



Commonwealth Director of Public Prosecutions

Annual Report 1999-2000

Commonwealth of Australia 2000
ISSN 1034-3318

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DPP

Commonwealth Director of Public Prosecutions

3 September, 2000

The Honourable Daryl Williams AM QC MP
Attorney-General
Parliament House
Canberra

My dear Attorney

I have the honour to submit my report on the operations of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2000, in accordance with section 33(1) of the Director of Public Prosecutions Act 1983.

Yours faithfully

DAMIAN BUGG, QC
Director of Public Prosecutions

Office of the Commonwealth DPP

Head Office

Director: Damian Bugg QC
4 Marcus Clarke St,
CANBERRA CITY ACT 2601
Tel: 02 6206 5666, Fax: 02 6206 5684
PO Box 3104, CANBERRA CITY ACT 2601

ACT prosecutions

Senior Assistant Director: Grant Lalor
Tel: 02 6206 5666, Fax: 02 6206 5684
PO Box 3104, CANBERRA CITY ACT 2601

Sydney Office

Deputy Director: Jim Jolliffe
Level 35, Pacific Power Building, 201 Elizabeth St,
SYDNEY NSW 2000
Tel: 02 9321 1100, Fax: 02 9264 8241,
Locked Bag A4020, SYDNEY SOUTH NSW 1235

Melbourne Office

Deputy Director: Mark Pedley
22nd Floor, 200 Queen St
MELBOURNE VIC 3000,
Tel: 03 9605 4333, Fax: 03 9670 4295
GPO Box 21A, MELBOURNE VIC 3001

Brisbane Office

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

Townsville Office

Assistant Director: Gary Davey
3rd Floor, 188 Wills St,
TOWNSVILLE QLD 4810
Tel: 07 4772 7177, Fax: 07 4772 1358
PO Box 1233, TOWNSVILLE QLD 4810

Cairns Office

Principal Legal Officer: Peter Edson
Level 1, Bolland Centre, 14 Spence St,
CAIRNS QLD 4870
Tel: 07 4031 5688, Fax: 07 4031 3438

Perth Office

Deputy Director: Ian Bermingham
8th Floor, 66 St Georges Terrace,
PERTH WA 6000
Tel: 08 9264 7264, Fax: 08 9264 7266
GPO Box B92, PERTH WA 6001

Adelaide Office

Deputy Director:

June Phillips
15th Floor, Commonwealth Bank Building,
100 King William St,
ADELAIDE SA 5000
Tel: 08 8238 2600, Fax: 08 8231 8257
GPO Box 2562, ADELAIDE SA 5001

Hobart Office

Assistant Director:

Julie Read
8th Floor, 188 Collins St,
HOBART TAS 7000
Tel: 03 6220 5005, Fax: 03 6220 5425
GPO Box 366D, HOBART TAS 7001

Darwin Office

Assistant Director:

Matthew Bracks
9th Floor, National Mutual Centre, 11 Cavenagh St,
DARWIN NT 0800
Tel: 08 8943 1470, Fax: 08 8943 1477
GPO Box 3345, DARWIN NT 0801

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Compliance statement

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

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

The Report has been prepared in accordance with the *Requirements for Departmental Annual Reports*.

As aids to access, the report includes a table of contents, a glossary and an alphabetical index.

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

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

The DPP homepage can be accessed at www.cdpp.gov.au and the email address is inquiries@cdpp.gov.au.

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

Director's overview

This is my first Annual Report as Commonwealth Director of Public Prosecutions. I commenced duties on 2 August 1999 part way through the reporting period. Peter Walshe, whose substantive position is First Deputy Director, acted as Director for the first part of the year. The Office is indeed fortunate to have a person of Peter's experience and ability available to act as Director and my thanks go to him for his work during that time and the remainder of the year.

Before coming to the Commonwealth, I was the DPP for Tasmania for 13 years. The duties of the Commonwealth position are similar, although on a larger and geographically wider scale. I am now responsible for the work of over 400 lawyers and support staff across eight major offices and two sub-offices.

The range of Commonwealth prosecution work is wider than is sometimes thought. The mainstay of the work involves drug, fraud and corporate prosecutions but, as will be seen elsewhere in this Report, the remainder of the cases cover a range of topics which defy classification. There is also the criminal assets work, the extradition and mutual assistance work and the support and assistance which we provide to the investigative agencies. The work is always challenging. I have yet to find any of it dull.

The Office had, at the time of my arrival, been established and operating successfully for 15 years. I am pleased to say my impressions of the Office, obtained through my contact with it as a State Director, were that it appeared to be operated efficiently by capable and dedicated officers. Those impressions have been confirmed over the past months and I have not found any need to make major changes to the structure or operating arrangements of the Office.

The DPP, like any government agency, has to operate within a budget and that can sometimes cause stress. However, I am satisfied that the Office is working well within the applicable parameters and that we provide a high quality prosecution service that gives value to the Australian community.

On the legal front, the main development last year was undoubtedly the series of High Court decisions which cast doubt on the validity of parts of the Corporations Law and on the DPP's capacity to fully prosecute offences against it. Those developments are dealt with in detail elsewhere in this Report. The uncertainty created by those decisions has made a complex area of our practice even more difficult to manage. Unfortunately the uncertainties have not all been resolved and there are some issues which have still not been litigated. I am hopeful that the position will be clearer by this time next year because of agreements for proposed reforms which were announced at the time of finalising this Overview. Corporate prosecutions are an essential part of the regulatory process and they also form an important part of the DPP's practice and there really needs to be greater certainty about the law and about the DPP's powers in this area.

On the administrative front, after a six month trial we decided to keep a permanent office in Cairns. The trial showed that the DPP needs a full-time presence in Cairns, as well as Townsville, to properly meet work demands in north Queensland. The offices in Townsville and in Cairns both operate as part of the Brisbane establishment. The intention in setting them up was to save the cost, and wasted time, involved in sending lawyers from Brisbane to run cases in north Queensland. The experiment has proved successful, although we do not have any plans at this stage to open sub-offices elsewhere.

The Darwin Office was formally opened as a separate DPP Office in early December. The Darwin and Perth Offices have had to cope with a significant increase in work due to the sharp rise in people smuggling offences in those areas.

The DPP has also expanded the tax prosecutions branches in Sydney and Melbourne and has set up tax prosecution units in Brisbane, Adelaide, Perth and Head Office to cope with the cases that are expected to flow from the introduction of the new tax system and the GST.

In the last months of the year a great deal of work was put into the negotiations leading to the development of the next DPP Certified Agreement. The Agreement will run for the next two years and it is important to get the best outcome we can to benefit both the organisation and our staff. At the time of writing the Agreement has not been finalised, but we are approaching the final stages. My thanks go to everyone who participated in the process, on both sides of the negotiating table. It has been a long process to get to the present stage and it has not always been easy for those involved.

The challenges that lie ahead for the DPP include coming to terms with the new tax laws and with the provisions of Part 2 of the Commonwealth Criminal Code which sets out general principles of criminal responsibility. Part 2 of the Code will eventually apply to all offences under Commonwealth law. Under the current timetable, Part 2 will come into general operation in December 2001. Between now and then the DPP will have to commit time and resources to training our officers on the requirements of Part 2 and to developing the material which officers are going to need to provide advice to investigators and assistance to the magistrates and judges who are going to have to apply the Code to Commonwealth prosecutions brought in their courts. I have submitted a proposal to the Council of the Australian Institute of Judicial Administration suggesting the preparation of manuals and aids to assist judicial officers.

The DPP also has a responsibility to continue to press for reform to criminal procedure to simplify and streamline the conduct of large criminal cases. In the course of the year I had the honour to participate on a body called the Working Group on Criminal Trial Procedure which was set up by the Commonwealth Attorney-General in May 1999. The Working Group presented a report to government in September 1999. The Group made a number of recommendations which I hope will be accepted. If so, they should go some way to reducing the burden imposed on the courts and the community by complex criminal cases.

In the course of the year, DPP officers also participated in a Criminal Trial Reform Conference held under the aegis of the Australian Institute of Judicial Administration and the Standing Committees of Attorneys-General. The Conference also made a number of recommendations to government on this topic.

This is an important issue for the Australian community and it is important that the DPP's work in this area continues.

The DPP does not work in a vacuum. We depend on the investigative agencies to investigate cases and refer them for prosecution and asset recovery action. It is very important for the DPP to work closely with the investigative agencies. We are, and must remain, independent of the investigators, but that does not mean that we cannot provide advice and support to them when they need it. As society and the transactions between its members become more complex, the cases being investigated are becoming more complicated. The early involvement of an experienced prosecutor can help focus an investigation and make the best use of finite resources.

I am pleased to report that the DPP has excellent operating arrangements with all Commonwealth investigative agencies, particularly the Australian Federal Police, the National Crime Authority and Australian Securities and Investments Commission, and with the other agencies we deal with on a regular basis, including the Attorney-General's Department, Centrelink and the Insolvency Trustee Service Australia. Our liaison arrangements are built upon a strong foundation of cooperation and trust.

I am also pleased to report that the DPP has continued to receive solid support from the Attorney-General, the Honourable Daryl Williams AM QC MP, and the Minister for Justice and Customs, Senator the Honourable Amanda Vanstone. Both Ministers have shown an interest in the DPP and a commitment to its continued operation as an independent prosecuting agency.

While the Office is National the bulk of my time is spent working with the staff of Head Office who have, throughout the year, provided me with invaluable assistance and support. The Head Office team is a close knit one which has established strong bonds over the time of the DPP. Tragically, during the year, Maree Ayers, a very popular and respected officer in the ACT Prosecutions Section of the Office was fatally injured in a motor vehicle accident. The sudden and tragic loss of such a talented lawyer, popular staff member and young mother of two was a low point in the year for Head Office. My sympathy and that of all the Office goes to Maree's family. She is and will be fondly remembered by the Office.

Finally, it remains to thank all employees of the DPP, in all our offices, for their good work over the past year. At the end of the day, the person in charge of any national organisation can only be as good as their staff allow them to be. I look forward to the next four years with some optimism.

Damian Bugg QC
Director of Public Prosecutions

CHAPTER 1

Office of the DPP

Establishment

The DPP was established under the Director of Public Prosecutions Act 1983. The Office is headed by a Director, appointed for a term of up to seven years.

Damian Bugg QC was appointed as Director for five years commencing on 2 August 1999. He was previously the Director of Public Prosecutions for the State of Tasmania.

The DPP is within the portfolio of the Commonwealth Attorney-General, but the Office operates independently of the political process. Under section 8 of the DPP Act the Attorney-General has power to issue guidelines and directions to the DPP. There were no directions under section 8 during 1999-2000.

Role

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

The DPP does not generally prosecute street crimes or crimes against the person. Those matters are normally covered by the criminal laws of the States and the offences are prosecuted by the State DPP's. The main cases prosecuted by the DPP involve drug importations and money laundering, offences against the Corporations Law and fraud on the Commonwealth (including tax fraud, medifraud and social security fraud). The remaining part of the DPP's practice involves the prosecution of offences committed against Commonwealth schemes and covers a range of matters which cannot easily be categorised.

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

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

Under current administrative arrangements, a large number of Commonwealth agencies have an investigative role and the DPP receives briefs of evidence from, and provides legal advice to, a wide range of agencies.

Corporate plan

The DPP's current Corporate Plan was issued in 1996-97. The plan is under review and a new Corporate Plan will be issued when it has been settled.

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

order to advance social justice by deterring and discouraging breaches of Commonwealth law and ensuring that serious offenders are brought to justice.

Social justice and equity

The DPP advances social justice and equity by helping to enforce the criminal law for the benefit of all members of the community and by helping to ensure that all alleged offenders are treated equally.

Prosecution policy

All decisions made in the prosecution process are regulated by guidelines set out in the *Prosecution Policy of the Commonwealth*. That document has been tabled in Parliament and is available from any DPP office listed at the front of this Report.

The threshold issue in any criminal case is whether charges should be laid, or continued, against the alleged offender. Under the Prosecution Policy, there is a two stage test that must be satisfied:

- there must be sufficient evidence to prosecute the case (which requires not just that there be a prima facie case but that there also be reasonable prospects of conviction); and
- it must be clear from the facts of the case, and all the surrounding circumstances, that prosecution would be in the public interest.

It is not the DPP's role to decide whether a person has committed a criminal offence or to press for conviction at all costs. The prosecutor's role is to present all relevant admissible evidence to the jury, or other tribunal of fact, so that it can determine, after considering any additional evidence presented by the defence, whether it is satisfied beyond reasonable doubt that the defendant is guilty as charged.

Functions and powers

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

The main functions of the Director are noted above. The Director also has a number of miscellaneous functions including:

- prosecute indictable offences against State law where, with the consent of the Attorney-General, the Director holds an authority to do so under the laws of that State;
- conduct committal proceedings and summary prosecutions for offences against State law where a Commonwealth officer is the informant;
- appear in extradition proceedings and proceedings under the Mutual Assistance in Criminal Matters Act 1987; and
- apply for superannuation forfeiture orders under Commonwealth law.

The Director also has a function under section 6(1)(g) of the DPP Act to recover pecuniary penalties in matters specified in an instrument signed by the Attorney-General. On 3 July 1985 the then Attorney-General signed an instrument under section 6(1)(g) which has general application.

The DPP does not normally 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.

Organisation

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

Head Office provides advice to the Director and coordinates activities across Australia. Head Office is also responsible for prosecutions for Commonwealth offences in the ACT and related criminal assets proceedings.

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

Corporate Governance

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

The larger offices (Sydney, Melbourne and Brisbane) each have a Senior Management Committee which meets on a regular basis to assist the Deputy Director in charge of that office. There is no formal committee structure within the other offices. There is a twice annual meeting between the Director and the Deputy Directors to discuss policy and management issues.

In the course of the year the DPP settled Guidelines on Official Conduct. The document sets out the ethical standards expected of DPP employees. All DPP officers were asked to sign a copy of the document to indicate that they were aware of the contents and an updated version of the document will be included in the next DPP Certified Agreement.

Outcomes and outputs

An outcome and output chart for 1999-2000 appears at the end of this Chapter.

Best practice

The DPP is in the process of reviewing the operation of each DPP office through a Best Practice Review Committee, which has representatives from Head Office and regional level. The Committee has so far reviewed the Sydney, Brisbane, Adelaide and Perth offices and is in the process of reviewing the Melbourne office. It will eventually review all offices.

As the name of the Committee suggests, the idea is to identify best practices within the DPP and allow all offices to benefit from experiences gained in other jurisdictions.

Senior management chart

(as at 30 June 2000)

Director Damian Bugg QC	Head Office	Dep Dir B2 Legal and Prac. Mgt (J Thornton) Dep Dir B2 Corp Mgt (S Walker)	SES B1 Commercial Pros (G Davidson) SES B1 Policy (J McCarthy) SES B1 Crim Assets & International (G Gray) SES B1 ACT Prosecutions (G Lalor)
First Deputy Director (P Walshe)	Sydney Office	Deputy Director B2 (J Jolliffe)	SES B1 Prosecutions (G Drennan) SES B1 Prosecutions (B Doherty) SES B1 Prosecutions (J Shouldice) SES B1 Tax Branch (C Murphy) SES B1 Crim Assets (vacant) SES B1 Commercial Pros (P Shaw)
Principal Advisor, Comm and Policy (G Delaney)	Melbourne Office	Deputy Director B2 (M Pedley)	SES B1 Prosecutions (S Bruckard) SES B1 Prosecutions (B Tchakerian) SES B1 Tax Branch (L West) SES B1 Crim Assets (K Wiltshire) SES B1 Commercial Pros (S Kirne)
	Brisbane Office	Deputy Director B2 (P Evans)	SES B1 Prosecutions (D Adsett) SES B1 Crim Assets (S Grono) SES B1 Commercial Pros (C Barker) SES B1 Townsville (G Davey) Legal 2 Cairns (P Edson)
	Perth Office	Deputy Director B2 (I Bermingham)	SES B1 Executive (vacant) SES B1 Commercial Pros (R Fogliani)
	Adelaide Office	Deputy Director B1 (J Phillips)	
	Hobart Office	Assistant Director Legal 2 (J Read)	
	Darwin Office	Assistant Director Legal 2 (M Bracks)	

Outcome and output chart 1999-2000

DIRECTOR OF PUBLIC PROSECUTIONS Director : Damian Bugg QC

Total price of outputs	\$58.477m
Departmental outcome appropriation	\$58.105m

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

Total price	\$58.477m
Departmental output appropriation	\$58.105m

Output 1.1

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

Total price	\$58.477m
Appropriation	\$58.105m

CHAPTER 2

Prosecutions

General prosecutions

Practice

Prosecuting is a key function of the DPP and the majority of DPP officers work in the General Prosecutions and Commercial Prosecutions Branches.

The conduct of litigation is the most visible part of the prosecution function. However, there is considerable work involved in preparing cases for hearing, providing advice and other assistance to investigators, drafting charges, and settling applications for search and other warrants.

Prosecution work also involves a high level of liaison with investigators and with investigative agencies generally. In the past year, the DPP statistics show that DPP lawyers spent a total of 1 193 hours attending 657 different liaison sessions. DPP officers also regularly participate in training courses for investigators. In the last year, DPP lawyers spent a total of 511 hours attending 154 training sessions. A large number of those sessions involved moot courts and other training for AFP recruits. It is important for the DPP to maintain effective relations with the investigating agencies and to assist in ensuring that investigators are properly equipped to perform their duties. However, the work places considerable resource demands on the Office.

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 sometimes different rules of evidence, in each jurisdiction.

The majority of court work is conducted in-house by DPP lawyers or in-house counsel. However, the DPP briefs counsel from the private Bar if the case requires expertise or resources that 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.

It is generally more cost effective for the DPP to prosecute in-house than to brief counsel from the private Bar. However, it is not always possible to run cases in-house. Some cases require expertise or experience which is not available in-house.

Details on the number of prosecutions conducted during the past year appear in the tables at the end of this chapter. Performance indicators for the prosecuting function appear later in this chapter.

Reports on some of the more significant cases dealt with during the year appear in Chapter 6.

Developments

The mainstays of the General Prosecutions practice are drug crime and money laundering, and fraud in all its manifestations. Those areas produced the bulk of cases for the past year, as they have traditionally. The remainder of the cases involved a miscellany of different crimes against Commonwealth schemes including fisheries offences, migration offences, bribery and corruption, electoral offences, air navigation offences and environmental crime. Virtually every Commonwealth Act

creates new offences. The range of the General Prosecutions practice is as wide as the reach of Commonwealth law.

The range is illustrated in tables 8 to 10 at the end of this Chapter, which show the range of legislation under which charges were laid in the past year, and the range of agencies from which the DPP receives briefs for prosecution.

The last year saw an increase in the number of people prosecuted for organised people smuggling. This looks likely to remain a growth area for the foreseeable future. So far most of the cases have involved the masters or crew members of boats used to bring people to Australia. However, we are likely to see a move towards prosecuting more of the organisers, supported by extradition requests where the organisers are outside Australia.

The year also saw an increase in the number of cases involving the evasion of excise on various products including tobacco, fuel and alcohol. There was, in particular, a marked increase in the number of cases involving the alleged sale of home grown, and unexcised, tobacco or “chop-chop”. The increase in excise cases seems to be a result of the Australian Customs Service and the Australian Taxation Office devoting more investigative resources to this area. This is an example of how the DPP’s workload can be affected by decisions made by upstream agencies about what types of cases they will pursue and how effective the decisions are.

It is worth noting that the General Prosecutions practice is not homogenous across the Commonwealth. There are regional variations in the type of crime which is committed and which end up being investigated and prosecuted. For obvious reasons people smuggling offences and offences involving foreign fishing vessels tend to arise in disproportionate numbers in Perth and Darwin. Conversely, a disproportionate number of the DPP’s drug and money laundering cases arise in NSW.

Commercial prosecutions

Practice

The DPP Commercial Prosecutions Branches conduct all cases arising under the Corporations Law, all large fraud prosecutions where there is a corporate element, and prosecutions under the Trade Practices Act 1974.

The responsibility for investigating breaches of the Corporations Law rests with the Australian Securities and Investments Commission. The ASIC prosecutes minor regulatory matters itself but when an investigation discloses the commission of a serious criminal offence, the ASIC refers the matter to the DPP for prosecution.

The ASIC and DPP have settled guidelines for the investigation and prosecution of corporate crime. The DPP provides early advice to the ASIC in the investigation of suspected offences. This is particularly important in large fraud cases where investigations can be long and resource intensive. Early involvement by the DPP can help to direct the investigation to areas that are most likely to result in prosecution. There is regular liaison between the ASIC and the DPP at head of agency, management and operational levels.

Issues

The main development in this area over the past year has been a series of High Court decisions which have cast doubt on the validity of parts of the Corporations Law scheme and on the ability of the DPP to fully perform the prosecution function under the scheme (and the legislation that preceded it). Under the scheme the State Corporations Acts apply the Corporations Law as State law. The Corporations Law as applied remains State law but it is administered as if it were Commonwealth law. The DPP, which is a Commonwealth agency, prosecutes offences against the Corporations Law.

In August 1999 the High Court decided, in the matter of Hopwood and Byrnes, that the DPP did not have the power to appeal against sentences imposed on two defendants who had been convicted of offences against the Companies (SA) Code. That was because the provisions of the Corporations (SA) Act that gave the DPP power to prosecute the offences did not expressly give the DPP the power to appeal against an inadequate sentence. The High Court found that a power to prosecute does not bring with it a power to appeal against sentence.

In February 2000 the High Court reached a similar result in the matter of Bond. In that case the High Court was willing to assume that the DPP as prosecutor had the power to appeal under State law, but found that there was nothing in Commonwealth law which authorised the DPP to exercise that power.

In May 2000, in the matter of Hughes, the High Court rejected an argument that the DPP had no power to prosecute an offence against the Corporations Law of WA. However, the Court went on to find that, as the relevant Commonwealth law imposed a duty on the DPP to prosecute Corporations Law offences, the authority conferred by that law could only be exercised if, in the circumstances of the particular case, it was supported by a head of Commonwealth power specified in the Constitution. That last ruling has implications for the whole management of the Corporations Law scheme and other Commonwealth/State cooperative schemes.

The matter of Hopwood and Byrnes was reported in last year's Annual Report. Case reports on Bond and Hughes appear in Chapter 6.

The problem identified by the High Court in Bond has been remedied by an amendment to the DPP Act, which ensures that DPP now has authority to exercise any power of appeal that is given under State law. However, the problems identified in the other cases cannot be resolved by Commonwealth law alone.

Specialist units

Tax prosecutions

The DPP has had tax prosecutions units in Sydney and Melbourne for some years now. Those two units have been expanded, and are now separate branches headed by an SES officer, and tax units have been set up in Brisbane, Adelaide, Perth and Head Office. The changes have been made to cope with the cases that are expected to flow following the introduction of the new tax system and the GST.

Other specialist units

The DPP has also had specialist Centrelink units in Sydney and Melbourne for the past few years. The units have allowed the DPP to develop expertise in what is a deceptively complex area of the law and to give the investigators a single point of contact with the DPP and a single source of advice.

This experiment with specialisation has proved to be a success. However, there are limits to which an organisation the size of the DPP can afford to specialise. The DPP does not have enough lawyers to set up specialist units to deal with every area of its work. However, each office has appointed liaison officers to deal with the agencies that refer cases to the DPP. The liaison officers are the first point of contact with investigators from the relevant agency and they oversee the provision of legal advice and prosecution services to that agency. That has allowed some degree of specialisation without reducing flexibility within the Office.

Exercise of statutory powers

• No bill applications

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

In the past year there were 61 no bill applications received from defendants or their representatives. Of these, 21 were granted and 40 refused. A further 27

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 48.

Of the matters discontinued, the sufficiency of evidence was the main factor in 36 cases. Public interest was the main factor in 10 of the remaining cases. In two cases prosecutions were discontinued for both evidential and public interest reasons.

Seventeen no bills were granted in fraud cases, seven in drugs cases, two in commercial prosecutions and 22 in other matters.

- **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 for perjury. 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.

In the past year the DPP gave undertakings under sections 9(6) and 9(6D) to 24 people in a total of 13 matters (in some cases, indemnities were given to more than one witness in a single matter).

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. The DPP gave one undertaking under that Act in the past year.

- **Taking matters over**

Under section 9(5) of the DPP Act the Director has power to take over a prosecution for a Commonwealth offence that has been instituted by another person and either carry it on or bring it to an end. This power was not exercised during 1999-2000.

- **Ex-officio indictments**

The Director has power under section 6(2D) of the DPP Act to file an indictment against a person when they have not been committed for trial. The Director exercised the power on three occasions in 1999-2000. Those cases each involved a person charged with people smuggling offences. In each case, the magistrate declined to commit the defendant for trial only because there was a technical defect in the evidence set out in the committal papers. The defect was easily remedied and the defence was aware, in each case, that the matter was likely to proceed to trial despite the outcome of the committal proceedings.

There were also a number of cases where a defendant was committed for trial but stood trial on different charges from those on which he or she was committed.

- **Consent to conspiracy proceedings**

Conspiracy proceedings under Commonwealth law can only be commenced with the consent of the Director. In 1999-2000 the Director gave consent to the commencement of conspiracy proceedings against six defendants in relation to five conspiracies.

Performance indicators

The following table lists the DPP's performance indicators for the conduct of all prosecutions for 1999-2000 and compares them with the figures for the previous year.

Prosecution performance indicators for 1999-2000

Description	Target	Outcome	Details (by no. of defs)
Prosecutions resulting in a conviction	90%	97%	4 771 (out of 4912)
Figures for 1998-99	90%	96%	4 829 (out of 5018)
Defended summary hearings resulting in conviction	60%	67%	214 (out of 319)
Figures for 1998-99	60%	60%	214 (out of 356)
Defended committals resulting in a committal order	80%	97%	373 (out of 384)
Figures for 1998-99	80%	98%	319 (out of 324)
Defended trials resulting in a conviction	60%	73%	96 (out of 132)
Figures for 1998-99	60%	63%	81 (out of 128)
Prosecution sentence appeals upheld in summary matters	60%	82%	18 (out of 22)
Figures for 1998-99	60%	91%	10 (out of 11)
Prosecution sentence appeals upheld after a trial	60%	60%	9 (out of 15)
Figures for 1998-99	60%	61%	11 (out of 18)

The indicators show that the DPP is meeting all targets and is exceeding targets in five out of six areas.

Prosecution statistics

In the course of the year the DPP completed criminal proceedings against 4 912 people involving a total of 7 358 charges. The DPP received cases from more than 30 different agencies.

The tables which follow set out details of the prosecutions conducted in 1999-2000.

Table 1: Outcomes of successful prosecution action by DPP 1999-2000

No of defendants convicted of summary offences	4 266
No of defendants convicted of indictable offences	505
No of defendants committed for trial or sentence	561

Table 2: Summary prosecutions in 1999-2000

Defendants convicted after a plea of guilty	4 052
Defendants convicted after a plea of not guilty	214
Total defendants convicted	4 266
Defendants acquitted after a plea of not guilty	105
Total	4 371

Table 3: Committals in 1999-2000

Defendants committed after a plea of guilty	188
Defendants committed after a plea of not guilty	373
Total defendants committed	561
Defendants discharged after a plea of not guilty	11
Total	572

Table 4: Prosecutions on indictment in 1999-2000

Defendants convicted after a plea of guilty	409
Defendants convicted after a plea of not guilty	96
Total defendants convicted	505
Defendants acquitted after a plea of not guilty	36
Total	541

Table 5: Prosecutions on indictment – duration of trials in 1999-2000

1 – 5 days	44
6 – 10 days	47
11 – 15 days	12
16 – 20 days	13
21 – 25 days	7
26 – 30 days	7
Over 30 days	14
Total trials	144

Table 6: Prosecution appeals against sentence in 1999-2000

	Summary	Indictable
Number of appeals upheld	18	9
Number of appeals dismissed	4	6
Total number of appeals	22	15
% of appeals upheld	81.8%	60.0%

Table 7: Defence appeals in 1999-2000

	Summary	Indictable
Number of appeals against sentence upheld	49	25
Number of appeals against sentence dismissed	122	28
Number of appeals against conviction upheld	5	1
Number of appeals against conviction dismissed	21	14
Number of appeals against conviction & sentence upheld	9	3
Number of appeals against conviction & sentence dismissed	15	12
Total number of appeals	221	83

Table 8: Legislation: charges dealt with in 1999-2000

	Summary	indictable
Agriculture & Veterinary Chemicals Act	12	
Air Navigation Act	2	
Australian Citizenship Act	2	
Australian Federal Police Act	19	3
Australian Postal Corporation Act	11	
Australian Securities & Investments Commission Act	8	
Bankruptcy Act	24	4
Census and Statistics Act	2	
Child Support (Assessment) Act	2	
Child Support (Registration & Collection) Act	4	
Childcare Rebate Act	4	
Civil Aviation Act & Regulations	71	2
Common Law		1
Commonwealth Electoral Act	421	
Companies Code		2
Copyright Act	15	
Corporations Law	61	30
Crimes (Aircraft) Act	1	
Crimes (Aviation) Act	21	4
Crimes (Currency) Act	49	11
Crimes (International Protected Persons) Act	4	
Crimes Act	703	303
Criminal Code	11	18
Customs Act	97	264
Defence Act and Regulations	14	
Export Control Act & Orders	9	
Export Meat Orders	13	
Family Law Act		1
Financial Transaction Reports Act	121	38
Fisheries Management Act	233	
Fuel (Penalty Surcharges) Administration Act	1	
Great Barrier Reef Marine Park Act & Regulations	84	
Health Insurance Act	34	4
Imported Food Control Regulations	1	
Marriage Act	3	
Migration Act	138	118
National Crime Authority Act	4	2
National Health Act	10	3
National Parks & Wildlife Regulations	18	
Navigation Act	1	2
Non-Commonwealth legislation: Drugs	48	30
Non-Commonwealth legislation: Other	130	48
Occupation Health & Safety (Cth Employment) Act	6	
Passports Act	22	8
Primary Industries Levy Collection	5	
Proceeds of Crime Act	3	16
Public Order (Protection of Persons & Property) Act	60	
Quarantine Act	6	4
Radiocommunications Act	9	
Royal Commissions Act	2	
Secret Commissions Act		1
Securities Industry Act	1	
Social Security Act	3525	
Statutory Declarations Act	3	
Student Assistance Act	57	
Superannuation Industry (Supervision) Act	1	
Sydney Airport Curfew Act	1	

Taxation legislation	267	2
Telecommunications Act	3	
Therapeutic Goods Act	12	1
Torres Strait Fisheries Act	7	
Trade Marks Act	6	1
Trade Practices Act	5	
Veterans Entitlements Act	15	1
Whale Protection Act	1	
Wildlife Protection (Regulation of Exports & Imports) Act	6	6
Witness Protection Act		1
Total	6 429	929

Table 9: Crimes Act 1914: charges dealt with in 1999-2000

	Summary	Indictable
Aiding and abetting (s.5)	3	
Accessory after the fact (s.6)	1	
Incitement (s.7A)	1	
Breach of recognisance (ss.20A, 20AC)	4	
Damage property (s.29)	13	4
False pretences (s.29A)	5	3
Imposition (s.29B)	128	61
False statements (s.29C)	5	
Fraud (s.29D)	67	159
Seizing Commonwealth goods (s.30)	4	
Administration of justice (ss.32-50)	6	9
Forgery (ss.65-69)	53	10
Disclosure of information (s.70)	1	1
Stealing or receiving (s.71)	60	16
Falsification of books (s.72)	9	5
Bribery (ss.73 & 73A)	1	4
False returns or certificates (s.74)	2	1
Resisting public officers (s.76)	17	
Computer offences (ss.76A - 76E)	103	6
Espionage and official secrets (ss.77 - 85D)	2	
Postal offences (ss.85E - 85ZA)	50	1
Telecommunications offences (ss.85ZB - 85ZKB)	158	
Conspiracy (s.86)		13
Conspiracy to defraud (s.86A)		10
Trespass on Commonwealth land (s.89)	10	
Total	703	303

Table 10: Defendants dealt with in 1999-2000: referring agencies

	Summary	Indictable
Air Services Australia	1	
Australian Bureau of Statistics	2	
Australian Communications Authority	5	
Australian Competition and Consumer Commission	4	
Australian Customs Service	15	19
Australian Electoral Commission	421	
Australian Federal Police	533	461
Australian Fisheries Management Authority	43	
Australian Maritime Safety Authority	1	
Australian National Parks & Wildlife Service	5	
Australian Nature Conservation Authority	4	
Australian Postal Corporation	58	7
Australian Quarantine and Inspection Service	21	
Australian Securities & Investments Commission	45	35
Australian Taxation Office	188	14
Centrelink	3 077	35
Civil Aviation Safety Authority	27	3
Comcare	4	
Dept of Agriculture Fisheries and Forestry	12	
Dept of Defence	3	3
Dept of Education Training and Youth Affairs	5	
Dept of Employment Workplace Relations & Small Business	6	
Dept of Environment & Heritage	54	
Dept of Immigration and Multicultural Affairs	43	13
Dept Transport & Regional Services	1	
Dept of Veterans Affairs	17	2
Health Insurance Commission	53	7
Insolvency & Trustee Service Australia	6	
National Crime Authority	6	19
National Registration Authority	10	
Non-Commonwealth agencies		
- State police	225	25
- Other	138	1
Therapeutic Goods Administration	5	1
Total	5 038	645

CHAPTER 3

Criminal assets and International

Criminal assets

Practice

The recovery of criminal assets forms an adjunct to the prosecution work of the DPP. The work is performed by Criminal Assets branches which include, or have access to, the services of financial analysts.

The work is designed to ensure that offenders are not only prosecuted for their crimes but are also stripped of the profits. There is as much need in this area as in prosecutions to ensure that alleged offenders are treated fairly and consistently. There is also a need to ensure that recovery action is coordinated with the related prosecution.

The DPP's effectiveness depends on support from the Australian Federal Police, the National Crime Authority and the other agencies which do the investigative work. The DPP also works closely with the Insolvency and Trustee Service Australia which is responsible for securing, managing and realising property under the Proceeds of Crime Act.

The total amount recovered under the criminal assets initiative for 1999-2000 was almost \$5 million. As at 30 June 2000, the total value of property that was subject to restraining orders was over \$16.8 million.

A breakdown of these numbers is given in the tables at the end of this chapter. Performance indicators for work in this area appear later in this chapter.

Policy

The DPP does not take recovery action in every case where a person has obtained money as a result of committing a Commonwealth offence. In some cases there is nothing the DPP can usefully add to normal debt recovery processes. In other cases there is no money available to recover.

The factors that the DPP looks at in deciding whether to take recovery action include whether there is a basis for recovery 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 alleged offender appears likely to resist recovery action and whether there is a need to coordinate the recovery and prosecution actions.

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

- **Proceeds of Crime Act**

The PoC Act provides a 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 allow the 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. 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.

- **Customs Act**

Division 3 of Part XIII of the Customs Act 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.

- **Civil remedies function**

The DPP is given a civil remedies function under sections 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 can only be exercised to recover unpaid tax and in matters or classes of matter specified in an instrument signed by the Attorney-General. However, on 23 October 1995 the then Attorney-General signed an instrument which gives the DPP power to exercise the civil remedies function in any matter which gives rise to a civil liability to the Commonwealth, provided the matter is connected to an actual or proposed prosecution.

Review of the PoC Act

In 1998/99 the Australian Law Reform Commission conducted a review of the Proceeds of Crime Act and related legislation. The Commission presented its Report to government in June 1999 (ALRC Report No 87: *Confiscation that Counts, a review of the Proceeds of Crime Act 1987*).

The Report made a total of 93 recommendations, including a recommendation that the PoC Act be amended to incorporate a non-conviction based regime to enable confiscation, on the basis of proof to the civil standard, of profits derived from prescribed unlawful conduct.

The government is currently considering its response to the Report.

Superannuation orders

The Criminal Assets branches conduct proceedings under the Crimes (Superannuation Benefits) Act 1989 and Part VA of the Australian Federal Police Act 1979. Under these provisions a Commonwealth employee who has been convicted of a corruption offence, and has been sentenced to more than 12 months imprisonment, can lose the government funded component of their superannuation benefits. Members of the AFP can also lose government funded superannuation if found guilty of some types of disciplinary offence.

The mechanism involves the Attorney-General issuing an authorisation to the DPP to apply for a superannuation order. The court that hears the application must make an order if it is satisfied that the preconditions have been met. The effect of a superannuation order is that the defendant loses all rights to employer paid benefits under the relevant superannuation scheme, but is entitled to be paid an amount equal to their own contributions plus interest.

In 1999-2000 the DPP obtained three superannuation orders under the CSB Act. There were no orders under Part VA of the AFP Act. Details of the orders obtained under the CSB Act are set out in the following table.

Name	State	Date
Metwaly-Duval	NSW	4 November 1999
Champain	NSW	21 January 2000

National liaison

In 1998-99 the DPP joined with other agencies involved in recovering the proceeds of crime to establish a national liaison framework. The other agencies involved are the AFP, the NCA, ITSA and the Attorney-General's Department.

The purpose is to provide a forum for the discussion of issues which have national implications and to provide an increased level of inter-agency coordination. This development reflects an ongoing commitment by all agencies to build on experience and improve performance.

In 1999-2000 the agencies met, at a national level, on four occasions. Two of the meetings were held in Canberra, one in Sydney and one in Melbourne. The interstate meetings were designed to give officers at regional level an opportunity to participate in the forum. The experiment has worked well and the practice of meeting interstate will continue.

Performance indicators

The following table lists the DPP's performance indicators for criminal assets cases.

Description	No.	%	Target
Applications for restraining orders that succeeded	39	97%	90%
Figures for 1998-99	25	100%	
Applications for pecuniary penalty orders that succeeded	11	100%	90%
Figures for 1998-99	9	100%	
Applications for forfeiture orders that succeeded	61	98%	90%
Figures for 1998-99	44	83%	
Damages awarded against DPP under undertakings	Nil	--	--
Figures for 1998-99	Nil	--	--
No of cases legal costs awarded against DPP (i)	1	--	--
Figures for 1998-99	2	--	--
Amounts paid for costs awarded against DPP	\$14 500	--	--
Figures for 1998-99	\$16 550	--	--

(i) Costs may not be paid in the year that they were awarded.

The performance indicators show that the DPP exceeded targets in all applicable areas in 1999-2000.

International

Practice

International work is a small but growing part of the DPP's practice. It is now widely recognised that crime, especially organised crime, is a global phenomenon. Criminals rarely respect international boundaries and law enforcement agencies can

no longer afford the luxury of looking at crime in national terms. Recent years have seen a proliferation of international arrangements to attack crime and a growing awareness of the need for countries to work together in this area. It is important for the DPP to play its part in the international effort against crime.

The DPP's work in this area is coordinated from the Criminal Assets and International Branch in Head Office, which liaises with the International Branch of the Attorney-General's Department and provides an information and support service to DPP officers. However, the case work is performed at regional office level as part of the normal work of DPP officers.

Extradition

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

The DPP is involved at two levels in the extradition process. The first is that the DPP conducts court proceedings in Australia to determine eligibility for surrender in relation to incoming extradition proceedings. The DPP acts as solicitor on the record on the basis of instructions from the Attorney-General's Department. The DPP also prepares outgoing requests for extradition in cases where a person who has been charged with Commonwealth offences is found in a foreign country.

In the past year the DPP was instructed to conduct 23 new incoming extradition requests. In the same time, Australia made four requests for extradition in relation to prosecutions being conducted by the DPP. That figure does not include requests for extradition in relation to prosecutions being conducted by State DPPs.

The number of incoming requests was up, from 18 in 1998-99. The number of outgoing requests was also up, but only slightly. There were three outgoing requests in 1998-99.

The pattern shown by these figures suggests that Australia is still a popular destination for people on the run.

The most notable development in this area over recent years has been the tendency for people resisting extradition to raise extradition objections.

Section 19(2)(d) of the Extradition Act provides that one of the things a magistrate must take into account in deciding whether to find a person eligible for extradition is whether there is an extradition objection. The burden of showing that there is an extradition objection rests on the defendant, and requires that the defendant show that there are substantial grounds for believing that the offence alleged by the requesting country is a political or military offence; or that they are really being prosecuted for their race, religion, nationality or political opinions; or that they are likely to be prejudiced by reason of their race, religion, nationality or political opinions; or that they have already been dealt with for the relevant offence. The burden is not easily discharged. A defendant who wants to show an extradition objection must go behind the papers provided by the foreign country and must, in effect, show something approaching bad faith by that country.

The concept of extradition objections has been around for as long as extradition itself, but until recent times few defendants took on the burden of trying to show an extradition objection. In recent times however six separate defendants have attempted to show an extradition objection. To date none of the defendants has been successful, although it should be noted that five of the six cases are still before the Australian courts.

Mutual Assistance

MA is the process whereby countries provide assistance to each other where it is necessary to exercise compulsory powers in another country to investigate and prosecute alleged offences or to recover the proceeds of crime. The process is

similar to extradition. It depends upon international agreement and is based on reciprocity.

As with extradition, the Attorney-General's Department is the Central Authority for MA for Australia. It processes all incoming and outgoing requests. The DPP conducts any court proceedings in Australia that are required to comply with an incoming request and provides assistance when search warrants are required. The DPP also prepares the paperwork for outgoing MA requests in Commonwealth matters.

In the past year the DPP was involved in 21 new incoming MA cases. In the same time, Australia made 19 MA requests in matters involving the DPP. The incoming cases involved seven requests for evidence to be taken in Australia, 13 requests for search warrants and one request for action to be taken to recover the proceeds of crime.

Criminal assets recovery tables

Table 1: PoC Act: orders made and forfeitures secured in 1999-2000

No. of restraining orders obtained	39
Estimated net value of property restrained	\$8 341 054
No. of PPOs obtained	11
Value of PPOs	\$1 136 247
No. of S.19 forfeitures obtained	61
Estimated value of property forfeited under S.19	\$1 760 668
No. of s. 30 forfeitures	6
Estimated value of property forfeited under S.30	\$ 847 616

Table 2: PoC Act: restraining orders in force as at 30 June 2000

No. of restraining orders in force	75
Estimated net value of property restrained	\$16 471 416

Table 3: PoC Act: money recovered in 1999-2000

No. of PPOs paid	25
Amounts paid under PPOs	\$1 348 234
No. of S.19 forfeitures realised	52
Amounts recovered from S.19 forfeitures	\$1 588 671
No. of S.30 forfeitures realised	8
Amounts recovered from S.30 forfeitures	\$ 783 667
No. of cases where amount recovered from settlement etc.	4
Amounts recovered from settlements etc.	\$ 978 917
Total recovered	\$4 699 489

Table 4: Customs Act: restraining orders, pecuniary penalty orders, seizures & condemnation of property involving DPP in 1999-2000

No. of restraining orders obtained	Nil
Estimated value of property restrained	Nil
No. of PPOs obtained	Nil
Value of PPOs	Nil
No. of cases where property seized	Nil
Estimated value of seized property	Nil
No. of condemnations	2
Estimated value of condemned property	\$100 350

Table 5: Customs Act: restraining orders in force as at 30 June 2000

No. of restraining orders in force	2
Estimated net value of property restrained	\$375 170

Table 6: Customs Act: money recovered in 1999-2000

No. of PPOs paid	1
Amounts paid under PPOs	\$ 4 655
No. of cases where condemned property realised	3
Amounts recovered from realisation of condemned property	\$81 600
No. of cases where amounts recovered from settlements etc.	Nil
Amounts recovered from settlements etc.	Nil
Total recovered	\$86 255

Table 7: Civil remedies: property secured, judgments and reparation orders obtained by DPP in 1999-2000

No. of cases where property secured by injunction or otherwise	1
Estimated value of property secured by injunction or otherwise	\$127 542
No. of judgments and reparation orders obtained	6
Amount of judgments and reparation orders	\$15 107 122 *

* One reparation order is for \$15m but only about \$700,00 of that amount is expected to be recovered.

Table 8: Civil remedies: money recovered in 1999-2000

No. of judgments and reparation orders paid	Nil
Amounts paid under judgments and reparation orders	Nil
No. of cases where amounts recovered from settlements etc.	3
Amounts recovered from settlements etc.	\$131 161
Total recovered	\$131 161

Table 9: Criminal Assets: Total recoveries for 1999-2000

Proceeds of Crime Act PPO	\$1 348 234
Proceeds of Crime Act s.19 forfeiture	\$1 588 671
Proceeds of Crime Act s.30 forfeiture	\$ 783 667
Proceeds of Crime Act settlement and other payments	\$ 978 917
Proceeds of Crime Act total	\$4 699 489
Customs Act PPO	\$ 4 655
Customs Act condemnation	\$ 81 600
Customs Act total	\$ 86 255
Civil remedies judgments & reparations	Nil
Civil remedies settlements and other payments	\$ 131 161
Civil remedies total	\$ 131 161
Grand total	\$4 916 905

CHAPTER 4

Law reform

One of the objectives of the DPP is to provide recommendations on the laws or proposed laws of the Commonwealth relating to the criminal justice system. This Chapter outlines some of the issues considered in 1999-2000.

Criminal Code Amendment Bill 1999

The Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 1999 was introduced into the Parliament in November 1999. Amongst other things, it provides for the insertion of a new Chapter 7 into the Criminal Code entitled "The Proper Administration of Government". This new Chapter will contain the offences of general application relating to theft, fraud, bribery, forgery, causing harm to Commonwealth public officials, and impersonating and obstructing Commonwealth public officials.

The DPP was consulted in the preparation of the Bill as well as in relation to a number of proposed government amendments to the Bill. The Bill was referred to the House of Representatives Standing Committee on Legal and Constitutional Affairs and officers from the DPP gave evidence before that Committee on 15 May 2000.

The Bill also provides for a new defence of "lawful authority" to be inserted in Chapter 2 of the Criminal Code. This addresses, to some extent, the concerns expressed in last year's Annual Report in relation to the absence from the Criminal Code of a provision on the lines of the existing section 15D of the Crimes Act 1914.

Amendments to the DPP Act

The Jurisdiction of Courts Legislation Amendment Act 2000 made a number of amendments to the DPP Act relating to the appeal powers of the Director and members of the staff of the DPP.

New sections 6(1)(ma) and 17(2) confer on the Director and members of the staff of the DPP the function of instituting and carrying on appeals arising out of prosecutions for offences against the laws of a State where the Director or member of staff is authorised to institute such appeals by or under the law of the relevant State. These new sections deal with the specific issue identified in the High Court cases of Hopwood, Byrnes and Bond, which are discussed elsewhere in this Report. Sections 9(8A) and (8B) confer on the Director new rights to institute or carry on appeals in summary matters.

Judicial review of decisions made in the criminal justice process

The Jurisdiction of Courts Legislation Amendment Act 2000 also made a number of amendments to the Administrative Decisions (Judicial Review) Act 1977, the Corporations Act 1989 and the Judiciary Act 1903 which together restrict access to administrative law remedies to review decisions in the criminal justice process. In broad terms, the Federal Court no longer has jurisdiction under the ADJR Act or section 39B of the Judiciary Act to review decisions in the criminal justice process unless the judicial review proceedings were on foot prior to the commencement of the relevant prosecution. Further, where previously the Federal Court would have had jurisdiction under section 39B to review a decision in the criminal justice process that jurisdiction may now only be exercised by the appropriate State or Territory Supreme Court.

The DPP considers that these legislative changes will go a long way towards reducing the scope for administrative law remedies being used to prolong and delay criminal proceedings.

Listening devices

In the case of *Nicholas*, which is referred to in Chapter 6, the Victorian Court of Criminal Appeal ruled that section 219B(5) of the Customs Act 1901 does not authorise the issue of a warrant to use a listening device in relation to “a particular person” unless that person can be identified by name or some other objective feature. The Court ruled that the type of warrant commonly known as a “person X warrant” is not valid.

The decision has serious implications for the law enforcement effort. When narcotic goods are detected in the course of importation and the police wish to conduct a controlled delivery of the package containing the narcotic goods, it will often be the case that the best chance of identifying those involved in the importation, particularly those higher up in the criminal organisation, and obtaining evidence of that involvement will be to put a listening device in the package. However, that cannot now be done.

The DPP has recommended that the listening device provisions be amended to enable a listening device to be used in circumstances where it is not practicable to specify “a particular person”. In that regard, it is worth noting that the Gibbs Committee made a similar recommendation back in 1991.

CHAPTER 5

Resource management

Overview

Management

There is a Resource Management Branch in each regional office, and a Resource Management Section in Head Office. Resource managers in all regional offices work under the overall direction of the Deputy Director, Corporate Management.

The national Resource Management Section is located in Head Office and has national responsibility for financial and human resource management for the DPP Australia wide. The Section is headed by two managers (a financial manager and a human resources manager). The Section provides high level policy and procedure guidance as well as payroll and financial services.

The Resource Management Branches in the regional offices are each headed by an Executive Officer who works under the supervision of the Deputy Director for that State.

Significant developments

Resource management within the DPP continues to undergo substantial changes and challenges with a continuing wide range of Government reforms.

The implementation of the new Public Service Act, enacted in December 1999, brought about many changes to the personnel environment. The main areas affected were recruitment and selection, personnel delegations, establishments and changes in terminology.

As noted earlier in this Report, in the course of the year the DPP revised its Guidelines on Official Conduct to reflect the APS Values and Code of Conduct contained in the Act. A Copy of the new document is set out at Appendix 2.

In the second half of the year the DPP negotiated a new Certified Agreement with staff which will run for the next two years.

Negotiations have now commenced with SES officers for new Australian Workplace Agreements. The Agreements should be settled and in place by the end of September 2000.

During the year the Director completed and issued a number of Instructions on various conditions under the current agreement and the new Public Service Act. To supplement the Instructions, the DPP issued a series of Explanatory Notes on all conditions of service and other entitlements to provide staff with user friendly documents which clearly explain their entitlements. Both the Director's Instructions and the Explanatory Notes have been added to the DPP Intranet to allow desk top access by all staff.

Other significant developments for the year include the work required to comply with the New Tax System and the GST and to implement devolved banking. In the IT area there was significant work involved with the introduction of a Litigation Support System, updating the PC standard image, a review of the IT Contingency and Recovery Plans and, in the first half of the year, Y2K compliance. The DPP is taking part in the Commonwealth's IT infrastructure outsourcing initiative. The outsourcing

exercise is at the planning stage and is being coordinated by the Office of Asset Sales and IT Outsourcing. The DPP has also commenced a project, which has turned out to be resource intensive, to upgrade the SAP R/3 system to Version 4.6B HRPS. The new system should be in full production by December 2000.

Finally, there was a fair amount of administrative work involved in converting the office facility in Cairns into a permanent DPP office.

Human resources

Staffing

As at 30 June 2000 the number of operational staff was 403 (410 at 30 June 1999). A breakdown of this figure appears in Tables 1 to 4 at the end of this Chapter. Average operational staffing for the year was 392.3 (401.87 for 1998–99).

Training and development

The DPP has implemented a Performance Management Scheme which focuses on skills development. Each non-SES employee is required to have a personal development plan in place, which is reviewed each year following a performance assessment. The development plan is designed to cover not only the skills required for an employee's current position but also skills required for career planning and personal development.

The plans are used to develop training programs and to ensure that each staff member is receiving their fair share of training.

As part of the new scheme, all staff were given the opportunity for training in giving and receiving feedback. This proved to be a very successful exercise. The majority of staff participated and the feedback suggests that most of those who participated gained a benefit from the training.

Over the course of the year, a lot of the training focussed on the technological skills needed to operate PCs and the DPP's internal information systems. However, the DPP also provided training in time management, balancing work and family demands, assertiveness, managing stress, writing skills and OH&S. The DPP also provided comprehensive in-house training to all employees whose work is affected by the introduction of the GST. A number of DPP offices use the in-house computer package Knowhow Solutions to allow employees to develop PC skills in their own time.

The DPP offices also conducted regular in-house legal training to keep legal skills current and to ensure that DPP lawyers comply with the continuing legal education requirements that apply to them. Brisbane Office also organised legal awareness sessions (delivered by legal staff) for non-lawyers in the office.

Direct expenditure on external training for the year was approximately \$155 284. In addition, considerable in-house and on the job training was conducted during the year. This is not costed.

Staff interchange

The DPP has an interchange program under which employees can be placed with local or overseas organisations if resources are available. There were no formal placements under the program in the past year. However, two staff members worked in other countries on a leave without pay basis. A number of staff also transferred, on either a temporary or permanent basis, to other DPP offices during the course of the year.

Occupational health and safety

All DPP offices have OH&S representatives. New representatives are selected and trained as the need arises. During the year, there were a number of staff trained in OH&S supervisor training, first aid and as fire wardens. It is a part of the DPP's induction process for all new staff to be instructed in correct OH&S procedures for

the office environment. Ongoing training and video presentations are used to refresh other staff.

There is an OH&S committee meeting in each DPP office on a regular basis. The first priority at such meetings is given to minimising potential problems, especially those that may result from the introduction of new technology. If there is a problem, the DPP's practice is to engage specialists with the skills needed to carry out inspections and to develop strategies to overcome the problem.

There is at least one formal workplace inspection in each DPP office during each year. No problems of major significance came to light during 1999–2000 although concerns were raised in Melbourne after there was an outbreak of legionella in Victoria. The air conditioning units in the Melbourne office have been checked on a regular basis since then. No problems have been found to date.

As highlighted in the last Annual Report, in 1998-99 the DPP Brisbane Office and COMCARE conducted a cooperative OH&S project. The project was completed in October 1999. This project started by looking at stress management but broadened into the development of a comprehensive injury prevention program for the Brisbane Office. COMCARE may produce a booklet based on the findings of the project and drawing on examples of the DPP's experience.

Equal employment opportunity

The new Public Service Act 1999 provides for a values-based APS. One of these values provides for a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves. Section 18 of the Act promotes employment equity and requires all agencies to establish a workplace diversity program to assist in giving effect to the APS values.

In February 1999 the Director launched the DPP's Workplace Diversity Plan. In his policy statement the Director described the key objective of the program as being to encourage all staff to model appropriate behaviours for the effective management of workplace diversity so as to create a positive work environment which values and utilises the contributions of people of different backgrounds, experiences, perspective and family responsibilities.

The aims of the Workplace Diversity Program are to:

- provide a work environment which fully recognises, develops and uses the knowledge and skills of employees in an equitable way;
- ensure that merit selection and equal employment opportunity form the basis for recruitment and selection;
- provide a working environment free from discrimination and harassment; and
- ensure that human resource planning is supported by flexible people management policies, which encourage the best possible balance between family and work responsibilities.

The Director has the overall responsibility for implementing the Workplace Diversity Plan. The Plan is funded locally in each office, but implementation is coordinated from Head Office by the Deputy Director, Corporate Management.

The DPP's EEO profile is shown in Table 4 at the end of this Chapter. The table is based on information volunteered by staff and staff can choose not to disclose their EEO status. Accordingly the information may not be complete.

The office employs one Aboriginal legal cadet in Melbourne and one in Brisbane. The employment levels for EEO target groups have varied since last year. The number of women employees has increased from 233 to 240. A total of 23 staff have identified a disability and 66 staff have identified themselves as having a non-English speaking background.

Performance management

As already noted the DPP has a Performance Management Scheme which focuses on skills development. The Scheme is also used as a basis for making decisions in relation to incremental advancement.

Workplace participation

There were a large number of staff meetings throughout the year, mainly as a result of the need to negotiate the new Certified Agreement. All staff were kept informed of developments in the negotiations and were able to attend and participate in staff meetings at various stages of the process. There were also staff meetings in a number of offices to discuss changes to accommodation or new fitouts. Workplace participation forms an integral element of the new Certified Agreement.

Financial management

General

The DPP uses the SAP R/3 Financial Management Information System and Fines and Costs debtors system to comply with the requirements of the Financial Management and Accountability Act 1997 and to meet applicable accounting standards.

The DPP prepared its first accrual based budget for 1999-2000 as part of the first Commonwealth-wide accrual budget. The DPP will implement arrangements for devolved banking from 1 July 2000.

Financial statements

Audited financial statements are included at the end of this Report. Total net accrual expenditure for 1999-2000 was \$56.230 million, against a budget of \$56.176 million (in 1998-98 net accrual expenditure was \$59.083 million).

Outcome/output structure

Under the current budget arrangements the DPP has one outcome with one output. Under the previous structure there were two sub-programs, Commonwealth Prosecutions (which included Commercial Prosecutions) and Criminal Assets, with Executive and Support Costs apportioned between these two sub programs. However, those arrangements have been changed.

For further information on the DPP budget see Attorney-General's Portfolio Budget Statements for 1998-99 and 1999-2000.

Accounting policy

The DPP's accounting policy is set out in a series of Director's (Chief Executive Officer's) Financial Instructions and related financial delegations. The instructions give effect to the DPP's obligations under the Financial Management and Accountability Act 1997 and comply with the requirements of that Act. The Financial Management and Accountability Act came into operation on 1 January 1998 and devolved the responsibility for financial management to the Chief Executive Officer of each Commonwealth agency.

The financial statements at the end of this Report were prepared in accordance with Schedule 2 of the FMA Orders made by the Minister for Finance.

For detailed information on the accounting policy used to prepare the audited financial statements refer to Note 2 of the financial statements.

Accounts processing

The DPP uses Australian government credit cards wherever it is practicable to do so. Electronic funds transfer is also used in some cases where suppliers have the capacity to accept this method of payment.

The DPP is reviewing its accounts processing practices to identify potential areas for improved efficiency. As part of the GST implementation, a letter was sent to all suppliers asking them to update payment details and to advise whether they can accept electronic funds transfer as a means of payment.

Asset management

During 1999-2000 the DPP prepared an asset replacement program based on the expected date of replacement of all capital items. The program will be updated annually. A stocktake of all assets was undertaken in the course of developing the program.

Purchasing

During 1999-2000 the DPP gazetted all purchases in excess of \$2 000. Not all purchases were notified within the required time-frame. However they were all notified as soon as possible thereafter.

Claims and losses

In 1999-2000 the DPP had no claims or losses which individually resulted in net costs to the Commonwealth of \$50 000 or more, other than for legal costs awarded to defendants.

The DPP also had no claims or losses which resulted in aggregate costs to the Commonwealth in the ranges \$10 000 to \$20 000 and \$20 000 to \$50 000, other than for legal costs awarded to defendants.

Capital works management

The DPP had no major capital works projects that cost \$6 million or more in 1999-2000. During 1999-2000 the DPP completed a major refit of the Brisbane Office, with a total budget of approximately \$1.7 million, and commenced a fitout of a new office in Adelaide, with a budget of approximately \$0.8 million.

Agency evaluations

As noted elsewhere in this Report, the DPP is in the process of reviewing the operation of each DPP office through the Best Practice Review Committee.

Other areas

Information technology

The DPP computer installation is made up of IBM-compatible personal computers, local and wide area networks and in-house applications running in a client-server environment. Windows 95 and Office 97 are the basic office administrative systems.

The DPP maintains the following in-house systems:

- Case Recording and Information Management System (CRIMS), which records details of prosecutions handled by the DPP;
- Criminal Assets Recording System (CARS), which records and tracks action by the Criminal Assets branches;
- Fines and Costs (FACS), which records and disperses fines and costs imposed by courts; and
- File Registry System (FILE), which keeps a record of administration files.

The DPP operates a SAP R/3 Resource Management Information System on Hewlett-Packard Unix minicomputers, using an Oracle database, for financial, payroll and human resource management. The Office also operates the FIRST library system utilising Windows NT and Oracle on file servers.

The DPP uses an Intranet system to facilitate the internal dissemination of information. Considerable work has gone into maintaining material on the Intranet.

For reasons of security, DPP officers do not have desktop access to the Internet or external E Mails systems. Access to the Internet and external E Mail is provided through stand alone computers.

In the first part of the year, priority was given to the review of systems for Y2K compliancy. The DPP also updated its IT contingency plans during the course of the year.

The Office has decided to adopt a Litigation Support System that was initially developed by the Australian Securities and Investments Commission as the standard litigation support system for use by the DPP. The system is known as LSS. There was considerable work during the year to implement the system. That work has not been completed.

Libraries

The DPP has a library in each office. The librarians assist the work of the office by providing high level research, reference and information services. Each library has a dual role in providing users in that office with an up-to-date legal collection of electronic and hard copy materials and as part of a cooperative network disseminating legal information to other DPP offices. The librarians use the DPP Intranet to give access to legal information through legal resource pages, in-house databases and legal publishers' electronic services.

The Head Office library has a national coordinating and management role. National services include DPP in-house databases, manuals, information service, cataloguing and the library management system. There are regular librarians' meetings which provide a venue for input from all offices into the development of library network policies and procedures.

Accommodation

In 1999-2000 the DPP spent approximately \$7.209 million on accommodation and occupied a total of 17 074 square metres (\$7.3 million and 16 805 square metres in 1998-99). The increase in space resulted from the DPP taking additional space in Hobart to provide office accommodation for the Director. The decrease in cost was the result of renegotiating some leases.

During 1999-2000 the DPP negotiated new leases for the offices in Adelaide and Cairns.

Consultancy services

Details of expenditure for 1999-2000 are shown in Table 5 at the end of this chapter.

Fraud control and internal audit

In the course of the year the DPP prepared a revised Fraud Control Plan which updated the existing Fraud Risk Assessment and Fraud Control Plan. The new plan was approved by the Law Enforcement Coordination Division of the Attorney-General's Department.

There was an internal audit of administration in all offices in the course of the year. No issue of major concern came to light but the auditors were able to make a number of suggestions for improvement in the management of the financial systems.

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

External scrutiny

The DPP was referred to in one report by the Auditor-General in 1999-2000. That was Audit Report No. 21 of 1999-2000 entitled *Audits of the Financial Statements of Commonwealth Entities for the Period Ended 30 June 1999*. The comments made in that report in respect of the DPP were that the audit report on the financial statements was unqualified and the result of the audit of the accounts and records was satisfactory.

The DPP was not referred to in any report by the Ombudsman and there were no adverse findings against the management practices of the DPP by a court or tribunal.

Public relations

All media inquiries are handled by a media contact officer in Head Office who can be contacted on (02)62065606 during office hours. The DPP will provide accurate information on any matter which is on the public record but will not disclose information on cases that are yet to come before the courts.

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

The DPP did not undertake any advertising campaigns or market research in 1999-2000.

Status of women

The DPP does not have a women's unit. The responsibility for ensuring that proper attention is paid to the status of women rests directly with the Director, supported by the Deputy Directors.

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

Environmental matters and energy management

Wherever possible, the DPP uses energy saving methods in its operations and endeavours to make the best use of resources. The DPP uses technology to minimise energy use, including automatic switch-off devices on electrical equipment. All waste paper is recycled and the DPP gives preference to environmentally sound products when purchasing office supplies.

Business regulation

The DPP has no role in business regulation other than to prosecute criminal offences in appropriate cases. The DPP's activities in Commercial Prosecutions are reported earlier in this Report.

Public comment

Any person is free to write to the DPP, at the addresses shown at the front of this Report, on any matter which concerns them.

Privacy

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

Resource management tables

Table 1(a): Staff as at 30 June 2000

Classification	ACT	NSW	VIC	QLD	SA	WA	TAS	NT	TOTAL
Director	1								1
SES Band 3	2								2
SES Band 2	2	1	1	1		1			6
SES Band 1	4	8	6	6	1	2			27
PLO	7	23	19	8	7	7	2	1	74
SLO	3	13	14	8	4	6	1	1	50
LO 2		20	5		1		1	2	29
LO 1		2		4			1		7
Exec 2	7	2	3	1	1				14
Exec 1	5	4	3	1	1	1			15
APS 6	3	3	1	3	1	2			13
APS 5	7	2	4	2					15
APS 4	6	18	10	12	3	6		1	56
APS 3	3	16	10	3	2	9	4	3	50
APS 2		13	17	5	4				39
APS 1		3					1		4
ABCAD				1					1
Totals	50	128	93	55	25	34	10	8	403

Legend:

SES	Senior Executive Service
PLO	Principal Legal Officer
SLO	Senior Legal Officer
LO	Legal Officer
Exec	Executive Officer
APS	Australian Public Service Officer
ABCAD	Aboriginal Cadet – Legal

Table 1(b): Staffing summary 1999–2000

Statutory Office Holders	1
Total staff employed under the P S Act	384
Total staff employed under the DPP Act	18
Total	403

The total number of temporary staff included in this table is 22.

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

Category	Full Time		Part Time	
	Male	Female	Male	Female
Director	1			
Senior Executives -				
Band 3	2			
Band 2	5	1		
Band 1	17	10		
Legal Officers	70	71	1	18
Executive Officers	17	10		2
APS 1 – 6	48	113	2	14
Aboriginal Cadets		1		
Total: 403	160	206	3	34

Table 3: Staff usage by Office

Office	Actual Average Staffing 1999–2000
ACT	49.9
NSW	122.5
VIC	95.1
QLD	52.3
SA	21.8
WA	36.8
TAS	7.1
NT	6.8
Total	392.3

Table 4: EEO Profile as at 30 June 2000

Classification	Male	Female	ATSI	PWD	First Language English plus Another	First Language other than English
Director	1					
SES Band 3	2					
SES Band 2	5	1				1
SES Band 1	17	10		1		1
Legal Officers	71	89	1	7	14	7
Executive Officers	17	12			4	2
APS Employees	50	127		15	20	17
Aboriginal Cadet		1				
Total 403	163	240	1	23	38	28

All of the above tables do not include 29 inoperative staff.

Table 5: Consultancies for 1999-2000

Consultant	Purpose	Cost	Period	Reason used
Head Office				
Norman Disney & Young*	Prepare security management plan	\$3 900	May-June 2000	Special expertise not available in office
Blake Dawson Waldron *	Advice on employment contracts	\$9 140	May-June 2000	Special expertise not available in office
Business Catalyst International	Conduct internal audits	\$42 500	April-June 2000	Special expertise not available in office
Walter & Turnbull	Fraud risk assessment and control plan	\$12 525	Oct-Nov 1999	Special expertise not available in office
Brisbane				
Gutteridge Haskins*	Advice on physical building security	\$4 800	Sept-Dec	Special expertise not available in office
Park Road Group*	Occupational health survey	\$3 200	Oct-Nov 1999	Special expertise not available in office
Hassell Pty Ltd	Architectural services for office refurbishment	\$76 910	May-Dec 1999	Special expertise not available in office
Adelaide				
Hassell Pty Ltd	Architectural services for office refurbishment	\$82 000	May-Dec 1999	Special expertise not available in office

Consultancies marked * were not publicly advertised.

Table 6: Resources for outcome

	Budget for 1999-2000 (\$'000)	Actual Expenses (\$'000)	Budget for 2000-2001 (\$'000)
Administered appropriations	-	-	-
Total administered expenses	-	-	-
Price of Departmental appropriations			
Output 1.1	56,176	56,176	58,105
Total revenue from government (appropriations)	56,176	56,176	58,105
Contributing to price of departmental outputs			
Revenue from other sources			
Output 1.1	363	946	452
Total revenue from other sources	363	946	452
Total Price of departmental outputs (Total revenue from Government and from other sources)	56,539	57,122	58,557
Total estimated resourcing for outcome 1 (Total price of outputs and admin expenses)	56,539	57,122	58,557

Table 7: Average Staffing Level

	1999-2000	2000-2001 (Estimate)
Average Staffing Level (Number)	392	415

CHAPTER 6

Significant cases

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

General prosecutions

Grimshaw

In this matter the defendant was employed by a Commonwealth agency and was entitled to a government vehicle and a petrol card. When he left Commonwealth employment, the defendant bought the car and kept the petrol card. He used the petrol card in a holiday trip around Australia, running up a bill of \$871 which was paid by the Commonwealth. The defendant claimed that he always intended to pay back the money, although he did not do so until challenged about it. A magistrate found the defendant guilty on 39 counts of imposing on the Commonwealth under section 29B of the Crimes Act 1914, one count for each time he used the card. The defendant was convicted and released on a good behaviour bond.

The defendant appealed and the convictions were overturned by the ACT Supreme Court. The Court found, on the basis of previous authority, that in order to secure a conviction for an offence of imposition it is necessary to show that the Commonwealth was deceived or misled. There was no evidence of that in the present case. The Commonwealth paid the petrol bills because it was under a contractual duty to do so, not because it was operating under a mistake of fact.

The Supreme Court took a narrow view of section 29B of the Crimes Act and one which, if correct, has significant implications for the conduct of Commonwealth prosecutions. The DPP has appealed to the Full Court of the Federal Court to have the issue tested.

Katsuno

This case was reported last year. At that stage there was an appeal pending before the High Court.

The case involved the importation of heroin. The defendant was convicted and sentenced to 20 years imprisonment with a non-parole period of 14 years. The issue in the case was whether the Victoria Police had acted properly in giving the prosecution, but not the defence, details of people on the jury panel who had criminal convictions of a “non-disqualifying” nature, that is convictions which did not make the person ineligible for jury service. In doing so the Police acted in accordance with a long standing practice in Victoria.

The Victorian Court of Appeal found nothing wrong with the practice. However, the High Court disagreed. The High Court found the practice of giving details of the jury panel to the prosecution, or to anyone other than the Sheriff, was in breach of an implied prohibition in the Victorian Juries Act 1967. A majority of the Court went on to find, however, that this conduct did not render the defendant’s conviction a nullity or involve a miscarriage of justice that required that the conviction be set aside. The majority also held that, as the breach of the Juries Act occurred before the actual selection of the jury, the defendant was not denied his right under section 80 of the Constitution to be tried by a jury.

The case is reported as R v Katsuno (1999)109ACrimR66. The decision has required a change to the jury selection procedures in Victoria.

Nicholas

This case related to the importation of 8.4kg of heroin from Thailand in 1994. Australian police were aware of the planned importation as a result of information provided by the Thai police. When the drugs arrived in Australia, the AFP seized the drugs, replaced the bulk of the drugs with an inert substance and allowed the drugs to run. The AFP also placed a listening device in the bag containing the drugs, acting pursuant to a warrant under section 219B(5) of the Customs Act 1901.

On 24 September 1994 the AFP arrested the defendant and another person after stopping and searching their vehicle. The bag containing the sample drugs was in the boot of the vehicle. The case against the suspects was based on that fact and on incriminating conversations that had been picked up by the listening device. The defendant was charged with possession of the sample drugs and attempting to gain possession of the whole shipment. The co-offender died before the case came to trial.

The defendant was convicted by a jury on both charges. He was initially sentenced to 15 years imprisonment with a non-parole period of ten years. However, that was reduced on appeal to 12 years with a non-parole period of eight.

The defendant appealed against conviction on a number of grounds, but the main issue related to the listening device and whether the relevant warrant was valid. A warrant under section 219B(5) of the Customs Act can only authorise the use of a listening device in relation to "a particular person". There is also provision, in section 219B(7), for a warrant to authorise the use of a listening device in relation to particular premises. However, there is no provision which expressly allows a listening device to be placed inside a package.

In this case, the police did not know who was going to collect the controlled sample of drugs and were not able to name the person whose conversation they wished to monitor. The warrant authorised the monitoring of conversations involving the person who was expected to take delivery of the sample drugs. It was in a form commonly known as a "person X warrant". At trial, the judge found that the warrant was valid and rejected a challenge to the material obtained under the listening device.

On appeal, the Victorian Court of Criminal Appeal found that the warrant was invalid. The Court ruled that a warrant under section 219B(5) of the Customs Act must identify the person to whom it relates by name or other identifying features and not by reference to events which may or may not occur. However, the Court went on to find that there had been no miscarriage of justice in this case because the police had acted in good faith and on the basis of existing authority, and the trial judge would have acted properly, in the exercise of discretion, in allowing the LD material into evidence even if he had found that the warrant was invalid. The defendant has applied for special leave to appeal to the High Court in relation to that finding.

The ruling by the Victorian Court of Appeal has significant implications for the law enforcement process. It is relatively common for the authorities to detect incoming drugs at the Customs barrier. In such cases, the normal course is for police to let a sample of the drugs run, under controlled conditions, to try to identify people as high as possible in the criminal organisation. Until now, it has been a common procedure for police to place a listening device inside the package containing the drugs. The use of a listening device has the potential to provide clear and uncontroversial evidence to identify serious criminal offenders, and to also protect the interests of any innocent third party who may come into incidental contact with the package. That can no longer be done unless and until section 219B of the Customs Act is amended.

Noonan

This case involved a ruling by the Administrative Appeals Tribunal in relation to an application under the Freedom of Information Act 1982.

Noonan was a senior employee in the Bond Group of companies at the time of the transactions which led to charges being laid against Bond, Mitchell and Oates. Each of those defendants was charged with conspiring with each other, with Noonan and with diverse others to defraud Bell Resources Ltd. No charges were laid against Noonan.

In September 1998 Noonan made an application to the DPP under the FOI Act seeking access to witness statements and other prosecution documents held in relation to the proceedings against Bond, Mitchell and Oates, including documentation regarding the decision to include her name as a co-conspirator. The DPP declined to grant access to Noonan on the basis of exemptions under section 37(2)(a) and section 42 of the Act. On 21 June 2000 Deputy President McMahon of the Administrative Appeals Tribunal confirmed the decision of the DPP.

The Deputy President found that the documents attracted legal professional privilege and that privilege in the statements had not been waived simply because copies had been served on one or more defendants for the purpose of a preliminary hearing.

The Deputy President also found that release of the documents could prejudice the fair trial of a person since the criminal proceedings against Oates have not been completed and there was reason to believe the Noonan might approach some of the witnesses if she secured a copy of their statements.

Roberts

Roberts and his brother were charged with conspiring to import a trafficable quantity of ecstasy into Australia. It was alleged that the brothers, and their associates, imported two quantities of ecstasy tablets, each involving thousands of tablets, and were planning a third importation. The conspiracy ran for about two years and was well organised. The drugs were imported from the UK inside specially constructed suitcases which were purchased in Amsterdam. The suitcases had a concealed rack in the base and the rack was wrapped in plastic film and carbon paper to defeat x-ray examination. The drugs were paid for in amounts under \$10 000, to avoid scrutiny under the Financial Transaction Reports Act 1988.

Roberts eventually pleaded guilty to the charge against him. Debate then centred on whether, for the purpose of sentence, his moral culpability should be assessed against what is known about ecstasy now or against what was known at the time he committed the offences. It was argued that ecstasy was thought to be less harmful at the time of the offence than it is now known to be. That issue was considered by the WA Court of Criminal Appeal and the High Court.

The WA Court of Criminal Appeal ruled that it was appropriate for the sentencing judge to have regard to the current range of sentences being imposed for drug cases, particularly given the importance of general deterrence as a factor in the sentencing process. It was not relevant to consider what the range of sentences was when the offence was committed. The High Court agreed.

Roberts was sentenced to 15 years imprisonment with a non-parole period of eight years and money totalling \$360 000, found in a storage unit and at Roberts' residence, was forfeited to the Commonwealth.

Wong and Leung

These defendants were each charged with being knowingly concerned in importing not less than a commercial quantity of heroin. The case involved five crates which were air shipped from Bangkok to Adelaide in 1997. The crates contained marble pedestals within which was hidden a total of 13.4 kg of heroin. The shipment was intercepted by the AFP in Adelaide and the heroin replaced with a substituted

material. The crates were delivered to the nominated addressee in Adelaide and were later tracked by the AFP to Sydney.

The crates eventually passed into the custody of a person called Law. Law transferred the pedestals to garage premises at Cherrybrook in Sydney. On 8 November 1997 the defendants travelled to the garage and helped Law break up the marble pedestals and remove the substitute material. Wong, Leung and Law were arrested upon completion of the extraction process.

Wong and Leung pleaded not guilty but were found guilty by the jury. They were each initially sentenced to 12 years imprisonment with a non-parole period of seven years. On appeal, the NSW Court of Criminal Appeal increased the sentences to 14 years imprisonment with a non-parole period of nine years.

The Court of Criminal Appeal took the opportunity to formulate non-binding guidelines for sentences in drug importation cases. The Court, following its own approach in other recent guideline cases, specified a recommended range for persons at the low end of an importing organisation. The court stated that people higher in the organisation should receive a higher penalty. The decision of the Court of Criminal Appeal has been reported at Wong (1999)108ACrimR531.

Wong and Leung have applied for special leave to appeal to the High Court to argue that the NSW Court of Criminal Appeal does not have power to formulate sentencing guidelines in respect of federal offences.

Commercial prosecutions

Balos

Balos was charged with 45 offences against section 179 of the NSW Crimes Act 1900 and one offence against section 178BB of that Act. It was alleged that Balos, acting through agents, offered investors extremely attractive interest rates in return for loans to two entities that he described as "Commodities International" and "British Marine Bank", which were said to have offices in various world finance centres. Those entities were fictitious and Balos did not run an investment business. It was alleged that he used the money he raised for his own purposes, mainly for gambling.

Between February 1995 and September 1997 Balos raised approximately \$10.3 million from 296 investors. The amount of funds deposited by individuals ranged from \$5 000 to \$330 000. All of the investors lost their money, apart from a few who received "interest" payments in the early days of the scheme. Those payments were funded from money collected from later investors.

The case was investigated by ASIC and the prosecution was conducted by the DPP with agreement from the NSW DPP. Balos pleaded not guilty and it was necessary for the DPP to formally prove every part of its case. That was not an easy exercise given the length of time over which the offences were committed and the number of individual transactions that were involved. Over 5 000 banking documents were produced into evidence.

The prosecution also had to prove that Commodities International and British Marine Bank did not exist in any of the cities named on the relevant letterheads. That was done by means of evidence obtained under the Mutual Assistance in Criminal Matters Act 1987, which was tendered as evidence under the provisions of the Foreign Evidence Act 1994.

Balos was found guilty by a jury but is yet to be sentenced.

Bond

In 1997 Bond was convicted on two counts of failing to act honestly as a company officer with intent to defraud, contrary to section 229 of the Companies (WA) Code. The charges related to the misuse of \$1 billion belonging to the Bell Resources group

of companies. The Companies (WA) Code was the relevant law prior to the commencement of the national Corporations Law scheme, and is State legislation.

At first instance Bond was sentenced to a total of four years imprisonment. The DPP appealed against the sentence and, in August 1997, the WA Court of Criminal Appeal increased the sentence to an effective term of seven years.

In 1999 Bond filed an application for special leave to appeal to the High Court against the increased sentence. The application was filed the day after judgment was delivered by the High Court in the matter of Byrnes and Hopwood (reported last year). In that case the High Court found that the DPP had no power to appeal against a sentence imposed in respect of offences against the Companies (SA) Code. While the DPP had power to prosecute the relevant offences there was no express grant of power to appeal against an inadequate sentence.

The High Court granted special leave to Bond and the appeal was heard in February 2000. The DPP sought to distinguish Byrnes and Hopwood on the basis that the laws of WA, unlike those of SA, give a general power to "the prosecution" to appeal against an inadequate sentence. The DPP argued that there was nothing in the DPP Act, or any other law, to prevent the Commonwealth DPP from exercising that power in a case where the DPP prosecuted the relevant offences.

The High Court rejected that argument. The High Court ruled that the DPP could only exercise those State powers that Commonwealth law authorised. It was not enough that WA law was wide enough to give the DPP power to appeal against sentence. There needed to be something in Commonwealth law that authorised the DPP to exercise that power. The only relevant provision in Commonwealth law was section 17 of the DPP Act, which gave the DPP power to institute and carry on prosecutions for State offences where certain conditions were satisfied. The High Court held, consistently with the decision in Byrnes and Hopwood, that the power to prosecute given under this provision did not encompass a power to appeal against an inadequate sentence.

The High Court upheld Bond's appeal and restored the initial sentence of four years imprisonment.

The decision in this matter highlighted a limitation on the DPP's powers to prosecute offences against State Law. The situation was addressed by amendments to the DPP Act, made under the Jurisdiction of Courts Legislation Amendment Act 2000, which give the DPP power to appeal in cases involving State offences provided the laws of the relevant State give the DPP a power to appeal.

Hannes

Hannes, who was an Executive Director of Macquarie Corporate Finance Limited, was charged with one offence against section 1002G of the Corporations Law (insider trading) and two offences under section 31(1) of the Financial Transaction Reports Act 1988 (conducting transactions so as to avoid reporting requirements).

The charges related to the purchase of call options in TNT at a time when Macquarie Corporate Finance Ltd was acting for TNT in relation to a proposed takeover of TNT by a Dutch company. It was alleged that Hannes purchased a large number of TNT call options, using the name Mark Booth, before the takeover negotiations became public knowledge. When the takeover offer was announced, the value of the call options increased and Hannes made a profit of approximately \$2 million. The two structuring offences related to action allegedly taken by Hannes to avoid detection of his purchase of the call options.

Hannes pleaded not guilty but was convicted by a jury after a lengthy trial in the District Court of NSW. This was the first time a jury convicted a defendant of an insider trading offence under the current provisions of the Corporations Law. Hannes was sentenced to 26 months imprisonment with a minimum term of 18 months. He was also fined \$110 000.

Hannes has appealed against his conviction and the DPP has appealed against the sentence imposed. Both appeals remain to be heard.

Hughes

The defendant in this matter is currently awaiting trial in the District Court of WA on three counts under sections 1064(1) and 1311(1)(a) of the Corporations Law. The alleged offences relate to an investment scheme that involved raising money within Western Australia to be sent offshore to a securities house in the USA..

The defence brought a motion to quash the indictment on the basis that the Corporations Law of WA was beyond the legislative competence of the State Parliament and that the DPP lacked the necessary legislative authority to prosecute the offences. The motion was removed to the High Court. The Court unanimously upheld the validity of the Corporations Law of WA and held that the DPP had the power to prosecute the offences in the circumstances of this case (see The Queen v Hughes [2000] HCA 22).

On the first issue, the defence argued that by sections 29 and 31 of the Corporations (WA) Act the State had attempted to convert a State law into a Commonwealth law and that this was beyond the power of the State legislature. The Court rejected this argument holding that section 29 applied Commonwealth laws as laws of the State. There is nothing wrong in a State importing the wording of Commonwealth legislation into the laws of the State.

In relation to the power to prosecute, the Court held that in the context of a joint Commonwealth/State scheme a State law can confer a power upon a Commonwealth statutory body but that a Commonwealth law authorising that conferral is required before the power can be exercised. The Court also held that, if the Commonwealth law imposes a duty on the Commonwealth body to exercise the State power, the Commonwealth law must be supported by a head of Constitutional power.

The Court found that there was an applicable Commonwealth authorisation provision (a combination of sections 47 and 73 of the Corporations Act and regulation 3(1)(d) of the Corporations (Commonwealth Authorities and Officers) Regulations 1990). On the facts of this case, the authorisation provision was supported by section 51(i) of the Constitution, which is the power to make laws with respect to trade and commerce with other countries and section 51(xxix), which is the power to make laws with respect to external affairs. This was because the offences alleged against the defendant related to the making of investments in the USA.

The immediate result of the decision is that the trial of Hughes can proceed. However, the legal effect of the decision is that the DPP can only prosecute offences against a State Corporations Law where the conduct underlying the alleged offences relates to a subject matter over which the Commonwealth has legislative power.

Wilhelm

Wilhelm was convicted on 15 counts of obtaining property with intent to defraud, contrary to section 409(1)(a) of the Criminal Code (WA). It was alleged that on 15 occasions over an eight month period he obtained money from a real estate agent and a solicitor by falsely representing that he was an investment adviser who traded in shares and who was running a lucrative share trading scheme on the London and Sydney stock exchanges. The victims gave Wilhelm cheques totalling \$432 000 which he used for a variety of purposes, none of which included running an investment scheme. Among other things, Wilhelm bought a rural property in WA and purchased a ski lodge in New Zealand.

Wilhelm, who had a prior criminal record, was sentenced to a total of five years imprisonment.

Appendix 1

Statement under the Freedom of Information Act

Under section 8(1)(b) of the Freedom of Information Act 1982 the DPP is required to publish information on the following matters:

- (a) Particulars of the organisation and functions of the agency, indicating as far as practicable the decision-making powers and other powers affecting members of the public that are involved in those functions.

Information on this is contained throughout this Report, but particularly in Chapter 1.

- (b) Particulars of any arrangements that exist for bodies or persons outside the Commonwealth administration to participate, either through consultative procedures, the making of representations or otherwise, in the formulation of policy by the agency, or in the administration by the agency of any enactment or scheme.

People charged with Commonwealth offences, or who are the subject of criminal assets proceedings, may make representations to the Director either directly or through their legal representatives. Any matters raised will be taken into account when a decision is made whether to continue the prosecution or the criminal assets proceedings.

- (c) Categories of documents that are maintained in the possession of the agency, being a statement that sets out, as separate categories of documents, categories of such documents, if any, as are referred to in paragraph 12(1)(b) or (c) and categories of documents, if any, not being documents so referred to, as are customarily made available to the public, otherwise than under the Act, free of charge upon request.

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

- DPP Annual Report; and
- *The Prosecution Policy of the Commonwealth : Guidelines for the making of decisions in the prosecution process.*

- (d) Particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain physical access to the documents of the agency.

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

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

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

Appendix 2

Guidelines on Official Conduct for Staff of the DPP

1.1 The APS Values and Code of Conduct are an integral part of the DPP Guidelines on Official Conduct. These are set out in the following paragraphs.

1.2 APS Values

The Australian Public Service:

- Is apolitical, performing its functions in an impartial and professional manner;
- Is a public service in which employment decisions are based on merit;
- Provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian Community it serves;
- Has the highest ethical standards;
- Is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian Public;
- Is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
- Delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public;
- Has leadership of the highest quality;
- Establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace;
- Provides a fair, flexible, safe and rewarding workplace;
- Focuses on achieving results and managing performance;
- Promotes equity in employment;
- Provides a reasonable opportunity to all eligible members of the community to apply for APS employment;
- Is a career – based service to enhance the effectiveness and cohesion of Australia's democratic system of Government; and
- Provides a fair system of review of decisions taken in respect of APS employees.

1.3 Code of Conduct

The Code of Conduct for Australian Public Servants applies to all staff of the Office.

Based on that code, employees of the DPP must:

- Behave honestly and with integrity in the course of APS employment;
- Act with care and diligence in the course of APS employment;
- When acting in the course of APS employment, treat everyone with respect and courtesy, and without harassment;
- When acting in the course of APS employment, comply with all applicable Australian laws;
- Comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction;
- Maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff;
- Disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment;

- Use Commonwealth resources in a proper manner;
- Not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment;
- Not make improper use of:
 - inside information, or
 - the employee's duties, status, power or authority,
 In order to gain, or seek to gain, a benefit or advantage for the employee or for any other person;
- At all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS;
- While on duty overseas, at all times behave in a way that upholds the good reputation of Australia; and
- Except in the course of his or her duties as an APS employee or with the Agency Head's express authority, not give or disclose, directly or indirectly, any information about public business or anything of which the employee has official knowledge.

1.4 In addition employees of the DPP must:

- Have regard to any official guidelines or recommendations that relate to the performance of their duties;
- As a Commonwealth officer, provide assistance to members of the public to enable them to understand their entitlements and obligations;
- Disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their employment with the DPP. This means employees must:
 - Avoid situations in which private interests, whether pecuniary or otherwise, conflict or might reasonably be thought to conflict with a public duty. If an employee possesses, directly or indirectly, an interest which conflicts or might reasonably be thought to conflict with a public duty, or improperly influences their conduct in the discharge of their responsibilities, they must disclose that interest to their Deputy Director. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the further information must also be disclosed to their Deputy Director;
 - Disclose any interests involving immediate family members, to the extent that they are known by the employee which might possibly be perceived to conflict with a public duty, to their Deputy Director;
 If an employee possesses an interest which conflicts with the duties of the Office they should divest themselves of the interest, be removed from the duties in question, or obtain the authorisation of their Deputy Director to continue to discharge the duties; and
- Comply with any other lawful conduct requirement that is prescribed by the Director.

1.5 Employees of the DPP must not:

- Solicit or accept from any person any remuneration or benefit for the discharge of the duties of their office, apart from their official remuneration;
- Other than in the context of minor and routine hospitality, solicit or accept any benefit, or advantage or promise of further advantage whether for themselves, their immediate family or any associated business concern or trust, from persons who are in, or seek to be in, any contractual or special relationship with government;
- Use information obtained in the course of official duties to gain directly or indirectly an advantage, pecuniary or otherwise, for anyone, including themselves;

- Accept any gift, hospitality or concessional travel, except for trivial or small gifts of a seasonal or customary nature, offered in connection with the discharge of the duties of their office. In any event every gift must be declared in accordance with the DPP policy on acceptance of gifts;
 - Allow the pursuit of private interest to interfere with the discharge of public duties; or
 - Harass or discriminate against any DPP employees or members of the public.
- 1.6** The code emphasises the importance of self-regulation. In this regard it is expected that no employee of the DPP will accept gifts, travel or hospitality which could give even the appearance of conflict of interest, past, present or future, or which could be interpreted as having been offered in return for favour or preferment.
- 1.7** Should employees earn frequent flyer points or other awards during official travel, or through accommodation while on official travel, these points or other awards shall only be used for further official travel or other official purposes, not for private purposes.
- 1.8** All employees are therefore expected to advise their Executive Officer or Deputy Director of any offers or suggestions of hospitality, gifts or travel made to them that could be seen to be contrary to the spirit of these guidelines.
- 1.9** In summary, ethical problems which may arise as a result of private financial or other interests must be avoided at all costs. Areas which may have the potential to bring an employee into conflict include:
- Non-disclosure of pecuniary interest; and
 - Outside employment, even after leaving the employment of this Office;

If employees engage in employment outside of official duties prior approval must be obtained from the Director. The approval should adhere to the following principles:

- It shall not affect efficiency or performance of official duties;
 - Be performed in the employee's own time; and
 - Not place employees in a conflict of interest situation or potential for such;
 - Acceptance of fees;
 - Holding of outside offices;
 - Improper use of information for personal advantage;
 - Acceptance of gifts or sponsored travel;
 - Acceptance of business appointments;
 - Use of official facilities for unauthorised purposes.
- 1.10** If in doubt, an employee should advise their Executive Officer or Deputy Director of any fact that may have the potential to lead to a conflict of interest in the conduct of their duties.

Reporting of suspected improper or fraudulent activity

- 1.11** Employees should report any activity that they believe is improper or fraudulent to their Executive Officer, Branch Head or Deputy Director. If the matter is of such gravity that it cannot be handled within their Office it should be referred to a member of the Audit Committee for consideration.

1.12 The members of the DPP Audit Committee are the Principal Advisor, Commercial Prosecutions (Chair), Head Office, First Deputy Director, Head Office and Deputy Director, Corporate Management, Head Office.

Breach of the Code of Conduct

1.13 Employees who breach the APS Code of Conduct or the DPP Guidelines on Official Conduct may face disciplinary action as prescribed by the DPP Certified Agreement and the Director's Instruction relating to Managing Misconduct.

Glossary

AFP	Australian Federal Police
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CSB Act	Crimes (Superannuation Benefits) Act 1989
DPP	Director of Public Prosecutions
DWR&SB	Department of Workplace Relations and Small Business
EEO	Equal Employment Opportunity
FMA Act	Financial Management and Accountability Act 1997
FTR Act	Financial Transaction Reports Act 1988
ITSA	Insolvency and Trustee Service Australia
LSS	Litigation Support System
MA	Mutual Assistance
MCCOC	Model Criminal Code Officers Committee
NCA	National Crime Authority
OH&S	Occupational Health and Safety
PoC Act	Proceeds of Crime Act 1987
PPO	Pecuniary Penalty Order
SES	Senior Executive Service

**OFFICE OF THE COMMONWEALTH DIRECTOR
OF PUBLIC PROSECUTIONS INDEPENDENT
AUDIT REPORT**

Can be found in the Printed version.

FINANCIAL STATEMENTS
Are available as a separate PDF document

