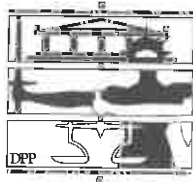




Commonwealth
Director of Public Prosecutions
Annual Report
1994-95





Commonwealth Director
of
Public Prosecutions

Annual Report
1994-95

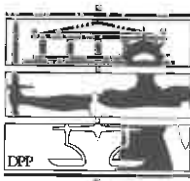


Commonwealth of Australia 1995

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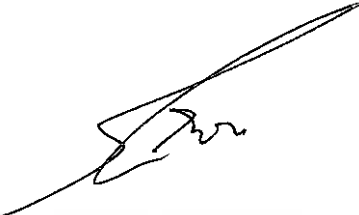
Commonwealth Director of Public Prosecutions

The Hon. Michael Lavarch MP
Attorney-General
Parliament House
CANBERRA ACT 2600

My dear Attorney,

I have the honour to submit my report on the operations of the Office of the Director of Public Prosecutions for the year ending 30 June 1995, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully,



MICHAEL ROZENES QC
Director
27 September 1995

Contents

	Page
Compliance statement	ix
Director's overview	xi
Chapter 1	Office of the Director of Public Prosecutions
	Establishment 1
	Vision and corporate plan 2
	Role 2
	Functions and powers 3
	Organisation 4
	Senior management chart 6
Chapter 2	Exercise of statutory powers
	No bill applications 7
	Appeals 8
	Indemnities 9
	Taking matters over 10
	Ex officio indictments 10
Chapter 3	General prosecutions
	New South Wales 11
	Victoria 16
	Queensland 21
	Western Australia 27
	South Australia 30
	Australian Capital Territory 32
	Tasmania 35
	Northern Territory 36
Chapter 4	Corporate prosecutions
	Caseloads 39
	New South Wales 40
	Victoria 44
	Queensland 48
	South Australia 52
	Western Australia 55
	Tasmania 60
	Northern Territory 60
	Australian Capital Territory 60
Chapter 5	Criminal assets
	Legislation 61
	Civil remedies 62
	Practice 62
	Other functions 62
	Structure 63
	Criminal Assets Recording System 64
	National Agencies Criminal Assets Conference 64
	Criminal Assets Trust Fund 64

Contents

	New South Wales	65
	Victoria	68
	Queensland	69
	South Australia	70
Chapter 6	Law reform and other issues	
	Criminal legislation generally	77
	Commonwealth sentencing legislation	77
	Review of 1C, Crimes Act	77
	Direction under section 8, DPP Act	78
	Contempt proceeding	78
	<i>Jacobson and another v Rogers:</i>	
	Search warrants and the shield of the Crown	79
	<i>Ridgeway v R</i>	80
	Model Criminal Code:	
	blackmail, forgery, bribery and secret commissions	82
	<i>Criminal Code Act 1995 and Crimes Amendment Bill 1995</i>	83
	Review of litigation costs	83
Chapter 7	Resource management	
	Human resources	85
	Information technology	94
	Libraries	95
	Public relations	95
	Financial management	96
	Accounting Policy and Processes	97
	Capital works management	98
	Consultancy services	99
	Fraud control and internal audit	100
	Reports by the Auditor-General	100
	Status of women	101
	Environmental matters and energy management	102
	Freedom of information	102
	Business regulations	102
	Public comments	102
	Privacy	102
Chapter 8	Prosecution statistics	
	Tables 1 to 7	103
Appendix	Statement under section 8 of the Freedom of Information Act	117
Glossary		119
Compliance index		121
Financial statements		123
Index (alphabetical)		161

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Compliance statement

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

Section 33(1) requires that the Director of Public Prosecutions shall, as soon as practicable after 30 June each year, prepare and furnish a report to the Attorney-General with regard to the operations of the Office during the year.

Section 33(2) provides that the Attorney-General shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of receipt.

The report has been prepared in accordance with guidelines for the preparation of annual reports that were tabled in the House of Representatives on 10 April 1991 and in the Senate on 11 April 1991.

As aids to access, the report includes a table of contents, a glossary, an alphabetical index and a compliance index showing where each item that is required under the guidelines and which is applicable to the DPP, can be found.

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

- *Prosecution Policy of the Commonwealth*;
- *DPP Corporate Plan*;
- *DPP Information Booklet*;
- *DPP Civil Remedies Report 1985-87*; and
- *the Program Performance Statement for the Attorney-General's Portfolio*.

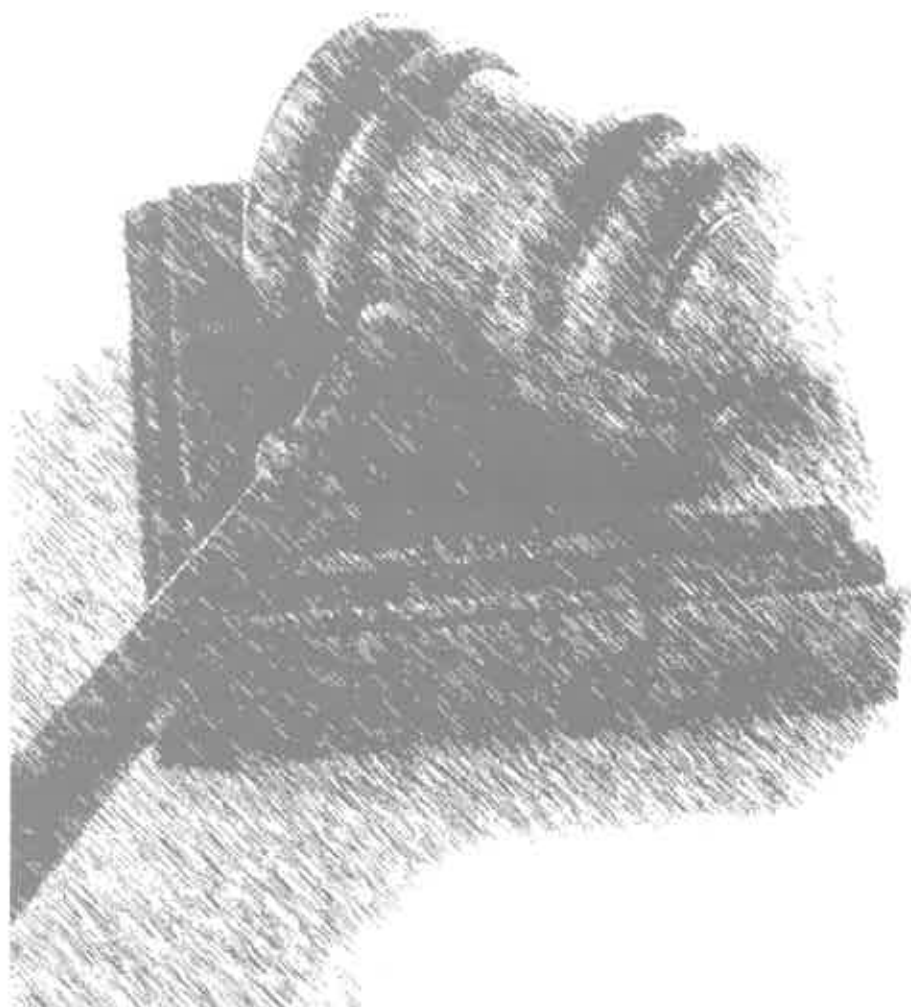
The DPP has also produced a short information video entitled *Prosecuting in the Public Interest*, which outlines the work of the office and where it fits into the criminal justice system.

Copies of the documents can be obtained by writing to the DPP at any of the addresses that appear at the start of this report. Copies of the video are also available from each office.

The DPP has also published a 'home page' on the Internet.

The address is: <http://www.nla.gov.au/dpp/dpphp.html>

Any questions or comments about this report may be directed to the DPP Journalist who works in DPP Head Office and who may be contacted during business hours by telephoning 06 270 5666.



Director's overview

The past year has been one of considerable work and steady achievement for the Office of the Commonwealth DPP.

There will be setbacks for any organisation of the size, and with the range of functions, of the DPP, but there is much to be positive about.

The challenges facing the DPP remain much the same as for previous years. They include the need to find better ways of presenting large commercial cases in a form (and in a time-frame) that the criminal justice system can accommodate: And the demand which faces all Commonwealth agencies of being called on to do more with less. The body of this report outlines the way that the DPP has responded to these and other challenges over the past year.

One development which should be noted involves the impact on the prosecution process of the High Court's decision in *Dietrich*. The High Court has ruled, in effect, that a court should not allow a trial to proceed against an unrepresented defendant if the matter involves serious criminal charges and the defendant cannot afford to pay for legal representation. The High Court ruled that the trial judge should stay the trial, indefinitely if necessary, unless legal representation is made available.

The *Dietrich* decision has had a major impact in the prosecution of corporate offences where the trials tend to be lengthy, and therefore expensive, and where defendants sometimes have difficulty obtaining legal aid. However, the problem created by *Dietrich* can arise in any large case where the cost of legal representation will be high. It is not uncommon for defendants in large cases to claim that they cannot afford representation. The DPP has and will continue to vigorously oppose any *Dietrich* application where there is reason to suspect that the defendant is not genuinely indigent (without the means to pay for legal representation). However, if the defendant can satisfy the court that he or she cannot afford legal representation, there is usually little the DPP can do to bring the case to trial. The only practical solution in such cases is for government to ensure that legal representation is available. Otherwise, considerable time, energy and resources will be wasted in investigating serious criminal charges and instituting a prosecution without guilt or innocence ever being determined.

The past year saw a continued flow of corporations cases through the Office. When it was first set up, the Australian Securities Commission identified a number of corporations for investigation in relation to events which occurred in the 1980s. The most significant of these investigations became known as the 'Big 16'. Those investigations have now been completed. In 12 of the 16 matters charges have been laid against company officers who are alleged to have committed criminal offences. In the other four cases there was



Michael Rozemes QC,
Commonwealth Director of Public Prosecutions.

Director's overview

found to be no basis for prosecution. A number of those charged in relation to the 'Big 16' matters have now been convicted and imprisoned. With one exception, those defendants remaining to be dealt with on these matters, have all been committed for trial.

The remaining trials are likely to be lengthy and difficult. For example, a recently-completed trial - that arising from the collapse of Growth Industries - lasted 14 weeks. Taking into account the possibility that there will be appeals, it will be some time yet before all the remaining matters are concluded.

While most media attention has been directed to the 'Big 16' matters, there has been a steady stream of prosecutions of company officers for transgressions which are serious but, perhaps, less spectacular than those identified with the 1980s. For example, during the 12 months covered by this report, 88 corporate prosecutions have been instituted for offences that can result in imprisonment. During the same period, 42 company officers were found guilty of serious corporate offences. Of these, 16 received jail sentences (ranging as high as eight years with a six year minimum), nine received suspended sentences, three received community service orders, 10 were fined and four were placed on good behaviour bonds. In addition, all but four of the officers were automatically disqualified from managing a corporation for five years.

These penalties indicate that the courts will take a serious view of breaches of the Corporations Law in any case which involves a criminal disregard of the duties imposed on the officer of a company.

Finally, I think it worth noting that the last year saw continuing positive developments in the level of liaison and cooperation between agencies involved in Commonwealth law enforcement. HOCOLEA, or the Heads of Commonwealth Law Enforcement Agencies, provides an invaluable forum for communication at senior level and the arrival on the scene of the Commonwealth Law Enforcement Board promises to lead to improved levels of coordination of the activities of different agencies. At the same time, the DPP is moving close to finalising a memorandum of understanding with the Attorney-General's Department which will, for the first time, set out detailed liaison arrangements for areas where the activities of the two agencies overlap. Cooperation between different agencies is essential to effective law enforcement. The continued developments in this area are welcomed.

I thank the staff of my Office for their efforts over the year and I also thank my state counterparts and the heads of the various investigative agencies we deal with for their good work and cooperation over the past 12 months.



Michael Rozenes QC
Commonwealth Director of Public Prosecutions

Chapter 1

Office of the Director of Public Prosecutions



ESTABLISHMENT

The DPP was established under the *Director of Public Prosecutions Act 1983* and began operations in 1984. The Office is headed by a Director, who is appointed for a statutory term of up to seven years, and an Associate Director.

The current Director, Michael Rozenes QC, was appointed from the Victorian Bar for a period of three years commencing on 1 February 1992. His appointment was renewed for a further two years on 1 February 1995. There is provision under section 18 of the DPP Act for the Director to be appointed subject to terms and conditions. No terms or conditions were specified in the case of the present Director.

The current Associate Director, Edwin J. Lorkin, was appointed for a period of three years commencing on 1 July 1992. His appointment was renewed for a period of two years on 30 June 1995.

The DPP is within the portfolio of the Commonwealth Attorney-General, but the Office effectively operates independently of the Attorney-General and of the political process.

Under section 8 of the DPP Act the Attorney-General has power to issue guidelines and directions to the DPP.

Clockwise:

Edwin J. Lorkin, (foreground) Associate Director
Mark Pedley, Deputy Director Melbourne
Ian Bermingham, Deputy Director Perth
Tony Wadick, Deputy Director Sydney
Paul Foley, Deputy Director Adelaide
Peter Walshe, First Deputy Director
Stela Walker, Assistant Director Resource Management
Peter Browning, National Resources Manager
Paul Evans, Deputy Director Brisbane
Grahame Delaney, Principal Adviser Corporate Prosecutions
Michael Rozenes, QC, Director

Chapter I

Office of the Director of Public Prosecutions

That can only be done after there has been consultation between the Attorney-General and the Director. In addition, any direction or guideline must be in writing and a copy must be published in the gazette and laid before each House of Parliament within 15 sitting days.

One direction was issued under section 8 during the last year. The direction was signed by the Minister for Justice on 3 October 1994 and was published in the *Commonwealth of Australia Gazette* No. GN 45 of 16 November 1994. The direction relates to the conduct of prosecutions for offences against Part IIIA of the *Crimes Act 1914*. That part deals with 'child sex tours', Australian residents travelling to other countries to engage in sexual activity with children. The direction specifies matters which the DPP must take into account in deciding whether an alleged offender should be treated as a resident of Australia for the purpose of the offence provisions and also requires that the DPP obtain consent from the Attorney-General or the Minister for Justice before prosecuting a person under 18. A discussion of the direction appears in Chapter 6.

VISION AND CORPORATE PLAN

The DPP's vision is to provide a fair, effective and efficient prosecution service to the Commonwealth and the people of Australia.

The corporate plan identifies the following objectives:

- to prosecute alleged offences against the criminal law of the Commonwealth, in appropriate matters, in a manner which is fair and just;
- to ensure that offenders are deprived of the proceeds and benefits of criminal activity and to ensure the pursuit of civil remedies;
- to assist and cooperate with other agencies to ensure that law enforcement activities are effective;
- to contribute to the improvement of the Commonwealth criminal law and the criminal justice system generally;
- to preserve and enhance public confidence in the prosecution process and criminal justice system; and
- to manage resources efficiently and provide an effective service to the Commonwealth.

The corporate plan is designed to advance social justice by deterring and discouraging breaches of Commonwealth law.

The corporate plan identifies strategies to achieve the objectives and sets criteria by which the performance of the Office can be judged.

ROLE

The primary role of the DPP is to prosecute offences against Commonwealth law, including the Corporations Law, and to recover the proceeds of Commonwealth crime.

The majority of Commonwealth prosecutions, other than the occasional private prosecution, are conducted by the DPP. The remaining cases consist mainly of high-volume matters which, for reasons of convenience, are conducted by other agencies under arrangement with the DPP. State authorities also conduct some Commonwealth prosecutions, again for reasons of convenience.

Chapter I

Office of the Director of Public Prosecutions

The DPP also has responsibility for the conduct of prosecutions for offences against the laws of Jarvis Bay and Australia's external territories, other than Norfolk Island.

The DPP's practice in relation to the recovery of criminal assets is described later in this report. In general terms, the DPP's charter is to ensure that Commonwealth offenders who have derived significant financial benefits, and who have accumulated assets, are not only prosecuted but are also stripped of those assets.

The DPP is not an investigative agency. It can only act when there has been an investigation by the Australian Federal Police or another investigative agency. However, the DPP often provides legal advice and other assistance during the investigative stage, particularly in large and complex matters.

The Commonwealth's main investigative agencies are the Australian Federal Police, the National Crime Authority and the Australian Securities Commission. However, many other agencies have an investigative role as part of their administrative function and the DPP receives briefs of evidence from, and provides legal advice to, a wide range of different agencies.

All decisions in the prosecution process are made in accordance with the guidelines laid down in the *Prosecution Policy of the Commonwealth*, which is available from any DPP office listed at the front of this report.

FUNCTIONS AND POWERS

The DPP is created by statute and only has those functions and powers which are given to the Director by legislation. Those functions and powers are to be found in sections 6 and 9 of the DPP Act and in specific legislation like the *Proceeds of Crime Act 1987*.

The main functions of the Director have already been discussed. The Director also has a number of miscellaneous functions including:

- to prosecute indictable offences against State law where, with the consent of the Attorney-General, he is authorised 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 assist coroners in inquests and inquiries under Commonwealth law;
- to appear in extradition proceedings and proceedings under the *Mutual Assistance in Criminal Matters Act 1987*; and
- to apply for superannuation forfeiture orders under Commonwealth law.

The Director also has the 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. This provision covers cases, mostly in the revenue area, where Commonwealth law is enforceable by quasi-criminal proceedings rather than prosecution.

To date there has only been one instrument under section 6(1)(g) which has general application. That instrument was signed on 3 July 1985 and, among other things, it ensures that the DPP has power to conduct all prosecutions under taxation laws.

Chapter 1

Office of the Director of Public Prosecutions

The DPP does not conduct prosecutions under the *Customs Act 1901*, except in the case of narcotics offences. The responsibility for prosecuting non-narcotic matters, which are enforceable by quasi-criminal proceedings, rests with the Australian Government Solicitor.

The Director is given a number of specific powers under the DPP Act. These include power to:

- prosecute by indictment and authorise others to sign indictments on his behalf;
- decline to proceed further in the prosecution of a person who has been committed for trial;
- take over proceedings commenced by another and either carry them on or discontinue them;
- discontinue proceedings being conducted by the DPP even if the informant wishes to proceed;
- grant indemnities to potential witnesses; and
- exercise any right of appeal that may be open to the Attorney-General or to the Director in his own right.

The Director has widely delegated his powers and the majority of operational decisions are made at regional level. However, current arrangements ensure that key decisions in major matters are made personally by the Director or the Associate Director.

ORGANISATION

The DPP has a Head Office in Canberra and regional offices in Sydney, Melbourne, Brisbane, Perth and Adelaide. There is also a sub-office of the Brisbane Office in Townsville.

At present the DPP has no office in Tasmania or the Northern Territory. In those places, Commonwealth prosecutions and related civil proceedings are conducted on behalf of the DPP by the Australian Government Solicitor pursuant to an arrangement under section 32 of the DPP Act.

HEAD OFFICE

Head Office provides policy and legal advice to the Director, controls and coordinates activities across Australia, liaises at national level with other agencies and provides administrative support to the Director. Head Office is also responsible for conducting prosecutions for Commonwealth offences in the ACT and for related criminal assets proceedings.

As at 30 June 1995, Head Office consisted of six branches: Litigation, Corporations, Criminal Assets, Policy, ACT Prosecutions, and Administrative Support.

The first three branches supervise the conduct of cases by the regional offices, provide input and assistance where it is needed, and advise the Director in matters warranting his involvement. They also liaise with other agencies, provide advice on legal issues of general relevance, and provide input into the development of policy on matters within their areas of responsibility. The Corporations Branch also has carriage of corporations prosecutions in the ACT and the Criminal Assets Branch has the carriage of criminal assets work in the ACT.

The Policy Branch is responsible for assisting the Director to develop and apply consistent policies across the Commonwealth in relation to the DPP's prosecution functions. It is also responsible for developing and

Chapter 1

Office of the Director of Public Prosecutions

maintaining guidelines to assist DPP officers and for making recommendations to other agencies, particularly the Attorney-General's Department, in relation to Commonwealth criminal law and proposed changes to it.

The ACT Prosecutions Branch is responsible for conducting prosecutions for offences against Commonwealth law in the ACT.

The Administrative Support Branch is responsible for the national coordination of budget and personnel policy, information technology, library support and public relations advice. It also provides administrative services to the Director and the Head Office branches.

DPP REGIONAL OFFICES

The regional offices are responsible for conducting prosecutions and civil recovery action.

Each office is divided into at least four branches: General Prosecutions, Corporate Prosecutions, Criminal Assets and Administrative Support. Sydney has two additional General Prosecutions Branches and Melbourne and Adelaide each have one additional General Prosecutions Branch.

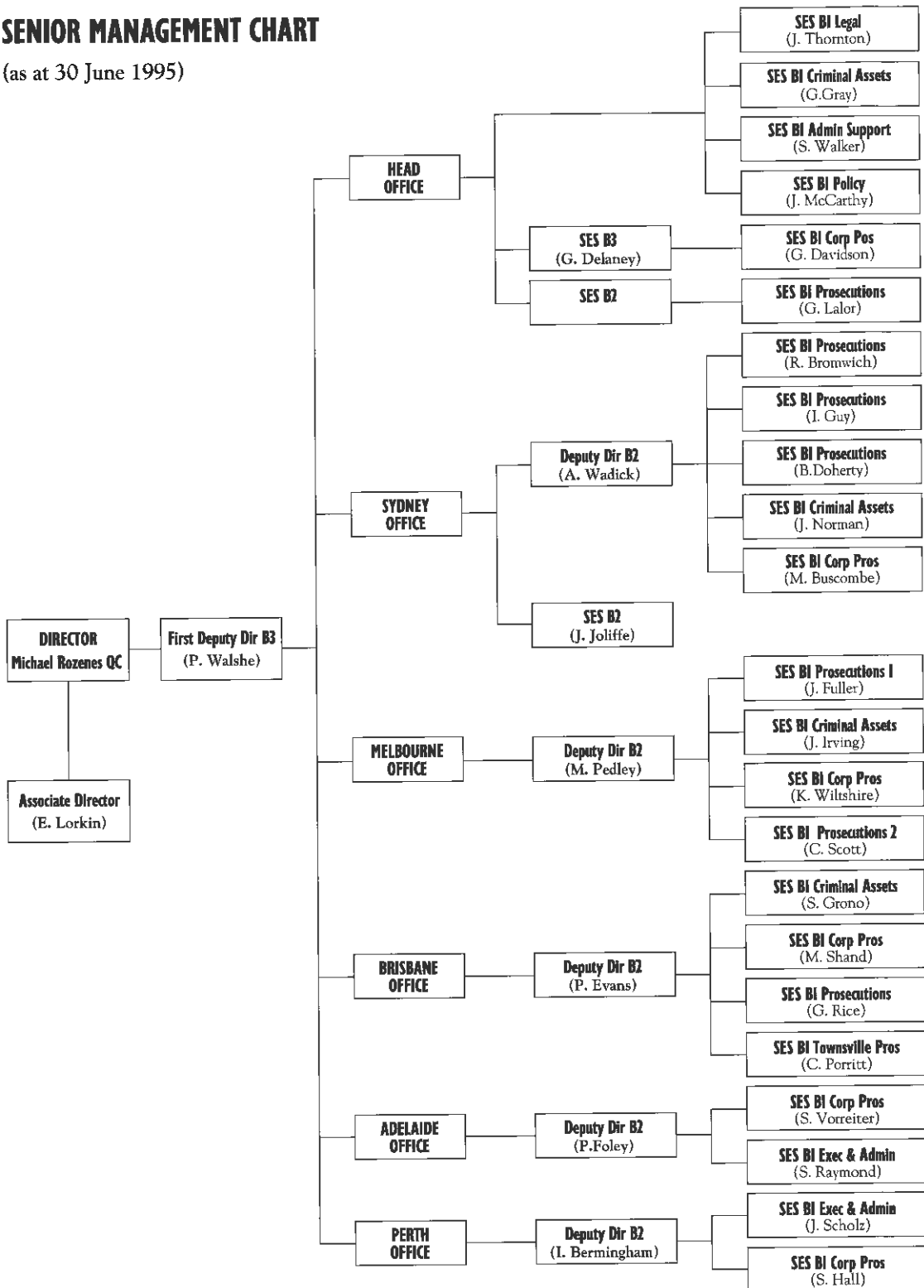
The sub-office in Townsville is not divided into functional units.

HOBART AND DARWIN

In Tasmania and the Northern Territory, prosecutions and criminal assets work is carried out by the Australian Government Solicitor as part of the general work of the office.

SENIOR MANAGEMENT CHART

(as at 30 June 1995)



Chapter 2

Exercise of statutory powers

This chapter deals with the exercise of the statutory powers which have not been delegated beyond Head Office.

NO BILL APPLICATIONS

The Director has power under section 9(4) of the DPP Act to decline to proceed in the prosecution of a person who has been committed for trial by a magistrate.

This power has only been partially delegated. Senior officers in the regional offices have power to reject a no bill application made at the court door if it clearly lacks merit. In any other case a no bill application received from a defendant, and any proposal by a regional office not to file an indictment, must be referred for decision by the Director or the Associate Director.

In the past year there were 37 no bill applications received from defendants or their representatives. Of these, 16 were granted and 21 refused. A further 23 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 39 which is eight more than 1993-94. A breakdown of these statistics appears in table 1.

Table 1: No bill matters

State	Applications by defence			Action by DPP	Total discontinued
	Granted	Refused	Total		
NSW	9	11	20	7	16
Vic.	2	4	6	4	5
Qld		2	2	1	2
WA	4	2	6	8	12
SA	1	2	3	2	3
Tas.				1	1
NT					
ACT					
Total	16	21	37	23	39

Under the *Prosecution Policy of the Commonwealth*, the decision to prosecute requires that there be reasonable prospects of conviction and that the public interest requires a prosecution. Of the 39 matters discontinued prior to trial, the sufficiency of evidence was the main factor in 28 cases. In the remaining 11 cases, public interest factors were the main reason for discontinuing. These factors include the defendant's health, circumstances surrounding the offence and general humanitarian grounds. Of these 11 cases, one defendant had previously been tried twice with the jury unable to reach a verdict. A further three defendants had been

Chapter 2 Exercise of statutory powers

previously convicted by majority verdict which the High Court held to be unconstitutional in relation to Commonwealth offences in *Cheatle v R*. The three defendants had already served all or most of their sentences.

A breakdown of these statistics appears in table 2.

Table 2: Reasons for discontinuing prior to trial

State	Reasons		Total
	Evidence	Public Interest Factors	
NSW	13	3	16
Vic.	5	1	6
Qld		1	1
WA	6	6	12
SA	3		3
Tas.	1		1
NT			
ACT			
Total	28	11	39

APPEALS

Section 9(7) of the DPP Act gives the Director the same rights of appeal in matters being conducted by the DPP as are available to the Attorney-General.

This and related provisions give the DPP power to appeal against an inadequate sentence, to seek review of a ruling by a magistrate on a point of law, and to appeal against a grant of bail.

The DPP has no power in any jurisdiction to seek review of a jury verdict acquitting the defendant on the merits of the case. However, the DPP can seek review of points of law that arise at trial and can generally seek further review where an intermediate court has set aside a conviction.

The DPP follows a policy of restraint in these matters. The Office only appeals in cases where there is a clear public interest in seeking review of a decision. It is policy to only institute appeals where it can be asserted with some confidence that the appeal will be successful.

All proposed appeals must be referred to Head Office for decision by the Director or the Associate Director unless the appeal period is about to expire. In that case a Deputy Director may file appeal papers and seek retrospective approval for the appeal.

Statistics on the number of appeals lodged by the DPP during the year appear in the tables at the end of this report.

Chapter 2 Exercise of statutory powers

INDEMNITIES

Section 9(6) of the DPP Act empowers the Director to give an undertaking to a potential witness in Commonwealth proceedings that any evidence the person may give, and anything derived from that evidence, will not be used in evidence against the person other than in proceedings for perjury.

Section 9(6B) enables the Director to give a similar undertaking to a potential witness in State proceedings where there is a risk of the witness disclosing the commission of offences against Commonwealth law.

Section 9(6D) empowers the Director to give an undertaking to a person that they will not be prosecuted under Commonwealth law in respect of a specified offence or specified conduct. This is equivalent to a transactional indemnity.

In some cases the only way of proceeding against a serious offence is to call evidence from lesser participants in the criminal scheme. It is desirable that lesser offenders be prosecuted for their role before they are called as witnesses. However, that is not always possible. The only way of proceeding in some cases is by giving the witness an undertaking under section 9(6), 9(6B) or 9(6D).

In the past year the Director or the Associate Director signed a total of 47 undertakings under sections 9(6), 9(6B) and 9(6D). In some cases, indemnities were given to more than one witness. In total, indemnities were given in 23 cases of which 22 were prosecutions. The other case involved indemnities for nine witnesses who gave evidence at the coronial inquiry into the death of seven people in a plane crash near Young in New South Wales.

In 1993-94 a total of 40 indemnities were granted in 25 cases. A breakdown of the figures for 1994-95 appears in tables 3 and 4.

Table 3: Indemnities - numbers

State	Matters	Indemnities			Total indemnities
		s.9(6)	s.9(6B)	s.9(6D)	
NSW	12	17	9	1	27
Vic.	3	1		4	5
Qld	6	8	2	1	11
WA	1			2	2
SA					
Tas.					
NT					
ACT	1	2			2
Total	23	28	11	8	47

Chapter 2
Exercise of statutory powers

Table 4: Indemnities - types of case (i)

State	Drugs	Fraud	Money Launder	Coronial Inquiry	Corp.	Other	Total
NSW	1(1)	2(5)	1(2)	1(9)	4(5)	3(5)	12(27)
Vic.	1(1)		1(3)			1(1)	3(5)
Qld		4(9)			1(1)	1(1)	6(11)
WA							1(2)
SA							
Tas.							
NT							
ACT						1(2)	1(2)
Total	2(2)	6(14)	2(5)	1(9)	5(6)	6(9)	23 (47)

(i) The figures in the table show the number of matters, with the number of indemnities shown in brackets.

The Director also has power under section 30(5) of the *National Crime Authority Act 1984* to give an undertaking to a person who has been summonsed to appear before the NCA that any evidence they may give, and anything derived from that evidence, will not be used in a prosecution for an offence against Commonwealth law, other than perjury. That power was exercised once in 1994-95.

TAKING MATTERS OVER

Under section 9(5) of the DPP Act the Director has power to take over a prosecution for a Commonwealth offence that has been instituted by another and either carry it on or bring it to an end. The power was exercised in one matter during 1994-95.

EX OFFICIO INDICTMENTS

The Director has power under section 6(2D) of the DPP Act to file an indictment against a person for charges in respect of which they have not been committed for trial. The power, which cannot be delegated, was exercised three times in 1994-95. This does not include cases where the counts in the indictment were different from those on which a committal order was made.

One case involved a defendant charged with a State offence who indicated that he would be prepared to plead guilty and give evidence against two other accused charged with Commonwealth offences whose trial was about to begin. The defendant was dealt with by way of ex officio indictment for a Commonwealth offence covering the conduct alleged in the State offence. The two accused people that he was to give evidence against subsequently pleaded guilty.

In the second case the magistrate was not satisfied that there was sufficient evidence to commit one of two jointly-charged defendants. The Director disagreed and approved an ex officio indictment. The third case involved a State prosecution of five defendants charged with a combination of State and Commonwealth offences. The magistrate discharged one defendant in respect of the Commonwealth offence. An ex officio indictment was presented in relation to that offence.

Chapter 3

General prosecutions

The General Prosecutions Branches conduct all DPP prosecutions other than those for corporate offences. They also handle extradition proceedings and court work arising from requests by foreign countries that evidence be taken in Australia for use overseas.

The conduct of litigation is the most obvious part of the work of the branches. However, there is also considerable work involved in preparing cases for hearing, providing advice and other assistance to investigators, drafting charges, and settling applications for search warrants, listening devices and telephone intercepts. DPP officers are also involved in training investigators. The DPP does not run training courses, but it regularly participates in courses run by other agencies addressing topics within its area of expertise.

In extradition matters the DPP conducts litigation in Australia when a foreign country has sought the return of a person found in Australia. DPP officers also appear in court where evidence is taken in connection with a request by Australia for the extradition of a person wanted for an alleged offence against Commonwealth law.

The Commonwealth does not have its own criminal courts. The DPP prosecutes mainly in State and Territory courts, which are vested with jurisdiction to deal with Commonwealth matters under section 68 of the *Judiciary Act 1903*. The result is that DPP prosecutors operate under different procedures, and slightly different laws of evidence, in each jurisdiction.

The majority of court work is conducted in-house by DPP lawyers or in-house counsel. However, the DPP briefs counsel from the private Bar in cases which warrant that course, due either to the complexity of the matter or because the case requires expertise or resources which are not available in-house.

The DPP also often briefs local solicitors or police prosecutors to represent it on mentions and pleas of guilty in matters dealt with in country areas. Statistics on the number of cases dealt with during the year appear later in this report.

The reports which follow give some indication of the range of cases dealt with by the DPP during the past year.

NEW SOUTH WALES

OPERATION PALLET

This case involved the importation of 70.5 kilograms of heroin concealed in the hollowed-out centre of pallets of paper. The paper was shipped from a company in Malaysia to its associated company in Sydney.

Three people were charged and each pleaded guilty. Che Yook was a director of both the Malaysian and Sydney companies. He arranged for the paper to be cut in Malaysia, the concealment of the heroin and the loading of the pallets into the container. He was at the Sydney factory when the container was delivered and unloaded.

He was charged with importing the heroin contrary to section 233B(1)(b) of the Customs Act. He pleaded guilty before the trial and was sentenced to 26 years imprisonment with a non-parole period of 20 years.

Yun Bai was arrested when he arrived at the Sydney factory in a van to collect the pallets of paper. He was charged with one count under State law of knowingly taking part in the supply of heroin. He pleaded on the first day of the trial and gave an undertaking to give evidence against another defendant. He was given a 55

Chapter 3

General prosecutions

per cent discount for assistance and was sentenced to a minimum term of four years and nine months with an additional term of one year and seven months.

Wanchai Sae-Sung, who was also arrested at the factory, had rented safe houses. He was charged with one count of knowingly taking part in the supply of heroin. He was sentenced to a minimum term of 12 years with an additional term of four years.

Che Yook and Sae-Sung have appealed against their sentences but the appeals have not yet been heard.

HOOKHAM

This defendant was involved in the management of a company that failed to pay \$198 000 in group tax. The failure to pay group tax is an offence under section 221F of the *Income Tax Assessment Act 1936*. Section 8Y of the *Taxation Administration Act 1953* provides that a person who is involved in the management of a company which commits a taxation offence is deemed to have also committed the offence unless the person can show that he or she was not involved in the commission of the offence.

Hookham pleaded guilty to nine offences against section 221F of the *Income Tax Assessment Act*. The issue was whether the court had power under section 21B of the *Crimes Act* to make a reparation order against a person who was deemed to have committed an offence. The matter went as far as the High Court which held that a reparation order can be made against a deemed offender.

The matter was returned to the District Court. However, the judge exercised his discretion against making a reparation order after taking into account the fact that the sudden collapse of the company's major debtor had left the company unable to pay its debts.

LIM

In June 1995 Lim was sentenced to a total of 18 years imprisonment with a 13 year non-parole period. He pleaded guilty to being knowingly concerned in the importation of 8.4 kilograms of heroin and to possessing a further 6.5 kilograms of heroin. He also pleaded guilty to two counts of possessing automatic firearms and had another offence taken into account, which involved the possession of \$65 000 in cash which was suspected of being the proceeds from the sale of heroin.

Lim escaped arrest at the time of the heroin seizures but was arrested at Perth international airport attempting to leave Australia. At that time he was in possession of a further \$40 000 in cash.

The District Court found that Lim was part of an organised syndicate involved in importing large quantities of heroin from Malaysia and Singapore. Lim was not one of the principals but he was involved in recruitment of couriers. He was also involved in the storage and wholesale distribution of drugs and in the receipt and transmission of money.

Lim has appealed against the sentence.

ORNELAS

Ornelas pleaded guilty to tax frauds and related offences and was sentenced to a total of four years imprisonment with a non-parole period of one year. Ornelas was initially a registered tax agent but after losing his registration, he worked as an employee of another agent.

Chapter 3

General prosecutions

The principal count alleged that, over a three year period, Ornelas prepared 35 false income tax returns in various names which caused the Australian Taxation Office to pay \$97 750 which were not payable. Ornelas was also charged with being involved in a fraud by another person and with attempted fraud.

The prosecution arose out of a joint AFP and ATO investigation. The investigators seized documents under search warrants which showed that Ornelas was planning to lodge false returns in another 14 names seeking refunds totalling \$51 000. Those documents were the subject of a charge of forgery. Ornelas also pleaded guilty to, or had taken into account, a number of other offences involving smaller amounts of money.

The DPP recovered \$25 000 from the bank account of a company controlled by Ornelas. ATO set off a further \$25 000 in outstanding tax refunds that were owed to Ornelas and \$10 000 was paid on his behalf. The court made a reparation order against Ornelas for the balance of \$47 000.

ROSS

Ross was an insurance and superannuation products salesman. He pleaded guilty after a sentence indication hearing to two counts of defrauding the Commonwealth under section 29D of the Crimes Act.

In the 1988-89 financial year, Ross claimed \$149 000 on behalf of his company in false income tax deductions. In the 1989-90 financial year Ross claimed a further \$192 000 in false deductions. The total loss to the revenue was \$207 000.

The fraud involved Ross recording false information on hundreds of the company's cheque butts which enabled him to claim personal expenses as business deductions. There were at least 300 false entries in the two returns. For example, an amount of \$10 950 which was claimed as sponsorship of a school football side was in fact spent building a jetty at Ross' Gold Coast home. An amount of \$1 000 claimed as wages for a 'D Toy' was in fact spent by Ross to purchase toys from Dandies Toy Store.

Ross was sentenced to a period of imprisonment of 18 months with a minimum term of three months. Ross filed for voluntary bankruptcy in July 1993 and no money has been recovered by ATO.

BRACKEN

In March 1994 Bracken pleaded guilty to five offences against section 29B of the Crimes Act and 11 offences against section 29D of that Act. The offences related to \$708 000 in Social Security benefits that he was not entitled to and \$7 000 in overtime payments.

Bracken was the manager of the Revesby branch of the Department of Social Security for most of the period during which the offences were committed. The fraud was committed over a 12 year period and involved Bracken obtaining benefits in nine different names. He was sentenced to imprisonment for six years and eight months with a non-parole period of five years. He was also ordered to pay a pecuniary penalty in the sum of \$846 000.

Bracken appealed against the sentence. In November 1994 the Court of Criminal Appeal reduced the non-parole period to four years.

Chapter 3

General prosecutions

KONG AND AU

Wang Kong was charged with one count of defrauding the Commonwealth of \$326 000. Johnson Au was charged with being knowingly concerned in the offence.

The fraud was perpetrated by Wang, Au and Wang's brother Henry, who were involved in a business called Century Income Tax and Accounting. The business prepared taxation returns for a large number of Chinese nationals. Once the returns had been prepared and signed by the taxpayers the defendants forged returns which contained substantial claims for additional deductions which had not been sought by the taxpayers.

Kong and Au charged their clients a flat fee of \$50 for preparing their tax returns which was deducted from their tax refund cheques. Accordingly, the refund cheques were made payable to their business. The defendants sent their clients the amounts that were properly claimed from ATO and kept the balance.

The defendants both pleaded guilty after sentence indication hearings. Kong was sentenced to four years imprisonment with a non-parole period of two years. Au was sentenced to three years and six months imprisonment with a non-parole period of 21 months. Kong received a longer sentence than Au because she was a qualified accountant who had the expertise needed to understand and exploit the system. Au had no formal training and his command of English was less.

FRANIC

Franic was convicted on a charge of importing four tonnes of cannabis resin from Tonga. The drugs were worth approximately \$38 million.

Franic appeared to be a businessman specialising in re-turfing of lawns and playing fields. On the pretext of fulfilling a contract to re-turf the sports stadium in Tonga, Franic arranged for two massive rollers to be built in Australia. Each roller was approximately six feet long and eight feet high and weighed three or four tonnes. The rollers were filled with sand in Australia, supposedly to provide ballast, and were shipped to Tonga where it was clear they were unsuitable for the work at hand. The prosecution alleged that the sand was removed from one of the rollers and replaced with four tonnes of cannabis resin. The roller was then welded closed and shipped back to Australia by Franic.

The roller was intercepted by the AFP. Franic was arrested in New Zealand and was ultimately extradited to stand trial in Sydney.

Franic was sentenced to 10 years imprisonment with a non-parole period of seven-and-a-half years. He has appealed against conviction and sentence and the DPP has appealed against sentence.

TODHUNTER

This case involved an extradition to the USA. The defendant was charged in the USA with tax evasion and money laundering. Todhunter is a UK citizen who was in Australia on business when he was arrested.

It was alleged that Todhunter laundered over \$4.5 million on behalf of a co-conspirator who defrauded hundreds of investors in companies which he controlled. The invested funds were sent to England and supposedly invested in the precious metal futures market. In fact the funds were fraudulently manipulated by Todhunter through a number of companies and accounts he controlled in England, Switzerland, Germany

Chapter 3

General prosecutions

and the USA. The laundered funds were then returned back to the USA.

The extradition was strongly contested. The matter was complicated by the fact that a new extradition treaty with the USA came into force after Todhunter had been arrested.

In April 1993 a magistrate determined that Todhunter was eligible for surrender to the USA on all charges. Todhunter sought a review of the decision by the Federal Court.

In August 1994 a single judge of the Federal Court determined that Todhunter was eligible for surrender to the USA on two conspiracy charges but not on 23 substantive counts of money laundering. Both parties appealed to the full Federal Court against that decision. In April 1995 the full Federal Court dismissed both appeals. Todhunter was extradited to the USA shortly afterwards.

TAN

Tan was arrested while importing almost five kilograms of heroin into Australia from Singapore. He purported to assist AFP officers by agreeing to engage in a controlled delivery of the packages to the person who he said was the proposed Australian recipient. Subsequent police investigations established that the person in question did not exist.

Tan pleaded guilty to importing the drugs. He was sentenced to imprisonment for nine years, with a non-parole period of six years.

KWOK

In 1994 Kwok travelled to Australia from Hong Kong in order to take delivery of a shipment of motor parts, which he was then to forward to the intended Australian recipient. Each of the five packages contained two transmission shafts which had heroin secreted inside them. The total amount of heroin was approximately six kilograms. After his arrest Kwok agreed to assist the police, which led to the arrest of the Australian courier whose job was to collect the parts from Kwok.

Kwok pleaded guilty to the charge against him and was sentenced to five years imprisonment with a non-parole period of two and a half years. The sentence was significantly discounted because of the assistance provided to the police.

FORTUNA FISHING

Fortuna Fishing Pty Ltd and Donald Mill were both charged with offences against the *Fisheries Management Act 1991* of taking black cod, a protected species of fish, and offences against the National Parks and Wildlife Regulations of commercial fishing in a marine national park.

Mills, who was the captain of the fishing boat, directed the crew to fillet the fish at sea and dispose of the carcass overboard so that if they were boarded by fisheries inspectors it would be impossible for them to identify the fish.

On the return journey a dispute broke out between Mills and some of the crew about payment for the trip. The crew members threatened to report Mills to the authorities. Mills proceeded to dump all the fillets in the cold room over the side of the vessel. However, some fillets had been kept by the crew to eat during the trip.

Chapter 3

General prosecutions

When the boat returned to port one of the crew took the fillets from the crew galley and delivered them to fisheries authorities. The fillets were sent to the University of New South Wales where a scientific test known as electrophoresis was carried out. The test confirmed that the fillets were black cod.

The company was fined \$15 000 for the offence against the Fisheries Act and \$7000 costs for the offence against the National Parks and Wildlife Regulations. Mills was fined \$3000 for the fisheries offence and \$1400 for the national parks offence.

VICTORIA

TAM

Tam was charged with one count of failing to report the transfer of more than \$5000 in cash out of Australia contrary to section 15(1) of the *Financial Transaction Reports Act 1988*. The defendant was aboard a Cathay Pacific airlines flight in November 1994 when four suspect packages wrapped in black, gold and green paper were discovered in a suitcase belonging to him.

The packages were unwrapped and were found to contain \$350 200 in Australian currency. The defendant initially denied any knowledge of the money. He then gave several inconsistent reasons for having the money in his possession.

Tam was convicted and sentenced to three months imprisonment for the offence. This sentence was later reduced on appeal by the County Court, which released Tam on a good behaviour bond. The money was ordered to be forfeited under the *Proceeds of Crime Act 1987*.

TEESE

Teese, who was a licensed aircraft maintenance engineer, signed 15 blank maintenance release certificates for a payment of \$50 per form. He was aware that the blank forms could be applied to any aircraft. He pleaded guilty to 15 counts of giving a false certificate under section 87 of the Crimes Act.

Teese was 72 years old. He was sentenced to a total of 18 months imprisonment which was fully suspended upon him entering a bond to be of good behaviour for two years. He was also fined \$2000.

PERFILI

In 1992 the defendant, together with a co-conspirator, was arrested in the Solomon Islands attempting to smuggle 191 wild parrots from the Solomon Islands. He was prosecuted in the Solomon Islands and pleaded guilty to a number of offences including attempting to export the birds.

Upon his return to Australia, the defendant was charged with one count of conspiring to import prohibited wildlife contrary to section 86(1)(a) of the Crimes Act. He was convicted and sentenced to three years imprisonment, to be released after serving one year. He has sought leave to appeal against his conviction.

MORRISSEY, HOWES, KEOGH AND MEEHAN

Howes, Keogh and Meehan were employees of the Department of Arts and Administrative Services. Morrissey was an electrical contractor. They agreed on a scheme to defraud DAAS, whereby Meehan and

Chapter 3

General prosecutions

Howes would use their government credit cards to pay Morrissey for work he was not required to perform. They then split the proceeds. DAAS paid Morrissey at least \$1.67 million between December 1988 and November 1991. Each defendant pleaded guilty in the Melbourne County Court to one count of defrauding the Commonwealth.

Morrissey undertook to give evidence against the other defendants and he was dealt with separately. He was sentenced to two years and six months imprisonment with a minimum term of 12 months. The judge stated that but for his cooperation he would have been sentenced to four years imprisonment with a non-parole period of two years and six months.

Meehan was sentenced to four years imprisonment with a non-parole period of 18 months. His involvement in the fraudulent scheme was more significant and lasted longer than that of the other DAAS employees and his rewards were greater.

Howes and Keogh were both sentenced to three years imprisonment with a minimum term of 12 months.

Details of recovery action taken against the defendants appear in Chapter 5.

LEDERMAN

The defendant was a medal collector and dealer who forged 12 sets of war service medals. He purchased blank medals and had them impressed with the names and service numbers of significant service personnel so as to increase their value. He then sold or swapped the forged medals, representing them to be genuine. He also unlawfully obtained the naval record cards of two crew of HMAS *Sydney*, and sold them with the medals in order to further increase their value.

The defendant was charged with:

- one count of being knowingly concerned in forgery;
- 15 counts of uttering;
- three counts of obtaining property by deception; and
- one count of being knowingly concerned in the disclosure of information by a Commonwealth officer.

The defendant pleaded guilty to all the charges and was sentenced to six months imprisonment which was suspended on him entering a good behaviour bond.

PRIVATE PROSECUTION

In this matter a private individual laid charges against 11 defendants. Two of the defendants were AFP officers, four were Victorian Police officers and five were civilians. The charges laid included conspiring to prevent or defeat the execution or enforcement of a law of the Commonwealth contrary to section 86(1) of the Crimes Act, attempting to pervert justice contrary to section 43 of the Crimes Act and conspiring to bring a false accusation contrary to section 41 of the Crimes Act.

Pursuant to section 9(5) of the DPP Act, the Director decided to take over the conduct of the prosecutions and, after assessing the evidence, declined to carry the prosecutions on further. All charges were struck out by a magistrate upon application by the DPP.

Chapter 3

General prosecutions

The individual who had laid the charges subsequently made an application to the Supreme Court of Victoria for orders quashing the Director's decision to discontinue the prosecutions and compelling him to continue with the proceedings. The court dismissed the application, primarily on the basis that the Victorian Supreme Court did not have jurisdiction to deal with the case.

The individual then applied to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* seeking orders requiring the Director to proceed with the prosecutions and for the case to be conducted in the Federal Court. The Federal Court dismissed the proceedings because of defects in the application. That order was made without prejudice to the individual's right to institute fresh proceedings under the ADJR Act. It is not clear at this stage whether the individual will do so.

CAMPBELL'S CASH & CARRY

The defendant company carried on business as a wholesale grocery retailer. In the course of the business, the defendant sent advertising brochures to members of the Campbell's Cash & Carry organisation which included advertisements for brands of cigarettes and details of their wholesale price.

The company was charged with offences against section 5(1)(b) of the *Smoking and Tobacco Advertisements Act 1989* and the *Tobacco Advertising Prohibition Act 1992*. A magistrate found the charge under the 1989 Act proven and the other charges were dismissed on the grounds that the members of the Campbell's Cash & Carry organisation were not members of the public for the purpose of the legislation.

The Director appealed against the decision to dismiss the charges under the 1992 Act. On appeal, the Supreme Court judge found that members of the Campbell's Cash & Carry organisation were members of the public and that they had been exposed to cigarette advertising. The matter was remitted back to the Magistrates Court.

The defendant has appealed against the Supreme Court's ruling. No hearing date has yet been set for the appeal.

STOCKDALE

The defendant was employed by the Department of Social Security 'teleservice' centre in Geelong. He sold information held on the DSS computer to a private investigator. He pleaded guilty to four counts relating to disclosing protected information and accepting money knowing his duty as a Commonwealth officer would be affected. The conduct occurred over a 14 month period and the defendant was paid \$5 or \$10 per transaction.

The defendant received fully suspended sentences. The Director has appealed against the sentence. The appeal was dismissed.

CHUNG

The defendant was apprehended at Tullamarine Airport carrying a bag containing six kilograms of heroin. The heroin was hidden under a false bottom in the bag.

Chung pleaded guilty to one count of importation and was sentenced to 16 years imprisonment with a minimum term of 12 years. On appeal the sentence was reduced to 13 years with a minimum term of 10 years.

Chapter 3

General prosecutions

LOLLIS

The defendant, who was proprietor of a nursing home, submitted false claims for Commonwealth funding. The defendant claimed that he had paid wages to staff for services that were in fact performed by himself and his wife. Between 1986 and 1992 the defendant was overpaid \$152 000. The defendant arranged for the paymistress at the nursing home to prepare false wage claims and wage records to cover the fraud.

Lollis pleaded guilty to two counts of defrauding the Commonwealth contrary to section 29D of the Crimes Act. He repaid the debt in full prior to sentencing. Lollis was sentenced to 18 months imprisonment to be released after three months upon entering a good behaviour bond.

OPERATION BULL

In January 1993, officers of the Australian Customs Service intercepted a Russian sailor, Ovcharuk, as he departed the Port of Melbourne after arriving in Australia as a crew member on the Russian merchant vessel the *Maxim Mikhailov*. Customs officers found a bag in Ovcharuk's possession which contained 5.6 kilograms of heroin and 165 grams of cannabis resin.

The AFP were called and Ovcharuk agreed to assist in undertaking a controlled delivery of the narcotics. Ovcharuk delivered the bag to a man named Shlakht who later met with another man, Krasnov. Shlakht and Krasnov were arrested by police.

Ovcharuk pleaded guilty in the County Court in Melbourne to two counts of importing prohibited imports. He was sentenced to an effective term of six years imprisonment with a non-parole period of four-and-a-half years. He received a substantial discount for his cooperation.

Ovcharuk made a statement to police in which he said he had been given the narcotics in Vladivostok by another Russian sailor, Levitsky. Levitsky had also given Ovcharuk a note containing telephone numbers. Ovcharuk was told to ring one of the numbers on the note and say 'It's Igor, regards from Nikolai, I'm standing near the telephone box'. He was told the bag containing the narcotics would be collected from him. Ovcharuk could not directly implicate Krasnov or Shlakht in the importation of the narcotics.

Police travelled to Vladivostok and spoke with Levitsky. Levitsky made a statement implicating Krasnov as the principal in this importation. Levitsky was however, unwilling to come to Australia and give evidence. Accordingly, the prosecution arranged for Levitsky's evidence to be taken before a Russian Court in Kharbarovsk in the Russian Far East.

Australian lawyers and police travelled to Russia for the hearing. Levitsky's evidence was video recorded and counsel for Krasnov and Shlakht were given the opportunity to cross-examine him.

After the evidence had been taken in Russia, Krasnov and Shlakht pleaded guilty to various charges under the Customs Act. Krasnov was sentenced to an effective sentence of 16 years with a non-parole period of 14 years. Shlakht was sentenced to an effective sentence of seven years with a non-parole period of five years.

An appeal against those sentences is now pending before the Supreme Court in Melbourne.

Chapter 3

General prosecutions

SEMAL PTY LTD

The defendant, a chemical company, pleaded guilty before the Melbourne Magistrates Court on 8 June 1995 to seven counts of importing Stage 1 chlorofluorocarbons without a licence contrary to the *Ozone Protection Act 1989*.

The company was discharged without conviction upon entering into a good behaviour bond. One condition of the bond was that the company pay \$168 000 to the Cooperative Research Centre for Southern Hemisphere Meteorology. This money is to be used for research into the ozone layer.

OUAIDA

This defendant was convicted of frauds committed against the Australian Taxation Office and the Department of Social Security.

In 1979 Ouaida obtained an invalid pension. In 1983 his sons bought a milk-bar/takeaway food shop that generated significant income. Ouaida operated that business until at least February 1992 during which time he derived substantial income from the business.

In 1989 Ouaida purchased four properties in Tasmania which were subsequently leased and returned rental income. In 1991 Ouaida bought a second milk-bar/convenience store for just over \$240 000. This business also had a very large cash turn over.

Throughout the period that he ran the two businesses and received rent on the four Tasmanian properties Ouaida continued to receive an invalid pension and did not lodge an income tax return.

Ouaida was charged with a single count of defrauding the Department of Social Security and six counts of defrauding ATO. After a trial, which lasted for three months, Ouaida was convicted on all counts.

Ouaida was sentenced to three years imprisonment with a minimum term of six months.

DPP REFERENCE NO. 1

This case was a reference appeal to the Court of Criminal Appeal on a point of law which arose during a County Court trial. The trial involved alleged sales tax fraud. There were three counts of defrauding the Commonwealth contrary to section 29D of the Crimes Act. The trial judge directed the jury to deliver verdicts of not guilty on the ground that, because the vendors dealt with a fictitious company, the transactions were not valid sales at law and accordingly no sales tax was payable on the transactions.

The Court of Criminal Appeal held that the trial judge erred in directing the jury to acquit the accused. The case is reported at (1994) 29 ATR 638.

LY

This defendant imported 97.4 grams of heroin into Australia hidden in the lining of the waistband of his trousers. The heroin was discovered during a body search at the Melbourne Airport.

The defendant agreed to provide assistance to police, but was vague and selective about information provided. He pleaded guilty to a charge of importing heroin and was sentenced on the basis that he was not entitled to any discount for cooperation. He was sentenced to four years imprisonment with a non-parole period of two years.

Chapter 3

General prosecutions

FERNANDEZ

In January 1995, Fernandez pleaded guilty to one count of defrauding the Commonwealth of \$1.6 million in unpaid sales tax.

Fernandez was the managing director of Cheben Pty Ltd, an importer and wholesaler of household electrical goods. From December 1988 to September 1990, the company sold goods worth over \$12 million. An AFP investigation revealed that sales tax was only paid in respect of nine per cent of those sales.

Fernandez used two sets of invoices to record the company's wholesale transactions. One set of invoices only recorded the sales upon which sales tax had been paid and was designed to mislead ATO. The investigation located a further 820 invoices recording sales upon which no sales tax had been paid.

Fernandez was sentenced to four years imprisonment with a non-parole period of three years. He has lodged an appeal against the sentence.

QUEENSLAND

RICHES

Riches was tried in the District Court at Cairns for an alleged offence against the *Civil Aviation Act 1988* of flying an aircraft in a manner likely to cause danger to people. It was alleged that he was the pilot of a two-seater aircraft which crashed at a fly-in at a station in North Queensland injuring the pilot and passenger. The aircraft crashed just after it had completed a low-level circuit of the runway area to allow the passenger to drop a flour-bomb on a target as part of one of the events at the fly-in.

The accused was convicted and fined \$3000. He was also excluded for three years from acting under civil aviation authorisations he holds.

STANTA

This defendant pleaded not guilty to an offence of defrauding the Commonwealth in relation to more than \$50 000 paid to her in sole parent pension and additional family payments. She received those payments during a period of four years when she claimed to be separated from her former de facto partner.

The evidence showed that during the relevant period the defendant initially lived in a house rented by her partner, she and her partner had purchased land in their joint names and had taken out a loan, also in joint names, to build a house on that land. The defendant and her partner had also purchased a laundrette business which the defendant subsequently conducted. Documents lodged by the defendant with DSS showed that she was living in the home built on the land that she and her partner purchased but claimed that the defendant was paying rent to a third party. The address given for that third party was the address of the laundrette business.

The court found that the defendant had been living in a de facto relationship during the period in question and she was convicted of the offence. The defendant was sentenced to two years imprisonment to be released on a good behaviour bond after serving three months. She was also ordered to repay to the Commonwealth \$48 000, being the amount of the debt which remained outstanding.

Chapter 3

General prosecutions

MOHAMED

This defendant pleaded guilty to an offence under the *Migration Act 1958* of parting with possession of a document intending it to be used to help another person to enter Australia. The document in question was a Certificate of Identity, which is a document similar to a passport and which can be issued to a stateless person or a person who is not able to obtain a passport from their country of origin. The certificate related to the defendant's brother.

The defendant sent the certificate to Kenya intending it to be delivered to a cousin so that he could use it to gain entry to Australia. The cousin subsequently arrived at Melbourne airport with the certificate and applied for refugee status. The certificate bore false immigration stamps including a false 'departed Australia' stamp.

The magistrate convicted the defendant and released him on a bond to be of good behaviour for 18 months. The defendant appealed against the recording of a conviction. The principal argument advanced in support of the appeal was that the defendant was a doctor with overseas qualifications who is currently undertaking postgraduate studies in Australia and that the recording of a conviction could disadvantage him in seeking employment.

In August 1994 the Court of Appeal dismissed the appeal. The court held that the imposition of a conviction was within the magistrate's discretion and there was nothing to show that the discretion had been exercised incorrectly. The court drew attention to the public interest in having the migration scheme properly administered.

OPERATION GARRET

This case arose from a joint AFP/ATO operation which originally involved an investigation into the illegal activities of an unregistered tax agent, Brian Napthine, but which expanded into an investigation into the activities of a number of his clients.

Napthine prepared tax returns for a significant number of members of the Vietnamese community in Brisbane. He failed to declare the income derived from this work on his yearly income tax returns and also failed to notify the Department of Social Security of this income and continued to claim unemployment benefits. Napthine also assisted some of his clients who ran small businesses to defraud the Commonwealth by submitting false income details on the tax returns that he prepared for them.

Napthine defrauded \$48 000 in tax and \$41 000 in Social Security payments. He was knowingly concerned in fraud by his clients which totalled \$198 000.

Napthine pleaded guilty to two counts of defrauding the Commonwealth and 12 counts of being knowingly concerned in defrauding the Commonwealth. He was sentenced to four years imprisonment with a non-parole period of 12 months. He cooperated with authorities and gave evidence in the trials of some of his former clients. The court indicated that but for his cooperation his sentence would have been five years with a non-parole period of 18 months.

Chapter 3

General prosecutions

OPERATION DIWAI

In early 1993 Robert Bell, his two sons, Simon and Nicholas and the de facto wife of Nicholas, Rebecca Isles, agreed to import a quantity of cannabis into Australia from Papua New Guinea for the purpose of selling it.

It was arranged that Robert Bell would purchase a yacht and sail it up to PNG with his son Simon and would there make contact with a PNG national named Isu Moiya. In the meantime Isles would arrange with Moiya for the cannabis to be available for collection.

An AFP investigation began when Moiya booked a reverse charge call from a public telephone box in Lae, PNG, to the Australian telephone number of Rebecca Isles. During the conversation that ensued a PNG telephone exchange supervisor heard the speakers talking about bags full of 'stuff' and rifles and cartridges. The supervisor notified Lae police who in turn spoke to the AFP liaison officer in PNG. The AFP kept the suspects under electronic and physical surveillance for four months.

Robert and Simon Bell were both inexperienced sailors and the expedition to PNG eventually floundered because of concerns by Robert Bell about his ability to sail to PNG and back successfully.

All defendants pleaded guilty to conspiring to import a trafficable quantity of cannabis into Australia and were sentenced to the following terms of imprisonment:

Robert Bell - six years imprisonment with a non-parole period of two and a half years;

Simon Bell - four years imprisonment with a non-parole period of 18 months;

Nicholas Bell - two and a half years imprisonment to be released after serving 12 months upon entering into a good behaviour bond; and

Rebecca Isles - six years imprisonment with a non-parole period of two years.

All defendants subsequently appealed to the Queensland Court of Appeal against the severity of their sentences. Their appeals were allowed on the basis that the sentencing judge had failed to give sufficient weight to the fact that the conspiracy had been brought to an end voluntarily. The sentences were reduced as follows:

Robert Bell - four years imprisonment with a non-parole period of 15 months;

Simon Bell - two years imprisonment to be released after serving nine months upon entering into a good behaviour bond;

Nicholas Bell - 12 months imprisonment to be released after serving three months upon entering into a good behaviour bond; and

Rebecca Isles - four years imprisonment with a non-parole of 12 months.

Chapter 3

General prosecutions

GUDGEON

This case involved the importation of 192 kilograms of cannabis into Australia in a shipping container from Thailand. Gudgeon was one of the principals and was the person who instigated the importation.

Gudgeon was convicted on one count of importing a commercial quantity of cannabis after a 16 day trial at which he was not legally represented. He was sentenced to 15 years imprisonment with a non-parole period of seven-and-a-half years.

Gudgeon appealed against conviction and sentence. The appeal was based on the principles established by the High Court cases of *Dietrich* and *Ridgeway*. The appeal has been heard and the decision reserved.

OPERATION HUNTER

The defendants in this matter, Chin, Tan and Yeo, arrived at Brisbane International Airport on 25 June 1994, travelling as members of a tourist party from Singapore. Customs officers selected Chin and Tan for baggage examination. That examination revealed that their baggage was inordinately heavy for its style of construction. Further examination showed that large quantities of heroin were secreted in the base of each item of baggage.

Customs officers then searched the other 15 members of the tour group. They found that Yeo was also carrying heroin. Between them, the three men were carrying more than nine kilograms of powder containing approximately 7.5 kilograms of pure heroin. Each denied knowledge of the presence of the drug but were convicted after trial. Chin and Tan were sentenced to 14 years imprisonment and Yeo to 16 years imprisonment.

OPERATION EXTRA

In this matter the AFP in Cairns obtained information about the location of a large quantity of cannabis recently imported into Australia. The AFP established surveillance on storage premises at Cairns.

Robert Myles and Anthony Myles were observed arriving at the storage premises in a truck. They loaded 60 nylon woven bags and two carry bags containing compressed cannabis into the rear of the truck. Police maintained surveillance on the truck as it was driven south to a point near Proserpine where it left the highway.

The AFP intercepted the vehicle on a dirt road several kilometres from the highway. The bags were found to contain 1.2 tonnes of compressed cannabis.

The defendants were accused was arrested and charged under State legislation with possession of a dangerous drug. At their trial, the defendants claimed that they thought they were collecting packages of dried shark fin from the storage premises for delivery to an address at Mackay. Each was convicted and sentenced to 10 years imprisonment.

WRIGHT

Wright was charged with one offence of defrauding the Commonwealth between December 1985 and December 1993. Wright began living with her de facto husband in December 1985 while she was in receipt of sole parent's pension. The de facto husband refused to financially support her daughter. It appeared that he gave very limited financial support for the early years of the relationship. Wright deceived the DSS by

Chapter 3

General prosecutions

claiming that the person she was living with was her brother-in-law. Her lies persisted during the whole period that she was in receipt of the benefit. In April 1991 she obtained employment on a casual basis. She initially advised of a small amount of employment but then later failed to declare it at all.

From May 1992 to October 1994 Wright was employed permanently by a catering company. DSS were advised of her employment by an anonymous person and in March 1993 DSS raised an overpayment of \$30 000 based solely on her employment. She repaid this amount on demand and DSS instigated further inquiries. AFP investigated the matter. When interviewed Wright made full admissions regarding her de facto relationship. A further overpayment of \$42 000 was raised and was repaid by the time of her sentence. She had made the repayments by borrowing the money from her de facto husband who insisted on a stamped loan agreement between the parties. She was sentenced by the District Court to two years imprisonment wholly suspended. On appeal the Court of Appeal increased the sentence to three years imprisonment to be released after serving 12 months.

BASS

Bass was an auditor in the Australian Taxation Office who offered to assist a female taxpayer, including destroying documents on her file, if she had intercourse with him. He was charged with one count of corruption under section 73(2) of the Crimes Act. He pleaded not guilty, but was convicted and sentenced to 12 months imprisonment with a minimum term of four months.

GORDY AND ROWLANDS

Rowlands was charged with eight offences of imposition alleging that she received a sole parent's pension to which she was not entitled because she was residing with a partner. Gordy was charged with being knowingly concerned in those offences.

In 1987 Gordy was arrested in relation to drink driving and dangerous driving. He was advised by his legal advisers that he would likely go to jail. He had recently split up from Rowlands who was in receipt of a sole parent's pension. He recommenced living with Rowlands on the basis that she would hide him from the authorities. She was afraid that the family would be split up if he was detected. She did not advise DSS of the change in her circumstances because she thought that the police would find out about Gordy.

During the next six-and-a-half years Gordy continued to live with Rowlands but never ventured very far from the house. During this time Rowlands had a number of further children to Gordy but did not notify DSS. She obtained employment for some periods but always fully declared her income. As a result of her actions she was overpaid the amount of \$83 920.

During sentencing at the Townsville District Court the defence produced a DSS calculation which revealed that if the family had disclosed their full circumstances to DSS, and Gordy had gone on unemployment benefits or the equivalent with Rowlands as a dependant, the pair would have been entitled to \$83 000 in any case. The judge commented that this was an extraordinary situation and that it was completely different to any other kind of offence that he had encountered. He took account of the fact that the offence was motivated not to deceive the DSS but to keep the family together. He stated that ordinarily imprisonment was called for but because of the unique circumstances he would impose a suspended sentence. The defendants were both sentenced to two years imprisonment but the term was wholly suspended.

Chapter 3

General prosecutions

DOUBE AND MOREX MEAT

Morex Meat Australia Pty Limited operated an abattoir at Grantham near Toowoomba. Doube was the managing director of Morex. Morex was charged with seven offences of applying false trade descriptions to meat intended for export contrary to the *Export Control Act 1982*. The company was also charged with an offence of possessing an official marking device, which is also an offence under that Act. Doube was charged with being knowingly concerned in those offences and with an offence of attempting to pervert the course of justice.

Five of the offences related to the application of false trade descriptions to meat bound for Korea. Both the company and Doube were acquitted on those charges.

The other two offences arose out of the re-packaging of a large quantity of beef also bound for Korea. There was evidence that a group of employees were surreptitiously assembled at the meat works on a weekend and entered a cold room that had been sealed with official Department of Primary Industry seals. The employees then re-packaged a large quantity of beef to make it appear that it had been slaughtered on 12 March 1992 when, in fact, it had been slaughtered on dates in February 1992.

An official Australian Quarantine and Inspection Service stamp was used without authority to create labels bearing the false slaughter date to make it appear the re-packaged beef had been officially inspected. The re-packaging operation was discovered by an inspector of the Australian Quarantine and Inspection Service.

The charge of attempting to pervert the course of justice related to his conduct during the investigation of the above offences. In the early stages of the investigation two senior employees at the meat works took full responsibility for the relevant events. Later the employees revealed to investigators that they had acted at the behest of Doube and had claimed responsibility to protect him. They also revealed that after the offences had been discovered Doube had attempted to influence them by sending them on overseas trips and offering them money.

In February 1994 both the employees pleaded guilty to offences under the *Export Control Act*. They agreed to give evidence against the company and Doube. In October 1994 the company and Doube were tried in the District Court at Toowoomba.

Both Morex and Doube were convicted of the offences relating to re-packaging the beef. Doube was also convicted of attempting to pervert the course of justice. Morex was fined a total of \$75 000. Doube was fined a total of \$10 000 for the *Export Control Act* offences. He was also sentenced to three years and two months imprisonment with an order that he not be eligible for parole until he had served one month on the charge of attempting to pervert the course of justice.

Both Morex and Doube appealed against their convictions and sentences and the DPP appealed against the sentence imposed on Doube. The Court of Appeal dismissed the appeals by the company and Doube but allowed the appeal by the DPP. Doube was re-sentenced to two years imprisonment on each of the *Export Control Act* offences. The sentence for attempting to pervert the course of justice was not disturbed but the period he was required to serve before being eligible for parole was increased from one month to nine months.

The company and Doube both applied for special leave to appeal to the High Court. Both applications were refused.

Chapter 3

General prosecutions

ARNOLD

This case involved an administrator of a non-profit community based child-care centre who submitted false information to the Department of Community Services and Health about the number of children attending the centre. This resulted in the centre receiving \$143 000 in excess of its entitlements over a four year period.

Arnold used \$70 000 of the money for her own benefit. She pleaded guilty to one count of defrauding the Commonwealth and was sentenced to three years imprisonment to be released after four months.

On appeal the period of imprisonment to be served was increased to 12 months. A pecuniary penalty order of \$70 218 was made against her of which \$55 000 is likely to be recovered.

CANNABIS FROM PNG

In the past year there were eight prosecutions in Townsville and Cairns arising from the importation of cannabis from PNG to Australia. Six of the matters have been successfully concluded and committal proceedings in relation to the other two matters will be held within the next few months.

The cannabis, which is said to be of superior quality to that available in Australia, is known as New Guinea Gold and attracts a premium price when sold in Cairns. There appears to be a large profit margin involved in the commercial importations as a pound of cannabis purchased in PNG for approximately \$300-\$500 can be resold in Cairns for \$3500-\$4500.

A number of the matters involved Torres Strait Islanders who used their private boats to travel to PNG during the night, purchase cannabis and return home before dawn. Such cases generally involve less than five kilograms of cannabis and convicted offenders are generally imprisoned for less than six months.

In the matter of Lui, however, the defendant admitted to assisting in 14 importations over a period of eight months involving the importation of a total of 270 kilograms of cannabis. Lui's role in the importations was to provide a dinghy for the organisers and to provide navigation expertise. Lui was sentenced to three years imprisonment but was ordered to be released after nine months upon entering into a recognisance.

In the matter of Luka the defendant was intercepted by Customs officers after a flight from PNG and was found to be in possession of 774 grams of cannabis. He was released on bail while awaiting trial and during this period he was arrested in the Torres Strait by Queensland Police in possession of eight kilograms of cannabis obtained from PNG. Luka was sentenced to nine months imprisonment for the Commonwealth offence to be cumulative on the sentence for the State offence.

WESTERN AUSTRALIA

MARKOVINA

The DPP appealed successfully against sentences imposed on Markovina by a District Court judge of 10 years and four years imprisonment for offences of possession of imported methylamphetamine and heroin. A non-parole period of five years and three months had been fixed.

Chapter 3

General prosecutions

As reported last year, the first charge related to 17.5 kilograms of methylamphetamine that was recovered by the AFP from an emu farm in WA. The drug had been buried along with \$465 000 in cash. This was by far the largest known seizure of methylamphetamine at that time in Australia. A further \$58 000 was found buried at the house of the defendant's brother. The heroin charge involved 100 to 130 grams of heroin.

The Court of Criminal Appeal commented upon the scale of dealing in methylamphetamine as 'dwarfing' all previous cases. The court increased the head sentences to 12 years and six years, to be served cumulatively, and fixed a non-parole period of seven years and one month and two weeks, having regard to time spent in custody and statutory allowances.

CZARNIAK

Maurice and Petra Czarniak were registered pharmacists who sold five individually-made products being Quelfas A, Healfas, Resplendence hair cream, Acne-ban and Rash-Away. The Czarniaks refused to register the goods under the *Therapeutic Goods Act 1989* as they considered the products to be food and therefore not therapeutic goods.

Maurice Czarniak was charged with 16 counts of being knowingly concerned in an offence by his company of either supplying or manufacturing unregistered goods contrary to the *Therapeutic Goods Act*. Petra Czarniak was charged with four counts under the *Therapeutic Goods Act*.

At trial the Czarniaks admitted all the elements of the offence save that the products in question were therapeutic goods. They argued that the products contained nutrients such as eggs and other starch and, notwithstanding that the products were for topical application, they were therefore foods. The prosecution called evidence to show that the products were skin creams ointments, intended for external application to the skin, and that they were potentially toxic if swallowed.

The defendants were both convicted on all counts and were fined a total of \$96 000. This is the largest fine ever imposed in the history of the District Court of Western Australia.

The Czarniaks appealed unsuccessfully to the Court of Criminal Appeal against sentence and conviction. They are now seeking special leave to appeal to the High Court.

INDONESIAN FISHERMEN

As in previous years the DPP has continued to conduct prosecutions of Indonesians found fishing illegally in Australian waters.

The most significant development over the past 12 months has been the arrival of large commercial fleets to take Trepang. Trepang (otherwise known as sea slug or beche-de-mer) is a sedentary organism valuable as a food source and is taken by divers using air compressors and diving gear, or occasionally air tanks.

In October 1994 13 Trepang boats out of a fleet of 27 were apprehended in the area of Ashmore Reef off the northwest coast of Western Australia. The masters of the boats were each charged with offences against the *Fisheries Management Act 1991*. They all pleaded not guilty but were convicted after a six day hearing in the Broome Court of Petty Sessions. In each case, the master entered into a recognisance to be of good behaviour and the boat, catch and equipment was forfeited.

Chapter 3

General prosecutions

The Trepang fleets continued their incursions into Australian waters and a further 19 vessels were apprehended in November and December 1994.

In all of those cases the masters pleaded guilty to the charges and entered into recognisances to be of good behaviour. In eight cases the court ordered that the boat, catch and equipment be forfeited. In the remaining 11 cases the catch and equipment was forfeited but the magistrate decided not to order forfeiture of the boats. That was because those were apprehended in an area at the edge of the Australian Fishing Zone where the Royal Australian Navy and the Australian Fisheries Management Authority had not previously taken enforcement action.

The DPP was also the respondent to an appeal by five Indonesian fishermen who had been convicted for offences under the *Fisheries Management Act 1991* after being apprehended fishing for Trochus, a mollusc found on reefs and in shallow coastal waters.

The fishermen were each fined and ordered to serve periods of imprisonment in default of payment ranging between 200 and 520 days. The fishermen appealed against the severity of the sentence and argued that, as they were impecunious foreign nationals, the imposition of fines upon them meant that, effectively, they were being sentenced to imprisonment.

The appeals failed. The Supreme Court noted that a heavy penalty was required given the seriousness of the offences and the appellants' past history of offending. The court upheld the principle that, where other sentencing options are excluded by the facts of a case, a fine must reflect the gravity of the offence and must be imposed even though it may be likely that the defendants would serve a default term by reason of their not being permitted to be in the jurisdiction in order to pay the fine by other means.

TERRITORY PROSECUTIONS

Prosecutors from the DPP Perth Office prosecute defended matters in the Territories of Christmas Island and Cocos (Keeling) Islands.

The most recent prosecution arose when an AFP officer stationed at Cocos (Keeling) Islands, accompanied by the Government Conservator, intercepted a number of runabouts returning from the fauna reserve at North Keeling Island. The officer noticed a brown hessian sack floating well out of the water behind an approaching runabout. Fourteen dead protected seabirds were found inside the bag. A long bamboo pole, traditionally used by Cocos Malay Islanders as part of a flail to knock seabirds out of the air, was found floating in the water next to the sack.

North Keeling Island has become the last surviving breeding ground for local seabirds, many species of which are endangered and are found nowhere else in the world. This island is 24km to the north of the other Cocos Islands. It used to be difficult to reach until runabouts powered by outboard motors became available to the local community.

The three occupants of the runabout were jointly charged with having in their possession, without reasonable excuse, protected animals contrary to the *National Parks and Wildlife Conservation Act 1975*. The matter was heard at the Cocos Island Court of Petty Sessions. All three defendants were found guilty and each was ordered to pay fines and costs of \$600.

Chapter 3
General prosecutions

SOUTH AUSTRALIA

EDWARDS

The defendant was a former Director of counselling with the Vietnam Veterans' Counselling Service. While working with VVCS the defendant used about \$2800 of Commonwealth money to pay for the printing of a private book containing poems written by veterans. The defendant arranged for the printers to create invoices bearing false details of the work performed to cover the cost of printing.

The defendant pleaded guilty to three counts of defrauding the Commonwealth. He was convicted and imprisoned for three months but was released forthwith upon entering into a good behaviour bond. The defendant has repaid the money.

LOVERIDGE

This defendant was charged with imposing on the Commonwealth in relation to a claim for aged pension in two false names. She received a pension from 1967 to 1993 in one of the names and claimed a second pension from June 1986 in the second name. The defendant gave different addresses and operated two bank accounts for the receipt of the two pensions. The defendant obtained an overpayment of \$51 000 over a seven year period. When she was sentenced, the defendant was 69 years old and in poor health.

In sentencing the defendant, the judge stressed the responsibility of the courts to protect the integrity of the Social Security system by imposing proper punishments for deliberate and sustained fraud. He sentenced Loveridge to two-and-a-half years imprisonment, to be released on a recognisance after 10 months.

The defendant appealed against the sentence to the South Australian Court of Criminal Appeal. The court dismissed the appeal stating that the sentence of two-and-a-half years imprisonment for a course of conduct extending over seven-and-a-quarter years and involving a planned fraud upon the Social Security system was a moderate and reasonable sentence, even giving full weight to the factors of mitigation.

BROOK

This defendant was charged with defrauding the Commonwealth, by fraudulently claiming age pensions in nine false names. The fraudulent activity commenced in December 1986 and continued until July 1994. The amount of money defrauded was \$301 000.

This case was one of the most serious examples of this type of fraud to come before the South Australian courts. Brooks' modus operandi was as follows:

1. He set up a number of false identities with documents obtained from various sources over a period of years. He commenced organising the false identities well before he commenced the fraud. For example, he obtained a birth certificate for one identity in December 1986 but did not apply for aged pension in that name until March 1987, when the identity was 65 years of age and therefore entitled to claim for an aged pension.

Chapter 3

General prosecutions

2. He organised residential addresses for each claimant by renting premises shortly before the claim was lodged. The length of the leases varied between one and 12 months and the leases were not renewed on expiration. There was evidence that no one occupied the properties.
3. He obtained 18 Post Office boxes in false names, 10 of which were used in connection with the fraudulent claims.
4. He controlled a total of 40 false named bank accounts. It appears that Brook opened accounts in the nine false names to facilitate the payment of pensions. The remaining accounts appear to have been used to launder money between the pension accounts and himself.
5. He obtained tax file numbers for each of the identities, and also obtained motor vehicle licences and Medicare cards in the false names to reinforce the subterfuge.

Brook pleaded guilty to nine counts of defrauding the Commonwealth and to a variety of offences under the *Financial Transaction Reports Act 1988* arising from the operation of bank accounts in false names. He was given a total head sentence of eight years with a non-parole period of eight months.

The sentencing judge acknowledged that these were serious offences, and that he had no choice but to impose a sentence of imprisonment. He placed much emphasis upon the defendant's sad life and noted his psychiatric condition. At the time of sentencing Brook was 70 years of age, had moderate coronary artery disease and suffered from a personality disorder.

The DPP appealed against the sentence to the Court of Criminal Appeal. The non-parole period of eight months was increased to two years. The court stressed the paramount need for general deterrence in cases of this kind. While the court should always take into account factors personal to the defendant, it was necessary for the protection of the Social Security system that people should understand that they cannot escape the consequences of their actions with relative impunity simply by reason of age and the afflictions which go with age.

INTERNAL FRAUD

In 1994 Geoffrey Hammond, a former employee of the Department of Veterans' Affairs, was charged with four counts of defrauding that Department of a total of \$23 000. He did this by lodging claims in the names of two fictitious elderly veterans and their wives.

Hammond created the names from the surnames and initials of two women with whom he had close relationships. He tricked those women into allowing him to operate bank accounts they had opened in their names which he used as the repository for the service pension payments. Hammond used most of the money to support a gambling habit. The scheme operated over a period of six months.

Hammond made full admissions in the matter and pleaded guilty. He was sentenced to 20 months imprisonment, to be released forthwith upon entering a recognisance. The DPP appealed against the sentence and the Court of Criminal Appeal increased the sentence to three years imprisonment with a minimum term of 18 months. Full restitution was made from Hammond's contributions to his superannuation.

Chapter 3

General prosecutions

GAFFNEY

This was a prosecution under section 8Y of the *Taxation Administration Act 1953* against the director of seven companies which operated five motels throughout Australia during the late 1980s and early 1990s. The defendant pleaded guilty to 59 counts under section 221F of the *Income Tax Assessment Act 1936* involving the failure to remit tax instalment deductions totaling \$354 000. The defendant was sentenced to 12 months imprisonment with release forthwith and 300 hours community service. An order for reparation was made.

AUSTRALIAN CAPITAL TERRITORY

HAZELTON

The defendant pleaded guilty in the District Court at Cooma to one count of defrauding the Commonwealth in an amount of \$46 000. He was an Australian Postal Corporation employee. He failed to bring into account amounts received for bulk postage in relation to a mail order company situated in Cooma. The offence was committed over an 18 month period. Full restitution was made from termination entitlements.

Hazelton was sentenced to two years and eight months imprisonment to be released after serving one year.

SMITH AND SMITH

The two defendants were a husband and wife who were involved in the joint venture of building flats in Wagga. At the same time they built a family home also in Wagga.

In 1988-89 the defendants agreed to treat a sum of \$100 000 that they had spent on the family home as if it had been spent on the flats. The result was that the joint venture project suffered a loss which the defendants apportioned between them in their individual income tax returns. The defendants also claimed the cost of curtains and blinds against the joint venture and they presented false documentation to ATO to cover the fraud.

The amount of tax avoided by the husband was \$23 940. ATO imposed a further administrative penalty of \$28 909. The husband paid both sums prior to sentencing.

The wife did not actually avoid any tax because her total income was below the tax threshold.

The husband was charged with an offence of defrauding the Commonwealth and the wife with an offence under the *Taxation Administration Act*. Both defendants pleaded guilty. The husband was sentenced to 12 months imprisonment to be released after serving three months and the wife was fined.

On appeal, the District Court varied the husband's sentence by allowing him to serve the three months in custody by way of periodic detention. The appeal by the wife was dismissed.

DIBELLA

The accused was the director of a Company which carried on business as the operator of a supermarket in Jindabyne. Following an audit by ATO, the defendant was charged with seven counts of defrauding the Commonwealth by not declaring income.

The total amount not declared over a seven year period was \$556 000. These amounts came mainly from

Chapter 3

General prosecutions

interest earned on money in false name accounts and from capital gains totalling \$250 000 earned on the renovation of a home in Woollahra.

The defendant pleaded guilty after a sentence indication hearing. He was sentenced to imprisonment for a period of 18 months to be released after serving three months on a recognisance to be of good behaviour for a period of two years. The defendant had paid \$611 000 by way of primary tax and penalties prior to sentence.

ELLIOTT

This defendant was charged with a structuring offence under section 31 of the Financial Transaction Reports Act. It was alleged that he was party to 92 separate cash transactions in a seven week period totalling \$548 000 in cash and \$202 000 in bank cheques. It was alleged that he had structured the transactions to avoid the reporting requirements of the Act.

The accused was a bookmaker and the owner of a cigarette and giftware kiosk. For an unknown reason money seemed to be transferred on an average of three times daily from one financial institution to another. Each transaction was under \$10 000.

The defendant was convicted in the Albury Local Court following a summary hearing and was released without sentence on entering a recognisance to be of good behaviour and to pay \$500 prosecution costs.

MACKAY

Mackay was employed by the Attorney-General's Department as an Information Technology Officer Class 1. His duties included computer systems analysis and design, carrying out programming tasks and software evaluation.

Without any authorisation, and contrary to his duty, Mackay developed a computer program that enabled him to improperly obtain the passwords of over 100 officers on the Department's electronic mail system.

Mackay also developed programs that, when activated, operated automatically on the Department's computer system to systematically access the mail boxes of those officers by using each person's user identification and password and then store the mail messages and documents obtained. The programs could be used covertly on Mackay's computer while he was able to work at his computer on legitimate work. During April, May and June 1994 Mackay obtained documents that included confidential legal advices, possible Parliamentary Questions, and documents relating to personnel.

Mackay then sent 36 computer diskettes containing material obtained via Australia Post to the Shadow Attorney-General. He also sent two letters providing instructions on how to gain access to the diskettes. The diskettes contained over 12 000 mail messages and over 2000 documents. The attempted communication of this material had the potential to cause significant damage to the people and organisations mentioned in the documents.

Chapter 3

General prosecutions

The diskettes and the letters were handed to the AFP. The Attorney-General's Department conducted computer traces and these detected abnormal activity on Mackay's computer. The AFP then commenced video surveillance of Mackay's workstation and on 27 June 1994 Mackay was arrested and charged.

Mackay pleaded guilty in the ACT Magistrates Court to five charges under section 70(1) of the Crimes Act of attempting to communicate documents which came into his possession by virtue of being a Commonwealth Officer, and which it was his duty not to disclose, to another person, not being a person to whom he was authorised to communicate them.

In sentencing Mackay, the magistrate said that Mackay was employed in a position of trust and that the offences were a serious breach of that trust and of his duty. Mackay said in evidence that his motives in committing the offences were altruistic in that he was interested in bringing to light the alleged lack of security measures in the system. The magistrate found that Mackay's complete lack of remorse and his admissions of a political agenda, together with his wish for financial reward for his deeds, made it impossible to believe that he had any altruistic motive and that his concern for the lack of security in the system had been a rather convenient fall-back position in the hope of some leniency.

The magistrate said that imprisonment was the only appropriate penalty because people in a similar position must know that the community will not tolerate such breaches of trust and duty and that if they are tempted to commit similar offences they run the very real risk of spending some time in jail as a result.

Mackay was sentenced to imprisonment for nine months, to be released after serving three months upon entering a recognisance on conditions including that he be of good behaviour for three years.

RAMDHUN

Ramdhun was employed as a contract computer consultant by the Australian Customs Service. His duties included inserting an audit trail into a computer program used for the payment of diesel fuel rebates. Between June 1993 and February 1994 Ramdhun altered data within the system to cause rebates, which had previously been legitimately paid, to be repaid into two accounts to which he had access. The total amount defrauded was approximately \$1.4 million.

Ramdhun was charged with 13 counts of defrauding the Commonwealth, one count of attempting to defraud the Commonwealth, one count of altering data stored in a Commonwealth computer and one count of engaging in organised fraud. He was found guilty after a jury trial in the ACT Supreme Court. He was sentenced to a total of eight years imprisonment with a non-parole period of four years. He was ordered, under the Proceeds of Crime Act, to repay the amount defrauded.

SEWELL

Sewell was a constable in the AFP. It was alleged that he obtained a petrol card for an official vehicle after a duplicate card had been issued for the vehicle and that he used the card to purchase petrol for his own use on 13 occasions. Sewell pleaded guilty on the morning of the hearing. He was convicted of an offence against section 64A *Audit Act 1901* of misusing a Commonwealth credit card and was placed on a good behaviour bond.

Chapter 3 General prosecutions

TASMANIA

ROOK V MAYNARD (NO. 2)

This matter related to alleged breaches of section 76B(1) of the Crimes Act which provides that it is an offence for a person to intentionally and without authority obtain access to data stored in a Commonwealth computer. The case related to a Commonwealth employee who had allegedly breached the section many times.

Section 15D of the Crimes Act provides that where it is an offence to do something 'without lawful authority, or without lawful authority or excuse or without permission' the burden of proving lack of authority is on the defendant. The issue was whether the phrase 'without authority' in section 76B(1) came within the terms of section 15D.

At first instance, the magistrate upheld a submission of no case to answer on the basis that section 15D did not apply to the offence created by section 76B and that the applicant carried the burden of proving the absence of authority. This prosecution appealed against the decision.

It was held that section 15D applied to section 76B.

STEVENSON

This matter related to false returns submitted to the Australian Fisheries Management Authority in respect of orange roughy which the appellant claimed to have caught outside the Australian Fishing Zone in an area off the coast of New South Wales known as the Gascoyne Seamount. On two occasions when the relevant fishing boat was supposedly at the Seamount it had been seen by police at St Helen's Hill off the east coast of Tasmania. On another occasion, other documents on the boat showed that fish were taken when the forms submitted to AFMA reported that no fishing activity had taken place.

At first instance substantial fines were imposed upon both the owner of the boat and the master. The owner was fined \$94 000 and the master \$28 000. The master was also banned from the AFZ for a period of six months and the owner forfeited \$144 641, being the proceeds of two of the catches.

Both the owner and the master appealed against sentences and the prosecution appealed against the term of suspension of the master. The master withdrew his appeal and the owner's appeal was dismissed. The prosecution appeal was upheld and the period of suspension was extended to 12 months.

The master appealed to the Full Court of the Supreme Court of Tasmania against the extension of his suspension. By a majority, the court dismissed the appeal.

Chapter 3

General prosecutions

NORTHERN TERRITORY

ARRANGED MARRIAGE

This matter proceeded as a plea of guilty to one count of arranging a marriage for the purpose of assisting a person to get a permit to remain in Australia contrary to subsection 83D(1) of the *Migration Act 1958*.

The defendant, a Darwin businessman, paid the expenses for a fifteen year old Timorese girl to come to Darwin. He was also involved in supplying supporting documentation for her visa. Prior to her arrival he discussed with a male Timorese-born Australian the prospect of marrying a girl he had coming from Timor. The subject was again raised after she arrived. The men came to an arrangement that the Australian citizen would receive rent-free accommodation in return for his role in the marriage of convenience.

The defendant was involved in making the formal arrangements for the wedding, arranging an appointment with a solicitor and making application before a magistrate for permission for a minor to marry. He also attended the wedding as a witness.

After the wedding the defendant obtained a form from the Department of Immigration and Ethnic Affairs with a view to arranging for the girl to remain permanently in Australia. The partially-completed form was found by police at the defendant's business premises.

The defendant was convicted and fined a total of \$10 000.

BEN TAPP

The defendant pleaded guilty to a number of offences relating to breaches of the Civil Aviation Regulations.

The offences fell into a number of categories including flying without an air operators certificate, flying commercial flights while only having a private pilot's license, flying without a current medical certificate and flying greater than the number of hours allowable in a twenty-four hour period.

The defendant was convicted on all counts and fined a total of \$5600.

RUSSEL

The defendant obtained \$57 000 in credit without declaring he was an undischarged bankrupt. He was declared a bankrupt in three different States in 1970, 1980 and 1988. Between 1970 and 1990 he was an undischarged bankrupt for all but two years.

The defendant was convicted of five counts under section 269 of the *Bankruptcy Act 1966* and was sentenced to a total of 18 months imprisonment to be released after serving 9 months. At the time of sentence only \$400 had been repaid and the judge took into account lack of contrition and the need for general deterrence.

AYRES

In this case the Commonwealth was defrauded of \$84 000 by the two defendants. The wife claimed benefits after the defendants resumed living together following a short separation. Mr Ayres was in full time employment.

Chapter 3

General prosecutions

The defendants pleaded guilty to charges of defrauding the Commonwealth and were sentenced to two years imprisonment to be released after four months. A reparation order was made for the outstanding amount of \$82 000.

FOREIGN FISHING VESSELS

Between 1 July 1994 and 30 June 1995 a total of sixty eight Indonesians were prosecuted for offences against the *Fisheries Management Act 1991*, namely fishing inside the Australian Fishing Zone and being equipped to fish. The vessels usually carried a crew of between five and 10 Indonesian fishermen. However prosecution action was only taken against the masters of the vessels. In all of the cases prosecuted, the vessels were fishing either for shark or trepang.

In the overwhelming majority of cases, the matters were proceeded ex-parte after the defendants had consented to the court's jurisdiction and been returned to Indonesia. Generally a fine of between \$1000 and \$5000 was ordered in relation to each offence, and in all of the cases the court ordered forfeiture of the seized vessel.



Chapter 4

Corporate Prosecutions

Since 1 January 1991 the DPP has prosecuted, on a national basis, offences against both the Cooperative Scheme Laws and the Corporations Law. This function was given to the DPP by the *Corporations Act 1989* and the corresponding Corporations Acts of the various States and the Northern Territory. Prior to that time the responsibility for investigation and prosecution of offences for corporate misconduct rested with State Corporate Affairs Offices and State prosecution authorities.

The responsibility for investigating offences against the Cooperative Scheme Laws and the Corporations Law rests with the Australian Securities Commission. With the exception of minor regulatory matters the ASC refers completed investigations to the DPP for prosecution action.

Offences against the Corporations Law and the Cooperative Scheme Laws of the States and the Northern Territory are treated as offences against Commonwealth law and are prosecuted in accordance with the *Prosecution Policy of the Commonwealth*.

The ASC and DPP have developed guidelines which form the basis of the working relationship for the investigation and prosecution of corporate crime. The guidelines deal with the role of the DPP in the criminal investigative process. In essence, the DPP is to provide early advice to the ASC in the investigation of suspected offences. This is important in corporate fraud cases where an investigation can be time-consuming and resource-intensive. Early involvement of the prosecutor can assist in putting to best use the finite resources of the investigator by avoiding areas of inquiry that are unlikely to result in a prosecution.

There is regular liaison between the ASC and the DPP at head of agency, management and operational levels. Both organisations have a clear understanding of each other's respective roles and responsibilities.

Communication between the ASC and DPP is enhanced by regular liaison meetings at both the regional and national levels together with the exchange of reports on cases by both organisations. This formal liaison is in addition to case-level liaison between officers of the ASC and the DPP.

CASELOADS

During the year there was a steady flow of referrals to the DPP for both advice and prosecution.

As indicated in the 1993-94 Annual Report the DPP had 200 matters on hand at the start of the year.

During 1994-95 the ASC referred 95 matters for advice and 50 matters for hearing or prosecution. It should be noted that some of the matters referred for advice eventually lead to prosecution. During the year 140 matters were completed as follows:

Plea guilty	33
Found guilty	16
Acquitted	9
Advice provided	62
Other	20

Chapter 4

Corporate Prosecutions

As at 30 June 1995 the DPP had 205 matters on hand that had been referred by the ASC.

Additionally, the DPP had three matters on hand relating to corporate misconduct that had been referred by the NCA.

As with most statistics, these figures do not tell a complete story. The following descriptions of some of the more significant or interesting cases dealt with during the year provide a greater appreciation of the work involved.

NEW SOUTH WALES

GROWTH INDUSTRIES

On 8 May 1995, after a 14 week trial, a NSW District Court jury found David John Towey guilty of four offences against the Companies (NSW) Code. Towey was the former managing director of a number of companies in the Growth Industries group.

The Growth Industries group was established in 1987 to promote and manage tax-driven horticultural and viticultural investment schemes. Between 1988 and 1989 the group raised approximately \$135 million from over 5000 investors. A provisional liquidator was appointed to the group in July 1990.

On 26 June 1995 Towey was sentenced to imprisonment for 16 months with a minimum term of 12 months for making improper use of his position as an officer of Growth Industries Pty Ltd. Towey was found to have used \$717 750 of the company's funds to finance a personal investment project contrary to section 229(4) of the Companies (NSW) Code.

Towey was also convicted of one count of misleading the auditors of Growth Industries Pty Ltd contrary to section 564(1) of the Companies (NSW) Code. It was alleged that Towey made a false statement to the auditors that an expense of \$400 000 was a legitimate cost of the company for investigating 'new project' feasibility. Despite this representation, approximately \$256 000 of the \$400 000 was used by Towey for personal expenses. In respect of this count, Towey was placed on a \$1000 three year good behaviour bond.

Towey was also found guilty of two counts of failing to act honestly in the exercise of his powers contrary to section 229(1)(a) of the Companies (NSW) Code. In two separate transactions involving \$52 000 and \$260 000 Towey used Growth Industries funds to repay personal loans. In respect of these two counts, Towey received a \$1000, 18 month good-behaviour bond.

This trial was the first time in Australia that a jury had been assisted with the presentation of evidence via a computer system. The Commonwealth DPP has developed a new portable, computerised court presentation system called CLARITY. The system was first used during the committal hearing of the Towey matter and is referred to in the 1992-93 Annual Report. The use of CLARITY resulted in significant savings in court time. The system is now being used in many other prosecutions.

Chapter 4

Corporate Prosecutions

PETER GORDON FLUDE

As reported in the 1993-94 Annual Report Peter Flude was due to stand trial on charges related to ATA Services Limited, a company which provided consultancy services for a variety of agricultural, horticultural and viticultural projects. The company acted as trustee and growers representative for various projects managed by Growth Industries Management Limited.

Flude pleaded guilty to one count of supplying misleading information to auditors contrary to section 564(1) of the Companies (NSW) Code. In light of Flude's references and record of community service [Karpin DCJ], found the offence proved and, without recording a conviction, required Flude to enter into a recognisance under section 556A of the *Crimes Act 1900* (NSW) in the sum of \$5000 to be of good behaviour for two years. Flude had not gained any personal financial benefit from the transaction.

The count against Flude alleged that he had omitted from the 1989 *ATA Services Limited Annual Report* information about a \$1 million payment to an unrelated company, Sydglen Pty Ltd. By his plea, Flude acknowledged that the omission of this payment had the effect of misleading the auditors and rendered the company's 1989 annual report misleading.

BUDGET CORPORATION LIMITED

On 25 November 1992 charges were laid against Robert Ansett, Stanley Hamley, David Smithers and Andrew Stevenson in relation to a prospectus for the issue of shares in Budget Corporation Limited.

The prospectus, which was issued on 21 November 1988, offered 12.5 million ordinary shares in Budget Corporation Limited for public subscription at an issue price of \$1 per share. At the time of the issue of the prospectus, Ansett and Hamley were directors of Budget Corporation Limited. It was alleged that Smithers and Stevenson, respectively the accountant and the solicitor to the prospectus, were knowingly concerned in the issue of the allegedly false prospectus.

The committal proceedings began on 2 May 1994. The magistrate found there to be a prima facie case against both Stevenson and Smithers. However, pursuant to section 41(6) of the *Justices Act 1902* (NSW) discharged both defendants on the basis that he was of the opinion a jury would not be likely to convict them. Both defendants have sought costs and the magistrate has reserved his decision in relation to that issue.

The committal proceedings against Ansett and Hamley continued and both defendants were committed for trial to the NSW Supreme Court. No date has yet been allocated for the trial.

SPEDLEY SECURITIES LIMITED

As indicated in past reports, charges have been laid against Brian Yuill, James Craven and John Corner arising from the investigation into the collapse of Spedley Securities Limited and related companies.

Yuill

During August/September 1994 Yuill was tried in relation to a group of charges laid against him, referred to as the Nodrogen proceedings. After a trial lasting just over two weeks, Yuill was convicted and, on 14 September 1994, was sentenced to a minimum term of imprisonment of two years and ten months, to expire on 11 July 1997, with an additional term of 11 months. Yuill has lodged an appeal against this conviction and this appeal is presently part-heard.

Chapter 4

Corporate Prosecutions

Yuill's re-trial on the group of charges referred to as the 'Triton' proceedings was due to commence on 4 September 1995. The re-trial was ordered by the Court of Criminal Appeal on 29 June 1994 following the quashing of his conviction from his first trial (referred to in the 1994-95 Annual Report). On 21 July 1995 Yuill successfully sought to have the trial date vacated until after the High Court handed down its decision in *R v Hopwood and Byrnes*, referred to below.

Two other matters, referred to as the 'Chelsea' proceedings and the '1988 Accounts' proceedings, are awaiting trial dates.

Craven

On 6 June 1995 Craven pleaded guilty to a charge under section 229(4) of the Companies (NSW) Code relating to the 'Bisley Rights' issue. He was sentenced to nine months imprisonment comprising a minimum term of six months and 23 days, to expire on 29 December 1995, with an additional term of two months and seven days.

As noted in the 1994-95 Annual Report, Craven was prosecuted by the NSW Crown Solicitor for contempt of court following his refusal to answer questions in the first 'Triton' trial of Yuill, referred to above. Craven was convicted of three of the nine charges and, on 30 June 1995, was ordered to pay a fine of \$10 000 and sentenced to a term of six months imprisonment commencing on 30 December 1995. The issues that arose in that case concerning the scope of an undertaking given pursuant to section 9(6) of the *DPP Act 1983* are discussed elsewhere in this report.

CORNER

A date for the trial of Corner in relation to offences under sections 229(4) and 564(1) of the Companies (NSW) Code was fixed to commence on 27 March 1995. However, on 17 February 1995, this date was vacated and the trial has been adjourned until after a decision has been handed down by the High Court in *R v Hopwood and Byrnes*, referred to below.

GENERAL INVESTMENTS AUSTRALIA LIMITED

On 26 August 1994 Robert Alan Hodge and Bruce Douglas Meredith Kitson, officers of General Investments Australia Limited (GIAL), were committed to stand trial for 26 offences against section 229(4) of the Companies (NSW) Code and ten offences against section 563(2) of the Companies (NSW) Code. The section 229(4) offences relate to 13 payments by GIAL to Radlec Investments Pty Ltd and Kleinwort Benson Australia Limited. It was alleged that Kitson and Hodge as officers of GIAL improperly used their positions as such officers by procuring the provision of funds to Radlec Investments Pty Ltd and Kleinwort Benson Australia Limited to gain an advantage for Radlec Investments Pty Ltd and Hodge.

On 28 November 1994 Kitson entered a plea of guilty to one offence against section 229(4). A number of similar section 229(4) offences were scheduled and taken into account for the purposes of sentencing Kitson. The Court deferred passing sentence upon Kitson entering a recognisance pursuant to section 558 of the Crimes Act 1900 (NSW) in the sum of \$1000 to be of good behaviour for two years. A date for Hodge's trial has not yet been set.

Chapter 4 Corporate Prosecutions

DIRECT ACCEPTANCE CORPORATION LIMITED

On 21 December 1994 two former directors of Direct Acceptance Corporation Limited (DAC), Raymond Lord and John Richard Riordan were committed to stand trial in the Supreme Court, Sydney on a number of charges of making improper use of their positions as officers of DAC contrary to section 229(4) of the Companies (NSW) Code in order to gain an advantage either indirectly for themselves (one charge in respect of each defendant), or directly for companies associated with them (three charges as against Lord and four charges as against Riordan).

Lord was also committed for trial on two counts of furnishing misleading information to DAC's trustee for debenture holders contrary to section 564(1) of the Companies (NSW) Code. A trial date for the matter has not yet been set.

CRANE AND REYNOLDS

In the 1993-94 Annual Report it was noted that proceedings had been brought in the Supreme Court under the *Supreme Court (Summary Jurisdiction) Act 1967* (NSW) against Desmond Crane and David Reynolds. Charges were brought against Crane and Reynolds for contraventions of section 125 of the Securities Industry (NSW) Code and section 178BB of the *Crimes Act 1900* (NSW). The hearing against Crane and Reynolds commenced on 29 August 1994. It was alleged that a company, ATS Resources Ltd (ATSR), had entered into an agreement to purchase shares in another company which was subject to the approval of ATSR shareholders and that Crane and Reynolds were the authors of a false and misleading report concerning the purchase which was issued to shareholders for the purpose of seeking their approval.

On 16 September 1994 Levine J dismissed the charges against Crane and Reynolds under section 125 of the Securities Industry (NSW) Code. The Court held that the report could not have been likely to induce the purchase of securities by ATSR as the purchase had occurred when the agreement to purchase shares already had been entered into and secondly, the act of the general meeting of the shareholders of ATSR in approving the purchase was not an act of the company, ATSR.

On 6 April 1995, Levine J found that in respect of each defendant there was no case to answer in relation to the charge under section 178BB of the *Crimes Act 1900* (NSW).

ENTITY GROUP LIMITED

In the 1992-93 Annual Report, mention was made of the proceedings against Garry Carter, Christopher Blaxland and Dennis Vickery.

The accused are each to be separately tried with the trial of Carter to commence on 7 August 1995. The other two trials will follow consecutively at the conclusion of the Carter trial. An application was made by Carter for a stay of proceedings based principally on alleged impecuniosity and the principles to be derived from the High Court in *Dietrich v R* (1992) 177 CLR. This application was dismissed on 25 July 1995.

Chapter 4

Corporate Prosecutions

WESTMEX LIMITED

As indicated in the 1993-94 Annual Report on 4 March 1994 Russel John Goward, the former chairman and managing director of Westmex Limited, was charged with one offence against sections 125 of the Securities Industry (NSW) Code.

It is alleged that on 6 December 1989 Goward made a statement in a press announcement which was likely to induce the purchase of Westmex shares and which he ought to have known was false or misleading. The statement represented that over the two months prior to 6 December 1989 no director of Westmex had sold Westmex shares. The statement was subsequently reported in the press on 7 December 1989.

It is alleged that in November 1989 Goward had given instructions to a stockbroker for the sale of approximately 733 800 Westmex shares held by a private company controlled by him. The sale yielded approximately \$719 700.

At the time of the press announcement, the private company was the single largest shareholder in Westmex and the share price of Westmex shares had been falling. Westmex was placed into liquidation in February 1990.

On 27 February 1995 Goward was committed to the District Court for trial. A trial date is yet to be fixed.

VICTORIA

PRO-IMAGE STUDIOS LTD

Eight former officers and directors of a public listed company, Pro-image Studios Limited, were charged in September 1993 with offences under both the Companies (Victoria) Code and the *Crimes Act 1958* (Vic). Pro-image Studios Ltd was a member of the Quatro group which comprised four listed companies, namely Quatro Ltd, Distrionics Ltd, Pro-image Studios Ltd and Whitehall Ltd and numerous subsidiaries and associated companies. The defendants have been charged with offences which include failing to act honestly pursuant to section 229(1)(b) of the Companies (Vic) Code, making improper use of position pursuant to section 229(4) of the Companies (Vic) Code, theft pursuant to section 74 of the *Crimes Act 1958* (Vic) and obtaining a financial advantage by deception pursuant to section 82(1) of the *Crimes Act 1958* (Vic). The transactions, the subject of the charges, are complex and involve large sums of money.

The committal hearing commenced on 22 August 1994. On 31 August 1994, one of the defendants, David William Cole, pleaded guilty to one offence of failing to act honestly pursuant to section 229(1)(b) of the Companies (Victoria) Code. Mr Justice Hampel of the Supreme Court of Victoria sentenced Cole to be imprisoned for 15 months, such sentence being wholly suspended.

The committal hearing against the remaining defendants has been adjourned to 21 August 1995 as the possible date when the magistrate will deliver his decision.

The case is the first in Victoria where the computer litigation support system was used in a committal. The DPP's computer court presentation system, CLARITY, allowed speedy access to the 30 000 documents that had been scanned and transferred to compact disc. Also loaded on those discs were approximately 60 diagrams which were used to explain the relevant transactions and the corporate structure and relationship of the various groups of private and public companies involved in the transactions, the subject of the charges.

Chapter 4

Corporate Prosecutions

By the use of sophisticated document embedding techniques it was possible to access on screen all the documents necessary to explain and justify the various elements of each relevant diagram. With limited exceptions the hearing proceeded by reference to the relevant on-screen image rather than by reference to the original documents. The use of this system which was developed by the DPP and the ASC saved significant time and resources both in and out of court.

PETER FRANCIS PECK

Peter Francis Peck pleaded guilty in the County Court to one count of carrying on a futures advice business contrary to section 1143(a) of the Corporations Law, one count of making improper use of his position contrary to section 232(6) of the Corporations Law, one count of failing to comply with an ASC notice contrary to section 63 of the ASC Law and one count of obtaining property by deception contrary to section 81 of the *Crimes Act 1958* (Vic).

Peck carried on a futures advice business under the business name Commcheck between 1 July 1989 and 31 October 1991.

Commcheck purported to act as a worldwide commodity monitoring and analysis firm, providing financial advice and services to clients. Peck, as proprietor of Commcheck issued reports to a number of persons in relation to futures transactions and in some instances through Commcheck and/or Crux Investments Pty Ltd entered into commodity agreements whereby futures trading services were purported to be provided. Crux was Peck's private company. At no stage did Peck, Commcheck or Crux hold the requisite licences to carry on a futures advice business in Australia.

The investors forwarded cheques payable to Commcheck to be invested on the futures market and received fortnightly commodity reports advising of the status of their investments. This continued until 16 September 1991 when Peck advised them that Commcheck had ceased to operate.

Without the knowledge or authorisation of investors, Peck deposited four cheques payable to Commcheck totalling \$168 000 into a bank account in the name of Crux and deposited one cheque payable to Commcheck in the sum of \$10 000 into his personal Visa cheque account. Peck did not execute any futures trades in relation to the amounts paid by the various investors.

Peck also failed to fully comply with a notice issued pursuant to section 32(1) of the ASC Law to provide books and records to the ASC.

Peck was sentenced to an effective total of two and a half years imprisonment, to be released after serving four months, pursuant to section 20(1)(b) of the *Crimes Act 1914*.

JOHN AVRAM - INTERWEST LTD

On 6 February 1992 proceedings were commenced against John Avram and others in respect of a transaction involving the giving of financial assistance by Interwest Ltd in connection with the acquisition of shares in itself contrary to section 129(5) of the Companies (Victoria) Code.

John Avram was a director of Interwest Ltd and group chief executive of the Interwest Group of companies in mid 1989. Interwest was at that time a public company listed on the Australian Stock Exchange.

Chapter 4

Corporate Prosecutions

Companies associated with Avram controlled 65 per cent of the issued shares of **Interwest**.

In mid 1989 the Interwest Group of companies was committed to an expansion program that extended to the building and acquisition of a number of hotels and resorts. In some instances funding that had been promised for various of these projects was not forthcoming as and when expected. The group was asset rich but cash poor.

Interwest had adopted as part of its corporate plan an objective that it would increase its number of issued shares with the intention of diluting Avram's own shareholding and encouraging financial institutions to take up shares in Interwest. Attempts to attract institutional shareholders failed.

Avram and another senior Interwest executive decided in early July 1989 to approach another shareholder and a distant relative of Avram, Peter Jordan, to take up a placement of approximately 25 million shares in Interwest at a price of 50 cents per share.

It was proposed that Jordan pay for the shares in part with monies loaned to him by Avram and in part from monies borrowed from Kuwait Asia Australia Ltd (KAA). Jordan agreed to the proposal under which he was not required to put up any funds of his own or to offer any security beyond the shares themselves.

Arrangements were made with KAA to provide \$7.5 million by way of a bill facility. The advance was made to another group company, Interwest Hotels Pty Ltd. The facility was guaranteed by Interwest Ltd, Avram and another senior Interwest officer. The shares issued to Jordan were used to secure the advance by KAA.

When repayment of the KAA facility fell due Interwest did not look to Jordan to repay it or refinance it. The entries in the books of Interwest, Interwest Hotels, and TLC failed to mention that KAA provided the funds used to partly pay for Jordan's shares.

On 10 December 1992 Avram and the other accused were committed for trial in respect of charges arising out of this transaction .

Avram subsequently commenced Supreme Court proceedings to review the decision of the magistrate to commit him for trial. On 23 August 1993 that application was dismissed by consent with an order that Avram pay the informant \$7500 in costs.

On 9 December 1994 Avram was arraigned in the County Court at Melbourne and entered a plea of guilty to two counts of contravening section 129(5) of the Companies(Victoria)Code.

On 31 May 1995 Avram was sentenced to four months jail fully suspended for two years on each count. Each sentence is concurrent upon the other.

BENDIGO GOLD NL

Charges in the matters of Robert Champion De Crespigny and Thomas John Meiklejohn were laid in December 1993 and changed in wording but not in substance, in April 1994.

On 1 December 1994 these charges were determined when the charges against De Crespigny were dismissed upon the prosecution advising the court that it did not intend pursuing those charges. Meiklejohn pleaded guilty to one charge under section 229(2) of the Companies (Vic) Code and was placed upon a two year good behaviour bond without a conviction being recorded against him.

Chapter 4

Corporate Prosecutions

The case against both De Crespigny and Meiklejohn concerned a number of alleged inaccuracies in the Part A Statement issued by Brunswick NL in respect of the takeover of Bendigo Gold NL. The principal issue related to the valuation of Brunswick's non-current assets which was stated to be based on an 'independent report'.

It was accepted that the 'independent report' upon which the directors based their valuation was a report prepared by Neil Cole in 1988 from data supplied by Brunswick for the purpose of submission to a commercial lender for the purposes of a proposed finance facility. It was alleged that not only was the Cole report so heavily qualified as to make it unreliable as the basis of a valuation in these circumstances, but also that it contained very significant internal calculation errors including the failure to take into account significant mining costs.

The principal charge against De Crespigny was pursuant to section 44(1) of the Companies (Acquisition of Shares) Code, which required the prosecution to establish objectively that the Part A Statement contained misleading material. The offence did not require proof of any state of mind and did not require proof of any dishonesty on the part of the defendant. If the statement did contain misleading material the defendant would then have the onus of demonstrating that he took all reasonable care in the circumstances to ensure that the statement was not misleading.

As part of the investigative process, the ASC had issued notices to produce documents to a large number of persons and entities, including Cole, Western Mining Ltd and Brunswick. It was the material produced in response to these notices, which constituted the basic data by which the expert witnesses retained by the ASC formed their opinions that the valuations stated in the Part A could not be justified or defended.

During the course of the hearing of this matter further data concerning the geology of one of Brunswick's mining pits was adduced by the defence.

It appears that this data had been located at about the time the hearing commenced.

The material which had not been available at the time of the preparation of the Part A Statement or when the prosecutions' experts provided their opinions, attributed a sufficiently high value to the pit and consequently to the non-current assets of Brunswick to cast doubt on the proposition that viewed objectively the valuation was not misleading.

Accordingly, the DPP decided to discontinue the prosecution in accordance with the *Prosecution Policy of the Commonwealth*. Some time prior to this, when it had been agreed that the prosecution would proceed on a summary basis as opposed to a proceeding by way of committal and trial, De Crespigny had by his solicitor agreed to waive any right to claim costs in the event he was not found guilty at the summary hearing. Accordingly, no order as to costs was sought or made against the informant.

GRANT AND CALLAGHAN

On 11 March 1995 Leigh Ronald Grant and David John Callaghan were sentenced by Judge Mullally in the Melbourne County Court to terms of imprisonment following the trial of Callaghan and the plea of guilty of Grant.

Grant pleaded guilty to two 'rolled up' counts of theft contrary to section 74 of the *Crimes Act 1958* (Vic) and gave evidence against Callaghan at Callaghan's trial.

Chapter 4

Corporate Prosecutions

Callaghan was convicted by a jury of 73 counts of theft contrary to section 74 of the *Crimes Act 1958* (Vic).

Grant was sentenced to a total sentence of five years with a non-parole period of three years. Callaghan was sentenced to eight years with a non-parole period of six years.

In 1987 Grant and Callaghan began operating an insurance funding business known as Insurance Funding Pty Ltd. The business of Insurance Funding was to provide finance to businesses and individuals to enable them to pay insurance premiums. The company obtained funds to do this by a combination of loan funds provided by clients of Callaghan or Grant and by loan funds provided by financial institutions. By about mid 1989 Insurance Funding was in serious financial trouble.

In October 1989 Grant and Callaghan entered into negotiations which led to the formation of a joint venture company named Infund Australia Ltd. Infund was to procure, settle, service, manage and supervise 'approved loan contracts' on behalf of another party. Grant and Callaghan agreed that they would each own 12.5 per cent of Infund's shares and the rest were owned by the other party to the joint venture.

Grant and Callaghan controlled an account of Infund known as the Infund Premium account as well as the bank accounts of Insurance Funding and various other bank accounts associated with other business enterprises run by them. From January 1990 Grant and Callaghan made 65 unauthorised withdrawals from these accounts totalling \$6 751 246.50. These withdrawals correspond to 65 counts of theft on the presentment filed against Callaghan. Grant was presented on one 'rolled up' count of theft representing the 65 withdrawals.

The remaining charges against Grant and Callaghan related to the Australian Sharemarket Fund which was marketed by Grant and Callaghan to Asian investors. The accused represented the Australian Sharemarket Fund as 'a diverse portfolio of quality shares' and the 'only fund designed for the migrant'.

A Taiwanese migration consultant was employed by the accused to locate migrants who might be interested in placing their funds with Australian companies. Callaghan provided the agent with information relating to the Australian Sharemarket Fund which was false or misleading. The accused in fact used the money invested to provide financial support for Insurance Funding, to pay interest to investors in the Australian Sharemarket Fund and to conceal the unauthorised withdrawals by repaying some of the money stolen. A total of \$2 350 000 was stolen from the Asian investors.

Upon sentencing the accused Judge Mullally commented that the frauds effected by Grant and Callaghan were a cause of concern nationally as they affected the trust necessary for legitimate business dealings between Australia and its trading partners.

QUEENSLAND

SKASE

As reported in previous reports, on 31 August 1992, two ex officio indictments were presented in the Brisbane District Court charging Christopher Charles Skase with one offence against section 229(1) of the Companies (Queensland) Code, 29 offences against section 229(4) of the Companies (Queensland) Code and two offences against section 129 of the Companies (Queensland) Code. Skase was not present at the

Chapter 4

Corporate Prosecutions

presentation of the indictments. He was then in Mallorca, Spain, and claimed to be unable to travel to Australia due to the state of his health.

On 31 January 1994, Skase was arrested in Mallorca, Spain following a request for his provisional **arrest** by the Attorney-General. He was admitted as a prisoner to the General Hospital of Palma De Mallorca.

On 3 March 1994, an extradition request was delivered to the Spanish Ministry of Foreign Affairs in relation to the offences against both the Companies (Queensland) Code and further offences against section 267 of the *Bankruptcy Act 1966*.

The application for Skase's extradition was argued before the Audiencia Nacionale in Mallorca, Spain, on 19 July 1994. Oral and written medical evidence was placed before the court regarding the fitness of Skase to travel to Australia. Experts from both Australia and Spain in the areas of aero-medical evacuations and pulmonary disease provided evidence to the court that Skase could safely travel to Australia to face these charges. The court reserved its decision regarding the application.

On 16 September 1994, the Audiencia Nacionale delivered its judgment in which it concluded that **Skase** was eligible to be extradited to Australia in respect of the offences against the Companies (Queensland) Code. The court declined to order his extradition in relation to the offences against the *Bankruptcy Act 1966* indicating that these were not offences which were recognised in Spanish law. In light of his medical condition, as a condition of his extradition, the court imposed the requirement that Skase be transported to Australia by sea.

Appeals against the court's decision were lodged by Skase and the Spanish authorities on behalf of Australia and considered by the Full Bench of the Audiencia Nacionale on 28 October 1994.

On 19 December 1994, the Full Bench of the Audiencia Nacionale handed down its judgment. It supported the view that Skase was eligible to be extradited to Australia in respect of the Companies (Queensland) Code charges. However, the court also concluded that Skase's health was such that to order his extradition to Australia by air or by sea involved unacceptable risks. Therefore, the court ordered that Skase be **released** and the extradition application be refused.

FOSTER

On 1 October 1992, Peter Foster was charged with three offences against section 37(b) of the *Crimes Act 1914*. It was alleged that Foster attempted to induce certain persons to give false testimony at an ASC examination.

Peter Foster was an undischarged bankrupt and as such was prevented from taking part in the management of a company. Notwithstanding this it was alleged that Foster arranged for three acquaintances to be directors of Trade-Ex Limited in name only while Foster made all the decisions, dealt with creditors and staff and arranged for cheques to be signed by one of the directors.

The ASC began an investigation when it came to their attention that Foster may have been involved in the management of Trade-Ex. It is alleged that Foster prepared a six-page document indicating to the directors that they should answer any questions in accordance with the information in that document so as to disguise Foster's involvement in the management of Trade-Ex.

Chapter 4 Corporate Prosecutions

Foster was committed on all charges in October 1993. On 28 April 1995, Foster through his legal representative, indicated a preparedness to plead guilty to each of the charges. The matter was then adjourned for sentence to 31 July 1995.

HYLAND

On 9 February 1994, Gavin Keith Hyland was committed for trial on a total of 17 charges under both the Criminal Code (Qld) and the Futures Industry (Queensland) Code. The charges relate to a total of over \$200 000 received by Hyland from investors in his capacity as a financial adviser. It is alleged that the investors instructed Hyland to invest money on their behalf and that, contrary to the instructions, Hyland used the money to trade on the futures exchange or the stock market in the name of Hyland Investment Corporation Pty Ltd, a company of which he was a director and the major shareholder.

The original trial date of 17 October 1994 was vacated due to the accused's ill-health. A new trial date of 31 July 1995 was allocated with the trial expected to take three weeks.

On 20 July 1995, Hyland pleaded guilty to seven counts against section 427 of the Criminal Code (Qld). The date for his sentence has not yet been fixed.

PIVOT GROUP LIMITED

As indicated in last year's report on 3 May 1994, Peter Laurance appeared in the Brisbane Magistrates Court on 13 charges under section 129 and 13 charges under section 229(4) of the Companies (Queensland) Code. Peter Searson and Graham McHugh were also summonsed to appear in court on similar charges.

The charges concern an attempt by Q-West Pty Ltd (Laurance's private company) to take over and subsequently privatise Pivot Group Limited (PGL). The Pivot Group was primarily responsible for the management of Seaworld Aquatic Park and was a majority unit holder in the Seaworld Property Trust which owned the park.

It is alleged that Q-West was provided with a number of facilities by Tricontinental Corporation for the purpose of financing the purchase of PGL shares. It is alleged that interest payments on these facilities were made to Tricontinental by either Pivot Projects (a group company) or PGL and recorded as loans to Q-West contrary to section 129 of the Companies (Queensland) Code.

Each of the co-accused is also charged with improperly using his position as a director under section 229(4) of the Companies (Queensland) Code in relation to these payments.

Laurance, Searson and McHugh were committed for trial in December 1994. The trial, which is expected to take 4 weeks, has been listed to commence on 23 October 1995 in the Brisbane District Court.

MACKENZIE-FORBES

On 6 July 1995, Neil Mackenzie-Forbes was arrested and charged with 34 offences against section 427 of the Criminal Code (Qld) and 34 offences against section 1307 of the Corporations Law.

It is alleged that between 10 November 1992 and 14 February 1994, Mackenzie-Forbes became involved in 34 fraudulent transactions relating to the securing of finance by Queen Street Press from 11 finance companies.

Chapter 4

Corporate Prosecutions

WHITTAL

On 28 January 1994, a warrant of arrest was issued in respect of Anthony Raymond Whittal in relation to an alleged offence against section 232(2) of the Corporations Law.

As Whittal was resident in New Zealand, the Australian Securities Commission sought the assistance of the New Zealand police to obtain an order for Whittal to be extradited from New Zealand to Australia. Whittal was arrested and an application for his extradition was made to the District Court at Tauranga. The application was heard on 18 April 1994. The Court reserved its decision on that day and on 22 April 1994 the court declined to make an order for Whittal's extradition.

On 17 August 1994, a review of that decision was conducted by the High Court of New Zealand and by consent, the order of the District Court at Tauranga was quashed and the extradition application was remitted back to the District Court to be dealt with according to law.

On 14 November 1994, the District Court ordered that Whittal be extradited to Australia.

Following his return to Australia, Whittal was committed for trial on 8 February 1995. His trial is scheduled to commence in the Brisbane District Court on 14 August 1995.

It is alleged that in April 1991 Whittal failed to act honestly as a director of a company by withdrawing the sum of \$580 000 from the company's account for the fraudulent purpose of defeating claims against the company.

COOK

Maxwell Leonard Cook was a director and chairman of the board of a publicly listed company, Portfolio Holdings Limited whose primary activity was in the marketing of an insurance bond. Cook was also chairman of the Family Security Friendly Society.

In January 1991, the affairs of the Friendly Society came under investigation by State and Federal police as well as the ASC. The existence of the investigation became apparent to Cook following the execution of a search warrant on the offices of the Friendly Society on 11 January 1991.

On 14 January 1991, Cook arranged for the sum of \$199 000 to be transferred from the account of Portfolio Holdings to a joint account which he and his wife conducted at the same bank. He also arranged at the same time for monies to be transferred from the account of his private company Lawford Investments Pty Ltd into the joint account. This made a total of \$317 000 transferred into the joint account on that day.

Cook indicated to the bank that his reason for transferring the funds was his concern that the funds in his own company's name may be frozen. He further indicated to the bank that the funds being transferred would be used as working capital until the dispute with the Friendly Society was resolved. The evidence was unclear as to which companies Cook envisaged would utilise the funds as working capital.

It was alleged that contrary to section 232(6) of the Corporations Law, Cook made improper use of his position as an officer of Portfolio Holdings to gain directly an advantage for himself.

Cook was tried before a judge and jury in the Southport District Court on 19 and 20 July 1994. At the conclusion of the prosecution case, the trial judge acceded to an application on behalf of Cook that there was no case to answer.

Chapter 4

Corporate Prosecutions

The trial judge concluded that the prosecution had adduced sufficient evidence to establish that, viewed objectively Cook had acted improperly, Cook had gained an advantage and Cook had intended to gain an advantage for himself.

However, the trial judge concluded that the prosecution needed to go further. It was held that the evidence suggested that Cook believed his actions were in the best interests and for the benefit of Portfolio Holdings and that this belief could give rise to an honest and reasonable mistake of fact under section 24 of the Criminal Code (Qld). His Honour then concluded that section 24 could not be overcome by the prosecution and therefore directed the jury to acquit.

The matter was referred to the Court of Appeal pursuant to section 669A of the Criminal Code (Qld). The issues referred to the Court of Appeal for consideration included whether the trial judge had power in the circumstances of the case to direct an acquittal, whether a belief on the part of an accused that his conduct was in the best interests of a corporation can excuse criminal responsibility for an offence against section 232(6) of the Corporations Law and the applicability of Chapter V of the Criminal Code (Qld) to offences against the Corporations Law.

The reference was argued before the Court of Appeal on 27 April 1995 at which time the Court reserved its decision.

SOUTH AUSTRALIA

FULLER, JOHNSON AND CUMMINGS

As reported last year Michael John Fuller, Malcolm Johnson and Joseph Patrick Cummings have been charged with conspiracy to defraud, offences under the *Criminal Law Consolidation Act 1935* (SA) and offences under the Companies (South Australia) Code. The charges relate to an alleged scheme whereby Beach Petroleum NL acquired interests in the Burbank Oil Fields in Oklahoma at a grossly inflated price of \$US28 million. The same interests had been purchased by entities controlled by Johnson for approximately \$US3.7 million.

The committal proceedings against Fuller and Cummings proceeded on various dates between 8 June 1994 and 13 October 1994 when the proceedings were stayed again by the Supreme Court of South Australia pending further judicial review proceedings in which it was sought to review the prosecution's decision to withdraw certain witness statements at the committal. In March 1995 the judicial review proceedings were determined in favour of the prosecution and the committal continued until 28 June 1995 when both defendants were committed for trial on all charges.

In December 1994 Johnson was arrested in the United Kingdom under an Australian extradition warrant and now faces extradition to Australia.

HOPWOOD AND BYRNES

In last year's report it was noted that the South Australian Court of Criminal Appeal had upheld an appeal by Timothy Hopwood and Martin Byrnes in relation to offences against section 229(4) of the Companies (South Australia) Code. The court had indicated that once conduct which is objectively improper has been

Chapter 4

Corporate Prosecutions

proved beyond reasonable doubt it was necessary to consider the intention of the actor to determine if the civil impropriety is translated into criminal impropriety.

The DPP was successful in its application to the High Court for special leave to appeal against the decision of the Court of Criminal Appeal and the hearing of the appeal took place on 7 February 1995. The High Court has reserved its decision.

SU

Stephen Su was prosecuted for contravening section 1064 of the Corporations Law. It was alleged he had issued an invitation to purchase 'prescribed interests'. The prescribed interests involved interests in the manufacture and distribution of a product known as a potato cup which was an edible food container made from potato flour. The prescribed interests were ultimately formulated as units in three unit trusts where each trust was to own and operate a machine capable of manufacturing the potato cups.

The magistrate dismissed the information on the basis that the exemption to the definition of 'prescribed interests' in regulation 7.12.04 applied. The magistrate effectively decided that the exemption with respect to private trusts applied as there was only one overall scheme, namely the scheme to manufacture and distribute potato cups. The prosecution appealed to the Supreme Court of South Australia arguing that in terms of the relevant regulation the promoter was involved in the promotion of three schemes and therefore the exemption did not apply. The argument of the prosecution was that the only interests that were promoted were specific interests in units in one of three unit trusts and not an interest in the overall scheme.

On 15 July 1994 Bollen J dismissed the prosecution's appeal. In light of the public importance of the issues the DPP sought to appeal that decision to the Full Court of the Supreme Court. On 9 May 1995 the Full Court dismissed the appeal holding that the word 'scheme' carried with it the notion of a plan or program of action, and that this expression was apt to describe the overall strategy involved, whereby each step was an incident of a single scheme to market the relevant equipment in South Australia.

KAROUNOS AND HUNT

George Karounos and Barbara Hunt were charged with the common law offence of conspiracy to defraud. It was alleged that they conspired with Ross Daniel Hodby (who operated a finance broking and land broking business) to defraud those members of the public who had entrusted monies to Hodby to be invested on their behalf with proper and adequate security over real estate. It was alleged that between 1 August and 31 October 1986 Karounos and Hunt, being aware that Hodby was under a duty to obtain adequate security over real estate for loans of his clients' money, agreed with him that \$520 000 should be loaned to Karta Pty Ltd, a company in which Karounos and Hunt were interested, without adequate security and that the clients of Hodby were thereby defrauded by being exposed to a significant risk of economic loss.

Karounos and Hunt were committed for trial on 9 September 1991 and first arraigned in the Supreme Court on 15 October 1991, when the matter was remitted to the District Court. Following several successful attempts by Karounos to postpone his trial, the case eventually came on for trial on 7 June 1993. Karounos was represented by counsel on certain applications and issues but was unrepresented throughout the trial proper before the jury.

Chapter 4

Corporate Prosecutions

The trial proceeded despite numerous applications by Karounos to either abandon or further postpone the trial, including an application seeking to stay the proceedings on the basis of *Dietrich v R* (1992) 177 CLR 292.

On 4 January 1994, after 95 sitting days, the jury found Karounos guilty and on 5 January 1994 he was convicted and sentenced to two years and six months imprisonment, with a non-parole period of one year and nine months.

Karounos appealed against his conviction on numerous grounds. His appeal was dismissed by the South Australian Court of Criminal Appeal on 3 February 1995, reported in (1995) 180 L.S.J.S. 42. The decision is important in that the court held that a person who refuses or neglects to comply with the reasonable requirements of the Legal Services Commission cannot be said to be unable to obtain legal assistance without fault on his part and bring himself within the *Dietrich* principle. King C.J. observed:

I am left with a strong conviction that the appellant embarked upon a planned course of action to frustrate and delay the trial at every turn and to prevent it from resulting in a verdict.

The matter of Hunt has been re-listed for trial.

ANDERS

The defendant pleaded guilty in the Supreme Court of South Australia to four counts of making improper use of his position as a director of Bridea Investments Pty Ltd to gain an advantage for himself contrary to section 229(4) of the Companies (South Australia) Code.

The defendant was one of five directors of Bridea, a family investment company incorporated in 1951. The principal assets of Bridea consisted of a parcel of real estate and a substantial share portfolio valued at approximately \$550 000.

To further his own business interests the defendant sought and obtained approval for banking accommodation totalling approximately \$15 million from three banks. The loans were to himself personally. The security the defendant provided in order to obtain the loans included all of Bridea's assets together with his own assets and those of a number of the companies of which he was the sole shareholder.

It was alleged that the defendant used his position as a director of Bridea to cause Bridea to provide its assets as security for his loans and causing Bridea to guarantee repayment of the loans. All of this was done without the knowledge or consent of the minority shareholder (a company, the shareholders of which were the defendant's nephews and nieces). The defendant's actions in causing Bridea to mortgage its assets and guarantee payment of the loans put Bridea's assets at risk.

At a time when the defendant was finding it difficult to service his debts to the banks he caused the majority of Bridea's share portfolio to be sold. The proceeds totalling approximately \$357 000 were paid directly into his personal accounts with the various banks. This was done without the knowledge or consent of the minority shareholder. The defendant accounted for the \$357 000 in Bridea's books as a loan to himself from Bridea. There was, however, no real prospect that he would repay the loan.

Ultimately, the defendant was not able to repay the loans to the banks. The banks then enforced their rights under the respective guarantees and Bridea's real estate and remaining share portfolio were sold.

Chapter 4

Corporate Prosecutions

The proceeds of the sale of the assets were applied by the banks towards the defendant's debt. This left Bridea with no tangible assets and it was placed into liquidation.

The sole asset of any significance that Bridea was left with was a debt from the defendant in the sum of \$244 310.28. The defendant is now a bankrupt and no part of the debt has been paid, nor is there any prospect that any of it will be.

The court accepted that the loss of Bridea's assets, and its ultimate liquidation, was occasioned as a result of the defendant entering into transactions which the defendant had hoped would profit himself and the shareholders of Bridea. However, the court said that optimism that an improper transaction will result in a profit does little to mitigate the seriousness of offending. Further, it was said that the desire to amass an even larger fortune than that which the defendant already had could only be characterised as an expression of greed.

The defendant was sentenced to 18 months imprisonment with a non-parole period of 12 months. With some hesitation the court suspended the sentence upon Anders entering a two year good behaviour bond. The court stated that it discounted the penalty, which it otherwise would have imposed, by about 25 per cent in light of the defendant's contrition.

WESTERN AUSTRALIA

BOND

On 3 March 1995 Alan Bond was committed for trial on two charges of acting dishonestly as a director of Bond Corporation Holdings Ltd with intent to defraud, contrary to section 229(1) of the Companies (WA) Code and two charges of furnishing or permitting the furnishing of false information to the board of the company and its auditor, contrary to section 564(1) of the Companies (WA) Code.

The charges relate to the acquisition by Dallhold Investments Pty Ltd, Bond's private company, of the painting *La Promenade* by the French impressionist painter Edouard Manet. It is alleged that Bond Corporation was a party to a lease arrangement by virtue of which it had the opportunity to acquire the painting in late 1988 for substantially less than the market price. It is alleged that Bond failed to notify the board of Bond Corporation of this opportunity and also that he caused the company to forgo that opportunity. He then caused Dallhold to acquire the painting at the offered price of \$2.4 million. The painting was then estimated to be worth between \$12.5 million and \$17 million. Throughout the lease Bond Corporation had made lease payments totalling approximately \$5.6 million on the understanding it would have the opportunity to purchase the painting at its residual value under the lease.

It is further alleged that, following inquiries by Bond Corporation's auditors in late 1989, false information was provided to the board of the company and to an auditor. It was falsely asserted that there had always been an unwritten profit share arrangement between Dallhold and Bond Corporation in respect of the painting.

The preliminary hearing commenced on 18 July 1994 and was completed on 23 February 1995.

During the course of the preliminary hearing, it was contested on behalf of Bond that a number of persons resident overseas could provide material evidence. On 18 August 1994 an application by Bond was made to

Chapter 4

Corporate Prosecutions

the Supreme Court of Western Australia for an order that letters of request issue to courts in the United States and Poland for evidence to be taken from four such persons. The application was refused at first instance and Bond then appealed to the Full Court.

The Full Court appeal was heard on 26 October 1994 and a decision dismissing the appeal was delivered on 14 November 1994. The court held that it had not been established that the proposed witnesses could give material evidence and the interests of justice weighed heavily against the granting of the orders sought.

An appeal to the High Court filed on behalf of Bond was subsequently abandoned.

Bond appeared in the District Court on 3 May 1995 when he was arraigned on an indictment containing the four counts and entered pleas of not guilty. It is anticipated that a trial date in early 1996 will be obtained.

On 31 May 1995 Bond made an unsuccessful application in the District Court to have his bail varied so as to permit overseas travel. The matter is referred to in more detail under the next heading.

BOND, OATES AND MITCHELL

On 11 January 1995 a complaint was sworn against Alan Bond, Anthony Gordon Oates and Peter Alexander Mitchell alleging various offences contrary to the Criminal Code (WA) and the Companies (WA) Code. The charges resulted from an extensive investigation by the ASC and the AFP into transactions in 1988 and 1989 involving funds flowing from Bell Resources Ltd to Bond Corporation Holdings Ltd.

Bond, Oates and Mitchell are charged with conspiring to defraud Bell Resources Ltd, its subsidiaries and its shareholders contrary to section 412 of the Criminal Code (WA). In addition Bond is charged with three offences of improperly using his position as a director contrary to section 229(4) of the Companies (WA) Code, Oates is charged with eight such offences and Mitchell with four. In each case charges of failing to act honestly as a director with intent to defraud contrary to section 229(1) of the Companies (WA) Code have been preferred in the alternative.

The basis of the charges is the allegation that between 29 August 1988 and 3 November 1989 over \$400 million of Bell Resources Ltd's liquid assets were transferred to Bond Corporation in fraudulent circumstances. Over \$50 million was also transferred to Bond's private company Dallhold. It is further alleged that these transactions were concealed from the NCSC by being replaced with a loan facility provided by a subsidiary of a related company. Further amounts flowed through this facility such that by late May 1989 the total was more than \$800 million.

Bond was arrested and appeared in the East Perth Court of Petty Sessions on 14 January 1995. He subsequently elected to have a preliminary hearing which has been set down to commence on 1 November 1995 and continue until 17 January 1996.

Mitchell returned voluntarily from the United States, where he now resides, and appeared in the East Perth Court of Petty Sessions on 20 May 1995. He elected to participate in the preliminary hearing and has been remanded to appear again on 1 November 1995.

Oates resides in Poland and has not yet been brought before a court to answer the charges. A warrant for his arrest has been issued.

Chapter 4

Corporate Prosecutions

The terms of Bond's bail on both this matter and the *La Promenade* charges prohibit him from leaving Australia. On 31 May 1995 he made applications in respect of both matters to have his bail varied to permit him to travel overseas. On 1 June 1995, Heenan J ordered that the bail conditions as originally set should stand and that the charges were of such seriousness that overseas travel could not be permitted. His Honour noted that the overriding consideration was the public interest.

With ministerial consent, the charges under the Companies (WA) Code were preferred outside the five year time limit set down by section 34 of the Companies and Securities (Interpretation and Miscellaneous Provisions) Code. Oates has commenced proceedings in the Federal Court to review the Minister's decision. Bond has commenced similar proceedings in the Administrative Appeals Tribunal.

PARRY CORPORATION

In November 1994 Kevin Parry was re-tried on one count of improper use of position contrary to section 229(4) of the Companies (WA) Code.

The case related to the use by Parry of a parcel of shares, owned by a company called Mincorp Ltd of which he was a director, as security for a loan to another company. This was done by Parry without the knowledge or consent of the other directors of Mincorp. In addition Parry falsely represented to the bank, which was granted security over the shares, that there had been a resolution of Mincorp authorising the use of the shares.

Parry was convicted after trial and fined \$15 000. In passing sentence, the trial judge noted that whilst the crime warranted a term of imprisonment the special and individual circumstances were such that a custodial term was not necessarily in the interests of the community.

INDEPENDENT RESOURCES

Elfic

Michael John Fuller and Joseph Patrick Cummings were committed for trial in late 1993 upon six and five counts respectively of improper use of their positions as directors of the companies Enterprise Gold Mines NL, Spargos Mining NL and Queen Margaret Gold Mines NL, in order to obtain advantages for other companies, contrary to section 229(4) of the Companies (Western Australia) Code. The charges concern the acquisition of a 15 per cent parcel of Claremont Petroleum NL shares by Petrogulf Resources Ltd.

Fuller and Cummings are both undischarged bankrupts, resulting from the judgment against them in *Beach Petroleum v Johnson and Others* (1993) 115 ALR 411. They sought a stay of the criminal proceedings against them on the basis of the decision in *Dietrich v R* (1992) 177 CLR 292. After hearings on 17 and 18 November 1994 and 1 February and 2 March 1995 both accused were found to be indigent on 3 March 1995. Thereafter, the Legal Aid Commission of Western Australia declined to provide a grant of legal aid to the defendants. The Commonwealth has, to date, also declined to provide any grant of aid or provide further funds to the Legal Aid Commission. Accordingly, the proceedings against Fuller and Cummings were stayed by the District Court on 1 June 1995 until further order of the court. The stay applications caused the vacation of two trial dates, the first in February 1995 and the second in August 1995.

Chapter 4

Corporate Prosecutions

King King

Michael John Fuller was charged with one offence of failing to act honestly in the exercise of his powers and the discharge of his duties as a director of Spargos Mining NL, contrary to section 229(1) of the Companies (Western Australia) Code and one offence of making improper use of his position as a director of Spargos Mining NL in order to gain an advantage for Independent Resources Ltd, contrary to section 229(4) of the Companies (Western Australia) Code. Joseph Patrick Cummings was charged with being knowingly concerned in the second offence by Fuller.

The charges relate to the payment of \$15 million of Spargos funds to Independent Resources Limited for the purchase of IRL preference shares under the guise of a purchase by Spargos in an interest in a gold mine owned by a Philippines company, Benguet Exploration Inc.

A preliminary hearing proceeded in the Perth Court of Petty Sessions on various dates in November and December 1994. On 23 December 1994 both defendants were committed for trial to the District Court of Western Australia.

Subsequently both defendants sought a stay of the proceedings against them upon the basis of *Dietrich v R* (1992) 177 CLR 292. The applications have been set down for hearing for 1 and 2 August 1995.

COLE

Gerhard Joseph Cole, a director of Australian Carbon Ltd, was convicted on 19 July 1994 of making a false statement to the Australian Stock Exchange in relation to the net profit of Australian Carbon Ltd for the 1988 financial year. Cole, as chairman of directors, claimed the company's net profit was \$2.4 million, whereas a loss of \$1.3 million was actually incurred. Cole was sentenced to a term of imprisonment of 12 months, with eligibility for parole, on 22 July 1994.

EQUITY MANAGEMENT LTD

David Douglas Millar, Alan Edward Rose and Arthur Murphy were convicted of offences relating to acting dishonestly as directors of Equity Management Ltd with intent to deceive shareholders by failing to disclose the fact that three loans of \$750 000 each were to be made to their private companies from the vendor of a caravan park being purchased by the company.

Millar and Rose were also convicted of making improper use of their positions as directors of Equity Management Ltd in arranging for the company to enter into the purchase of the caravan park with the intention of gaining an advantage for their own private companies, namely the loans of \$750 000 on extremely favourable terms.

On 17 May 1995 Millar and Rose were sentenced to 18 months jail, and Murphy to 12 months jail, all with eligibility for parole.

CITYSCAPE LIMITED

Charges under sections 230 and 229(4) (in the alternative) of the Companies (Western Australia) Code were laid against Michael Andrew Bibby and Richard Scott-Murphy who were directors of Cityscape Ltd. It is alleged that the defendants authorised the use of \$750 000 belonging to the company as security to obtain

Chapter 4 Corporate Prosecutions

personal loans for themselves from a finance company. It is also alleged that both defendants subsequently failed in their duty to recover the company's money.

Following a preliminary hearing both defendants were committed for trial on 11 November 1994 on two counts of improperly using their positions as directors pursuant to section 229(4). The magistrate declined to commit the defendants on the section 230 count holding that the \$750 000 deposit in this case did not constitute a security within the meaning of section 230(1)(b) of the Companies (Western Australia) Code. The trial is expected to take place in late 1995 or early 1996.

THE DUKE GROUP LIMITED

As reported last year, charges were laid against Harold Abbott, Peter Reid, Paul Fitzsimmons and Charles Kovess in relation to transactions whereby it is alleged that Kia Ora Gold Corporation NL provided for the acquisition of its own shares to the value of \$11 940 300 contrary to section 129 of the Companies (Western Australia) Code. A preliminary hearing lasting 12 days was held in June 1994. In November 1994 the magistrate committed the four accused to trial in the District Court. A trial date has not yet been set.

BARRIS

In November 1994 Con Barris was found guilty by a District Court jury of 33 offences against section 229(4) of the Companies (Western Australia) Code. Barris was a director of Perth Finishing College Pty Ltd which operated a school (including accommodation facilities) for Asian students to prepare them for their tertiary entrance examinations. Barris was also a director of Hanley Holdings Pty Ltd, a family trust company carrying on, amongst other things, share trading activities. Between October 1988 and April 1989 Barris, authorised 33 payments by Perth Finishing College Pty Ltd (amounting to a total of approximately \$274 000) to Hanley Holdings Pty Ltd in part to pay its share trading debts. Perth Finishing College Pty Ltd went into liquidation in October 1989.

In November 1994 Barris was sentenced to imprisonment for four years with eligibility for parole. The trial judge noted Barris' conduct was typical of conduct usually only brought to light after great irremediable damage had been caused and called for marked general deterrence. The trial judge also commented that:

Your disregard of your duty as a director was as blatant as it was unprincipled...it is not unfair to point to the indirect harm done by your activities to Australia's reputation in international trade and take into account the total detriment to students, employees and creditors disadvantaged by the closure of (Perth Finishing College Pty Ltd).

On 8 June 1995 Barris' appeal against his sentence was dismissed by the Court of Appeal which generally approved the sentencing remarks of the trial judge.

Chapter 4 Corporate Prosecutions

TASMANIA

FAIRLIE

In the 1993-94 Annual Report it was noted that an appeal had been lodged against a decision of a magistrate to dismiss without recording a conviction six counts against John Fairlie of failing to keep adequate and proper accounting records contrary to sections 267 and 555 of the Companies (Tasmania) Code.

On 9 June 1995 Crawford J upheld the appeal and found that the magistrate had failed to make sufficient findings of facts. The court held that it was not in the interests of justice to remit the matter back to the Court of Petty Sessions because the original magistrate was no longer a magistrate.

Crawford J found the respective offences under section 555 justified conviction and that the imposition of punishment with general deterrence was a material consideration. However, his Honour was not persuaded to set aside the dismissal of the charges under section 555(1) because having regard to the history of the matter the respondent would face double jeopardy. In respect of the offences against section 267 the Court convicted Fairlie and fined him \$2000.

NORTHERN TERRITORY

LEVOT

Phillip Danby and Raymond Levot were charged with one count each of making improper use of their positions as officers of Time Constructions Pty Ltd to gain directly an advantage contrary to section 232(6) of the Corporations Law. Both accused pleaded guilty and were sentenced in the Supreme Court of the Northern Territory at Alice Springs on 12 May 1995.

Each of the accused as directors of a company which was in a very poor financial state, caused an amount of \$250 000 to be paid to another company so as to obtain a release from personal guarantees they had given.

The accused were sentenced to four months imprisonment to be released forthwith upon entering a self recognisance in the sum of \$1 000 to be of good behaviour for a period of two years. A compensation order for \$117 500 was successfully obtained pursuant to section 232(7) of the Corporations Law against each of the accused. An appeal in respect of the compensation order had been lodged by each of the accused.

AUSTRALIAN CAPITAL TERRITORY

TOOTH

On 21 April 1995 William Richard Tooth was summonsed to appear in the Queanbeyan Local Court in relation to 34 offences under the *Crimes Act 1900* (NSW).

In general, the charges relate to the falsification and use of false documents used in applications to finance companies to finance a number of crop dusting aircraft. It is alleged Tooth obtained a financial benefit for himself and others as a result of these activities.

Chapter 5

Criminal Assets

The recovery of criminal assets forms an adjunct to the prosecution of Commonwealth offences by ensuring that offenders are not only prosecuted but are also stripped of the profits of their crime.

The legal work in this area consistently returns more than it costs the DPP. However, the legal work is criminal in nature. There is as much need in this area as in general prosecutions to ensure that action is, and is seen to be, independent of political considerations and to ensure that offenders are treated as consistently and as reasonably possible.

There is also a need to ensure that recovery action is coordinated with the related criminal prosecution. There is usually a close connection between the prosecution and the criminal assets action and knowledge of the criminal proceedings, and of the criminal law in general, is essential to effective decision-making.

The DPP's effectiveness in this area is dependent on a high level of cooperation between the DPP and officers from investigative agencies, particularly the Australian Federal Police and the National Crime Authority. The DPP takes an active role at the investigation stage. However, it relies heavily on the assistance of investigators to locate assets and obtain the evidence needed to restrain and eventually recover them.

Many criminals hide their money behind complex financial structures or seek to move it off-shore. The task of locating assets and determining who owns or controls them requires expertise not only in criminal law, but also in commercial law, corporate law, banking law, and the laws of trusts and taxation. The DPP employs specialist lawyers to bring these skills together. It also employs financial analysts who are trained and equipped to follow the money trails and prepare financial analyses.

The total amount recovered under the criminal assets initiative for 1994-95 was \$5.9 million. As at 30 June 1995, the total value of property that was subject to restraining orders, injunctions or otherwise secured was \$26.6 million. Full details of the work performed by the Criminal Assets Branches appears at tables 1A to 3D.

LEGISLATION

The DPP has three main avenues open to pursue the proceeds of Commonwealth crime. They are:

PROCEEDS OF CRIME ACT

The *Proceeds of Crime Act 1987* provides a comprehensive scheme to trace, freeze and confiscate criminal assets. The Act is conviction based, which means that no final orders can be made unless a person has been convicted of an indictable offence against Commonwealth law. However, there are provisions which enable courts to make restraining orders to ensure that property is not dissipated while the criminal proceedings run their course.

There are also provisions in the PoC Act which enable the courts to look behind the corporate veil when deciding whether to make restraining orders or final orders under the Act. The courts are entitled to look at whether the defendant has effective control over property even if he or she has no legal title to it.

The PoC Act applies to all indictable offences against Commonwealth law, although it is used primarily in relation to drug offences and serious fraud against the Commonwealth.

Chapter 5 Criminal Assets

CUSTOMS ACT

Division 3 of Part XIII of the *Customs Act 1901* contains a scheme which is similar to that under the PoC Act. However, the scheme applies only to drug offences and it is not conviction-based.

The Customs Act provisions are used less frequently than the PoC Act, and generally only when there are no Commonwealth charges or there is some other reason why action cannot be taken under the PoC Act.

CIVIL REMEDIES

The DPP is given a civil remedies function under paragraphs 6(1)(fa) and 6(1)(h) of the DPP Act. The function is to take, or coordinate or supervise the taking of, civil remedies in matters connected with an actual or proposed prosecution.

The function does not involve any new powers of recovery. What it does is enable the DPP to enforce, or coordinate the enforcement of, traditional civil remedies where the money at stake represents the proceeds of crime.

The civil remedies function is limited in that it can only be exercised to recover unpaid taxes and in matters or classes of matter that have been specified in an instrument signed by the Attorney-General. To date only four general instruments have been signed. They give the DPP power to exercise the civil remedies function in relation to social security cases, Medicare cases, nursing home fraud and student assistance fraud.

PRACTICE

The DPP does not take recovery action in every case where a person has obtained money as a result of a Commonwealth offence. In many cases, there is nothing the DPP can usefully add to the normal processes of Commonwealth debt recovery.

The factors that the DPP looks at in deciding whether to take action in a particular case include whether there is a basis for recovery action if the DPP does not get involved, the size of the debt, whether the offender holds assets offshore or in a false name, whether the offender appears likely to resist recovery action, and whether there is need to coordinate recovery action with the criminal proceedings.

The DPP's approach is, essentially, to determine whether there is a proper basis for it to pursue criminal assets in a particular case and, if so, to determine which of the options open to it is the most appropriate in the circumstances of that case.

OTHER FUNCTIONS

The Criminal Assets Branches also conduct:

- any litigation that arises where proceedings are brought to recover goods that have been seized under the Customs Act on the basis that they are narcotics or narcotic-related; and
- proceedings for superannuation orders under the *Crimes (Superannuation Benefits) Act 1989* and Part VA of the *Australian Federal Police Act 1979*.

Chapter 5 Criminal Assets

Under the Crimes (Superannuation Benefits) Act a Commonwealth employee who has been convicted of a corruption offence, as defined in that Act, and has been sentenced to more than 12 months imprisonment, can lose their government-funded superannuation benefits. There are similar provisions in the AFP Act, although a member of the AFP who has been found guilty of some disciplinary offences can also be deprived of superannuation.

The mechanism involves the Attorney-General or Minister for Justice issuing an authorisation to the DPP to apply for a superannuation order. The court that hears the application has no discretion but to make an order if it is satisfied that the preconditions for doing so have been met. The effect of a superannuation order is that the defendant loses all rights to employer-paid benefits under the superannuation scheme, although the defendant is entitled to recover their own contributions plus interest.

STRUCTURE

There is a Criminal Assets Branch in each DPP regional office.

There is also a Criminal Assets Branch in Head Office which coordinates the work in this area. The Head Office Branch also conducts case work in the ACT and coordinates the activities of the DPP in relation to extradition and mutual assistance.

There are no Criminal Assets Branches in the Australian Government Solicitor's offices in Hobart and Darwin. In those places, criminal assets work is carried out as part of the general work of the office, with support from an appropriate regional office of the DPP when special expertise is needed.

It is important to maintain a dedicated Criminal Assets Branch in each DPP Office. The work in this area is specialised and difficult and the expertise would be quickly lost if the specialist branches were broken down.

As at 30 June 1995, the number of officers working in this area was as follows:

	Head Office		Sydney		Melbourne		Brisbane		Perth		Adelaide	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
SES	1		1		1		1		.5			
Legal/Legal2	1		5	2	1		3		1		1	
Para-legals and Admin Support	1		7		3		1	1	.33			.25
Financial Analysts			2		1	1	1		1		1	

Note that the financial analysts do not work exclusively on criminal assets cases. They also provide services for the prosecution branches. Indeed, in the Melbourne Office the financial analysts are attached to prosecution branches rather than to the Criminal Assets Branch.

Note also that some lawyers in the Criminal Assets Branches also carry out work for other branches.

CRIMINAL ASSETS RECORDING SYSTEM

The DPP maintains a computerised Criminal Assets Recording System to keep track of cases in the criminal assets area. CARS has proven invaluable for managing work in the Criminal Assets Branches and for maintaining accurate records of restraining orders and when they need to be renewed.

The CARS system is cross-referenced with the records maintained by the prosecutions branches, and provides a means of checking to ensure that all cases where there is a potential for recovery action are reviewed by the Criminal Assets Branches.

The CARS system has been refined in light of operating experience and will continue to be modified and updated to meet the changing needs of the DPP.

NATIONAL AGENCIES CRIMINAL ASSETS CONFERENCE

In December 1994, the DPP hosted the third National Agencies Criminal Assets Conference in conjunction with the Australian Federal Police and the Insolvency and Trustee Service Australia. The conference was partially funded by a grant of \$10 000 from the Criminal Assets Trust Fund.

The conference brought together investigators and prosecutors from the full range of Commonwealth and State agencies involved in recovering the proceeds of crime. There were also representatives from New Zealand and Vanuatu.

The theme of the conference was International Enforcement and the speakers included the Special Counsel on international forfeiture matters from the US Department of Justice.

The conference was well-attended and well-received. As in past years, the 1994 conference provided an excellent forum for practitioners to discuss issues affecting their work and to exchange ideas on how to deal with common problems.

CRIMINAL ASSETS TRUST FUND

All money recovered under the PoC Act and Division 3 of Part XIII of the Customs Act is paid into the Criminal Assets Trust Fund. That fund is administered by the Insolvency and Trustee Service Australia.

Money paid into the fund is used to finance law enforcement projects selected by the Attorney-General or Minister for Finance and drug rehabilitation programs selected by the Minister for Health.

In 1994-95 a total of \$3.6 million was paid into the CAT Fund.

During the course of the year there was a review of the operation of the CAT Fund. The DPP participated as a member of the review team, which also included representatives from the Australian Federal Police, the Commonwealth Law Enforcement Board, the Australian Customs Service and the Australian Institute of Criminology.

The review report was presented to government in November 1994 and the recommendations were accepted in 1995.

The review made a number of recommendations to improve administration of the CAT Fund and increase

Chapter 5 Criminal Assets

the level of accountability on the part of agencies that are given funding for law enforcement projects.

One effect of the recommendations is that, in future, there will be more time for applications to be considered and assessed before the Attorney-General or Minister for Justice is required to decide which applications to approve. One unintended consequence of the changes was that there was no funding round in the period covered by this report.

The case reports which follow give some indication of the range of work in the criminal assets area and the way in which the DPP goes about recovering the proceeds of Commonwealth crime.

NEW SOUTH WALES

COLETTI

This defendant was arrested in August 1992 for an alleged offence against section 233B of the Customs Act involving the transient possession of 50 kilograms of cocaine. The DPP obtained a restraining order under the PoC Act over all of Coletti's property at the time of his arrest. Coletti was convicted, after a trial, in June 1994. The conviction involved a serious offence for the purpose of the PoC Act. Accordingly, the defendant faced the prospect that any of his property that was still the subject of a restraining order as at 8 December 1994 would be forfeited to the Commonwealth by operation of section 30 of the PoC Act.

The defendant brought proceedings under section 48(4) of the PoC Act seeking orders to exclude his property from the operation of section 30. In order to achieve that result he needed to show that item of property was not derived from any unlawful activity and that his interest in it was lawfully acquired. The problem Coletti faced was some of the money he had used to buy the property was income that he had not declared to the Australian Taxation Office and that he had never paid tax on. The case of *DPP v Jeffrey* (1992) 58 A Crim R 310 is authority that, in such cases, a defendant can not show that the relevant property was not derived from unlawful activity because it is an offence to fail to declare income and the effect of that offence is to increase the funds that the defendant would otherwise have had available to buy the property.

The case was eventually settled after Coletti agreed to pay all outstanding income tax, together with penalties and interest, within 90 days. The DPP consented to orders that lifted the restraining order over Coletti's property.

CONDON

This defendant was convicted of five counts of defrauding the Commonwealth contrary to section 29D of the Crimes Act. Condon misused money which had been provided by the Department of Employment, Education and Training to an organisation that conducted training courses for unemployed people. A feature of the fraud was the use of a bank account to which Condon was the sole signatory. Most of the money which passed through that account was used for improper purposes, but some was used for legitimate purposes.

The DPP applied for a pecuniary penalty order in the matter. The judge accepted that the starting point for assessing Condon's profit for the purpose of section 27 of the PoC Act was to treat all monies that passed through the bank account as being the proceeds of his crime. However, as it was clear that some of the money had been spent for legitimate purposes, the DPP offered to identify the transactions which appeared

Chapter 5 Criminal Assets

to have been improper rather than to force the defence to call evidence in relation to each transaction. The judge accepted the offer and further debate in the case was restricted to transactions where there was genuine dispute about the propriety of the defendant's conduct. The judge eventually made a pecuniary penalty order in the sum of \$110 000.

A further issue in the case concerned a number of computers that the defendant purchased from the proceeds of his crime and then hired to the training organisation. The judge accepted a submission by the DPP that he should treat the profit the defendant made from that investment as being part of the proceeds of his crime.

The defendant has appealed against conviction. The appeal has been heard but judgment has been reserved.

HINES

Hines was an employee of Australia Post who defrauded that organisation of \$214 500 over a 16 month period. He was convicted on one charge under section 29D of the Crimes Act and was sentenced to 16 months imprisonment with a non parole period of nine months. The court also made a pecuniary penalty order against Hines in the sum of \$138 814, being the outstanding balance of the money defrauded. The remaining amount had already been repaid to Australia Post.

After he was released from prison, Hines was not able to secure employment and was forced to rely on Social Security benefits. Accordingly he could not pay the pecuniary penalty order from income. His only real asset was a residential property where he lived with his wife and dependant son. The property was valued at approximately \$180 000. However, given that the property was the family home, the DPP was reluctant to force Hines to sell it.

Hines was a member of the Australia Post Superannuation Scheme. He had entitlements under that scheme of approximately \$175 000, of which \$35 000 represented his own contributions and \$140 000 was attributable to employer funded contributions.

The trustees of the fund released Hines' own contributions to enable him to partially pay the pecuniary penalty order. However, by virtue of the *Occupational Superannuation Standards Act 1987* and, since 1993, the *Superannuation Industry (Supervision) Act 1993*, they were not able to release any part of the employer funded contributions except with approval from the Insurance and Superannuation Commissioner.

In October 1994, after lengthy correspondence between the DPP and the Insurance and Superannuation Commission, the Commissioner agreed that it was appropriate for the trustees to release Hines' employer funded entitlements. The Commissioner decided that the release was in the interests of all parties given that the only other method of recovering the pecuniary penalty would be to force sale of the family home.

The Commissioner issued a Notice of Compliance to the trustees which authorised them to release the funds. In April 1995 the trustees released \$95 670 and the Official Trustee applied that amount towards satisfaction of the pecuniary penalty order.

MCCAULEY

The conviction of Bruce McCauley for an offence against section 233B(1)(ca) of the *Customs Act 1901* has led to interesting legal issues being raised in a number of jurisdictions.

Chapter 5 Criminal Assets

One of the most interesting issues involves a consideration of the DPP's use of documents obtained under section 66 of the PoC Act. That issue arose in the following way.

In February 1992 the DPP commenced proceedings under the PoC Act to restrain assets belonging to McCauley. In May and June 1992 the Supreme Court of NSW made production orders as part of those proceedings. As a result of the production orders, the DPP obtained access to a large number of documents, including documents relating to a property settlement that had been entered between McCauley and his former wife and which had been registered under the *Family Law Act 1974*. The effect of the settlement was to transfer a substantial amount of McCauley's personal and corporate property to the former wife.

It is important to note that for some time preceding his arrest for drug offences McCauley had been under investigation by the Australian Taxation Office. On 21 July 1992 ATO obtained judgment against McCauley for unpaid income tax in the amount of \$8.4 million.

After examining the documents relating to the property settlement, the DPP decided to exercise its civil remedies function in this matter. The DPP commenced proceedings in the Family Court seeking to have the property settlement set aside under section 79A of the Family Law Act on the basis that it involved an attempt to defraud the Commonwealth by putting McCauley's assets beyond the reach of ATO. The proceedings were brought in the name of the Deputy Commissioner of Taxation.

In the course of the Family Court proceedings the DPP issued a subpoena to the AFP which held the documents that had been obtained under the production orders. The former wife has challenged the subpoena on the basis that the DPP, and ATO, had made improper use of information obtained pursuant to the production orders. The argument is that information obtained under the PoC Act can only be used for purposes related to the PoC Act. The former wife claims that the Family Court action involves an abuse of process.

The case has significant implications for the future conduct of the DPP's criminal assets practice. If the arguments raised by the former wife are accepted, it would mean that there would be limitations on the use the DPP could make of information that was lawfully in its possession and which had been secured for the purpose of pursuing the proceeds of crime. It is unusual to see an issue of that kind being argued before the Family Court.

As at 30 June 1995, argument has still to be heard on this issue. In the meantime a further legal issue has arisen involving the application of section 58 of the *Bankruptcy Act 1966*.

McCauley was declared bankrupt in 1995. Section 58(3) of the Bankruptcy Act provides that after a person has become bankrupt it is not competent for a creditor to enforce any remedy against the person in respect of a provable debt or to commence or continue legal proceedings in respect of a provable debt except with leave of the Federal Court. The former wife has commenced proceedings in the Federal Court seeking a declaration that the Family Law proceedings cannot be pursued without leave under section 58 and opposing a grant of leave.

The issue before the Family Court cannot be resolved until that application has been dealt with by the Federal Court.

VICTORIA

KOVACS AND ROTAR

These people were charged with narcotics offences against the *Customs Act 1901*. They were convicted of those offences on 5 December 1994.

The DPP obtained restraining orders under the PoC Act against real property belonging to Kovacs, being his half interest in his matrimonial home, and cash in the sum of \$93 000 that was found in Rotar's possession at the time of his arrest. Both items of property were liable to automatic forfeiture six months after conviction by operation of section 30 of the PoC Act.

Kovacs brought proceedings under section 48(4) of the PoC Act to try to prevent the forfeiture of his house. Rotar did not bring any proceedings in respect of the \$93 000 cash, and disowned any interest in the money. However a claim was brought in respect of the money by a third person who normally resides overseas. That claim was made under section 48(3) of the PoC Act.

The applications came on for hearing before the Supreme Court of Victoria at the beginning of June 1995, just before the six month time limit for making the applications expired. Kovacs succeeded in his application but the overseas resident failed in his.

Kovacs was able to satisfy the Court that the money used to build his house came from lawful sources. However the overseas resident was not able to show that the \$93 000 had not been under the effective control of Rotar and was not able to satisfy the court that it was in the public interest that the money not be forfeited. The overseas resident has since appealed against the decision.

The case provides an example of the different obligations that are placed upon offenders and third parties when seeking to prevent automatic forfeiture under the PoC Act.

The case also shows the problems that arise because of the strict time limits that currently apply under section 30. Time does not stop running when an application is made under section 48(3) or (4). The application must be lodged, and determined, within the six month period. The court noted the problems that can arise in dealing with last minute applications. Similar comments have been made by a number of other judges in Victoria and elsewhere. Those comments have been passed on to the Attorney-General's Department, which administers the PoC Act.

MEEHAN, KEOGH AND HOWES

Full details of this case appear in Chapter 3. The defendants were former public servants who conspired with an external contractor to defraud the Commonwealth of about \$1.8 million. They received half of that sum by way of kick-backs which they shared between them. The DPP obtained pecuniary penalty orders which can be partially enforced against assets which the defendants accumulated with assistance from the kick-backs.

The money that will eventually be recovered from these offenders will range from 40 per cent to 100 per cent of the amount they obtained from the offences. The case illustrates the fact that it is not always possible to recover the full amount that a defendant has improperly obtained, or even the full amount ordered to be paid under a pecuniary penalty order. Ultimately, the DPP can only recover money from a defendant if he or she has assets or income to recover against.

Chapter 5 Criminal Assets

The defendants were all sentenced to terms of imprisonment of over 12 months for what were clearly corruption offences for the purpose of the Crimes (Superannuation Benefits) Act. At the time of writing the Minister for Justice is considering whether to authorise the DPP to seek superannuation orders against two of the offenders to recover employer-funded superannuation benefits paid to them when they retired. The third offender dissipated his superannuation payout before action could be taken under the Crimes (Superannuation Benefits) Act and there is nothing to be gained by seeking an order under that Act.

QUEENSLAND

CHILD CARE FRAUD

The defendant in this case was charged with six offences against section 29D of the *Crimes Act 1914*. The defendant was involved in operating a child care centre and was entitled to claim fee relief on behalf of eligible parents whose children attended the centre. She lodged a large number of claims that were either exaggerated or totally false and obtained approximately \$277 700 from the Commonwealth in excess of her entitlements.

In October 1994 the DPP obtained a restraining order under the PoC Act over all the property owned by the defendant, other than some specified items.

In February 1995, at the District Court in Mackay, the defendant was found to be unfit to be tried. The court found that there was a *prima facie* case against the defendant but also found that she was unlikely to be fit to be tried within 12 months. Pursuant to section 20BC(2)(a) of the Crimes Act, the court ordered that the defendant be detained at a private hospital for a period of 12 months.

The effect of the orders made by the court was to stay any further criminal proceedings against the defendant. This also had the effect of bringing the PoC action to an end. The PoC Act is conviction-based and without a conviction for an indictable offence, there can be no final orders under that Act. There is nothing in the Act dealing with the situation where a defendant has been found unfit for trial and the DPP had no alternative but to allow the restraining order to lapse.

The DPP could not exercise the civil remedies function in this case because the Director has not been authorised to exercise the function in cases of this kind. Accordingly, the matter was referred back to the Department of Family Services and Health to pursue recovery of the debt by normal processes.

OPERATION GARRET

Full details of this case also appear in Chapter 3. The case arose from a joint investigation by the Australian Federal Police and the Australian Taxation Office into the affairs of an unregistered tax agent. The tax agent was eventually charged with offences against the Crimes Act. An audit of some of the tax agent's clients showed that several of them had submitted incorrect taxation returns and had failed to disclose income.

The DPP exercised the civil remedies function in this matter to coordinate recovery action against 22 offenders who between them owed more than \$1 million in unpaid tax.

As at 30 June 1995, the following action has been taken in the matter:

Chapter 5

Criminal Assets

- restraining orders have been obtained under the PoC Act in relation to three taxpayers, and a pecuniary penalty order has been obtained against one taxpayer;
- agreements for payment have been negotiated with four taxpayers and negotiations are continuing with three more;
- voluntary payments have been received from five taxpayers;
- two taxpayers have voluntarily declared themselves bankrupt; and
- the Commissioner of Taxation has instituted bankruptcy proceedings against three taxpayers.

SOUTH AUSTRALIA

BROOK

Brook was charged with nine counts of defrauding the Commonwealth and nine counts of operating a bank account in a false name. The charges related to a scheme devised and implemented by Brook over a period of seven years to obtain aged pensions in fictitious names. The scheme resulted in the Commonwealth being defrauded of over \$300 000. The defendant, who was in his 70's, pleaded guilty to the charges.

The DPP obtained a restraining order under the PoC Act over Brook's home on Kangaroo Island and over \$52 800 that was found in various bank accounts either in the defendant's true name or in the names of the fictitious identities he had used. The defendant agreed to sell the property on Kangaroo Island and the proceeds of that sale, together with the monies from the bank accounts, was paid to the Department of Social Security. The restraining order was lifted, by consent, to allow that to occur. This action resulted in the Department recovering \$116 000.

BRYANT

Bryant was arrested and charged in April 1993 with the possession of five kilograms of cocaine that had been imported in breach of the Customs Act. The DPP obtained a restraining order over various items of property including residential properties in Victoria and some money in a bank account.

Bryant subsequently pleaded guilty to the charge and was formally convicted in November 1993. The offence was a serious offence for the purposes of the PoC Act. Accordingly, Bryant stood to lose all property still restrained six months after conviction unless he obtained orders under section 48(4) of the PoC Act which avoided the operation of section 30. Bryant applied for such orders on 19 May 1994, five days before the six month period expired. Following negotiations, the proceedings were settled and the court made consent orders which left only the money in the bank account under restraint. That money, which totalled \$77 500, was forfeited to the Commonwealth on 24 May 1994.

Subsequently Bryant's wife claimed a half-share in the forfeited money on the basis that the relevant bank account had been held in joint names. Her claim was also settled. The court made a consent order requiring that she be paid \$26 500.

The amount paid into the CAT Fund in respect of this matter was \$51 049.

Chapter 5
Criminal Assets

Table 1A: PoC Act: work done by DPP Criminal Assets Branches in 1994-95 - including work done on cases opened prior to July 1994*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Estimated value (net) of Restraining Orders \$	10 244 066	1 130 101	120 000	215 000	614 516		\$12 323 683
No. of Restraining Orders obtained	29	13	1	2	5		50
Total amount of PPOs ordered \$	723 753	764 320		16 000	618 557		\$2 122 630
No. of PPOs obtained	6	8		3	6		23
Estimated value of s.19 forfeitures \$	60 506	402 329		21 120			\$483 955
No. of s.19 forfeitures	18	7	1	1	1		28
Estimated value of s.30 forfeitures \$	2 224 000				187 631		\$2 411 631
No. of s.30 forfeitures	3				1		4

*This gives an indication of the amount of work done in 1994-95 by Criminal Assets Branches by type of work.

Table 1B: PoC Act - details and value of DPP Criminal Assets Branches' cases outstanding as at 30 June 1995*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Estimated net value of current Restraining Orders \$	13 585 812	3 508 321		845 827	229 980	1 188 435	\$19 358 375
No. of current Restraining Orders	39	22		10	5	1	77
Estimated value of prop. forfeited under s.19 and not yet disposed of \$	25 990	17 252					\$43 242
No of currents s.19 Forfeiture Orders	7	5					12
Estimated value of prop. forfeited under s.30 and not yet disposed of \$	2 975 362	83 000			38 689		\$3 097 051
No. of current s.30 Forfeitures	8	3			2		13
Total amount of current PPOs not yet paid \$	8 947 106	1 603 016		41 506	823 691		**\$11 415 319
No. of current PPOs not yet paid	21	13		3	12		49

*This table gives a picture of outstanding work at 30 June 1995 and gives an indication of future recoveries work.

** Does not include amounts of PPOs considered to be irrecoverable.

Chapter 5
Criminal Assets

Table 1C: PoC Act - money recovered during 1994-95*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Amounts paid under PPOs \$	1 580 189	215 399		16 000	1 325		\$1 812 913
Number of PPOs	15	7		3	2		27
Amounts recovered from s.19 forfeitures \$	93 974	457 796	90	21 120			\$572 980
Number of s.19 forfeitures	8	7	1	1			17
Amounts recovered from s.30 forfeitures \$	686 953	36 955	51 050	28 665	149 142		\$952 765
Number of s.30 forfeitures	11	1	1	1	1		15
Amounts recovered from settlements, voluntary payments etc. \$	358 499	39 785	348 727	28 514		46 760	\$822 285
Number of matters	9	1	4	1		1	16
Total recovered \$	2 719 615	749 935	399 867	94 299	150 467	46 760	\$4 160 943

*Note: Not all the amounts recovered will have been paid into the Confiscated Assets Trust Fund. Money recovered under settlement and other payments is not paid into the Trust Fund.

Table 2A: Customs Act - work done by DPP Criminal Assets Branches 1994-95 - restraining orders and pecuniary penalty orders*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Value of property restrained \$		193 000					\$193 000
No. of Restraining Orders		2					2
Total amount of PPOs							
No. of PPOs							

*This gives an indication of the amount of work done in the DPP's Criminal Assets Branches.

Table 2B: Customs Act - work done 1994-95* - seized and condemned property

	NSW	Vic.	SA	WA	Qld	ACT	Total
Value of seized property \$	335 650	45 000	35 860	360 100	58 250		\$834 860
No. of cases where property seized	3	1	3	1	1		12
Value of condemned property \$	364 350	25 334			61 450		\$451 134
No. of condemnations	5	3			4		12

*This Table sets out details of work done by the DPP Criminal Assets Branches in relation to forfeited property seized and condemned under the Customs Act.

Chapter 5
Criminal Assets

Table 2C: Customs Act - cases outstanding as at 30 June 1995 - restraining orders and pecuniary penalty orders*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Value of current Restraining Orders \$		567 629					\$567 629
No. of Restraining Orders	1	3					4
Value of current PPOs not yet paid \$	91 218	41 595					\$132 813
No. of PPOs not yet paid	1	2					3

*This table gives a picture of outstanding work at 30 June 1995 and gives an indication of future recoveries work.

Table 2D: Customs Act - cases outstanding as at 30 June 1995 - seized and condemned property*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Value of seized property not condemned \$	257 280	202 880	84 375	601 100			\$1 145 635
No. of Cases	7	9	4	6			26
Value of condemned property not realised \$	19 000	65 515			56 300		\$140 815
No. of cases	3	4			2		9

*This table gives a picture of outstanding work at 30 June 1995 and gives an indication of future recovery work.

Table 2E: Customs Act - money recovered by DPP Criminal Assets Branches 1994-95*

	NSW	Vic.	SA	WA	Qld	ACT	Total
Amounts paid under PPOs		76 673					\$76 673
Number of PPOs		2					2
Amounts from disposal of condemned property \$	284 277	21 333	19 550	273 650	6 350		\$605 160
Number of disposals	10	5	2	3	3		23
Amounts received in some other way under Customs Act \$		29 091					\$29 091
Number of matters		1					1
Total amounts recovered \$	284 277	127 097	19 550	273 650	6 350		\$710 924

Chapter 5
Criminal Assets

Table 2F: total recoveries 1994-95

Proceeds of Crime Act PPO	1 812 913
Proceeds of Crime Act s.19 forfeiture	572 980
Proceeds of Crime Act s.30 forfeiture	952 765
Proceeds of Crime Act settlement and other payments	822 285
Customs Act PPO	76 673
Customs Act forfeiture and condemnation	605 160
Customs Act other	29 091
Total	\$4 871 867

Table 3A: civil remedies - work done by DPP Criminal Assets Branches 1994-95 - tax case

	NSW	Vic.	SA	WA	Qld	ACT	Total
Value of property secured by injunction or otherwise \$		20 000			140 000		\$160 000
No. of matters		1			1		2
Amount of judgments and reparation orders \$					238 374		\$238 374
No. of matters					1		1

Table 3B: civil remedies - work done by DPP Criminal Assets Branches 1994-95 - Non-tax cases

	NSW	Vic.	SA	WA	Qld	ACT	Total
Value of property secured by injunction or otherwise \$		17 000			108 391		\$125 391
No. of cases		2			3		5
Amount of judgments and reparation orders \$					143 669		\$143 669
No. of cases					3		3

Chapter 5
Criminal Assets

Table 3C: civil remedies - cases outstanding at 30 June 1995*

Type of case	NSW	Vic.	SA	WA	Qld	ACT	Total
Value of property in tax cases where property secured by injunction or otherwise \$	1 743 271		1 087 689		2 777 785		\$5 608 745
No. of cases	2		4		3		9
Amount of judgments and reparation orders outstanding in tax cases \$	9 551 191		1 837 226		4 069 278		\$15 457 695
No. of judgments/orders	6		4		8		18
Value of property in non-tax cases where property secured by injunction or otherwise \$		45 000	941 083		118 000		\$1 104 083
No. of cases		1	15		2		18
Amount of judgments and reparation orders outstanding in non-tax cases \$			579 196		172 508		\$751 704
No. of judgments/orders			11		5		16

*This table gives a picture of outstanding work at 30 June 1995 and gives an indication of future recovery work.

Table 3D: civil remedies: recovery of money in cases in which the DPP exercised its civil remedies powers 1994-95*

	NSW	Vic.	SA	WA	Qld	ACT	TOTAL
Payments under judgments and reparation orders in tax cases \$							
No. of matters							
Other payments in tax cases e.g. settlement, bankruptcy \$		216 399	21 598		495 642		\$733 639
No. of matters		6	1		5		12
Payments under judgments and reparation orders in non-tax cases \$			32 142				\$32 142
No. of matters			5				5
Other payments in non-tax cases \$		92 008	116 406		62 989		\$271 403
No. of matters		5	12		3		20
Total recovered \$		308 407	170 146		558 631		\$1 037 184

*There are also civil recoveries in prosecutions in cases involving the Australian Taxation Office and other departments in which DPP is not involved and which are not recorded in this table.

Chapter 6

Law reform and other issues

One of the objectives of the DPP is to provide sound, constructive and timely recommendations on laws or proposed laws of the Commonwealth relating to the criminal justice system. The DPP is uniquely placed to identify deficiencies in the application of existing laws, as well as to assess proposals for law reform in the light of operational experience. This chapter outlines some of the areas in which the DPP was active in 1994-95. It also deals with a number of other issues of general importance.

CRIMINAL LEGISLATION GENERALLY

During the period under review the DPP was involved in an extended period of consultation with the federal Attorney-General's Department in relation to two pieces of proposed legislation - the Evidence Bill 1993, which has now been enacted and is in operation, and the Crimes Amendment (Forensic Procedures) Bill 1995, which was introduced at the end of the Budget sittings.

The latter Bill represents the third and final stage of the Commonwealth's proposed legislation dealing with the investigation of Commonwealth offences. Assuming the Bill is enacted there will be a comprehensive set of Commonwealth provisions regulating the investigation of Commonwealth offences. The first two stages were the enactment of Part 1C and Part 1AA of the Crimes Act. While the first two stages implemented in the main recommendations made by the Gibbs Committee, the proposed forensic procedures legislation is based on draft legislation developed by the Model Criminal Code Officers' Committee (MCCOC) under the auspices of the Standing Committee of Attorneys-General (SCAG).

COMMONWEALTH SENTENCING LEGISLATION

Chapter 3 of the 1993-94 Annual Report dealt with the review of the DPP. One of the recommendations made by the review was that the Commonwealth's sentencing legislation should be reviewed with a view to simplification. A working party, consisting of representatives from the Attorney-General's Department and the DPP, has since been established to review the provisions of Part 1B of the *Crimes Act 1914*.

The provisions of Division 6 in Part 1B, which deal with the consequences of a finding that a defendant is unfit to be tried, are also in urgent need of review. In that regard, see a discussion of some of the problems with those provisions at pages 99-100 in the 1993-94 Annual Report. However, the working party will not be considering those provisions. They will not be reviewed until a Model Mental Impairment Bill, that is currently being developed by MCCOC, has been completed.

A first draft of the Model Mental Impairment Bill was released by MCCOC for comment in late 1994.

The DPP has reservations about a number of the proposals made by MCCOC and has provided extensive comments on the draft Bill to MCCOC.

REVIEW OF 1C OF THE CRIMES ACT

Part 1C was inserted in the Crimes Act by the *Crimes (Investigation of Commonwealth Offences) Amendment Act 1991*, which came into force on 1 November 1991. Broadly speaking, Part 1C provides for the detention of arrested people for the purpose of investigation.

Chapter 6

Law reform and other issues

During the passage of the Crimes (Investigation of Commonwealth Offences) Amendment Act the Federal Government undertook to monitor the new legislation and to conduct a review after an appropriate period with a view to making any changes that were necessary in the light of operational experience.

Recently the Attorney-General's Department issued for comment a discussion paper dealing with a number of proposed changes to the provisions of Part 1C. Over the last three-and-a-half years the DPP has made a number of recommendations to the department for amendments to Part 1C, and most of those recommendations have been incorporated in the discussion paper. In particular, the department agrees that the distinction under Part 1C between a 'deemed arrest' and a 'lawful arrest' should be addressed. The distinction has proved to be a troubling one for those who are required to work with this legislation.

DIRECTION UNDER SECTION 8, DPP ACT

On 3 October 1994 the Minister for Justice issued a direction to the Director of Public Prosecutions pursuant to section 8 of the DPP Act relating to the circumstances in which the DPP should institute or carry on prosecutions for offences under Part IIIA of the Crimes Act. That Part was inserted by the *Crimes (Child Sex Tourism) Amendment Act 1994*.

As required by section 8(3)(a) of the DPP Act, the direction was published in the *Commonwealth of Australia Gazette* (No. GN45, 16 November 1994).

The direction was issued in response to concerns expressed by the House of Representatives Committee on Constitutional and Legal Affairs in its report on the Crimes (Child Sex Tourism) Amendment Bill 1994 in relation to the application of the provisions of that Bill to 'residents' and suspects under 18 years of age. In relation to the latter aspect a number of submissions to the Committee commented that in some circumstances it would be inappropriate to prosecute where the alleged offender was under the age of 18 years, such as where the alleged offender was under 18 but close in age to the person with whom he or she had a sexual relationship.

The Committee recommended that consideration be given to inserting a consent provision in Part IIIA. The response of the Government was that it would implement this suggestion by issuing an appropriate direction under the DPP Act.

The direction specifies matters the DPP must take into account in deciding whether a person should be regarded as a resident of Australia for the purpose of the provisions and requires that the DPP not institute or carry on proceedings for an alleged offence by a person who was under 18 at the time of the alleged offence without the consent in writing of the Attorney-General or the Minister for Justice.

CONTEMPT PROCEEDINGS

Mention is made in Chapter 4 of this report of the contempt proceedings taken against James Craven relating to his refusal to answer questions in the prosecution of Brian Yuill for offences under the Companies (NSW) Code on the ground that to do so would incriminate him. He had refused to answer the questions notwithstanding that he had been given an undertaking pursuant to section 9(6) of the DPP Act.

In its reasons for judgment delivered on 11 November 1994 [*Registrar, Court of Appeal (NSW) v. Craven*

Chapter 6

Law reform and other issues

(1994) 126 ALR 668] the NSW Court of Appeal appeared to misconstrue the effect of an undertaking granted pursuant to subsection 9(6). The court proceeded on the basis that such an undertaking would not have prevented the use of Craven's evidence in any subsequent proceedings instituted against him for offences against the *Crimes Act 1900* (NSW). Accordingly, in the view of the Court of Appeal, Craven remained in jeopardy of incriminating himself and he was therefore entitled to invoke the privilege against self incrimination and to decline to answer the questions put to him at the trial of Yuill.

Following discussions with the NSW Solicitor-General, who had the carriage of the contempt proceedings against Craven, it was decided to file a notice of motion before the Court of Appeal asking it to reconsider its earlier determination.

In reasons for judgment handed down on 30 June 1995, the Court effectively acknowledged that it had misconstrued subsection 9(6) on the earlier occasion.

It may be noted that all three members of the court referred to the question whether subsection 9(6) was constitutionally valid in that it purported to prohibit the use of the witness's evidence, and anything derived from that evidence, in both State as well as federal proceedings. However, as the point had not been argued before it, all members of the court considered that they should proceed on the basis that the subsection was valid.

JACOBSEN AND ANOTHER V ROGERS : SEARCH WARRANTS AND THE SHIELD OF THE CROWN

The Annual Report for 1992-93 includes a reference to the decision by the Full Federal Court in *Rogers v. Moore and Dibb*. The Court held that the then section 10 of the *Crimes Act*, which provided for the issue and execution of search warrants, did not bind the Crown in the right of either the Commonwealth or a State, and that accordingly section 10 did not authorise the issue of a search warrant to enter and search Crown premises. As a result, the warrants in that case were ruled invalid, those warrants having been issued for the purpose of searching premises occupied by the Fisheries Department of Western Australia. As noted in 1992-93, the DPP filed an application for special leave to appeal to the High Court from the decision.

By a majority of 6-1 the High Court allowed the appeal, holding that section 10 bound the Crown in the right of the Commonwealth and the States. While section 10 has been repealed, the replacement provision, section 3E, is not materially different and it is clear that the latter provision also binds the Crown in the right of the Commonwealth and the States.

In their joint judgment Mason CJ, Deane, Dawson, Toohey and Gaudron JJ further held that the right to seize property from Crown premises pursuant to a search warrant is not unqualified. Apart from any limitation which may be specifically imposed by statute, their Honours stated:

Where the public interest in maintaining the confidentiality of particular documents in the possession of government or a government agency ought to prevail over the public interest in the prosecution of crime, then those documents have in our view public interest immunity from search and seizure under section 10. ... In accordance with the approach adopted in Baker v Campbell, it is open to the Crown to resist the seizure under a section 10 search warrant of documents to which public interest immunity attaches.

Chapter 6

Law reform and other issues

In most cases this limitation on the authority conferred by a search warrant is unlikely to present any practical problems for police. The limitation will not apply where police wish to seize non-Crown material which is located on Crown premises or material where there is no recognisable public interest in its suppression, and no basis for objecting to its seizure on public interest grounds. There certain classes of documents, such as Cabinet papers and documents relating to the formation of government policy at a high level, where the nature of the document will weigh heavily against disclosure. However, it is highly unlikely that the police will seek to seize such documents under the authority of a search warrant.

There remains the question what the police should do in the event that a claim of public interest immunity is made by a responsible officer of a government agency during the execution of a search warrant on that agency. Unfortunately, the main judgment of the High Court is of little assistance in that regard. Their Honours merely stated that 'if a dispute arises as to the existence of immunity, means are available to obtain a judicial determination of the issue', and that if there are practical difficulties in giving effect to immunity in the context of the execution of a search warrant, those practical difficulties are not insurmountable.

Following the High Court's decision the DPP provided advice to the AFP on what the police should do in the event a claim of public interest immunity is made during the execution of a search warrant on a government agency. The DPP has advised the executing officer should adopt the same basic procedure as that followed when a claim of legal professional privilege is made during the execution of a search warrant. The responsible officer within the agency concerned should be asked to prepare a list of the relevant documents, which should include a general description of each document. The documents which are the subject of the claim should then be placed in an envelope and sealed. The documents, and a copy of the list prepared by the responsible officer, should then be delivered to a person acceptable to both parties. In the event the claim cannot be satisfactorily resolved by subsequent discussion, the agency should then be given a reasonable opportunity to institute proceedings seeking to establish the claim.

After upholding the appeal from the Full Federal Court's decision the High Court remitted the matter to the Federal Court to consider whether a claim of public interest immunity could be sustained in relation to the documents which had been sought pursuant to the subject search warrants. In a decision handed down on 21 July 1995, French J of the Federal Court held that the claim of public interest immunity could not be made out.

RIDGEWAY V R

Ridgeway was convicted in 1992 of one count of possessing a trafficable quantity of heroin contrary to section 233B of the *Customs Act 1901*. He was sentenced to 12 years imprisonment with a non parole period of eight years.

The prosecution case was that Ridgeway had been an acquaintance of a person called Lee who was convicted of offences relating to the importation of heroin and had been deported to Malaysia following his release from jail. Following Lee's deportation Ridgeway asked Lee to arrange the purchase of a quantity of heroin and import it into Australia. Ridgeway also travelled to Singapore and paid Lee some money for the purchase of the heroin. However, unbeknown to Ridgeway, Lee had become a registered informant for the Royal Malaysian Police and he advised them of Ridgeway's intentions. The Malaysian Police then undertook a 'controlled delivery' of the heroin with cooperation of the Australian Federal Police and the Australian

Chapter 6

Law reform and other issues

Customs Service. The heroin was delivered to Ridgeway and another person in Adelaide by Lee and a Malaysian police officer. Ridgeway was then arrested by the AFP.

Ridgeway appealed against his conviction to the Court of Criminal Appeal in South Australia. The appeal was dismissed. Ridgeway then applied to the High Court for special leave to appeal. Special leave was granted and in April 1995 the High Court, by a majority of 6-1, granted his appeal.

The problem in the case was that actions of the authorities in bringing the heroin into Australia amounted to an offence against the Customs Act, even though the purpose was to obtain evidence against Ridgeway of his involvement in a criminal enterprise. There is no provision in the Customs Act to allow law enforcement authorities to commit acts which would otherwise constitute an offence against that Act.

Prior to the High Court's decision there was conflicting authority at Court of Criminal Appeal level whether a court's discretion to exclude evidence that had been illegally or improperly obtained applied where the illegality or impropriety related not to the manner by which the police had obtained evidence of an offence that had already been committed but rather to the circumstances in which the offence had been committed. In a number of cases it had been held that, if any remedy was appropriate in the circumstances of a particular case, it was a stay of the prosecution as an abuse of process.

By a 5-2 majority the High Court rejected the argument that a stay was an available remedy where illegality or impropriety on the part of the police procured the commission of an offence. Rather the remedy in such a case, if appropriate, was the application of an exclusionary discretion. In that regard, the five justices held that a trial judge possesses a discretion to exclude, on public interest grounds, all evidence of an offence or of an element of an offence in circumstances where the offence or element was bought about by unlawful or improper conduct on the part of law enforcement officers.

Their Honours identified two distinct, but possibly overlapping, categories of cases where police illegally procure an offence. The first consists of cases in which police conduct induces a person to commit an offence. In that category of case, the public interest in the conviction and punishment of the offender is likely to prevail over other considerations except where the illegality or impropriety of the police conduct is grave and either so calculated or so entrenched that it is clear that considerations of public policy relating to the administration of criminal justice require exclusion of the evidence. The other category of cases is where illegal police conduct is itself the principal offence to which the charged offence is ancillary or itself constitutes an essential ingredient of the charged offence.

In a case which fell within the latter category their Honours stated that the considerations in favour of exclusion of the evidence will be 'extremely formidable' if 'the illegal police conduct would appear to be condoned by those in high authority and it does not appear that criminal proceedings have been brought against the police'.

The Ridgeway case fell within the second category referred to by their Honours. In the circumstances their Honours concluded that all evidence establishing that the drugs had been imported should have been excluded. Their Honours observed that the weight that would ordinarily be given to the public interest in convicting and punishing Ridgeway for his offence against the Customs Act was reduced by the fact that Ridgeway's possession of the heroin constituted **one** of a variety of offences under South Australian law.

Chapter 6

Law reform and other issues

It was open to the appropriate authorities to proceed against Ridgeway for an offence under State law even if the evidence of importation was excluded. While the circumstances in which Ridgeway obtained possession of the heroin may have involved illegal conduct on the part of the police, such illegality would not constitute an element of any State offence and the case would fall within the 'first category' referred to by their Honours. As noted above, in such a case ordinarily the public interest in the conviction and punishment of those guilty of crime will prevail over other considerations favouring exclusion of the evidence.

Ridgeway has since been charged with an offence under South Australian law relating to his possession of the heroin which was the subject of the proceedings for an offence against the Customs Act.

The Government has now introduced a Bill into Parliament in response to the High Court decision. If it is enacted, the Crimes Amendment (Controlled Operations) Bill 1995 will provide:

- senior police officers and members of the NCA will have power to issue certificates authorising a controlled law enforcement operation involving the importation, exportation and/or possession of narcotic drugs;
- law enforcement officers acting in good faith and in the course of duty in relation to an authorised controlled operation will not be criminally liable for narcotic offences against Commonwealth and State law;
- in cases where law enforcement officials took part in, or facilitated, the importation of narcotics prior to the commencement of the proposed legislation, evidence of such an importation will not be inadmissible if the importation was effected pursuant to a request from the AFP to the Australian Customs Service.

In relation to the last point, as at April 1995 there were at least 12 defendants before the courts in cases that involved similar fact situations to that which arose in Ridgeway. In a number of those cases State charges have since been substituted for Commonwealth charges. In other cases the DPP is waiting for Parliament to consider the Crimes Amendment (Controlled Operations) Bill before deciding what action to take.

MODEL CRIMINAL CODE :

BLACKMAIL, FORGERY, BRIBERY AND SECRET COMMISSIONS

Last year's annual report dealt in general terms with the DPP's submission to MCCOC on the issues raised in a discussion paper dealing with theft and fraud offences. MCCOC envisages that those offences will form part of Chapter 3 in the Model Criminal Code. The remaining offences to be included in Chapter 3 - blackmail, forgery, bribery and secret commissions - were the subject of a discussion paper which was released for comment in August 1994.

The DPP has provided MCCOC with detailed comments on various issues raised in that discussion paper. It appears that a final report on the proposed Chapter 3 offences will be released later in 1995, and that it is possible the Commonwealth may introduce legislation implementing the MCCOC recommendations as early as 1996.

Chapter 6
Law reform and other issues

CRIMINAL CODE ACT 1995 AND CRIMES AMENDMENT ACT 1995

The *Criminal Code Act 1995* and the *Crimes Amendment Act 1995* (Nos 11 and 12 of 1995) received royal assent on 15 March 1995. Both pieces of legislation were referred to the Senate Legal and Constitutional Legislation Committee in their passage through Parliament.

The DPP provided written submissions to the Committee in relation to both pieces of legislation and an officer from the DPP gave evidence to the Committee on two occasions in 1994. The written submissions and the oral evidence canvassed a number of practical issues arising under the legislation.

REVIEW OF LITIGATION COSTS RULES

In the Annual Report for 1993-94, reference was made to a submission by the DPP to the ACT Attorney-General's Department concerning issues raised in a discussion paper entitled *The Reimbursement of Litigation Costs*.

In October 1994 the Australian Law Reform Commission issued an issues paper entitled *Review of the Litigation Costs Rules* which essentially canvassed the same issues raised in the ACT discussion paper. The DPP provided a submission to the Commission which expressed views similar to those outlined in last year's annual report.

Chapter 7

Resource management

Each DPP Office has a Resource Management Branch responsible for providing services to that office.

While Head Office plays a coordinating role in areas of national importance, as well as providing media liaison and publishing services, administrative responsibility has mostly been devolved to the regional offices.

Each regional Resource Management Branch is headed by an Executive Officer who works under the supervision of the respective Deputy Director for that State. These branches are responsible for all personnel, information technology, library and accounting services as well as general administration.

HUMAN RESOURCES

The most significant development this year was the certification of the 'conditions-only' agreement under agency bargaining. The DPP approached this exercise jointly with the Community and Public Sector Union and an agreement was certified in December 1994. The DPP was unable to identify productivity offsets to fund a wage increase and therefore the agreement provides for improvements to conditions only. It is believed to be the first of its type certified in the Australian Public Service. Staff subsequently received a 2 per cent wage increase through the service-wide 'foldback pool' arrangements with a further 2 per cent to be paid, effective from 6 April 1995.

Office personnel policies were reviewed and re-issued as required to implement conditions negotiated under agency bargaining. These policies were reviewed and/or developed in consultation with the CPSU and staff generally.

Performance management continued to develop throughout the year and appraisals were completed for all eligible staff. An evaluation of the Office's performance appraisal scheme was undertaken in 1994 via a questionnaire to all participating staff. The survey results indicated that there are a number of issues that need to be addressed to improve the administration and effectiveness of the scheme, particularly consistency of ratings, and these are being put in place for the next round in September 1995.

A quality-management program, introduced to the National Personnel Services Section in Head Office last year, aims to increase the client focus of DPP personnel work and improve performance. Under this program, service agreements have been negotiated with each State Office and records are maintained to assess the level of service actually provided. This initiative continues to show results, with improved understanding of the roles between Head Office and State offices.

During the year, the recommendations of an internal review of information technology staffing strategies were implemented. This review was necessary considering the substantial change in the DPP's information technology environment in recent years and involved the translation of staff to the Information Technology Officer employment category.

Chapter 7 Resource management

STAFFING

Staffing at the end of June 1995 was 455 personnel (485 at 30 June 1994), see the following tables 1 - 4.

Average staffing for the year was 453 (481 in 1993-94 and 468 in 1992-93). No new functions have been provided for in 1995-96. Staffing next year is expected to average approximately 456 staff.

The staff turnover for lawyers for this year remained relatively low at only 7 per cent (6 per cent for 1993-94). This is in contrast to turnover rates in the mid to late 80s which were as high as 30 per cent in some offices. The low rate is considered to be a product of limited opportunities in the private sector and increased opportunities within the DPP coming from expanded functional responsibilities. The turnover rate for non-legal staff rose to 19 per cent (13 per cent in 1993-94 and to 7 per cent in 1992-93). Analysis of exit questionnaires revealed that the increased turn-over rate is due to personal reasons and to advance careers.

There was limited staff movement of permanent Senior Executive Service officers, with three gains and six losses. This excludes staff employed under the DPP Act on fixed-term contracts, which are re-negotiated as contracts expire. None of the gains or losses involved intra-agency mobility.

The percentage of staff dedicated to corporate support was 25.3 per cent for 1994-95 (22.75 per cent in 1993-94 and 23.5 per cent in 1992-93). This figure includes all staff not directly supporting legal activities, including national and State library, information technology and administrative staff.

There were no requests for post separation employment received under Chapter 13 of the Guidelines on Official Conduct of Commonwealth Public Servants. This chapter applies to officers who propose to accept business appointments on retirement or resignation from the Australian Public Service.

TRAINING AND DEVELOPMENT

A revised National Training Policy and Plan was issued in July 1995 continuing the process of refining individual training agreements for all staff and local training programs. Ongoing improvements to the training computer system (OMNI) and the implementation of the Australian Training Register (ATR) will further enhance preparation of national and State annual training programs.

A National Training Conference is held annually to review the processes and to progress the strategy of focussing training on the skills required for individual's work.

With the recently completed information technology re-equipment, much of the main focus of administrative training in 1994-95 was on new software applications. OH&S issues also received attention.

Each office conducts regular in-house legal training, usually on a monthly basis. This training ensures lawyer's skills remain current and that they complete the required equivalent of 20 hours per year.

Net eligible expenditure on training for the year was approximately \$360 680, which is 1.6 per cent of total salary expenditure. The total number of training days was 1315 at an average of 2.9 days per person.

Chapter 7
Resource management

Table 1: Staff as at 30 June 1995

Classification	ACT	NSW	Vic.	Qld	SA	WA	Total
Director	1						1
Associate Director	1						1
SES Band 3	2						2
Band 2		2	1	1	1	1	6
Band 1	7	9	3	6	3	3	31
Legal 2	9	29	18	8	10	7	81
Legal 1	2	27	21	17	3	8	78
SITO A	1						1
SITO B	2		1				3
SITO C	1	2					3
ITO 2			1	1			2
ITO 1	1		1		1	1	4
SPO B	1						1
SPOC	1	1	1	1	1	1	6
PO 2	1						1
PO 1	1						1
PAO Grade 3	1						1
SOG A	1						1
SOG B		3	3	1	1	1	9
SOG C	3						3
ASO 6	4	2	2	1	1	1	11
5	5	1	2	1			9
4	6	20	10	4		4	44
3	9	29	12	11	10	10	81
2	1	16	26	5	1	2	51
1	1	2	2	3			8
Agency	2	6	1		3	3	15
Totals	64	149	107	60	35	42	455

(unpaid inoperative staff are not included)

Legend	SES	Senior Executive Service	SITO	Senior Information Technology Officer
	SOG	Senior Officer Grade	SPO	Senior Professional Officer
	SOG	Senior Officer Grade	ASO	Administrative Service Officer
	PAAB	Professional Aboriginal Assistant	PAO	Public Affairs Officer

Chapter 7 Resource management

Staffing summary

	1993-94	1994-95
Statutory Office Holders	2	2
Total staff employed under the PS Act 1972	460	418
Total staff employed under the DPP Act 1983	13	20
Agency Staff	10	15
Total	485	455

The total number of temporary staff included in this figure is 24

Key staffing performance indicators

The proportion of staff dedicated to corporate support (library/IT/administration) was 25.3 per cent (22.75 per cent in 1993-94).

Staff turnover rates (per cent)	1992-93	1993-94	1994-95
Legal		6	7
Non-Legal	7	13	19

Table 2: Staff as at 30 June 1995 by gender and category

Category	Full-time		Part-time	
	Male	Female	Male	Female
Director	1			
Associate Director	1			
Senior Executive Service -				
Band 3	2			
Band 2	6			
Band 1	22	9		
Legal	88	70	1	12
Senior Officer & equiv.	15	13		2
Administrative Service Officer & equiv.	56	145	3	9
Grand total	455			

15 agency staff are included in the above figures

Chapter 7
Resource management

Table 3: Staff usage by office

Office	Estimated Average Staffing 1994-95	Actual Average Staffing 1994-95	Estimated Average Staffing 1995-96
Head Office	65	66	63
NSW	164	153	157
Vic.	112	103	107
Qld	54	56	54
SA	32	33	32
WA	43	42	43
Total	470	453	456

Table 4: Staff usage by program

Program	Estimated Average Staffing 1994-95	Actual Average Staffing 1994-95	Estimated Average Staffing 1995-96
Prosecutions			
General	211	201	204
Corporations	95	94	92
Total	306	295	296
Criminal Assets	47	43	47
Executive & Support	117	115	113
Total	470	453	456

STAFF INTERCHANGE

The DPP Interchange Program, finalised in consultation with relevant unions, provides for one or two formal placements in any year subject to available resources. These placements can be with local or overseas organisations. The program operates on a reciprocal arrangement, but this is not an essential feature.

Ms June Phillips, a senior lawyer in the Brisbane Office undertook an overseas placement in the Ministry of the Attorney-General, Toronto, Canada from March 94 for a period of six months.

Chapter 7 Resource management

OCCUPATIONAL HEALTH AND SAFETY

The DPP has a current Occupational Health and Safety agreement with the Public Sector Union which was signed on 22 July 1992.

All States have trained representatives and deputies. Committee meetings are held regularly in all offices and issues are discussed that have been identified through the regular checks performed by the OH&S representatives. Attention is being given to minimise potential problems that may result from new technology and in particular, soft tissue injuries using equipment such as a computer 'mouse'. Offices have engaged specialists to carry out inspections and develop strategies to overcome these problems.

EQUAL EMPLOYMENT OPPORTUNITY

The third Employment Equity Plan covering the years 1994-97 was approved by the Public Service Commission in April 1994.

The plan was developed following consideration of the views of all DPP through a voluntary staff survey on EEO and an evaluation of the previous program. State offices and the Community Public Sector Union were involved at each stage of development.

Statistics once again show that with the exception of ATSI staff, members of the target groups at the DPP compare favourably with the rate at which these groups are employed in the Australian Public Service as a whole.

Each State office has an officer responsible, part-time, for the implementation of EEO under the direction of the Deputy Director. The National Resource Management Section, Head Office, provides control, advice and coordination for the State offices under the direction of the Senior Executive, Resource Management who is responsible for Equal Employment Opportunity. An officer at Head Office is designated as the DPP's EEO coordinator. It is expected that the staffing effort during the next financial year will be approximately the same as this year, approximately 1.5 ASL nationally.

EEO is a standard topic of discussion at the biannual Executive Officers' Conference and at industrial democracy meetings. Staff with EEO responsibilities attend EEO network meetings as appropriate.

Major achievements since 1 July 1994 include :

- Completion and distribution of,
 - Aboriginal and Torres Strait Islander Career Development Policy
 - Child Care and Other Caring Responsibilities Policy
 - Disability Discrimination Policy
- Guidelines for Managing Infectious Diseases in the Workplace and Understanding HIV/AIDS and Hepatitis B and C
- EEO workshops and training conducted in State offices.

Chapter 7 Resource management

Major EEO priorities for 1995-96 will be:

- Completion of Return to Work Policy Guidelines for Home-based Work
- Development of cadetship and traineeship programs for EEO target groups
- Revision of State EEO equity plans
- Continuation of EEO awareness training

Through the completion of voluntary information, the computerised personnel system (NOMAD) has EEO details recorded on most staff. Also, training details are monitored by EEO target groups using the OMNI computer system.

No EEO related grievances were lodged in 1994-95. Monitoring of exit questionnaires and interviews indicates no general perception of discrimination against members of target groups. One grievance has since been lodged in respect of non renewal of a temporary employment contract. An officer has been appointed to undertake an investigation.

Table 5: EEO profile of the DPP as at 30 June 1995

Classification	Male	Female	ATSI	PWD	NESB1	NESB2
Director	1				1	
Assoc Dir.	1					
SES 3	2					
SES 2	6			1		
SES 1	22	9		1	1	1
Legal 2	49	32		1	3	8
Legal 1	33	45	1		2	7
SOG A/B/C & equiv.	15	13		1	2	4
ASO 1-6 & equiv.	60	152		10	12	26
Total**	189	251	1	14	21	46

** 15 Agency staff are not included in the above figures

Legend

- ATSI** Aboriginal and Torres Strait Islanders
- PWD** People with Disabilities
- NESB1** Non-English Speaking Background (first generation, born overseas and whose first language was not English)
- NESB2** Non-English Speaking Background (second generation, arrived in Australia before age five along with Australian-born people with parents of NESB)

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

Chapter 7 Resource management

PERFORMANCE PAY

The DPP made payments to SES and to other eligible non-SES staff during the year. Details in relation to this appear in tables 6, 7 and 8.

A computerised performance appraisal system (PACS) has been developed and will be implemented in 1995-96. Training in the systems use and in feedback will be conducted in the third quarter of 1995.

The Office's policies will be reviewed in light of changes proposed in the 1995-96 APS wages package.

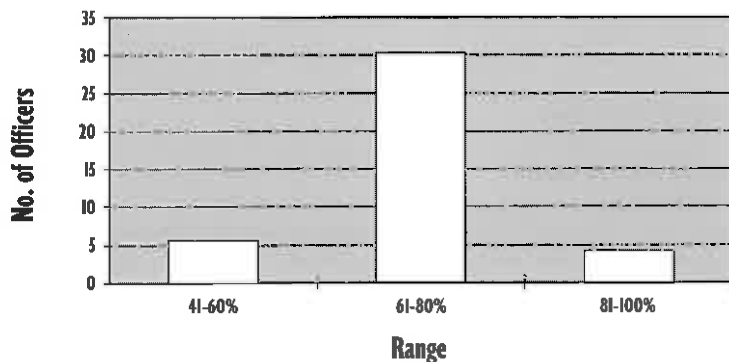
To date, the DPP has received no formal grievances in relation to the operation of performance appraisal or performance pay.

Table 6: Performance pay: Number of eligible staff and aggregate payments 1994-95

Staff Category	Number (staff years)	Aggregate Payments (\$)
SES	39.7	218 112
Senior Officer A/B*	126.0	176 278
Senior Officer C*	18.2	26 533

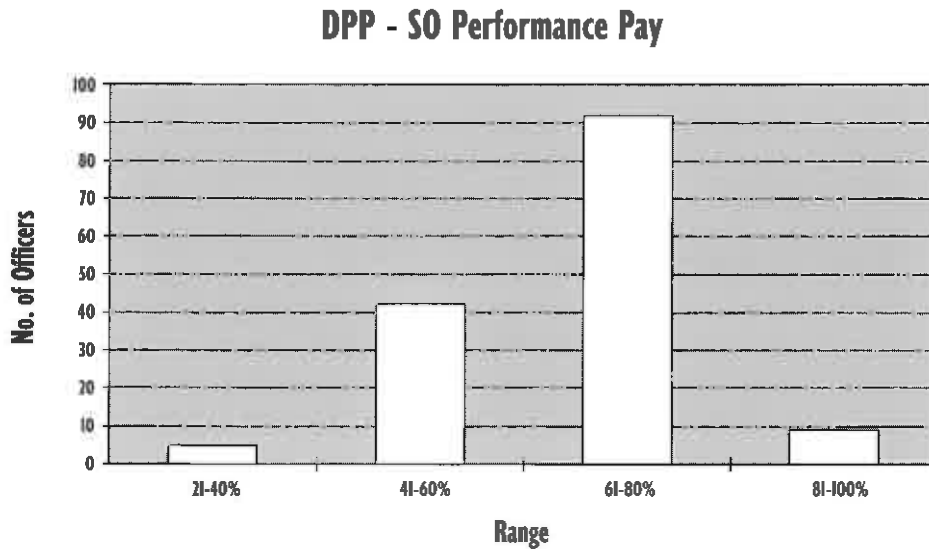
* These categories include staff at equivalent levels

Table 7: Distribution of performance pay for SES staff



Chapter 7
Resource management

Table 8: Distribution of performance pay for Senior Officer A, B and C and equivalents



INDUSTRIAL DEMOCRACY

The DPP's Industrial Democracy Plan was last revised and agreed with the CPSU in May 1993. It is working effectively and this has been recognised by both management and the union. The DPP is committed to the principles of industrial democracy.

A National Consultative Council meeting was held in Head Office in May 1995 and the next meeting is scheduled for March 1996.

Industrial democracy meetings in the regions involved issues such as relocation, accommodation, overuse problems related to new technology and manual handling. Under the principles of industrial democracy, agency bargaining has provided an instrument for staff to be involved in major decisions affecting their working environment and practices. E-mail has proven to be a convenient method of keeping staff informed of issues that do not require a full staff meeting.

The Senior Executive responsible for industrial democracy is the Senior Executive, Resource Management, Head Office. Head Office staff monitor industrial democracy with the union through the National Consultative Council and through copies of the minutes of State meetings.

Industrial democracy is now integrated in the management approach of the Office of the DPP and therefore no specific major events are reported.

INFORMATION TECHNOLOGY

COMPUTER RE-EQUIPMENT

In March 1995 the Commonwealth DPP won the 1995 Government Technology Productivity Silver Award for its information technology re-equipment project completed in late 1993 and early 1994.

The project included the installation of IBM-compatible personal computer local and wide area networks and replacement of the applications that were running on Wang VS minicomputers to a client-server environment.

WANG VS MINICOMPUTERS

With the migration of all systems to a client-server environment all WANG VS mini computers in regional offices have been decommissioned. Two WANG VS minicomputers have been retained in Head Office for the finance and library management systems. Both of the minicomputers are expected to be decommissioned by the end of 1995-96 when the library and finance systems are replaced or migrated to DPP's client-server environment.

CORPORATE SYSTEMS

Except for the financial management system (FINEST) and library management system (LIBMAN) the following corporate systems have been redeveloped using a client-server environment:

- **Case Recording and Information Management System (CRIMS).** This system records information and progress of matters being dealt with by the DPP.
- **Fines and Costs (FAC).** This system records and disperses fines and costs imposed by courts.
- **Criminal Assets Recording System (CARS).** This system records and tracks value of assets of defendants.
- **File Registry System (FILE).** This system records Administration files.

During 1994-95 the corporate systems have been further developed, enhancements including changes to the Court Diary functions and implementation of the Administration File Registry system.

COMPUTER-BASED COURT PRESENTATION SYSTEM - CLARITY

The DPP has developed its own computer court presentation system called CLARITY which assists with the preparation, management and presentation of evidence in complex cases run by the DPP. These may vary from the use of spreadsheets and text retrieval software to the use of databases displaying images, which may be required to be custom-built.

The DPP has expanded its use of computer-based imaging systems. The CLARITY system has been successfully used in NSW, Victoria, WA and the ACT in cases ranging from money laundering to complex corporate prosecutions.

Each office has been provided with a basic system that includes a powerful PC, a scanner, 21-inch monitors and off-the-shelf PC software. The use of the CLARITY system has greatly accelerated the speed with which

Chapter 7

Resource management

documents are tendered and has assisted as well in simplifying complex matters. It provides the court with useful, clear diagrams showing complex transactions. The system, which is fully portable, has cut court time in the cases where it has been used.

The system has been accepted by the legal profession, judges and court administrators across Australia and has been shown to law enforcement agencies overseas. The DPP is coordinating the development of uniform computer standards across all federal law enforcement agencies in a bid to streamline the investigation process through to the prosecution phase.

LIBRARIES

The DPP libraries operate as a network providing legal material as well as reference and information services to the Office. All libraries have access to local and overseas databases. The introduction of Local Area Networks has enabled the librarians to provide desktop access to internal databases and a number of legal applications on disk and CD-ROM.

Each office is staffed with at least one professional librarian. The librarians meet regularly and provide input to network policies and procedures. The Head Office librarians perform national roles maintaining in-house databases and producing a weekly newsletter for DPP librarians and a monthly legal information service for lawyers. The systems/cataloguing librarian maintains the library management system and is responsible for network cataloguing.

There are 18 in-house databases containing opinions, speeches, media reports, internal newsletters, documents and manuals, legal abstracts and legislation. Scanning equipment is used to add material no longer in electronic form. Access is provided via the LAN to 16 commercial legal databases on disk and 12 on CD-ROM. The ISYS text retrieval system is used for most of the in-house databases and for those commercial databases which do not have their own text retrieval system.

The process of evaluating new library management systems, as mentioned in last year's report, has continued into this financial year. Evaluation will soon be complete and a new system purchased before the end of the next financial year.

PUBLIC RELATIONS

All media inquiries are answered by the DPP Journalist who works in Head Office, Canberra. These include questions about prosecutions conducted by DPP State offices.

The DPP has a policy of providing accurate information which is available on the public record. Information is not disclosed on cases yet to come before the courts, apart from confirming whether a matter is under consideration.

The DPP Journalist is responsible for providing media policy advice to the Director, senior management and individual prosecutors nationally, as well as being responsible for the Office's national publishing and information programs, including the maintenance of the corporate image of the Office. The Journalist also liaises with ministers' offices, client departments and investigating agencies on media issues affecting the DPP.

Chapter 7 Resource management

Another service provided is a daily media summary delivered via the computer network to each DPP officer. This summary is the basis of a database which can be searched retrospectively for research purposes.

A corporate video, *Prosecuting in the Public Interest*, explains and illustrates the varied and complex work of the Commonwealth DPP. Copies of the video are available from each DPP office.

The DPP Journalist can be contacted on 06 270 5672 during office hours.

The DPP did not undertake any advertising campaigns or market research in the reporting period.

FINANCIAL MANAGEMENT

FINANCIAL STATEMENTS

Audited financial statements for the DPP are included at the end of this report. The DPP's total revenue and expenses over the last four years, and budget for 1995-96 are:

Table 8: Revenue and expenses over past four years and budget for 1995-96

	1991-92 (\$'000)	1992-93 (\$'000)	1993-94 (\$'000)	1994-95 (\$'000)	1995-96 (\$'000) (estimate)
Receipts	1 974	1 239	1 170	3 344	3 135
Expenses					
Budget	52 606	51 042	52 372	49 598	51 268
Actual	41 341	46 041	46 974	43 370	

The reduction in expenditure over 1993-94 has been primarily due to the finalisation of the war crimes matters and the completion of the major parts of the information technology re-equipment, partly offset by salary and price movements. No funds have been provided for war crimes prosecutions from 1994-95.

The underspending against budget was due to carry-over of funds due to delays in relocating Head Office and deferral of aspects of the IT re-equipment while software is evaluated.

AGENCY EVALUATIONS

A DPP evaluation plan was developed during 1990-91, which provided for the evaluation of significant DPP activities within a five-year cycle. The Criminal Assets, Fines and Costs and Information Technology functions have been reviewed in past years.

During 1992-93 the DPP was represented on a portfolio review of the corporate prosecutions function which established an ongoing funding base for corporate prosecutions from 1993-94 onwards.

A tripartite review (DPP, Department of Finance and the Attorney-General's Department) was conducted of the prosecution function of the DPP during 1993-94.

All major activities of the Office have been reviewed in recent years.

Chapter 7 Resource management

PROGRAM BUDGETING

The DPP has three sub-programs for the purposes of external reporting: Commonwealth Prosecutions (which includes corporate prosecutions and the now finalised war crimes prosecutions), Criminal Assets and Executive and Support (which includes the IT re-equipment project). Details of the activities carried out under each sub-program appear in the relevant chapters of this report. The expenditure incurred in respect of each program appears in the financial statements at the end of this report.

For further information on DPP budgets refer also to the Attorney-General's Program Budget Measures Statements 1994-95 - Sub-program 6.7 and Attorney-General's Portfolio Budget Statements 1995-96 - Sub-program 6.7.

Table 9: Actual expenditure v budget

Function		1991-92 (\$'000)	1992-93 (\$'000)	1993-94 (\$'000)	1994-95 (\$'000)	1995-96 (\$'000)
Base funding	Budget	34 922	35 801	37 680	37 382	38 443
	Actual	35 096	33 890	34 365	32 128	
IT re-equipment	Budget	1 400	4 390	1 306	268	695
	Actual	220	4 001	1 493	562	
Corporate prosecutions	Budget	7 107	4 500	11 150	11 948	12 130
	Actual	3 788	4 959	9919	10 680	
War crimes	Budget	9 177	6 351	2 236	n/a	n/a
	Actual	2 237	3 191	1 197	n/a	n/a
Total expenses	Budget	52 606	51 042	52 372	49 598	51 268
	Actual	41 341	46 041	46 974	43 370	

ACCOUNTING POLICY AND PROCESSES

FINANCIAL REPORTING AND MANAGEMENT INFORMATION SYSTEMS

The past year saw the continued expansion of external reporting requirements with the decision that all agencies are to report on an accrual basis by 30 June 1995. This has, and will continue to, require a significant retraining of staff and redevelopment of systems to enable the new requirements to be implemented. Given the considerable work and costs involved the DPP decided not to move to full accrual reporting until 1994-95.

The DPP operates three key management information systems, the FINEST financial management information system, an in-house developed Fines and Costs receivables management system and the NOMAD personnel management information system.

Chapter 7

Resource management

A new or upgraded full accrual Financial Management Information System will be put in place during 1995-96 to meet the new accrual accounting requirements and those of the new Department of Finance accounting system (FIRM).

The Fines and Costs system has been replaced by a new system developed as part of the DPP's information technology re-equipment program and now incorporates improved accounting and reporting functions.

ACCOUNTING POLICY

The DPP Financial and Purchasing Handbooks are being re-written to incorporate the effect of the proposed Financial Management and Accountability Act and will be formally issued by July 1996, incorporating new Chief Executive Officers Instructions.

PURCHASING

The DPP Purchasing Handbook, which was formally issued in September 1992, incorporating the DPP Purchasing Reform Plan remains in force pending the new financial legislation under preparation.

During 1994-95 the DPP failed to gazette purchases in excess of \$2000 within the required time-frame in a number of instances due to breakdowns in office procedures. Such purchases were subsequently gazetted later, but outside the required reporting period.

ACCOUNTS PROCESSING

The DPP will be reviewing accounts processing practices and the degree of devolution desirable in conjunction with the move to an accrual accounting environment. Higher skill levels required may mean that some processes previously decentralised may have to be re-centralised to reduce the training overhead required.

Australian Government credit cards are used where practicable, and are proving to be an efficient alternative.

Approximately 11 319 claims for payment were processed, by cheque or credit card, nationally during 1994-95 (13 463 in 1993-94 and 12 400 in 1992-93), of which 92 per cent were paid on the due date (94 per cent in 1993-94 and 95 per cent in 1992-93). In smaller offices it is cost effective to process batches at regular intervals, rather than processing small numbers of claims strictly on the due date.

CLAIMS AND LOSSES

The DPP had no claims or losses which individually resulted in net costs to the Commonwealth of \$50 000 or more during 1993-94.

The DPP had no claims which resulted in costs to the Commonwealth in aggregate in the range of \$10 000 to \$20 000 and \$20 000 to \$50 000.

CAPITAL WORKS MANAGEMENT

The DPP had no major capital works projects costing not less than \$6 million in 1993-94.

Chapter 7
Resource management

CONSULTANCY SERVICES

During 1994-95 the DPP incurred expenditure under consultancy agreements or systems integration contracts as shown in table 10 below:

Table 10: Consultancy

Name of Consultant	Purpose	Cost	Period of Engagement	Reason consultancy used
ACT Office				
EASACT*	Conselling	\$280.00	8.6.95	Specialist skills
DGR Consulting*	Performance Indicators	\$25 687.00	10.6.94 - 30.9.94	Specialist advice
Ernst & Young*	IT Security	\$50 350.00	1.7.94 - 30.6.95	Specialist skills not available internally
Department of Finance*	Evaluation of Financial Systems	\$12 375.00	20-24.1.95	Specialist skills not available internally
Pat Farrelly*	Assessment of Impact of FMA Act	\$7 000.00	26.4.95 - 15.5.95	Specialist advice
BHP IT	Ongoing support for IT Re-equipment	\$211 958.50	1.7.94 - 30.6.95	Specialist skills not available internally
Ernst & Young*	Internal Audit	\$61 264.71	31.5.94 - 30.6.95	Internal Audit
Ernst & Young*	Fraud Control Plan	\$1 603.05	9.12.94	EO Conference Presentation
Chris Priestley P/L*	Court Presentation Review	\$15 244.85	March 95	Specialist skills not available internally
Sydney Office				
T Buddin*	In-house Counsel	\$86 249.97	1.7.94 - 31.3.95	Cost effective
M Ierace*	In-house Counsel	\$9 583.33	15.5.95 - 30.6.95	Cost effective
Davidson Trahaire*	Employee's Assistance Programme	\$13 600.00	1.4.94 - 30.6.95	Specialist skills not available internally
ShowCase Systems*	Court presentation	\$7 800.00	various	Specialist skills not available internally
ODDAC Pty Ltd*		\$400.00	28.2.95	Specialist skills not available internally
CP Recruitment & Management Services*	Rapporior for EO Conference	\$1 610.00	8-9.12.94	Specialist skills not available internally
Brian Booth*	PoC Interpretation	\$1 950.00	20.9.94	Specialist skills not available internally

Chapter 7 Resource management

Melbourne office

Perspectives *	Managing yourself /others	\$900.00	18.5.95	Specialist skills not available internally
Rhonda Tranks & Associates *	Workgroup Coordinator - Organisational development project	\$5 230.00	29.8.94 - 2.3.95	Specialist skills not available internally
	Analysis of ITO survey and report	\$840.00	10.3.95	
B. Young	In-house control	\$41 022.00	30.1.95 - 30.6.95	Cost effective

Adelaide office

OCAR *	Training	\$1000.00	4.4.95 & 11.4.95	Part of EAS Service
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Consultancies marked * were not publicly advertised.

FRAUD CONTROL AND INTERNAL AUDIT

The DPP issued an updated Fraud Control Plan in 1995. The Director re-issued the *Guidelines on the Conduct of DPP Officers*, which was distributed to all staff along with the revised Public Service Commission *Guidelines on the Conduct of Officers*.

The DPP contracted Ernst and Young to perform its internal auditor function for 1993-94-95. Under the contract Ernst and Young reviewed the DPP's Audit and Fraud Risk Assessments, prepared an Internal Audit strategy and updated the Fraud Control plan. As part of this process Ernst and Young has undertaken internal audits of the DPP's Canberra, Sydney, Brisbane and Adelaide offices.

There was one case of fraud reported during the year, involving the theft of \$5948. This case was referred to the AFP and the officer was charged by summons and later pleaded guilty in the ACT Magistrates Court. The officer was sentenced to six months jail (fully suspended with a two year good behaviour bond) and to perform 208 hours community service. The officer, who resigned from the Australian Public Service, was ordered to make full restitution.

There were no relevant disciplinary proceedings under the *Public Service Act 1922*.

REPORTS BY THE AUDITOR-GENERAL

The DPP was referred to in one report by the Auditor-General: *No. 22 1994-95 Results of 1993-94 Financial Statements Audit of Commonwealth Entities*. Comments made in that report in respect of the DPP were :

- The audit report on the financial statements was unqualified and the results of the audit of the accounts and records were satisfactory.

Chapter 7 Resource management

- The ANAO assessed the Office as having a sound internal control structure. An element of the sound internal control structure is a strong control environment. Effective use of internal audit and appropriate policies and procedures in the use of information technology contributed to the Office's strong control environment.

Accommodation Costs and Usage by Program Element

PROGRAM	Space Occupied (m2)			Accommodation costs		
	1992-93 m2	1993-94 m2	1994-95 \$m	1992-93 \$m	1993-94 \$m	1994-95 \$m
Prosecutions	6 439	6 226	6 092	3.38	2.697	1138
Corporations	2 676	2 880	2 991	.452	.886	592
War Crimes	370	356	0	.104	.62	0
Total Prosecutions	9 484	9 461	9 083	3.942	3.644	1730
Criminal Assets	1 803	2 188	1 898	.948	.948	334
Executive and Support	4 427	4 818	4 818	2.511	2.241	965
Total DPP	15 714	16 467	16 466	7.401	6.833	3029

During the year a new lease was negotiated for DPP Sydney office, leases were re-negotiated for the Melbourne and Adelaide offices as well. Savings have been achieved under these new agreements. A new lease is being finalised to relocate Head Office in Canberra office.

STATUS OF WOMEN

The DPP does not have specific policies addressing the status of women, other than in relation to employment issues addressed under EEO.

Given the nature of the functions the DPP performs, the Office has limited capacity to promote the status of women other than in the general sense of ensuring that there is no discrimination against women in the criminal process. This includes ensuring that all relevant matters are placed before judges and magistrates called upon to sentence female offenders.

The DPP does not have a women's unit. The responsibility for ensuring that proper consideration is paid to the status of women rests on the Deputy Directors. See tables 2 and 5 in this chapter for the numbers of women employed by the DPP.

Chapter 7 Resource management

ENVIRONMENTAL MATTERS AND ENERGY MANAGEMENT

During 1993-94 the Office engaged the services of the Centre for Environmental Management of the Department of Administrative Services to undertake an energy management audit and to prepare an energy management plan.

To date the DPP has only been able to put in place a few energy saving measures as the capacity to do so is limited due to the fact that the DPP occupies leased premises and runs a fleet of vehicles leased from the Department of Administrative Services. DPP office managers are aware of the need to make the most efficient use of resources whenever it is in their power to do so. Preference is given to environmental-sound products and office waste is recycled wherever practicable.

FREEDOM OF INFORMATION

During the year 12 requests were received by the DPP under the FOI Act. Three requests were granted in full, six requests were granted in part, two requests were refused and one request was transferred. Eleven of the requests were dealt with within 30 days and one request was dealt with within 60 days.

BUSINESS REGULATIONS

The DPP has no role to play in business regulation other than to prosecute criminal offences in appropriate cases. The DPP's activities in corporate prosecutions are reported in Chapter 4 of this report.

PUBLIC COMMENTS

The DPP has no formal arrangements for inviting complaints from the general public. However, any person is free to write to the Director care of Head Office, Canberra.

Most of the correspondence received during the year was from people charged with criminal offences, or their solicitors, asking that the matter not proceed. Statistics on the results in cases where representations were made after committal appear in Chapter 2.

A large proportion of the remaining correspondence concerned alleged offences which, in the writer's opinion, should have been the subject of prosecution. Any case in which it appeared that there might be substance to an allegation was referred to the AFP or other appropriate agency for investigation.

Most of the remaining representations concerned perceived deficiencies in the criminal law or the criminal process. Where appropriate, such representations were referred to the Attorney-General's Department.

PRIVACY

No reports were served on the DPP by the Privacy Commissioner under section 30 of the Privacy Act.

Chapter 8

Prosecution statistics

The following tables provide a picture of the prosecutions conducted by the DPP during the year in New South Wales, Victoria, Queensland, Western Australia, South Australia and the ACT.

The financial year 1994-95 was the first full year of operation of the DPP's Case Recording and Information Management System (CRIMS). The system records all case details and information on the progress and outcome of prosecution matters. CRIMS has generated the reports for the statistical tables presented in this report. However, some reports for tables included in the annual report in previous years are still being developed.

Table 1(a): Defendants dealt with summarily in 1994-95

State	Defendants outstanding at 1.7.94	Defendants received during year	No. of defendants dealt with	Pleas of guilty to all charges (i)	Outcome of summary trials			Other (iii)	Defendants outstanding at 30.6.95
					No. of summary trials	No. of defendants convicted (ii)	No. of defendants where all charges dismissed		
NSW (iv)	604	1 659	1 467	1 189	87	78	22	178	796
Vic.	304	1 099	1 114	962	65	41	24	87	289
Qld	123	973	846	750	36	29	7	60	250
WA	98	615	512	460	14	27	3	22	201
SA	365	634	745	521	24	13	10	201	254
ACT (v)	83	232	205	142	19	13	7	43	110
Total	1 577	5 212	4 889	4 024	245	201	73	591	1 900

- Notes:**
- (i) Includes cases where a defendant changed his or her plea to guilty during the course of the summary trial.
 - (ii) i.e. where a defendant was convicted on at least one charge, or at least one charge was found proven.
 - (iii) This category includes a number of matters where warrants have issued for the non-appearance of a defendant. In 1994-95 the number of these matters is unusually large as it includes warrants which have been outstanding for a number of years. It also includes matters where the prosecution was withdrawn or no evidence was offered by the prosecution in respect of any charge and matters where proceedings were discontinued and fresh proceedings were instituted in another jurisdiction.
 - (iv) Does not include certain prosecutions conducted in south-eastern NSW by DPP Head Office (Canberra).
 - (v) Includes certain prosecutions conducted in south-eastern NSW and in the Jervis Bay Territory. Pursuant to an agreement with the ACT Director of Public Prosecutions a number of matters were referred to his Office for prosecution if appropriate. They involved matters which were essentially of ACT rather than Commonwealth concern, and for the most part arose out of the exercise by the AFP of its community policing function in the ACT.

Chapter 8
Prosecution Statistics

Table 1(b): Legislation: defendants dealt with summarily in 1994-95 (i)

Legislation	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Citizenship Act		4	1	1			6
Australian Federal Police Act	5	3	3			2	13
Australian Securities Commission Act							
Bankruptcy Act	12	11	8	8	3	1	43
Census and Statistics Act	5		1	1	9		16
Civil Aviation Act	2	2	17	6	6		33
Commonwealth Electoral Act	2			1	198	2	203
Continental Shelf Act							
Copyright Act	5	4	1	1			11
Crimes Act	201	197	94	69	169	68	798
Crimes (Aviation) Act	1	1	3	3			8
Crimes (Currency) Act	11	6	2	1	3	2	25
Customs Act	19	29	29	6	5	1	89
Companies Code	4	6	1	1	4		16
Corporations Law		10	10		2		22
Export Control Act	4	7	3	2	4		20
Family Law Act							
Federal Airports Corporation Act		5			6		11
Financial Transaction Reports Act	45	32	12	13	2	2	106
First Home Owners Act							
Fisheries Act	28						28
Fisheries Management Act	2	4	1	120			127
Fishing Industry Act							
Great Barrier Reef Marine Park Act			33				33
Health Insurance Act	5	4	1	2	1	2	15
Industrial Relations Act							
Marriage Act	2	2	1	2	1		8
Meat Inspection Act		4					4
Migration Act	112	12	6	13	4		147
National Health Act	2						2

Chapter 8
Prosecution Statistics

Table 1(b): continued

Legislation	NSW	Vic.	Qld	WA	SA	ACT	Total
Non-Commonwealth legislation (ii)	24	24	10	15	14	12	99
Passports Act	22	7	4	2	3		38
Public Order (Protection of Persons and Property) Act	1	6				5	12
Proceeds of Crime Act	1	1					2
Quarantine Act	5		2	3			10
Radiocommunications Act		3	3	1			7
Social Security Act	800	685	536	215	253	91	2 580
Statutory Declarations Act	2	1		1	1	1	6
Student Assistance Act	45	4	17	17	9		92
Taxation legislation	67	30	40	4	28	10	179
Telecommunications Act	1	3		1	2		7
Telecommunications (Interception) Act		1					1
Torres Strait Fisheries Act			2				2
Trade Marks Act	16	2	1		1		20
Trade Practices Act	1						1
Wildlife Protection (Regulation of Exports and Imports) Act	6		2	1			9
Other	9	4	2	2	17	6	40
Total	1 467	1 114	8 46	512	745	205	4 889

- Notes:
- (i) Prosecutions for offences under subordinate legislation are recorded under the principal Act.
 - (ii) This includes matters that, strictly speaking, concerned Commonwealth offences by reason of the Commonwealth Places (Application of Laws) Act. In the case of the ACT, also includes offences against the laws of the Jervis Bay Territory prosecuted by DPP Head Office.

Chapter 8
Prosecution Statistics

Table 1(c): Crimes Act 1914: defendants dealt with summarily in 1994-95

	NSW	Vic.	Qld	WA	SA	ACT	Total
Incitement (s. 7A)					1		1
Breach of recognisance etc. (ss.20A,20AC)	5	9		1	20	4	39
Damage property (s.29)	1	1	1	2	7	3	15
False pretences (s.29A)	2	4		1	3		10
Imposition (s.29B)	97	62	19	14	38	7	237
False statements (s.29C)							
Fraud (s.29D)	12	39	15	10	2	9	87
Seizing Commonwealth goods (s.30)	1	2			1		4
Offences relating to administration of justice (ss.32-50)	1			5			6
Forgery and related offences (ss.65-69)	18	19	19	11	9	12	88
Disclosure of information (s.70)		1				3	4
Stealing or receiving (s.71)	11	13	7	3	14	13	61
Falsification of books (s.72)	2				1		3
Bribery (ss.73 & 73A)	2					2	4
False returns (s.74)	1						1
Personating public officers (s. 75)		1				1	2
Resisting etc. public officers (s. 76)			6	2	2	2	12
Offences relating to computers (ss 76B-76E)	13	5		4		2	24
Espionage and official secrets (ss. 77-85D)		2					2
Offences relating to postal services (ss. 85E-85ZA)	11	6	7	3	8	2	37
Offences relating to telecommunications services (ss. 85ZB-85ZKB)	17	21	19	13	31	7	108
Conspiracy (s.86)	6	2					8
Conspiracy to defraud (s.86A)	1						1
Trespass on Commonwealth land (s.89)					30		30
Other (i)		10	1		2	1	14
Total	201	197	94	69	169	68	798

Notes: (i) Usually charges laid in reliance on section 5 (attempt), section 6 (accessories) or section 7 (complicity) where the principal offence has not been indicated.

Chapter 8
Prosecution Statistics

Table 2(a): Accused dealt with on indictment in 1994-95

State	Accused outstanding at 1.7.94	Accused committed during year	No. of accused dealt with	Pleas of guilty to all charges (i)	Outcome of trials				No. bills (iv)	Warrants	Accused outstanding at 30.6.95
					No. of trials	No. of accused convicted (ii)	No. of accused acquitted on all charges	Other (iii)			
NSW	174	225	212	147	40	25	14	5	13	8	187
Vic.	57	159	118	92	19	13	7	0	6	0	98
Qld	47	128	112	70	29	21	7	2	10	2	63
WA	43	62	65	33	22	15	12	0	5	0	40
SA	27	47	47	28	11	8	4	1	5	1	27
ACT (v)	4	18	10	6	2	2	0	0	2	0	12
Total	352	639	564	376	123	84	44	8	41	11	427

- Notes:**
- (i) Includes cases where an accused person changed his or her plea to guilty during the course of the trial.
 - (ii) i.e. where an accused person was convicted on at least one charge.
 - (iii) e.g. jury unable to agree on verdict or trial aborted after it had commenced (and any retrial not completed in the year under review), accused found unfit to plead, indictment quashed, accused died prior to completion of hearing but before sentence.
 - (iv) See Chapter 2 for details of no bills entered during the financial year. The number of no bills do not include those cases where the power under section 9(4) of the DPP Act was exercised, but the prosecution proceeded on State charges.
 - (v) May include certain prosecutions conducted in south-eastern NSW or the Jervis Bay Territory by DPP Head Office, Canberra.

Chapter 8
Prosecution Statistics

Table 2(b): Legislation: accused dealt with on indictment in 1994-95

Legislation	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Federal Police Act							
Bankruptcy Act	1		2	1	5		9
Companies Code	6	2		11	4		23
Corporations Law		1	2		3		6
Crimes Act	106	75	54	7	21	8	271
Crimes (Currency) Act	4	2	2	1			9
Customs Act	69	29	31	25	5		159
Financial Transaction Reports Act	5	1	1	3	2		12
Health Insurance Act	1						1
Marriage Act			1	1			2
Migration Act	4		3	2			9
Non-Commonwealth (i)	2	6	6	4	5		23
Passports Act	2	1					3
Proceeds of Crime Act	4						4
Social Security Act		1	2		1		4
Other	8		8	10	1	2	29
Total	212	118	112	65	47	10	564

Note: (i) Other than Companies Code

Chapter 8
Prosecution Statistics

Table 2(c): Crimes Act 1914: accused dealt with on indictment in 1994-95

	NSW	Vic.	Qld	WA	SA	ACT	Total
Incitement (s.7A)							
Breach of recognisance etc. (ss.20A, 20AC)	1						1
Damage Property (s.29)							
False pretences (s.29A)	5	1	3	1			10
Imposition (s.29B)	67	22	6		9		104
False statements (s.29C)							
Fraud (s.29D)	14	39	32	4	6	4	99
Offences relating to administration of justice (ss.32-50)							
Offences relating to administration of justice (ss.32-50)	1		1				2
Forgery and related offences (ss.65-69)							
Forgery and related offences (ss.65-69)	2		6		3		11
Disclosure of information (s. 70)							
Disclosure of information (s. 70)	1					1	2
Stealing or receiving (s.71)							
Stealing or receiving (s.71)	1	2	3			2	8
Falsification of books (s.72)							
Falsification of books (s.72)						1	1
Bribery (ss.73 and 73A)							
Bribery (ss.73 and 73A)	4		1				5
False returns (s.74)							
False returns (s.74)		2					2
Personating public officer (s.75)							
Personating public officer (s.75)				1			1
Resisting etc. public officers (s.76)							
Resisting etc. public officers (s.76)					3		3
Offences relating to computers (ss.76B - 76E)							
Espionage and official secrets (Part VII)							
Offences relating to postal services (ss.85E-85ZA)							
Offences relating to postal services (ss.85E-85ZA)	2		2				4
Offences relating to telecommunications services (ss.85ZB-85 ZKB)							
Offences relating to telecommunications services (ss.85ZB-85 ZKB)	1	3					4
Conspiracy (s.86)							
Conspiracy (s.86)		3		1			4
Conspiracy to defraud (s.86(1)(e) or s.86A)							
Conspiracy to defraud (s.86(1)(e) or s.86A)	7	2					9
Other (i)							
Other (i)		1					1
Total	106	75	54	7	21	8	271

Note: (i) Usually charges laid in reliance on section 5 (attempt) or section 7 (complicity) where the principal offence has not been indicated.

Chapter 8
Prosecution Statistics

Table 2(d): Duration of trials on indictment completed in 1994-95

State	No. of trials	Total No. of accused dealt with	Number of hearing days						
			Less than 5	5 - 10	11 - 15	16 - 20	21 - 25	26 - 30	More than 30
NSW	40	44	17	7	5	2	7	0	2
Vic.	19	26	4	8	4		1		
Qld	29	32	19	8		1	1		
WA	22	27	11	8	1				2
SA	11	13	5	5	3				
ACT	2	2	1		1				
Total	123	144	57	36	14	3	9	0	4

Table 3(a): Prosecution appeals against a sentence imposed by a court of summary jurisdiction in 1994-95

State	No. of appeals dealt with	Type of matter			Outcome of appeal	
		Drugs	Social Security	Other	Upheld	Dismissed
NSW	3	1		2	3	
Vic.	4		1	3	4	
Qld	1			1	1	
WA						
SA	3			3		3
ACT	1			1	1	
Total	12	1	1	10	9	3

Chapter 8
Prosecution Statistics

Table 3(b): Prosecution appeals against a sentence imposed following a conviction on indictment in 1994-95 (i)

State	No. of appeals dealt with	Type of matter			Outcome of appeal	
		Drugs	Social Security	Other	Upheld	Dismissed
NSW	4	3		1	3	1
Vic.	6	4		2	5	1
Qld	6	3	1	2	6	
WA	1	1			1	
SA	5	1	1	3	2	3
ACT	2			2		2
Total	24	12	2	9	17	7

Note: (i) Does not include appeals that were withdrawn.

Table 4(a): Appeals against conviction and/or sentence by persons convicted by a court of summary jurisdiction in 1994-95 (i)

State	No. of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction & sentence
NSW	123	24	68	31
Vic.	53	24	20	9
Qld	7	0	5	2
WA	8	3	5	0
SA	5	0	3	2
ACT	12	1	9	2
Total	208	52	110	46

Note: (i) Does not include appeals that were withdrawn or abandoned.

Chapter 8
Prosecution Statistics

Table 4(b): Appeals by accused convicted on indictment in 1994-95

State	No. of appellants dealt with	Type of appeal		
		Appeals against conviction only	Appeals against sentence only	Appeals against conviction and sentence
NSW	50	10	22	18
Vic.	20	0	16	4
Qld	19	3	12	4
WA	14	9	5	0
SA	6	1	4	1
ACT	9	5	2	2
Total	118	28	61	29

Table 5: Defendants dealt with in committal proceedings in 1994-95

State	Defendants outstanding at 1.7.94	Defendants received during year	No. of defendants dealt with	No. of defendants committed for sentence	Outcome of defended committal proceedings			Other (1)	Withdrawn	Defendants outstanding at 31.5.95
					No. of defended committal proceedings	No. of defendants committed trial	No. of defendants discharged on all charges			
NSW	108	212	227	56	137	141	25	4	1	93
Vic.	55	168	128	46	75	60	15	4	3	95
Qld	33	79	85	9	49	76	0	0	0	27
WA	29	26	49	18	10	30	0	1	0	6
SA	26	23	46	7	27	32	2	5	0	3
ACT	8	11	19	5	8	10	4	0	0	0
Total	259	519	554	141	306	349	46	14	4	224

Note: (1) Included in this figure is a number of warrant matters.

Chapter 8
Prosecution Statistics

Table 6(a): Social security prosecutions: defendants dealt with summarily in 1994-95 (i)

State	Defendants outstanding at 1.7.94	Defendants received during year	No. of defendants dealt with	Pleas of guilty to all charges	Outcome of summary trials			Other	Defendants outstanding at 30.6.95
					No. of summary trials	No. of defendants convicted	No. of defendants where all charges dismissed		
NSW	272	1 047	875	776	22	22	0	77	444
Vic.	157	761	739	680	16	10	6	43	179
Qld	74	645	572	529	13	12	1	30	147
WA	65	257	231	223	2	3	0	5	91
SA	166	253	286	216	8	3	4	63	133
ACT	23	128	92	79	1	1	0	12	59
Total	757	3 091	2 795	2 503	62	51	11	230	1 053

Note: (i) See notes to Table 1(a)

Table 6(b): Social security prosecutions: Accused dealt with on indictment in 1994-95 (i)

State	Accused outstanding at 1.7.94	Accused committed during year	No. of accused dealt with	Pleas of guilty to all charges	Outcome of trials			Other	No Bills	Warrants	Accused outstanding at 30.6.95
					No. of trials	No. of accused convicted	No. of accused acquitted on all charges				
NSW	31	67	65	51	7	3	3	0	4	4	33
Vic.	3	48	43	41	1	1	0	0	1	0	8
Qld	5	33	25	19	3	4	0	0	2	0	13
WA	0	4	4	4	0	0	0	0	0	0	0
SA	7	5	10	9	1	0	0	1	0	0	2
ACT	1	3	2	1	0	0	0	0	1	0	2
Total	47	160	149	125	12	8	3	1	8	4	58

Note: (i) See notes to Table 2(a)

Chapter 8
Prosecution Statistics

Table 7(a): Defendants dealt with summarily in 1994-95: referring agencies (i), (ii)

	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Bureau of Statistics	5		1		9		15
Australian Customs Service	6		3	1			10
Australian Electoral Commission	2			1	198		201
Australian Federal Police	252	307	224	111	81	78	1 053
Australian Fisheries Management Authority	1						1
Australian Postal Corporation	15	10	7	7	9	8	56
Australian Protective Service	1			2			3
Australian Quarantine and Inspection Service	10	11	5				26
Australian Securities Commission	6	14	11	2	6		39
Australian Taxation Office	63	35	40	4	28	18	188
Australian Telecommunications Authority		3		1	8		11
Australian and Overseas Telecommunications Corporation							0
Civil Aviation Authority	2	3	10	4	6		25
Dept of Human Services and Health		1					1
Dept of Employment, Education and Training	49	6	19	15	11		100
Dept of Immigration and Ethnic Affairs	111	18	6	18	5		158
Dept of Industrial Relations							0
Dept of Primary Industries & Energy		2	1	3	5	1	12
Dept of Social Security	854	658	456	197	252	90	2 507
Dept of Transport							0
Dept of Veterans' Affairs	14	2					16
Federal Airports Corporation		5					5
Federal Bureau of Consumer Affairs							0
Health Insurance Commission	7	1	2	4	1	2	17
National Crime Authority		1					1
Non-Commonwealth agencies (other than State police)	31	18	19	134	15	7	224
Official Receiver	1						1
Spectrum Management Agency		4	3	1			8
State police	40	11	37	5	110	1	204

Chapter 8
Prosecution Statistics

Table 7(a) continued

	NSW	Vic.	Qld	WA	SA	ACT	Total
Trade Practices Commission	1						1
Other	7	4	2	3	1		26
Total	1 478	1 114	846	513	745	205	4 901

- Notes: (i) This table provides information as to those agencies that referred matters for prosecution to the DPP. These agencies would have carried out any necessary investigation prior to referral to the DPP.
- (ii) These figures may include a number of advice matters.

Table 7(b): Accused dealt with on indictment in 1994-95: referring agencies (i)

	NSW	Vic.	Qld	WA	SA	ACT	Total
Australian Customs Service	4	1		6			11
Australian Federal Police	118	103	83	41	33	6	384
Australian Postal Corporation	2		1			2	5
Australian Quarantine and Inspection Service			2				2
Australian Securities Commission	7	3	4	11	7		32
Australian Taxation Office	3	1					4
Australian Telecommunications Authority	2						2
Civil Aviation Authority			2		1		3
Dept of Employment, Education and Training							0
Dept of Immigration and Ethnic Affairs	7		3	4			14
Dept of Primary Industries and Energy							0
Dept of Social Security	53	7	6	2	5	2	75
Health Insurance Commission							0
National Crime Authority	3						3
Non-Commonwealth agencies (other than State police)							0
Official Receiver							0
State police	9	3	7		1		20
Other	4		4	1			9
Total	212	118	112	65	47	10	564

- Note: (i) This table provides information as to those agencies that referred matters for prosecution to the DPP. These agencies would have carried out any necessary investigation prior to referral to the DPP.

Appendix

Statement under section 8 of the *Freedom of Information Act 1982*

Under section 8(1)(b) of the *Freedom of Information Act 1982* the DPP is required to publish up-to-date information on the following matters:

- (i) Particulars of the organisation and functions of the agency, indicating as far as practicable the decision-making powers and other powers affecting members of the public that are involved in those functions.

Information on this is contained throughout the annual report, but particularly chapter 1: Office of the DPP and chapter 2: Exercise of statutory functions and powers.

- (ii) Particulars of any arrangements that exist for bodies or persons outside the Commonwealth administration to participate, either through consultative procedures, the making of representations or otherwise, in the formulation of policy by the agency, or in the administration by the agency of any enactment or scheme.

Persons charged with Commonwealth offences, or the subject of criminal assets proceedings, may make representations to the Director concerning the proceedings against them either directly or through their legal representatives. Any matters raised will be taken into account when a decision is made whether to continue the prosecution or the criminal assets proceedings.

- (iii) Categories of documents that are maintained in the possession of the agency, being a statement that sets out, as separate categories of documents, categories of such documents, if any, as are referred to in paragraph 12(1)(b) or (c) and categories of documents, if any, not being documents so referred to, as are customarily made available to the public, otherwise than under the Act, free of charge upon request.

The DPP maintains the following documents:

- documents relating to legal advice, including correspondence from Commonwealth departments and agencies and copies of notes of advice given;
- documents referring to criminal matters and prosecutions before courts and pre-court action, including counsels' briefs, court documents, witnesses' statements and documents provided by referring departments and agencies;
- general correspondence including intra-office, ministerial and interdepartmental correspondence;
- internal working papers, submissions and policy papers;
- internal administration papers and records;
- investigative material, a considerable amount of which is held on database and in the form of tape recordings;
- documents held pursuant to search warrants;
- accounting and budgetary records including estimates; and
- prosecution and civil remedies manual.

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

A p p e n d i x

- annual reports and other reports required by legislation;
- relevant media releases;
- copies of the texts of various public addresses or speeches made by the Director and other senior officers;
- DPP Bulletin; and
- Prosecution Policy of the Commonwealth : Guidelines for the making of decisions in the prosecution process.

(iv) Particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain physical access to the documents of the agency.

Facilities for the inspection of documents, and preparation of copies required, are provided at each DPP office. Copies of all documents are not held in each office and therefore some documents cannot be inspected immediately upon request. Requests may be sent or delivered to the FOI Coordinating Officer at any of the addresses set out at the beginning of this report. Business hours are 8.30 a.m. to 5.00 p.m.

Requests for access in States and Territories where there is no regional office of the DPP should be forwarded to the FOI Coordinating Officer, Attorney-General's Department, in the relevant State or Territory or to the Head Office of the DPP in Canberra.

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

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

Glossary

ACS	Australian Customs Service
AFP	Australian Federal Police
AGS	Australian Government Solicitor
ASC	Australian Securities Commission
ATO	Australian Taxation Office
CPSU	Community and Public Sector Union
CARS	Criminal Assets Recording System
CLARITY	Court Presentation System (computer based)
CRIMS	Case Recording and Information Management System
SCAG	Standing Committee of Attorneys-General
EEO	Equal Employment Opportunity
FTR Act	Financial Transactions Reports Act
HOCLEA	Heads of Commonwealth Law Enforcement Agencies
LEPR	Law Enforcement Policy and Resources Committee
NCA	National Crime Authority
PoC	Proceeds of Crime Act

Compliance Index

Topic	Item No.	Location
Chief Officer's Statement	01 - 04	page xi
Aids to access	05	page v
	06	page 161
	07	page ix
 Corporate Overview		
- objectives	08	page 1
social justice overview	09	page 1
corporate structure	10 - 11	page 4
portfolio legislation	12- 15	Not applicable to DPP
statutory authorities	16 - 17	Not applicable to DPP
non-statutory bodies	18 - 21	Not applicable to DPP
government companies	22 - 24	Not applicable to DPP
major documents	25	page ix
 Program Reportings		
- activities	26 - 27	Ch. 2 to 8
social justice	28 - 29	page 1
 Human Resources		
- staffing overview	30 - 32	page 86
performance pay	33 - 34	page 92
training	35 - 38	page 86
interchange scheme	39	page 89
EEO	40	page 90
industrial democracy	41	page 93
OH & S	42	page 90
post-separation employment	43	page 86
 Other Resources		
- financial statements	44	page 123
claims and losses	45 - 47	page 98
purchasing	50 - 51	page 98
consultancy services	52 - 57	page 99
capital works	58	page 98
laboratory services	59	Not applicable to DPP

Compliance Index

External Scrutiny

- Auditor-General	60 - 63	page 100
parliamentary committees	64 - 66	page 100
Ombudsman	67 - 69	page 100
courts and tribunals	70 - 72	page 100
FOI	73	page 102
privacy	74 - 79	page 102
client comments	80 - 81	page 102

Impact Monitoring

business regulation	82 - 82	page 102
status of women	84	page 101
environmental matters and energy management	85 - 90	page 102



Ref:

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

Scope

I have audited the financial statements of the Office of the Director of Public Prosecutions for the year ended 30 June 1995.

The statements comprise:

- Statement by the Director and Senior Executive, Resources Management
- Operating Statement
- Statement of Assets and Liabilities
- Statement of Program Expenses and Revenues
- Statement of Program Assets and Liabilities
- Statement of Cash Flows
- Statement of Transactions by Fund, and
- Notes to and forming part of the Financial Statements.

The Director and Senior Executive, Resources Management are responsible for the preparation and presentation of the financial statements and the information contained therein. I have conducted an independent audit of the financial statements in order to express an opinion on them.

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

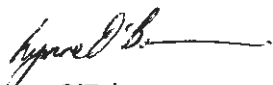
The audit opinion expressed in this report has been formed on the above basis.

Audit Opinion

In accordance with sub-section 51(1) of the *Audit Act 1901*, I now report that in my opinion, the financial statements:

- are in agreement with the accounts and records kept in accordance with section 40 of the Act;
- are in accordance with the Guidelines for Financial Statements of Departments, and
- present fairly in accordance with Statements of Accounting Concepts, applicable Accounting Standards and other mandatory professional reporting requirements the information required by the Guidelines including the Office's departmental and administered operations and its cash flows for the year ended 30 June 1995 and departmental and administered assets and liabilities as at that date.

Australian National Audit Office



Lynne O'Brien
Executive Director

For the Auditor-General

Canberra
27 September 1995

OFFICE OF
THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1994-95

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1994-95

CONTENTS

Certification of the Financial Statements

Operating Statement

Statement of Assets and Liabilities

Statement of Program Expenses and Revenues

Statement of Program Assets and Liabilities

Statement of Cash Flows

Statement of Transactions by Fund

Notes to and forming part of the Financial Statements

Glossary of Terms

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 1994-95

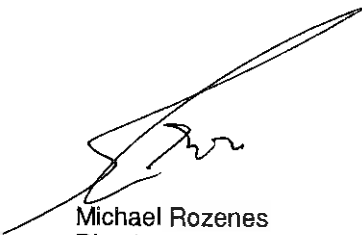
STATEMENT BY THE DIRECTOR

AND

PRINCIPAL ACCOUNTING OFFICER

CERTIFICATION

We certify that the financial statements for the year ended 30 June 1995 are in agreement with the accounts and records of the Office of the Director of Public Prosecutions and, in our opinion, the statements present fairly the information required by the Guidelines for Financial Statements of Departments, issued in March 1995.



Michael Rozenes
Director



S Walker
Senior Executive,
Resource Management.

Signed
Dated

27/9/95

Signed
Dated

27/9/95

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
OPERATING STATEMENT
for the year ended 30 June 1995**

	Note	1994-95 \$'000	1993-94 \$'000
NET COST OF SERVICES			
Expenses	2		
Employee expenses		25,530	26,851
Other administrative expenses	22	24,938	23,347
Total expenses		50,468	50,198
Revenues from independent sources			
Other revenues from independent sources	3	352	347
Total revenues from independent sources		352	347
Net cost of services		50,116	49,851
REVENUES FROM GOVERNMENT			
Appropriations used for:			
Ordinary annual services (net appropriations)	23	42,877	46,877
Liabilities assumed by other departments	25	3,018	3,063
Resources received free of charge from other departments	3	132	34
Abnormal Revenue	3	554	1,013
Total revenues from government		46,581	50,987
Excess of revenues from government over net cost of services		(3,535)	1,136
Accumulated revenues less expenses at beginning of reporting period		(1,068)	(2,204)
Adjustment to Accumulated revenue less expenses at beginning of reporting period	2	(67)	Nil
Accumulated revenues less expenses at end of reporting period		(4,670)	(1,068)

ADMINISTERED EXPENSES AND REVENUES			
Administered expenses	14		
Fines and costs Payments		1,549	2,323
Payment to the States		150	Nil
Total administered expenses		1,699	2,323
Administered revenues	15		
Fines and Costs Receipts		2,489	2,904
Miscellaneous receipts		710	165
Total administered revenues		3,199	3,069

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
STATEMENT OF ASSETS AND LIABILITIES
As at 30 June 1995

	Note	1994-95 \$'000	1993-94 \$'000
CURRENT ASSETS			
Cash	6	149	278
Receivables	7	3	6
Other	8	598	487
Total current assets		750	771
NON-CURRENT ASSETS			
Property, Plant and Equipment	9	6,629	7,058
Total non-current assets		6,629	7,058
Total assets		7,379	7,829
CURRENT LIABILITIES			
Creditors	10	1,726	2,010
Provisions	11	3,473	3,501
Other	13	3,255	17
Total current liabilities		8,454	5,528
NON-CURRENT LIABILITIES			
Provisions	11	3,595	3,369
Total non-current liabilities		3,595	3,369
Total liabilities		12,049	8,897
NET LIABILITIES		4,670	1,068

ADMINISTERED ASSETS AND LIABILITIES			
Administered assets			
Cash	16	67	301
Receivables - Fines and Costs		5,483	5,971
Receivables - Other		311	Nil
Total administered assets		5,861	6,272
Administered liabilities			
Other - Fines and Costs	17	10	34
Total administered liabilities		10	34

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
STATEMENT OF PROGRAM EXPENSES AND REVENUES**
for the year ended 30 June 1995

	Program 1 Prosecutions		Program 2 Criminal Assets		Program 3 Executive & Support		Total
	1994-95 \$'000	1993-94 \$'000	1994-95 \$'000	1993-94 \$'000	1994-95 \$'000	1993-94 \$'000	
NET COST OF SERVICES							
Expenses							
Employee expenses	16,744	17,683	2,737	3,123	6,049	6,045	25,830
Other Administrative Expenses	17,317	14,724	1,450	1,785	6,171	6,838	24,938
Total expenses	34,061	32,407	4,187	4,908	12,220	12,883	50,468
Revenues from Independent sources							
Other revenues from Independent sources							
			12	27	340	91	352
Total revenues from Independent sources	Nil	229	12	27	340	91	347
Net cost of services	34,061	32,178	4,175	4,881	11,880	12,792	50,116
REVENUES FROM GOVERNMENT							
Appropriations treated as revenues	29,389	29,852	3,177	4,712	10,311	12,313	42,877
Liabilities assumed by other departments	1,996	2,014	328	370	694	679	3,063
Resources received free of charge	86	19	13	4	33	11	132
Abnormal revenue	291	1,013	41	Nil	222	Nil	554
Total revenues from government	31,762	32,898	3,559	5,086	11,260	13,003	46,581
Excess of revenues from government over net cost of services	(2,299)	720	(616)	205	(620)	211	1,136

	1994-95 \$'000	1993-94 \$'000	1994-95 \$'000	1993-94 \$'000	1994-95 \$'000	1993-94 \$'000
ADMINISTERED EXPENSES AND REVENUES						
Administered expenses						
Fines and Costs Payments	1,548	2,323	Nil	Nil	Nil	2,323
Payments to States	150	Nil	Nil	Nil	Nil	150
Total administered expenses	1,698	2,323	Nil	Nil	Nil	2,323
Administered revenues						
Fines and costs Receipts	2,409	2,904	Nil	Nil	Nil	2,904
Miscellaneous revenue	Nil	Nil	28	155	681	710
Total administered revenues	2,409	2,904	28	155	681	3,659

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
STATEMENT OF PROGRAM ASSETS AND LIABILITIES**
for the year ended 30 June 1995

	Notes	Program 1 Prosecutions		Program 2 Criminal Assets		Program 3 Executive & Support		Total	
		1994-95	1993-94	1994-95	1993-94	1994-95	1993-94	1994-95	1993-94
		\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
ASSETS									
Current	6,7,8	419	451	41	42	290	278	750	771
Non-current	9	4,566	4,642	494	671	1,569	1,745	6,629	7,058
Total assets		4,985	5,093	535	713	1,859	2,023	7,379	7,829
LIABILITIES									
Current	10,11,13	5,895	3,885	833	444	1,726	1,199	8,454	5,528
Non-current	11	2,225	1,998	380	315	990	1,056	3,595	3,369
Total liabilities		8,120	5,883	1,213	759	2,716	2,255	12,049	8,897

ADMINISTERED ASSETS AND LIABILITIES		Program 1 Prosecutions		Program 2 Criminal Assets		Program 3 Executive & Support		Total	
	Notes	1994-95	1993-94	1994-95	1993-94	1994-95	1993-94	1994-95	1993-94
		\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Administered assets	16								
Cash		86	301	1	NII	NII	NII	67	301
Receivables - Fines and costs		5,453	5,971	25	NII	NII	NII	5,483	5,971
Receivables - Other		NII	NII	NII	NII	311	NII	311	NII
Total administered assets		5,539	6,272	26	NII	311	NII	5,861	6,272
Administered liabilities	17								
Other - Fines and Costs		10	34	NII	NII	NII	NII	10	34
Total administered liabilities		10	34	NII	NII	NII	NII	10	34

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
STATEMENT OF CASH FLOWS
As at 30 June 1995

	Note	1994-95 \$	1993-94 \$
CASH FLOWS FROM OPERATING ACTIVITIES	24		
Inflows :			
Receipts from government		42,876,602	46,876,607
Receipts from independent sources		55,943	331,564
Outflows :			
Payments to employees		22,181,315	23,287,611
Payments for administration		20,140,506	21,431,853
Net cash provided by operating activities		610,724	2,488,707
CASH FLOWS FROM INVESTING ACTIVITIES			
Inflows :			
Proceeds from the sale of non-current assets		298,992	22,174
Outflows :			
Payment for acquisition of plant and equipment		942,478	2,043,326
Payment for leasehold improvements		95,578	263,486
Net cash used in investing activities		(739,064)	(2,284,638)
Net increase (or decrease) in cash		(128,340)	204,069
Cash at 1 July 1994		277,632	73,563
Cash at 30 June 1995		149,292	277,632

CASH FLOWS FROM ADMINISTERED TRANSACTIONS			
Inflows :			
Fines and costs received		2,489,033	2,904,035
Miscellaneous Revenue		710,293	164,740
Outflows :			
Payments to the states		150,000	Nil
Fines and Costs - Payments to other Agencies		404,763	1,732,627
Net cash flows from administered transactions		2,644,563	1,336,148

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
STATEMENT OF TRANSACTIONS BY FUND
for the year ended 30 June 1995

	Notes	1994-95 Actual \$	1994-95 Budget \$	1993-94 Actual \$
Consolidated Revenue Fund (CRF)				
RECEIPTS				
Fines and Costs (Note 18)	3	2,290,336	2,727,000	908,069
Proceeds of Crime	3	29,091		Nil
Miscellaneous	3	681,202	10,000	164,740
Section 35 of the Audit Act 1901 (Note 23)	3	343,365	274,000	97,564
Total receipts to CRF (Note 3)		3,343,994	3,011,000	1,170,373
EXPENDITURE				
Annual Appropriations	23			
Appropriation Act No.1			49,324,000	
Appropriation Act No.3				
Appropriation under Section 35 of the Audit Act 1901 (Note 23)		43,219,967	274,000	46,974,171
Appropriation Act No.2			Nil	Nil
Appropriation Act No.4		150,000		Nil
Advance to the Minister for Finance			Nil	Nil
Total expenditure from CRF		43,369,967	49,598,000	46,974,171
Loan Fund				
		Nil	Nil	Nil
Trust Fund (TF)				
DPP Services, Other Government and Non Department:	26			
Receipts		91,969	59,000	103,743
Expenditure		79,118	59,000	98,633
DPP Law Enforcement Projects:				
Receipts		11,570	20,000	256,174
Expenditure		139,908	20,000	82,001
Total Trust Fund receipts		103,539		359,917
Total Trust Fund expenditure		219,026		180,634

(a) - Revenue

(b) - Receipts offset within outlays

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 1995

Note	Description
1	Statement of significant accounting policies.
2	Items charged as Expenses.
3	Items credited as Revenue.
4	Act of Grace Payments, Waivers and Amounts Written-off.
5	Auditor's Remuneration
6	Cash - departmental
7	Receivables - departmental
8	Other Current Asset
9	Property, Plant and Equipment
10	Creditors and Accruals
11	Provisions
12	Agreements Equally Proportionately Unperformed
13	Other Current Liabilities
14	Administered Expenses
15	Administered Revenue
16	Administered Assets
17	Administered Liabilities
18	Fines and Costs Trust Account
19	Guarantees and Undertakings
20	Contingent Liabilities
21	Executive's Remuneration
22	Other Administrative Expenditure
23	Details of Expenditure from Annual Appropriations
24	Cash Flow Reconciliation
25	Liabilities assumed by other departments
26	Trust Fund

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO THE FINANCIAL STATEMENTS**

For the year ended 30 June 1995

NOTE 1

STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

- (a) **Basis of Accounting** - The financial statements have been prepared in accordance with the 'Guidelines for Financial Statements of Departments', issued by the Minister for Finance in March 1995. The Guidelines require compliance with the Statement of Accounting Concepts and relevant Australian Accounting Standards.
- (i) The financial statements have been prepared on an accrual basis.
- (ii) The financial statements have been prepared in accordance with the historical cost convention and do not take account of changing money values or current values of non-current assets except for library holdings which were valued by an expert valuer at second hand replacement value.
- (b) **Comparative Figures** - Where necessary, comparative figures have been adjusted to conform with changes in presentation in these financial statements.
- (c) **Foreign Currencies** - Amounts paid to and by the DPP during the year in foreign currencies have been converted at the rate of exchange prevailing at the date of each transaction.
- (d) **Insurance** - In accordance with government policy, assets are not insured and losses are expensed as they are incurred.
- (e) **Asset Capitalisation Threshold** - All depreciable non current assets with a historical cost equal to or in excess of \$2,000 are capitalised in the year of acquisition and included on the Office's Asset Register. The value of all such assets on the Asset Register is included in the financial statements. Assets with a historical cost under \$2,000 are expensed in the year of acquisition.
- (f) **Library Capitalisation** - Library holdings were valued by an expert valuer at second hand replacement value. The \$2,000 threshold was not applied to library holdings. Only Law Reports are capitalised and all other library acquisitions are expensed in the year of acquisition. Library holdings are not depreciable and will be re-valued each five years.
- (g) **Software Capitalisation** - Purchased software and software developed under contract with a historical cost equal to or in excess of \$500 are capitalised and included in the Statement of Assets and Liabilities. Software having a unit cost less than \$500 are expensed in the year of acquisition.
- Software is depreciated over its estimated useful life. Depreciation calculated using the straight-line method. Useful life is estimated by officers of the DPP.
- (h) **Artwork Capitalisation** - All Artwork purchased by the DPP and presently held by the DPP has been brought to account in 1994/95 at historical cost. The \$2,000 threshold is not applied to Artworks. Artwork capitalised consists of originals, limited edition prints and prints. Artwork holdings are not depreciable and will be re-valued each 5 years.
- (i) **Valuation of Non-Current Assets** - Non-Current assets are valued at Historical costs, unless otherwise stated. Where the purchase record of an asset could not be located, the asset was valued by DPP staff (Officer's Valuation) based on the cost of a similar item of similar age.
- (j) **Depreciation of Non-Current Assets** - All depreciable non-current assets are written off over their estimated useful lives. Depreciation is calculated using the straight-line method. Expected scrap value and useful life are estimated by officers of the DPP.

NOTE 1 - STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES (continued)

- (k) **Amortisation of Fitout** - All fitout is amortised over its estimated useful life. Amortisation is calculated using the straight-line method. Expected scrap value and useful life are estimated by officers of the DPP.
- (l) **Employee Entitlements** - Provisions have been made for vesting employee entitlements which Office employees have accumulated as a result of the rendering of their services to the Office up to the end of the reporting period. Amounts have been provided for Recreation Leave, Long Service Leave, Leave Bonus and Performance Pay, but not for Superannuation entitlements. Long Service Leave provisions have been included for officers who have accumulated more than three and a half years of service. Provisions have been apportioned between current and non-current based on previous histories of payments and known payments due.

An Analysis of non-vesting sick leave taken during the last 3 years determined that it was inappropriate to provide a provision for non-vesting sick leave.

- (m) **Superannuation** - The liability for the present value of the Commonwealth's share of future superannuation payments is assumed by the government. The Office's notional contribution towards the Commonwealth's share has been estimated in accordance with the Department of Finance Guidance Release for Departmental Financial Statements dated August 1994 at 16.1% of total salary for superannuation for members of the CSS and PSS schemes.

This premium is not provided for in the Office's appropriation nor is it paid out in cash. The accrued revenue is reported as 'liabilities assumed by government' and the accrued expense forms part of 'employee expenses' in the operating statement.

From 1 July 1995 the Office pays a contribution for employers liabilities based on a 16.1% rate. This amount will be expensed.

- (n) **Resources received free of charge** - Resources received free of charge are recognised in the Operating Statement as revenue where the amounts can be reliably measured. Use of those resources is recognised as part of the Net Cost of Services.
- (o) **Administered items** - The Office administers, but does not control, certain resources on behalf of the Commonwealth. It is accountable for the transactions involving those administered resources, but does not have the discretion to deploy the resources for achievement of the Office's objectives. Transactions and balances relating to administered activities are disclosed separately in the various statements.

Items classified as Administered include -

- Fines and Costs awarded to the Commonwealth;
- Payments to the States for judicial services, and
- Miscellaneous revenue collected and deposited into the CRF.

- (p) **Administered Receivables** - The DPP prosecutes matters under Commonwealth Law on behalf of Commonwealth Agencies, including prosecutions under the *Crimes Act 1914* which is administered by the DPP.

Prior to 30 June 1994, only Fines and Costs awarded by the court as a result of prosecutions under the *Crimes Act 1914* were recorded as receipts and receivables due to the DPP. Fines and Costs awarded under other legislation (not administered by DPP) were due to other agencies and were recorded separately in the receivables note, but were not recorded on the face of the statements.

NOTE 1 - STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES (continued)

p) Administered Receivables continued:

From 1 July 1994 the DPP took over responsibility for those receivables previously due to other budget funded agencies. Those amounts are recorded as DPP Receipts to CRF from 1994-95 in the Statement of Transactions by Fund. The Operating Statement and Statement of Assets and Liabilities reflect all Fines and Costs Receivable to the Commonwealth in 1994-95 and all receipts into the Fines and Costs Trust account are recognised as Administered Revenue.

(q) Administered Bad and Doubtful Debts - A significant amount of debts outstanding may not be recovered, as fines and costs may be converted by serving time in prison, by performing community service or similar provisions. A number of fines and costs will also be written off as unrecoverable. Bad debts are written off during the year in which they are identified. A provision for doubtful debts has been made based on historical trend from past years data. The provision and its basis is reassessed annually.

(r) Program Statement - The Office reports under three programs - Prosecutions (which includes Corporate Prosecutions and War Crimes), Criminal Assets and Executive and Support (which includes Library and Information Technology services).

Common costs and services are charged to a "Common" program during the financial year and were apportioned amongst programs at the end of the financial year based on estimated average staffing levels or accommodation occupied for each program. This apportionment does not include Corporate Prosecutions, as these costs are charged directly to Corporations, not common.

PROGRAM	Average Staffing levels 1994-95	Average Staffing levels 1993-94	Square Metres occupied 1994-95	Square Metres occupied 1993-94
Prosecutions	55.6%	55.9 %	45.2%	45.8 %
Criminal Assets	12.5%	12.7 %	14.1%	16.1 %
Executive and Support	31.9%	31.4 %	40.7%	38.1 %
Total	100.0 %	100.0 %	100.0 %	100.0 %

Due to the small size of the Office and the common use of most significant assets, this Office operates only a single Balance Sheet. Therefore, the Program dissection of items included in the Program Statement of Assets and Liabilities has been apportioned based on the estimated usage of resources of the Office as indicated by the proportion of staffing resources used by a program or accommodation occupied. This apportionment does include Corporate Prosecutions, due to the common use of Assets.

PROGRAM	Average Staffing levels 1994-95	Average Staffing levels 1993-94	Square Metres occupied 1994-95	Square Metres occupied 1993-94
Prosecutions	65.1%	64.6%	55.2%	56.2%
Criminal Assets	9.6%	10.2%	11.5%	13.0%
Executive and Support	25.3%	25.2%	33.3%	30.8%
Total	100.0 %	100.0 %	100.0 %	100.0 %

NOTE 1 - STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES (continued)

- (s) **Rounding** - Subject to the exceptions referred to in the following paragraphs, amounts shown in the financial statements (excluding the notes) have been rounded-off as follows :
- amounts of \$500 or more have been rounded up to the next \$1,000;
 - amounts less than \$500 have been rounded down to zero.

The rules governing rounding, referred to above, do not apply to the following items which are rounded to the nearest dollar :

- Statement of Transactions by Fund (and related notes);
- Act of Grace Payments, Wavers and write-offs; and
- Executive's Remuneration.

NOTE 2

ITEMS CHARGED AS EXPENSES :

Items included as Expenses in the Operating Statement were :

	1994-95	1993-94
	\$	\$
Losses on sale on disposal of non-current assets	Nil	519,557
Provision for depreciation of property, plant and equipment	1,240,695	473,426
Provision for amortisation of leasehold improvements	397,040	(1,451,969)
Provision for employee entitlements #	131,264	417,867

Adjustment to Accumulated Revenues less expenses at the beginning of the reporting period:

In 1994-95 the accounting policy for recognition of Long Service Leave provisions changed in accordance with Department of Finance Guidance Release 7, dated June 1995. The Accumulated Revenues less expenses at the beginning of the period are adjusted by \$67,380 to reflect this.

NOTE 3

ITEMS CREDITED AS REVENUE :

The DPP does not charge users of the services it provides.

Total monies received by the DPP in 1994-95 totalled \$3,363,774(\$1,170,373 in 1993-94).

From 1 July 1994 the DPP took over responsibility for Receivables previously on-forwarded to other budget funded agencies. These amounts are recorded as DPP Administered Fines and Costs Revenue from 1994-95 and are recorded in the DPP's Financial Statements. This accounts for the approximate doubling of the reported Fines and Costs revenue.

Receipts and Refunds

The CRF receipt figures in the Detailed Statement of Transactions by Fund for 1994-95 are comprised of :

Description	Receipts \$	Refunds \$	Net Receipts \$
Revenue			
- Proceeds of Crime Legislation	29,091	Nil	29,091
Receipts offset against outlays			
- Section 35 of the Audit Act 1901	343,684	319	343,365
- Miscellaneous	681,479	277	681,202
Administered Receipts			
- Fines and Costs	2,309,520	19,184	2,290,336
Total receipts	<u>3,363,774</u>	<u>19,780</u>	<u>3,343,994</u>

1994-95 \$	1993-94 \$
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Parliamentary Appropriations carried over pursuant to Cabinet endorsed "Running Costs" arrangements

- SES Salaries	94,000	238,000
- Non-SES Salaries	229,000	360,000
- Administrative Expenses	597,000	336,000
- Legal Expenses	1,105,000	Nil
- Property Operating Expenses	1,114,000	Nil
Total Appropriations carried over	<u>3,139,000</u>	<u>934,000</u>

Profits on sale of non-current assets

<u>211,638</u>	Nil
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NOTE 3 Continued

Resources received free of charge:

The resources received free of charge which have been recognised in the Operating Statement are:

	1994-95 \$	1993-94 \$
- Department of Finance Provision of accounting and payroll services	29,965	34,372
- Australian National Audit Office Audit of the 1994/95 financial statements	102,500	Nil*
Total resources received free of charge	<u>132,465</u>	<u>34,372</u>

* Audit of the 1993/94 financial statements was on a fee for service basis.

Services received free of charge but not recognised are:

- **Attorney-General's Department** - Prosecution and related services in Tasmania and the Northern Territory, where the DPP does not have offices, are provided by the Australian Government Solicitor.

The Office of the Commonwealth Director of Public Prosecutions took over the function of payroll processing for its own staff in September 1991 from the Attorney-General's Department. Payroll support was provided by Attorney-General's in the way of computer resources until February 1994, at which time the DPP transferred to a bureau service provided by the Department of Administrative Services on a fee for service basis.

- **Australian Archives** - Storage and disposal facilities
- **State Prosecutors** - Conduct minor prosecutions on behalf of the DPP in remote locations.

Revenue from Independent Sources:

Other revenue from independent sources is made up of grants received for DPP Law Enforcement Trust Project (refer note 28) and Section 35 monies received which relate to receivables of the financial year.

	1994-95 \$	1993-94 \$
Other Revenue from independent sources:		
DPP Law Enforcement Projects receipts	11,570	256,174
Section 35 monies for receivables for the financial year	<u>340,660</u>	<u>90,760</u>
Total Revenue from independent sources	<u>352,230</u>	<u>346,934</u>

NOTE 3 Continued

Abnormal revenue:

In 1993-94 this item represents the capitalisation of Library Holdings held by the Office. Library holdings were valued by an expert valuer at second hand replacement value. Library holdings are not depreciable and will be re-valued each 5 years.

In 1994-95 this item represents the capitalisation of software held by the office, which was previously not reported as part of Computer assets and the capitalisation of Artworks held by the Office. Software is valued at historic cost and is depreciated over its estimated useful life. Artwork is valued at historic cost. Artwork holdings are not depreciable and will be re-valued each 5 years.

Abnormal revenue due to:	1994-95 \$	1993-94 \$
- Capitalisation of Library Holdings	Nil	1,012,675
- Adjustment to Computer Asset holding reported previously	228,954	Nil
- Capitalisation of Software not previously reported	239,773	Nil
- Capitalisation of Artwork not previously reported	85,042	Nil
Total Abnormal Revenue	<u>553,769</u>	<u>1,012,675</u>

NOTE 4

ACT OF GRACE PAYMENTS, WAIVERS AND AMOUNTS WRITTEN-OFF :

No payments were made during the financial year 1994-95 pursuant to authorisations given under Section 34A(1) of the *Audit Act 1901* (nil in 1993-94).

One waiver of \$300 due to the Commonwealth was made during the financial year 1994-95 pursuant to subsection 70C(2) of the *Audit Act 1901* (nil in 1993-94), this waiver relates to the Administered item Fines and Costs.

The following details are furnished in relation to amounts written off by the Office during the financial year 1994-95 under sub-section 70C(1) of the *Audit Act 1901* (70 amounts totalling \$9,514 were written off in 1993-94).

In respect of departmental items:

	Number	\$
(i) Losses or deficiencies of public moneys	Nil	Nil
(ii) Irrecoverable amounts of revenue	Nil	Nil
(iii) Irrecoverable debts and overpayments	Nil	Nil
(iv) Amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Minister, be uneconomical	Nil	Nil
(v) The value of lost, deficient, condemned, unserviceable or obsolete stores	163	107,020
Total	<u>163</u>	<u>107,020</u>

NOTE 4 Continued

In respect of Administered items.		
	Number	\$
(ii) Irrecoverable amounts of revenue	897	659,565
(iii) Irrecoverable debts and overpayments	1,476	189,739
(iv) Amounts of revenue, or debts or overpayments, the recovery of which would, in the opinion of the Minister, be uneconomical	938	32,066
Other Legislation*	10	9,101
Total	3,321	890,471

*Amounts are identified in the Fines and Costs system as being written-off under other legislation if the courts have advised that the Agency who may ultimately expect receipt of such monies have written-off the amount or if the Agency who may ultimately expect receipt of such monies has advised that they have written-off the amount.

LOSSES AND DEFICIENCIES IN PUBLIC MONEYS AND OTHER PROPERTY

During 1994-95 this office had one case involving the loss of moneys. No relief was provided or sought under Part XIIA of the *Audit Act 1901*. The amount of \$5,948.60 is being recovered by this Office. No action was taken during 1993-94 under Part XIIA of the *Audit Act 1901*.

NOTE 5

AUDITOR'S REMUNERATION

EXTERNAL AUDIT :

The notional fee for services provided by the Australian National Audit Office in relation to the audit of the 1994-95 Financial Statement is estimated at \$102,500 (\$122,000 was paid for the audit of the 1993-94 Financial Statement).

The ANAO is recorded in Note 3 as having provided resources free of charge to the DPP in 1994-95. No other benefits were received by the Australian National Audit Office.

INTERNAL AUDIT :

Ernst and Young were contracted to provide Internal Auditor services for the Office for 1993-94 and 1994-95. Internal audit reports were used by the ANAO in their audit of the 1994-95 Accounts and Records of the DPP. Total remuneration paid, or due and payable, in relation to internal audit services is \$61,265 (\$54,611 for 1993-94).

Ernst and Young also received payments totalling \$58,680 for consultancies undertaken in respect of IT security and contingency planning and \$1,603 for fraud awareness training.

NOTE 6**CASH - Departmental:**

Cash includes amounts held in Collectors Receipts accounts, Legal advance accounts and other minor accounts. Amounts held in Credit Card Settlement Accounts are not included in cash balances.

	1994-95	1993-94
	\$	\$
<u>Cash at Bank -</u>		
Legal Advance accounts	55,440	42,312
Collectors Receipts Account	1,112	20,213
<u>Cash on Hand -</u>		
Legal Advance accounts	3,139	3,022
Other Advance accounts, cash floats	38,675	32,821
<u>Cash on Trust - Held in Commonwealth Public Account</u>		
DPP Law Enforcement Projects	50,926	179,264
Total Cash at bank and on hand	<u>149,292</u>	<u>277,632</u>

DPP Law Enforcement Project Trust Account was established on 25 March 1993. Monies in this Trust Account are to be expended on law enforcement and drug rehabilitation and education projects for the purpose of Section 34D of the *Proceeds of Crime Act 1987*. Money held in the account have been granted for the purchase of computer aided court presentation systems and to host a national criminal assets conference.

NOTE 7

RECEIVABLES - Departmental:

(a) Other Debtors:

	1994-95	1993-94
	\$	\$
Current :		
Other	2,101	5,603
Less doubtful debts	Nil	Nil
	<u>2,101</u>	<u>5,603</u>
Net Current receivables	2,101	5,603
Non-Current :		
Other	Nil	Nil
Less doubtful debts	Nil	Nil
	<u>Nil</u>	<u>Nil</u>
Net Non-Current Receivables	Nil	Nil
Total Net Receivables	<u>2,101</u>	<u>5,603</u>

(b) Trade Debtors

<u>797</u>	<u>Nil</u>
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(c) Age Analysis - Receivables DPP

Gross Receivables	<u>2,898</u>	<u>5,603</u>
Not overdue	9,68	Nil
Overdue less than 30 days	1,806	3,402
Overdue 30 to 60 days	124	289
Overdue more than 60 days	<u>Nil</u>	<u>1,912</u>
Total Receivables	<u>2,898</u>	<u>5,603</u>

(d) Write-offs 1994-95

No debts were written-off during 1994-95 (nil in 1993-94):

NOTE 8

OTHER CURRENT ASSETS :

PREPAYMENTS :

Prepayments represent amounts paid but for which goods or services have not yet been received at 30 June 1995.

	1994-95	1993-94
	\$	\$
Administrative Expenses :		
Library	239,345	171,741
Computer	21,998	1,564
Other	148,205	135,886
Legal Expenses	37,003	26,284
Property Operating Expenses:		
Current	151,728	151,565
Total Prepayments	<u>598,279</u>	<u>487,040</u>

NOTE 9

PROPERTY, PLANT AND EQUIPMENT :

The information reported as at 30 June 1995 was validated by stocktakes conducted during the year.

Fitout represents improvements to buildings leased by the DPP since the DPP took over responsibility for funding such items on 1 July 1989.

	1994-95 \$	1993-94 \$
Closing Balance 30 June :		
1. Items at cost :		
Computers and Software at cost	6,246,792	5,179,770
Less accumulated depreciation	<u>3,129,117</u>	<u>2,042,398</u>
	3,117,675	3,137,372
Furniture at cost	391,108	432,661
Less accumulated depreciation	<u>264,990</u>	<u>218,746</u>
	126,118	213,915
Plant and Equipment at cost	1,729,337	1,757,544
Less accumulated depreciation	<u>1,107,202</u>	<u>999,470</u>
	622,135	758,074
Fitout at cost	2,506,927	2,440,349
Less accumulated amortisation	<u>900,928</u>	<u>503,888</u>
	1,605,999	1,936,461
Artwork at Cost	133,524	Nil
Sub-total Property, Plant and Equipment at cost	<u>11,007,688</u>	<u>9,810,324</u>
Less accumulated depreciation	<u>5,402,237</u>	<u>3,764,502</u>
Sub-total Net Property, Plant and Equipment	<u>5,605,451</u>	<u>6,045,822</u>
2. Items at valuation :		
Library Holdings at valuation	1,023,475	1,012,675
Total Property, Plant and Equipment	12,031,163	10,822,999
Less accumulated depreciation	<u>5,402,237</u>	<u>3,764,502</u>
Net Property, Plant and Equipment	<u>6,628,926</u>	<u>7,058,497</u>

NOTE 10**CREDITORS AND ACCRUALS:**

Creditors and Accruals at 30 June 1995 totalled \$1,725,616, (\$2,010,030 in 1993-94).

	1994-95 \$	1993-94 \$
Trade Creditors and Accruals	1,442,974	1,884,503
Other Creditors and Accruals *	282,642	125,527
Total Creditors and Accruals	<u>1,725,616</u>	<u>2,010,030</u>

* Other accruals are primarily accrued salaries, \$281,172 in 1994-95 ,(\$82,333 in 1993-94).

NOTE 11**PROVISIONS:****CURRENT PROVISIONS:**

	1994-95 \$	1993-94 \$
Recreation Leave	2,539,665	2,611,760
Long Service Leave	294,573	277,076
Performance Pay	638,745	611,931
Total Current Provisions	<u>3,472,983</u>	<u>3,500,767</u>

NON-CURRENT PROVISIONS:

Long Service Leave	<u>3,595,257</u>	<u>3,368,830</u>
Total Non-current Provisions	<u>3,595,257</u>	<u>3,368,830</u>
TOTAL PROVISIONS	<u>7,068,240</u>	<u>6,869,597</u>

NOTE 12

AGREEMENTS EQUALLY PROPORTIONATELY UNPERFORMED:

(a) Capital Expenditure Commitments :

The DPP had no capital commitments outstanding at 30 June 1995 (nil at 30 June 1994).

(b) Other Commitments :

The DPP has entered into commitments as at 30 June 1995 of \$21,098,471 (\$11,187,606 as at 30 June 1994) and are payable as follows after the reporting period:

Item	First year	Second Year	Third to Fifth Years	Sixth and Subsequent Years	Total
	\$	\$	\$	\$	\$
Plant & Equipment	13,906				13,906
ADP	14,387				14,387
Library	129,015				129,015
Other #	772,191	1,275,360	8,035,393	2,626,107	12,709,051
Legal	7,750,813	481,300			8,232,113
Total	<u>8,680,312</u>	<u>1,756,660</u>	<u>8,035,393</u>	<u>2,626,107</u>	<u>21,098,472</u>

Other Commitments consist primarily of a property lease the Office intends to enter into.

(c) Contracted Expenditure:

DPP also had \$255,217 contracted liabilities which remain unperformed at 30 June 1994 (\$45,066,988 at 30 June 1994). Amounts are payable as follows after the end of the reporting period:

Item	First year	Second Year	Third to Fifth Years	Sixth and Subsequent Years	Total
	\$	\$	\$	\$	\$
ADP	26,000				26,000
Library					
Other #	8,800				8,800
Legal	115,000	105,417			220,417
Total	<u>149,800</u>	<u>105,417</u>	Nil	Nil	<u>255,217</u>

Other contracted expenditure in 1993-94 largely related to leases for accommodation, these are now disclosed by way of Other liability and the Deferred lease expense is recognised. See Note 13.

NOTE 13**OTHER CURRENT LIABILITIES**

The following deferred lease expenses exist for property leases currently held by this office.

	1994-95	1993-94
	\$	\$
Deferred Lease expenses	3,255,495	17,397
Total Other Current Liabilities	<u>3,255,495</u>	<u>17,397</u>

Amounts are payable as follows after the end of the reporting period for accommodation leases:

First year	Second Year	Third to Fifth Years	Sixth and Subsequent Years	Total
\$	\$	\$	\$	\$
3,101,979	4,587,843	15,444,602	18,681,318	41,815,742

NOTE 14**ADMINISTERED EXPENSES :**

	1994-95	1993-94
	\$	\$
Fines and Costs		
- Payments to Agencies*	404,763	1,732,627
- Bad and Doubtful debts	1,143,926	590,647
Payments to the states		
- Payment to NSW for judicial services	150,000	Nil
Total Administered Expenses	<u>1,698,689</u>	<u>2,323,274</u>

* This amount reflects the payments made out of the Fines and Costs Trust account and forwarded to other Agencies as appropriate.

NOTE 15**ADMINISTERED REVENUE :**

	1994-95	1993-94
	\$	\$
Fines and Costs Receipts *	2,489,033	2,904,035
Proceeds of Crime	29,091	Nil
Miscellaneous Revenue:		
- Rental Rebate **	622,024	Nil
- Other	59,178	164,740
Net Administered Revenue	3,199,326	3,068,775

* This amount reflects receipts into the Fines and Costs Trust account, which is then allocated and forwarded to either CRF or other Agencies as appropriate. As a result the amount of Fines and Costs receipts recorded in the Statement of Transactions by Fund will not equal this amount.

** This amount reflects rental rebate received in respect of a property lease.

NOTE 16**ADMINISTERED ASSETS :**

Administered Assets comprises Cash held in Fines and Costs bank accounts, Fines and Costs monies held in the Collectors Receipts Account pending transfer to Consolidated Revenue, and Administered Receivables.

Administered cash :	1994-95	1993-94
	\$	\$
Cash at Bank		
Collectors Receipts Account	24,376	168,413
<u>Cash on Trust - Held outside Commonwealth Public Account</u>		
Fines and Costs - cash at bank	42,352	130,956
Fines and Costs - cash on hand	Nil	1,319
Total Administered Cash at bank and on hand	66,728	300,688

NOTE 16 continued

Administered Receivables :

From 1 July 1994 the DPP took over responsibility for Receivables previously on-forwarded to other budget funded agencies. These amounts are recorded as DPP Administered Receivables from 1994-95. This accounts for the increase in the Reported DPP Administered Receivables and the decrease in the Other CPA Agencies Administered Receivables.

	1994-95 \$	1993-94 \$
Current :		
Fines and Costs due to the DPP	5,593,468	1,859,898
Less doubtful debts	<u>1,625,557</u>	<u>196,219</u>
	3,967,911	1,663,679
Fines and Costs due to other CPA Agencies	1,177,330	4,142,728
Less doubtful debts	<u>99,338</u>	<u>605,253</u>
	1,077,992	3,537,475
Fines and Costs due to Non-CPA Agencies	196,644	289,741
Less doubtful debts	<u>24,502</u>	<u>1,796</u>
	172,142	287,945
Other Receivables - Rental Rebate	<u>311,012</u>	Nil
Net Current Administered Receivables	5,529,057	5,489,099
Non-Current :		
Fines and Costs due to the DPP	147,654	73,219
Less doubtful debts	<u>42,911</u>	<u>7,725</u>
	104,743	65,494
Fines and Costs due to other CPA Agencies	123,538	414,292
Less doubtful debts	<u>10,424</u>	<u>60,528</u>
	113,114	353,764
Fines and Costs due to Non-CPA Agencies	54,046	63,052
Less doubtful debts	<u>6,734</u>	<u>391</u>
	47,312	62,661
Net Non-Current Administered Receivables	265,169	481,919
Total Net Administered Receivables	5,794,226	5,971,018

NOTE 16 continued

Age Analysis - Administered Receivables

	1994-95 \$	1993-94 \$
Gross Administered Receivables	7,292,680	6,842,930
Not overdue	1,316,037	1,408,847
Overdue less than 30 days	263,414	319,391
Overdue 30 to 60 days	171,099	533,484
Overdue more than 60 days	5,542,130	4,581,208
Total Administered Receivables	7,292,680	6,842,930

Write-offs 1994-95 - Administered Receivables

A significant amount of debts outstanding may not be recovered, as fines and costs may be converted by serving time in prison, by performing community service or similar provisions. A number of fines and costs will also be written off as irrecoverable. During 1994-95 the following amounts were written out of the books:

Agency / Type	DPP	CPA(Non DPP)	NON-CPA	TOTAL
Prison Sentence	65,650	4,672	100	70,422
Community Service	167,401	13,497	835	181,733
Irrecoverable	806,813	63,956	20,702	891,471
Waivers	300	Nil	Nil	300
Total Write-offs	1,040,164	82,125	21,637	1,143,926

NOTE 17

ADMINISTERED LIABILITIES :

The liability due to other agencies for 1994-95 from the Fines and Costs Trust Account balances as at 30 June 1995 is based on historical trends. The calculated liability for 1994-95 is \$9,648 (\$34,392 in 1993-94).

	1994-95 \$	1993-94 \$
Fines and Costs	9,648	34,392
Total Administered Liabilities	9,648	34,392

NOTE 18**FINES AND COSTS TRUST ACCOUNT**

Legal Authority - The accounts were opened in accordance with Section 20 of the Finance Directions by the Director as a delegate of the Minister for Finance.

Purpose of Account - The purpose of the account is to process fines and costs awarded in Commonwealth prosecutions. Such moneys are collected by State Courts and forwarded regularly to the DPP. In 1993-94, moneys collected were initially banked to these accounts and then disbursed to either DPP revenue accounts (see Statement of Transactions by Fund) for matters for which the DPP has administrative responsibility, mainly Crimes Act matters, or to other Departments or Agencies for Acts administered by them (eg Taxation, Social Security, etc).

As from 1 July 1994 the DPP took over responsibility for receivables previously due to other agencies, except in respect of matters administered by non-budget funded agencies (eg Federal Airports Corporation, etc). All Fines and Costs receipts and payments will be recorded in the DPP's Operating Statement as administered items. The balance in the Fines and Costs Trust account will be recorded as an administered asset in the Statement of Assets and Liabilities.

	1994-95	1993-94
	\$	\$
Opening Balance 1 July	132,275	83,947
Receipts	2,489,033	2,904,035
Expenditure	2,578,956	2,855,707
Closing Balance 30 June	42,352	132,275

NOTE 19**GUARANTEES AND UNDERTAKINGS :**

If a matter is being prosecuted by the DPP and assets are frozen under the Proceeds of Crime Act, this Office gives an undertaking against potential losses in respect of assets administered by the Commonwealth. If the related prosecution is unsuccessful, costs/damages can be awarded against the DPP. Costs/damages so awarded are met from the DPP's annual appropriations for Legal Expenses.

Although costs/damages have been awarded against the DPP and will continue to be awarded from time to time, the DPP is unable to declare an estimate of such undertakings due to the uncertainty of the outcome of matters, but more particularly to the sensitivity of the information related to matters still before the courts.

NOTE 20

CONTINGENT LIABILITIES :

If a matter being prosecuted by the DPP is defended successfully, the court may order that the DPP meet certain costs incurred by the defence. Costs so awarded are met from DPP or client organisations annual appropriations for Legal Expenses.

Although costs have been awarded against the DPP and will continue to be awarded from time to time, the DPP is unable to declare an estimate of contingent liabilities due to the uncertainty of the outcome of matters, but more particularly to the sensitivity of the information related to matters still before the courts.

NOTE 21

EXECUTIVE'S REMUNERATION :

In relation to the \$10,000 band of fixed remuneration that commences at \$100,000 and each successive \$10,000 band, the number of executive officers whose total fixed remuneration in connection with the management of the affairs of the Office of the Director of Public Prosecutions for the reporting period are as follows:

	1994-95 Number	1993-94 Number
Fixed remuneration		
\$100,000 to \$110,000	1	1
\$110,001 to \$120,000	5	7
\$120,001 to \$130,000	Nil	Nil
\$130,001 to \$140,000	Nil	2
\$140,001 to \$150,000	2	Nil
\$150,001 to \$160,000	1	1
\$160,001 to \$170,000	Nil	Nil
\$170,001 to \$180,000	Nil	Nil
\$180,001 to \$190,000	Nil	1
\$190,001 to \$200,000	Nil	Nil
\$200,001 to \$210,000	1	Nil

The aggregate fixed remuneration of the executives identified above is \$1,335,524, (\$1,540,372 in 1993-94).

The aggregate performance pay earned by the executives identified above is \$56,857, (\$61,350 in 1993-94).

NOTE 22**OTHER ADMINISTRATIVE EXPENDITURE :**

	1994-95 Actual \$	1994-95 Budget \$	1993-94 Actual \$
Administrative Expenditure	7,065,558	8,083,000	8,438,419
Legal Expenditure	10,724,997	9,253,000	8,102,346
Property operating Expenditure - Current	3,029,150	8,075,000	6,832,897
Property Operating Expenditure - Capital	174,535	2,202,000	263,486
Legal Services - AGS	44,412	50,000	49,410
Total Other Administrative Expenditure	<u>21,038,652</u>	<u>27,663,000</u>	<u>23,686,558</u>

Refer Also Note 2.

NOTE 23**DETAILS OF EXPENDITURE FROM ANNUAL APPROPRIATIONS :**

	1995-96 Budget \$	1994-95 Actual	1994-95 Appropriation \$
APPROPRIATION ACT No's. 1 and 3			
Division 133 - Director of Public Prosecutions			
1. Running Costs - Annotated Appropriation	51,268,000	43,219,967	54,358,365
APPROPRIATION ACT No's. 2 and 4			
Division 807 - Director of Public Prosecutions - Other Services			
01. Payment to NSW court administration		150,000	150,000
	<u>51,268,000</u>	<u>43,369,967</u>	<u>54,508,365</u>

NOTE 23 continued**RUNNING COSTS (ANNOTATED APPROPRIATION DIVISION 133.1.00)**

This appropriation was annotated pursuant to section 35 of the *Audit Act 1901* to allow the crediting of receipts from contributions for senior officers official vehicles, contributions towards the cost of semi-official telephones and receipts from the sale of surplus and/or obsolete assets.

The Annotated Appropriation operated as follows :

	Appropriation - Division 133.1 \$	Section 35 Receipts \$	Total Appropriation \$	Expenditure \$
1994-95	54,165,000	343,365	54,508,365	43,369,967
1993-94	52,420,000	97,564	52,517,564	46,974,171

NOTE 24**CASH FLOW RECONCILIATION :**

	1994-95 \$	1993-94 \$
Net Cost of Services	50,115,426	49,851,021
Revenue from Government	(46,581,104)	(50,986,427)
Depreciation / amortisation	(1,950,150)	(229,470)
Profit/Loss on sale of non-current assets	211,638	(519,557)
Capitalisation of Non-current Assets not previously reported	324,815	1,012,675
Adjustment to Non-current assets previously reported	245,062	50,148
Decrease in Receivables	(2,704)	(6,804)
Increase/Decrease in other assets	111,240	(391,627)
Decrease/Increase in Creditors	284,415	(1,088,036)
Increase in Provisions	(131,264)	(417,867)
Increase/Decrease in other liabilities	(3,238,098)	237,237
Net cash provided by Operating Activities	<u>(610,724)</u>	<u>(2,488,707)</u>

NOTE 25**LIABILITIES ASSUMED BY OTHER DEPARTMENTS :**

Liabilities assumed by other departments represents the liability for the present value of the Commonwealth's share of future Superannuation payments. The liability for 1994-95 is \$3,018,267 (\$3,062,773 in 1993-94).

NOTE 26**TRUST FUND :**

	1994-95 Actual \$	1994-95 Budget \$	1993-94 Actual \$
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DPP Services, Other Government and Non Departmental Bodies

- . Legal Authority - Audit Act 1901, Section 60.
- . Purpose - payment of costs in connection with services performed on behalf of other governments and non-departmental bodies (COMCARE expenses).

Receipts and Expenditure -

Opening balance 1 July	<u>12,100</u>	12,100	6,989
Receipts	91,969	59,000	103,743
Expenditure	<u>79,118</u>	59,000	98,633
Closing balance 30 June	<u>24,951</u>	<u>12,100</u>	<u>12,100</u>

(The Trust Account operates for the purpose of receiving, from Comcare, amounts payable to employees under determinations in accordance with the *Safety, Rehabilitation and Compensation Act 1988*).

The DPP pays an annual premium to Comcare for workers compensation.

Until a determination is made by Comcare, this Office makes payments from the salary notional item to the employee. When Comcare makes a determination in respect of a case they pay monies into the Trust Account to meet the determined costs. Upon receiving a determination and funds from Comcare, the Office processes a journal to credit that amount back to salary expenditure and to debit the Trust Account.

The balance of \$24,951 as at 30 June 1995 (\$12,100 as at 30 June 1994) for the Trust Account is the total of amounts received from Comcare to be paid to claimants in accordance with determinations.

DPP Law Enforcement Projects

- . Legal Authority - Audit Act 1901, Section 62 A
- . Purpose - for the expenditure of moneys on law enforcement projects selected for the purpose of section 34D of the Proceeds of Crime Act 1987.

Receipts and Expenditure -

Opening balance 1 July	<u>179,264</u>	179,264	5,091
Receipts	11,570	20,000	256,174
Expenditure	<u>139,908</u>	20,000	82,001
Closing balance 30 June (Note 6)	<u>50,926</u>	<u>179,264</u>	<u>179,264</u>

APPENDIX: GLOSSARY OF TERMS

ACT OF GRACE PAYMENTS: Section 34A of the Audit Act 1901 provides that, in special circumstances, the Commonwealth may pay an amount to a person notwithstanding that the Commonwealth is not under any legal liability to do so.

ADMINISTRATIVE EXPENSES: Includes all operational expenditure (excepting salaries), not just expenditure on office based activities. The item includes both direct costs and overhead expenditure: it includes, inter alia, minor capital expenditure (ie items less than \$250,000) which is considered part of ordinary annual services; it does not include, inter alia, major capital expenditure, grants, loans or subsidies.

ADVANCE TO THE MINISTER FOR FINANCE (AMF): The contingency provisions appropriated in the two Supply Acts and the two annual Appropriation Acts to enable funding of urgent expenditures not foreseen at the time of preparation of the relevant Bills. These funds may also be used in the case of changes in expenditure priorities to enable 'transfers' of moneys from the purpose for which they were originally appropriated to another purpose pending specific appropriation.

ANNUAL APPROPRIATIONS: Acts which appropriate moneys for expenditure in relation to the Government's activities during the financial year. Such appropriations lapse on 30 June. They are the Appropriation Acts.

APPROPRIATION: Authorisation by Parliament to expend public moneys from the Consolidated Revenue Fund or Loan Fund for a particular purpose, or the amounts so authorised. All expenditure (ie outflows of moneys) from the Commonwealth Public Account must be appropriated (ie authorised by the Parliament).

APPROPRIATION ACT (No 1): An act to appropriate moneys from the Consolidated Revenue Fund for the ordinary annual services of Government.

APPROPRIATION ACT (No 2): An act to appropriate moneys from the Consolidated Revenue Fund for other than ordinary annual services. Under existing arrangements between the two Houses of Parliament this Act includes appropriations in respect of new policies (apart from those funded under Special Appropriations), capital works and services, plant and equipment and payments to the states and the Northern Territory.

APPROPRIATION ACTS (Nos 3 and 4): Where an amount provided in an Appropriation Act (No 1 or 2) is insufficient to meet approved obligations falling due in a financial year, additional appropriation may be provided in a further Appropriation Act (No 3 or 4). Appropriations may also be provided in these Acts for new expenditure proposals.

AUDIT ACT 1901: The principal legislation governing the collection, payment and reporting of public moneys, the audit of the Public Accounts and the protection and recovery of public property. Finance Regulations and Directions are made pursuant to the Act. The Audit Act is expected to be repealed with effect from 1 July 1996 and replaced with three new acts, including the Financial Management and Accountability Act which will define the accounting environment for this Office in future years.

COMMONWEALTH PUBLIC ACCOUNT (CPA): The main bank account of the Commonwealth, maintained at the Reserve Bank in which are held the moneys of the Consolidated Revenue Fund, Loan Fund and Trust Fund. (The DPP is not responsible for any transactions relating to the Loan Fund).

CONSOLIDATED REVENUE FUND (CRF): The principal working fund of the Commonwealth mainly financed by taxation, fees and other current receipts. The Constitution requires an appropriation of moneys by the Parliament before any expenditure can be made from the CRF.

CONTINGENT LIABILITIES: obligations which will only become payable if a specific future event occurs (eg claims for damages and pending law suits).

COMPENSATION and LEGAL EXPENSES: includes legal outgoings incurred in the course of a prosecution. It comprises largely payments to barristers and solicitors, but also includes case related costs such as transcript, interpreters, court fees, process serving, witness expenses and other legal outgoings.

COMMITMENTS: an intention to incur an obligation which will give rise to a future sacrifice of service potential or future economic benefits.

CONTRACTED EXPENDITURE: material liabilities contracted and which remain unperformed as at 30 June.

CURRENT: an asset or liability that, in the ordinary course of operations, would be consumed or converted into cash or be due and payable within 12 months after the end of the financial year

EXPENDITURE: The total or gross amount of money spent by the Government on any or all of its activities (ie the total outflow of moneys from the Commonwealth Public Account) (c.f. 'Outlays'). All expenditure must be appropriated (ie authorised by the Parliament), see also 'Appropriations'.

Every expenditure item is classified to one of the economic concepts of outlays, revenue (ie offset within revenue) or financing transactions.

FINES and COSTS: amounts awarded by the Courts as fines and costs penalties as a result of prosecutions under Commonwealth legislation. A significant amount of potential receipts may not be received, as fines and costs may be converted by serving time in prison, by performing community service or similar provisions. A number of fines and costs will also be written off as unrecoverable.

LIABILITY: an item that represents a future sacrifice of service potential or future economic benefits that the Office is presently obliged to make. Includes provisions for employee entitlements, excluding superannuation.

OUTLAYS: An economic concept which shows the net extent to which resources are directed through the Budget to other sectors of the economy after offsetting recoveries and repayments against relevant expenditure items ie outlays consist of expenditure net of associated receipt items. The difference between outlays and revenue determines the Budget balance (ie surplus or deficit). See also 'Appropriations'; and 'Receipts offset within outlays'.

PREPAYMENTS: Prepayments include amounts paid by the Office in respect of goods or services (excluding approved grants) that have not been received as at 30 June. (Amounts relating to salaries, wages, annual leave, long service leave, superannuation and other employee entitlements with respect to officers or employees of the Office, are exempted from the disclosure requirements).

RECEIPTS: The total or gross amount of moneys received by the Commonwealth (ie the total inflow of moneys to the Commonwealth Public Account). Every receipt item is classified to one of the economic concepts of revenue, outlays (ie offset within outlays) or financing transactions. See also 'Revenue'.

RECEIPTS NOT OFFSET WITHIN OUTLAYS: Receipts classified as 'revenue'. See also 'Revenue'.

RECEIPTS OFFSET WITHIN OUTLAYS: Refers to receipts which are netted against certain expenditure items because they are considered to be closely or functionally related to those items.

REVENUE: Items classified as revenue are receipts which have not been offset within outlays or classified as financing transactions. The term 'revenue' is an economic concept which comprises the net amounts received from taxation, interest, regulatory functions, investment holdings and government business undertakings. It excludes amounts received from the sale of government services or assets (these are offset within outlays) and amounts received from loan raisings (these are classified as financing transactions). See also 'Receipts'.

TRUST FUND: a cash based, non lapsing appropriation, used either as a working account for activities with a commercial orientation or to hold monies for specific purposes set out in legislation or under arrangements where the Commonwealth is a trustee for private monies.

I n d e x

- accommodation costs & usage, 101
- accounting policy & processes, 97-8
- agency bargaining, 85
- agency evaluations, 96
- Anders, 54-5
- appeals, 8, 110-12
- Arnold, 27
- arranged marriage, 36
- Attorney-General's Department, memorandum of understanding with DPP, xii
- audit
 - internal audit, 100
 - reports by the Auditor-General, 100-01
- Australian Capital Territory
 - corporate prosecutions, 60
 - general prosecutions, 32-4
- Australian Government Solicitor, customs matters, 4
- Australian Securities Commission, 3
 - investigations of corporations, xi-xii, 39
- Ayres, 36-7

- Barris, 59
- Bass, 25
- Ben Tapp, 36
- Bendigo Gold NL, 46-7
- Big 16, xi-xii
- blackmail, Model Criminal Code, 82
- Bond, 55-6
- Bond, Oates and Mitchell, 56-7
- Bracken, 13
- bribery, Model Criminal Code, 82
- Brook, 30-31, 70
- Bryant, 70
- Budget Corporation Ltd, 41
- business regulations, 102

- Campbell's Cash & Carry, 18
- cannabis from PNG, 27
- capital works management, 98
- child care fraud, 69
- child sex tours, 2
- Christmas Island prosecutions, 29
- Chung, 18
- Cityscape Ltd, 58-9

- claims & losses, 98
- CLARITY, 40, 94-5
- Cocos (Keeling) Islands prosecutions, 29
- Cole, 58
- Coletti, 65
- Commonwealth Law Enforcement Board, xii
- compliance
 - index, 120-21
 - statement, ix
- computerised court presentations, 40, 94-5
- Condon, 65-6
- consultancy services, 99-100
- contempt proceedings, 78-9
- Cook, 51-2
- Cooperative Scheme Laws, 39
- Corner, 42
- corporate plan, 2
- corporate prosecutions, 39-60
 - caseloads, 39-40
- Corporations Law, xii, 2, 39
- Crane and Reynolds, 43
- Crimes Act
 - review, 77-8
 - see also Model Criminal Code
- Crimes Amendment Act 1995*, 83
- Criminal Assets Branch, 61-75
 - civil remedies, 62, 74-5
 - Criminal Assets Recording System, 64
 - Criminal Assets Trust (CAT) Fund, 64-5
 - legislation, 61-2
 - national agencies conference, 64
 - other functions, 62-3
 - practice, 62
 - structure, 63
 - total recoveries, 74
- Criminal Code Act 1995*, 83
- Customs Act, 4, 62
 - work done, 72-3
- Czarniak, 28

- Dibella, 32-3
- Dietrich* decision, xi
- Direct Acceptance Corporation Ltd, 43
- Director's overview, xii-xiii

I n d e x

- Doube and Morex Meat, 26
DPP Act, 78
DPP reference no.1, 20
Duke Group Ltd, 59
- Edwards, 30
Elliott, 33
Entity Group Ltd, 43
environment & energy matters, 102
equal employment opportunity (EEO), 90-91
Equity Management Ltd, 58
establishment, 1-2
evaluations *see* agency evaluations
ex officio indictments, 10
extradition, 11
- Fairlie, 60
Fernandez, 21
financial management, 96-7
 financial statements, 96
 reporting & management information systems, 97-8
foreign fishing vessels, 37
forgery, Model Criminal Code, 82
Fortuna Fishing, 15-16
Foster, 49-50
Franic, 14
fraud control, 100
 internal fraud, 31
Freedom of Information, 102, 117-18
Fuller, Johnson and Cummings, 52
functions & powers, 3-4
- Gaffney, 32
General Investments Australia Ltd, 42
general prosecutions, 11-37
glossary, 119
Gordy and Rowlands, 25
Grant and Callaghan, 47-8
Growth Industries, 40
Gudgeon, 24
- Hazelton, 32
head office, 4-5
 appeals, 8 *see also* prosecutions
Heads of Commonwealth Law Enforcement Agencies (HOCLEA), xii
Hines, 66
Hookham, 12
Hopwood and Byrnes, 52-3
Hyland, 50
- indemnities, 9-10
Independent Resources, 57-8
Indonesian fishermen, 28-9
industrial democracy, 93
information technology, 94-5
 staffing strategies, 85
information, further information, ix
- Jervis Bay, 3
Jacobsen and another v Rogers, 79-80
John Avram-Interwest Ltd, 45-6
- Karounos and Hunt, 53-4
Kong and Au, 14
Kovacs and Rotar, 68
Kwok, 15
- law reform & other issues, 77-83
Lederman, 17
legal aid, impact of the *Dietrich* decision, xi
legislation
 Commonwealth sentencing, 77
 Crimes Act review, 77-8
 criminal legislation, 77
 DPP Act, 78
 see also individual Acts
letter of transmittal, iii
Levot, 60
libraries, 95
Lim, 12
litigation
 conduct, 11
 review of costs, 83
 see also prosecutions

Index

- Lollis, 19
- losses *see* claims & losses
- Loveridge, 30
- Ly, 20

- Mackay, 33-4
- Mackenzie-Forbes, 50
- Markovina, 27-8
- McCauley, 66-7
- Meehan, Keogh and Howes, 68-9
- Model Criminal Code, 82
- Mohamed, 22
- Morrissey, Howes, Keogh and Meehan, 16-17

- National Agencies Criminal Assets Conference, 64
- National Crime Authority, 3
- New South Wales
 - corporate prosecutions, 40-44
 - criminal assets, 65-7
 - general prosecutions, 11-16
 - no bill applications, 7-8
- Northern Territory
 - corporate prosecutions, 60
 - general prosecutions, 36-7

- occupational health & safety (OH&S), 90
- offices of the DPP, vii-viii, 4-5
- Operation Bull, 19
- Operation Diwai, 23
- Operation Extra, 24
- Operation Garret, 22, 69-70
- Operation Hunter, 24
- Operation Pallet, 11-12
- organisation, 4-5
- Ornelas, 12-13
- Ouaida, 20

- Parry Corporation, 57
- Perfil, 16
- performance
 - appraisal, 85
 - pay, 92-3
- Peter Francis Peck, 45
- Peter Gordon Flude, 41

- Pivot Group Ltd, 50
- powers *see* functions & powers
- privacy, 102
- private prosecution, 17-18
- Pro-Image Studios Ltd, 44-5
- proceeds of crime, 2-3, 61
 - work done, 71-2
 - see also* criminal assets
- prosecutions
 - accused dealt with on indictment, 107-9, 115
 - appeals, 110-12
 - committal proceedings, 112
 - conduct of prosecutions, 2
 - defendants dealt with summarily, 103-06, 114-15
 - duration of trials on indictment, 110
 - Social Security prosecutions, 113
 - statistics, 103-15
 - territory prosecutions, 29
 - see also* corporate prosecutions
 - see also* general prosecutions
- public comments, 102
- public relations, 95-6
- purchasing, 98

- quality-management program, 85
- Queensland
 - corporate prosecutions, 48-52
 - criminal assets, 69-70
 - general prosecutions, 21-7

- Ramdhun, 34
- regional offices, 5
- regulation of business, 102
- resource management, 85-102
 - accommodation costs & usage, 101
 - accounting policy & processes, 97-8
 - capital works management, 98
 - consultancy services, 99-100
 - financial management, 96-7
 - fraud control & audits, 100-01
 - human resources, 85-93
 - information technology, 94-5
 - libraries, 95
 - public relations, 95-6

I n d e x

- Riches, 21
- Ridgeway v R, 80-82
- role, 2-3
- Rook v Maynard (no.2), 35
- Ross, 13
- Russel, 36

- search warrants, 79-80
- secret commissions, Model Criminal Code, 82
- Semal Pty Ltd, 20
- senior management, 6
- Sewell, 34
- shield of the Crown, 79-80
- Skase, 48-9
- Smith and Smith, 32
- Social Security prosecutions, 113
- South Australia
 - corporate prosecutions, 52-5
 - criminal assets, 70
 - general prosecutions, 30-32
- Spedley Securities Ltd, 41-2
- staff, 86-9
 - EEO, 90-91
 - industrial democracy, 93
 - interchange, 89
 - OH&S, 90
 - performance pay, 92-3
 - senior management, 6
 - training & development, 86
 - see also* resource management, human resources
- Stanta, 21
- statutory powers, 7-10
- Stevenson, 35
- Stockdale, 18
- Su, 53
- superannuation deprivation, 63

- taking matters over, 10
- Tam, 16
- Tan, 15
- Tasmania
 - corporate prosecutions, 60
 - general prosecutions, 35
- taxation laws, 3

- Teese, 16
- Todhunter, 14-15
- Tooth, 60

- unions
 - agency bargaining, 85
 - industrial democracy, 93

- Victoria
 - corporate prosecutions, 44-8
 - criminal assets, 68-9
 - general prosecutions, 16-21
 - vision & corporate plan, 2

- Western Australia
 - corporate prosecutions, 55-9
 - general prosecutions, 27-9
- Westmex Ltd, 44
- Whittal, 51
- women, status of women, 101
- Wright, 24-5