2011
	<b>\$'000</b>	\$'000
<b>Contingent liabilities</b>		
Claims for damages or costs	<u>102</u>	-
<b>Total contingent liabilities</b>	<u>102</u>	-

Details of each class of contingent liabilities and contingent assets listed above are disclosed in Note 11: Contingent Assets and Liabilities, along with information on significant remote contingencies and contingencies that cannot be quantified.

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

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**ADMINISTERED SCHEDULE OF COMPREHENSIVE INCOME**  
*For the period ended 30 June 2012*

	Note	2012 \$	2011 \$
<b>EXPENSES</b>			
Write-down and impairment of administered assets		<u>1,023,597</u>	1,627,494
<b>Total expenses administered on behalf of Government</b>		<u>1,023,597</u>	1,627,494
<b>LESS:</b>			
<b>OWN-SOURCE INCOME</b>			
<b>Own-source revenue</b>			
<b>Non-taxation revenue</b>			
Fines and costs		413,882	2,946,496
Other		-	370
<b>Total non-taxation revenue</b>		<u>413,882</u>	2,946,866
<b>Total own-source revenue administered on behalf of Government</b>		<u>413,882</u>	2,946,866
<b>Gains</b>			
Reversal of previous administered asset write-downs		<u>171,340</u>	223,995
<b>Total gains administered on behalf of Government</b>		<u>171,340</u>	223,995
<b>Total own-source income administered on behalf of Government</b>		<u>585,222</u>	3,170,861
<b>Net cost of (contribution by) services</b>		<u>(438,375)</u>	1,543,367
<b>Surplus (Deficit) on continuing operations</b>		<u>(438,375)</u>	1,543,367

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



<b>OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS</b>			
<b>ADMINISTERED SCHEDULE OF ASSETS AND LIABILITIES</b>			
<i>As at 30 June 2012</i>			
	Notes	2012 \$	2011 \$
<b>ASSETS</b>			
<b>Financial Assets</b>			
Cash and cash equivalents		-	-
Trade and other receivables		-	836,831
<b>Total financial assets</b>		<b>-</b>	<b>836,831</b>
<b>Total assets administered on behalf of Government</b>		<b>-</b>	<b>836,831</b>
<b>LIABILITIES</b>			
<b>Payables</b>			
Other		-	150
<b>Total payables</b>		<b>-</b>	<b>150</b>
<b>Total liabilities administered on behalf of Government</b>		<b>-</b>	<b>150</b>
<b>Net assets</b>		<b>-</b>	<b>836,681</b>

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

<b>OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS ADMINISTERED RECONCILIATION SCHEDULE</b>		
	2012	2011
	\$	\$
<b>Opening administered assets less administered liabilities as at 1 July</b>	<b>836,681</b>	1,266,783
Plus: Administered income	<b>585,222</b>	3,170,861
Less: Administered expenses (non CAC)	<b>(1,023,597)</b>	(1,627,494)
Administered transfers to/from Australian Government:		
Appropriation transfers from OPA:		
Special appropriations (unlimited)	<b>60,145</b>	(1,997,013)
Transfers to OPA	<b>(458,451)</b>	23,544
Restructuring		
Transfers to other Agencies		
Equity adjustment		
<b>Closing administered assets less administered liabilities as at 30 June</b>	<b>-</b>	836,681

As part of the 2011-2012 Federal Budget, the Government announced that the CDPP will cease its role in reporting fines and costs that relate to Commonwealth offences, and that this role was to be transferred to the relevant Commonwealth Agency. The receivables in relation to the fines and costs were transferred from CDPP to 25 Commonwealth Agencies effective 1 October 2011.

The net assets relinquished to all entities were \$6,158,604.

The value of liabilities were transferred to the entities for no consideration.

<b>OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS</b>		
<b>ADMINISTERED CASH FLOW STATEMENT</b>		
<i>For the period ended 30 June 2012</i>		
	2012	2011
Notes	\$	\$
<b>OPERATING ACTIVITIES</b>		
<b>Cash received</b>		
Fines and costs	458,451	1,997,013
<b>Total cash received</b>	<u>458,451</u>	<u>1,997,013</u>
<b>Cash used</b>		
Refund of fines and costs	(60,145)	(23,544)
<b>Total cash used</b>	<u>(60,145)</u>	<u>(23,544)</u>
<b>Net cash from (used by) operating activities</b>	<u>398,306</u>	<u>1,973,469</u>
<b>Net Increase (Decrease) in Cash Held</b>	<u>398,306</u>	<u>1,973,469</u>
Cash and cash equivalents at the beginning of the reporting period	-	-
Cash from Official Public Account for:		
- Appropriations	60,145	23,544
	<u>60,145</u>	<u>23,544</u>
Cash to Official Public Account for:		
- Refund of Receipts	(458,451)	(1,997,013)
	<u>(458,451)</u>	<u>(1,997,013)</u>
<b>Cash and cash equivalents at the end of the reporting period</b>	<u>-</u>	<u>-</u>
The above statement should be read in conjunction with the accompanying notes.		

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

*As at 30 June 2012*

	Notes	2012 \$	2011 \$
<b>Administered Commitments</b>			
<i>As at 30 June 2012</i>		<u>Nil</u>	<u>Nil</u>
<b>Administered Contingencies</b>			
<i>As at 30 June 2012</i>		<u>Nil</u>	<u>Nil</u>

This schedule should be read in conjunction with the accompanying notes.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS***For the period ended 30 June 2012*

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<b>Note</b>	<b>Description</b>
1	Summary of Significant Accounting Policies
2	Events After the Reporting Period
3	Expenses
4	Income
5	Financial Assets
6	Non-Financial Assets
7	Payables
8	Lease Incentives
9	Provisions
10	Cash Flow Reconciliation
11	Contingent Liabilities and Assets
12	Senior Executive Remuneration
13	Remuneration of Auditors
14	Financial Instruments
15	Financial Assets Reconciliation
16	Write-down and Impairment of Administered Assets
17	Administered Fines and Costs Revenue
18	Administered Other Revenue
19	Reversal of Previous Administered Asset Write-Downs
20	Administered Financial Assets
21	Administered Payables
22	Administered Cash Flow Reconciliation
23	Administered Contingent Assets and Liabilities
24	Administered Financial Instruments
25	Appropriations
26	Special Accounts
27	Compliance with Statutory Conditions for Payments from the Consolidated Revenue Fund
28	Compensation and Debt Relief
29	Reporting of Outcomes
30	Net Cash Appropriation Arrangements

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

*For the period ended 30 June 2012*

**Note 1: Summary of Significant Accounting Policies**

**1.1 Objectives of the Office of the Director of Public Prosecutions**

The Office of the Commonwealth Director of Public Prosecutions (CDPP) is an Australian Government controlled entity. It is a not-for-profit entity. The objective of the CDPP is to provide a prosecution service to the Commonwealth and to the people of Australia which is fair, independent, accountable, effective and efficient in order to advance social justice by deterring and discouraging breaches of Commonwealth law and ensuring that serious offenders are brought to justice.

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, income 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.

The CDPP ceased its role in reporting Administered fines and costs on 30 September 2011.

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

**1.2 Basis of Preparation of the Financial Statements**

The financial statements are general purpose financial statements and are required by section 49 of the *Financial Management and Accountability Act 1997*.

The Financial Statements have been prepared in accordance with:

- Finance Minister's Orders (or FMO) for reporting periods ending on or after 1 July 2011; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities 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 statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

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

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
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*For the period ended 30 June 2012*

economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under executor contracts are not recognised unless required by an accounting standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments or the Schedule of Contingencies.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the Statement of Comprehensive Income 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 are reported on the same basis and using the same policies as for departmental items.

**1.3 Significant Accounting Judgements and Estimates**

In the process of applying the accounting policies listed in this note, the CDPP has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of property, plant and equipment has been taken to be the market value of similar items as determined by an independent valuer.

No accounting assumptions and estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next reporting period.

**1.4 New Australian Accounting Standards****Adoption of New Australian Accounting Standard Requirements**

No accounting standard has been adopted earlier than the application date as stated in the standard.

Other new or revised standards, interpretations or amending standards that were issued prior to the signing of the Statement by the Chief Executive and Chief Financial Officer and are applicable to the current reporting period did not have a financial impact, and are not expected to have a future financial impact on the CDPP.

**Future Australian Accounting Standard Requirements**

Other new or revised standards, interpretations or amending standards that were issued prior to the signing of the Statement by the Chief Executive and Chief Financial Officer and are applicable to the future reporting period are not expected to have a future financial impact on the CDPP.

**1.5 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;

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
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*For the period ended 30 June 2012*

- 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 associated with the transaction will flow to the entity.

The stage of completion of contracts at the reporting date is determined by reference to services performed to date as a percentage of total services to be performed.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at the end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

*Resources Received Free of Charge*

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

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 1.7).

*Revenue from Government*

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the CDPP 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.

*Parental Leave Payments Scheme*

The CDPP will offset amounts received under Parental Leave Payments Scheme (for payment to employees) by amounts paid to employees under that scheme, because these transactions are only incidental to the main revenue-generating activities of the CDPP. Amounts received by the CDPP not yet paid to employees are presented gross as cash and a liability (payable). The CDPP received \$14,576 (2011: \$nil) under this scheme, and this is disclosed as a footnote to Note 4E: Revenue from Government.



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

*For the period ended 30 June 2012*

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**1.6 Gains****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. Resources received free of charge are recorded as either revenue or gains depending on their nature.

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 1.7).

**Sale of Assets**

Gains from disposal of assets is recognised when control of the asset has passed to the buyer.

**1.7 Transactions with the Government as Owner****Equity Injections**

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

**Restructuring of Administrative Arrangements**

Net assets received from or relinquished to another Australian Government agency or authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

**Other Distributions to Owners**

The FMO's require that distributions to owners be debited to contributed equity unless in the nature of a dividend. No distributions to owners occurred in 2011-2012 (2010-2011: \$378,063).

**1.8 Employee Benefits**

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.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end

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

*For the period ended 30 June 2012*

of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

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 CDPP is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that applied at the time the leave is taken, including the CDPP'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 as at 30 June 2012. The estimate of the present value of the liability takes into account attrition rates and pay increases 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.

Superannuation

Staff of the CDPP are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS accumulation plan (PSSap) or employee nominated superannuation funds.

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.

The 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 CDPP's employees. The 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

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

*For the period ended 30 June 2012*

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not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where an 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. Leased 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 representative of the pattern of benefits derived from the leased assets.

The CDPP has no finance leases.

**1.10 Borrowing Costs**

All borrowing costs are expensed as incurred.

**1.11 Cash**

Cash is recognised at its nominal amount. Cash and cash equivalents includes:

- cash on hand;
- demand deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amount of cash and subject to insignificant risk of changes in value;
- cash held by outsiders; and
- cash in special accounts.

**1.12 Financial Assets**

The CDPP classifies its financial assets in the following categories:

- loans and receivables.

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 through the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate 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'. 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 the end of each reporting period.

- Financial assets held at amortised cost - if there is objective evidence that an impairment loss has been incurred for 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 Statement of Comprehensive Income.
- 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.

**1.13 Financial Liabilities**

Financial liabilities are classified as 'other financial liabilities'. Financial liabilities are recognised and derecognised upon 'trade date'.

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.

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 shorter period.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (irrespective of having been invoiced).

**1.14 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

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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.

**1.15 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 income 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, which has a threshold of \$20,000 or 5% of fitout value.

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 the CDPP where there exists an obligation to restore the property to its original condition. These costs are included in the value of the CDPP's leasehold improvements with a corresponding provision for the 'makegood' recognised.

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 subsequent 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.

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During 2011-2012 an independent valuation of library holdings was carried out by Daryl G Bird, Certified Practising Valuer AVAA, of Preston Rowe Paterson NSW Pty Ltd.

Revaluation adjustments are made on a class basis. Any revaluation increment was 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 in the surplus/deficit. Revaluation decrements for a class of assets were recognised directly in the surplus/deficit except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date was eliminated against the gross carrying amount of the asset and the asset was restated to the revalued amount.

Depreciation

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the CDPP using, in all cases, the straight-line method of depreciation.

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:

	<b>2012</b>	<b>2011</b>
Leasehold improvements	Lease term	Lease term
Plant and equipment	2 to 30 years	2 to 30 years

Impairment

All assets are assessed for impairment at 30 June 2012. 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 the CDPP were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

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**1.17 Intangibles**

The 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 (2009-2010: 3 to 20 years).

All software assets are assessed for indications of impairment as at 30 June 2012.

**1.18 Taxation / Competitive Neutrality****Taxation**

The 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 the 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 Administered Schedules 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 the CDPP for use by the Government rather than the CDPP 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 payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the CDPP on behalf of the Government and reported as such in the Administered Cash Flow Statement and in the Administered Reconciliation Table.

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Revenue

All administered revenues are revenues relating to the course of 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.

Reversals of previous write-downs occur 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.

- 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.
- 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

Loans and Receivables

The CDPP ceased its role in reporting Administered fines and costs on 30 September 2011. All receivables were transferred to the referring Agencies at that date.



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**Note 2: Events After the Reporting Period**

There was no subsequent event that had the potential to significantly affect the ongoing structure and financial activities of the CDPP.

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**Note 3: Expenses**

	2012	2011
	\$'000	\$'000
<b>Note 3A: Employee Benefits</b>		
Wages and salaries	42,416	42,935
Superannuation:		
Defined contribution plans	3,613	2,772
Defined benefit plans	4,553	4,929
Leave and other entitlements	8,344	4,630
Separation and redundancies	95	-
Other employee benefits	939	776
<b>Total employee benefits</b>	<b>59,960</b>	<b>56,042</b>

Due to a change in the interpretation of the Australian Accounting Standards, some allowances have been reclassified from Other Employee Benefits to Wages and Salaries. Comparative amounts for 2011 have been changed accordingly.

**Note 3B: Suppliers**

**Goods and services**

Prosecution legal costs	19,810	16,477
ICT	2,837	2,269
Property	1,449	1,707
Library	1,555	1,468
Other	3,712	3,274
<b>Total goods and services</b>	<b>29,363</b>	<b>25,195</b>

**Goods and services are made up of:**

Provision of goods – related entities	20	26
Provision of goods – external parties	3,056	2,420
Rendering of services – related entities	1,377	1,814
Rendering of services – external parties	24,910	20,935
<b>Total goods and services</b>	<b>29,363</b>	<b>25,195</b>

**Other supplier expenses**

Operating lease rentals - external entities:		
Minimum lease payments	9,376	10,387
Rental expense for sub-leases	91	77
Workers compensation expenses	675	328
<b>Total other supplier expenses</b>	<b>10,142</b>	<b>10,792</b>
<b>Total supplier expenses</b>	<b>39,505</b>	<b>35,987</b>

Due to a change in the interpretation of the Australian Accounting Standards, some expenses have been reclassified to Library Expense. Comparative amounts for 2011 have been changed accordingly.

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	2012	2011
	\$'000	\$'000
<b>Note 3C: Depreciation and Amortisation</b>		
<b>Depreciation:</b>		
Leasehold improvements	3,090	3,578
Infrastructure, plant & equipment	1,386	1,197
<b>Total depreciation</b>	<b>4,476</b>	<b>4,775</b>
<b>Amortisation:</b>		
Intangibles	441	149
<b>Total amortisation</b>	<b>441</b>	<b>149</b>
<b>Total depreciation and amortisation</b>	<b>4,917</b>	<b>4,924</b>
<b>Note 3D: Finance Costs</b>		
Unwinding of discount	117	106
<b>Total finance costs</b>	<b>117</b>	<b>106</b>
<b>Note 3E: Write-down and Impairment of Assets</b>		
<b>Asset write-downs and impairments from:</b>		
Impairment of receivables	1	-
Impairment of plant and equipment	-	6
<b>Total write-down and impairment of assets</b>	<b>1</b>	<b>6</b>
<b>Note 3F: Losses from Asset Sales</b>		
<b>Infrastructure, plant and equipment:</b>		
Proceeds from disposal	(6)	(24)
Carrying value of assets sold	48	29
<b>Total losses from asset sales</b>	<b>42</b>	<b>5</b>
<b>Note 3G: Other Expenses</b>		
Costs awarded against the Commonwealth	492	1,083
<b>Total other expenses</b>	<b>492</b>	<b>1,083</b>

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**Note 4: Income**

	2012	2011
	\$'000	\$'000

**Note 4A: Sale of Goods and Rendering of Services**

Provision of goods - external entities	-	1
Rendering of services - related entities	3,001	3,136
Rendering of services - external entities	29	27
<b>Total sale of goods and rendering of services</b>	<b>3,030</b>	<b>3,164</b>

**Note 4B: Other Revenue**

Resources received free of charge-services from external entities	214	326
Subsidies received	1	8
<b>Total other revenue</b>	<b>215</b>	<b>334</b>

**GAINS**

**Note 4C: Sale of Assets**

<b>Property, plant and equipment:</b>		
Proceeds from sale	7	24
Carrying value of assets sold	-	(15)
<b>Net gain from sale of assets</b>	<b>7</b>	<b>9</b>

**Note 4D: Other Gains**

Resources received free of charge-services from related entities	54	54
Other	194	120
<b>Total other gains</b>	<b>248</b>	<b>174</b>

**REVENUE FROM GOVERNMENT**

**Note 4E: Revenue from Government \***

<b>Appropriations:</b>		
Departmental appropriations	86,224	95,927
<b>Total revenue from Government</b>	<b>86,224</b>	<b>95,927</b>

\* CDPP received \$14,576 (2011: \$nil) under the Paid Parental Leave Scheme; these amounts were offset against the amounts paid to employees in the Statement of Comprehensive Income.

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**Note 5: Financial Assets**

	2012 \$'000	2011 \$'000
<b>Note 5A: Cash and Cash Equivalents</b>		
Cash on hand or on deposit	218	241
<b>Total cash and cash equivalents</b>	<b>218</b>	<b>241</b>
<b>Note 5B: Trade and Other Receivables</b>		
<b>Good and Services:</b>		
Goods and services - related entities	475	273
Goods and services - external parties	-	-
<b>Total receivables for goods and services</b>	<b>475</b>	<b>273</b>
<b>Appropriations receivable:</b>		
For existing programs	67,929	73,939
<b>Total appropriations receivable</b>	<b>67,929</b>	<b>73,939</b>
<b>Other receivables:</b>		
GST receivable from the Australian Taxation Office	518	512
Other	60	85
<b>Total other receivables</b>	<b>578</b>	<b>597</b>
<b>Total trade and other receivables (gross)</b>	<b>68,982</b>	<b>74,809</b>
<b>Less impairment allowance account</b>		
Goods and services	(1)	-
<b>Total impairment allowance account</b>	<b>(1)</b>	<b>-</b>
<b>Total trade and other receivables (net)</b>	<b>68,981</b>	<b>74,809</b>
<b>Receivables are expected to be recovered in:</b>		
No more than 12 months	68,976	74,804
More than 12 months	5	5
<b>Total trade and other receivables (net)</b>	<b>68,981</b>	<b>74,809</b>
<b>Receivables are aged as follows:</b>		
Not overdue	68,805	74,809
Overdue by:		
0 to 30 days	170	-
31 to 60 days	-	-
61 to 90 days	6	-
More than 90 days	1	-
<b>Total receivables (gross)</b>	<b>68,982</b>	<b>74,809</b>

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**Note 5: Financial Assets**

	<b>2012</b>	2011
	<b>\$'000</b>	\$'000
<b>The impairment allowance account is aged as follows:</b>		
Not overdue	-	-
Overdue by:		
0 to 30 days	-	-
31 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	<u>1</u>	-
<b>Total impairment allowance account</b>	<u>1</u>	-

**Reconciliation of the Impairment Allowance Account:**

**Movements in relation to 2012**

	<b>Goods and</b>	<b>Other</b>
	<b>services</b>	<b>receivables</b>
	<b>\$</b>	<b>\$</b>
<b>Opening balance</b>	-	-
Increase/decrease recognised in net surplus	<u>1</u>	-
<b>Closing balance</b>	<u>1</u>	-

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**Note 6: Non-Financial Assets**

	2012	2011
	\$'000	\$'000
<b>Note 6A: Land and Buildings</b>		
<b>Leasehold improvements:</b>		
Work in progress	90	1,057
Fair value	38,568	36,727
Accumulated depreciation	<u>(32,386)</u>	<u>(29,296)</u>
<b>Total leasehold improvements</b>	<b><u>6,272</u></b>	<b><u>8,488</u></b>
<b>Total land and buildings</b>	<b><u>6,272</u></b>	<b><u>8,488</u></b>

No indicators of impairment were found for land and buildings.

One leased premise at Farrell Place Canberra is expected to be disposed of within the next 12 months due to the cessation of the lease.

**Note 6B: Property, Plant and Equipment**

<b>Property, plant and equipment:</b>		
Work in progress	33	-
Fair value	16,195	14,632
Accumulated depreciation	<u>(7,636)</u>	<u>(8,787)</u>
<b>Total property, plant and equipment</b>	<b><u>8,592</u></b>	<b><u>5,845</u></b>

All revaluations were conducted in accordance with the revaluation policy stated at Note 1. On 31 March 2012, Daryl G Bird, Certified Practising Valuer AVAA, of Preston Rowe Paterson NSW Pty Ltd conducted a revaluation of the library holdings.

A revaluation increment of \$2.265m for plant and equipment was transferred to the asset revaluation surplus by asset class and included in the equity section of the balance sheet.

No indicators of impairment were found for property, plant and equipment.

A number of items of property, plant and equipment are expected to be disposed of due to the cessation of the leased premises at Farrell Place Canberra. Additionally, a small number of items are expected to be disposed as part of normal operations.

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**Note 6C: Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2011-12)**

	Buildings \$'000	Other property, plant & equipment \$'000	Total \$'000
<b>As at 1 July 2011</b>			
Gross book value	37,784	14,632	52,416
Accumulated depreciation and impairment	(29,296)	(8,787)	(38,083)
<b>Net book value 1 July 2011</b>	<b>8,488</b>	<b>5,845</b>	<b>14,333</b>
Additions:			
By purchase	874	1,916	2,790
Revaluations and impairments recognised in other comprehensive income	-	2,265	2,265
Depreciation expense	(3,090)	(1,386)	(4,476)
Disposals:	-	(48)	(48)
<b>Net book value 30 June 2012</b>	<b>6,272</b>	<b>8,592</b>	<b>14,864</b>
<b>Net book value as of 30 June 2012 represented by:</b>			
Gross book value	38,658	16,228	54,886
Accumulated depreciation	(32,386)	(7,636)	(40,022)
<b>Net book value 30 June 2012</b>	<b>6,272</b>	<b>8,592</b>	<b>14,864</b>



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Note 6C (Cont'd): Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2010-11)

	Buildings \$'000	Other property, plant & equipment \$'000	Total \$'000
<b>As at 1 July 2010</b>			
Gross book value	38,627	13,821	52,448
Accumulated depreciation and impairment	(27,648)	(7,957)	(35,605)
<b>Net book value 1 July 2010</b>	<b>10,979</b>	<b>5,864</b>	<b>16,843</b>
Additions:			
By purchase	1,087	1,203	2,290
Depreciation expense	(3,578)	(1,197)	(4,775)
Disposals:			
Other	-	(25)	(25)
<b>Net book value 30 June 2011</b>	<b>8,488</b>	<b>5,845</b>	<b>14,333</b>
<b>Net book value as of 30 June 2011 represented by:</b>			
Gross book value	37,784	14,632	52,416
Accumulated depreciation	(29,296)	(8,787)	(38,083)
<b>Net book value 30 June 2011</b>	<b>8,488</b>	<b>5,845</b>	<b>14,333</b>

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	<b>2012</b>	2011
	<b>\$'000</b>	\$'000
<b>Note 6D: Intangibles</b>		
<b>Computer software:</b>		
Work in progress - purchased	-	737
Purchased	<b>2,450</b>	2,983
Accumulated amortisation	<b>(1,199)</b>	(2,545)
<b>Total intangibles</b>	<b>1,251</b>	1,175

No indicators of impairment were found for intangible assets.

No intangibles are expected to be sold or disposed of within the next 12 months.

**Note 6E: Reconciliation of the Opening and Closing Balances of Intangibles (2011-12)**

	<b>Computer software purchased</b>
	<b>\$'000</b>
<b>As at 1 July 2011</b>	
Gross book value	<b>3,720</b>
Accumulated amortisation and impairment	<b>(2,545)</b>
<b>Net book value 1 July 2011</b>	<b>1,175</b>
Additions:	
By purchase	<b>517</b>
Amortisation	<b>(441)</b>
<b>Net book value 30 June 2012</b>	<b>1,251</b>
<b>Net book value as of 30 June 2012 represented by:</b>	
Gross book value	<b>2,450</b>
Accumulated amortisation and impairment	<b>(1,199)</b>
<b>Net book value 30 June 2012</b>	<b>1,251</b>

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**Note 6E (Cont'd): Reconciliation of the Opening and Closing Balances of Intangibles (2010-11)**

	Computer software purchased	
	\$'000	
<b>As at 1 July 2010</b>		
Gross book value	2,933	
Accumulated amortisation and impairment	(2,396)	
<b>Net book value 1 July 2010</b>	<b>537</b>	
Additions:		
By purchase	787	
Amortisation	(149)	
<b>Net book value 30 June 2011</b>	<b>1,175</b>	
<b>Net book value as of 30 June 2011 represented by:</b>		
Gross book value	3,720	
Accumulated amortisation and impairment	(2,545)	
<b>Net book value 30 June 2011</b>	<b>1,175</b>	
	<b>2012</b>	2011
	<b>\$'000</b>	<b>\$'000</b>
<b>Note 6F: Other Non-Financial Assets</b>		
Prepayments	<b>970</b>	991
<b>Total other non-financial assets</b>	<b>970</b>	991
<b>Total other non-financial assets - are expected to be recovered in:</b>		
No more than 12 months	<b>967</b>	982
More than 12 months	<b>3</b>	9
<b>Total other non-financial assets</b>	<b>970</b>	991

No indicators of impairment were found for other non-financial assets.

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**Note 7: Payables**

	2012	2011
	\$'000	\$'000
<b>Note 7A: Suppliers</b>		
Trade creditors and accruals	5,241	4,401
Operating lease rentals	2,001	2,499
<b>Total supplier payables</b>	<u>7,242</u>	<u>6,900</u>

**Supplier payables expected to be settled within 12 months:**

Related entities	307	99
External parties	4,934	4,796
<b>Total</b>	<u>5,241</u>	<u>4,895</u>

**Supplier payables expected to be settled in greater than 12 months:**

Related entities	467	-
External parties	1,534	2,005
<b>Total</b>	<u>2,001</u>	<u>2,005</u>
<b>Total supplier payables</b>	<u>7,242</u>	<u>6,900</u>

Settlement was usually made within 30 days.

**Note 7B: Other Payables**

Wages and salaries	1,133	1,037
Superannuation	200	168
Other	198	285
<b>Total other payables</b>	<u>1,531</u>	<u>1,490</u>

**Total other payables are expected to be settled in:**

No more than 12 months	1,455	1,416
More than 12 months	76	74
<b>Total other payables</b>	<u>1,531</u>	<u>1,490</u>

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

*For the period ended 30 June 2012*

**Note 8: Interest Bearing Liabilities**

	2012	2011
	\$'000	\$'000

**Note 8: Other Interest Bearing Liabilities**

Other interest bearing liabilities <sup>1</sup>	1,038	904
<b>Total other interest bearing liabilities</b>	<b>1,038</b>	<b>904</b>

**Other interest bearing liabilities are expected to be settled:**

Within one year	261	204
In one to five years	499	700
In more than five years	278	-
	<b>1,038</b>	<b>904</b>

1. The CDPP received incentives in the form of rent free periods and reduced lease payments on entering property leases.

**Note 9: Provisions**

	2012	2011
	\$'000	\$'000

**Note 9A: Employee Provisions**

Leave	19,304	15,108
<b>Total employee provisions</b>	<b>19,304</b>	<b>15,108</b>

**Employee provisions are expected to be settled in:**

No more than 12 months	4,454	4,001
More than 12 months	14,850	11,107
<b>Total employee provisions</b>	<b>19,304</b>	<b>15,108</b>

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	2012	2011
	\$'000	\$'000
<b>Note 9B: Other Provisions</b>		
Provision for restoration obligations	2,793	2,701
<b>Total other provisions</b>	<u>2,793</u>	<u>2,701</u>
<b>Other provisions are expected to be settled in:</b>		
No more than 12 months	525	378
More than 12 months	2,268	2,323
<b>Total other provisions</b>	<u>2,793</u>	<u>2,701</u>
	<b>Provision for restoration \$'000</b>	
<b>Carrying amount 1 July 2011</b>	<u>2,701</u>	
Additional provisions made	168	
Revaluation	-	
Amounts used	(193)	
Amounts reversed	-	
Unwinding of discount or change in discount rate	117	
<b>Closing balance 2012</b>	<u>2,793</u>	

CDPP currently has 12 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.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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**Note 10: Cash Flow Reconciliation**

	2012	2011
	\$'000	\$'000
<b>Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement</b>		
<b>Cash and cash equivalents as per:</b>		
Cash flow statement	218	241
Balance sheet	218	241
<b>Difference</b>	<u>-</u>	<u>-</u>
<b>Reconciliation of net cost of services to net cash from operating activities:</b>		
Net cost of services	(101,534)	(94,472)
Add revenue from Government	86,224	95,927
<b>Adjustments for non-cash items</b>		
Depreciation / amortisation	4,917	4,924
Net write down of non-financial assets	1	6
(Gain)/loss on disposal of assets	35	5
Resources received free of charge - services	268	-
Restoration - recognition of new	117	-
<b>Changes in assets / liabilities</b>		
(Increase) / decrease in net receivables	5,829	(6,069)
(Increase) / decrease in prepayments	21	(316)
Increase / (decrease) in employee provisions	4,196	(899)
Increase / (decrease) in other provisions	92	82
Increase / (decrease) in supplier payables	470	(1,213)
Increase / (decrease) in other payables	(87)	36
Increase / (decrease) in lease incentives	134	297
<b>Net cash from (used by) operating activities</b>	<u>683</u>	<u>(1,692)</u>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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*For the period ended 30 June 2012*

**Note 11: Contingent Assets and Liabilities**

	Claims for damages or costs	
	2012	2011
	\$'000	\$'000
<b>Contingent liabilities</b>		
Balance from previous period	-	-
New	102	-
Re-measurement	-	-
Liabilities recognised	-	-
Obligations expired	-	-
<b>Total contingent liabilities</b>	<b>102</b>	<b>-</b>

**Quantifiable Contingencies**

The schedule of contingencies reports contingent liabilities in respect of claims for damages/costs of \$102,000 (2011: \$0). The amount represents an estimate of the CDPP's liability based on advice from the Courts.

**Unquantifiable Contingencies**

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 organisation's 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.

**Significant Remote Contingencies**

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



**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2012*

**Note 12: Senior Executive Remuneration**

**Note 12A: Senior Executive Remuneration Expenses for the Reporting Period**

	2012	2011
	\$	\$
<b>Short-term employee benefits:</b>		
Salary	7,910,861	7,154,376
Annual leave accrued	584,447	538,557
Bonuses	42,000	40,000
Other allowances	202,356	214,170
<b>Total short-term employee benefits</b>	<u>8,739,664</u>	<u>7,947,103</u>
<b>Post-employment benefits:</b>		
Superannuation	1,305,766	1,254,313
<b>Total post-employment benefits</b>	<u>1,305,766</u>	<u>1,254,313</u>
<b>Other long-term benefits:</b>		
Long service leave	1,070,308	193,016
<b>Total other long-term benefits</b>	<u>1,070,308</u>	<u>193,016</u>
<b>Termination benefits</b>	-	-
<b>Total employment benefits</b>	<u>11,115,738</u>	<u>9,394,432</u>

**Notes**

- Note 12A is prepared on an accrual basis (therefore the bonus expenses disclosed above may differ from the cash 'Bonus paid' in Note 12B).
- Note 12A excludes acting arrangements and part-year service's where total remuneration expensed for a senior executive was less than \$150,000.

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

For the period ended 30 June 2012

**Note 12: Senior Executive Remuneration**

**Note 12B: Average Annual Reportable Remuneration Paid to Substantive Senior Executives During the Reporting Period**

		2012					
Average annual reportable remuneration <sup>1</sup>	Senior Executives No.	Reportable salary <sup>2</sup>	Contributed superannuation <sup>3</sup>	Reportable allowances <sup>4</sup>	Bonus paid <sup>5</sup>	Total	
		\$	\$	\$	\$	\$	
<b>Total remuneration (including part-time arrangements):</b>							
less than \$150,000	4	77,215	12,524	-	500	90,239	
\$150,000 - \$179,999	3	144,523	21,872	-	1,000	167,395	
\$180,000 - \$209,999	13	169,526	28,372	-	1,000	198,898	
\$210,000 - \$239,999	5	185,841	40,665	-	1,000	227,506	
\$240,000 - \$269,999	3	183,972	66,471	-	1,000	251,443	
\$270,000 - \$299,999	-	-	-	-	-	-	
\$300,000 - \$329,999	1	237,611	90,957	-	1,000	329,568	
\$330,000 - \$359,999	-	-	-	-	-	-	
\$360,000 - \$389,999	1	283,869	80,133	-	1,000	365,002	
\$390,000 - \$419,999	-	-	-	-	-	-	
\$420,000 - \$449,999	-	-	-	-	-	-	
\$450,000 - \$479,999	1	398,562	54,031	-	-	452,593	
<b>Total</b>	<b>31</b>						

**Notes**

- This table reports substantive senior executives who received remuneration during the reporting period. Each row is an averaged figure based on headcount for individuals in the band.
- 'Reportable salary' includes the following:
  - gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
  - reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits); and
  - exempt foreign employment income.
- The 'contributed superannuation' amount is the average actual superannuation contributions paid to senior executives in that reportable remuneration band during the reporting period, including any salary sacrificed amounts, as the individuals' payslips.

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

*For the period ended 30 June 2012*

4. 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.
5. 'Bonus paid' represents average actual bonuses paid during the reporting period in that reportable remuneration band. The 'bonus paid' within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the entity during the financial year.
6. Various salary sacrifice arrangements were available to senior executives including superannuation, motor vehicle and expense payment fringe benefits. Salary sacrifice benefits are reported in the 'reportable salary' column, excluding salary sacrificed superannuation, which is reported in the 'contributed superannuation' column.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
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**Note 12B: Substantive Senior Executives during the Reporting Period - cont**

	2011						
	Senior Executives	No.	Reportable salary <sup>2</sup>	Contributed superannuation <sup>3</sup>	Reportable allowances <sup>4</sup>	Bonus paid <sup>5</sup>	Total
			\$	\$	\$	\$	\$
Average annual reportable remuneration <sup>1</sup>							
Total remuneration (including part-time arrangements):							
less than \$150,000		3	79,017	17,794	-	667	97,478
\$150,000 - \$179,999		1	131,186	21,712	-	1,000	153,898
\$180,000 - \$209,999		14	162,616	30,335	-	1,000	193,951
\$210,000 - \$239,999		4	177,998	46,324	-	1,000	225,322
\$240,000 - \$269,999		3	172,671	68,414	-	1,000	242,085
\$270,000 - \$299,999		-	-	-	-	-	-
\$300,000 - \$329,999		1	214,788	91,108	-	1,000	306,896
\$330,000 - \$359,999		-	-	-	-	-	-
\$360,000 - \$389,999		-	-	-	-	-	-
\$390,000 - \$419,999		1	359,968	50,765	-	-	410,733
<b>Total</b>		<b>27</b>					

**Notes**

- This table reports substantive senior executives who received remuneration during the reporting period. Each row is an averaged figure based on headcount for individuals in the band.
- 'Reportable salary' includes the following:
  - gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
  - reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits); and
  - exempt foreign employment income.
- The 'contributed superannuation' amount is the average actual superannuation contributions paid to senior executives in that reportable remuneration band during the reporting period, including any salary sacrificed amounts, as the individuals' payslips.
- 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.
- 'Bonus paid' represents average actual bonuses paid during the reporting period in that reportable remuneration band. The 'bonus paid' within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the entity during the financial year.
- Various salary sacrifice arrangements were available to senior executives including superannuation, motor vehicle and expense payment fringe benefits. Salary sacrifice benefits are reported in the 'reportable salary' column, excluding salary sacrificed superannuation, which is reported in the 'contributed superannuation' column.

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

For the period ended 30 June 2012

**Note 12: Senior Executive Remuneration**

**Note 12C: Other Highly Paid Staff**

	2012					
	Staff No.	Reportable Salary <sup>2</sup> \$	Contributed superannuation <sup>3</sup> \$	Reportable allowances <sup>4</sup> \$	Bonus paid <sup>5</sup> \$	Total \$
Average annual reportable remuneration <sup>1</sup>						
Total remuneration (including part-time arrangements):						
less than \$150,000	-	-	-	-	-	-
\$150,000 - \$179,999	4	131,874	21,167	-	250	153,291
\$180,000 - \$209,999	15	162,586	32,110	-	867	195,563
\$210,000 - \$239,999	1	184,326	29,385	-	1,000	214,711
<b>Total</b>	<b>20</b>					

**Notes**

1. This table reports staff:
  - a) who were employed by the entity during the reporting period;
  - b) whose reportable remuneration was \$150,000 or more for the financial period; and
  - c) were not required to be disclosed in Tables A or B.
 Each row is an averaged figure based on headcount for individuals in the band.
2. 'Reportable salary' includes the following:
  - a) gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
  - b) reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits); and
  - c) exempt foreign employment income.
3. The 'contributed superannuation' amount is the average actual superannuation contributions paid to senior executives in that reportable remuneration band during the reporting period, including any salary sacrificed amounts, as per the individuals' payslips.
4. 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.
5. 'Bonus paid' represents average actual bonuses paid during the reporting period in that reportable remuneration band. The 'bonus paid' within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the entity during the financial year.
6. Various salary sacrifice arrangements were available to senior executives including superannuation, motor vehicle and expense payment fringe benefits. Salary sacrifice benefits are reported in the 'reportable salary' column, excluding salary sacrificed superannuation, which is reported in the 'contributed superannuation' column.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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*For the period ended 30 June 2012*

**Note 12C: Other Highly Paid Staff - cont**

	2011					
	Staff No.	Reportable Salary <sup>2</sup> \$	Contributed superannuation <sup>3</sup> \$	Reportable <sup>4</sup> allowances <sup>4</sup> \$	Bonus paid <sup>5</sup> \$	Total \$
Average annual reportable remuneration <sup>1</sup>						
Total remuneration (including part-time arrangements):						
less than \$150,000	-	-	-	-	-	-
\$150,000 - \$179,999	13	126,038	36,975	-	-	163,013
\$180,000 - \$209,999	12	166,293	28,681	-	-	194,974
<b>Total</b>	<b>25</b>					

**Notes**

1. This table reports staff:
  - a) who were employed by the entity during the reporting period;
  - b) whose reportable remuneration was \$150,000 or more for the financial period; and
  - c) were not required to be disclosed in Tables A or B.
 Each row is an averaged figure based on headcount for individuals in the band.
2. 'Reportable salary' includes the following:
  - a) gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
  - b) reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits); and
  - c) exempt foreign employment income.
3. The 'contributed superannuation' amount is the average actual superannuation contributions paid to senior executives in that reportable remuneration band during the reporting period, including any salary sacrificed amounts, as per the individuals' payslips.
4. 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.
5. 'Bonus paid' represents average actual bonuses paid during the reporting period in that reportable remuneration band. The 'bonus paid' within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the entity during the financial year.
6. Various salary sacrifice arrangements were available to senior executives including superannuation, motor vehicle and expense payment fringe benefits. Salary sacrifice benefits are reported in the 'reportable salary' column, excluding salary sacrificed superannuation, which is reported in the 'contributed superannuation' column.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2012*

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**Note 13: Remuneration of Auditors**

	2012	2011
	\$000	\$000

Financial statement audit services were provided free of charge to the CDPP by the Australian National Audit Office (ANAO).

**Fair value of the services provided**

Financial statement audit services	<u>54</u>	<u>54</u>
<b>Total</b>	<u>54</u>	<u>54</u>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2012*

**Note 14: Financial Instruments**

	2012	2011
	\$000	\$000
<b>Note 14A: Categories of Financial Instruments</b>		
<b>Financial Assets</b>		
<b>Loans &amp; Receivables:</b>		
Cash & cash equivalents	218	241
Trade and other receivables	534	358
<b>Total</b>	<b>752</b>	<b>599</b>
<b>Carrying amount of financial assets</b>	<b>752</b>	<b>599</b>
<b>Financial Liabilities</b>		
<b>At amortised cost:</b>		
Suppliers payables	7,242	6,900
Interest bearing liabilities	1,038	904
<b>Total</b>	<b>8,280</b>	<b>7,804</b>
<b>Carrying amount of financial liabilities</b>	<b>8,280</b>	<b>7,804</b>

**Note 14B: Net Income and Expense from Financial Assets**

There is no income or expenses from financial assets in 2011-12 or 2010-11.

**Note 14C: Net Income and Expense from Financial Liabilities**

There is no income or expenses from financial liabilities in 2011-12 or 2010-11.

**Note 14D: Fair Value of Financial Instruments**

The carrying value equals the fair value of the financial assets and liabilities in 2011-2012 and 2010-2011.

**Note 14E: Credit Risk**

The CDPP was exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk was the risk that arises from potential default of a debtor. This amount was equal to the total amount of the trade receivables (2011-2012: \$535,000 and 2010-2011: \$358,000). The CDPP has policies and procedures that guide debt recovery techniques that are to be applied. The CDPP held no collateral to mitigate against credit risk.

**Credit quality of financial instruments not past due or individually determined as impaired**

	Not past due nor impaired	Not past due nor impaired	Past due or impaired	Past due or impaired
	2012	2011	2012	2011
	\$000	\$000	\$000	\$000
Cash and cash equivalents	218	241	-	-
Receivables for goods and services	528	358	7	-
<b>Total</b>	<b>746</b>	<b>599</b>	<b>7</b>	<b>-</b>

The CDPP has assessed the risk of the default on payment and had allocated \$1,000 in 2011-2012 (2010-2012: nil) to an impairment allowance account.



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

*For the period ended 30 June 2012*

**Note 14E: Credit Risk - cont'd**

**Ageing of financial assets that were past due but not impaired for 2012**

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Receivables for goods and services	528	-	6	-	534
<b>Total</b>	<b>528</b>	<b>-</b>	<b>6</b>	<b>-</b>	<b>534</b>

**Ageing of financial assets that were past due but not impaired for 2011**

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Receivables for goods and services	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

There are no financial assets which have been individually assessed as impaired.

**Note 14F: Liquidity Risk**

The CDPP's financial liabilities were payables and other interest bearing liabilities. The exposure to liquidity risk is based on the notion that CDPP will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely as the CDPP is appropriated funding from the Australian Government and 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 were made when due and has no past experience of default.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2012*

**Note 14F: Liquidity Risk - cont'd**

**Maturities for non-derivative financial liabilities 2012**

	On demand \$000	within 1 year \$000	1 to 2 years \$000	2 to 5 years \$000	> 5 years \$000	Total \$000
Supplier payables	-	5,241	1,092	909	-	7,242
Interest bearing liabilities	-	261	221	278	278	1,038
<b>Total</b>	-	<b>5,502</b>	<b>1,313</b>	<b>1,187</b>	<b>278</b>	<b>8,280</b>

**Maturities for non-derivative financial liabilities 2011**

	On demand \$000	within 1 year \$000	1 to 2 years \$000	2 to 5 years \$000	> 5 years \$000	Total \$000
Supplier payables	-	4,401	498	1,967	34	6,900
Interest bearing liabilities	-	204	204	283	213	904
<b>Total</b>	-	<b>4,605</b>	<b>702</b>	<b>2,250</b>	<b>247</b>	<b>7,804</b>

The CDPP had no derivative financial liabilities in either 2011-2012 or 2010-2011.

**14G: Market Risk**

The CDPP held basic financial instruments that did not expose the CDPP to certain market risks, such as 'Currency risk' and 'Other price risk'. There were no interest-bearing items on the balance sheet.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2012*

**Note 15: Financial Assets Reconciliation**

	2012	2011
	\$'000	\$'000
<b>Total financial assets as per balance sheet</b>	<b>69,199</b>	75,050
Less: non-financial instrument components		
Appropriations Receivable	<b>67,929</b>	73,939
Other Receivables	<b>518</b>	512
Total non-financial instrument components	<u><b>68,447</b></u>	<u>74,451</u>
<b>Total financial assets as per financial instruments note</b>	<u><b>752</b></u>	<u>599</u>

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

*For the period ended 30 June 2012*

**Administered Expenses**

	2012	2011
	\$	\$

**EXPENSES**

**Note 16: Write-down and Impairment of Assets**

**Asset write-downs and impairments from:**

Fines and costs receivables	6,599,552	1,477,390
(Decrease) Increase in provision for doubtful debts	(5,575,955)	150,104
<b>Total write-down and impairment of assets</b>	<b>1,023,597</b>	<b>1,627,494</b>

**Administered Income**

	2012	2011
	\$	\$

**OWN-SOURCE REVENUE**

**Non-Taxation Revenue**

**Note 17: Fines and Costs Revenue**

Fines and costs	413,882	2,946,496
<b>Total fines and costs revenue</b>	<b>413,882</b>	<b>2,946,496</b>

**Note 18: Other Revenue**

Other	-	370
<b>Total other revenue</b>	<b>-</b>	<b>370</b>

**GAINS**

**Note 19: Reversal of Previous Asset Write-downs**

Reinstate receivables previously written-off	171,340	223,995
<b>Total reversal of previous asset write-downs</b>	<b>171,340</b>	<b>223,995</b>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS		
NOTES TO THE SCHEDULE OF ADMINISTERED ITEMS		
As at 30 June 2012		
<b>Note 20: Administered Financial Assets</b>		
	2012	2011
<b>FINANCIAL ASSETS</b>	<b>\$</b>	<b>\$</b>
<b>Note 20A: Trade and Other Receivables</b>		
<b>Other receivables:</b>		
Fines	-	6,412,786
<b>Total other receivables</b>	<b>-</b>	<b>6,412,786</b>
<b>Total receivables (gross)</b>	<b>-</b>	<b>6,412,786</b>
<b>Less: Impairment allowance account:</b>		
Other	-	(5,575,955)
<b>Total impairment allowance account</b>	<b>-</b>	<b>(5,575,955)</b>
<b>Total other receivables (net)</b>	<b>-</b>	<b>836,831</b>
<b>Receivables are expected to be recovered in:</b>		
No more than 12 months	-	373,931
More than 12 months	-	462,900
<b>Total trade and other receivables (net)</b>	<b>-</b>	<b>836,831</b>
<b>Receivables were aged as follows:</b>		
Not overdue	-	388,005
Overdue by:		
0 to 30 days	-	139,616
31 to 60 days	-	148,315
61 to 90 days	-	120,337
More than 90 days	-	5,616,513
<b>Total receivables (gross)</b>	<b>-</b>	<b>6,412,786</b>
<b>The impairment allowance account is aged as follows:</b>		
Not overdue	-	(95,765)
Overdue by:		
0 to 30 days	-	(58,470)
31 to 60 days	-	(74,497)
61 to 90 days	-	(72,352)
More than 90 days	-	(5,274,871)
<b>Total impairment allowance account</b>	<b>-</b>	<b>(5,575,955)</b>
Other receivables were with entities external to the Australian Government. Credit terms are net 30 days (2010-11: 30 days)		
<b>Reconciliation of the Impairment Allowance Account:</b>		
<b>Opening balance</b>	<b>(5,575,955)</b>	(5,425,851)
Amounts written off	-	1,477,390
Amounts recovered and reversed	-	(223,995)
Increase/decrease recognised in net surplus	<b>5,575,955</b>	(1,403,499)
<b>Closing balance</b>	<b>-</b>	<b>(5,575,955)</b>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO THE SCHEDULE OF ADMINISTERED ITEMS**  
*As at 30 June 2012*

**Note 21: Administered Payables**

	2012	2011
	\$	\$
<b>PAYABLES</b>		
<b>Note 21: Other Payables</b>		
Other	-	150
<b>Total other payables</b>	<u>-</u>	<u>150</u>
<b>Other payables expected to be settled within 12 months:</b>		
External	-	150
<b>Total other payables</b>	<u>-</u>	<u>150</u>

**Note 22: Administered Cash Flow Reconciliation**

	2012	2011
	\$	\$
<b>Reconciliation of cash and cash equivalents as per Administered Schedule of Assets and Liabilities to Administered Cash Flow Statement</b>		
<b>Cash and cash equivalents as per:</b>		
Schedule of administered cash flows	-	-
Schedule of administered assets and liabilities	-	-
<b>Difference</b>	<u>-</u>	<u>-</u>
<b>Reconciliation of net cost of services to net cash from operating activities:</b>		
Net cost of services	458,451	1,997,013
Add refunds	<u>(60,145)</u>	<u>(23,544)</u>
<b>Net cash from (used by) operating activities</b>	<u>398,306</u>	<u>1,973,469</u>

**Note 23: Administered Contingent Assets and Liabilities**

**Quantifiable Administered Contingencies**

Since 30 June 2012 to the reporting date, the courts have not ordered fines and costs that are reportable in the CDPP's financial statements (2011: \$362,640).

**Unquantifiable Administered Contingencies**

As at 30 June 2012, the CDPP did not have unquantifiable contingencies.

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

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.

**Significant Remote Administered Contingencies**

The CDPP had no significant remote contingencies.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO THE SCHEDULE OF ADMINISTERED ITEMS**  
*For the period ended 30 June 2012*

**Note 24: Administered Financial Instruments**

	2012	2011
	\$	\$
<b>Note 24A: Categories of Financial Instruments</b>		
<b>Financial Assets</b>		
Nil	-	-
<b>Carrying amount of financial assets</b>	<u>-</u>	<u>-</u>
<b>Financial Liabilities</b>		
Other payables	-	150
<b>Carrying amount of financial liabilities</b>	<u>-</u>	<u>150</u>

**Note 24B: Net Income and Expense from Financial Assets**

There is no net income or expenses from financial assets in 2011-12 or 2010-11.

**Note 24C: Net Income and Expense from Financial Liabilities**

There is no net income and expenses from financial liabilities in 2011-12 or 2010-11.

**Note 24D: Fair Value of Financial Instruments**

The carrying value equals the fair value of the financial assets and liabilities in 2011-2012 and 2010-2011.

**Note 24E: Credit Risk**

The CDPP was exposed to minimal credit risk as no Administered loans and receivables were held.

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

*For the period ended 30 June 2012*

**Note 24: Administered Financial Instruments - cont'd**

**Note 24F: Liquidity Risk**

The CDPP's financial liabilities were payables. The exposure to liquidity risk is based on the notion that CDPP will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely as the CDPP is appropriated funding from the Australian Government and 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 were made when due and has no past experience of default.

**Maturities for non-derivative financial liabilities 2012**

	On demand \$	1 to 2 years \$	2 to 5 years \$	> 5 years \$	Total \$
At amortised cost:					
Payables-suppliers	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

**Maturities for non-derivative financial liabilities 2011**

	On demand \$	1 to 2 years \$	2 to 5 years \$	> 5 years \$	Total \$
At amortised cost:					
Payables-suppliers	150	-	-	-	150
<b>Total</b>	<b>150</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>150</b>

The Office has no derivative financial liabilities in either 2011-2012 or 2010-2011.

**Note 24G: Market Risk**

The CDPP held basic financial instruments that did not expose the CDPP to certain market risks, such as 'Currency risk' and 'Other price risk'.

There were no interest-bearing items on the balance sheet.



OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
For the period ended 30 June 2012

Note 25: Appropriations

Table A: Annual Appropriations (Recoverable GST exclusive)

	2012 Appropriations										Appropriation applied in 2012 (current and prior years) \$'000	Variance \$'000	
	Appropriation Act				FIMA Act								
	Annual Appropriation \$'000	Appropriations Reduced \$'000	Advance to Finance Minister \$'000	Total \$'000	Section 30 \$'000	Section 31 \$'000	Section 32 \$'000	Section 33 \$'000	Section 34 \$'000	Section 35 \$'000			Total Appropriation \$'000
<b>DEPARTMENTAL</b>													
Ordinary annual services	89,199	-	-	-	1,548	3,846	-	-	-	-	94,593	99,055	(4,462)
Other services	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity	-	-	-	-	-	-	-	-	-	-	-	-	-
Loans	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Departmental</b>	<b>89,199</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,548</b>	<b>3,846</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>94,593</b>	<b>99,055</b>	<b>(4,462)</b>
	2011 Appropriations												
	Appropriation Act				FIMA Act								
	Annual Appropriation \$'000	Appropriations Reduced \$'000	Advance to Finance Minister \$'000	Total \$'000	Section 30 \$'000	Section 31 \$'000	Section 32 \$'000	Section 33 \$'000	Section 34 \$'000	Section 35 \$'000	Total Appropriation \$'000	Appropriation applied in 2011 (current and prior years) \$'000	Variance \$'000
<b>DEPARTMENTAL</b>													
Ordinary annual services	99,600	(378)	-	-	138	3,494	-	-	-	-	102,854	97,396	5,458
Other services	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity	-	-	-	-	-	-	-	-	-	-	-	-	-
Loans	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Departmental</b>	<b>99,600</b>	<b>(378)</b>	<b>-</b>	<b>-</b>	<b>138</b>	<b>3,494</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>102,854</b>	<b>97,396</b>	<b>5,458</b>

Note:

1. Appropriation Act (No.1) 2010-11: s.10. On the 29th of June 2011, the Finance Minister determined a reduction in departmental appropriations following a request by the Attorney General of Australia. The amount of the reduction determined under Appropriation Act (No. 1) of 2010-11 was \$378,000.



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

For the period ended 30 June 2012

**Note 25: Appropriations (cont'd)**

**Table C: Unspent Annual Appropriations ('Recoverable GST exclusive')**

	2012	2011
	\$'000	\$'000
<b>DEPARTMENTAL</b>		
Cash	218	241
Appropriation Act (No.1) 2010-11	65	5,664
Appropriation Act (No.1) 2009-10	9,320	9,732
Appropriation Act (No.1) 2008-09	13,907	13,907
Appropriation Act (No.1) 2007-08	17,609	17,609
Appropriation Act (No.1) 2006-07	13,954	13,954
Appropriation Act (No.1) 2005-06	5,315	5,315
Appropriation Act (No.1) 2004-05	7,758	7,758
	<b>68,146</b>	<b>74,180</b>

**Table D: Special Appropriations ('Recoverable GST exclusive')**

Authority	Type	Purpose	Appropriation applied	
			2012	2011
			\$'000	\$'000
Financial Management and Accountability Act 1997 s.28(2) (Administered)		To provide an appropriation where an Act or other law required or permits the repayment of an amount received by the Commonwealth and apart from this Refund section there is no specific appropriation for the repayment.	60	24
<b>Total</b>			<b>60</b>	<b>24</b>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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*For the period ended 30 June 2012*

**Note 26: Special Accounts**

	2012	2011
<b>Services for Other Entities and Trust Moneys - Office of the Director of Public Prosecutions Special Account</b>	<b>\$</b>	<b>\$</b>
<i>Appropriation: Financial Management and Accountability Act 1997 section 20</i>		
<i>Establishing Instrument: Financial Management and Accountability Determination 2009/29</i>		
<p><i>Purpose:</i> (a) disburse amounts held on trust or otherwise for the benefit of a person other than the Commonwealth; (b) disburse amounts in connection with services performed on behalf of other governments and bodies that are not FMA Act agencies; (c) repay amount where an Act or other law requires or permits the repayments of an amount received; and (d) reduce the balance of the Special Account (and, therefore, the available appropriation for the Account) without making a real or notional payment.</p>		

There were no transactions during 2011-12 or 2010-11.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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**Note 27: Compliance with Statutory Conditions for Payments from the Consolidated Revenue Fund**

Section 83 of the Constitution provides that no amount may be paid out of the Consolidated Revenue Fund except under an appropriation made by law. The Department of Finance and Deregulation provided information to all agencies in 2011-12 regarding the need for risk assessments in relation to compliance with statutory conditions on payments from special appropriations, including special accounts.

During 2011-12, the CDPP developed a plan to review exposure to risks of not complying with statutory conditions on payments from special appropriations and special accounts. The plan involved:

- identifying each special appropriation and special account;
- determining the risk of non-compliance by assessing the difficulty of administering the statutory conditions and assessing the extent to which existing payment systems and processes satisfy those conditions; and
- determining procedures to confirm risk assessments in medium risk cases and to quantify the extent of non-compliance, if any, in higher risk situations.

The CDPP's special appropriation and special account are not subject to statutory conditions for payment.

Accordingly, payments made from the special appropriation and special account were assessed as presenting a low risk of contravening Section 83.

The work conducted to date has identified no issues of compliance with Section 83.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
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**Note 28: Compensation and Debt Relief**

	2012 \$	2011 \$
<b>Compensation and Debt Relief - Departmental</b>		
No 'Act of Grace payments' were expended during the reporting period (2011-2012).	Nil	Nil
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997 (2011-2012)	Nil	Nil
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period. (2011-2012)	Nil	Nil
No ex-gratia payments were provided for during the reporting period. (2011-2012).	Nil	Nil
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the Public Service Act 1999 (PS Act) during the reporting period (2011-2012).	Nil	Nil
<b>Compensation and Debt Relief - Administered</b>		
No 'Act of Grace payments' were expended during the reporting period (2011-2012).	Nil	Nil
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997(2011-2012).	Nil	Nil
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period. (2011-2012)	Nil	Nil
No ex-gratia payments were provided for during the reporting period. (2011-2012).	Nil	Nil
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the Public Service Act 1999 (PS Act) during the reporting period (2011-2012).	Nil	Nil

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2012*

**Note 29: Reporting of Outcomes**

The CDPP has only one outcome.

**Note 29A: Net Cost of Outcome Delivery**

	Outcome 1	
	2012	2011
	\$'000	\$'000
<b>Departmental</b>		
Expenses	(105,034)	(98,153)
Own-source income	3,500	3,681
<b>Administered</b>		
Expenses	(1,024)	(1,627)
Own-source income	585	3,170
<b>Net cost/(contribution) of outcome delivery</b>	<b>(101,973)</b>	<b>(92,929)</b>

**Note 29B: Major Classes of Departmental Expense, Income, Assets and Liabilities by Outcome**

<b>Expenses</b>		
Employee benefits	(59,960)	(56,042)
Supplier	(39,505)	(35,987)
Depreciation and amortisation	(4,917)	(4,924)
Other	(652)	(1,200)
<b>Total</b>	<b>(105,034)</b>	<b>(98,153)</b>
<b>Income</b>		
Income from government	86,224	95,927
Sales of goods and services	3,030	3,164
Other non-taxation revenue	470	517
<b>Total</b>	<b>89,724</b>	<b>99,608</b>
<b>Assets</b>		
Cash and cash equivalents	218	241
Trade and other receivables	68,981	74,809
Land and buildings	6,272	8,488
Property, plant and equipment	8,592	5,845
Intangibles	1,251	1,175
Other non financial assets	970	991
<b>Total</b>	<b>86,284</b>	<b>91,549</b>
<b>Liabilities</b>		
Suppliers	7,242	6,900
Other payables	1,531	1,490
Lease incentives	1,038	904
Employee provisions	19,304	15,108
Other provisions	2,793	2,701
<b>Total</b>	<b>31,908</b>	<b>27,103</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that were eliminated in calculating the actual Budget outcome.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
 NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
 For the period ended 30 June 2012

**Note 29: Reporting of Outcomes - cont'd**

**Note 29C: Major Classes of Administered Expenses, Income, Assets and Liabilities by Outcomes**

	Outcome 1	
	2012 \$'000	2011 \$'000
<b>Administered expenses</b>		
Write-down of assets	1,024	1,627
<b>Total</b>	<b>1,024</b>	<b>1,627</b>
<b>Administered income</b>		
Fines and costs	414	2,946
Other non-taxation revenues	171	224
<b>Total</b>	<b>585</b>	<b>3,170</b>
<b>Administered assets</b>		
Cash and cash equivalents	-	-
Receivables	-	837
<b>Total</b>	<b>-</b>	<b>837</b>
<b>Administered liabilities</b>		
Payables	-	-
<b>Total</b>	<b>-</b>	<b>-</b>
Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that were eliminated in calculating the actual Budget outcome.		



**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2012*

**Note 30: Net Cash Appropriation Arrangements**

	2011 \$'000	2011 \$'000
<b>Total comprehensive income (loss) less depreciation/amortisation expenses previously funded through revenue appropriations<sup>1</sup></b>	<b>(10,393)</b>	6,379
<i>Plus</i> : depreciation/amortisation expenses previously funded through revenue appropriation	<u>(4,917)</u>	<u>(4,924)</u>
<b>Total comprehensive income (loss) - as per the Statement of Comprehensive Income</b>	<b><u>(15,310)</u></b>	<b><u>1,455</u></b>

1. From 2010-11, the Government introduced net cash appropriation arrangements, where revenue appropriations for depreciation/amortisation expenses ceased. Entities now receive a separate capital budget provided through equity appropriations. Capital budgets are to be appropriated in the period when cash payment for capital expenditure is required.

## Legislation Abbreviations

<i>ACC Act</i>	<i>Australian Crime Commission Act 2002 (Cth)</i>
<i>AFP Act</i>	<i>Australian Federal Police Act 1979 (Cth)</i>
<i>Aged Care Act</i>	<i>Aged Care Act 1997</i>
<i>ASIC Act</i>	<i>Australian Securities and Investments Commission Act 2001 (Cth)</i>
<i>Civil Aviation Act</i>	<i>Civil Aviation Act 1988</i>
<i>Corporations Act</i>	<i>Corporations Act 2001 (Cth)</i>
<i>Criminal Code</i>	<i>Commonwealth Criminal Code (Criminal Code Act 1995 (Cth))</i>
<i>Crimes Act</i>	<i>Crimes Act 1914 (Cth)</i>
<i>CSB Act</i>	<i>Crimes (Superannuation Benefits) Act 1989 (Cth)</i>
<i>Customs Act</i>	<i>Customs Act 1901 (Cth)</i>
<i>DPP Act</i>	<i>Director of Public Prosecutions Act 1983 (Cth)</i>
<i>FMA Act</i>	<i>Financial Management and Accountability Act 1997</i>
<i>FOI Act</i>	<i>Freedom of Information Act 1982</i>
<i>Migration Act</i>	<i>Migration Act 1958</i>
<i>NCCP Act</i>	<i>National Consumer Credit Protection Act 2009</i>
<i>POC Act 1987</i>	<i>Proceeds of Crime Act 1987 (Cth)</i>
<i>POC Act 2002</i>	<i>Proceeds of Crime Act 2002 (Cth)</i>
<i>WHS Act</i>	<i>Work Health and Safety Act 2011</i>

## Acronyms and Abbreviations

<u>ABN</u>	Australian Business Number
<u>ABS</u>	Australian Bureau of Statistics
<u>ACBPS</u>	Australian Customs and Border Protection Service
<u>ACBPS officers</u>	Australian Customs and Border Protection Service officers
<u>ACC</u>	Australian Crime Commission
<u>ACCC</u>	Australian Competition and Consumer Commission
<u>ACV</u>	Australian Customs Vessel
<u>AEC</u>	Australian Electoral Commission
<u>AFMA</u>	Australian Fisheries Management Authority
<u>AFP</u>	Australian Federal Police
<u>AGD</u>	Attorney-General's Department
<u>AGIMO</u>	Australian Government Information Management Office
<u>AGS</u>	Australian Government Solicitor
<u>AFZ</u>	Australian Fishing Zone
<u>AMSA</u>	Australian Maritime Safety Authority
<u>ANAO</u>	Australian National Audit Office
<u>APS</u>	Australian Public Service
<u>APSC</u>	Australian Public Service Commission
<u>AQIS</u>	Australian Quarantine and Inspection Service
<u>ASIC</u>	Australian Securities and Investments Commission
<u>ASIO</u>	Australian Security Intelligence Organisation
<u>ASX</u>	Australian Stock Exchange
<u>ATO</u>	Australian Taxation Office
<u>ATM</u>	Automatic Teller Machine
<u>AUD</u>	Australian dollars
<u>AUSTRAC</u>	Australian Transaction Reports and Analysis Centre
<u>BAS</u>	Business Activity Statement

CARS	Criminal Assets Recording System
CASA	Civil Aviation Safety Authority
CCTV	Closed-circuit television
CDPP	Commonwealth Director of Public Prosecutions
CFD	Contracts for Difference
CPR	Commonwealth Procurement Rule
CRIMS	Case Reporting and Information Management System
CSCL	China Shipping Container Lines
defendant	a person who has been charged with an offence
DFAT	Department of Foreign Affairs and Trade
DHS	Department of Human Services
DPP	Director of Public Prosecutions
DNA	Deoxyribonucleic acid
EFTPOS	Electronic Funds Transfer at Point Of Sale
EMS	Express Mail Service
EWP	Employee Wellbeing Program
FMIS	Financial Management Information System
FOI	Freedom of Information
GBL	Gamma butyrolactone
GHB	Gamma hydroxybutyrate
GPS	Global Positioning System
GST	Goods and Services Tax
HR	Human Resources
HRMIS	Human Resource Management Information System
ICT	Information and Communication Technology
IPS	Information Publication Scheme
IT	Information Technology
ITSA	Insolvency and Trustee Service Australia
LPO	Licensed Post Office
LSS	Litigation Support System

<u>MDMA</u>	<u>methylenedioxyamphetamine (otherwise known as ecstasy)</u>
<u>MOPED</u>	<u>Managing Officers, Prosecutors and Executive Directors</u>
<u>MOU</u>	<u>Memorandum of Understanding</u>
<u>NMI</u>	<u>National Measurement Institute</u>
<u>PDC</u>	<u>Phone Directories Co. Pty Ltd</u>
<u>PPO</u>	<u>Pecuniary Penalty Order</u>
<u>PRC</u>	<u>Peoples Republic of China</u>
<i><u>Prosecution Policy</u></i>	<i><u>Prosecution Policy of the Commonwealth</u></i>
<u>PSFEL</u>	<u>Provisional Fisheries Surveillance Enforcement Line</u>
<u>SES</u>	<u>Senior Executive Service</u>
<u>SIEV</u>	<u>suspected irregular entry vessel</u>
<u>SMS</u>	<u>Short Message Service</u>
<u>The taskforce</u>	<u>Permanent Criminal Assets Confiscation Taskforce</u>
<u>USD</u>	<u>United States Dollar</u>



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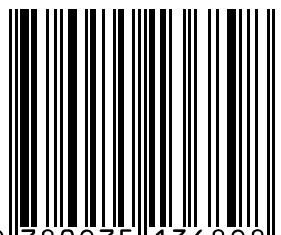
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