



# DPP

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Commonwealth Director  
of Public Prosecutions

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Annual Report 2006 - 2007

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# DPP

## Commonwealth Director of Public Prosecutions

12 October 2007

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 2007, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully

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

DAMIAN BUGG AM QC  
Director of Public Prosecutions

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# Contents

<b>Compliance statement</b>		<b>IX</b>
<b>Director's overview</b>		<b>XI</b>
<b>Chapter 1</b>	<b>Office of the DPP</b>	<b>1</b>
	Senior management chart	
	Outcome and output chart 2005-2006	
<b>Chapter 2</b>	<b>General Prosecutions</b>	<b>11</b>
	Significant Cases	
<b>Chapter 3</b>	<b>Commercial Prosecutions</b>	<b>51</b>
	Significant Cases	
<b>Chapter 4</b>	<b>Statistics and Performance Indicators for General and Commercial Prosecutions</b>	<b>61</b>
<b>Chapter 5</b>	<b>Criminal Confiscation</b>	<b>75</b>
	Significant Cases	
<b>Chapter 6</b>	<b>International</b>	<b>91</b>
<b>Chapter 7</b>	<b>Law Reform</b>	<b>99</b>
<b>Chapter 8</b>	<b>Practice Management</b>	<b>103</b>
<b>Chapter 9</b>	<b>Resource Management</b>	<b>113</b>
<b>Appendix 1</b>	<b>Statement under the Freedom of Information Act</b>	<b>135</b>
<b>Appendix 2</b>	<b>Commonwealth DPP Corporate Plan</b>	<b>137</b>
<b>Acronyms and Abbreviations</b>		<b>140</b>
<b>Financial statements</b>		<b>141</b>
<b>Compliance index</b>		<b>199</b>



## 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, in this report referred to as 'Acronyms and Abbreviations' and an alphabetical index.

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

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

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

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



## Director's Overview

The past year has, once again, been a challenging one for the Office.

The DPP is responsible for the prosecution of crimes against the laws of the Commonwealth and the recovery of the proceeds of that crime. The DPP is independent of the political process, and I am proud to say that it continues to deliver a high quality prosecution service to the Australian people.



The decisions made by myself and my officers in the prosecution of Commonwealth crime are made in accordance with the *Prosecution Policy of the Commonwealth*. This document underpins the work of the DPP and is applied with respect to decisions made at every stage of the prosecution process – from the nature and number of charges to be pursued, to whether or not the DPP should appeal against a sentence imposed in a particular case. The *Prosecution Policy* informs the practice of the DPP. Its application to each case is designed to ensure that the practice of the DPP is consistent and fair, and that the DPP continues to perform its role in the criminal justice system effectively.

The DPP is not an investigative agency. Rather, the DPP considers matters which are referred to it by the 40 or so agencies or departments which have an investigative or regulatory function. In considering whether to prosecute any one of those referrals, the *Prosecution Policy of the Commonwealth* is applied. The *Prosecution Policy* contains a two step test which must be met before prosecution action can be pursued. First, there must be sufficient evidence provided to the DPP by the investigative agency to justify the conclusion that there is a reasonable prospect of obtaining a conviction. If that first limb of the test is met, then the matter will be prosecuted unless it is not in the public interest to do so. Public interest factors, which are set out in the *Prosecution Policy*, are numerous, but it is fair to say that if the matter involves an allegation of serious wrongdoing, it is unlikely that the DPP will decide that the matter should not be prosecuted in the public interest.

I noted in last year's Report that the work of the Office has significantly expanded over the last several years. This expansion of the work of the DPP has resulted in the Office prosecuting significant numbers of matters which could be described as serious wrongdoing. These matters include people trafficking (sexual servitude and slavery offences), child sex tourism and the online sexual exploitation of children, serious drug offences, serious tax offences and money-laundering offences, and prosecutions arising out of the collapse of HIH.

The prosecution of terrorism offences under Part 5.3 of the *Criminal Code* continues to raise challenging issues for the Office. The broader jurisdictional cover of Part 5.3 will continue to demand attention to our understanding of, and cooperation with, other jurisdictions and their law enforcement agencies. The DPP takes these matters very seriously and continues to work with investigative agencies to ensure effective and fair prosecution outcomes.

The DPP is in a unique position within the criminal justice system in Australia. Matters prosecuted by the DPP must be conducted in the eight different State and Territory jurisdictions around the country. Those jurisdictions have differing procedural requirements, and by and large the judicial officers who are called on to adjudicate Commonwealth matters are experts in State or Territory law rather than in the Commonwealth jurisdiction. This is rarely mentioned when the work of the Office is considered. The challenge confronting the Office in dealing, on a day to day basis, with matters being prosecuted across the jurisdictions of the country, involves not only presenting evidence, but may also require assisting courts in the interpretation and consideration of unfamiliar provisions and concepts in Commonwealth legislation. This complexity is an integral part of prosecuting Commonwealth crimes and I would like to acknowledge the significant task that Judges and Magistrates across the country face when dealing with Commonwealth matters.

I noted in last year's Report that I am proud of the professionalism and commitment of the staff of the Office. Due to the expanding nature and complexity of the work of the DPP, the Office has commenced a national recruitment campaign. The exercise has been undertaken nationally in an attempt to overcome a challenge of recent experience for the Office. We are finding, as are other federal agencies, that the economic and resource based activities in some States have created inconsistencies in the supply of appropriately qualified people from within regions. The response to the campaign has been very positive and I am confident that our recruitment of new staff on a national basis will meet the needs of the Office for the foreseeable future.

The service which the Office delivers is assisted by the positive working relationships which the Office enjoys with the many Commonwealth agencies and departments which brief prosecutions to the Commonwealth DPP. These working relationships are maintained and enhanced by regular liaison and workshops which provide assistance with understanding and application of new legislation and procedures. I am grateful for the hard work which my officers and those of the agencies have put in to this process of enhancement. Good working relationships are not achieved at just one level and I am also pleased to say that this year the Chief Executive Officers of the law enforcement agencies

of the Commonwealth have continued to work closely with one another and the Office in maintaining the effectiveness of those working relationships.

In addition, I am pleased to say that during the course of the year, the DPP has been in a position to make a meaningful contribution to the promotion of justice in the Pacific Region. The Office is the only national prosecuting office in Australia, and it has been rewarding for the Office to have been involved in activities which enhance the effectiveness of the Office nationally and internationally. During the year, the Office co-hosted, with the New South Wales Director of Public Prosecutions, a Pacific regional forum of senior prosecuting officers where eleven national jurisdictions and four Australian State and Territory jurisdictions were represented. The attendance of the international delegates was facilitated by AusAID, and I am pleased to report that the meeting, which I am sure will be the first of many, was very successful and will assist in establishing closer working relationships in the Region.

The Office strives for best practice in a number of ways, and is consistently engaged with other large offices of prosecution from around the world. In April, the Office initiated, hosted and chaired a conference for the managing officers and chief executives of the national prosecuting offices of England, Ireland, Scotland, New Zealand, Canada and Australia and the three large prosecuting offices from New South Wales, Victoria and Queensland. The Office greatly values the opportunity to contribute to advances in best practice for service delivery, training and management within the modern prosecuting offices around the world.

I am pleased to once again acknowledge the hard work of the staff of my Office. Their professionalism and commitment to the provision of a national prosecution service is to be commended. Every working day of the year many important and non-reviewable decisions are made in my Office, many of them pass without public notice or comment. I have said on another occasion that I call for a very high standard in the way in which these decisions are considered and made, and I am confident that the high standard I seek is achieved.

As this is my last Annual report it is appropriate that I not only acknowledge the contribution of all the staff in the Office during my term as Director, but that I also acknowledge individually the contributions of particular staff who have assisted me and played a significant role in the work of the Office during those years. I realise that by taking this step I cannot possibly mention individually all the committed and hard working people in the Office, and I preface these comments with that general acknowledgement.

John Thornton, my First Deputy Director, Stela Walker, Deputy Director Corporate Management, Graeme Davidson Deputy Director Commercial

International and Counter Terrorism and James Carter Acting Deputy Director Legal and Practice Management have all made significant individual contributions to the work of the Office in my term as Director and they make up the senior management team of the Office as I write this Overview. I have previously acknowledged other members of that team who have, over my term, retired from Office. This group together with the Deputies who are mentioned in the Senior Management Chart in this Report, provide the support and leadership from which the Office benefits in meeting its day to day tasks. They have also provided me with direct assistance and guidance on the many technical and complex issues which, on a day to day basis, require my attention. The Commonwealth is fortunate that people of such ability and dedication have chosen careers with the Office and have so committed themselves to the Office. I would also like to acknowledge the loyal support and assistance I have received over the last eight years from Kathy Medved (Canberra Office) and Leesa Glidden, my Personal Assistant (Hobart Office).

To all the staff of the Office I thank you for your hard work and dedication and I feel pleased to be able to reassure the next Director, Chris Craigie SC, that he will be supported in his term as Director by a very competent and professional team. Finally, a very big vote of thanks to Katie Firster for her work in compiling and presenting the last three Annual Reports.

The Commonwealth's criminal justice system relies on, amongst other things, the independence of the DPP. In order to maintain that independence, the DPP must have the support of the Government of the day. In my time as Director, I have received consistent support from the Government. I would like to thank the Attorney-General, The Honourable Philip Ruddock MP and the Minister for Justice and Customs, Senator the Honourable David Johnston, for their commitment to the DPP and the work of the Office.

I am pleased to present the Annual Report for 2006-2007.

A handwritten signature in black ink, appearing to read 'Damian Bugg', written in a cursive style.

Damian Bugg AM QC  
Commonwealth Director of Public Prosecutions

## CHAPTER 1

# Office of the DPP

### Establishment

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

The current Director of Public Prosecutions is Damian Bugg AM QC who has held the position since 2 August 1999. His term will expire on 12 October 2007. On 22 August 2007, the Attorney-General announced the appointment of Chris Craigie SC as the Commonwealth Director of Public Prosecutions. Mr Craigie will take up his appointment as Director on 13 October 2007.

The DPP is an independent prosecuting agency. The Commonwealth Attorney-General has power under section 8 of the DPP Act to issue directions and guidelines to the Director. However, any guidelines must be issued in writing and must be tabled in Parliament, and there must be prior consultation between the Attorney-General and the Director. There were no directions or guidelines issued under section 8 in 2006-2007.

### Role

The role of the DPP is to prosecute offences against Commonwealth law, and to confiscate the proceeds of Commonwealth crime. The DPP also conducts prosecutions for offences against the laws of Jervis Bay and Australia's external territories, other than Norfolk Island.

The DPP does not generally prosecute street crime. That type of offence is normally covered by the criminal laws of the States and, except in Jervis Bay and Australia's external territories, those offences are prosecuted by State and Territory DPPs.

The main cases prosecuted by the DPP involve drug importation and money laundering, offences against the corporations legislation, fraud on the Commonwealth (including tax fraud, medifraud and social security fraud), people smuggling, people trafficking (including sexual servitude and sexual slavery), terrorism, and a range of regulatory offences. The remaining area of the DPP's practice covers a wide range of matters which cannot be easily

categorised. The DPP's prosecution practice is as wide as the reach of Commonwealth criminal law.

Most Commonwealth prosecutions are conducted by the DPP. However, there are a few areas where Commonwealth agencies conduct summary prosecutions for straight-forward regulatory offences by arrangement with the DPP. In 2006-2007, the Australian Taxation Office (ATO) conducted 3,757 prosecutions in which offences were found proved against 3,403 people. The Australian Securities and Investments Commission (ASIC) took action against 512 company directors for 1,028 breaches. The Australian Electoral Commission prosecutes some electoral offences. There are also some cases where a State or Territory agency conducts a Commonwealth prosecution, usually for reasons of convenience.

The DPP is not an investigative agency. It can only prosecute, or take confiscation action, when there has been an investigation by an investigative agency such as the Australian Federal Police (AFP) or the Australian Crime Commission (ACC). However, the DPP regularly provides legal advice to investigators at the investigative stage.

A large number of Commonwealth agencies have an investigating role and the DPP receives briefs of evidence from, and provides legal advice to, a wide range of agencies. In 2006-2007, the DPP received referrals from over thirty Commonwealth agencies as well as a number of State and Territory agencies.

### **Social Justice and Equity**

The DPP advances the interests of social justice and equity by working with other agencies to enforce the criminal law for the benefit of the community. Ultimately, the DPP's place in the criminal justice system relies on the community's trust in the way that the DPP conducts its work. The DPP recognises that it is critical that it acts ethically and fairly.

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

## **DPP Corporate Plan**

In 2007, the DPP extended the operation of the 2003-2004 Corporate Plan. The Corporate Plan appears at Appendix 2 of this Report.

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

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

It is intended to conduct a detailed review of the Plan after the results of the client survey, which was conducted during the course of the year, are analysed. There is a summary of the results of the survey in Chapter 8 of this Report.

## **Prosecution Policy**

All decisions made in the prosecution process are regulated by guidelines set out in the *Prosecution Policy of the Commonwealth*. That document has been tabled in Parliament and is available from any of the DPP offices listed at the front of this Report or at the DPP's website at [www.cdpp.gov.au](http://www.cdpp.gov.au).

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 a reasonable prospect of conviction); and
- it must be evident from the facts of the case, and all the surrounding circumstances, that the prosecution would be in the public interest.

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

The DPP takes a similar approach in deciding whether to take action to confiscate the proceeds of crime. There must be sufficient material to support confiscation action and it must be clear that it would be in the public interest to take such action.

## **Functions and Powers**

The DPP was created by statute and has the functions and powers given to the Director by legislation. Those functions and powers are found in sections 6 and 9 of the DPP Act and in specific legislation including the *Proceeds of Crime Act 2002*.

As noted above, the main functions of the Director are to prosecute offences against Commonwealth law and to confiscate the proceeds of Commonwealth crime. The Director also has a number of miscellaneous functions including:

- to prosecute indictable offences against State law where the Director holds an authority to do so under the laws of that State;
- to conduct committal proceedings and summary prosecutions for offences against State law where a Commonwealth officer is the informant;
- to provide legal advice to Commonwealth investigators;
- to appear in proceedings under the *Extradition Act 1988* and the *Mutual Assistance in Criminal Matters Act 1987*; and
- to apply for superannuation forfeiture orders under Commonwealth law.

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

The DPP does not conduct proceedings under Part XIV of the *Customs Act 1901*, which are called prosecutions, but which are enforced by a quasi-criminal process. The responsibility for prosecuting those matters rests with the Australian Government Solicitor. However, the DPP prosecutes all criminal matters arising under the *Customs Act 1901*, including offences of importing and exporting ‘tier 1’ and ‘tier 2’ goods. After 6 December 2005, importing and exporting narcotic goods are prosecuted pursuant to Part 9.1 of the *Criminal Code* rather than the *Customs Act 1901*.

## Summary Prosecutions, Committals and Trials

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

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

In this Report, a reference to a committal proceeding is a reference to a preliminary hearing before a Magistrate to determine whether in a case which involves a serious offence there is sufficient evidence for the matter to proceed to trial before a judge and jury. A reference to a trial is a reference to a defended hearing before a judge and jury.

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

In this Report, where there is no reference made to an Act of Parliament, the Act is a Commonwealth Act. The *Criminal Code* is the Commonwealth *Criminal Code*.

## Corporate Governance and Organisation

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

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

The larger offices (Sydney, Melbourne and Brisbane) each have a Senior Management Committee which meets on a regular basis to assist the Deputy Director in charge of that office. There is a less formal structure within the other offices, which reflects the size of those offices. There is a twice annual meeting of the Director and the Deputy Directors to discuss policy and management issues. There are also regular meetings of an executive management group comprising senior officers from Head Office and a number of the Regional Offices.

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

### **Outcomes and Outputs**

An outcome and output chart for 2006-2007 appears at the end of this Chapter.

**Senior Management Chart**

(As at 30 June 2007)

<p><b>Director Damian Bugg AM QC</b></p> <p>First Deputy Director B3 (John Thornton)</p>	<b>Head Office</b>	Dep Dir B2 Legal and Practice Management (James Carter) Dep Dir B2 Corporate Management (Stela Walker) Dep Dir B2 CICT Branch (Graeme Davidson)	SES B1 Crim Assets (Marcus Hassall) SES B1 Policy (Jaala Hinchcliffe) SES B1 Legal and Practice Management Branch (Mark de Crespigny) SES B1 Wickenby (Berdj Tchakerian) SES B1 CICT Branch (Bruce Taggart) Assistant Director ACT Prosecutions (Jon White)
	<b>Sydney Office</b>	Deputy Director B2 (Jim Jolliffe)	SES B1 Asst Deputy Director (Paul Shaw) SES B1 Prosecutions (Penny Musgrave) SES B1 Prosecutions (Chris Murphy) SES B1 Prosecutions (Michael Allnutt) SES B1 Tax and Economic Crime (Elizabeth Ryan) SES B1 Criminal Assets (Angela Alexandrou) SES B1 Commercial Pros (Vacant) SES B1 CT Unit (David Stevens)
	<b>Melbourne Office</b>	Deputy Director B2 (Mark Pedley)	SES B1 Prosecutions (Lisa West) SES B1 Prosecutions (Vicky Argitis) SES B1 Tax Branch (Andrea Pavleka) SES B1 Crim Assets (Carolyn Davy) SES B1 Commercial Pros (Shane Kirne) SES B1 CT Unit (Scott Bruckard)
	<b>Brisbane Office</b>	Deputy Director B2 (David Adsett)	SES B1 Prosecutions (Shane Hunter) SES B1 Crim Assets (Sylvia Grono) SES B1 Commercial Pros (Catherine Ryan) SES B1 Tax Branch (Clive Porritt) SES B1 Townsville (Gary Davey) Principal Legal Officer Cairns (Andrew Lloyd)
	<b>Perth Office</b>	Deputy Director B2 (Ros Fogliani)	SES B1 Pros and Criminal Assets (Darren Renton) SES B1 Commercial Pros (Martyn Plummer)

<b>Adelaide Office</b>	Deputy Director B1 (Freda Propsting)
<b>Hobart Office</b>	Assistant Director (Ian Arendt)
<b>Darwin Office</b>	Assistant Director (Paul Usher)

### Outcome and Output Chart 2006-2007

<b>DIRECTOR OF PUBLIC PROSECUTIONS</b>	
<b>Director: Damian Bugg AM QC</b>	
Total price of outputs	\$94.945 million
Departmental outcome appropriation	\$93.297 million

<b>Outcome : To contribute to the safety and well-being of the people of Australia and to help protect the resources of the Commonwealth through the maintenance of law and order and by combating crime.</b>	
Total price	\$94.945 million
Departmental output appropriation	\$93.297 million

<b>Output 1.1</b>	
<b>An independent service to prosecute alleged offences against the criminal law of the Commonwealth, in appropriate matters, in a manner which is fair and just and to ensure that offenders, where appropriate, are deprived of the proceeds and benefits of criminal activity.</b>	
Total price	\$94.945 million
Appropriation	\$93.297 million



## CHAPTER 2

# General Prosecutions

### Overview

The DPP is responsible for the conduct of prosecutions for offences against the laws of the Commonwealth. The DPP has a long-standing practice in the prosecution of the importation of illicit substances, frauds on the Commonwealth (including tax and social security frauds) and corporate fraud. The DPP has prosecuted these matters, as well as a range of other matters from fisheries offences to immigration offences, since its establishment. These matters have long formed the backbone of prosecuting Commonwealth offending.

However, as has been noted in previous Reports, Commonwealth law has significantly expanded in the last decade to include a range of offences not previously known to Commonwealth law. The DPP is now prosecuting a range of other offences including counter-terrorism offences, people trafficking offences, child sex tourism and online child sexual exploitation offences.

The statistics that appear in Chapter 4 of this Report include statistics for general prosecutions.

### Types of Matters

A number of investigative agencies and departments refer matters to the DPP. For the most part, these investigative agencies and departments are Commonwealth entities. The DPP has productive working relationships with referring agencies and departments. Agencies such as the AFP, the ACC, Centrelink, the Australian Customs Service (ACS) and the ATO refer large numbers of matters to the DPP every year. In addition, the DPP also receives matters from a range of other Commonwealth entities such as Australia Post, Medicare Australia, the Civil Aviation Safety Authority, the Australian Maritime Safety Authority, the Department of the Environment and Heritage and the Department of Immigration and Citizenship.

### Types of Work

Commonwealth offending can often involve very large and complex briefs of evidence which may take significant time and expertise to consider. In this way,

prosecuting is not limited to litigation itself. Rather, prosecuting includes a range of other work such as preparing cases for hearing, providing legal advice to investigators, drafting charges and settling applications for warrants. For many years, the DPP has delivered high quality legal advice on very complex matters, for example, in the area of tax fraud and corporate fraud.

The DPP endeavours to provide investigating agencies with the assistance that the agency requires to investigate offences and gather evidence to support prosecution action efficiently. The DPP maintains close working relationships with these client agencies, and further information about these relationships is given at Chapter 8 of this Report.

## **Legal Framework**

Commonwealth offences are generally prosecuted in the Courts of the various States and Territories. Because of this, prosecution action is conducted within a legal framework which combines two jurisdictions, and this adds a layer of complexity to the prosecution of Commonwealth offences. Specifically, the substantive Commonwealth law is uniform Australia wide, but the practice and procedure which applies to the prosecution of an offence varies across the States and Territories.

This means that there can be significant differences in prosecutions between the jurisdictions, including for example, differences in the rules of evidence, differences in the practical conduct of the matter (including matters such as how a committal process might be conducted), as well as differences in the available sentencing options. Understanding these differences, and the way they affect the dynamics of prosecuting in the different Australian jurisdictions, is an important feature of prosecuting offences against Commonwealth law. The DPP has built up considerable expertise in dealing with these issues.

## **Developments in Case Work**

### **Centrelink**

Centrelink refers the largest number of briefs to the DPP of any agency. It is important that Centrelink and the DPP work closely together to develop best practice national standards for briefs of evidence and systems statements. In 2006-2007, the DPP and Centrelink conducted research into matters where the DPP had made a decision that a brief from Centrelink contained insufficient evidence to prosecute. The reasons underlying the decisions not to prosecute were examined. This research will assist Centrelink in its investigation planning.

In May 2007, the DPP held its annual prosecutors' conference on Centrelink prosecutions. Prosecutors from all DPP Regional Offices and Head Office attended the conference. A range of issues were discussed including those arising from the introduction of new technology in Centrelink. Continued discussion of these issues promotes national consistency in dealing with prosecutions across Australia.

### **Tax Prosecutions**

Prosecutions of frauds committed on the Australian taxation system remain an important part of the DPP's work. People convicted of serious tax fraud are regularly sentenced to significant terms of imprisonment. Detailed later in this Chapter are summaries of some of the prosecutions for tax fraud completed during the financial year. Those cases include the prosecution of Kenneth O'Meara for a fraud on the Goods and Services Tax system who was sentenced to eight years imprisonment with a non-parole period of five years and four months. The cases also include the prosecution of Mark Norman and Robert Norman who, while running an accounting and tax agent business, committed fraud relating to income tax returns. They were sentenced to nine years and nine months imprisonment with a non-parole period of five years and nine months, and seven years imprisonment with a non-parole period of four years and two months respectively.

As part of the working arrangements between the ATO and the DPP, the ATO 'In House' Prosecution Section prosecutes minor regulatory tax offences. The arrangements provide that, should any of the prosecutions being conducted by the ATO In House Prosecutions Section be contested, the DPP will take over and complete the prosecution. Should the result of a prosecution that had been

undertaken by the ATO In House Prosecution Section be the subject of an appeal, the DPP has responsibility for the conduct of the appeal proceedings.

A summary of the DPP's involvement in Project Wickenby follows below. In addition to its involvement in Project Wickenby, the DPP expects to continue to pursue a significant number of taxation prosecutions arising from other tax minimisation schemes, and fraud relating to income tax and the Goods and Services Tax.

### **Project Wickenby**

In February 2006, the Australian government committed significant and specific funding for a project to combat international tax evasion which has an impact on the Australian tax system. Project Wickenby is a joint project designed to enhance the strategies and capabilities of Australian and international agencies to collectively detect, deter and deal with international tax avoidance and evasion. It is also designed to improve community confidence in Australian regulatory systems, particularly confidence that the Australian government addresses serious non-compliance with tax laws, and reform of administrative practice, policy and legislation.

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

The DPP has continued its participation in regular meetings of the Project Wickenby Cross Agency Advisory Committee, a committee which was established in order to oversee the project and advise the Commissioner of Taxation on a range of matters. The DPP plays a valuable advisory role in providing information about prosecutions and criminal asset recovery, both in a general sense and in relation to specific matters arising out of Project Wickenby. The DPP also participates in many of the other governance processes which have been established around Project Wickenby.

On 6 July 2007, Glenn Dawson Wheatley pleaded guilty in the Melbourne County Court to three charges, including defrauding the Commonwealth contrary to section 29D of the *Crimes Act 1914* and dishonestly obtaining a gain from the Commonwealth contrary to section 135.1(1) of the *Criminal Code* in relation to offences which resulted in the ATO being defrauded of \$318,092. This was the first matter under Project Wickenby to result in a conviction. On

19 July 2007, Wheatley was sentenced in the Victorian County Court to an effective term of 30 months imprisonment to be released after serving 15 months. An appeal against severity of sentence to the Victorian Court of Appeal has been lodged and is currently outstanding.

The DPP is currently prosecuting four other people arising out of investigations conducted as part of Project Wickenby. These matters are currently at the committal stage in various jurisdictions.

In addition, the DPP is taking criminal asset recovery action in two Queensland matters. In these cases, the DPP has taken action to restrain assets with an estimated net value in excess of \$10 million. Applications for pecuniary penalty orders have been filed, although these have been stayed by the District Court of Queensland pending the finalisation of the criminal proceedings.

It is anticipated that significant numbers of prosecution and criminal asset recovery matters arising out of Project Wickenby will be referred to the DPP on an ongoing basis. The matters are likely to be complex, involve voluminous material and raise difficult legal issues. The conduct of these matters will require specialist legal expertise in both a prosecution and proceeds of crime context.

### **Money Laundering Prosecutions**

Division 400 of the *Criminal Code* contains a range of money laundering offences which are broad in their application. Offences in sections 400.3 to 400.8 are based on a person dealing with money or property which is proceeds of crime or will be (or is at risk of becoming) an instrument of crime. Section 400.9 is based on a person receiving, possessing, concealing, disposing, importing or exporting money or other property which it is reasonable to suspect is proceeds of crime of a Commonwealth, foreign, State or Territory indictable offence. These offences commenced in 2003 and replaced money laundering offences in the *Proceeds of Crime Act 1987*. These offences were introduced in response to Australia's international treaty obligations.

The DPP has experienced a growth in referrals of matters containing allegations of money laundering offences, particularly in the past twelve months. The majority of these referrals have come from the AFP. There has been a subsequent growth in money laundering prosecutions and convictions as a result.

Money laundering prosecutions are typically complex prosecutions. As the offences in Division 400 of the *Criminal Code* are relatively new, there is only limited judicial consideration of the issues that can arise in these cases. The

factual circumstances of these cases are usually complex and often include conduct overseas, which requires overseas cooperation and evidence to assist the investigation and prosecution. The DPP held a money laundering conference this year for prosecutors involved in money laundering prosecutions to discuss issues and to share things learnt from recent prosecutions.

The New South Wales Court of Criminal Appeal has provided recent guidance on sentencing principles in money laundering prosecutions under Division 400 of the *Criminal Code* in the successful prosecution appeals against sentence in the matters of *R v Huang, R v Siu* [2007] NSWCCA 259 and *A. Ansari v R, H. Ansari v R* [2007] NSWCCA 204. In both of these matters, the Court of Criminal Appeal allowed the DPP's appeal against sentence and increased the sentence imposed on the defendants.

### **Online Child Sex Exploitation Offences**

Offences involving the online sexual exploitation of children have become a significant aspect of the DPP's practice. On 1 March 2005, offences criminalising the online exploitation of children were inserted into the *Criminal Code*. The provisions are designed to prohibit two main areas of activity: the use of the Internet (or other telecommunications service) in relation to child pornography or child abuse material, and using the Internet (or other telecommunications service) to 'groom' or 'procure' children for sexual activity.

These prosecutions are important. The child pornography and child abuse matters often involve very significant numbers of images and videos which depict the serious sexual exploitation of children. Most of the images and videos depict children, rather than, for example, a cartoon or a computer generated image. Some of these children might be identifiable or known to the defendant, and some of the children may never be identified. The possession and dissemination of this material perpetuates the sexual exploitation of children. In addition, the grooming and procuring offences often involve children who can be identified as the victims of the offending behaviour.

Prosecuting these matters raise issues for the DPP. Child pornography and child abuse material is difficult to deal with as it is disturbing and often involves very large amounts of offending material. Dealing with and presenting this evidence to courts poses a challenge for prosecutors, defence and courts. Like child sex tourism matters, grooming and procuring offences often involve dealing with the issues associated with taking evidence from children.

## **People Trafficking – Sexual Servitude and Slavery**

The DPP continues to conduct prosecutions in the area of people trafficking under Division 270 of the *Criminal Code*. That Division is broadly designed to capture behaviour which includes the trafficking of people into Australia to work in environments of forced labour. It criminalises slavery, sexual servitude and deceptive recruiting.

In the DPP's experience, most of the cases have involved the trafficking of women from South East Asia to work in the sex industry. The conditions in which those women are forced to work are alleged to be criminal, and in general terms, the women are forced to live and work in places and conditions where they are not able to leave or choose to discontinue the work.

The summary in last year's Report noted that as at 30 June 2006, the DPP was prosecuting five matters under this Division, all of which involved more than one defendant. As at 30 June 2007, the DPP was prosecuting 12 defendants, and there were another three defendants who were appealing their convictions.

These matters are not straightforward prosecutions to conduct, and they raise difficult conceptual issues in the interpretation of the law, the presentation of appropriate evidence, and the treatment of victim witnesses. All of the prosecutions have raised cultural and linguistic difficulties with the witnesses, and all of the prosecutions have been lengthy and complex.

## **Fisheries Prosecutions**

A significant part of the practice of the DPP is the conduct of fisheries prosecutions arising from referrals from the Australian Fisheries Management Authority (AFMA). The prosecutions relate to illegal foreign fishers in Australia's northern waters, the prosecution of foreign fishers in Australia's southern fishing zones, and the prosecution for breaches of the *Fisheries Management Act 1991* by domestic fishermen.

The DPP's Darwin Office has worked closely with AFMA, the ACS and the Royal Australian Navy in prosecuting matters arising from Australia's efforts to curb illegal fishing in Australia's northern waters. During the period 1 July 2006 to 30 June 2007, 405 foreign fishermen were prosecuted for illegal fishing in Australia's northern waters. Some of the prosecutions have involved charges arising from violent actions taken by illegal foreign fishers seeking to resist apprehension. Those prosecutions have, on a number of occasions, resulted in sentences of imprisonment.

Detailed later in this Chapter is the prosecution of Alfonso Amoedo and Enrique Dominguez. Both these defendants were successfully prosecuted for offences arising from the illegal taking of an estimated 3.8 tonnes of Patagonian Toothfish by the trawler the *Taruman* in the Australian Fishing Zone surrounding Macquarie Island.

AFMA refers a number of matters each year to the DPP relating to offences committed by domestic commercial fishers. The prosecution of Delmark Holdings Pty Ltd, relating to the breach by that company of its fishing permit by the over catching of gummy shark, resulted in a fine of \$165,000 and a forfeiture order in the sum of \$151,904, being the proceeds of the illegally taken fish.

### **Counter-Terrorism Prosecutions**

Part 5.3 of the *Criminal Code* contains offences proscribing terrorist activity. These provisions were first enacted by the *Security Legislation Amendment (Terrorism) Act 2002* in July 2002. There have been a number of legislative amendments to the Part in response to issues that have arisen in the operation of these provisions. The DPP continues to provide comments to the Attorney-General's Department on law reform proposals which may affect terrorism offences or the way in which they are prosecuted.

Legislation has also been enacted to govern the procedures employed during terrorism prosecutions. One important piece of legislation is the *National Security Information (Criminal and Civil Proceedings) Act 2004* (NSI Act). This Act is directed to ensuring the traditional requirements of a fair trial for the defendant apply and to also protect sensitive information which may affect national security and law enforcement interests. The NSI Act only applies to criminal prosecutions if the DPP gives notice that it is to apply. The Act currently applies to six proceedings, involving 26 defendants.

Terrorism offences are often factually complex and the related prosecutions may involve large quantities of evidence. The nature of the allegations and their potential consequences are also very serious. Additionally, terrorism prosecutions are often subject to numerous interlocutory appeals and challenges. Accordingly, the DPP has designated specialist counter-terrorism prosecutors in each regional office and has established Counter-Terrorism Branches in the Sydney and Melbourne offices.

The AFP is responsible for the investigation and charging of persons suspected to have committed Commonwealth terrorism offences. Following the provision of the AFP's briefs of evidence, the DPP evaluates whether the *Prosecution Policy of the Commonwealth* is satisfied and conducts any prosecution. The AFP

and the DPP maintain a positive relationship and the DPP provides legal advice to the AFP during their investigations. In this process, the DPP is reliant upon the content, form and timing of the information provided by the AFP.

There are currently 27 people charged with terrorism offences in Australia. Of these, 24 are in custody and three have been granted bail pending their trial. Another person is a convicted and sentenced prisoner awaiting the hearing of an appeal against his conviction and sentence.

There are also another four people charged with non-terrorism offences but which because of the nature of the weapons or explosives concerned are sufficiently serious for the cases to be handled by counter terrorism prosecutors. These people are currently in custody.

There are two current terrorism prosecutions involving 13 and nine accused persons respectively. The joint trials of these two groups of defendants are expected to commence in early 2008 in Sydney and Melbourne and are expected to run between nine to 12 months each. These prosecutions will consume a significant quantity of the DPP's resources.

## Significant Cases

The cases summarised in this Chapter are some of the general prosecutions dealt with by the DPP in the past year. The cases are important either because the facts and circumstances alleged by the prosecution are significant, or because they demonstrate a point of legal relevance. The cases have also been selected to show the range of offences prosecuted by the DPP.

### **Alfonso Dacruz Amoedo and Enrique Soto Dominguez**

In about June 2005, the foreign fishing vessel known as the *Taruman* was observed by New Zealand authorities fishing within the Australian Fishing Zone surrounding Macquarie Island. On 6 September 2005, the *Taruman* was intercepted on the high seas by Australian authorities, and found to have a total of 143.8 tonnes of Patagonian Toothfish on board, of which it was estimated that 3.8 tonnes had been caught in the Australian Fishing Zone.

The *Taruman* was a commercial trawler approximately 76 metres in length that had been converted to conduct pelagic long line fishing. The vessel itself was a large scale commercial fishing boat used to fish for Patagonian Toothfish. The

vessel could be described as a floating 'fish factory' and located on board was equipment for processing and storing substantial quantities of fish.

A jury returned verdicts of guilty against each defendant for two offences. The first was an offence against section 100A(2)(a) of the *Fisheries Management Act 1991* of intentionally using the *Taruman*, having been reckless that the boat was a foreign boat and was used for commercial fishing in the Australian Fishing Zone. Each defendant was also found guilty of an offence against 101A(1) of the *Fisheries Management Act 1991* of intentionally having had the *Taruman* in his charge, when the *Taruman* was a foreign boat equipped with equipment for fishing and at a place in the Australian Fishing Zone.

On 26 September 2006, the defendants were sentenced in the District Court of New South Wales. Alfonso Amoedo, who was the fishing master on the *Taruman*, was sentenced to fines of \$65,000. Enrique Dominguez, who was the captain of the *Taruman*, was sentenced to fines of \$53,000.

The *Taruman*, including all catch and equipment, was seized by officers of the Australian Fisheries Management Authority and subsequently forfeited to the Commonwealth of Australia.

### **Quoc Kinh Truong Du, The Vinh Khanh Lam, Phuoc Thua Ly, Paul Trieu Thanh Tuan Nguyen, and Minh Tan Pham**

In August 2005, a consignment said to contain rattan baskets, artificial flowers and gypsum statues arrived in Sydney from Vietnam. An x-ray examination of the container at the Customs Examination Facility at Port Botany revealed anomalies in the goods within the container. Officers of the Australian Customs Service accessed the container and performed a field narcotics test on one of the gypsum statues which returned a positive result for ephedrine. Subsequent examination and analysis revealed that 766 of the gypsum statues within the consignment contained pseudoephedrine.

In total it was estimated that the statues contained between 309.7 to 388.8 kilograms of pseudoephedrine. There was the potential to convert the pseudoephedrine to between 85.68 kilograms and 107.57 kilograms of methylamphetamine hydrochloride. This drug is commonly called 'ice'. The participants in the venture each played a different role in relation to the importation and readying of the pseudoephedrine for distribution into the community.

The defendants were charged with various drug offences under Commonwealth and State law. The matters were heard in the District Court of New South Wales.

Quoc Du and The Lam entered pleas of guilty to the charges. On 25 May 2007, Du was sentenced to two years imprisonment, to be released forthwith. On 18 December 2006, Lam was sentenced to an effective sentence of 12 years imprisonment with a non-parole period of eight years.

Phoc Ly and Minh Pham were found guilty by a jury at the conclusion of an eight day trial. On 25 May 2007, Ly was sentenced to 12 years imprisonment with a non-parole period of nine years. On the same day, Pham was sentenced to imprisonment for 10 years with a non-parole period of seven years and six months. Pham has lodged a notice of intention to appeal against his conviction and sentence.

Paul Nguyen was acquitted by a jury at the conclusion of a trial that ran for seven days.

### **Abdul Azees Mohamed Ansari and Hajamaideen Mohamed Ansari**

The case involved the largest money laundering trial conducted by the DPP to date.

The case was complex in that the Crown case relied upon two separate but factually inter-related set of circumstances – the facts of the first conspiracy being retrospectively revealed by the assistance of the co-conspirator, ‘Z’.

In the first conspiracy, the defendants dealt with over A\$2 million in cash which was delivered to them over 10 days in October 2003 by Z, an Israeli national. In his evidence, Z testified how he was recruited in Romania, travelled to Australia to access cash and deliver it to the defendants on several trips to their money exchange business in Sydney. Z left Sydney on 13 October 2003. Within two days the defendants arranged for their associate to attend at their business repeatedly over a period of months. The defendants directed the associate to deposit large sums of cash into various bank accounts in sums under \$10,000. A total of \$1,952,107 in bank deposits was made by the associate on behalf of the defendants. The bank deposits were made in a way which was designed to avoid the attention of law enforcement authorities.

In the second conspiracy (22 March 2004 to 29 July 2004), the defendants had telephone conversations between October 2003 and June 2004 with their brother, Jaleel Ansari, who was then resident in France. The discussions show

Jaleel's contact with 'Usha', an otherwise unidentified woman based in Europe who the Crown alleged was a co-conspirator and European drug syndicate member. In January 2004 a series of e-mails between Azees and 'Usha' were recorded which show arrangements made for 'Usha' to meet with Jaleel. 'Usha' told Azees that she was 'sending somebody again in the future'. At about this time Z was again contacted by his Romanian associates and agreed to return to Australia to repeat what he did in October 2003. He did so, but was arrested before any money was delivered to the defendants.

Abdul Ansari and Hajamaideen Ansari were found guilty of the offences. The jury was unable to reach a verdict about Mohamed Jaleel Ansari, and the DPP has made a decision not to pursue the charges against him.

The defendants were sentenced on 10 November 2006 in the District Court of New South Wales. On each conspiracy the defendants were sentenced to four years imprisonment.

The DPP appealed against the sentences on the grounds that they were manifestly inadequate and the defendants appealed against their convictions. On 14 August 2007, the New South Wales Court of Criminal Appeal dismissed the defendants' appeals against conviction and allowed the DPP's appeal on the sentences. The Court of Appeal quashed the sentences given by the District Court and imposed sentences of seven years imprisonment for each conspiracy, partly accumulated, so as to result in an effective total head sentence of nine years imprisonment and a single non-parole period of five years and five months.

### **Ted Ball, Gavin Watson, Neil Vest and Martin Batchelor**

Ted Ball and Gavin Watson were the State Manager and Sales Manager of National 1 Pty Ltd, an Australia-wide stationery company, in the Australian Capital Territory. Ball and Watson provided corrupting benefits to Neil Vest and Martin Batchelor, who were Commonwealth public officials. Vest was the purchasing officer of AusAID and Batchelor was the purchasing officer of the Therapeutic Goods Administration.

The fraudulent scheme operated as follows: Vest and Batchelor would approach National 1 with items they wanted purchased, Ball would either personally purchase or arrange for the purchase of the items (usually via Watson) which were purchased using National 1 funds. National 1 then fraudulently billed back the cost to the Commonwealth agencies by invoicing goods that were never supplied and Vest and Batchelor approved payment of the invoices. Ball also used National 1 funds to buy items for his personal use and falsified National 1

accounting documents to say that the items were bought as stock. Watson agreed to give evidence for the prosecution and was granted an undertaking that he would not be prosecuted for his role in the offences under the DPP Act.

All defendants ultimately entered pleas of guilty to the charges. Batchelor and Vest were each sentenced in the Supreme Court of the Australian Capital Territory on 31 July 2007 to a total effective sentence of nine months imprisonment to be served by way of periodic detention. Batchelor and Vest also consented to the forfeiture under the *Proceeds of Crime Act 2002* of a number of items of property being the corrupting benefits they had received. Ball has yet to be sentenced and is contesting some facts in relation to the level of his involvement in the matter. Vest has subsequently lodged an appeal against the severity of his sentence, which is yet to be heard.

### **Joseph George Christiansz**

Joseph Christiansz was a registered tax agent with his own accounting firm, Dome Accounting. Between 15 February 2005 and 11 October 2005, he perpetrated a large scale fraud on the ATO by submitting false Business Activity Statements in relation to his own clients and the clients of other tax agents, resulting in refunds being issued by the ATO. The refunds were directed into bank accounts controlled by or associated with Christiansz.

Christiansz used the ATO Tax Agents' portal to change taxpayer information relating to his clients and also changed details relating to the clients of other tax agents by having their portal passwords reset, thereby enabling him to access the records of other tax agents. During this period, he unlawfully obtained \$1,398,906.63 in Goods and Services Tax refunds and unsuccessfully attempted to obtain a further \$9.8 million.

Of the \$1.3 million obtained, the AFP were successful in recovering cash in the sum of \$679,800 and a further \$365,582 was garnisheed by the ATO via some bank accounts, leaving an outstanding balance of \$353,524.63.

Christiansz was first charged with fraud offences on 9 June 2005. He absconded while he was on bail. He was arrested interstate on 12 October 2005 and was extradited to Victoria. He entered pleas of guilty, and on 1 February 2007 was sentenced to four and a half years imprisonment with a non-parole period of two years and 3 months imprisonment.

**Anton Claite, Rob Karam, Christopher Stephen Stavreff, Antonio Sergi, Mark Andrew Aisbett and Antonio Giampaolo**

This matter involved the largest importation of a commercial quantity of ecstasy in Australia to date.

On 12 April 2005, a cargo ship arrived in Melbourne from Italy carrying a container said to consist of eight pallets of ceramic tiles in cardboard boxes. These boxes were stacked around the outer sides of the pallets and a Customs examination revealed a number of plastic bags containing pills within the centre of the stack. Around 670 plastic bags containing ecstasy pills were recovered from the container. The total gross weight of the ecstasy was 1,236 kilograms (approximately 5,051,000 tablets). The purity of the drug was approximately 40% and the total net weight of the drug was therefore 503.81 kilograms.

The AFP replaced the drugs with false tablets and conducted a controlled delivery of the container to factory premises in Victoria. AFP officers entered the factory and arrested Mark Aisbett and Antonio Giampaolo, who were unpacking the tiles and the false tablets. Aisbett and Giampaolo were charged with attempting to possess the drugs contrary to sections 11.1 of the *Criminal Code* and section 233B of the *Customs Act 1901*. Anton Claite, Rob Karam, Christopher Stavreff and Antonio Sergi were later arrested and charged with conspiring to import the drugs contrary to section 11.5 of the *Criminal Code* and 233B of the *Customs Act 1901*.

All accused pleaded not guilty to the charges. The trial for Aisbett and Giampaolo commenced on 11 April 2007 and concluded on 8 May 2007. The trial for the other four defendants commenced on 21 May 2007 and concluded on 10 July 2007.

On 8 May 2007, a jury returned guilty verdicts against Aisbett and Giampaolo. On 10 July 2007, a jury returned not guilty verdicts against the other four defendants.

On 24 August 2007, Aisbett and Giampaolo were each sentenced to a term of six years imprisonment, to serve four years of that term. Both have lodged appeals against their convictions.

**Glen Christopher Cook and Eskil Honore Gundersen**

Glen Cook and Eskil Gundersen were both charged in relation to the attempted possession of three kilograms of cocaine that was intercepted by officers of the Australian Customs Service. Cook was also charged with possession of

Gammabutyrolactone, which is a prohibited substance. The charges were a mix of offences against Commonwealth law and Queensland State law.

Cook was apprehended by officers of the AFP in possession of a parcel, which he believed contained cocaine. Cook told police that he had been asked by a person known as 'Pablo' (who was Gundersen) to pick up the parcel. He said 'Pablo' asked him to bring the package to his apartment building, and it would be moved in a few days time. At the request of the AFP, Cook called Gundersen and asked for directions about the parcel and ultimately arranged for Gundersen to pick up the parcel.

The defendants both entered pleas of guilty before the Supreme Court of Queensland, but contested the facts. Both Cook and Gundersen asserted that they had a proprietary interest in the parcel. Both claimed that they were merely involved in the delivery of the drugs internally in Australia.

The sentencing judge was not satisfied that Cook and Gundersen were involved in a proprietary interest in the package. Cook was sentenced on the basis that he knew what was in the package and organised for its collection and arranged for it to be passed onto Gundersen. Gundersen was sentenced on the basis that he, at the request of another and knowing the package contained something illicit, collected the package from Cook and held it at an address of his choosing in preparation for the package to be passed on.

The sentence was passed on 31 May 2007. Gundersen was sentenced to seven years imprisonment with a non parole period of two years and four months. Cook was sentenced to eight and a half years imprisonment, with a non parole period of two years and ten months. Cook was also sentenced to lesser concurrent sentences for the other charges.

### **Lan Delin**

The defendant was a Chinese national and master of a foreign fishing vessel, the *De Yuan Yu 02*, which was apprehended by Australian authorities on 22 March 2006, one nautical mile inside the Australian Fishing Zone. At the time of detection, the vessel had been seven nautical miles within the Zone. The vessel's fishing equipment and nets were not stored or secured but left in positions consistent with their normal use in the fishing process.

The defendant attempted to avoid apprehension by the Royal Australian Naval vessel *HMAS Ipswich* by erratically manoeuvring his vessel and remaining underway despite directions to stop.

The defendant was charged with one offence of being in charge of a boat equipped for fishing in the Australian Fishing Zone contrary to section 101A of the *Fisheries Management Act 1991* and one charge of resisting a public official contrary to section 149.1 of the *Criminal Code*.

The defendant pleaded not guilty and the matter was tried in the Northern Territory Supreme Court. On 12 September 2006, the defendant was found guilty and sentenced to a fine of \$70,000 for the fisheries offence and six months imprisonment for resisting a public official.

The matter was the first matter under the *Fisheries Management Act 1991* to proceed to trial in the Northern Territory. Since the trial of Delin there have been a further three trials under similar sections of the *Fisheries Management Act 1991* and the *Criminal Code* all of which have resulted in guilty verdicts.

### **Delmark Holdings Pty Ltd**

The penalty in this matter was the highest ever imposed by a Court for an offence under the *Fisheries Management Act 1991*. The defendant was charged with breaching a condition of its fishing permits under sections 95(1)(d) and 95(5) of the *Fisheries Management Act 1991*.

The defendant reached its 2004 quota of gummy shark on 3 February 2004. The Australian Fisheries Management Authority sent correspondence to the defendant which advised the defendant that it had reached its quota of gummy shark for the 2004 calendar year and stated that it must not fish any additional gummy shark for that period. The defendant continued to fish gummy shark. The defendant caught 18,561 kilograms of gummy shark above its quota for the 2004 calendar year. The proceeds of the sale of the gummy shark was alleged to be \$151,904.

The defendant entered a plea of guilty to the charges. On 16 March 2007 in the Magistrates Court of Victoria, Delmark Holdings Pty Ltd was sentenced to a fine of \$165,000. The sentencing Magistrate also ordered the defendant to make forfeiture to the Commonwealth of Australia in the sum of \$151,904, being the proceeds of the sale of the 18,561 kilograms of gummy shark.

### **Wayne Frederick Floyd**

On 8 November 2005, Wayne Floyd was transiting Sydney Kingsford Smith Airport *en route* to Bangkok, Thailand. Floyd was subjected to a search by officers of the ACS who detected an inconsistency around Floyd's groin area.

Upon further examination it was revealed that Floyd was concealing six eggs in a stocking secreted in his underwear. One egg was declared infertile. The five remaining eggs hatched. One hatchling died.

Two hatchlings were identified as Galahs (*Cacatua roseicapilla*), and two were identified as Gang Gang cockatoos (*Callocephalon fimbriatum*). These species are listed under Appendix II to the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* ('CITES'), meaning that although not threatened with extinction now, they might become so unless trade in them is strictly controlled and monitored. CITES Appendix II also includes some non-threatened species, in order to prevent threatened species from being traded under the guise of non-threatened species that are similar in appearance.

Floyd was charged with one offence of attempting to export a regulated native specimen contrary to section 303DD of the *Environment Protection and Biodiversity Conservation Act 1999* and section 11.1(1) of the *Criminal Code*. He was sentenced on 17 July 2006 in the Sydney District Court and was fined \$25,000. Wildlife faces a continuing and growing threat posed by illicit trade. The matter emphasises the success of the ACS in detecting illegal trafficking in native fauna. The significant amount of the fine demonstrates the seriousness with which courts are continuing to regard such conduct.

### **Ciamtao Gunawan**

The defendant was an Indonesian national and crewman onboard an iceboat, the '*KM Karya Mulya*,' which was apprehended by Australian authorities on 14 July 2006 thirteen nautical miles inside the Australian Fishing Zone.

The crew violently resisted the attempts of the Australian Naval vessel *HMAS Dubbo* to board the vessel on two occasions. Anti-boarding devices were in place namely two-metre long steel poles which protruded from the sides of the vessel and ropes which trailed from the stern.

Officers of the Royal Australian Navy were threatened with and sustained harm during the boarding. The defendant threw concrete filled water bottles, weighing up to two kilograms, at the boarding party, striking several members. The impact of the bottles was strong enough to crack the protective helmet being worn by one boarding officer. In addition to throwing projectiles, the defendant wielded two machetes in a threatening manner at boarding officers as they attempted to board the vessel from a rigid hulled inflatable boat. The defendant's violent and threatening behaviour caused boarding officers to draw their firearms in self defence.

The defendant was charged with using a boat for commercial fishing in the Australian Fishing Zone contrary to section 100(2) of the *Fisheries Management Act 1991*. He was also charged with several offences related to the harm and threatened harm he caused to the officers of the Australian Navy.

The defendant entered a plea of guilty in the Northern Territory Supreme Court. On 13 October 2006, the defendant was sentenced to a fine of \$15,000 for the fisheries offence and 18 months imprisonment for the threats and harm caused to the officers of the Australian Navy. Due to the seriousness of the offences, the sentencing judge declined to impose a recognizance release order and specified that the defendant was to serve the whole term of the sentence.

### **Carolyn Joy Hughes**

These charges arose out of a fraud against Centrelink. The defendant misrepresented her living circumstances by failing to inform Centrelink that she and her partner were living together as if they were married, and thereby obtaining payment of the Disability Support Pension at the maximum rate applicable to a single person. The charges covered the period between 25 July 1995 and 16 June 2003. Had the defendant truthfully declared her living circumstances, the amount of her payments should have been approximately \$80,000 less than she was paid.

It was the Crown case that the defendant was in a marriage-like relationship. The Crown did not pinpoint the time at which the marriage-like relationship commenced. However, the Crown did allege that a relationship of that type was in existence by the commencement of the charge period, namely 25 July 1995. On that date, the defendant and her partner purchased a house together as joint tenants. In addition to the evidence of the joint purchase of real estate, the Crown also brought evidence of intermingling of finances and of overseas trips taken together by the defendant and her partner.

The defendant pleaded not guilty and the trial went for seven days in the Queensland District Court. The Crown called fourteen witnesses and the defence called three witnesses, including the defendant and her partner, who both claimed to be just good friends.

On 30 January 2007, the defendant was found guilty of fraud type charges. On 15 June 2007, she was sentenced to a term of imprisonment of three years, to serve 14 months of that sentence. The Court made a further order that the defendant pay reparation to the Commonwealth in the amount of \$76,022.61.

### **Subramaniam Karuppiah**

The defendant was a Malaysian national who spoke English, Malay and Tamil. He took part in bringing two non-citizens, being two Sri Lankan citizens, into Australia by travelling with them from Malaysia, through Indonesia and on to Darwin International Airport in the Northern Territory. The offender determined the itinerary to be undertaken and provided the visas for entry into Australia to both non-citizens. The offender acted as an interpreter for the two non-citizens. The offender was in contact with the principal organisers throughout the journey from Malaysia to Australia.

The defendant was charged with two offences of people smuggling under section 233(1)(a) of the *Migration Act 1958*. He pleaded not guilty and was tried in the Supreme Court of the Northern Territory in Darwin. The trial ran from 30 April 2007 to 3 May 2007 and also on the morning of 8 May 2007.

The defendant was found guilty of the offences. He was convicted on both counts and sentenced on each count to two years and six months imprisonment to be served concurrently.

### **Allan Robert Kessing**

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

On 31 May 2005 two articles appeared in *The Australian* entitled ‘Airport staff “smuggling drugs” Secret Customs report exposes criminal links’ and ‘Security operation rife with criminals’. Contents from the two reports were quoted or paraphrased in the articles.

Allan Kessing was a member of the ABS team and undertook research for the first report. Kessing resigned from the ACS on 10 May 2005. Telecommunications service records established that Kessing had been in telephone contact with one of the journalists. When officers of the AFP executed search warrants on premises associated with Kessing, a copy of each of the

reports was located as well as a business card for one of the journalists and notes of contact details for the journalist and News Limited. Evidence was given at the trial from ACS officers who were members of the ABS Unit, and other ACS officers who had access to the two reports, that they did not disclose contents of the reports to the media.

Kessing was charged with one offence of disclosing information as a former Commonwealth officer contrary to section 70(2) of the *Crimes Act 1914*. He entered a plea of not guilty and was tried in the District Court of New South Wales. The trial commenced on 6 March 2007, and after 16 days the jury returned a guilty verdict.

On 22 June 2007, Kessing was sentenced to nine months imprisonment, to be released forthwith. Kessing has lodged a notice of intention to appeal against his conviction and sentence with the New South Wales Court of Criminal Appeal.

### **Logambal Kupusamy**

The defendant was a Malaysian national who took part in bringing three non-citizens, being three Sri Lankan citizens, into Australia by travelling with them from Malaysia, through Indonesia and on to Darwin International Airport in the Northern Territory. The defendant, who spoke Tamil and Malay, acted as an interpreter for the non-citizens and was responsible for plane tickets and accommodation.

The defendant was charged with offences of people smuggling contrary to section 233(1)(a) of the *Migration Act 1958*.

The defendant pleaded guilty to the charges on 18 May 2007. She was convicted and sentenced to an aggregate term of two years imprisonment to be released after serving three months of that term.

The DPP also took proceeds of crime action to forfeit certain currency found on the defendant when she entered the country. The money could be directly linked to the offending and on 18 May 2007, US\$1,260 and 549,000 Indonesian Rupiah was forfeited to the Commonwealth of Australia.

### **Danny Hon Yeong Kong**

Danny Kong was a qualified accountant employed by the ATO between 5 December 1988 and 8 September 2005. He electronically submitted eleven false Business Activity Statements (BAS) to the ATO. The forms claimed 'input

tax credits' in relation to Goods and Services Tax from the ATO. During the accounting period, Kong never conducted any business or incurred any expenditure that justified refund of any payments from the ATO. Kong fraudulently obtained \$38,155 as a result of submitting the false forms.

Between 18 July 2000 and 14 December 2004, Kong accessed ATO electronic records on his work computer some 756 times in regard to the taxation affairs of various entities and persons. Kong had no work related reason to access those records. In some instances in the course of defending family law proceedings commenced by his ex-wife, Kong accessed the ATO records of his ex-wife and her solicitor. On other occasions he accessed ATO records in order to monitor the progress of his fraudulent BAS forms through the tax office.

Kong was charged with obtaining a financial advantage by deception contrary to section 134.2(1) of the *Criminal Code* and unauthorised access to taxation records contrary to section 8XA of the *Taxation Administration Act 1953*. He pleaded guilty to the charges and was sentenced in the County Court of Victoria to an effective sentence of 20 months imprisonment with an order that he serve ten months. Kong appealed against the sentence. On 18 May 2007, the Court of Appeal confirmed the head sentence of 20 months and reduced the minimum term to be served to just under six months.

### **Andrew Lester Labanon and Mehdi Mohammadi**

Labanon was a sailor on a warship belonging to the military of the United States of America which visited Townsville, Queensland, for the purpose of allowing the sailors to have recreation leave. Mohammadi and another sailor formed a joint venture to have Labanon take a bag from the ship and deliver it to them in Townsville. The bag contained 7.314 kilograms of methylamphetamine the street value of which was between \$3.9 and \$10 million (depending on the way in which it was 'cut'). The Crown alleged Mohammadi had been an organiser but was not present when the drugs were provided. Labanon claimed to have had no knowledge of the drugs in the bag that he delivered.

Mohammadi and Labanon were both charged with an offence against section 233B(1)(a)(iii) of the *Customs Act 1901* of importing a prohibited import being not less than the commercial quantity of methylamphetamine.

Both men were convicted by a jury on 18 May 2006 after a trial lasting eight days.

Labanon was found guilty on the basis that he had recklessly imported the drugs and was sentenced to six years imprisonment with a non parole period of three years. The DPP appealed the sentence on the basis that it was manifestly inadequate. On 8 December 2006, the Queensland Court of Appeal allowed the Crown appeal and substituted a new sentence of eight years imprisonment, with a non-parole period of four years.

Mohammadi was originally sentenced to fourteen years imprisonment with a non-parole period of seven years. He appealed against conviction and sentence. On 8 December 2006, the Court of Appeal dismissed the appeal against conviction and refused leave to appeal against sentence.

### **John William Lake, Glenn James Geerlings and Jamie Alan Carstein**

The defendants conspired together to import a commercial quantity of cocaine into Australia from Papua New Guinea (PNG). For that purpose they enlisted the assistance of a number of residents of the Torres Strait Islands who claimed to be able to locate and obtain cocaine from PNG. A sum of \$60,000 was borrowed by John Lake for the purpose of effecting a purchase of what was expected to be five kilograms of cocaine. The cocaine was sought as the first instalment of what the defendants hoped would be an ongoing business.

Lake and Jamie Carstein travelled to Horn Island to meet with some of the islanders and advance the plans. They reported progress of developments to Glenn Geerlings in Cairns. Although large amounts of money were paid by Lake and Geerlings to the islanders to obtain the cocaine, the plan never came to fruition. The police investigation was unable to establish the existence of the cocaine in PNG.

The defendants were charged with conspiracy to import a commercial quantity of cocaine contrary to section 233B(1)(b) of the *Customs Act 1901* and section 11.5 of the *Criminal Code*. They pleaded not guilty and were tried in the Supreme Court of Queensland in Cairns.

The case involved a development of the law of conspiracy. The Court concluded that a requirement under section 11.5(2)(c) of the *Criminal Code* that the words 'the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement' meant that the jury must be unanimous as to the performance of a particular overt act to satisfy that requirement. The Court also considered the nature and extent of particularisation of overt acts required for a conspiracy charge.

All of the defendants were found guilty. Lake and Geerlings were each sentenced to seven years imprisonment and Carstein, who had a longer criminal history, was sentenced to eight years imprisonment with non-parole periods of half that. The defendants appealed to the Queensland Court of Appeal, and all of the appeals were dismissed.

Several other people who are alleged to have also been involved in these activities await trial.

### **William John Lebler, Rodger William Moloney and Raymond John Garchow**

On 13 November 2003, New Zealand arrest warrants were issued by the New Zealand District Court against William Lebler, Rodger Moloney and Raymond Garchow. The charges against each were multiple counts of indecency and sodomy against boys under 16 years old, some dating back to the 1950s. The defendants were teachers or clergy in the order of St. John of God who were working, during the time of the alleged offences, at a school for mildly intellectually handicapped or orphaned boys in Christchurch, New Zealand.

Proceedings to extradite the defendants were commenced in the New South Wales Local Court on 10 May 2004, and proceeded, part-heard, in July and December 2004. During the nine days of hearing, the defendants argued that it would be ‘unjust, oppressive or too severe a punishment’ to surrender the defendants to New Zealand. Voluminous evidence was tendered in support of the claimed injustice and oppression, including allegations of police impropriety, collusion between complainants, and contamination of evidence by clergy and social workers.

On 14 February 2005, the Magistrate ordered the surrender of Rodger Moloney and Raymond Garchow to New Zealand but released William Lebler on account of his age, health and reduced mental capacity.

Moloney and Garchow appealed against the order for surrender to the Federal Court where, on 21 April 2006, His Honour Justice Madgwick upheld their appeals. New Zealand appealed to a five judge bench of the Full Federal Court, and on 5 October 2006 the Full Court of the Federal Court unanimously decided that the trial judgement was incorrect and should be set aside. The Court said that the differences between Australian and New Zealand law did not warrant the conclusion that it would be unjust to return the defendants to New Zealand. This was so, it was held, because both jurisdictions were sensitive to the difficulties arising in cases of this sort which could be addressed in different ways, but that ultimately ‘the Courts in both countries are under a duty to ensure

a fair trial'. The Full Court allowed New Zealand's appeal and confirmed the Magistrate's order that the defendants be surrendered to New Zealand.

Special leave to appeal to the High Court of Australia was sought by Moloney and Garchow, but was refused on 16 October 2006. They were surrendered to New Zealand to face committal proceedings there in September 2007.

### **Frederick Arthur Martens**

Frederick Martens was an Australian citizen and pilot, aged 56 years of age at the time of the offences. He flew aircraft carrying passengers and cargo to and from Bensbach Wildlife Lodge in the Western Providence of Papua New Guinea. He had a business relationship with a traditional land owner of that area and had offered to arrange for the education in Australia of the land owner's daughter, who was aged 14 years. On the pretence of flying the girl from the remote village Morehead to Port Moresby to arrange for her travel documentation, Martens took her to a Port Moresby club and then back to his house in Port Moresby. He had sexual intercourse with her on a date between 10 September 2001 and 16 September 2001.

Martens was charged with having sexual intercourse with a person under the age of 16 years, while outside Australia in Papua New Guinea, contrary to section 50BA of the *Crimes Act 1914*.

Martens pleaded not guilty to the offence. After a fully contested committal, the matter was committed for trial to the Supreme Court of Queensland in Cairns. The trial commenced on 23 October 2007 and lasted five days. Martens was found guilty.

On 30 October 2006, the defendant was sentenced to five and a half years imprisonment, with a non-parole period of three years. The defendant appealed against his conviction and sentence, but on 20 April 2007 the Queensland Court of Appeal dismissed his appeal. The Court described the girl as 'an unsophisticated village girl still at primary school in a remote part of Papua New Guinea'. It noted that the maximum penalty was 17 years imprisonment and that the defendant had not cooperated with the administration of justice and had showed no remorse. The Court described the defendant's behaviour as 'exploitative, predatory and despicable' and noted that the offences had 'a very significant detrimental impact' on the girl.

## **Andrew Dean McIntosh**

The Crown case was that the defendant operated his own film production and editing company. During early 2005, the defendant approached two brothers (a ten year old and an eleven year old) whilst they were skateboarding at Manly beach in Sydney. He told them that he was going to make a movie. The Crown case was that over the next four months, the defendant got to know the boys and gained the family's trust. During this time, the defendant attended the family home regularly and brought expensive gifts including money that was used for school fees.

The pilot shoot for the movie was to take place in the April 2005 school holidays in Vanuatu. The Crown case was that before they went to Vanuatu, the defendant sprayed the boys with fake tan which he claimed was part of the preparation for the movie. He did this while the boys were naked and the Crown case was that he inappropriately photographed and touched one of the boys during this process.

Upon arrival in Vanuatu, both of the boys stayed with the defendant. Both boys said that they were touched inappropriately by the defendant while in the shower in Vanuatu. The defendant took photographs and film of the boys naked, which he said that he was going to give to their mother. Significant parts of the video and stills focussed on the genital area, however, the defendant disputed this was intentional and all filming was part of the pilot for the short film.

The defendant was charged with two offences of committing an act of indecency on a person under the age of sixteen years outside Australia. He was also charged with an offence of aggravated indecent assault contrary to section 61M(1) of the *Crimes Act 1900* (New South Wales) and one offence of possessing child pornography contrary to section 91H(3) of the same Act.

The defendant pleaded not guilty to the offences and his trial commenced on 13 February 2007. The Crown case ran for some four weeks. During the trial, the Crown sought to lead evidence of the defendant's previous conduct in relation to a boy in the 1980s. That conduct had resulted in the defendant being convicted of a number of child sexual assault charges. The Crown argued that the offences committed in the 1980s were committed in similar circumstances to these offences. However, the application for that evidence to be given as part of the trial was unsuccessful. The jury found the defendant not guilty on all counts on 20 March 2007.

### **Jason Dean Mercanti**

On 2 separate occasions in 2004, Mercanti, travelling under false names, carried large sums of cash by air from Perth to Sydney. He carried approximately \$70,000 on the first trip and approximately \$200,000 on the second trip. On both occasions, Mercanti was the subject of a covert surveillance operation by officers of the ACC. Police executed search warrants at Perth airport on luggage checked in by Mercanti thus discovering the presence of the cash. After each of the searches, the cash was returned to Mercanti's bag and the bag was returned to the luggage conveyor. Surveillance of Mercanti was continued upon his arrival in Sydney on both occasions.

On 17 June 2005, Mercanti was questioned at an ACC examination. He denied that he had ever taken more than \$500 in cash on any flight from Perth to Sydney. It is an offence under section 33(1) to give false evidence at an ACC examination and Mercanti was charged with this offence.

The defendant pleaded not guilty and the matter was tried in the District Court of Western Australia. The jury in the first trial was dismissed because media coverage during the trial made reference to comments made by the Shadow Attorney-General of Western Australia about Mercanti's brother being in the organised crime world. A second jury found Mercanti guilty of the offences.

On 4 July 2007, Mercanti was sentenced to 18 months imprisonment, to serve eight months of that sentence. The sentencing judge commented that a message must be sent to the public that if a person deliberately lies under oath to an ACC examination, that conduct will ordinarily attract a term of imprisonment.

### **Kenneth Ian O'Meara**

On 3 July 2001, the defendant lodged a BAS on behalf of a company called Wandsworth Holdings Pty Ltd with the ATO. The BAS sought a refund of Goods and Services Tax ('GST') in the amount of \$504,968 from the ATO. This claim was false because it was based on purchases which were never made. On 18 July 2001, a refund in the amount of \$505,103.30 (including \$135.30 in interest) was paid by the ATO to Wandsworth.

On 24 December 2001, the offender lodged a BAS form on behalf of a company called Ozwide Real Estate Pty Ltd with the ATO. This BAS sought a refund of GST in the amount of \$311,428 from the ATO. The claimed refund was based upon purchases which were never made. This refund was stopped by the ATO and not paid.

In addition, the defendant lodged four BAS forms on behalf of a company called Semiconductor Motor Corporation Pty Ltd with the ATO. These BASs also contained false claims. The amounts claimed by the BAS forms was in excess of \$65 million.

The defendant was found guilty of five fraud offences by a jury in the District Court of New South Wales in relation to this conduct. There was one charge against the defendant regarding one of the BAS forms that he lodged on behalf of the company Semiconductor Motor Corporation Pty Ltd. The jury was not able to reach a verdict in relation to that charge. The amount the defendant claimed in that BAS form was \$34,500.

On 30 March 2007, the defendant was sentenced to eight years imprisonment, with five years and four months to serve. O'Meara has lodged a notice of intention to appeal his conviction.

### **Nationwide News Pty Ltd (publisher of the Daily Telegraph newspaper) and Queensland Newspapers Pty Ltd (publisher of the Courier Mail newspaper)**

These proceedings arise out of the prosecutions conducted in the matter of Operation Pendennis, which was reported on page 18 of last year's Annual Report.

It is alleged that Nationwide News Pty Ltd and Queensland Newspapers Pty Ltd breached non-publication orders made by the Magistrate hearing the committal proceedings in the Magistrates Court of Victoria in the Operation Pendennis prosecutions.

The non-publication orders were made by the Magistrate to protect the identity of Witness A, an overseas witness. His Honour found the non-publication orders were necessary to prevent prejudice to the administration of justice because if Witness A's identity were revealed, he may refuse to give evidence in the committal hearing, and as such the prosecution would be deprived of important evidence in support of its case. Following the making of the orders, the two defendants (through their respective newspapers) published articles in New South Wales and Queensland naming Witness A as a witness in the committal proceedings.

On 19 April 2007, the DPP filed an Originating Motion filed in the Supreme Court of Victoria alleging a contempt of court on the basis that the publication of the articles by the defendants constituted an actual or a threatened interference

with the administration of justice. The DPP is currently seeking to amend the Originating Motion and that application is yet to be determined. Once the application to amend is determined, the matters are likely to be listed before a Supreme Court judge for a hearing of the substantive arguments.

### **Mark Edward Norman and Robert John Norman**

This matter arose out of a joint investigation between the AFP and the ATO. The investigation concerned a systematic and ongoing fraud on the revenue being perpetrated through an accounting and tax agents business conducted by Mark Norman and Robert Norman, who were registered Tax Agents.

Between August 1993 and April 2003 the defendants, without the knowledge of their clients, submitted 180 original or amended income tax returns to the ATO which contained false claims for partnership losses for the 1991 to 2002 income years. Their actions resulted in the payment of illegitimate income tax refunds which were appropriated by the defendants. The loss to the revenue was \$2,824,108.

In addition, Mark Norman stole a client's cheque in the sum of \$744,225, made payable to the ATO. Without the client's knowledge, Mark Norman omitted the capital gain from the client's tax return, and the cheque was not forwarded to the ATO for payment of the capital gain taxation liability. The cheque was deposited into an account under the control of both Mark and Robert Norman and the proceeds generally expended on their personal and business items. The loss to the revenue as a result of the non-declaration of the capital gain was \$830,385.

The matter was heard by the New South Wales District Court. On the first day of the joint trial, the matters were adjourned for plea negotiations, resulting in both defendants entering pleas of guilty.

On 29 June 2007, Mark Norman was sentenced to a total effective sentence of nine years and nine months imprisonment with a non-parole period of five years and nine months. On the same day, Robert Norman was sentenced to a total effective sentence of seven years imprisonment with a non-parole period of four years and two months.

Mark Norman has indicated his intention to appeal against his sentence.

### **Guennadi Orlov**

The defendant was recruited online through a chat room to assist an Internet hacker (believed to be in Eastern Europe) steal money from bank accounts in Australia. The defendant opened bank accounts in Australia and provided the details of those accounts to the hacker. The defendant also provided the cards for automatic teller machines and the personal identification numbers for the accounts, to enable the accounts to be accessed from overseas by associates of the hacker. The defendant was paid for each account he opened and went on to recruit another person into the scheme.

The defendant was charged with one offence contrary to section 400.5(1) of the *Criminal Code* of dealing in money believed to be the proceeds of crime in an amount in excess of \$50,000.

The defendant entered a plea of not guilty to the charge, and was tried in the District Court of Western Australia. He was found guilty, and on 28 November 2006 he was sentenced to 12 months imprisonment, to serve six months of that term.

### **Jeffrey Eric Page, Dale Lynch and Daryl Corker**

Jeffery Page was a senior executive within Australia Post managing the Parcels and Transport Business Unit for Victoria and Tasmania. He was paid secret commissions by Dale Lynch and Daryl Corker. Lynch and Corker conducted a panel beating business and, in return for payments to Page, secured a virtual monopoly on the Australia Post vehicle repair work in Melbourne. The bribes included cash of \$20,000 to purchase a Harley Davidson motor cycle, a ride-on mower, windows for a holiday house and a lounge suite. This scheme operated for two years.

In addition, Page enlisted the assistance of other Australia Post staff members to engage in a series of thefts and frauds on Australia Post between 1999 and 2003. This included stealing a portable building from Australia Post and attaching it to his beach house at Peterborough, and stealing an air-conditioning system and installing it in his investment property. Page also transferred an employee to his area to work on a 'special project'. Ultimately, that project never materialised, and instead, the employee, who had building experience, was released by Page to work on various private building projects for himself and for Page (in relation to his investment property and holiday home), all the while claiming a wage from Australia Post.

Page was charged with various offences including the receipt of secret commissions and stealing Commonwealth property. Lynch and Corker were charged with giving secret commissions. The defendants entered pleas of guilty and were sentenced in the County Court of Victoria on 16 August 2006. The DPP appealed against the inadequacy of the sentences. That appeal was successful and on 18 October 2006, the Court of Appeal increased Page's sentence to four years imprisonment to be released after serving 18 months, and Lynch's and Corker's sentences to three years imprisonment to be released after serving nine months.

The DPP also took action to recover the proceeds of crime and ultimately obtained a pecuniary penalty order against Page for \$105,000 as part of a negotiated settlement.

### **Michael John Poynder**

In April 2006, investigating authorities commenced an investigation into the activities of the defendant. The police were originally alerted to the defendant by a woman who worked in a massage parlour. The defendant had told her certain things about wanting to sexually abuse children. The woman was disturbed by the conversation and contacted the police. As a result of receiving this information, police obtained telephone intercept warrants in relation to two telephone services used by the accused.

New South Wales police covertly recorded approximately 540 calls on the landline service of the offender. A large percentage of these calls were to the Hot Gozzip Chat Service. During these calls the offender discussed sexual acts against children, incest and bestiality. The offender used the chat service to seek out children, a female on one occasion and a male on the other occasion, both of whom he believed to be 15 years of age, in order to entice them into engaging in sexual activity with him for payment.

On the 31 May 2006, the defendant contacted the chat service and spoke with a male person who he believed was 15 years of age for the purposes of initiating sexual activity with him. The defendant attempted to make arrangements to meet this person for sex, however was unsuccessful.

On 15 June 2006, the defendant contacted the same chat service and spoke with a female undercover police operative pretending to be 15 years of age. The offender entered into sexual conversations with the undercover operative and offered her \$100 for fellatio and \$200 for sex. The offender arranged to meet the child at a residence in Redfern for sex. The defendant attended the premises

and was arrested by police. At the time of his arrest the offender was in possession of condoms, lubricant and the total sum of \$236.

The defendant was charged with using a carriage service to procure persons under the age of 16 for sexual activity contrary to section 474.26 of the *Criminal Code*, and using a carriage service in an offensive manner contrary to section 474.17 of the *Criminal Code*.

Ultimately, the defendant pleaded guilty to the procuring charges. The offences of using a carriage service in an offensive manner were taken into account on sentence. On 7 December 2006, the defendant was sentenced to a head sentence of three years imprisonment, to serve one year and three months of that term.

The DPP appealed to the Court of Criminal Appeal on the basis that the sentence was manifestly inadequate. The appeal was heard on 24 April 2007 and was dismissed on 14 June 2007. The Court of Criminal Appeal found that although the sentence was at or near the bottom of the appropriate sentencing range, it was not below that range in all the circumstances of the case.

### **Cecil Ronald Rhodes aka Wagamunga**

Cecil Rhodes was charged with resisting a public official contrary to section 149.1 of the *Criminal Code*.

On 14 March 2005, the defendant failed to stand when asked to do so by Justice Dowsett in the Federal Court sittings at the Cairns International Hotel. Rhodes verbally challenged the authority of the Court. The Court then directed that the defendant leave the Court precincts. Officers of the AFP asked the defendant to leave. He initially refused to do so and then refused to give his details to police. He physically resisted attempts by the police to remove and arrest him.

Throughout the prosecution, the defendant had advised the Court it may not call him 'Cecil' or 'Mr Rhodes', as Cecil was copyrighted and the Court may be fined for using the word 'Cecil' and further that the word 'Mr' was not on his birth certificate.

Rhodes was unrepresented and refused to enter a plea or recognise the jurisdiction of the Court during the prosecution committal and trial proceedings in relation to the charge. The trial was first listed in Cairns District Court in June 2006 before His Honour Judge Hoath, but it was aborted after Rhodes likened the prosecution to events during Nazi Germany. Judge Hoath charged and convicted Rhodes of contempt and sentenced Rhodes to two weeks imprisonment.

The matter went to another trial, and a jury found the defendant guilty of the offence. On 10 October 2006, in the Queensland District Court in Cairns, Judge White sentenced the defendant to six weeks imprisonment. The sentencing judge made reference to the defendant's criminal history which indicated previous offending directed at challenging authority.

### **Mark William Rowson**

The defendant obtained fraudulent GST refunds from October 2002 to October 2004. The scheme involved the registration of two companies, Callards P/L & Pavon P/L, using the identities of 2 genuine persons as the nominated directors, without their knowledge. The listed places of business given for these companies were "virtual offices" set up at serviced office premises in Melbourne.

Documentation was created and presented to the ATO via accounting firms Deloittes and Price Waterhouse purporting to show transactions between the companies totalling some \$42 million in value. These transactions were detailed in Business Activity Statements submitted to the ATO in which GST refunds were claimed. As a result of the submission of these fraudulent claims, refunds totalling \$2,453,102 were paid to Callards P/L by the ATO by way of electronic transfers of funds to a bank account in the name of Callards.

Subsequently, the defendant, purporting to be the director of the company, attended at the bank and on numerous occasions withdrew large amounts of cash. Documentation seeking further GST refunds totalling some \$1,334,173 was submitted to the ATO via Deloittes, however, these refunds were not paid by the ATO. Apart from a sum of \$68,000, none of the monies were recovered.

The defendant pleaded guilty to one count of obtaining a financial advantage by deception from a Commonwealth entity contrary to sub-section 134.2(1) of the *Criminal Code* and to one count of attempting to obtain a financial advantage from a Commonwealth entity contrary to sub-sections 11.1(1) & 134.2(1) of the *Criminal Code*.

On 11 September 2006 the defendant was sentenced in the County Court of Victoria to a total effective sentence of three years and one day imprisonment, with 18 months to serve.

The sentence was successfully appealed by the Director and the Court of Appeal upheld that appeal on 31 August 2007, increasing the total effective sentence to five years imprisonment, with three years to serve.

The Court re-affirmed that the pre-eminent sentencing consideration in cases of revenue fraud is that of general deterrence and, giving full weight to the principles of double jeopardy applicable to Crown appeals, nevertheless substantially increased both the effective head sentence and the pre-release period.

### **Roger William Searle**

This is a matter where an officer from the Queensland Police Service posed as an adult man called ‘Shane’, who had two daughters, ‘Tabitha’, an 11 year old, and ‘Lena’ a nine year old. Roger Searle contacted ‘Shane’ and the email discussion between them involved Searle suggesting sexually interfering with ‘Shane’s’ daughters.

Over a six week period Searle directly contacted ‘Tabitha’, another covert police officer. Through numerous emails and internet chats, Searle sought to win the trust of ‘Tabitha’ by telling her she would be his ‘special girl’ whilst promising her gifts and trips. Searle sent sexually explicit emails which included instructions on performing sexual acts and which described sexual acts he would like to perform with Tabitha.

Searle travelled to the Gold Coast after earlier advising Shane and Tabitha of his intention to do so and of his sexual plans with Tabitha once he met her. On 16 April 2006, the defendant was arrested by police.

Whilst he was on bail for those offences, Searle committed very similar offences involving another covert police officer who was posing as a single mother with a 14 year old daughter.

Searle was charged with offences against 474.27 of the *Criminal Code* (using a carriage service to groom a child) and 474.26 of the *Criminal Code* (using a carriage service to procure a child). He was also charged with transmitting child pornography material using a carriage service contrary to section 474.19 of the *Criminal Code*.

Searle pleaded guilty and on 15 June 2007 was sentenced in the Supreme Court of Queensland to an effective sentence of three and a half years imprisonment with a non parole period of 14 months. Searle has lodged an appeal against the severity of this sentence, which is pending.

## **David Sukkar and Jose Melgar Sevilla**

On 22 July 2004, Jose Melgar Sevilla entered Australia at Sydney from South America. He did this for the purpose of supervising the safe importation of a large quantity of cocaine which was secreted on board the vessel the *Marcos Dias*. The *Marcos Dias* had left South America some time earlier and was bound for Albany on the South Coast of Western Australia.

The importation involved 100.6 kilograms of cocaine powder, with an average purity of 77.8%, making the total quantity of pure cocaine 78.319 kilograms. David Sukkar assisted in aiding Sevilla in the importation of cocaine by travelling between Sydney and Albany in order to assist Sevilla. The *Marcos Dias* anchored off Albany whilst Sukkar and Sevilla hired an aluminium dinghy to be used to offload the cocaine from the *Marcos Dias*.

Sevilla arranged with the crew member to take delivery of the cocaine in the early hours of 7 August 2004. Sevilla took possession of the cocaine and Sukkar was instructed at that stage to make his way from Perth to Albany. The cocaine was hidden by Sevilla in scrubland a short distance from Quaranup Road. The AFP attended the scene and substituted the cocaine with 100 blocks of wood and returned the four bags to the same area. In the early hours of 8 August 2004, Sukkar, Sevilla and a third man drove to where the drugs were hidden and Sevilla and Sukkar retrieved the four bags. When they realised that the bags contained wood, they left the scene, but were arrested by the AFP shortly after.

On 5 August 2005, Sevilla pleaded guilty to aiding and abetting the importation of a commercial quantity of cocaine contrary to section 11.2(1) of the *Criminal Code* and section 233B(1)(b) of the *Customs Act 1901* and possession of a commercial quantity of cocaine which had been imported into Australia contrary to 233B(1)(c) of the *Customs Act 1901*. On 21 October 2005, he was sentenced to life imprisonment, to serve a minimum of 21 years.

Sukkar pleaded not guilty to similar charges. He was originally tried in the Supreme Court of Western Australia in April 2006, and the jury was unable to reach a verdict. His matter was listed for a retrial in February 2007, and at that time he entered a plea of guilty. On 15 February 2007, he was sentenced to 21 years imprisonment with a non-parole period of 13 years imprisonment. He has lodged an appeal against sentence.

## **Wei Tang**

This matter is reported in last year's Annual Report at pages 30 and 31.

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

While in Thailand each complainant entered into an agreement to come to Australia to work in the sex industry. The 'contract' required them to incur a debt of between \$35,000 and \$45,000 which they would pay off by servicing clients of the brothel. Upon their arrival in Australia, the complainants' passports were confiscated and kept at the brothel. According to the complainants, they were required to work at the brothel six days a week. Of the \$110 earned in respect of each client, \$50 was deducted from the debt. The remainder of the proceeds went to the brothel. The complainants were given the option of working on their 'free' day and of retaining any earnings made on that day. According to some of the complainants, they were locked in an apartment during the relevant time period.

On 9 June 2006, the accused was convicted by a jury in the County Court of Victoria. She was sentenced to ten years imprisonment with a non-parole period of six years. She appealed against her conviction and sentence, and that appeal was successful.

On 27 June 2007, the Court of Appeal of Victoria upheld one of the grounds of appeal, namely, that the trial judge erred in his directions to the jury about the offence provision. The Court held that the trial judge's directions drew no clear distinction between the intent to possess or use a person, for example in the context of an employment relationship, and the intentional possession or use of such person in the context of the possession or use being 'powers attaching to the right of ownership'.

The DPP has lodged an application for special leave to appeal to the High Court of Australia against the decision of the Court of Appeal.

## **Si Thanh To**

Si Thanh To was the Australian principal involved in the importation of 34.8 kilograms of methamphetamine from Canada in October 2005. His role was to facilitate the clearance of a speedboat on a trailer, which had been shipped in a

container, through the ACS. Examination of the speedboat revealed 46 packages of methamphetamine concealed under the decks. Officers of the AFP removed the packages, substituted the methamphetamine with an inert material, put these packages back into the boat and reconstructed the speedboat.

The defendant handled all of the paperwork for the customs clearance, obtained money from co-offenders overseas to pay for the clearance and arranged for the delivery of the container. He also gave directions to co-accused as to where the speedboat should be cut open to gain access to the drugs.

The defendant was charged with an offence of aiding and abetting in the importation of a commercial quantity of a prohibited drug contrary to section 11.2(1) of the *Criminal Code* and section 233B(1) of the *Customs Act 1901*. The defendant was tried in the District Court in Sydney between 30 October and 16 November 2006. He was found guilty by a jury and, on 2 February 2007, was sentenced to imprisonment for 17 years with a ten and a half year non-parole period.

The DPP lodged an appeal to the Court of Criminal Appeal in New South Wales on the basis that the sentence was manifestly inadequate. The appeal was heard on 5 April 2007, and on 5 July 2007 the Court of Criminal Appeal quashed the original sentence and sentenced the defendant to 25 years imprisonment with a non-parole period of 15 years.

### **Anh Kiet Tran**

Anh Tran travelled to Cambodia where he was provided with two large jars containing segments of fish. The skin of some of the segments of fish had been opened and condoms containing heroin hidden inside. The skin was then stitched back together. The gross weight of heroin contained in the jars was 2,159.4 grams at 64% purity. The quantity of pure heroin was 1,473 grams. Upon his return to Australia, Tran initially gave a false explanation of the purpose of bringing the jars, but later made admissions to police of the circumstances in which he was given the jars in Cambodia and that he was to be met in Brisbane where there would be an exchange of the drugs for payment.

Tran was charged with an offence of importing a marketable quantity of a border controlled drug, namely heroin, contrary to section 307.2 of the *Criminal Code*. The defendant pleaded guilty to the charge by way of *ex officio* indictment.

At first instance, in the Supreme Court of Queensland, the defendant was sentenced to fifteen years imprisonment with a non-parole period of seven years. The defendant successfully appealed against the sentence and the Queensland

Court of Appeal substituted a sentence of ten years imprisonment with a non-parole period of five years. The Court referred to the Australian Law Reform Commission Report, *Same Crime Same Time*, which contained comments on the disparity of sentences given to federal offenders within Australia. In the interest of endeavouring to ensure consistency across Australia, the Court undertook a review of sentences imposed in other States and Territories. Having done so, it concluded that a significant lowering of the sentence imposed at first instance was required.

### **Julie Turyn**

Julie Turyn was charged with one count of theft contrary to section 131.1(1) of the *Criminal Code*. The charge related to her employment as a customer services operator with Medicare (formerly the Health Insurance Commission) between June 2001 and May 2003. During that period, Turyn processed false Medicare receipts and appropriated the proceeds of the Medicare refunds in relation to those receipts, in the amount of \$163,448.45.

Turyn was convicted after a week long trial in the Supreme Court of the Australian Capital Territory of theft of a general deficiency in the amount of \$163,448.45. On 21 June 2007, she was sentenced to a period of three years imprisonment to serve four months of that term. Turyn appealed against her conviction and sentence, and the DPP cross-appealed in relation to sentence. Those proceedings have now concluded. Turyn withdrew her appeal against conviction and sentence, and the Crown appeal against sentence was dismissed.

### **Aruran Vinayagamoorthy and Sivarajah Yathavan and Arumugan Rajeevan**

It is alleged that the defendants are members of, and provided support and or funds to the Liberation Tigers of Tamil Eelam (the LTTE). The LTTE is an organisation that is alleged to have been waging a campaign through the use of violence against the Sri Lankan Government in an attempt to secure a separate Tamil State. Whilst the LTTE is not a proscribed terrorist organisation under the *Criminal Code*, the prosecution alleges that LTTE was an organisation that was directly or indirectly engaged in preparing, planning, assisting or fostering the doing of terrorists acts.

The funds are alleged to have been raised in Australia from the Tamil supporters resident within Australia. It is alleged the funds were either sent to Sri Lanka or were used to purchase equipment including electronic components capable of being used in remote detonation devices such as land mines.

Committal proceedings have commenced in the Magistrates Court of Victoria. This case is significant in that it is one of the first cases in which the prosecution will seek to establish the terrorist nature of the organisation in part by expert evidence.

### **Derek Wee**

This case is significant because it is the first matter in Australia which involved a contested hearing of charges under the Serious Computer Offences Division (Division 477) of the *Criminal Code*. Derek Wee was charged with five charges of knowingly causing an unauthorised impairment of electronic communication to or from a computer by means of a telecommunications service.

The defendant was an ex-employee of IBIS World Pty Ltd. He had been previously employed by the company as a 'webmaster' but his position had been made redundant. He launched five separate 'denial of service' attacks from his home computer, which had the effect of taking the financial transactions website of IBISWorld out of action for extended periods of time. The result was that customers of IBISWorld were not able to access the website and place orders for financial information with the company. The damage to the company in terms of lost orders and arranging for the website to be repaired was said by the company to exceed \$170,000.

The matter proceeded as a 20 day contested summary hearing in the Magistrates' Court of Victoria. It commenced on 9 October 2006 and ended on 16 November 2006. On 20 December 2006, the Magistrate found all five charges proved. On 18 January 2007, the defendant was convicted and sentenced to fines totalling \$7,500.

### **XYZ**

XYZ was a man aged 58 at the time of the offences. He engaged in two sexual acts with the seven year old daughter of a woman with whom he was in a relationship. Both offences were video recorded by the defendant and took place overseas.

The first offence was committed in Liberia and comprised the defendant's penis coming into contact with the victim's genitalia. The second offence was committed in Thailand, and related to an incident in a shower during which the accused was washing the victim and touched her around the genitalia inappropriately.

The offences came to light when the victim's mother questioned the victim about her wellbeing and was told of the incidents. The victim also said the accused had video recorded some of the occasions when he molested her. The victim's mother then obtained the defendant's video camera tape and upon viewing the tape in the machine discovered that her daughter had been sexually assaulted.

The defendant was charged with one offence of committing an act of indecency on a person who was under the age of sixteen contrary to section 50BC of the *Crimes Act 1914*, and one offence of engaging in sexual intercourse with a person under the age of sixteen contrary to section 50BA of the *Crimes Act 1914*.

The defendant entered a plea of guilty at a very late stage. Prior to pleading, he challenged the constitutional validity of the legislation creating the offences in question. The litigation about the validity of the legislation was conducted by the Attorney-General's Department. In November 2005, the High Court of Australia dismissed the defendant's challenge and found the child sex tourism provisions to be constitutionally valid.

On 14 December 2006, the defendant was sentenced in the County Court of Victoria to an effective term of six years imprisonment, with a non-parole period of four years imprisonment. The sentencing judge also made an order pursuant to the *Sexual Offenders Registration Act 2004* (Victoria) to the effect that the defendant is a registrable person and must comply with the reporting conditions imposed by that Act for the remainder of his life.

The defendant has lodged an appeal against severity of the sentence, and a hearing date is yet to be allocated.

### **Yu Long Yu**

This matter arose out of the largest seizure in Australian history of imported traditional Chinese medicine products.

Although this matter was primarily investigated by the ACS, it involved the collaboration of staff from two other agencies, namely, the then Department of

Environment and Heritage ('DEH'), and the Australian Quarantine and Inspection Service. DEH contributed significant expertise to the matter. The prosecution demonstrated the necessity of inter-agency co-operation in matters such as this and showed that several agencies can work together to achieve a successful outcome.

In August 2003, a container arrived in Australia from China. The goods in the container were consigned to Mei Yu Pty Ltd ('Mei Yu'). Yu Long Yu controlled the operation of Mei Yu and organised the importation. In the entry for home consumption lodged with the ACS the imported goods were described as 'Chinese herbs medicinal, Chinese herbs non-medicinal, Crushed oyster shell, Black edible fungi, Crushed cuttle fish and Haematite'. ACS officers examined the contents of the container and located goods that were not listed on the invoice, the bill of lading, or the Customs entry, including five cartons of *Aucklandia lappa* (114 kilograms) and four cartons of *Manis pentadactyla* (Chinese pangolin) (99kilograms). ACS officers subsequently executed warrants on Yu's business and residential premises.

During the execution of the warrants, ACS officers located *American ginseng* (*Panax quinquefolius*), *Lissemys punctata* (Indian Flao-shell Tortoise), *Cuora spp.* (Asian Box Turtle), *Saiga tatarica* (Saiga Antelope), Rhinocerus, Tiger (*panthera tigris*), Musk (*Moschus sp.*), and *Orchid Gastrodia*. All of the items are listed on the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* ('CITES') and fall under Appendix I or Appendix II. Appendix I contains species threatened with extinction which are or may be threatened by trade. Appendix II contains species that are not necessarily threatened with extinction, but could become so unless trade in them is subject to strict regulation.

On 25 July 2006 in the Downing Centre Local Court in Sydney, at the conclusion of a hearing that lasted eleven days, the Magistrate found all offences proved. The Magistrate found that Yu 'knew exactly what he was doing' in relation to the importation and that he was 'propagating the decimation of protected species'. On 29 November 2006, Yu was sentenced to 18 months imprisonment, to be released after serving six months of that sentence, and a total of \$6,000 in fines. Yu has appealed against his conviction to the District Court and the appeal is pending.

## CHAPTER 3

# Commercial Prosecutions

### Practice

Each of the larger Regional Offices of the DPP has a specialist Commercial Prosecutions Branch, which is responsible for prosecuting breaches of the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* (the ‘ASIC Act’). Offences that were committed against the Corporations and ASIC Laws of the States prior to 15 July 2001 are now treated as offences against the *Corporations Act 2001* and the ASIC Act pursuant to transitional provisions contained in those Acts.

The Australian Securities and Investments Commission (ASIC) is responsible for investigating breaches of the *Corporations Act 2001* and the ASIC Act. ASIC, by arrangement with the DPP, also conducts minor prosecutions for regulatory offences against those Acts. Where ASIC’s investigation appears to disclose the commission of a serious offence, ASIC refers the matter to the DPP for consideration and prosecution action, where appropriate. Where the investigation discloses the commission of State or Territory offences the DPP will prosecute those offences in accordance with arrangements with the State and Territory Directors of Public Prosecutions.

Investigations of significant corporations matters can be long and resource intensive and frequently the materials that ASIC provides to the DPP in relation to such matters are both voluminous and complex. The prosecution of such matters requires specialist skill.

The DPP is available to provide early legal advice to ASIC, which can assist to direct and focus the investigation so as to ensure that any prosecution is as effective as possible. There are arrangements in place to ensure regular liaison between ASIC and the DPP at head of agency, management and operational levels.

The DPP’s Commercial Prosecutions Branches are also responsible for conducting prosecutions of large fraud matters where there is a corporate element and offences against the *Trade Practices Act 1974* and the *Bankruptcy Act 1966*.

The Australian Competition and Consumer Commission (ACCC) has responsibility for investigating breaches of the *Trade Practices Act 1974*. There

is regular liaison between the DPP and the ACCC with respect to specific cases and other more general issues.

Breaches of the *Bankruptcy Act 1966* are investigated by the Bankruptcy Fraud Investigations Unit of Insolvency and Trustee Service Australia (ITSA). The DPP and ITSA meet regularly at both the National and Regional Office level to discuss issues of relevance to bankruptcy prosecutions.

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

## Significant Cases

### Prosecutions Arising Out of the Collapse of HIH

HIH was Australia's second largest insurance company and its collapse is one of the largest corporate failures in Australian history. The prosecutions arising out of the collapse of HIH have been reported in the previous two Annual Reports. On page 54 of last year's Report, there is an update of relevant matters since the Annual Report of the previous year.

The following is a report on the prosecutions since the last Annual Report.

- **Antony Boulden**

Prior to the takeover of FAI Insurances Ltd (FAI) by HIH, Antony Boulden was employed by FAI as a management accountant and the financial controller of its Corporate and Professional Insurance Division. In November 2005, Boulden was charged with one offence under section 590(1)(c)(iii) of the *Corporations Act 2001*. The charge related to his conduct, on 23 January 1998, of directing adjustments to the general ledger of the company when there was no proper basis for those adjustments. Without those adjustments, FAI would have recorded a loss of approximately \$2.325 million for the half-year ended 31 December 1997. Instead it reported a profit of \$3.175 million.

On 28 March 2006, Boulden was committed for trial, and on 2 June 2006, he pleaded guilty to the offence. On 1 December 2006 he was sentenced to a fixed term of twelve months imprisonment, to be served by way of periodic detention.

- **Geoffrey Arthur Cohen**

Geoffrey Cohen was a non-executive director of HIH and the chairman of the board.

Cohen has been charged with one count against section 1309(1) of the *Corporations Act 2001* of knowingly making a statement which was false or misleading to shareholders at the Annual General Meeting of HIH on 15 December 2000. An alternative, summary count against section 1309 (2) of the *Corporations Act 2001* of making a statement which was false or misleading without having taken reasonable steps to ensure it was not false and misleading has also been transferred to the Supreme Court pursuant to section 166 of the *Criminal Procedure Act 1986 (NSW)*.

It is alleged that at the shareholders' meeting, Cohen read an address to shareholders that contained statements about HIH receiving \$200 million in cash from Allianz Australia Ltd. This was misleading as the \$200 million was to be paid into a trust and therefore would not be available to HIH to meet its day-to-day cash flow requirements.

On 27 April 2007, Cohen was committed for trial. The trial has been set down for six weeks commencing on 3 March 2008.

- **Dominic Fodera**

Dominic Fodera was an executive director of HIH and its Chief Financial Officer.

As was reported in last year's Annual Report, Fodera had been committed to stand trial on one charge under section 996 of the *Corporations Act 2001* which alleged that on 26 October 1998 he authorised the issue of a prospectus by HIH Holdings (NZ) Ltd from which there was a material omission. The prospectus, which was for \$155 million of unsecured converting notes, included information that Societe Generale Australia (SGA) would take up a priority allocation of the lesser of 30% of the amount to be raised or \$35 million worth of the converting notes. The prospectus omitted to include information that, at the same time, HIH had made a separate agreement with SGA to deposit with SGA an amount equal to SGA's commitment to take up the priority allocation and that SGA's allocation of the converting notes would be secured against loss on resale by recourse to HIH's deposit.

Fodera's trial commenced in the Supreme Court of New South Wales on 5 March 2007. On 4 April 2007, the jury returned a verdict of guilty. Fodera

was remanded in custody on 10 May 2007 following submissions on sentence. On 7 June 2007, Fodera was sentenced to imprisonment for a term of three years and ordered to serve two years of that term. He will be eligible for release on recognisance in respect of this offence on 9 May 2009.

Fodera has lodged a notice of intention to appeal his conviction and sentence in this matter.

- **Robert Kelly**

Robert Kelly was the assistant company secretary of HIH.

On 4 July 2006, Kelly pleaded guilty to one offence against section 178BB of the *Crimes Act 1900* (New South Wales). On 26 May 2000, Kelly concurred in the making of a false or misleading statement to officers of Westpac Banking Corporation (Hong Kong). In this case, Westpac represented the interests of noteholders who had invested in a US\$150 million note issue by FAI. The issue of these notes amounted to a loan to FAI. The officers of Westpac were told that the reason HIH was not able to produce consolidated accounts of the FAI Group for the financial period ended 30 June 1999 was because the company structure had changed, the accounts could not be reconstructed and it would be too costly. This was false or misleading. The reason HIH would not produce consolidated accounts of the FAI Group was because it would have alerted Westpac to a potential event of default under the US\$150 million note facility which in turn could have resulted in the noteholders requesting repayment of the loans.

On 3 November 2006, Kelly was sentenced in the Supreme Court of New South Wales to perform 500 hours of community service.

- **Frederick Lo**

Lo was the company secretary of HIH Insurance Ltd. The prosecution related to two separate sets of circumstances.

Lo was responsible for overseeing HIH's compliance with the *Insurance Act 1973*. Between 12 May 1999 and 24 May 2000 he was responsible for lodging five quarterly returns and an annual return with the Australian Prudential Regulation Authority (APRA) in respect of CIC Insurance Ltd, part of the HIH Group. Lo misrepresented to APRA in these returns that CIC continued to meet its statutory minimum solvency requirements with a reckless disregard as to whether or not CIC did in fact meet those requirements. Lo adverted to the possibility that assets worth between \$108 and \$129 million which CIC had

pledged in support of the operations of another entity within the HIH Group may not have been admissible in the calculations of CIC's solvency for regulatory purposes. Lo nevertheless chose to represent to APRA that those assets were so admissible in the knowledge that the inclusion of those assets was critical to CIC's ability to meet the statutory solvency requirement.

Lo was also involved, in May and October 2000, with steps taken to ensure that lenders did not become aware of the breach of an obligation in a medium term note program by HIH's wholly owned subsidiary, FAI Insurances Ltd. Had the lenders become aware of the breach of the obligation there was a risk to FAI that the lenders would have taken steps to secure repayment of monies due and payable under the notes, which was some US\$75 million.

Lo was charged with three offences contrary to section 178BB of the *Crimes Act 1900* (New South Wales) of obtaining money by making a false or misleading statement and one offence contrary to section 184(1) of the *Corporations Act 2001* of being an officer who exercised power recklessly.

On 6 October 2006, Lo entered a plea of guilty to the charges in the Supreme Court of New South Wales. He was sentenced on 23 February 2007 to a fixed term of nine months imprisonment.

- **Daniel Wilkie and Ashraf Kamha**

Daniel Wilkie and Ashraf Kamha are former officers of FAI and directors of FAI General Insurance Company Ltd (FAIG) which was a wholly owned subsidiary of FAI. In late 2005, Wilkie and Kamha were each charged with one offence under sections 1317FA and 232(2) of the *Corporations Act 2001*, and one offence under section 590(1)(c)(iii) of the Act. It is alleged that on 2 January 1998, alterations were made to FAIG's claims database when there was no proper basis for these adjustments. These adjustments had the result that profit contained in FAI's accounts released to the Australian Stock Exchange for the six months to 31 December 1997 was artificially inflated.

On 7 August 2006, Wilkie and Kamha were each charged with a further offence under sections 1317FA and 232(2) of the *Corporations Act 2001* of failing to act honestly with the intention of deceiving the FAI external actuary. Kamha and Wilkie have been committed for trial to the Supreme Court of New South Wales.

## Other Commercial Cases

### Judith Anne Holland

Judith Holland was the Chief Executive Officer of the Queensland Teachers Union Health Fund Ltd (the 'Health Fund'). She also had a majority interest in Hely Pty Ltd held by way of a unit trust with other family members. In 1997, Hely Pty Ltd purchased a 49% profit share in the Health Fund's optical centre for \$800,000. In 2000, Hely Pty Ltd sold its interest in the optical centre back to the Health Fund for \$2.1 million.

The defendant, as the Chief Executive Officer of the Health Fund, was responsible for supervising the negotiations on the sale of Hely Pty Ltd's interest in the optical centre and reporting to the board of the Health Fund. Holland did not at any stage disclose to the board of the Health Fund her majority interest in Hely Pty Ltd.

Holland was charged with one offence of failing to act honestly as an officer of a friendly society contrary to section 298(2) of the *Friendly Societies (Queensland) Code 1997* (Qld) and one offence of using a position as officer of a corporation dishonestly with the intention of gaining an advantage contrary to section 184(2) of the *Corporations Act 2001*.

Holland entered a plea of not guilty to the offences and she was tried in the Supreme Court of Queensland. The trial went for eight days and on 11 October 2006, she was found guilty of the offences by a jury. She was sentenced to a term of imprisonment of twelve months, to be released after serving ten weeks of that term.

### Shane William Hoy

Shane Hoy pleaded guilty to four counts of dishonestly obtaining property contrary to section 408C(1)(b) of the *Criminal Code* (Qld), four counts of making a false statement to ASIC contrary to section 64(1)(b) of the *Australian Securities and Investments Commission ACT 2001*, and one count of carrying on a financial services business without being the holder of an Australian financial services licence contrary to section 911A of the *Corporations Act 2001*. Hoy pleaded guilty before His Honour Judge Noud in the Brisbane District Court on 8 February 2007.

The facts of the matter were that Hoy had falsely represented that he would invest funds in a 'private placement program' offering high returns over short

periods of time. He did not invest the funds in the manner promised but used them for personal expenses. He obtained a total amount of \$556,606.80 from ten investors.

The defendant also gave false information at a hearing held by ASIC on 12 January 2005 in relation to the funds paid to him. A psychiatric report was tendered by defence which outlined a significant personality disorder in that he was a pathological liar. His Honour noted the offences were gross breaches of trust, particularly in relation to one victim who was 87 years of age and had her last \$75,000 taken by the defendant on the promise he would help her earn back money that she had previously lost to a scam. The defendant was sentenced to five and a half years imprisonment with a recommendation that he be eligible for parole after 18 months on the Queensland State offences, and to six months imprisonment (to be served concurrently) on each of the Commonwealth offences.

### **John Gerard Sage**

John Sage was a financial adviser and property developer. The principal business activity of his group of companies was property development, using monies obtained from investors. He was charged in relation to making materially misleading statements to nine prospective investors in two of his property developments. Those statements, in the form of investment brochures and verbal presentations, were likely to (and did in fact) induce the purchase of shares in his companies.

The brochures and presentations contained unqualified references to the nature and the success of Sage's previous development, the Aurora development, and the investments in that project. There was no reference to the different form of investment in the Aurora development, or the financial failure of the Aurora development company.

Sage obtained \$1 million from investors in the two relevant development companies. Both companies went into administration and investors are expected to receive no or minimal returns.

On 29 June 2007, after a three-week trial in the County Court of Victoria, Sage was convicted of ten counts contrary to section 999 of the *Corporations Act 2001* of disseminating information and making statements that were materially misleading and likely to induce share purchase. There had been directed acquittals on three counts.

On 10 September 2007, Sage was sentenced to a total effective term of two years imprisonment, to serve nine months of that term.

## **Karl Suleman**

This matter is reported on page 62 of last year's Annual Report. At the time that the Report was published, Karl Suleman had not been sentenced.

Between December 1999 and November 2001, Suleman operated a trolley collection business at supermarkets located between Cairns and Adelaide. Investments were sought from the public in the trolley collection business, which took the form of a 'Financial Investment Agreement,' which was entered into between each investor and Karl Suleman Enterprises Pty Ltd, which Suleman personally signed. Investors were paid a generous fortnightly return from the time of making the investment.

Pursuant to the Financial Investment Agreements, the investors were to be paid the fortnightly return out of the income generated by the trolley collection business. However, the income generated by the business was a small fraction of the repayments guaranteed to the investors, and Suleman was aware of the shortfall. At all material times, there was no prospect that the increasing fortnightly repayments promised by Suleman could be funded other than by paying out new investor funds, and the business inevitably collapsed. The investors who have made statements in these proceedings sustained a loss of \$813,815 from a commitment of \$3,185,000.

On 1 May 2006, Suleman entered pleas of guilty to charges arising out of his conduct. On 24 January 2007, he was sentenced to seven years imprisonment, to serve five years and six months of that term.

## **Mark Antony Timleris**

Mark Timleris was an alternate director and manager of grain trading with Bustan International Pty Ltd, an Australian based company, controlled by United Arab Emirate interests. The company was holding a significant quantity of high priced inventory which it could not sell without incurring a significant loss and trading generally had not been particularly successful. Management was aware that if the company's financial performance did not improve, either the banks or the parent company would close it down. Timleris engaged in futures and unauthorised foreign exchange trading in an attempt to recoup losses, but only incurred further losses amounting to several million dollars.

Timleris, together with the financial controller, and (according to Timleris) at the direction of the company chairman, falsified and fabricated records to conceal losses from the parent company, and the company's auditors and financiers. He also furnished or was instrumental in furnishing these falsified records to the company's banks to ensure the continuation of the company's banking facility.

The matter received a considerable amount of media attention focusing on the aspect of internal corruption at Bustan and the connection of Timleris and other key players who were formerly employed at the Australian Wheat Board.

Timleris was charged with one count of false accounting contrary to section 83(1)(a) of the *Crimes Act 1958* (Vic), one count of obtaining a financial advantage by deception contrary to section 82(1) of the *Crimes Act 1958* (Vic) and two counts of dishonestly furnishing false or misleading information in the company's financial report with a view to gaining for himself or another contrary to section 83(1)(b) of the *Crimes Act 1958* (Vic).

On 23 November 2006, Timleris was sentenced in the County Court of Victoria to an effective sentence of three years imprisonment, to serve 12 months of that term.

### **Adam John Trescowthick**

Harris Scarfe Holdings Ltd ('HSHL'), originally called Charles Davis Ltd, was incorporated on 13 October 1911 and is the holding company for the Harris Scarfe group of companies (the 'Harris Scarfe group').

HSHL was a listed public company with approximately 4,500 shareholders.

Immediately prior to its collapse in early April 2001, the Harris Scarfe group operated 35 retail outlets in South Australia, New South Wales, Tasmania, Victoria, Western Australia and Queensland and employed a total of 1,600 employees. The group's turnover was \$406 million for the year ended 31 July 2000 and \$246.7 million for the seven months to February 2001.

At the time of the group's collapse creditors were owed a total of approximately \$150 million. On 31 January 2005 the DPP filed an information in the District Court of South Australia against Trescowthick charging him with a range of offences arising out of his duties as an officer of a corporation.

Alan Hodgson was the chief financial officer of HSHL. He falsely inflated profit levels in the company's monthly and consolidated accounts for the half year and full years from the year ending February 1999 to the half year ending 31 January 2001. Hodgson pleaded guilty in April 2002, and following an appeal against sentence, was re-sentenced on 24 October 2002 to five years and six months imprisonment with a non-parole period of two years and nine months. Hodgson was the principal witness against Trescowthick.

On 21 December 2006, in accordance with the *Prosecution Policy*, the Director discontinued the prosecution against Trescowthick on the basis that there were no longer reasonable prospects of securing a conviction.

## CHAPTER 4

# Statistics and Performance Indicators for Prosecutions

### Exercise of Statutory Powers

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

### No Bill Applications

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

In the past year, there were 24 no bill applications received from defendants or their representatives. Of these, seven were granted and 17 were refused. A further 11 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 18.

Of the 18 cases which were discontinued, in 14 of the matters the primary reason for discontinuing the prosecution was because there was insufficient evidence. Three of the matters were discontinued because the public interest did not warrant the continuation of the prosecution. In the remaining one case, the reason for discontinuing the prosecution was both the insufficiency of evidence and the public interest. Of the discontinued cases, six involved fraud, five involved drugs, two involved corporations offences and five involved other matters. Four of the matters were discontinued after a previous trial. In one case the defendant had been convicted but the conviction had been overturned on appeal. In the other three, the previous trials had not resulted in either a conviction or acquittal. In each case the DPP decided not to retry the defendant.

## **Indemnities**

The DPP Act empowers the Director to give what is commonly known as an ‘indemnity’ (which is more properly called an ‘undertaking’) to a potential witness.

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

In the past year, the DPP gave undertakings under sections 9(6) and 9(6D) to 22 people. In some cases, indemnities were given to more than one witness in a single matter, or more than one type of indemnity was given to the one witness. The DPP gave one indemnity under section 9(6B). There was one indemnity in a drugs matter, four in fraud matters, one in a corporations matter and 17 in other matters including a number in people trafficking (slavery) prosecutions.

## **Taking Matters Over - Private Prosecutions**

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

Under section 9(5) of the DPP Act, the Director has the power to take over a prosecution for a Commonwealth offence that has been instituted by another person. The Director is empowered to either carry on the prosecution or, if appropriate, to discontinue it. The power to take over and discontinue a prosecution was exercised in 2006-2007 in relation to 11 private prosecutors who commenced private prosecutions against more than 50 people. Many of the charges were for treason. Many of the individuals charged were politicians, judges, magistrates and prosecutors.

### ***Ex Officio* Indictments**

The Director has the power under section 6(2D) of the DPP Act to file an indictment against a person who has not been committed for trial. In 2006-2007, the Director did not exercise this power. In a number of other cases, a defendant stood trial on different charges from those on which he or she was committed, or the defendant stood trial in a different State or Territory jurisdiction from that in which the person was committed. In one case a defendant wanted to plead guilty and be dealt with quickly and wanted to forgo a committal proceeding. The indictments filed in those cases are sometimes referred to as *ex officio* indictments, but they are not treated as *ex officio* indictments for the purpose of these statistics.

### **Consent to Conspiracy Proceedings**

The consent of the Director is required before proceedings for Commonwealth conspiracy offences can be commenced. In 2006-2007, the Director gave consent to the commencement of conspiracy proceedings against 18 defendants in relation to seven alleged conspiracies. Six of the alleged conspiracies related to drugs offences and one related to fraud.

## **Performance Indicators 2006–2007**

Last year, the DPP met all of its performance indicators. This year, the DPP did not meet the performance indicator measuring the percentage of prosecution appeals on sentence in summary matters that were upheld. In this category, there were four cases appealed during the course of the year, of which the DPP was successful in two appeals during the reporting period. In fact, the DPP has been successful in a third matter, but the outcome of the appeal was not apparent until shortly after 30 June 2007. The effect of this is that the failure of the DPP to meet that performance indicator is due to both the small number of matters (that is, four cases) upon which this performance indicator is measured and the fact that the outcome of one of the matters was not known at the end of the financial year. The DPP met all of its other performance targets for 2006-2007.

The following table lists the DPP's performance indicators for the conduct of all prosecutions for 2006-2007 and compares them with figures for the previous year. This information also appears in graph form.

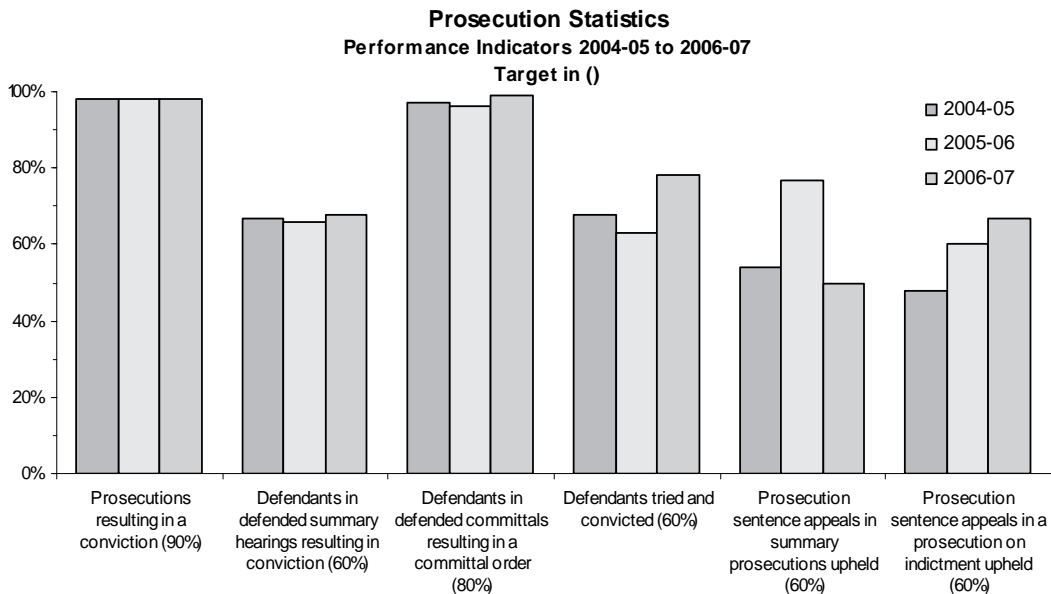
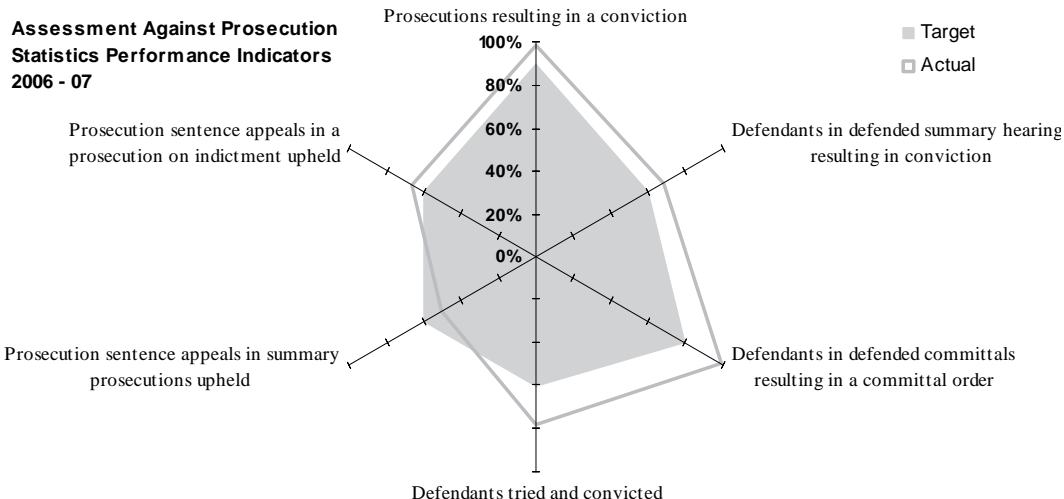
### Prosecution Performance Indicators for 2006-2007

Description	Target	Outcome	Details (by no. of defs)
<b>Prosecutions resulting in a conviction *</b>	90%	98%	4894 (4981)
<b>Figures for 2005 – 2006</b>	90%	98%	5085 (5200)
<b>Defendants in defended summary hearings resulting in conviction</b>	60%	68%	143 (210)
<b>Figures for 2005 – 2006</b>	60%	66%	138 (208)
<b>Defendants in defended committals resulting in a committal order</b>	80%	99%	316 (320)
<b>Figures for 2005 – 2006</b>	80%	96%	287 (299)
<b>Defendants tried and convicted</b>	60%	78%	72 (92)
<b>Figures for 2005 – 2006</b>	60%	63%	75 (120)
<b>Prosecution sentence appeals in summary prosecutions upheld</b>	60%	50%	2 (4)
<b>Figures for 2005 – 2006</b>	60%	77%	10 (13)
<b>Prosecution sentence appeals in a prosecution on indictment upheld</b>	60%	67%	6 (9)
<b>Figures for 2005 – 2006#</b>	60%	60%	9 (15)

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

# This includes one prosecution appeal where details have been suppressed.

### Prosecution Statistics Charts 2006-2007



## Prosecution Statistics

In the course of the year the DPP dealt with 5,922 people for a total of 8,326 charges. The cases came from 32 Commonwealth agencies as well as a number of State and Territory agencies. The following tables set out details of the prosecutions conducted in 2006-2007.

**Table 1: Outcomes of successful prosecution action 2006-2007**

Defendants convicted of offences prosecuted summarily	4418
Defendants convicted of offences prosecuted on indictment	476
Defendants committed for trial or sentence	580

**Table 2: Summary prosecutions in 2006-2007**

Defendants convicted after a plea of guilty	4275
Defendants convicted after a plea of not guilty	143
Total defendants convicted	4418
Defendants acquitted after a plea of not guilty	67
<b>Total</b>	<b>4485</b>

**Table 3: Committals in 2006-2007**

Defendants committed after a plea of guilty	264
Defendants committed after a plea of not guilty	316
Total defendants committed	580
Defendants discharged after a plea of not guilty	4
<b>Total</b>	<b>584</b>

**Table 4: Prosecutions on indictment in 2006-2007**

Defendants convicted after a plea of guilty	404
Defendants convicted after a plea of not guilty	72
Total defendants convicted	476
Defendants acquitted after a plea of not guilty	20
<b>Total</b>	<b>496</b>

**Table 5: Prosecutions on indictment – duration of trials in 2006-2007**

1 – 5 days	32
6 – 10 days	23
11 – 15 days	13
16 – 20 days	5
21 – 25 days	10
26 – 30 days	3
Over 31 days	12
<b>Total trials</b>	<b>98</b>

**Table 6: Prosecution appeals against sentence in 2006-2007**

	Summary	On Indictment
Number of appeals upheld	2	6
Number of appeals dismissed	2	3
<b>Total number of appeals</b>	<b>4</b>	<b>9</b>
Percentage of appeals upheld	50%	67%

**Table 7: Defence appeals in 2006-2007**

	Summary	On Indictment
Appeals against sentence upheld	93	11
Appeals against sentence dismissed	37	20
Appeals against conviction upheld	3	2
Appeals against conviction dismissed	10	5
Appeals against conviction & sentence upheld	13	6
Appeals against conviction & sentence dismissed	9	15
<b>Total appeals</b>	<b>165</b>	<b>59</b>

**Table 8: Legislation: charges dealt with in 2006-2007**

	Summary	On Indictment
Agricultural & Veterinary Chemicals (Administration) Act 1992	1	0
Airports (Control of On-Airport Activities) Regulations 1997	1	0
A New Tax System (Family Assistance) (Administration) Act 1999	3	0
Anti-Money Laundering and Counter-Terrorism Financing Act 2006	16	0
Australian Citizenship Act 1948	1	1
Australian Crime Commission Act 2002	5	17
Australian Passports Act 2005	51	12
Australian Securities & Investment Commission Act 2001	4	2
Aviation Transport Security Act 2004	3	0
Aviation Transport Security Regulations 2005	21	0
Bankruptcy Act 1966	306	26
Census & Statistics Act 1905	25	0
Civil Aviation Act 1988	18	0
Civil Aviation Regulations 1988	37	0
Common Law Offence *	35	0
Commonwealth Electoral Act 1918	1	0
Copyright Act 1968	35	3
Corporations Act 1989	2	5
Corporations Act 2001	38	28
Crimes (Aviation) Act 1991	25	0
Crimes (Currency) Act 1981	56	4
Crimes (Internationally Protected Persons) Act 1976	0	1
Crimes Act 1914	95	136
Criminal Code Act 1995	3798	418
Customs Act 1901	70	99
Defence Act 1903	9	0
Defence (Special Undertakings) Act 1952	0	7
Environment Protection & Biodiversity Conservation Act 1999	17	6
Environment Protection & Biodiversity Conservation Regulations 2000	18	0
Excise Act 1901	65	26
Financial Management and Accountability Act 1997	3	1
Financial Transaction Reports Act 1988	45	21
Fisheries Management Act 1991	599	75
Foreign Acquisitions & Takeovers Act 1975	2	0
Foreign Passports (Law Enforcement and Security) Act 2005	9	4
Great Barrier Reef Marine Park Act 1975	38	0
Great Barrier Reef Marine Park Regulations 1983	2	0
Health Insurance Act 1973	63	2
Income Tax Assessment Act 1936	9	0
Maritime Transport and Offshore Facilities Security Act 2003	1	0
Maritime Transport Security Regulations 2003	1	0

**Legislation: charges dealt with in 2006-2007 (cont)**

	Summary	On Indictment
Marriage Act 1961	2	0
Migration Act 1958	17	16
National Health Act 1953	5	1
Navigation (Collision) Regulations 1982	2	0
Non Commonwealth – Drugs	202	117
Non Commonwealth – Other	27	35
Occupational Health and Safety (Commonwealth Employment) Act 1991	3	0
Occupational Health and Safety (Maritime Industry) Act 1993	3	0
Passports Act 1938	28	5
Primary Industries Levies and Charges Collection Act 1991	10	0
Proceeds of Crime Act 1987	2	1
Protection of the Sea (Prevention of Pollution from Ships) Act 1983	13	0
Public Order (Protection of Persons & Property) Act 1971	2	0
Quarantine Act 1908	10	2
Radiocommunications Act 1992	4	0
Service and Execution of Process Act 1992	1	0
Social Security (Administration) Act 1999	900	0
Social Security Act 1947	2	0
Social Security Act 1991	181	0
Statutory Declarations Act 1959	1	0
Superannuation Industry (Supervision) Act 1993	2	5
Taxation Administration Act 1953	242	1
Telecommunications (Consumer Protection Service Standards) Act 1999	1	0
Telecommunications (Interception & Access) Act 1979	3	0
Therapeutic Goods Act 1989	4	1
Torres Strait Fisheries Act 1984	23	0
Trade Marks Act 1995	25	0
Trade Practices Act 1974	0	3
Veterans Entitlements Act 1986	2	0
<b>Total</b>	<b>7245</b>	<b>1081</b>

\* These charges related to a number of private prosecutions for a common law offence which the DPP took over and discontinued.

**Table 9: Crimes Act 1914: charges dealt with in 2006-2007**

	Summary	Indictable
Incite mutiny (s.25)	2	0
Damage property (s.29)	6	2
False pretences (s.29A)	1	6
Imposition (s.29B)	30	16
Fraud (s.29D)	15	84
Administration of justice offences (Part III)	17	6
Sexual conduct children overseas (s.50)	1	12
Forgery (ss.65-69)	3	3
Disclosure of information (s.70)	0	3
Stealing Commonwealth property (s.71)	1	0
Corruption and bribery (s. 73)	1	1
Personating public officers (s.75)	0	1
Unlawful access to computer data (s.76B)	0	1
Postal offences (ss.85E-85ZA)	6	1
Telecommunications offences (ss.85ZB-85ZKB)	8	0
Trespass on Commonwealth land (s.89)	4	0
<b>Total</b>	<b>95</b>	<b>136</b>

**Table 10: Commonwealth Criminal Code 1995: charges dealt with in 2006-2007**

	Summary	Indictable
Part 2.4 Extensions of criminal liability (ss.11.1 – 11.6)	4	5
Part 5.3 Terrorism (ss. 101.4 – 103.2)	0	4
Part 7.2 Theft and other property offences (ss.131.1 – 132.8)	33	8
Part 7.3 Fraudulent conduct offences (ss.134.1 – 135.4)	3451	174
Part 7.4 False or misleading statements (ss.136.1 – 137.2)	25	2
Part 7.6 Bribery and related offences (ss.141.1 – 142.2)	4	3
Part 7.7 Forgery and related offences (ss.144.1 – 145.5)	31	15
Part 7.8 Causing harm to, impersonating, obstructing Commonwealth officials (ss.147.1 – 149.1)	62	27
Part 7.20 Division 270 Slavery, sexual servitude and deceptive recruiting offences (ss.270.3 – 270.7)	0	2
Part 9.1 Serious drug offences (ss. 302.1 – 310.3)	37	66
Part 9.4 Dangerous Weapons (ss.360.1 – 360.4)	14	0
Part 10.2 Money laundering offences (ss.400.3 – 400.9)	3	20
Part 10.5 Postal offences (ss.471.1 – 471.15)	25	4
Part 10.6 Telecommunications offences (ss.474.1 – 474.27)	91	77
Part 10.7 Computer offences (ss.477.1 – 478.4)	9	5
Part 10.8 Financial information offences (ss. 480.4 – 480.6)	9	6
<b>Total</b>	<b>3798</b>	<b>418</b>

**Table 11: Defendants dealt with in 2006-2007: referring agencies**

	Summary	Indictable
Australian Bureau of Statistics	25	0
Australian Communications and Media Authority	3	0
Australian Competition and Consumer Commission	0	1
Australian Crime Commission	5	24
Australian Customs Service	45	17
Australian Electoral Commission	1	0
Australian Federal Police	361	225
Australian Fisheries Management Authority	384	52
Australian Maritime Safety Authority	16	0
Australian Postal Corporation	40	7
Australian Prudential Regulation Authority	2	1
Australian Quarantine and Inspection Service	3	1
Australian Securities and Investments Commission	34	37
Australian Sports Anti-Doping Authority	1	0
Australian Taxation Office	257	50
Australian Trade Commission	1	0
Centrelink	3556	62
Civil Aviation Safety Authority	16	0
Comcare	3	1
Department of Agriculture, Fisheries and Forestry	10	0
Department of Defence	12	5
Department of Education Science and Training	4	1
Department of Employment and Workplace Relations	6	2
Department of the Environment and Heritage	11	0
Department of Foreign Affairs and Trade	26	1
Department of Immigration and Citizenship	9	3
Department of the Treasury	2	0
Department of Veterans' Affairs	17	4
Great Barrier Reef Marine Park Authority	40	0
Insolvency Trustee Services Australia	236	9
Medicare Australia	63	4
Non Commonwealth Agencies	46	6
Therapeutic Goods Administration	2	4
State or Territory Police	134	34
<b>Total</b>	<b>5371</b>	<b>551</b>

Note this list contains names of only current Commonwealth agencies. Where an agency's name has changed over time, all the cases emanating from that agency, whatever its name, are included under the most current agency that has assumed the function. For example, under Australian Crime Commission are included prosecutions that were originally referred by the National Crime Authority.

**Table 12: Reparation orders and fines and costs**

	2005-2006 \$'000	2006-2007 \$'000
Reparation orders made	31,470	31,782
Fines and costs orders made	10,748	9,401



## CHAPTER 5

# Criminal Confiscation

### Overview

In addition to its prosecutorial responsibilities, the DPP has important functions relating to the taking of criminal confiscation action under Commonwealth legislation. Criminal confiscation legislation is an important weapon in combating financially motivated crime by the Commonwealth, and is aimed at depriving criminals of the proceeds of offences against Commonwealth laws; punishment and deterrence of offenders; preventing the reinvestment of proceeds of crime in further criminal activities; and giving effect to Australia's obligations under international conventions and agreements regarding proceeds of crime and anti-money laundering.

### Legislation

#### *Proceeds of Crime Act 2002*

The principal legislation under which the DPP operates in this area is the *Proceeds of Crime Act 2002* (POC Act 2002), which came into effect on 1 January 2003. The POC Act 2002 provides a comprehensive scheme to trace, restrain and confiscate the proceeds and instruments of crime against Commonwealth law. In some cases it may also be used to confiscate the proceeds of crime against foreign law.

Under the POC Act 2002, confiscation action may be taken either in conjunction with the prosecution process (conviction based action), or independently from that process (civil action).

Conviction based action depends upon a person being convicted by a court of a Commonwealth indictable offence, which in turn involves proof of all elements of the offence beyond reasonable doubt. Civil action may be taken whether or not a person has been charged with or convicted of an offence, and involves proof of the offence to a lower standard, 'the balance of probabilities'. Civil action is available in relation to a narrower range of cases.

In order to preserve property pending the outcome of confiscation proceedings, the POC Act 2002 provides for restraining orders over property to be made early on in an investigation. There are four different types of restraining orders which may be made under the POC Act 2002 in different circumstances.

There are three types of ‘final’ orders which may be made under the POC Act 2002:

- Forfeiture orders – where a court orders that property which is the proceeds or an instrument of crime be forfeited to the Commonwealth;
- Pecuniary penalty orders – where a court orders an offender to pay to the Commonwealth an amount equal to the benefit derived by the person from the commission of crime; and
- Literary proceeds orders – where a court orders an offender to pay to the Commonwealth an amount calculated by reference to benefits the person has derived through commercial exploitation of his or her notoriety resulting from the commission of an offence.

In addition to the above orders, in certain circumstances the POC Act 2002 provides for ‘automatic’ forfeiture of property. This can occur where a person has been convicted of a ‘serious offence’ within the meaning of the POC Act 2002, and involves the forfeiture of restrained property, after a waiting period, without further order of the court.

The POC Act 2002 contains a range of provisions which protect the rights of owners of restrained property and also third parties. These provisions facilitate, for example, access to restrained property for the purpose of paying reasonable living expenses or reasonable business expenses; exclusion of property from restraint or from forfeiture; and payment of compensation or hardship amounts out of the proceeds of forfeited property. In addition, a court can require the DPP to give an undertaking as to costs and damages as a condition for the making a restraining order.

Confiscated money and money derived from the realisation of other types of confiscated assets are paid into the Confiscated Assets Account, established under Part 4-3 of the POC Act 2002.

### **Other Legislation**

The *Proceeds of Crime Act 1987* (POC Act 1987) applies to cases in which confiscation action was commenced prior to 1 January 2003. The DPP is still conducting a minimal amount of residual litigation under the POC Act 1987.

The DPP also has statutory duties under the *Crimes (Superannuation Benefits) Act 1989* (the CSB Act) and Part VA of the *Australian Federal Police Act 1979* (the AFP Act). The CSB Act provides that the employer-funded proportion of a Commonwealth employee’s superannuation entitlements may be liable to confiscation if he or she is convicted of a ‘corruption offence’ within

the meaning of the Act. If the Attorney-General or the Minister for Justice and Customs issues an authority in such a case, the DPP must apply to a court for orders confiscating the employer-funded superannuation entitlements of the person. The AFP Act makes similar provision in relation to members of the AFP found guilty of corruption offences.

The DPP has two further responsibilities in this area which were used more regularly prior to the enactment of the POC Act 1987, but which are now used relatively infrequently. Those powers are as follows:

- Under Division 3 of Part XIII of the *Customs Act 1901* the DPP is vested with power to bring proceedings to recover profits earned from ‘prescribed narcotic dealings’; and
- Under the DPP Act, the DPP has power to take traditional civil remedies action on behalf of the Commonwealth in cases where there is a connection with a prosecution.

## Operating Structure

The DPP has specialised Criminal Assets Branches in each of the larger regional offices, and Criminal Assets lawyers in the other offices, who deal with criminal confiscation matters referred to them by the various investigative agencies. There is also a National Coordinator for Criminal Assets in Head Office who coordinates the work in this area on a national basis. The functions of the DPP’s Criminal Assets lawyers include considering the appropriateness of criminal confiscation action in matters referred to them by the relevant investigative agencies, and if appropriate, commencing and conducting confiscation litigation. In large and complex cases the DPP may also be involved in the provision of advice during the investigative phase of a criminal confiscation matter.

The DPP works in partnership in this area with a variety of Commonwealth agencies. All Commonwealth agencies with the capacity to investigate crime, particularly fraud, have a role in the identification and referral of proceeds of crime matters. Principal investigative responsibility however rests with agencies such as the AFP, the ACC, the ACS, ASIC, and the ATO, some of whom have specific investigative powers under the POC Act 2002.

The DPP also works closely with the Insolvency and Trustee Service of Australia (ITSA). ITSA is given specific responsibilities under the POC Act

2002 in relation to the management of restrained property and the realisation of confiscated property.

## **2006-2007 Financial Year**

2006-2007 was the fourth full financial year of operation of the POC Act 2002 and represented a period of consolidation of the work of the DPP in this area. The overall number of cases on hand slightly increased during the year. The value of new confiscation orders obtained was significantly less than for 2005-2006, however this is attributable to the ebb and flow of referrals from investigative agencies in this area. Importantly, the base value of funds recovered under the POC Act 2002 during the year continued to be high at \$16 million, and has now increased every year since the commencement of the Act in 2003.

During the financial year, DPP continued to make extensive use of the civil confiscation provisions contained in the POC Act 2002. Tax and tax-related frauds have emerged as a significant component of the confiscation litigation undertaken by the DPP in this area, complementing the confiscation work done in more traditional areas such as in relation to narcotics offences. The relationship between civil confiscation proceedings and the criminal prosecution process continues to be explored in the courts, and a number of decisions touching this issue were handed down during the course of the year.

In October 2006, the report of Tom Sherman AO reviewing the first three years of operation of the POC Act 2002 was tabled in Parliament. The Report concluded that the POC Act 2002 has been more effective in attacking the proceeds and instruments of crime than was the POC Act 1987, but also found that there were 'impediments to the effective operation of the Act' and proposed 'a large number of recommended changes to the Act'. Since the tabling of the Report, the DPP has provided input in relation to the development of specific legislative reform proposals.

In 2006-2007, the DPP continued to participate in extensive proceeds of crime training activities with its various referring agencies, and also agreed to take part in a number of international legal programs in the Asia Pacific Region. DPP confiscation lawyers met in Australia with delegations from Malaysia and Mongolia, and in May 2007 a DPP confiscation lawyer travelled to Samoa to participate in an International Crime Cooperation Workshop for the Pacific Region.

## Statistics

A detailed breakdown of the results for the 2006-2007 year is provided by the tables at the end of this Chapter, however the following is a summary of the DPP's criminal confiscation activities.

Under the POC Act 2002:

- 73 new restraining orders were obtained.
- 182 restraining orders were in force at as 30 June 2007.
- 10 pecuniary penalty orders were obtained.
- 51 forfeiture orders were obtained.
- Automatic forfeiture occurred in 11 matters.
- 50 compulsory examinations were undertaken.
- The total estimated value of confiscation orders obtained was \$12.07 million.
- The total amount recovered in relation to confiscation orders was \$16.026 million.

In relation to matters still continuing under the POC Act 1987 automatic forfeiture occurred in one matter and a total of \$2.6 million was recovered.

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

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

## POC Act 2002 Performance Indicators

The DPP's performance in cases under the POC Act 2002 during 2006-2007 is measured against various performance indicators below.

Description	Number	Target	Outcome
Applications for restraining orders that succeeded	75	90%	100%
Figures for 2005 – 2006	74	90%	100%
Applications for pecuniary penalty orders that succeeded	10	90%	100%
Figures for 2005 – 2006	21	90%	100%
Applications for forfeiture orders that succeeded	51	90%	98%
Figures for 2005 – 2006	37	90%	100%
Damages awarded against undertakings	0		\$0
Figures for 2005 – 2006	0		\$0
Number of cases where costs awarded against DPP	5		\$11,102
Figures for 2005 – 2006	0		\$0

## Significant Cases

### Paul Reginald Bowerman

In October 2004 Paul Bowerman entered pleas of guilty to one count of being knowingly concerned in a fraud on the ATO, and one count of seeking dishonestly to obtain a gain from the ATO.

In December 2004, the DPP obtained a charge-based restraining order under the POC Act 2002 over the property of Bowerman. The purpose of the restraining order was as security for an intended application for a pecuniary penalty order against Bowerman in respect of benefits obtained by him from the abovementioned offences.

In February 2005 Bowerman applied to the Court for, among other things, an order under section 39 of the POC Act 2002 that costs associated with his legal representation be paid out of his restrained property. Section 39 relevantly provides that a court that made a restraining order may make 'any ancillary orders that the Court considers appropriate', including an order varying the property covered by the restraining order.

The DPP opposed Bowerman's application on the grounds that the POC Act 2002 evinces an intention that the costs of legal representation of a person are not permitted to be paid out of restrained property. (Legal assistance for proceedings under the POC Act 2002 is instead available from legal aid commissions, who have agreed to disregard restrained assets for the purposes of applying their means tests).

The DPP referred to section 24 of the Act, which deals with the release of property from restraint for the purposes of meeting the 'expenses' of a person, and which expressly prohibits the court from releasing restrained property for the purposes of paying the legal expenses of a person.

Ultimately, the New South Wales Supreme Court ruled that the issue of access to restrained property for the purpose of paying legal expenses was dealt with fully in section 24 of the POC Act 2002, and hence that an application for a variation to a restraining order under 39 could not be used as a vehicle for achieving the same purpose. In coming to this conclusion the Court distinguished the recent High Court decision in *Mansfield v DPP (WA)* (2006) 228 ALR 214 relating to the payment of legal expenses out of restrained property under the *Criminal Property Confiscation Act 2000* (Western Australia).

The Court's decision has since been reported at *DPP (Cth) v Bowerman* (2006) 167 A Crim R 554.

### **Joseph George Christiansz**

Joseph Christiansz was a registered tax agent with his own accounting firm, Dome Accounting. Between 15 February 2005 and 2 June 2005, he perpetrated a large scale fraud on the ATO by submitting false BAS in relation to his own clients and the clients of other tax agents, resulting in refunds being issued by the ATO. The refunds were directed into bank accounts controlled by or associated with Christiansz.

Christiansz used the ATO Tax Agents' portal to change taxpayer information relating to his clients and also changed details relating to the clients of other tax agents by having their portal passwords reset, thereby enabling him to access the records of other tax agents. During this period, he unlawfully obtained \$1,398,906.63 in GST refunds and unsuccessfully attempted to obtain a further \$9.8 million.

Of the \$1.3 million obtained, the AFP were successful in recovering cash in the sum of \$679,800 and a further \$365,582 was garnisheed by the ATO via some bank accounts, leaving an outstanding balance of \$353,524.63.

The DPP initiated action under the POC Act 2002 seeking a restraining order for the purpose of satisfying a pecuniary penalty order for the outstanding amount of the fraud. On 9 August 2005, the County Court of Victoria ordered the restraint of Christiansz's property which consisted of two residential properties and a small amount of cash.

On 8 September 2006, prior to the resolution of the criminal proceedings against Christiansz, a civil pecuniary penalty order was made by consent for the outstanding amount of \$353,524.63. Proceeds from the sale of restrained property were paid into the Confiscated Assets Account in part payment of the pecuniary penalty amount.

A note regarding the prosecution action taken against Christiansz is included in Chapter 2 of this Report.

### **Cocaj Family**

In 1999 the Excise Section of the ATO, with assistance from members of the AFP, commenced an investigation of members of a family group suspected of the illicit manufacture, distribution, and sale of tobacco, and related excise and income tax frauds. A significant quantity of partly manufactured tobacco, implements associated with the manufacture of tobacco, such as cutting blades, together with empty hessian tobacco bales, and a quantity of manufactured cut tobacco were found at the premises occupied by two family groups: Sadik and Lumterie Cocaj and Enver, Azemin and Flora Cocaj. ATO investigators suspected Enver and Sadik Cocaj of offences relating to the unlawful manufacture and sale of an excisable good, tobacco. None of the Cocajs had a licence or permission to deal with an excisable good.

Sadik and Lumterie Cocaj and Enver, Azemin and Flora Cocaj owned seven residential properties between them suspected of having been purchased with the proceeds of their alleged offences.

The DPP commenced civil proceedings under the POC Act 2002 in September 2004. Restraining orders were obtained over the seven residential properties. The defendants applied to the Court for orders to exclude the properties from restraint, seeking to argue that the properties had been lawfully obtained. Following further investigations by the ATO and negotiations between the parties, on 3 July 2007 the District Court of Queensland ordered, by consent,

that Sadik and Lumterie Cocaj pay a pecuniary penalty to the Commonwealth of \$250,000 in respect of benefits obtained from unlawful conduct. Enver, Azemin and Flora Cocaj were similarly ordered to pay a pecuniary penalty of \$125,000. These amounts have been fully recovered by the Commonwealth.

### **Margot Olive McKay**

Margot McKay ran a business as a media consultant. In the course of her business McKay came into the possession of confidential information about the projected profits of a client company, Aristocrat Leisure Ltd. Using that information, McKay procured her mother, her 22 year old son and a female friend to acquire shares in Aristocrat Leisure, in part using funds provided by McKay herself. The shares later increased in value and some of the shares were sold for a profit.

McKay was charged with and pleaded guilty to offences against section 1043A of the *Corporations Act 2001* of insider trading. On 30 March 2007, McKay was sentenced to periodic detention. In addition the Supreme Court of New South Wales made an order pursuant to section 116 of the POC Act 2002 requiring McKay to pay a pecuniary penalty of \$77,428.37, representing the amount of the benefit unlawfully obtained through the insider trading.

### **Queen Street Mall Duty Free**

In March 2004 the ACS, AFP and ATO commenced a joint investigation into the suspected evasion of excise duty and GST in respect of manufactured tobacco products by a number of duty free stores operating in Brisbane. It was suspected that the stores were selling the tobacco products to distributors who then on-sold it to tobacco outlets in Brisbane but that documents provided to the ACS were falsified to create the appearance that the tobacco products were being sold in legitimate duty-free transactions to overseas ships' crews. No excise duty or GST was being paid in relation to the diverted tobacco product.

One of the stores alleged to have been involved in the above conduct was operated by Queen Street Mall Chandler Pty Ltd, trading as 'Queen Street Mall Duty Free'. In November 2004 the DPP obtained civil orders under the POC Act 2002 restraining property owned by the company and by three people registered as directors of the company. The restrained property included numerous bank accounts, cash, and a number of motor vehicles. Following the making of restraining orders the DPP also carried out a number of examinations under the POC Act 2002 in relation to the affairs and property of the company and its directors.

In September and October 2006, the Court heard applications for civil forfeiture against Queen Street Mall Chandler Pty Ltd. Although the company itself was not prosecuted, DPP was successful in proving the commission of dishonesty offences by the company under the *Criminal Code* in the civil jurisdiction of the Court, based on the civil standard of proof (the balance of probabilities). As a result the Court ordered forfeiture of property of the company valued in excess of \$485,000.

In relation to the three directors of Queen Street Mall Chandler Pty Ltd, in 2005 and 2006 they each pleaded guilty to, and were convicted of, dishonesty offences under the *Criminal Code*. For one of these individuals, the DPP had obtained a civil forfeiture order prior to his conviction. In relation to the other two people, automatic forfeiture of certain items of property followed upon their convictions in accordance with Part 2-3 of the POC Act 2002.

The total estimated value of property confiscated from the company and its three directors in this matter exceeded \$560,000. Of this amount, approximately \$530,000 was able to be confiscated under the civil confiscation provisions of the POC Act 2002.

### **Christopher Quick**

In November 2005 a Canadian national was arrested at Adelaide International Airport with 1.4 kilograms of pure cocaine strapped to his legs. Under police observation, the Canadian national then met with Christopher Quick and another person who were arrested.

The AFP subsequently executed a search warrant at Quick's residence. Cash in the amount of \$67,380 was seized, which had been located in a plastic bag inside a toy box.

Quick was ultimately charged with being in possession of property reasonably suspected of being proceeds of crime, contrary to section 400.9 of the *Criminal Code*. Quick pleaded guilty and on 13 April 2007, he was sentenced to imprisonment for six months to be released upon entering into a bond to be of good behaviour for two years. The Court also made an order for the forfeiture of the \$67,380.

### **X**

Between 2000 and 2003, X was a registered tax agent who, it was alleged, had promoted and operated tax evasion schemes involving the use of offshore entities.

Pursuant to the scheme, X would arrange for an offshore company controlled by X to issue an invoice to the participating company, allegedly for services rendered or performed, but when in fact no such services had been provided. The participating company would then transfer funds to the bank account of the offshore company as ‘payment’ for the services, and then claim the amount of the payment as a non-capital purchase (that is, as an income tax deduction), and claim a related GST input credit.

Later, pursuant to a round-robin series of transactions, the funds would be returned back to the controller of the participating company disguised as a loan from another entity controlled by X.

In return for making the above schemes available, X received 10% of the proceeds of each transaction by way of commission. Over the course of the alleged offence period, many hundreds of thousands of dollars passed through the scheme in the manner described above.

In March 2006, the DPP commenced civil proceedings against X under the POC Act 2002. At the time X was an undischarged bankrupt and held no assets in his own name. Nonetheless, eight items of real estate – owned through trusts, and through X’s wife and daughter (a minor) – were able to be restrained on the grounds that they were suspected of being subject to X’s effective control. Some of these assets had been purchased during the charge period.

On 22 December 2006, the DPP obtained final orders requiring X to pay a pecuniary penalty of \$900,000 to the Commonwealth in respect of benefits obtained by him. This order was able to be enforced in full under the POC Act 2002 through sale of the assets under X’s effective control.

## **Yongming Yan**

Yongming Yan, a citizen of the People’s Republic of China, was wanted by law enforcement authorities of China for alleged large-scale misappropriation and embezzlement offences committed in China. Yan travelled to Australia on a number of occasions, first as Yan, and later under the name ‘Yang Liu’. On these later occasions Yan is alleged to have produced a Chinese passport in the name ‘Yang Liu’, and failed to advise Australian immigration officials that he had previously travelled to and entered Australia in the name ‘Yongming Yan’.

Whilst present in Australia, Yan opened and operated a number of bank accounts. Some of the bank accounts were opened and operated in the name ‘Yang Liu’, in circumstances where Yan allegedly failed to advise that he was also known by the name ‘Yongming Yan’, contrary to section 24 of the *Financial Transaction Reports Act 1988*.

On 22 August 2005 a civil restraining order under the POC Act 2002 was obtained over bank accounts held in the name Desant Group Ltd, a company registered in the British Virgin Islands. The accounts in the name Desant Group Ltd were able to be restrained on the basis that they were suspected of being under the effective control of Yan, who was operating the accounts in the name 'Yang Liu'. The basis for the restraining orders was that Yan was suspected of having committed offences of opening and operating bank accounts in a false name in Australia.

Yan later made an application seeking revocation of the restraining order.

The DPP's proceedings were ultimately resolved by orders of the Supreme Court of New South Wales on 15 November 2006, by consent, forfeiting the sum of \$3,374,236.19 to the Commonwealth.

On 7 June 2007, pursuant to the equitable sharing provisions of the POC Act 2002, the Australian Government repatriated a sum of over \$3.37 million to the Government of the People's Republic of China.

## Criminal Assets Confiscation Tables

The tables which follow set out details of the criminal confiscation work conducted by the DPP in 2006-2007.

**TABLE 1: POC Act 2002: orders and forfeitures in 2006 – 2007**

	Number	Value
Restraining orders	75	\$22,975,623
Pecuniary penalty orders	10	\$4,421,882
Forfeiture orders	51	\$5,997,714
Automatic forfeiture under section 92	11	\$1,656,647
Literary proceeds orders	0	0

\*The fact that a PPO has been made against a person does not necessarily mean that all the money involved will be recovered by the DPP. A PPO may be made for an amount that exceeds the value of the defendant's property.

**TABLE 2: POC Act 2002: restraining orders in force as at 30 June 2007**

	Number	Value
Number of restraining orders in force	182	\$111,905,069

**TABLE 3: POC Act 2002: money recovered in 2006 – 2007**

	<b>Amount Recovered</b>
Pecuniary penalty orders	\$5,704,686
Forfeiture orders	\$7,780,334
Automatic forfeiture under section 92	\$2,540,908
Literary proceeds orders	-
Matters where money recovered but no formal orders made	\$516,463
<b>Total recovered</b>	<b>\$16,542,391</b>

**TABLE 4: POC Act 1987: orders and forfeitures in 2006 – 2007**

	<b>Number</b>	<b>Value</b>
Restraining orders	0	-
Pecuniary penalty orders	0	-
Forfeiture orders	1	\$197,289
Automatic forfeiture	0	-

**TABLE 5: POC Act 1987: restraining orders in force as at 30 June 2007**

	<b>Number</b>	<b>Value</b>
Number of restraining orders in force	9	\$3,146,124

**TABLE 6: POC Act 1987: Money recovered in 2006 – 2007**

	<b>Amount recovered</b>
Pecuniary penalty orders	\$772,482
Forfeiture orders	-
Automatic forfeiture	\$1,832,239
Matters where money recovered but no formal orders made	
<b>Total recovered</b>	<b>\$2,604,721</b>

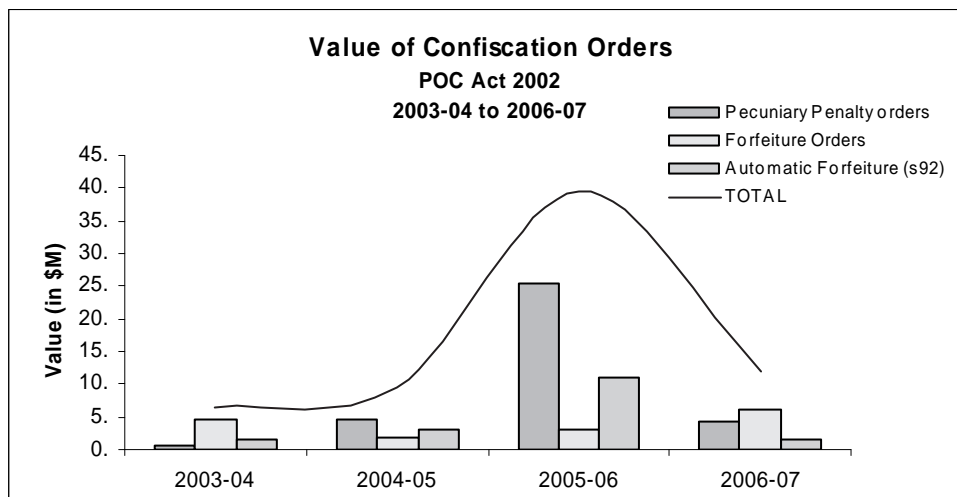
**TABLE 7: Criminal assets: summary of recoveries for 2006 – 2007**

POC Act 1987 pecuniary penalty orders	\$722,482
POC Act 1987 forfeiture orders	
POC Act 1987 automatic forfeiture	\$1,832,239
Matters where money recovered but no formal orders made	
<b>POC Act 1987 total</b>	<b>\$2,604,721</b>

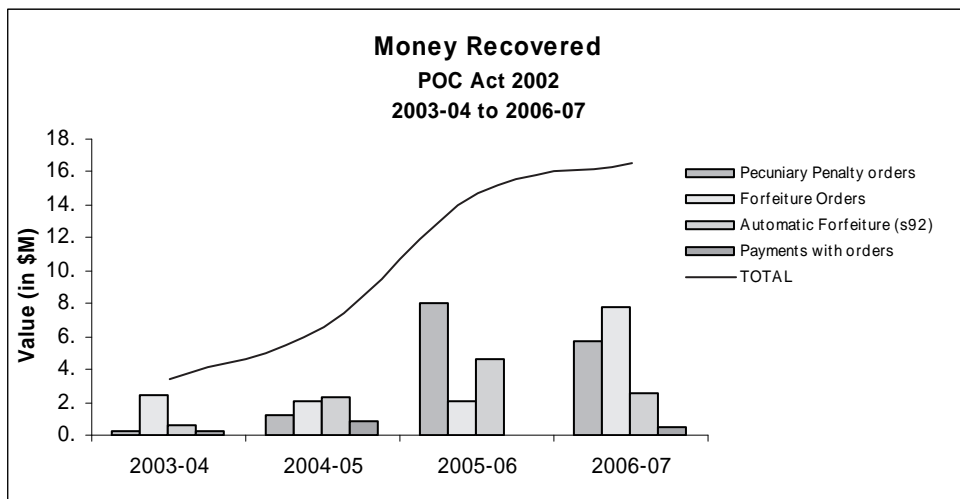
POC Act 2002 pecuniary penalty orders	\$5,704,686
POC Act 2002 forfeiture orders	\$7,780,334
POC Act 2002 automatic forfeiture	\$2,540,908
Matters where money recovered but no formal orders made	\$516,463
<b>POC Act 2002 total</b>	<b>\$16,542,391</b>
Customs Act condemnation	-
<b>Customs Act total</b>	<b>-</b>
<b>Grand total</b>	<b>\$19,147,112</b>

**TABLE 8: CSB Act – orders made in 2006 – 2007**

Name	State	Date
Bruce	NSW	9 November 2006
Hennessy	QLD	8 May 2007

**TABLE 9: Comparative table – estimated value of confiscations obtained under POC Act 2002; 2003-2004 to 2006-2007**

**TABLE 10: Comparative table – recoveries under POC Act 2002; 2003-2004 to 2006-2007**





## CHAPTER 6

# International

Transnational crime is becoming increasingly organised, prevalent and diverse in nature. Many of the offences prosecuted by the DPP, including terrorist offences, people smuggling, sexual servitude, drug trafficking and large scale fraud, are becoming increasingly globalised and involve criminal conduct in more than one national jurisdiction.

Correspondingly, the investigation and prosecution of such offences in Australia is becoming increasingly reliant upon the cooperation and assistance of investigative and prosecution agencies of foreign countries.

Australian investigative agencies and the DPP are also increasingly being called on to provide cooperation to foreign countries to assist them to investigate and prosecute transnational crime and to apprehend and extradite fugitives.

The DPP is involved in two main areas of international criminal co-operation: Extradition and Mutual Assistance. Extradition is the formal mechanism developed to enable countries to request other countries to apprehend fugitives and return them to the requesting country for trial or sentence. Mutual Assistance is a mechanism developed to enable countries to formally make requests to other countries to obtain information and evidence required to investigate and prove the commission of offences in the requesting country.

### Extradition

Extradition is an important mechanism in law enforcement. Increased efficiency in extradition practices worldwide has helped to challenge the perception that offenders can avoid being dealt with by law enforcement authorities by fleeing the jurisdiction. This has important consequences, not only for global law enforcement cooperation, but also in terms of domestic law enforcement, especially in terms of the deterrence of crime. The DPP has an important role to play in the efficiency of the extradition system in Australia.

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

The DPP has a role in both incoming extradition requests received by Australia and outgoing extradition requests for Commonwealth offences. In the case of incoming requests, the DPP appears in proceedings under the *Extradition Act 1988*

and in any appeals arising from those proceedings. The DPP appears for the foreign country in the proceedings, but acts on the basis of instructions provided by the Attorney-General's Department.

In the case of outgoing extradition requests, the DPP prepares requests for extradition in any case where a person is wanted for prosecution for an offence against Commonwealth law and is found to be in a foreign country. The DPP has no role in cases where a person is wanted for prosecution for an offence against State or Territory law. In such cases, the authorities of the relevant State or Territory deal directly with the Commonwealth Attorney-General's Department.

A breakdown of the numbers of new extradition requests is given in the tables at the end of this section.

### *Incoming Requests*

In the past year, the DPP received instructions from the Attorney-General's Department to act, or requests to provide advice or other assistance, in relation to 19 new requests from foreign countries. Six of those matters have resulted in court proceedings in Australia, with four of the people consenting to extradition. One person was found eligible for surrender by the Magistrate, and one matter is currently before the Court. The DPP also appeared on behalf of New Zealand in relation to three requests for extradition received this year. All three people sought consented to their surrender.

In the last year, proceedings were able to be commenced in respect of five matters which had been referred in previous financial years.

The DPP has continued to appear on behalf of foreign countries in a number of continuing extradition matters before the courts throughout the year. Some of these matters have proved to be highly litigious, with the persons seeking to challenge the extradition process at all levels of the court process. As at 30 June 2007 there were four of these matters still before the courts. The number and extent of legal challenges results in significant delays in the extradition proceedings being finalised.

In addition to the DPP's role in formal cases referred to it, the DPP also provides advice to the Attorney-General's Department on a preliminary basis on a number of matters referred to the Attorney-General's Department from foreign countries. The technical nature of extradition proceedings requires that documents submitted in support of an extradition request must meet the requirements of the *Extradition Act 1988* and the relevant Treaty. Given the widely differing legal

systems throughout the world, assistance is often provided to foreign countries to ensure that requests meet the standard required.

### *Outgoing Requests*

During the course of the year, the DPP asked the Attorney-General's Department to make thirteen extradition requests to foreign countries in relation to prosecutions being conducted by the DPP. Some of the requests were made to different countries in relation to the same individual. These requests were either formal requests, or requests for provisional arrest pending the submission of a formal request. Three persons have been returned to Australia as a result of the requests. A further five requests are the subject of extradition proceedings before the courts of the relevant foreign country.

Five persons were also surrendered to Australia during the year as a result of requests made in previous financial years. In one case, the person had been resisting extradition in the foreign country for almost 10 years.

One request for extradition was made to New Zealand, resulting in the return of the person to Australia.

### **Extradition requests involving the DPP\*: source country**

<b>Country</b>	<b>Incoming Requests</b>	<b>Outgoing Requests#</b>
Albania	1	
Canada	1	2
Croatia	1	
Cuba		1
France		1
Germany	2	
Greece	1	1
Hong Kong		2
India		1
Israel	1	
Jordan	1	
Malaysia		1
New Zealand	3	1
Papua New Guinea		1
Poland	1	
Romania	1	
Slovenia	1	
Solomon Islands		1
United Kingdom	2	1
United States	6	1
<b>Total requests</b>	<b>22</b>	<b>14</b>
	<b>(no. for previous year 34)</b>	<b>(no. for previous year 7)</b>

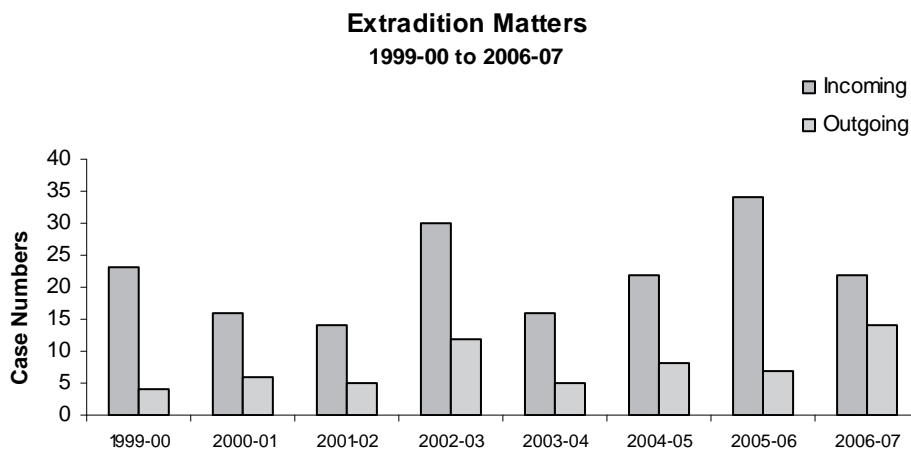
\* Includes work done on both provisional arrest and formal extradition requests and advice to the Attorney-General's Department.

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

**Extradition requests involving the DPP: type of matter**

Type of Matter	Incoming Requests	Outgoing Requests
Fraud	4	4
Murder/Assault	3	
Sex offences/Child Pornography	3	3
Drugs	4	7
Money-laundering	1	
War Crimes	1	
Child Abduction	3	
Other	3	
<b>Total requests</b>	<b>22</b>	<b>14</b>

The following chart shows the comparative numbers of both incoming and outgoing extradition matters from 1999-2000 to 2006-2007.



## Mutual Assistance

Mutual assistance is a formal process used by countries to provide assistance to each other to investigate and prosecute criminal offences, and to recover the proceeds of crime.

The mutual assistance regime rests on a network of international relations and obligations, together with the willingness of participating countries to provide assistance to each other.

This international network is underpinned by a number of bilateral treaties and multilateral conventions. Australia has ratified 26 bilateral mutual assistance treaties, and a number of multilateral conventions, which bind the signatories to provide mutual assistance to each other for the matters covered by these treaties or conventions, including:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- United Nations Convention Against Transnational Organized Crime
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

Countries which are not signatories to mutual assistance treaties or conventions also request mutual assistance from, and provide mutual assistance to, each other. This is done under the principle of reciprocity whereby the countries agree to provide assistance to each other on a case by case basis on the understanding they will receive similar assistance in return. In Australia the *Mutual Assistance in Criminal Matters Act 1987* provides a legislative basis for such assistance.

The formal mutual assistance regime runs parallel with the less formal system of international cooperation between investigating agencies, known as ‘agency to agency’ requests. The formal mutual assistance channel is used when required by the local law or custom, when a request for assistance requires the use of coercive powers in the requested country, or when the material requested is required in a form that may be admissible in criminal proceedings in the requesting country.

In relation to requests from other countries, the main types of assistance provided under the mutual assistance regime involve the use of coercive powers, and include:

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

The DPP generally becomes involved in the execution of requests by foreign countries to Australia where the execution of the request requires the use of coercive powers. The DPP assists members of the AFP in obtaining search warrants authorised under the *Mutual Assistance in Criminal Matters Act 1987*, and appears in Court proceedings to obtain evidence requested by foreign countries. DPP also conducts applications authorised under the *Mutual Assistance in Criminal Matters Act 1987* to register and enforce orders made by foreign courts to restrain and forfeit the proceeds of crime.

In the past year, the DPP provided assistance in executing 35 requests made by 22 countries.

The DPP was also involved in 140 outgoing requests made by Australia to 44 foreign countries. The outgoing requests were generally made in conjunction with Commonwealth investigative agencies, or joint taskforces comprising law enforcement officers from Commonwealth, State and Territory agencies. The DPP is generally not involved in mutual assistance requests initiated by State and Territory agencies where Commonwealth officers are not involved.

The DPP continues to provide mutual assistance training to Commonwealth investigative agencies, and to participate in capacity building forums with other countries in the region.

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

#### Mutual assistance requests involving the DPP - 2006-07

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Country	Incoming requests (involving the exercise of coercive powers)	Outgoing requests
Belgium		4
Brazil	1	
Cambodia		1
Canada		5
Chile	1	
Columbia	1	2
Cyprus		1
Czech Republic	1	
Federated States of Micronesia		1

## Mutual assistance requests involving the DPP - 2006-07 cont.

Fiji	1	
France		3
Germany	1	7
Greece	1	4
Guernsey		1
Hong Kong	3	17
India	1	3
Indonesia		5
Ireland	1	
Israel	3	1
Italy		1
Iraq		1
Japan		3
Jersey		1
Lebanon		1
Macedonia		1
Malaysia		4
Malta		2
Mauritania		1
New Caledonia		1
New Zealand	2	7
Pakistan		2
Papua New Guinea		1
Peru		1
Poland	1	1
Russian Federation	1	
Scotland	1	1
Singapore		6
South Africa	2	1
Sri Lanka		2
Sweden	1	
Switzerland	1	2
Thailand		1
The Netherlands	2	8
Turkey	1	3
United Arab Emirates		1
United Kingdom	5	9

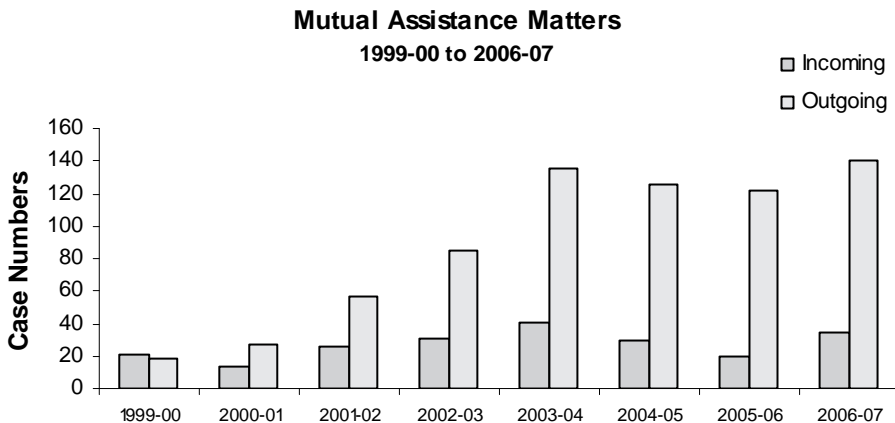
Mutual assistance requests involving the DPP - 2006-07 cont.

USA	3	17
Vanuatu		3
Venezuela		1
Vietnam		1
Total requests	35	140
Number of requests for preceding year – 2005-06	20	122

Mutual assistance matters involving the DPP: type of matter

Type of Matter	Incoming	Outgoing
Corporations		4
Drugs	9	51
Fraud	8	17
Laundering	6	11
Other	12	43
Terrorism		14
Total	35	140

The following chart shows the comparative numbers of incoming and outgoing mutual assistance matters from 1999-2000 to 2006-2007.



## CHAPTER 7

# Law Reform

The DPP contributes to law reform in a number of ways, including providing advice about the practical implications of existing legislation, new policy proposals, and proposed legislation.

The DPP's ongoing contribution to law reform stems from its practical experience conducting criminal prosecutions in courts across Australia. As the agency responsible for the conduct of prosecutions against the laws of the Commonwealth in all Australian jurisdictions, the DPP is in a unique position to provide insight into the practical operation of existing and proposed laws. The DPP provides feedback to policy formulators and law-makers about the operation of Commonwealth laws and the DPP's experience working with these laws in the courts. The DPP also has an interest in ensuring that Commonwealth legislation regarding the criminal law is clear, consistent and practical. However, it is important to recognise that the DPP does not develop criminal law policy.

The Policy Branch in Head Office coordinates the DPP's work in the area of law reform. The Policy Branch acts as a coordination point for the various areas of specialist expertise within the DPP, as well as between branches within the office, including the Commercial, International and Counter-Terrorism Branch and the Criminal Assets Branch. The Policy Branch operates closely with the Legal and Practice Management Branch in establishing and maintaining links between prosecutors in Regional Offices and Commonwealth law-makers.

### Legislative Proposals

The DPP commented on a wide range of legislative proposals and draft legislation during the course of the year, including the matters mentioned in this Chapter.

Last year's Report indicated that the DPP had provided comments to the Attorney-General's Department concerning the first exposure draft of the *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006*. The object of this Bill was to improve and strengthen Australia's anti-money laundering and counter-terrorism financing system in line with international standards issued by the Financial Action Task Force on Money Laundering. During the course of this year, the Attorney-General's Department released a second exposure draft of the Bill, which the DPP was also able to provide comments on. The Bill was then introduced into Parliament and passed. The *Anti-Money Laundering and*

*Counter Terrorism Financing Act 2006* received Royal Assent on 12 December 2006. The Act has quite a complex commencement structure which will see parts of the Act commencing at different times over a two year period. The DPP has assisted in implementing this legislation by providing training and materials to assist investigators and prosecutors in using the provisions that have commenced operation. The DPP will have an ongoing role in providing assistance to investigators and prosecutors on the operation of provisions of this Act as they commence.

In considering the operation of *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and the *Financial Transactions Reports Act 1988* in light of the *Anti-Money Laundering and Counter Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006*, the DPP became aware of an unintended consequence to section 31 of the *Financial Transaction Reports Act 1988*. This was amended by the *Anti-Money Laundering and Counter Terrorism Financing Amendment Act 2007* as a result of the DPP providing information concerning the issue to the Attorney-General's Department.

The *Copyright Amendment Act 2006* contains significant amendments to the *Copyright Act 1968*, including the repealing of the main criminal offence provisions in section 132 and replacing those offences with a tiered regime of indictable, summary and strict liability offences that carry a range of penalties. In addition to the criminal offences, there is an infringement notice scheme which is implemented in the *Copyright Regulations 1969*. These provisions commenced operation on 1 January 2007. The DPP has provided ongoing input in this area and has updated its Copyright Prosecutions Outline, which is an outline of the major offences contained in the Copyright Act for investigators and prosecutors, to reflect these amendments.

The *Crimes Legislative Amendment (National Investigative Powers and Witness Protection) Bill 2006* contains amendments to various Commonwealth Acts, including the *Crimes Act 1914*, in relation to various investigative issues such as search warrants. The DPP has provided comments in relation to several of the proposed amendments contained in this Bill as it has been developed.

## **Reviews**

The DPP has participated in a number of reviews throughout this year, by providing submissions or comments on discussion papers or proposals. Participating in reviews is an important part of the DPP's contribution to law reform because it is a mechanism to discuss how the law currently operates or to comment on proposed changes to the law. The following discussion provides examples of the DPP's participation in the arena of reviews this year.

This year the Australian Law Reform Commission (ALRC) released Issues Paper 33 entitled Client Legal Privilege and Federal Investigatory Bodies. In responding to the ALRC's Discussion Paper on the Evidence Act, the DPP indicated that it favoured a review of the operation of legal professional privilege/client legal privilege in all jurisdictions. The DPP made this submission because of issues that have arisen in federal investigations as a result of the operation of the privilege. In the light of these comments, the DPP welcomed the ALRC's consideration of the impact of client legal privilege on the work of federal investigatory bodies. The DPP has provided submissions on the issues paper, setting out concerns that the DPP has in relation to the impact that client legal privilege can have in delaying investigations. The DPP will consider the Discussion Paper once it is released and will provide further submissions if necessary.

Last year's report indicated that the ALRC presented the Attorney-General with its final report *Same Crime, Same Time: Sentencing of Federal Offenders*, in April 2006. The terms of reference asked the ALRC to examine and report on, amongst other matters, whether the sentencing provisions in Part 1B of the *Crimes Act 1914* provide an appropriate, effective and efficient mechanism for the sentencing and imprisonment of federal offenders and what, if any, changes are desirable. The review was to have particular regard to the changing nature and scope of federal criminal law and the question of consistency in the treatment of federal offenders across Australia. This review has been of particular interest to the DPP because it has been concerned with a major aspect of the prosecution process, sentencing. The DPP will provide assistance in relation to further consideration of law reform in the area of Federal sentencing.

The DPP also provided detailed submissions to the review by the Treasury of the Taxation Secrecy and Disclosure Provisions. In those submissions, the DPP highlighted issues that can arise in the interaction between taxation secrecy provisions and the criminal process. Of particular concern to the DPP is the restriction that taxation secrecy provisions place on the use of taxation information in criminal prosecutions that are not tax related prosecutions.

### **Liaison and Committees**

The DPP's input on legislative reform is facilitated by a close working relationship with the Attorney-General's Department, in particular the Criminal Justice Division and the Security and Critical Infrastructure Division. It is also facilitated by close liaison relationships with the Commonwealth departments and agencies which investigate Commonwealth offences.

On occasion, the DPP may identify deficiencies in laws or aspects of laws that in the view of the DPP should be clarified. These are brought to the attention of the Attorney-General's Department or another department or agency that has responsibility for the administration of the legislation involved. The DPP may also raise possible legislative changes for consideration.

During the course of this year, the DPP, along with Directors of Public Prosecutions in other jurisdictions, raised the issue of whether legislative amendments should be made to deal with the impact that the principle of 'double jeopardy' can have on appeals against sentence. The Council of Australian Governments (COAG) considered this issue in the course of its consideration of double jeopardy law reform in general. It was agreed by COAG that all jurisdictions would implement reform to provide that no principle of 'double jeopardy' should be taken into account in determining whether to impose a different sentence in a prosecution appeal against sentence.

In addition, the DPP is active in law reform through its discussions with departments and agencies, particularly through its liaison function, and at various interdepartmental committees where law reform issues are raised. For example, the DPP is represented on an interdepartmental committee, chaired by the Attorney-General's Department, which deals with measures to combat international trafficking in persons. The DPP's expertise in the prosecution of federal offences provides these working groups, interdepartmental committees, agencies and departments with information about the practical implications of proposed law reform.

### **International Committees**

The DPP has continued its role in relation to law reform in the broader international context through participation in international committees such as the Asia/Pacific Group on Money Laundering (APG). The APG is an autonomous regional body concerned with combating money laundering and counter terrorism financing. Its objects include assisting jurisdictions to enact criminal laws concerning money laundering and counter terrorism financing and implementing preventative measures. APG assess its members' compliance with global standards, such as the recommendations of the Financial Action Task Force on Money Laundering (FATF). As part of the DPP's representation on APG this year, a DPP lawyer participated on the panel conducting the mutual evaluation of Malaysia's compliance with these global standards.

These activities undertaken by the DPP in the last year are indicative of the valuable contribution that the DPP makes, on an ongoing basis, to law reform.

## CHAPTER 8

# Practice Management

In addition to case work and law reform work, the DPP also contributes to the work of the criminal justice system in broader ways. The DPP's corporate plan envisages a prosecution service which involves 'best practice' in both the recruitment and development of staff, and also in the delivery of a prosecution service to the Australian people. The DPP actively pursues this goal in the management of its practice.

The DPP manages its practice in terms of being a national office in ways which seek to enhance both the effectiveness of prosecutors and the maintenance of a federal prosecution service. The DPP has a number of policies and guidelines which it continues to review on a national basis. In addition, the DPP provides training on a national level to prosecutors in a range of areas, including advocacy.

The DPP works hard to maintain good working relationships with investigative agencies and departments. There is a system of national liaison with all of the DPP's major referring client agencies, which complements liaison conducted at a regional level. In addition, the DPP maintains a number of manuals and policies which assist law enforcement agencies in their role in investigating Commonwealth offending. The DPP also provides a valuable system of training and other support to investigators, and this work is discussed below.

### Advocacy Training

The DPP held a number of in-house advocacy courses in 2006-2007. The DPP considers sound advocacy skills to be important, and ensures that staff have access to regular opportunities to update their skills in this respect.

During the course of the year training was conducted in the Melbourne Office on how to appear on a plea in the Magistrates Court or County Court. The Sydney Office held a course on summary prosecutions and appearing in sentencing proceedings. The Melbourne Office also held a course on conducting applications for leave to appeal against sentence before a single justice of the Court of Appeal under section 582 of the *Crimes Act 1958*. The Brisbane Office held an advocacy training course on summary hearings. On occasion, prosecutors may attend advocacy training held in another regional office of the DPP.

## **Warrants Manuals**

During the course of the year, the DPP released updated versions of the DPP Search Warrants Manual, the Telecommunications and Access Interception Warrants Manual and the Surveillance Devices Warrants Manual. These manuals provide practical guidance on obtaining, executing and defending warrants under Commonwealth law.

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

## **Copyright Prosecution Outline**

As discussed in Chapter 7, the *Copyright Amendment Act 2006*, which commenced on 1 January 2007, contained significant amendments to the *Copyright Act 1968*, including amendments to the offence provisions in that Act. In response to those amendments, the DPP has released an updated version of the Copyright Prosecutions Outline. This Outline provides practical guidance and assistance to investigators and prosecutors of copyright matters.

## **Liaison with Investigative Agencies**

The DPP maintains liaison relationships with those Commonwealth agencies who refer matters for prosecution. As part of those relationships regular meetings at both the Regional and National level are held with those agencies that refer significant numbers of matters to the DPP. In addition the DPP maintains a liaison relationship with other investigative agencies that refer briefs of evidence to the DPP.

To support these liaison relationships, from time to time the DPP arranges national conferences addressing specific areas of work. Investigative agencies involved in those areas are invited to participate in the conferences and this provides a useful opportunity for prosecutors and investigators to discuss issues involved in dealing with specific types of criminal conduct. Recent conferences have addressed money laundering, Centrelink fraud, tax fraud and online child sexual exploitation.

## **Joint Trials – State and Territory DPPs**

As noted in Chapter 1, the Director is empowered to prosecute indictable offences against State and Territory laws, where the Director holds an authority to do so under the laws of the relevant State or Territory. In addition, the Director is empowered to conduct committal proceedings and summary prosecutions for offences against State or Territory law where a Commonwealth officer is the informant. Prosecutions which involve both Commonwealth and State charges are referred to as joint trials.

The DPP has arrangements in place with each of the Directors of Public Prosecutions in Australia in relation to the conduct of joint trials. The DPP is in the process of reviewing the arrangements with each of the State and Territory DPPs, with a view to establishing greater consistency in those arrangements.

This year, the DPP has entered into a new joint trial arrangement with the Victorian DPP. Consultations are continuing with other jurisdictions.

## **Prosecution Policy**

As discussed in last year's Report, the DPP has been conducting an ongoing review of the *Prosecution Policy of the Commonwealth*. This has been a significant exercise, and has included a comparison of prosecution policies around Australia and the United Kingdom and Canada. Possible amendments to the *Prosecution Policy of the Commonwealth* are currently being considered. Whilst it is some years since the last edition of this document was released, the *Prosecution Policy of the Commonwealth* continues to be very significant in promoting consistency in decisions made by the DPP, and in informing the public of the principles that underlie those decisions.

## **Review of Guidelines for Dealings between Commonwealth Investigators and the Commonwealth Director of Public Prosecutions**

In 1998, the DPP produced the *Guidelines for Dealings between Commonwealth Investigators and the Commonwealth Director of Public Prosecutions*. They were developed in consultation with the major Australian Government agencies which have an investigative function. They provide guidance for dealings between Australian Government investigators and the DPP and also provide agencies with a wide range of material and information about how to prepare matters for prosecution.

During the course of the year, the DPP has reviewed these guidelines to ensure that they are up to date and meet both the needs of agencies and the DPP. In 2006-2007 the DPP commenced consulting with Commonwealth investigative agencies with the aim of producing a final agreed version of this document.

### **International Contribution, particularly in the Pacific**

During the year, the DPP was actively involved in legal assistance initiatives across the Asia Pacific region. DPP staff have attended conferences and/or provided training on diverse matters such as Australian anti-money laundering and proceeds of crime mechanisms, mutual assistance and extradition, the prosecution by the DPP of illegal foreign fishers and the investigation and prosecution of complex corporate offences in Australia. DPP representatives have travelled far afield to provide this assistance from Apia and Koror to Beijing, Shanghai, Kuala Lumpur and Manila.

In addition to this, during the year, the Office co-hosted, with the New South Wales Director of Public Prosecutions, a Pacific regional forum of senior prosecuting officers. Senior prosecutors from eleven national jurisdictions from all around the Pacific, as well as four Australian State and Territory jurisdictions, attended the forum. The forum provided an opportunity for prosecutors to discuss specific issues which arise in Pacific jurisdictions. The attendance of the international delegates was facilitated by AusAID, and the feedback from the forum was very positive.

In April 2007, the Office initiated, hosted and chaired a conference for the managing officers and chief executives of the national prosecuting offices of England, Ireland, Scotland, New Zealand, Canada and Australia and the three large prosecuting offices from New South Wales, Victoria and Queensland. The aim of the conference was to examine and discuss advances in best practice for service delivery, training and management within the modern prosecuting office. The conference had a number of strong outcomes which will enable all prosecuting offices concerned to develop their practices in line with identified trends which will provide better service delivery and staff support.

### **Pacific Prosecutor's Pairing Programme**

It is a priority of the Commonwealth government to strengthen anti-money laundering and counter-financing of terrorism systems in the Pacific region. The Commonwealth Attorney-General's Department through its Anti-Money Laundering Assistance Team, worked with the DPP to establish a pairing

programme which is designed to build capacity within prosecution agencies in Pacific countries. The pairing programme is designed to assist prosecutors from the Pacific to develop skills such as dealing with proceeds of crime action by providing them with practical experience, training and mentoring.

During the course of the year, the DPP hosted a lawyer from the Papua New Guinea Office of Public Prosecutions in the criminal assets branch of the Brisbane Office. The DPP's participation in the pairing programme has been successful.

### **Director of Military Prosecutions – Memorandum of Understanding**

The Director of Military Prosecutions (DMP) is established by Part XIA of the *Defence Force Discipline Act 1982*, which commenced on 12 June 2006. The Office of Military Prosecutions is designed to provide an independent prosecution service across the three arms of the military to deal with allegations of breaches of service discipline.

The functions of the DMP include carrying on prosecutions for service offences and doing anything incidental or conducive to the performance of that function. A service offence includes any offence under the Act and any offence ancillary to an offence under the Act. The same conduct can give rise to the prosecution of an offence against the criminal law and an offence against military law.

As a general rule, the DMP is responsible for dealing with the prosecution of alleged conduct which is a breach of service discipline. The DMP is also responsible for conducting the prosecution of alleged conduct which is properly characterised as both a breach of service discipline and a criminal offence, which is to be dealt with as a breach of service discipline. The DPP is responsible for conducting the prosecution of alleged offences against Commonwealth law which are not breaches of service discipline.

In May 2007, the DPP entered into a Memorandum of Understanding with the DMP and every other State and Territory DPP. Questions of jurisdictional resolution which arise between the DMP and the DPP are dealt with in accordance with the arrangements outlined in that document.

### **Victims of Commonwealth Offending**

The prosecution of Commonwealth offences such as people smuggling, people trafficking, child sex tourism and the online sexual exploitation of children often involves individual, identifiable victims. Dealing with these individual,

identifiable victims of crime presents a range of challenges for the DPP. These witnesses are often vulnerable in that they may be children, may have suffered significant trauma, or may come from a significantly different social, cultural and linguistic background.

### **Survey of client agencies**

The DPP's Corporate Plan lists as one of its strategies the provision of professional assistance to referring agencies. A client agency survey is one means by which the success of this strategy is assessed. The DPP's 2006 referring agency survey is the third such DPP survey. The previous surveys were conducted in 1998 and 2002.

The survey was conducted during November and December in 2006. The DPP issued 429 surveys to 37 agencies. Of these agencies, 34 (92%) responded. There was a response rate of 52% from people who were sent the survey. This was a significant increase from the last survey and is in line with surveys of this nature.

The questions on the survey covered prosecution practice, criminal assets work, liaison, training and publications. The results were that 97% of respondents rated the DPP's prosecution practice work as acceptable or better and 94% rated its proceeds of crime work as acceptable or better.

The survey respondents rated most highly the quality of DPP advice, preparation of DPP cases, DPP advice prior to referring a brief of evidence and the skill of senior DPP staff. They rated lower DPP turnaround times for assessing briefs of evidence and consistency of DPP advice. The survey results show that DPP turnaround times for assessing briefs of evidence have generally improved since the last survey. One factor contributing to consistency of advice is the high level of staff turnover in some offices due to the tightening of the job market in those regions. This factor is being addressed as part of a national recruitment campaign.

Liaison meetings between the DPP and their agency were rated by 87% of respondents as very helpful or better. The strengths of liaison meetings were the ability to address issues, to have discussions about complex cases and to enhance the relationship between the two agencies. Suggestions for improvements were better structure and organisation of meetings through better use of agenda, minutes and management of agreed actions.

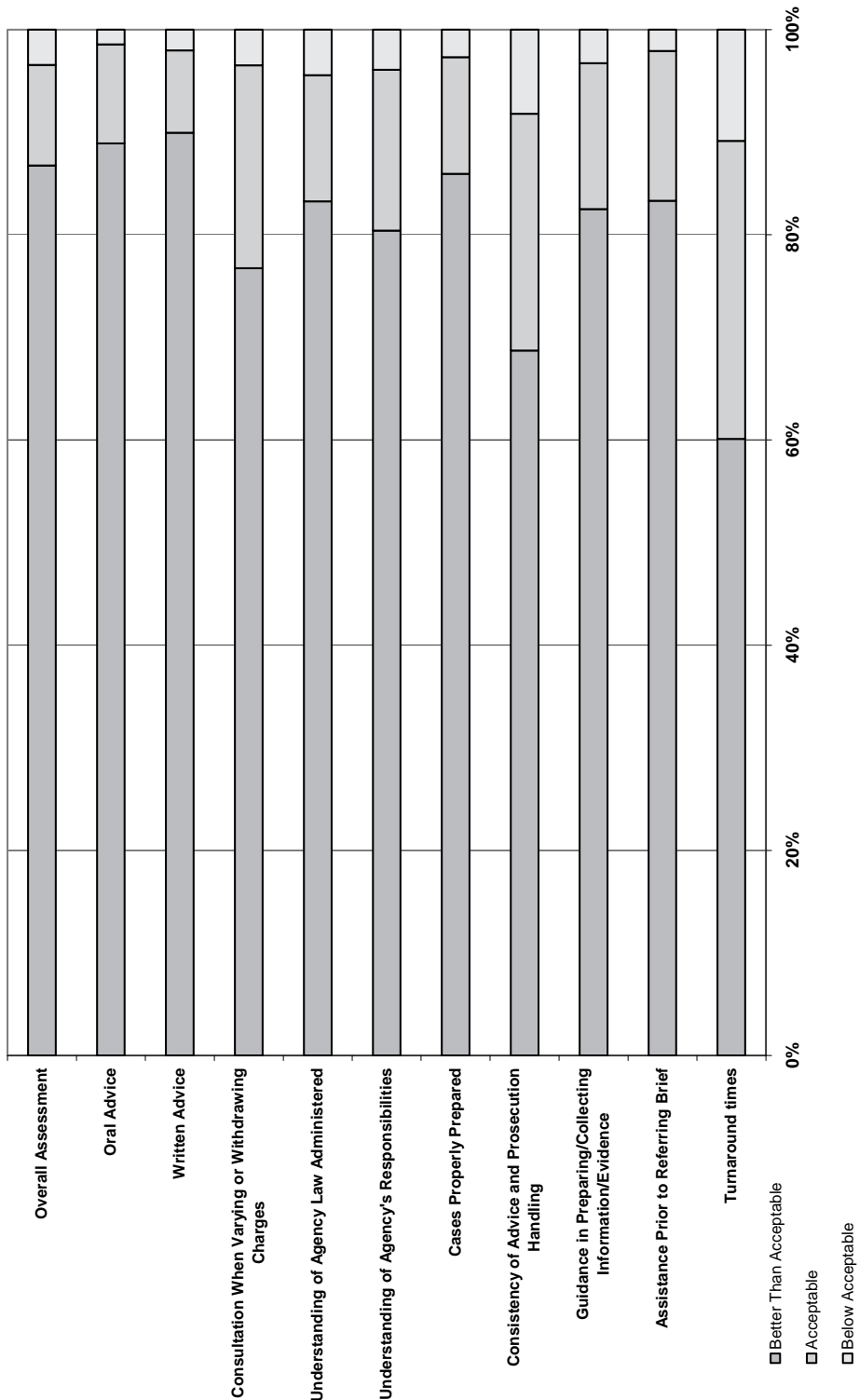
The respondents rated highly the DPP's training to investigators and DPP publications such as the search warrants manual. There were requests for the

provision of more training and greater electronic availability of DPP publications. A surprising finding was the number of people that were unaware of relevant DPP publications. The DPP is making more of its publications available electronically and new releases will be advised through liaison meetings.

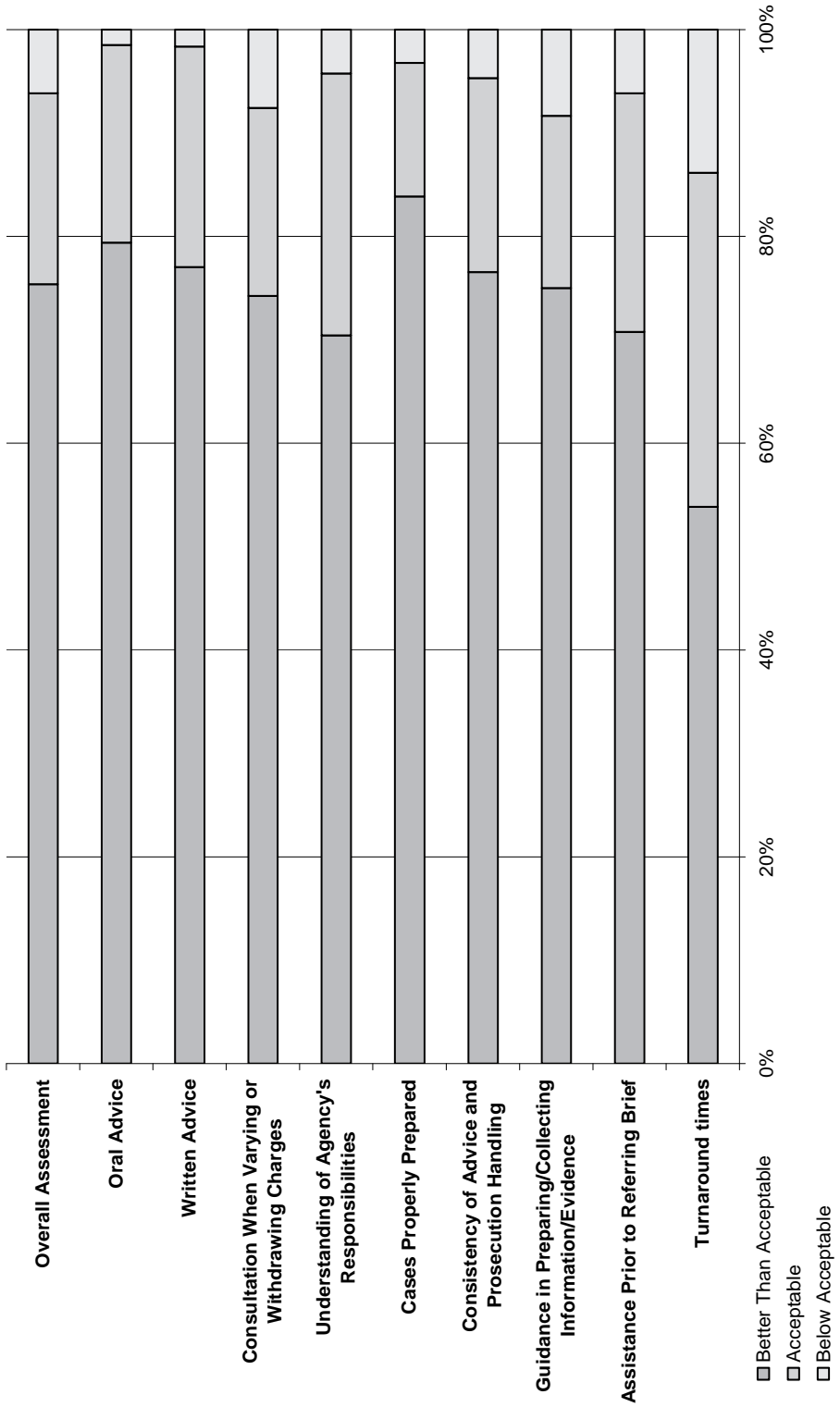
The responses to multiple choice questions, expressed as a percentage, are summarised in the table below.

Question	Better Than Acceptable	Acceptable	Poor
<b>Prosecutions Work</b>			
Turnaround Times in DPP work	60.1%	29.1%	10.8%
DPP assistance prior to a brief being referred	83.3%	14.6%	2.1%
DPP guidance in helping you collect and prepare information or evidence for a prosecution	82.5%	14.2%	3.3%
Consistency of DPP advice and handling of prosecutions	68.7%	23.1%	8.2%
Cases are adequately and properly prepared by DPP	85.9%	11.4%	2.7%
DPP understanding of your agency's responsibilities as they impact on prosecutions	80.4%	15.7%	3.9%
DPP understanding of the legislation administered by your agency which is relevant to DPP prosecution work	83.3%	12.3%	4.4%
Consultation with your agency when the DPP varies or withdraws charges	76.7%	19.8%	3.5%
Quality of written advice	89.9%	8.0%	2.1%
Quality of oral advice	88.9%	9.7%	1.4%
Overall assessment of the quality of DPP's prosecution work	86.8%	9.8%	3.4%
<b>Proceeds of Crime Work</b>			
Turnaround Times in Proceeds of Crime work	53.8%	32.3%	13.9%
DPP assistance prior to a brief being referred	70.8%	23.1%	6.2%
DPP guidance in helping you collect and prepare information or evidence for Proceeds of Crime work	75.0%	16.7%	8.3%
Consistency of DPP advice and handling of cases	76.6%	18.8%	4.7%
Cases are adequately and properly prepared by DPP	83.9%	12.9%	3.2%
DPP understanding of your agency's responsibilities as they impact Proceeds of Crime work	70.4%	25.4%	4.2%
Consultation with your agency when deciding to take proceeds of crime action (eg seeking restraining order)	74.2%	18.2%	7.6%
Quality of written advice	77.0%	21.3%	1.7%
Quality of oral advice	79.4%	19.1%	1.5%
Overall assessment of the quality of DPP's proceeds of crime work	75.4%	18.5%	6.2%
<b>Other Work</b>			
Overall liaison between the DPP and your agency	86.8%	10.4%	2.8%
Overall effectiveness of DPP participation in training courses.	90.6%	9.4%	0%

### Quality of Prosecution Work



**Quality of Proceeds of Crime Work**



## CHAPTER 9

# Resource Management

### Overview

### Management

The DPP has a Corporate Management Branch in Head Office, which is nationally responsible for Financial and Human Resource Management, Library Services and Information Technology (IT). The Branch is under the overall direction of the Deputy Director, Corporate Management, who also coordinates the Resource Management work in each State.

There is a Resource Management Branch in each Regional Office which is headed by an Executive Officer who works under the supervision of the Deputy Director for that Region.

The Head Office Branch includes a Human Resource Management Section, a Financial Management Section, a Library Section and an IT Section.

The Human Resource Management Section is responsible for providing policy direction and guidelines to the Regional Offices to ensure consistency of practice throughout the DPP. The Section also provides national payroll services, advice on entitlements and conditions of service, and is responsible for negotiating and implementing Collective Agreements and Australian Workplace Agreements. The Human Resource Management Section is also responsible for ensuring that the DPP meets its reporting requirements in relation to human resource issues. The Financial Management Section is responsible for the national management of the DPP's finances. The Library Section provides specialist library services throughout the office including reference, research, current awareness and online resources. The Information Technology Section is responsible for the technical infrastructure of the Office including the communications network, the computing capacity and the development and maintenance of various systems including the DPP's Intranet and litigation support.

## **Significant Developments**

### **National Recruitment Campaign**

In April 2007, the DPP commenced a national recruitment campaign for legal staff. The DPP usually conducts recruitment campaigns on a regional basis but elected to implement a single, centrally co-ordinated process encompassing the needs of all regions. The campaign experimented with new and innovative ways of advertising which generated greater interest from the market. The approach is also expected to foster efficiencies and consistency in the recruitment process and lead to better selection outcomes. The DPP will continue to work on having a strong and positive presence in the jobs and careers market.

- **Workplace Agreement**

The DPP Workplace Agreement for 2006-2009 came into effect on 30 November 2006. The nominal expiry date of the Agreement is 29 November 2009. The Agreement covers employees of the DPP employed under the *Public Service Act 1999* except for Senior Executive Service employees and employees whose salaries are not paid by the DPP.

As at 30 June 2007, there were 454 employees covered by the Agreement. Key changes made under the Agreement included the revision of the Work Level Standards and the Performance Management Scheme as well as changes to leave, flexible working arrangements, superannuation and travel provisions.

- **Australian Workplace Agreements**

The DPP has an Australian Workplace Agreement (AWA) in place for each substantive Senior Executive Service (SES) employee and for those employees selected to act as SES employees for a period of six months or more. As at 30 June 2007 there were 36 AWAs in place.

- **Performance Management**

The DPP amended its Performance Management Scheme for non-SES staff as part of the Workplace Agreement. The aim of the amendments is to promote greater equity particularly in relation to salary advancement. However, the fundamental design of the scheme remains unchanged, in that it is characterised by formal appraisal with a particular focus on training and development. In this way, the DPP aims to foster individual performance and encourage collaborative team behaviours that connect with organisational objectives and ultimately improve organisational performance.

- **Occupational Health and Safety**

During the year, the DPP commenced a major project to review its health and safety management arrangements. The review is in response to amendments to the occupational health and safety legislation and to the *Safety, Rehabilitation and Compensation Act 1988*. The review aims to ensure that the DPP continues to provide a safe and healthy workplace for all employees.

Elements of the review include the engagement of an officer with occupational health and safety experience to assist with the project, the provision of appropriate training and the review of current arrangements to ensure they provide the most appropriate measures to protect health and safety and comply with the amended legislation.

The DPP has started to develop health and safety management arrangements (HSMAs), which will be finalised in 2008.

During the year the DPP also introduced a number of initiatives into the workplace including the Employee Health and Fitness Initiative and the Trauma Management Programme.

The DPP recognises that employees who are fit and healthy will be more productive in the workplace and employees are encouraged to participate in activities that promote good health.

The Trauma Management Programme was introduced in recognition that staff may experience trauma reactions in response to dealing with some types of matters, for example, matters involving the sexual exploitation of children. The programme provides staff with education about the trauma response, practical strategies to proactively manage the matters which may cause distress or trauma as well as debriefing support.

As part of the development of the new Workplace Agreement it was agreed that the Elimination of Workplace Harassment policy would be reviewed in the 2007-2008 financial year. It was also agreed that education and awareness sessions will be run for all staff on this topic.

No accidents or dangerous occurrences under section 68 of the *Occupational Health and Safety Act 1991* Act were reported during the year. There were no investigations under sections 29, 46 or 47 of that Act reported during the year.

## **Staff**

### **Overview**

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

As at 30 June 2007, the total number of staff was 545, there having been 515 as at 30 June 2006. A breakdown of this figure appears in the tables at the end of this Chapter. The average staffing level for the year was 510.23 (485.62 for 2005-2006). All staff members are employed under the *Public Service Act 1999* or section 27 of the *DPP Act 1983*.

### **Training and Development**

As part of the Performance Management Scheme, each non-SES employee is required to have a personal development plan, which is reviewed each year following a performance assessment. If a training need is identified by either the supervisor or the employee, the DPP endeavours to ensure that the training is provided as part of the performance management cycle. The personal development plans are tailored to meet the needs of the individual to ensure that the employee has the skills required for their current position and for career development. Personal development plans are also used to develop training programs and to ensure that every staff member receives a fair allocation of training resources.

The DPP conducts in-house legal training to ensure that DPP lawyers comply with any continuing legal education requirements which apply to them. The DPP also runs an in-house advocacy training course for DPP lawyers.

Direct expenditure on external training for the year was \$102,022. There was also considerable in-house training and 'on the job' training, which was not costed.

### **Workplace Diversity and Equal Employment Opportunity**

It is a requirement of the *Public Service Act 1999* that every Australian Public Service workplace be free from discrimination, and recognise and use the diversity of the Australian community it serves. Section 18 of that Act provides that an Agency Head must establish a workplace diversity program. A Workplace Diversity Plan for the DPP was approved in April 2004. The aim of the Plan is to support diversity by creating an environment which enables DPP

staff members to realise their full potential and contribute meaningfully to the DPP's vision and mission. Essentially, the Plan aims to capitalise on the contributions that people with different backgrounds, perspectives and experiences can make to the DPP workplace.

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

The DPP's Equal Employment Opportunity (EEO) profile is shown in the tables at the end of this Chapter. The table is based on information volunteered by staff, and people can choose not to disclose their EEO status. Accordingly, the information may not be complete.

Some of the EEO employment levels have varied since last year. The number of female employees has increased from 334 to 358. The number of people who have self-identified as having a non-English speaking background is 92.

### **Status of Women**

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

As at 30 June 2007, women made up 66% of DPP employees, and 62% of lawyers.

Of the 38 full-time members of the SES, 12 were women. There were two part-time members of the SES, both of whom were women. In percentage terms, 35% of SES positions were filled by women.

As at 30 June 2007, there were 28 part-time legal officers working for the DPP, all of whom were women.

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

### **Workplace Participation**

The DPP Workplace Agreement includes provision for employees, and their representatives, to be involved in the development and implementation of major change. Consultation occurs mainly through regular staff meetings or special purpose meetings called to discuss specific issues.

## **Commonwealth Disability Strategy**

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

- **Privacy**

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

## **Financial Management**

### **Financial Statements**

The audited financial statements at the end of this Report were prepared in accordance with the *Financial Management and Accountability (Financial Statements for reporting periods ending on or after 1 July 2006) Orders* issued by the Minister for Finance and Administration. Detailed information on the accounting policies used to prepare the audited financial statements is at Note 1 in the financial statements.

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

### **Financial Performance**

- **Introduction**

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

In accordance with the DPP Act, the DPP prosecutes offences that result in fines and costs being ordered. The revenue is accounted for as administered funds, and when received as cash, is paid directly into Consolidated Revenue.

- **Operating Results**

Operating revenues for 2006-2007 were \$13.220 million (16%) more than 2005-2006. This increase in revenue is largely due to increased appropriations from government for increased work flowing from Operation Wickenby, enhanced enforcement measures against illegal foreign fishers, child care fraud and Centrelink fraud cases.

Operating expenses for 2006-2007 were \$1.781 million (2.3%) more than 2005-2006. During the year, the anticipated workload in relation to a number of tied funding measures was slower than projected. The overall increase is mainly due to:

- an increase in employee and related expenses of \$2.952 million which is a direct result of new budget measures and a pay increase during the year; and
- a reduction in property operating expenses of \$1.055 million which was mainly related to one-off expenditure in 2005-2006 for office modifications.

### **Cost Recovery Arrangements**

The DPP has a Memorandum of Understanding with the ATO. The ATO transfers part of their appropriation to the DPP to cover the cost for the prosecutions of offences under GST legislation. The amount received under this arrangement was \$1 million (2005-2006: \$1 million).

### **Purchasing**

The DPP adheres to the principles of value for money; encouraging competition amongst actual and potential suppliers; efficient, effective and ethical use of resources; and accountability and transparency during the procurement process. These policies and principles are set out in the *Commonwealth Procurement Guidelines* (CPG).

### **Competitive Tendering and Contracting**

Competitive tendering and contracting is the contracting out of the delivery of government activities, previously performed by a Commonwealth agency, to another organisation. It may be undertaken for the provision of either goods or services. No such contracts were entered into during the year.

## Consultancy Services

Many individuals, partnerships and corporations provide services to agencies under contracts for services. However, not all such contractors are categorised as consultants for the purposes of annual reporting. Consultants are distinguished from other contractors by the nature of the work they perform.

As a general rule, consultancy services involve the development of an intellectual output that assists with the DPP's decision making, and reflects the independent views of the service provider. For more information on what constitutes a consultancy, refer to

[http://www.finance.gov.au/procurement/identifying/\\_consultancies.html](http://www.finance.gov.au/procurement/identifying/_consultancies.html). The methods of selection used for consultancies are categorised as follows:

**Open Tender:** A procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are sought from the marketplace using national and major metropolitan newspaper advertising and the Australian Government AusTender Internet site.

**Select Tender:** A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. Tenders are invited from a short list of competent suppliers.

**Direct Sourcing:** A form of restricted tendering, only used in certain defined circumstances, with a single supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and/or services sought.

All consultancies with a value over \$80,000 are publicly advertised. Consultancies with a value of less than \$80,000 are either publicly advertised or sought by quote. Information on expenditure on contracts and consultancies is also available on the AusTender website [www.tenders.gov.au](http://www.tenders.gov.au).

During 2006-2007, the DPP entered into five new consultancy contracts with an estimated value of \$10,000 or more. Further details of these consultancies are provided at the end of this Chapter.

During 2006-2007, the DPP spent a total of \$0.117 million on consultancy contracts.

## Asset Management

The DPP's major assets are office fit-out, office furniture, purchased software and library holdings. A stock-take was conducted during the year to ensure the accuracy of asset records. The DPP reviewed its assets management procedures

and guidelines during the year. The DPP leases most of the desktop and notebook computers, servers and printers. This has resulted in cost savings to the DPP and a reduction in the administrative work involved in acquiring and maintaining IT equipment. During the 2006-2007 year, there were no significant purchases of assets.

### **Audit Committee**

The *Financial Management and Accountability Act 1991* requires chief executives to establish an Audit Committee to assist them in the financial governance of their agency. The Committee reviews, monitors and recommends improvements to the DPP's corporate governance framework, with a focus on risk management, internal controls, compliance and financial reporting. As part of this role it oversees DPP's internal and external audit processes.

Through internal audits, the Committee reviews key processes, systems and financial accountabilities across the whole DPP. The DPP's Audit Committee is appointed by the Director. It comprises three members: the First Deputy Director, the Deputy Director Legal and Practice Management and the Deputy Director Corporate Management. In addition, there is a standing invitation to the Australian National Audit Office to observe committee meetings.

### **Internal Audit and Fraud Control**

Internal audits are carried out every two years; the next is due in 2007-2008. Internal audit work is outsourced to provide an independent review of DPP processes and procedures.

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

In accordance with the *Commonwealth Fraud Control Guidelines 2002*, the DPP has in place fraud risk assessments and fraud control plan. Agencies subject to the *Financial Management and Accountability Act 1997* are only required to undertake a total review of the effectiveness of fraud control arrangements, including conducting a fresh risk assessment, at least every two years, providing that there is no major change in functions. The Director approved the updated Fraud Control Plan and Fraud Risk Assessment in December 2006. The Fraud Control Plan was submitted to the Attorney-General in January 2007.

All fraud control related material is made available to all staff via DPP-Net.

## External Scrutiny

The Auditor-General issued an unqualified audit report for the DPP's 2006-2007 financial statements.

During the reporting period, the Auditor-General issued only one report which includes information on the operations of the DPP:

- ANAO Audit Report No. 15 2006-07 'Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2006'.

The DPP provided a response to the report and agreed with the recommendations made. The report, and the DPP's response, is available on the Australian National Audit Office website: <http://www.anao.gov.au>.

The DPP was not referred to in any report by a Parliamentary Committee or by the Ombudsman. There were no judicial decisions and decisions of administrative tribunals that have had, or may have, a significant impact on the operations of the DPP.

## Advertising and Market Research

Payments to media advertising organisations during 2006-2007 totalled \$0.200 million, including Goods and Services Tax (\$0.104 million for 2005-2006). The DPP did not use the services of any creative advertising agencies, direct mailing or polling organisations.

Details of payments of \$10,300 (including Goods and Services Tax) and above, as required under Section 311A of the *Commonwealth Electoral Act 1918*, are as follows:

Organisation	Purpose	Payments \$ (inc. GST)
HMA Blaze Pty Ltd	Recruitment and Procurement Advertising	200,454

## *Legal Services Directions 2005*, Legal Services Expenditure

The *Legal Services Directions 2005* require agencies to report on expenditure on legal services.

The Legal Services Directions are not intended to cover the handling of criminal prosecutions and related proceedings (see General Note 4 to the Directions). The DPP report therefore relates to the DPP's administrative activities.

The total expenditure by the DPP on legal services (excluding the handling of criminal prosecutions and related proceedings) during 2006-2007 was \$0.05 million. Further details are provided at the end of this chapter.

### **Correction in 2005-2006 Annual Report**

Table 7 on page 123 of the 2005-2006 Annual Report contains a typographical error:

- The values for the last two rows under the heading Budget 2005-2006 should read 81,305 and not 81,035.

## **Other Areas**

### **Information Technology**

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

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

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

The DPP maintains the following in-house systems:

- Case Recording and Information Management System (CRIMS), which records details of prosecutions conducted by the DPP;
- Criminal Assets Recording System (CARS), which records action by the Criminal Assets Branches; and
- File Registry System (FILE), which keeps a record of general and administration files.

The DPP runs a SAP R/3 Resource Management Information System to support finance, payroll and human resource management. The system operates on Windows 2003 servers using MS SqlServer database. The Office also operates the FIRST library system which also runs MS SqlServer database on the Windows 2003 server.

The DPP has adopted a litigation support system known as LSS as the standard support system for DPP litigation. The system was initially developed by ASIC. It was used on a regular basis during 2006-2007. During the year the DPP issued an Request For Tender (RFT) for the Supply and Implementation of Litigation Support Software Solution and commenced evaluation of RFT responses. At the time of writing, the procurement process was still progressing. When the solution is selected and implemented it will become the DPP's standard litigation support system.

### **Intranet and Internet**

The DPP is continuing to upgrade its Intranet to a Portal based platform to provide access to DPP's legal and administrative information. The Portal's new Legal Resources site was added in February 2007. The site provides DPP legal staff with a one-stop access to legal manuals, guidelines, procedures, legislation, legal databases and other material including Continuing Legal Education papers presented by the DPP and Memoranda of Understanding. The portal implementation is now focused on the provision of legal tasks based on cases.

The DPP has an online recruitment site on the DPP Internet home page. The site provides potential applicants with electronic access to information relating to current vacancies and to DPP policies and procedures. The site has been very successful and experience has shown that it has been used effectively.

### **Libraries**

The DPP has a library in each Regional Office staffed by qualified librarians. The librarians provide valuable research, reference and information services to DPP officers. The libraries operate as a network maintaining an extensive legal collection of electronic and hard copy materials. Each library provides support to the office in which it is based and contributes to the dissemination of legal and other information throughout the DPP. Every DPP officer has access, through the library network, to the combined resources of all of the DPP's libraries. This includes access to high quality current awareness services.

With the office's move to portal software library staff have put considerable time and effort into developing user friendly legal resources pages. These pages

provide access to electronic legal information both in-house and external. External links include direct links to the major legal publishers' services. An important feature is a useful A-Z index. Responsibility for updating the pages is shared across the DPP library network. Library staff in each office provide regular training sessions on the use of all electronic resources.

The Head Office library has a national coordination and management role. National services include updating DPP in-house databases, distributing in-house materials, disseminating information, cataloguing, and managing the library system. There are regular librarians' meetings which provide an opportunity for all librarians to participate in the development of library network policies and procedures.

The DPP uses the FIRST library management system. The system is customised to meet the needs of a legal environment and is regularly upgraded. All new items are catalogued onto the system including all court decisions of interest to the Office. Staff members have desktop access to the library catalogue through DPPNet.

### **Public Relations**

All media inquiries are handled by a media contact officer in Head Office who can be contacted on (02) 6206 5606 during office hours. The DPP will provide accurate information on any matter that is on the public record but will not disclose information on cases that are yet to come before the court.

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

### **Ecologically Sustainable Development and Environmental Performance**

The DPP endeavours to use energy saving methods in its operations and to make the best use of resources. The DPP uses technology to minimise energy use, including automatic switch-off devices on electrical equipment. All computer equipment used by the DPP is energy star enabled. Waste paper is recycled, and preference is given to environmentally sound products when purchasing office supplies. A portion of electricity costs for Sydney, Melbourne and Head Office is sourced from green energy options.

The DPP has developed a comprehensive Intranet site for use by staff which includes research material, manuals, guidelines, directions and other documents which were once distributed in paper form. In addition, the Employee Self

Service scheme gives employees electronic access to personnel records, which has further reduced the demand for paper.

### Business Regulation

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

### Public comment

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

## Resource Management Tables

**Table 1(a): Staff as at 30 June 2007\***

	ACT	NSW	VIC	Qld	SA	WA	TAS	NT	TOTAL
Director	1								1
SES Band 3	1								1
SES Band 2	4	1	1	1		1			8
SES Band 1	4	10	6	7	1	3			31
PLO	12	29	19	15	6	8	1	1	91
SLO	11	20	20	15	5	7		3	81
LO 2	6	14	7	6	2	2	2	2	41
LO 1	1	23	14	10	3	2	2	3	58
Exec 2	9	2	1	1					13
Exec 1	8	4	2	3	1	2			20
APS 6	7	3	3	1	1	1		1	17
APS 5	6	4	5	4	1			1	21
APS 4	10	17	9	15	2	9	2	1	65
APS 3	3	21	13	14	6	8	1	1	67
APS 2	1	11	11			2	1	1	27
APS 1		1	1				1		3
<b>Totals</b>	<b>84</b>	<b>160</b>	<b>112</b>	<b>92</b>	<b>28</b>	<b>45</b>	<b>10</b>	<b>14</b>	<b>545</b>

\*Includes inoperative staff.

#### Legend:

<b>SES</b>	Senior Executive Service
<b>PLO</b>	Principal Legal Officer
<b>SLO</b>	Senior Legal Officer
<b>LO</b>	Legal Officer
<b>Exec</b>	Executive Officer
<b>APS</b>	Australian Public Service Officer

**Table 1(b): Staffing summary 2006-2007\***

<b>Category</b>	<b>Number</b>
Statutory Office Holders	1
Total staff employed under the <i>Public Service Act 1999</i>	494
Total staff employed under the DPP Act	50
<b>Total</b>	<b>545</b>

\*Includes inoperative staff.

The total number of non-ongoing employees included in this table is 86

**Table 2: Staff as at 30 June 2007 by sex and category\***

<b>Category</b>	<b>Full Time</b>		<b>Part Time</b>	
	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
Director	1			
Senior Executives -				
Band 3	1			
Band 2	6	2		
Band 1	19	10		2
Legal Officers	91	152		28
Executive Officers	16	15	1	1
APS 1 – 6	49	122	3	26
<b>Total: 545</b>	<b>183</b>	<b>301</b>	<b>4</b>	<b>57</b>

\*Includes inoperative staff

**Table 3: Staff usage by Office\***

<b>Office</b>	<b>Actual Average Staffing 2005 – 2006</b>
ACT	72.41
NSW	154.87
VIC	101.80
QLD	86.92
SA	27.19
WA	45.46
TAS	8.19
NT	13.39
<b>Total</b>	<b>510.23</b>

\*Includes inoperative staff

**Table 4: EEO Profile as at 30 June 2007**

<b>Classification</b>	<b>Male</b>	<b>Female</b>	<b>ATSI</b>	<b>PWD</b>	<b>First Language English plus Another</b>	<b>First Language other than English</b>
Director	1					
SES Band 3	1					
SES Band 2	6	2				2
SES Band 1	19	12	1	1	1	1
Legal Officers	91	180	1	3	28	15
Executive Officers	17	16		1	2	5
APS Employees	52	148	5	13	25	13
<b>Total</b>	<b>545</b>	<b>187</b>	<b>7</b>	<b>18</b>	<b>56</b>	<b>36</b>

\*Includes inoperative staff

**Legend:**

ATSI                      Aboriginal and Torres Strait Islander  
 PWD                      Person with disability

**Table 5: Salary Scales as at 30 June 2007**

<b>Classification</b>	<b>Salary</b>
SES Band 3	\$196,721 - \$210,268
SES Band 2	\$158,005 - \$179,761
SES Band 1	\$143,775 - \$151,908
Principal Legal Officer	\$103,492 - \$107,948
Executive Level 2	\$94,851 - \$105,275
Senior Legal Officer	\$78,061 - \$94,851
Executive Level 1	\$78,061 - \$84,245
Legal Officer 2	\$56,914 - \$68,128
APS 6	\$61,024 - \$70,011
APS 5	\$56,546 - \$59,925
Legal Officer 1	\$50,760 - \$55,063
APS 4	\$50,760 - \$55,063
APS 3	\$45,606 - \$49,176
APS2	\$41,201 - \$44,419
APS 1	\$21,310 - \$39,190

**Table 6: Consultancy services let during 2006-2007, of \$10,000 or more**

Consultant Name	Description	Contract Price (inc. GST) *	Selection Process **	Justification ++
Synergy Group	Fraud Control Plan Assessment	\$16,000	2	B
Blake Dawson Waldron Lawyers	Probity Advice for Procurement Process	\$20,500	1	C
Geyer Pty Ltd	Provision of Architectural Services	\$200,000	1	B
ASIO T4	Protective Security Risk Review	\$45,178	3	B
Australian Government Solicitor	Legal Advice for Procurement Process	\$52,000	1	B
<b>TOTAL</b>		<b>\$368,678</b>		

## Notes:

- \* Actual value if completed, estimated value at 30 June if not completed.
- \*\* Procurement Method
  1. Publicly advertised and an open tender process was adopted.
  2. Not publicly advertised. Firms may be approached through a selective tender process.
  3. Direct sourcing and receive an extension of an existing contract.
- ++ Reason for Contract
  - A. Skills currently unavailable within DPP
  - B. Need for specialised or professional skills
  - C. Need for independent research or assessment

**Table 7: Resources for Outcome**

	Budget * 2006- 2007 \$'000 (1)	Actual 2006- 2007 \$'000 (2)	Variation \$'000 (2 - 1)	Budget ** 2007- 2008 \$'000
<b>Administered Expenses</b>				
Total Administered Expenses	2,750	8,979	6,229	5,864
<b>Price of Departmental Outputs</b>				
Output 1.1:				
Revenue from Government (Appropriations) for Departmental Outputs	94,054	93,297	(757)	104,862
Revenue from other sources	2,075	1,648	(427)	1,891
Total Price of Departmental Outputs	96,129	94,945	(1,184)	106,753
<b>TOTAL FOR OUTCOME 1</b> (Total Price of Outputs and Administered Expenses)	<b>98,879</b>	<b>103,924</b>	<b>5,045</b>	<b>112,617</b>

\* Full year budget, including additional estimates.

\*\* Budget prior to additional estimates.

**Table 8: Average Staffing Level**

	2006-2007	2007-2008 (estimate)
Average staffing level (number)	505.5 *	580.0 *

\* On a full time equivalent basis, i.e. excludes inoperative staff

### Table 9: Commonwealth Disability Strategy Report

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

Performance Indicator	Performance Measure	Current level of performance	Goals for 2006-2007	Actions for 2006-2007
1. Employment policies, procedures and practices comply with requirements of the <i>Disability Discrimination Act 1992</i> .	Number of employment policies, procedures and practices that meet the requirements of the <i>Disability Discrimination Act 1992</i> .	The DPP has several employment policies which meet the requirements of the <i>Disability Discrimination Act 1992</i> .  Reasonable adjustment principles have been applied in relation to ongoing staff with disabilities.	Ongoing assessment to ensure that employment policies are relevant for all employees of the DPP.  DPP Workplace Diversity Plan addresses the needs of members of staff with disabilities.	Amend or update policies, procedures and practices if necessary and in line with legislative regulatory and case law developments.  Continue to meet the requirements of the <i>Disability Discrimination Act 1992</i> .
2. Recruitment information for potential job applicants is available in accessible formats on request.	Percentage of recruitment information requested and provided in: <ul style="list-style-type: none"> <li>• accessible electronic format; and</li> <li>• accessible formats other than electronic.</li> </ul> Average time taken to provide accessible information in: <ul style="list-style-type: none"> <li>• electronic format; and</li> <li>• formats other than electronic.</li> </ul>	100% available via fax, electronic e-mail and mail.  E-mail requests provided within 48 hours.  Phone requests dispatched within 48 hours of request.	100% of customer requests processed via desired medium within 48 hours of receipt.  Extensions of closing periods granted consistent with any delays in providing information.	DPP will continue to provide information to potential job applicants in accessible formats on request.  Respond to requests as necessary.
3. Agency recruiters and managers apply the principle of reasonable adjustment.	Percentage of recruiters and managers provided with information on reasonable adjustment.	No specific actions, however, in practice the principle has been in place at the DPP for the greater part of the past decade. Workplaces are modified as necessary to accommodate staff with disabilities.	Maintain staff awareness of principles and practices.	Formal training for selection committee members during 2007-2008 covering the application of the principles of reasonable adjustment.
4. Complaint/grievance mechanism, including access to external mechanisms, in place to address issues and concerns by staff.	Established complaints/grievance mechanisms, including access to external mechanisms in operation.	The DPP has a well established process for complaints and grievance handling. This includes access to external mechanisms e.g The Employees Assistance Program and the Merit Protection Commission.	All employees continue to be provided with access to Employees Assistance Program services and complaints/grievance mechanisms.	Information on complaints/grievance mechanisms are reviewed and updated as necessary.

**Table 10: Legal Services Expenditure**

This is a statement of legal services expenditure published in compliance with paragraph 11.1(ba) of the *Legal Services Directions 2005*.

	No.	\$ (GST inc.)
Agency's total legal services expenditure		49,342
Agency's total external legal services expenditure		49,342
External expenditure on solicitors		49,342
External expenditure on counsel		0
Number of male counsel briefed	0	
Value of briefs to male counsel		0
Number of female counsel briefed	0	
Value of briefs to female counsel		0
Other disbursements on external legal services		0
Agency's total internal legal services expenditure		0
Salaries		0
Overheads (includes administrative support and accommodation costs)		0



## Appendix One

### Statement under the Freedom of Information Act 1982

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

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

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

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

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

- (c) Categories of documents that are maintained in the possession of the agency that are:
  - (i) documents referred to in paragraph 12(1)(b) or 12(1)(c) of the Freedom of Information Act; or
  - (ii) documents that are customarily made available to the public, otherwise than under the Freedom of Information Act, free of charge on request.

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

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

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

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

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

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

## Appendix Two

### Corporate Plan

#### April 2004 – March 2005

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

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

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

In particular:

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

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

**STRATEGIES**

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

**ACTION PLAN**

<b>What the DPP will do</b>	<b>When the DPP will do it</b>	<b>Strategy</b>
1 Use performance indicator information	Monthly	All strategies
2 Best practice reviews	Ongoing	All strategies
3 Obtain feedback from courts	Ongoing	Strategy 1
4 Undertake case reviews	Ongoing	Strategy 1
5 Provide staff training and utilize performance management scheme	Ongoing	Strategy 3
6 Review performance through feedback from external agencies	Ongoing	Strategies 2 & 4

## Acronyms and Abbreviations

ACC	Australian Crime Commission
ACCC	Australian Competition and Consumer Commission
ACS	Australian Customs Service
AFP	Australian Federal Police
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AWA	Australian Workplace Agreement
CARS	Criminal Assets Recording System
COAG	Council of Australian Governments
<i>Criminal Code</i>	<i>Commonwealth Criminal Code (Criminal Code Act 1995 (Cth))</i>
CRIMS	Case Reporting and Information Management System
CSB Act	<i>Crimes (Superannuation Benefits) Act 1989</i>
DPP	Director of Public Prosecutions
DPP Act	<i>Director of Public Prosecutions Act 1983</i>
EEO	Equal Employment Opportunity
ESS	Employee Self Service Scheme
HOCOLEA	Heads of Commonwealth Law Enforcement Agencies
IT	Information Technology
ITSA	Insolvency and Trustee Service Australia
LSS	Litigation Support System
POC Act 1987	<i>Proceeds of Crime Act 1987</i>
POC Act 2002	<i>Proceeds of Crime Act 2002</i>
SES	Senior Executive Service

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

**Independent Audit Report 2006 - 2007**

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**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**

**FINANCIAL STATEMENTS 2006-2007**

**CONTENTS**

Independent Audit Report

Certification of the Financial Statements

Income Statement

Balance Sheet

Statement of Changes in Equity

Cash Flow Statement

Schedule of Commitments

Schedule of Contingencies

Schedule of Administered Items

Notes to and forming part of the Financial Statements

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**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**

**INDEPENDENT AUDIT REPORT 2006-2007**



## INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

### Scope

I have audited the accompanying financial statements of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2007, which comprise: a statement by the Chief Executive Officer and Chief Finance Officer; income statement; balance sheet; statement of changes in equity; cash flow statement; schedules of commitments, contingencies and administered items; a summary of significant accounting policies; and other explanatory notes.

### *The Responsibility of the Chief Executive for the Financial Statements*

The Commonwealth Director of Public Prosecutions, as Chief Executive, is responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997* and the Australian Accounting Standards (including the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### *Auditor's Responsibility*

My responsibility is to express an opinion on the financial statements based on my audit. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Office of the Commonwealth Director of Public

Prosecutions' preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office of the Commonwealth Director of Public Prosecutions' internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Commonwealth Director of Public Prosecutions, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

### *Independence*

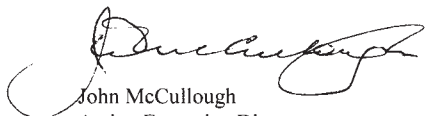
In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the ethical requirements of the Australian accounting profession.

### **Auditor's Opinion**

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

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, and the Australian Accounting Standards (including the Australian Accounting Interpretations); and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Office of the Commonwealth Director of Public Prosecutions' financial position as at 30 June 2007 and of its financial performance and its cash flows for the year then ended.

Australian National Audit Office



John McCullough  
Acting Executive Director

Delegate of the Auditor-General

Canberra  
20 September 2007

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**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**

**FINANCIAL STATEMENTS 2006-2007**

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

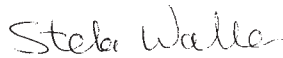
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In our opinion, the attached financial statements for the year ended 30 June 2007 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Damian Bugg AM QC  
Director

<sup>y</sup>  
18 September 2007



Stela Walker  
Deputy Director Corporate Management

19 September 2007

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**INCOME STATEMENT**

For the year ended 30 June 2007

	Notes	<b>2006-2007</b> \$ '000	2005-2006 \$ '000
<b>INCOME</b>			
<i>Revenue</i>			
Revenue from Government	3	<b>93,297</b>	80,059
Sale of goods and rendering of services	4	<b>1,173</b>	1,126
<b>Total revenue</b>		<b>94,470</b>	81,185
<i>Gains</i>			
Sale of assets	5	-	-
Other gains	6	<b>475</b>	540
<b>Total gains</b>		<b>475</b>	540
<b>TOTAL INCOME</b>		<b>94,945</b>	81,725
<b>Expenses</b>			
Employee benefits	7	<b>45,899</b>	42,947
Suppliers	8	<b>28,209</b>	29,317
Depreciation and amortisation	9	<b>3,300</b>	3,175
Write-down and impairment of assets	10	<b>4</b>	-
Net losses from disposal of assets	5	<b>4</b>	24
Other expenses	11	<b>521</b>	693
<b>TOTAL EXPENSES</b>		<b>77,937</b>	76,156
<b>Operating Surplus</b>		<b>17,008</b>	5,569

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

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS****BALANCE SHEET**

As at 30 June 2007

	Notes	2006-2007 \$ '000	2005-2006 \$ '000
<b>ASSETS</b>			
<b>Financial Assets</b>			
Cash and cash equivalents	12	244	222
Trade and other receivables	13	43,203	23,181
<b>Total Financial Assets</b>		<b>43,447</b>	<b>23,403</b>
<b>Non-Financial Assets</b>			
Land and buildings	14,16	11,615	12,823
Infrastructure, plant and equipment	15,16	5,853	7,001
Intangibles	17	334	403
Other non-financial assets	18	730	933
<b>Total Non-Financial Assets</b>		<b>18,532</b>	<b>21,160</b>
<b>TOTAL ASSETS</b>		<b>61,979</b>	<b>44,563</b>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	19	1,448	1,283
Other payables	20	2,151	1,796
<b>Total payables</b>		<b>3,599</b>	<b>3,079</b>
<b>Non-interest bearing liabilities</b>			
Lease incentives	21	1,013	1,225
<b>Total non-interest bearing liabilities</b>		<b>1,013</b>	<b>1,225</b>
<b>Provisions</b>			
Employee provisions	22	13,796	13,840
Other provisions	23	4,572	4,439
<b>Total Provisions</b>		<b>18,368</b>	<b>18,279</b>
<b>TOTAL LIABILITIES</b>		<b>22,980</b>	<b>22,583</b>
<b>NET ASSETS</b>		<b>38,999</b>	<b>21,980</b>
<b>EQUITY</b>			
Contributed equity		909	1,507
Reserves		8,177	7,568
Retained surpluses		29,913	12,905
<b>TOTAL EQUITY</b>		<b>38,999</b>	<b>21,980</b>
<b>Current Assets</b>		<b>44,177</b>	<b>24,336</b>
<b>Non-Current Assets</b>		<b>17,802</b>	<b>20,227</b>
<b>Current Liabilities</b>		<b>16,647</b>	<b>16,452</b>
<b>Non-Current Liabilities</b>		<b>6,333</b>	<b>6,131</b>

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

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**STATEMENT OF CHANGES IN EQUITY**

As at 30 June 2007

	Retained Earnings		Asset Revaluation Reserve		Contributed Equity		Total Equity	
	2006-2007 \$ '000	2005-2006 \$ '000	2006-2007 \$ '000	2005-2006 \$ '000	2006-2007 \$ '000	2005-2006 \$ '000	2006-2007 \$ '000	2005-2006 \$ '000
Opening Balance	12,905	7,336	7,568	4,858	1,507	1,507	21,980	13,701
Adjusted Opening Balance	12,905	7,336	7,568	4,858	1,507	1,507	21,980	13,701
<b>Income and Expense</b>								
Revaluation adjustment	-	-	609	2,710	-	-	609	2,710
<b>Subtotal income and expenses recognised directly in equity</b>	-	-	609	2,710	-	-	609	2,710
Surplus (Deficit) for the period	17,008	5,569	-	-	-	-	17,008	5,569
<b>Total income and expenses</b>	17,008	5,569	609	2,710	-	-	17,617	8,279
<b>Transactions with owners</b>								
<i>Distributions to owners</i>								
Returns of capital:								
Appropriation	-	-	-	-	(598)	-	(598)	-
<b>Sub-total transactions with owners</b>	-	-	-	-	(598)	-	(598)	-
<b>Closing balance as at end of reporting period</b>	29,913	12,905	8,177	7,568	909	1,507	38,999	21,980
Less: Outside equity interests	-	-	-	-	-	-	-	-
<b>Closing balance at 30 June</b>	29,913	12,905	8,177	7,568	909	1,507	38,999	21,980

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

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

For the year ended 30 June 2007

	Notes	<b>2006-2007</b> \$ '000	2005-2006 \$ '000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Goods and services		<b>904</b>	1,138
Appropriations		<b>72,951</b>	71,916
Net GST received		<b>2,538</b>	2,664
Other (a)		<b>265</b>	542
<b>Total cash received</b>		<b>76,658</b>	76,260
<b>Cash used</b>			
Employees		<b>46,078</b>	43,840
Suppliers		<b>29,648</b>	31,156
Cost awarded		<b>486</b>	685
<b>Total cash used</b>		<b>76,212</b>	75,681
<b>Net cash from or (used by) operating activities</b>	24	<b>446</b>	579
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of property, plant and equipment		-	5
<b>Total cash received</b>		-	5
<b>Cash used</b>			
Purchase of property, plant and equipment		<b>424</b>	692
<b>Total cash used</b>		<b>424</b>	692
<b>Net cash from or (used by) investing activities</b>		<b>(424)</b>	(687)
<b>FINANCING ACTIVITIES</b>			
<b>Cash used</b>			
Return of contributed equity		-	-
<b>Total cash used</b>		-	-
<b>Net cash from or (used by) financing activities</b>		-	-
<b>Net increase or (decrease) in cash held</b>		<b>22</b>	(108)
Cash at the beginning of the reporting period		<b>222</b>	330
<b>Cash at the end of the reporting period</b>	12	<b>244</b>	222

(a) Employee and supplier expense recoveries

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

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**SCHEDULE OF COMMITMENTS**

As at 30 June 2007

	<b>2006-2007</b>	2005-2006
	<b>\$ '000</b>	\$ '000
<b>BY TYPE</b>		
<b>Capital commitments</b>		
Infrastructure, plant and equipment	<b>468</b>	351
<b>Total capital commitments</b>	<b>468</b>	351
<b>Other commitments</b>		
Operating leases (1)	<b>45,836</b>	53,604
Legal services	<b>8,238</b>	6,153
Goods and services (excluding legal services)	<b>6,794</b>	7,085
GST payable on commitments receivable	<b>29</b>	2
<b>Total other commitments</b>	<b>60,897</b>	66,844
<b>Commitments receivable</b>		
Sub-lease rental	<b>(323)</b>	(21)
GST receivable on commitments payable	<b>(5,576)</b>	(6,143)
<b>Total commitments receivable</b>	<b>(5,899)</b>	(6,164)
<b>Net commitments by type</b>	<b>55,466</b>	61,031
<b>BY MATURITY</b>		
<b>Capital commitments</b>		
One year or less	<b>304</b>	319
From one to five years	<b>121</b>	-
Over five years	<b>-</b>	-
<b>Total Capital Commitments</b>	<b>425</b>	319
<b>Operating lease commitments</b>		
One year or less	<b>7,358</b>	8,662
From one to five years	<b>25,496</b>	29,360
Over five years	<b>8,522</b>	14,121
<b>Total Operating Lease Commitments</b>	<b>41,376</b>	52,143
<b>Other commitments</b>		
One year or less	<b>8,317</b>	6,671
From one to five years	<b>5,348</b>	1,898
Over five years	<b>-</b>	-
<b>Total Other Commitments</b>	<b>13,665</b>	8,569
<b>Net commitments by maturity</b>	<b>55,466</b>	61,031

NB: Commitments are GST inclusive where relevant.

The above schedule should be read in conjunction with the accompanying notes.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
SCHEDULE OF COMMITMENTS (Cont)**As at 30 June 2007

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(1) Operating leases included are effectively non-cancellable and comprise:

**Nature of lease/General description*****Leases for office accommodation.***

Lease payments are subject to increases in accordance with terms and conditions of each lease. The initial term of the leases vary, as do the options to renew.

***Leases for motor vehicles (for general office use).***

No contingent rentals exist. There are no renewal or purchase options available to the CDPP.

***Leases in relation to computer and printing equipment.***

There are two separate agreements, the first master planned rental agreement commenced w.e.f. 1 July 2001 and the second commenced w.e.f. 1 Oct 2004. Lease payments are determined at the start of the lease made under the master planned rental agreement, are based on the prevailing interest rates at that time and are fixed for the lease period. The term of the lease can be extended.

***Sub-lease for shared office accommodation.***

Lease payments are subject to increase in accordance with the terms and conditions of the head-lease. There is an option to renew in the head-lease.

The above schedule should be read in conjunction with the accompanying notes.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**SCHEDULE OF CONTINGENCIES**

As at 30 June 2007

	Guarantees		Indemnities		Claims for damages or costs		Total	
	2006-2007 \$ '000	2005-2006 \$ '000	2006-2007 \$ '000	2005-2006 \$ '000	2006-2007 \$ '000	2005-2006 \$ '000	2006-2007 \$ '000	2005-2006 \$ '000
<b>Contingent Liabilities</b>								
Balance from previous period	-	-	-	-	-	-	-	-
New	-	-	-	-	-	-	-	-
Re-measurement	-	-	-	-	-	-	-	-
Liabilities crystallised	-	-	-	-	-	-	-	-
Obligations expired	-	-	-	-	-	-	-	-
<b>Total Contingent Liabilities</b>	-	-	-	-	-	-	-	-
<b>Contingent Assets</b>								
Balance from previous period	-	-	-	-	-	151	-	151
New	-	-	-	-	9	-	9	-
Re-measurement	-	-	-	-	-	-	-	-
Assets crystallised	-	-	-	-	-	(151)	-	(151)
Contingencies expired	-	-	-	-	-	-	-	-
<b>Total Contingent Assets</b>	-	-	-	-	9	-	9	-
<b>Net Contingent (Liabilities)/Assets</b>								
							9	-

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 25: Contingent Liabilities and Assets.

The above schedule should be read in conjunction with the accompanying notes.

<b>OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS</b>			
<b>SCHEDULE OF ADMINISTERED ITEMS</b>			
As at 30 June 2007			
	Notes	<b>2006-2007</b>	2005-2006
		<b>\$ '000</b>	\$ '000
<b>Income Administered on Behalf of Government</b>			
<i>For the year ended 30 June 2007</i>			
<b>Revenue</b>			
Non-taxation			
Fees and fines	31	<b>9,401</b>	10,748
Reversal of previous asset write-downs	32	<b>60</b>	50
Total non-taxation		<u><b>9,461</b></u>	<u>10,798</u>
<b>Total Income Administered on Behalf of Government</b>		<u><b>9,461</b></u>	<u>10,798</u>
<b>Expenses Administered on Behalf of Government</b>			
<i>For the year ended 30 June 2007</i>			
Write-down of assets	33	<b>8,979</b>	10,431
<b>Total Expenses Administered on Behalf of Government</b>		<u><b>8,979</b></u>	<u>10,431</u>
This schedule should be read in conjunction with the accompanying notes.			

<b>OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS</b>			
<b>SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)</b>			
As at 30 June 2007			
	Note	<b>2006-2007</b>	2005-2006
		<b>\$ '000</b>	\$ '000
<b>Assets Administered on Behalf of Government</b>			
<i>As at 30 June 2007</i>			
<b>Financial Assets</b>			
Cash and cash equivalents	34	-	3
Receivables	35	<b>1,018</b>	2,449
<b>Total Assets Administered on Behalf of Government</b>		<b>1,018</b>	<b>2,452</b>
<b>Liabilities Administered on Behalf of Government</b>			
<i>As at 30 June 2007</i>			
<b>Payables</b>			
Other payables	36	<b>2</b>	4
<b>Total Payables</b>		<b>2</b>	<b>4</b>
<b>Total Liabilities Administered on Behalf of Government</b>		<b>2</b>	<b>4</b>
<b>Current assets</b>		<b>305</b>	2,001
<b>Non-current assets</b>		<b>713</b>	451
<b>Current liabilities</b>		<b>2</b>	4
<b>Non-current liabilities</b>		-	-
The schedule should be read in conjunction with the accompanying notes.			

<b>OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS</b>			
<b>SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)</b>			
As at 30 June 2007			
	Note	<b>2006-2007</b>	2005-2006
		<b>\$ '000</b>	\$ '000
<b>Administered Cash Flows</b>			
<i>For the year ended 30 June 2007</i>			
<b>Operating Activities</b>			
<b>Cash received</b>			
Fines and costs		<b>1,938</b>	2,109
Cash from Official Public Account - (for refunds)		<b>27</b>	28
<b>Total cash received</b>		<b>1,965</b>	2,137
<b>Cash used</b>			
Cash to Official Public Account		<b>1,941</b>	2,106
Refund of fines and costs		<b>27</b>	28
<b>Total cash used</b>		<b>1,968</b>	2,134
<b>Net cash from / (used by) Operating Activities</b>		<b>(3)</b>	3
<b>Net increase / (decrease) in Cash Held</b>		<b>(3)</b>	3
Cash at the beginning of the reporting period		<b>3</b>	-
<b>Cash at the end of the reporting period</b>		<b>-</b>	3
The schedule should be read in conjunction with the accompanying notes.			

<b>OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS</b>			
<b>SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)</b>			
As at 30 June 2007			
	Note	2006-2007 \$ '000	2005-2006 \$ '000
<b>Administered Commitments</b>			
<i>As at 30 June 2007</i>			
		<u>Nil</u>	<u>Nil</u>
<b>Administered Contingencies</b>			
<i>As at 30 June 2007</i>			
		<u>Nil</u>	<u>Nil</u>
<p>Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 38: Administered Contingent Liabilities and Assets.</p>			
<p>The schedule should be read in conjunction with the accompanying notes.</p>			

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**For the year ended 30 June 2007

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<b>Note</b>	<b>Description</b>
1	Summary of Significant Accounting Policies
2	Events After the Balance Sheet Date
3	Revenues from Government
4	Sale of Goods and Rendering of Services
5	Sale of Assets
6	Other Gains
7	Employee Benefits
8	Suppliers
9	Depreciation and Amortisation
10	Write-down and Impairment of Assets
11	Other Expenses
12	Cash and Cash Equivalents
13	Trade and Other Receivables
14	Land and Buildings
15	Infrastructure, Plant and Equipment
16	Analysis of Property, Plant and Equipment
17	Intangibles Assets
18	Other Non-Financial Assets
19	Suppliers
20	Other Payables
21	Non-Interest Bearing Liabilities
22	Employee Provisions
23	Other Provisions
24	Cash Flow Reconciliation
25	Contingent Liabilities and Assets
26	Executive Remuneration
27	Remuneration of Auditors
28	Average Staffing Level
29	Compensation and Debt Relief
30	Financial Instruments
31	Administered Fees and Fines Revenue
32	Reversal of Previous Administered asset write-downs
33	Write-down of Administered Assets
34	Administered Cash
35	Administered Receivables
36	Administered Payables
37	Administered Reconciliation Table
38	Administered Contingent Liabilities and Assets
39	Administered Financial Instruments
40	Appropriations
41	Special Accounts
42	Reporting of Outcomes

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

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**Note 1 - Summary of Significant Accounting Policies**

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

The Office of the Commonwealth Director of Public Prosecutions (CDPP) is an Australian Public Service organisation. The objective of the CDPP is to provide a fair, effective and efficient prosecution service to the Commonwealth and to the people of Australia.

The CDPP has one outcome:

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

The CDPP has one output:

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

Agency activities contributing toward the outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Agency in its own right. Administered activities involve the management or oversight by the Agency, on behalf of the Government, of items controlled or incurred by the Government.

The continued existence of the Agency in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the Agency's administration and programs.

**1.2 Basis of Preparation of the Financial Report**

The Financial Statements and notes are required by section 49 of the *Financial Management and Accountability Act 1997 (FMA)* and are a General Purpose Financial Report.

The Financial Statements and notes have been prepared in accordance with:

- Finance Minister's Orders (FMOs) for reporting periods ending on or after 1 July 2006; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Boards (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial report is presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

Unless alternative treatment is specifically required by an Accounting Standard or the FMOs, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow to the Entity and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

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Liabilities and assets that are unrealised are reported in the Schedule of Commitments and the Schedule of Contingencies (other than unquantifiable, which are reported at Note 25).

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the Income Statement when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for departmental items, except where otherwise stated at Note 1.26.

### **1.3 Significant Accounting Judgements and Estimates**

In the process of applying the accounting policies listed in this note, CDPP has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of land and buildings has been taken to be the market value of similar properties as determined by an independent valuer.

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

In applying the accounting policies in this note, the CDPP has made a judgement that has a significant impact on the amount recorded as administered receivables. The collectability of fines and costs debts are assessed at balance date by reviewing the debt, by age and amount, against the past payments history of similar debts. A provision for doubtful debt is then made based on that judgement.

### **1.4 Statement of Compliance**

Australian Accounting Standards require a statement of compliance with International Financial Reporting Standards (IFRSs) to be made where the financial report complies with these standards. Some Australian equivalents to IFRSs and other Australian Accounting Standards contain requirement specific to not-for-profit entities that are inconsistent with IFRS requirements. The CDPP is a not-for-profit entity and has applied these requirements, so while this financial report complies with Australian Accounting Standards including Australian Equivalents to International Financial Reporting Standards (AEIFRSs) it cannot make this statement.

#### *Adoption of new Australian Accounting Standard requirements*

No accounting standard has been adopted earlier than the effective date in the current period. The following adopted requirements have resulted in a change to the CDPP's accounting policies or have affected the amounts reported in the current or prior periods or are estimated to have a financial effect in future reporting periods.

#### *Restriction of the fair value option under AASB 139*

The AASB through *2005-4 Amendments to Australian Accounting Standards [AASB 139, AASB 132, AASB 1, AASB 1023 and AASB 1038]* restricted the option to designate a financial asset or liability at fair value through profit and loss.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

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The change was introduced with effect from the beginning of the comparative reporting period (1 July 2005).

Other effective requirement changes

The following amendments, revised standards or interpretations have become effective but have had no financial impact or do not apply to the operations of the CDPP.

Amendments:

- 2005-1 Amendments to Australian Accounting Standards [AASBs 1, 101, 124]
- 2005-6 Amendments to Australian Accounting Standards [AASB 3]
- 2006-1 Amendments to Australian Accounting Standards [AASB 121]
- 2006-3 Amendments to Australian Accounting Standards [AASB 1045]
- 2007-2 Amendments to Australian Accounting Standards arising from AASB Interpretation 12 [AASB1, AASB 117, AASB 118, AASB 120, AASB121, AASB 127, AASB 131 & AASB 139]

Interpretations:

- UIG 4 Determining whether an Arrangement contains a Lease
- UIG 5 Rights to Interests arising from Decommissioning, Restoration and Environmental Rehabilitation Funds
- UIG 7 Applying the Restatement Approach under AASB 129 Financial Reporting in Hyperinflationary Economies
- UIG 8 Scope of AASB 2
- UIG 9 Reassessment of Embedded Derivatives

UIG 4 and UIG 9 might have impacts in future periods, subject to existing contracts being renegotiated.

Future Australian Accounting Standard requirements

The following new standards, amendments to standards or interpretations have been issued by the Australian Accounting Standards Board but are effective for future reporting periods. It is estimated that the impact of adopting these pronouncements when effective will have no material financial impact on future reporting periods.

Financial instrument disclosure

AASB 7 Financial Instruments: Disclosures is effective for reporting periods beginning on or after 1 January 2007 (the 2007-08 financial year) and amends the disclosure requirements for financial instruments. In general AASB 7 requires greater disclosure than that presently. Associated with the introduction of AASB 7 a number of accounting standards were amended to reference the new standard or remove the present disclosure requirements through 2005-10 Amendments to Australian Accounting Standards [AASB 132, AASB 101, AASB 114, AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 & AASB 1038]. These changes have no financial impact but will affect the disclosure presented in future financial reports.

Other

The following standards and interpretations have been issued but are not applicable to the operations of the CDPP.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

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- AASB 1049 Financial Reporting of General Government Sectors by Governments
- UIG 10 Interim Financial Reporting and Impairment

## **1.5 Revenue**

### Revenue from Government

Amounts appropriated for departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

### Other Types of Revenue

Revenue from the sale of goods is recognised when:

- The risks and rewards of ownership have been transferred to the buyer;
- The seller retains no managerial involvement nor effective control over the goods;
- The revenue and transaction costs incurred can be reliably measured; and
- It is probable that the economic benefits associated with the transaction will flow to the entity.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction will flow to the entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debt is reviewed at balance date. Provisions are made when collectability of the debt is no longer probable.

## **1.6 Gains**

### Other Resources Received Free of Charge

Resources received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements.

Resources received free of charge are recorded as either revenue or gains depending on their nature ie. whether they have been generated in the course of the ordinary activities of the CDPP.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

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Sale of Assets

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

**1.7 Transactions with the Government as Owner**

Other distributions to owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2006-2007, by agreement with the Department of Finance and Administration, CDPP relinquished control of appropriation funding of \$598,000 which was returned to the Official Public Account. On 26 June 2007, the Finance Minister issued a determination to reduce Departmental Output Appropriations by \$598,000.

**1.8 Employee Benefits**

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Agency is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the Agency's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been determined by reference to the work of an actuary carried out during 2004-2005. The estimate of the present value of the liability takes into account attrition rates and pay increase through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The CDPP recognises a provision for terminations when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

Staff of the CDPP are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

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The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course.

CDPP makes employer contributions to the Employee Superannuation Scheme at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Agency's employees. CDPP accounts for the contributions as if they were contributions to defined contribution plans.

From 1 July 2005, new employees are eligible to join PSSap scheme.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the year.

### **1.9 Leases**

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Lease assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is the representative of the pattern of benefits derived from the leased assets.

The CDPP has no finance leases.

### **1.10 Cash**

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

### **1.11 Financial Risk Management**

CDPP's activities expose it to normal commercial financial risk. As a result of the nature of CDPP's business and internal and Australian Government policies, dealing with the management of financial risk, CDPP's exposure to market, credit, liquidity and cash flow and fair value interest rate risk is considered to be low.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

---

### **1.12 Derecognition of Financial Assets and Liabilities**

Financial assets are derecognised when the contractual rights to the cash flows from the financial assets expire or the asset is transferred to another Entity. In the case of a transfer to another Entity, it is necessary that the risks and rewards of ownership are also transferred.

Financial liabilities are derecognised when the obligation under the contract is discharged, cancelled or expires.

### **1.13 Impairment of Financial Assets**

Financial assets are assessed for impairment at each balance date.

#### Financial Assets held at Cost

If there is objective evidence that an impairment loss has been incurred on an unquoted equity instrument that is not carried at fair value because it cannot be reliably measured, or a derivative asset that is linked to and must be settled by delivery of such an unquoted equity instrument, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

### **1.14 Supplier and other payables**

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

### **1.15 Contingent Liabilities and Contingent Assets**

Contingent Liabilities and Contingent Assets are not recognised in the Balance Sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an existing liability or asset in respect of which settlement is not probable or the amount cannot be reliably measured. Contingent assets are reported when settlement is probable, and contingent liabilities are when settlement is greater than remote.

### **1.16 Acquisition of Assets**

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring.

### **1.17 Property, Plant and Equipment**

#### Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total). The \$2,000 threshold is not applied to library holdings, original artworks and limited edition prints.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
 For the year ended 30 June 2007

---

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by CDPP where there exists an obligation to restore the property to its original condition. These costs are included in the value of CDPP's leasehold improvements with a corresponding provision for the 'makegood' taken up.

Revaluations

Fair values for each class of asset are determined as shown below:

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

Following initial recognition at cost, property plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through operating result. Revaluation decrements for a class of assets are recognised directly through the operating result except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Leasehold improvements, property, plant and equipment are measured at valuation, being revalued with sufficient frequency such that carry amount of each asset class is not materially different, as at reporting date, from its fair value. The CDPP engaged an independent valuer, Herron Todd White Independent Property Advisors, to conduct a valuation of leasehold improvements, property, plant and equipment (except library holdings), as at 30 June 2006. In 2006-2007, CDPP engaged the Australian Valuation Office to conduct a valuation of the library holdings.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the CDPP using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and the methods, are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

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

For the year ended 30 June 2007

---

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

<u>Class</u>	<u>2006-2007</u>	<u>2005-2006</u>
Leasehold Improvements	<b>Lease Term</b>	Lease Term
Property, Plant and Equipment	<b>2 – 30 years</b>	2 – 30 years

Impairment

All assets were assessed for impairment at 30 June 2007. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if CDPP were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

**1.18 Intangibles**

CDPP's intangibles comprise software licenses and configuration costs of purchased software. These assets are carried at cost. Purchases of intangibles are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$5,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the CDPP's software are 3 to 20 years (2005-06: 3 to 20 years).

All software assets were assessed for indications of impairment as at 30 June 2007.

**1.19 Taxation / Competitive Neutrality**

The CDPP is exempt from all forms of taxation except fringe benefits tax (FBT) and the goods and services tax (GST).

Revenues, expenses, liabilities and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

Competitive Neutrality

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

**1.20 Foreign Currency**

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

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2007

---

### **1.21 Insurance**

The CDPP has insured for risks, other than worker's compensation, through the Government's insurable risk managed fund, Comcover. Worker's compensation is insured through Comcare Australia.

### **1.22 Comparative Figures**

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

### **1.23 Rounding**

Amounts have been rounded to the nearest \$1,000 except in relation to the following note disclosures:

- act of grace payments and waivers;
- remuneration of executives; and
- remuneration of auditors.

### **1.24 Commitments**

The amount shown as legal services commitments on the Schedule of Commitments represents estimated costs where legal counsel has been engaged to act on behalf of the CDPP. Although legal services cannot be contracted, these estimates are undertakings that are expected to create future liabilities.

### **1.25 Reporting of Administered Activities**

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Schedule of Administered Items and related Notes.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for Departmental items, including the application of Australian Accounting Standards.

#### *Administered Cash Transfers to and from the Official Public Account*

Revenue collected by CDPP for use by the Government rather than the Agency is Administered Revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Administration. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Agency on behalf of the Government and reported as such in the Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 37. Thus the Schedule of Administered Items largely reflects the Government's transactions, through the Agency, with parties outside the Government.

#### *Revenue*

All administered revenues are revenues relating to the course of ordinary activities performed by the CDPP on behalf of the Australian Government.

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

For the year ended 30 June 2007

---

Fines and costs are set down in a decision by a Court and are recorded as revenue on the date of the Court's decision. Where applicable, changes to the amount of fines and costs by subsequent appeals are recorded as a variation to the revenue (plus or minus) on the date of the Court's decision in respect of the appeal.

Reversal of previous write-downs occurs when a receivable written-off in a previous financial period is subsequently recovered.

Expenses

All expenses described in this note are expenses relating to the course of ordinary activities performed by the CDPP on behalf of the Australian Government.

*A. Write-down of assets*

Receivables are written down where fines and costs have been converted to a prison sentence or a community service order, have been received by other agencies, or are estimated to be irrecoverable.

*B. Allowance for doubtful debts*

The collectability of receivables are reviewed at balance date and a provision is made when collection of the receivable is judged to be less rather than more likely. At 30 June 2007 the value of the Fines and Cost debts is recognised at fair value which is based upon the actuary assessment by the Australian Government Actuary.

*C. Transfers to other Agencies*

Fines and costs that are payable to another agency are recorded as an expense.

Receivables

The CDPP is not responsible for the collection of fees and fines; this is the responsibility of the courts and/or State Collection Agencies. Provisions are raised against receivables for any doubtful debts and are based on a review of outstanding accounts as at year end. This includes examination of individual large debts over \$50,000.

**Note 2 - Events after the Balance Sheet Date**

There were no events occurring after balance date that has any material effect on the 2006-2007 Financial Statements.

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

For the year ended 30 June 2007

	2006-2007 \$ '000	2005-2006 \$ '000
<b>Note 3 - Revenues from Government</b>		
Appropriation:		
Departmental outputs	93,297	80,059
<b>Total revenue from Government</b>	<b>93,297</b>	<b>80,059</b>
<b>Note 4 - Sale of Goods and Rendering of Services</b>		
Goods	2	4
Services	1,171	1,122
<b>Total sales of goods and services</b>	<b>1,173</b>	<b>1,126</b>
Provision of goods to:		
Related entities	-	-
External entities	2	4
<b>Total sales of goods</b>	<b>2</b>	<b>4</b>
Rendering of services to:		
Related entities	1,144	1,098
External entities	27	24
<b>Total rendering of services</b>	<b>1,171</b>	<b>1,122</b>
<b>Note 5 - Sale of Assets</b>		
Net gains/(loss) from Sale of Assets		
Infrastructure, plant and equipment:		
Proceeds from disposal	2	-
Net book value at assets disposal	(2)	-
<b>Net gain from disposal of infrastructure, plant and equipment</b>	<b>-</b>	<b>-</b>
Infrastructure, plant and equipment:		
Proceeds from disposal	5	5
Net book value at assets disposal	(9)	(29)
<b>Net (loss) from disposal of infrastructure, plant and equipment</b>	<b>(4)</b>	<b>(24)</b>
Total proceeds from disposals	7	5
Total value of assets disposed and selling expenses	(11)	(29)
<b>Total net (loss) from disposal of assets</b>	<b>(4)</b>	<b>(24)</b>

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

For the year ended 30 June 2007

	<b>2006-2007</b>	2005-2006
	<b>\$ '000</b>	\$ '000
<b>Note 6 - Other Gains</b>		
Subsidies	40	7
Resources received free of charge - Related entities	74	68
Resources received free of charge - External entities	334	408
Other	27	57
<b>Total other gains</b>	<b>475</b>	540
<b>Note 7 - Employee Benefits</b>		
Wages and Salaries	33,745	31,580
Superannuation	6,535	6,904
Leave and other entitlements	4,037	3,021
Separation and redundancies	64	293
Other employee benefits	155	110
Other employee cost	1,363	1,039
<b>Total employee expenses</b>	<b>45,899</b>	42,947
<b>Note 8 - Suppliers</b>		
Provision of goods - related entities	29	19
Provision of goods - external entities	2,108	3,142
Rendering of services - related entities	1,083	1,437
Rendering of services - external entities	17,168	16,767
Operating lease rentals:		
Minimum lease payments	7,492	7,611
Rental expense for sub-leases	63	60
Workers' compensation premiums	266	281
<b>Total supplier expenses</b>	<b>28,209</b>	29,317
<b>Note 9 - Depreciation and Amortisation</b>		
Depreciation		
Leasehold improvements	2,169	1,857
Other infrastructure, plant and equipment	1,037	1,210
<b>Total Depreciation</b>	<b>3,206</b>	3,067
Amortisation		
Intangibles - Computer Software	94	108
<b>Total Amortisation</b>	<b>94</b>	108
<b>Total depreciation and amortisation</b>	<b>3,300</b>	3,175

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

For the year ended 30 June 2007

	<b>2006-2007</b>	2005-2006
	<b>\$ '000</b>	\$ '000
<b>Note 9 - Depreciation and Amortisation (cont)</b>		
The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:		
Leasehold improvements	2,169	1,857
Plant and equipment	1,037	1,210
Intangibles	94	108
Total depreciation and amortisation	<u>3,300</u>	<u>3,175</u>
<b>Note 10 - Write-down and Impairment of Assets</b>		
Non-financial assets - write-off		
Plant and equipment	4	-
Sub-total	<u>4</u>	<u>-</u>
<b>Total write-down of assets</b>	<u>4</u>	<u>-</u>
<b>Note 11 - Other Expenses</b>		
Costs awarded against the Commonwealth	521	693
<b>Total other expenses</b>	<u>521</u>	<u>693</u>
<b>Note 12 - Cash and Cash Equivalents</b>		
Cash at bank	220	197
Cash on hand	24	25
<b>Total cash and cash equivalents</b>	<u>244</u>	<u>222</u>
<b>Note 13 - Trade and Other Receivables</b>		
Appropriations receivable:		
- for existing outputs	42,579	22,832
Goods and services	247	13
GST receivable from the Australian Taxation Office	245	251
Other	132	85
<b>Total receivables (net)</b>	<u>43,203</u>	<u>23,181</u>
Receivables is represented by:		
Current	43,203	23,181
<b>Total receivables (net)</b>	<u>43,203</u>	<u>23,181</u>

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

For the year ended 30 June 2007

	2006-2007 \$ '000	2005-2006 \$ '000
<b>Note 13 - Trade and Other Receivables (cont)</b>		
Receivables (gross) are aged as follows:		
Not overdue	43,131	23,175
Overdue by:		
Less than 30 days	30	-
30 to 60 days	30	6
61 to 90 days	-	-
More than 90 days	12	-
	<u>72</u>	<u>6</u>
<b>Total receivables (gross)</b>	<b><u>43,203</u></b>	<b><u>23,181</u></b>
There are no provisions for doubtful debts.		
<b>Note 14 - Land and Buildings</b>		
<b>Leasehold improvements</b>		
- fair value	23,921	22,555
- accumulated amortisation	(12,306)	(9,732)
<b>Total leasehold improvements</b>	<b><u>11,615</u></b>	<b><u>12,823</u></b>
<b>Total land and buildings (non-current)</b>	<b><u>11,615</u></b>	<b><u>12,823</u></b>
<b>Note 15 - Infrastructure, Plant and Equipment</b>		
<b>Infrastructure, plant and equipment</b>		
Computer equipment at fair value	807	772
Accumulated depreciation	(522)	(374)
	<u>285</u>	<u>398</u>
Furniture at fair value	5,426	5,378
Accumulated depreciation	(2,808)	(2,354)
	<u>2,618</u>	<u>3,024</u>
Office equipment at fair value	1,888	1,810
Accumulated depreciation	(1,111)	(875)
	<u>777</u>	<u>935</u>
Artwork at fair value	142	142
Accumulated depreciation	(94)	(81)
	<u>48</u>	<u>61</u>
Library holdings at fair value	3,169	3,676
Accumulated depreciation	(1,044)	(1,093)
	<u>2,125</u>	<u>2,583</u>
<b>Total Infrastructure, Plant and Equipment (non-current)</b>	<b><u>5,853</u></b>	<b><u>7,001</u></b>

All revaluations are conducted in accordance with the revaluation policy stated at Note 1.

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

For the year ended 30 June 2007

**Note 16 - Analysis of Property, Plant and Equipment**

**TABLE A. Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2006-2007)**

Item	Buildings- Leasehold Improvements \$ '000	Infrastructure, plant and equipment \$ '000	Other Total \$ '000
As at 1 July 2006			
Gross book value	22,555	11,778	34,333
Accumulated depreciation/amortisation and impairment	(9,732)	(4,777)	(14,509)
Net Book Value 1 July 2006	<u>12,823</u>	<u>7,001</u>	<u>19,824</u>
Additions:			
by purchase	30	198	228
Net revaluation increment/(decrement)	931	(294)	637
Depreciation / amortisation expense	(2,169)	(1,037)	(3,206)
Disposals:			
Other disposals	(1)	(11)	(12)
Write-offs	1	(4)	(3)
Net Book Value 30 June 2007	<u>11,615</u>	<u>5,853</u>	<u>17,468</u>
<b>Net book value as of 30 June 2007 represented by:</b>			
Gross book value	23,921	11,432	35,353
Accumulated depreciation / amortisation and impairment	(12,306)	(5,579)	(17,885)
	<u>11,615</u>	<u>5,853</u>	<u>17,468</u>

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

For the year ended 30 June 2007

**Note 16 - Analysis of Property, Plant and Equipment (Cont)**

**TABLE A. Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2005-2006)**

Item	Buildings- Leasehold Improvements	Other Infrastructure, plant and equipment	Total
	\$ '000	\$ '000	\$ '000
As at 1 July 2005			
Gross book value	19,059	11,485	30,544
Accumulated depreciation/amortisation and impairment	(6,275)	(4,633)	(10,908)
Net Book Value 1 July 2006	12,784	6,852	19,636
Additions:			
by purchase	223	345	568
Net revaluation increment/(decrement)	1,673	1,043	2,716
Depreciation / amortisation expense	(1,857)	(1,210)	(3,067)
Disposals:			
Other disposals	-	(29)	(29)
Net Book Value 30 June 2007	12,823	7,001	19,824
<b>Net book value as of 30 June 2006 represented by:</b>			
Gross book value	22,555	11,778	34,333
Accumulated depreciation / amortisation and impairment	(9,732)	(4,777)	(14,509)
	12,823	7,001	19,824

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

For the year ended 30 June 2007

	<b>2006-2007</b>	2005-2006
	<b>\$ '000</b>	\$ '000
<b>Note 17 - Intangibles Assets</b>		
Computer software:		
Purchased software at cost	<b>2,324</b>	2,298
Accumulated amortisation	<b>(1,990)</b>	(1,895)
<b>Total intangible (non-current)</b>	<b><u>334</u></b>	<u>403</u>

No indications of impairment were found for intangible assets.

**TABLE B. Reconciliation of the Opening and Closing Balances of Intangibles (2006-2007)**

Item	Computer software purchased \$ '000
<b>As at 1 July 2006</b>	
Gross book value	2,298
Accumulated depreciation/amortisation and impairment	<b>(1,895)</b>
<b>Net Book Value 1 July 2006</b>	<b><u>403</u></b>
Additions:	
by purchase	26
Amortisation	<b>(94)</b>
Disposals:	
from disposals	-
<b>Net Book Value 30 June 2007</b>	<b><u>335</u></b>
<b>Net book value as of 30 June 2007 represented by:</b>	
Gross book value	2,324
Accumulated depreciation/amortisation and impairment	<b>(1,990)</b>
	<b><u>334</u></b>

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

For the year ended 30 June 2007

**Note 17 - Intangibles Assets (Cont)**

**TABLE B. Reconciliation of the Opening and Closing Balances of Intangibles (2005-2006)**

Item	Computer software purchased \$ '000
<b>As at 1 July 2005</b>	
Gross book value	2,177
Accumulated depreciation/amortisation and impairment	(1,787)
<b>Net Book Value 1 July 2005</b>	<u>390</u>
Additions:	
by purchase	121
Net revaluation increment/(decrement)	-
Amortisation	(108)
Disposals:	
from disposals	-
<b>Net Book Value 30 June 2006</b>	<u>403</u>
<b>Net book value as of 30 June 2006 represented by:</b>	
Gross book value	2,298
Accumulated depreciation/amortisation and impairment	(1,895)
	<u>403</u>

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

For the year ended 30 June 2007

	2006-2007 \$ '000	2005-2006 \$ '000
<b>Note 18 - Other Non-Financial Assets</b>		
Prepayments	263	688
Other	467	245
<b>Total other non-financial assets</b>	<b>730</b>	<b>933</b>
All other non-financial assets are current assets.		
No indicators of impairment were found for other non-financial assets.		
<b>Note 19 - Suppliers</b>		
Trade Creditors	1,237	1,105
Operating lease rentals	211	178
<b>Total supplier payables</b>	<b>1,448</b>	<b>1,283</b>
Supplier payables are represented by:		
Current	1,448	1,283
Non-current	-	-
<b>Total supplier payables</b>	<b>1,448</b>	<b>1,283</b>
Settlement is usually made net 30 days		
<b>Note 20 - Other Payables</b>		
Prepayments received	-	16
Accrued expenses	2,151	1,780
<b>Total other payables</b>	<b>2,151</b>	<b>1,796</b>
All other payables are current liabilities.		
<b>Note 21 - Non-Interest Bearing Liabilities</b>		
Lease incentives	1,013	1,225
<b>Total non-interest bearing liabilities</b>	<b>1,013</b>	<b>1,225</b>
Current	212	212
Non-current	801	1,013
<b>Total non-interest bearing liabilities</b>	<b>1,013</b>	<b>1,225</b>

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

For the year ended 30 June 2007

	2006-2007 \$ '000	2005-2006 \$ '000
<b>Note 22 - Employee Provisions</b>		
Salaries and wages	290	264
Leave	11,069	10,803
Superannuation	2,133	2,252
Other	304	521
<b>Total employee provisions</b>	<b>13,796</b>	<b>13,840</b>
Employee provisions are represented by:		
Current	12,191	12,270
Non-current	1,605	1,570
<b>Total employee provisions</b>	<b>13,796</b>	<b>13,840</b>

The classification of current includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date is \$4,299,000 (2005-2006: \$4,440,000), in excess of one year \$9,497,000 (2005-2006: \$9,400,000).

**Note 23 - Other Provisions**

Provision for Makegood (a)	1,136	1,099
Provision for lease payment under straight-line basis	3,436	3,340
<b>Total other provisions</b>	<b>4,572</b>	<b>4,439</b>

(a) The CDPP currently has 10 agreements for the leasing of premises which have provisions requiring the CDPP to restore the premises to their original condition at the conclusion of the lease. The CDPP has made a provision to reflect the present value of this obligation.

	Provision for Makegood \$ '000	Provision for lease payment under straight-line basis \$ '000	Total \$ '000
<b>Carrying amount at beginning of period</b>	<b>1,099</b>	<b>3,340</b>	<b>4,439</b>
Additional provision made	37	96	133
<b>Amount owing at end of period</b>	<b>1,136</b>	<b>3,436</b>	<b>4,572</b>

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

For the year ended 30 June 2007

	2006-2007 \$ '000	2005-2006 \$ '000
<b>Note 24 - Cash Flow Reconciliation</b>		
<b>Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement</b>		
<b>Report cash and cash equivalents as per:</b>		
Cash Flow Statement	244	222
Balance Sheet	244	222
<b>Reconciliation of operating result to net cash from operating activities:</b>		
Operating result	17,008	5,569
Depreciation /amortisation	3,300	3,175
Loss on disposal of assets	4	24
Net write-down of non-financial assets	4	-
(Increase) / decrease in net receivables	(20,620)	(8,018)
(Increase) / decrease in prepayments	203	126
Increase / (decrease) in incentives	(212)	(212)
Increase / (decrease) in employee provisions	(44)	(510)
Increase / (decrease) in supplier payables	787	441
Increase / (decrease) in other payables	16	(16)
<b>Net cash from / (used by) operating activities</b>	<b>446</b>	<b>579</b>

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

For the period ended 30 June 2007

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**Note 25 – Contingent liabilities and assets****Unquantifiable contingent liabilities**

If a matter prosecuted by the CDPP is defended successfully, the court may order that the CDPP meet certain costs incurred by the defence.

If a matter is being prosecuted by the CDPP and assets are frozen under the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*, the CDPP gives an undertaking against potential losses in respect of assets administered by the Commonwealth. If the related prosecution is unsuccessful, damages can be awarded against the CDPP. Costs and damages so awarded are met from the CDPP or client organisations annual appropriations.

Although costs and damages have been awarded against the CDPP and will continue to be awarded from time to time, the CDPP is unable to declare an estimate of liabilities not recognised nor undertakings due to the uncertainty of the outcome of matters, but more particularly, due to the sensitivity of the information related to matters still before the courts.

**Unquantifiable contingent assets**

Nil.

**Remote contingent liabilities**

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

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

For the year ended 30 June 2007

	2006-2007	2005-2006
<b>Note 26 - Executive Remuneration</b>		
The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:		
\$130,000 to \$144,999	1	1
\$145,000 to \$159,999	3	5
\$160,000 to \$174,999	10	18
\$175,000 to \$189,999	12	6
\$190,000 to \$204,999	6	6
\$205,000 to \$219,999	3	5
\$220,000 to \$234,999	3	1
\$235,000 to \$249,999	1	-
\$310,000 to \$324,999	1	-
\$370,000 to \$384,999	-	1
\$390,000 to \$399,999	1	-
<b>Total</b>	<b>41</b>	<b>43</b>
The aggregate amount of total remuneration of executives shown above.		
	<b>\$ 7,951,000</b>	\$ 7,803,000
The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above.		
	<b>Nil</b>	Nil
<b>Note 27 - Remuneration of Auditors</b>		
Financial statement audit services are provided free of charge to the CDPP.		
The fair value of services provided was:		
CDPP	<b>\$ 74,000</b>	\$ 68,000
	<b>\$ 74,000</b>	\$ 68,000
No other services were provided by the Auditor-General.		
<b>Note 28 - Average Staffing Level</b>		
The average staffing levels for the CDPP during the year were:		
	<b>506</b>	472

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

For the year ended 30 June 2007

	2006-2007 \$	2005-2006 \$
<b>Note 29 - Compensation and Debt Relief</b>		
<b>Departmental</b>		
Act of Grace payments <i>Number of payments 2006-2007:Nil, 2005-2006:Nil</i>	Nil	Nil
Ex-gratia payments <i>Number of payments 2006-2007:Nil, 2005-2006:Nil</i>	Nil	Nil
Waivers made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> <i>Number of payments 2006-2007:Nil, 2005-2006:Nil</i>	Nil	Nil
Defective Administration Scheme <i>Number of payments 2006-2007:Nil, 2005-2006:Nil</i>	Nil	Nil
Payments made pursuant to section 73 of the <i>Public Service Act 1999</i> <i>Number of payments 2006-2007:Nil, 2005-2006:Nil</i>	Nil	Nil
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>

<b>Administered</b>		
Act of Grace payments <i>Number of payments 2006-2007:Nil, 2005-2006:Nil</i>	Nil	Nil
Ex-gratia payments <i>Number of payments 2006-2007:Nil, 2005-2006:Nil</i>	Nil	Nil
Waivers made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> <i>Number of payments 2006-2007:Nil, 2005-2006:Nil</i>	Nil	Nil
Defective Administration Scheme <i>Number of payments 2006-2007:Nil, 2005-2006:Nil</i>	Nil	Nil
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>

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

For the year ended 30 June 2007

**Note 30 - Financial Instruments**

**(a) Interest Rate Risk:**

Financial Instrument	Note	Floating Interest Rate	Fixed Interest Rate Maturing In					Non-Interest Bearing		Total		Weighted Average Effective Interest Rate		
			1 Year or Less		1 to 5 Years		> 5 Years		2006-2007 \$ '000	2005-2006 \$ '000	2006-2007 \$ '000	2005-2006 \$ '000	2006-2007 %	2005-2006 %
			2006-2007 \$ '000	2005-2006 \$ '000	2006-2007 \$ '000	2005-2006 \$ '000	2006-2007 \$ '000	2005-2006 \$ '000						
<b>Financial Assets</b>														
Cash and cash equivalents	12	-	-	-	-	-	-	244	222	244	222	n/a	n/a	
Receivables for goods and services	13	-	-	-	-	-	-	247	13	247	13	n/a	n/a	
<b>Total</b>		-	-	-	-	-	-	491	235	491	235			
<b>Total Assets</b>										<b>61,979</b>	<b>44,563</b>			
<b>Financial Liabilities</b>														
Trade creditors	19	-	-	-	-	-	-	1,448	1,283	1,448	1,283	n/a	n/a	
<b>Total</b>		-	-	-	-	-	-	1,448	1,283	1,448	1,283			
<b>Total Liabilities</b>										<b>22,980</b>	<b>22,563</b>			

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

For the year ended 30 June 2007

**Note 30 - Financial Instruments (cont)**

**(b) Fair Values of Financial Assets and Liabilities**

	Notes	2006-2007		2005-2006	
		Total carrying amount \$ '000	Aggregate fair value \$ '000	Total carrying amount \$ '000	Aggregate fair value \$ '000
<b>Departmental</b>					
<b>Financial Assets</b>					
Cash and cash equivalents	12	244	244	222	222
Receivables for goods and services	13	247	247	13	13
<b>Total Financial Assets</b>		<b>491</b>	<b>491</b>	<b>235</b>	<b>235</b>
<b>Financial Liabilities (Recognised)</b>					
Trade creditors	19	1,448	1,448	1,283	1,283
<b>Total Financial Liabilities (Recognised)</b>		<b>1,448</b>	<b>1,448</b>	<b>1,283</b>	<b>1,283</b>

**(c) Credit Risk Exposures**

The CDPP's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

The CDPP has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

<b>OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS</b>		
<b>NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS</b>		
For the year ended 30 June 2007		
	2006-2007	2005-2006
	\$ '000	\$ '000
<b>Note 31 - Administered Fees and Fines Revenue</b>		
Fines and Costs	9,401	10,748
<b>Total Income Administered on Behalf of Government</b>	<b>9,401</b>	<b>10,748</b>
<b>Note 32 - Reversal of Previous Administered asset write-downs</b>		
Reinstate receivable previously written-off	60	50
<b>Total reversal of previous administered asset write-downs</b>	<b>60</b>	<b>50</b>
<b>Note 33 - Write-down of Administered Assets</b>		
Financial Assets		
Write-off	5,274	762
Prison sentence	1,101	600
Community service orders	26	109
Received by other agencies	388	449
Increase in provision for doubtful debts	2,190	8,511
<b>Total write-down of administered assets</b>	<b>8,979</b>	<b>10,431</b>
<p>Note: A significant amount of debts outstanding may not be recovered, as Fines and Costs may be converted by serving time in prison, by performing community service or similar provisions. A number of Fines and Costs are also written off as irrecoverable.</p>		
<b>Note 34 - Administered Cash</b>		
Cash and Cash Equivalents	-	3
<b>Total cash and cash equivalents</b>	<b>-</b>	<b>3</b>
<b>Note 35 - Administered Receivables</b>		
Fines and Costs	21,087	20,328
Less : Allowance for doubtful debts	(20,069)	(17,879)
<b>Total receivables (net)</b>	<b>1,018</b>	<b>2,449</b>

<b>OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS</b>		
<b>NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS</b>		
For the year ended 30 June 2007		
	<b>2006-2007</b>	2005-2006
	<b>\$ '000</b>	\$ '000
<b>Note 35 - Administered Receivables (Cont)</b>		
Fines and costs receivable (gross) are aged as follows:		
Not overdue	<b>1,038</b>	679
Overdue by:		
Less than 30 days	<b>354</b>	497
30 to 60 days	<b>664</b>	414
61 to 90 days	<b>6,624</b>	266
More than 90 days	<b>12,407</b>	18,472
<b>Total receivable (gross)</b>	<b>21,087</b>	20,328
Fines and costs receivables are with entities external to the Australian Government. Credit terms are usually 28 days from Court date but Courts can and do approve time-to-pay		
<b>Note 36 - Administered Payables</b>		
Other payables	<b>2</b>	4
<b>Total Administered Payables</b>	<b>2</b>	4
All payables are to entities that are not part of the Australian Government, i.e. refunds of receipts. Settlement is usually made within 30 days.		
<b>Note 37 - Administered Reconciliation Table</b>		
<b>Opening administered assets less administered liabilities as at 1 July</b>	<b>2,448</b>	4,159
Plus: Administered revenues	<b>9,461</b>	10,798
Less: Administered expenses	<b>(8,979)</b>	(10,431)
Administered transfers to/from Australian Government:		
Less: Transfers to OPA	<b>(1,941)</b>	(2,106)
Plus: Transfers from OPA	<b>27</b>	28
<b>Closing administered assets less administered liabilities as at 30 June</b>	<b>1,016</b>	2,448

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

For the period ended 30 June 2007

**Note 38 – Administered contingent liabilities and assets****Unquantifiable contingent liabilities / assets**

Fines and costs receivables are recorded at the amount set down in a decision by a Court. These decisions are subject to appeal, either by the Prosecution or by the Defence. If an appeal is successful, the amount of fines and costs receivable may increase or decrease.

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

**Unquantifiable contingent assets**

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

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

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
 For the year ended 30 June 2007

**Note 39 - Administered Financial Instruments**

**(a) Administered Interest Rate Risk**

Financial Instrument	Note	Floating Interest Rate		Fixed Interest Rate			Non-Interest Bearing		Total		Weighted Average Effective Interest Rate	
		Rate		1 Year or Less	1 to 5 Years	> 5 Years	Bearing		Total		%	
		2006-2007	2005-2006	2006-2007	2005-2006	2006-2007	2006-2007	2005-2006	2006-2007	2005-2006	2006-2007	2005-2006
		\$ '000	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000	%
<b>Financial Assets</b>												
Cash	34											n/a
Receivables - Fees and Fines (gross)	35							21,087	20,328	21,087	20,328	n/a
<b>Total</b>		-	-	-	-	-	-	21,087	20,331	21,087	20,331	n/a
<b>Total Assets</b>										1,018	2,452	
<b>Financial Liabilities</b>												
Payables - other	36							2	4	2	4	n/a
<b>Total</b>		-	-	-	-	-	-	2	4	2	4	
<b>Total Liabilities</b>										2	4	

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

For the year ended 30 June 2007

**Note 39 - Administered Financial Instruments (contd)**

**(b) Fair Values of Financial Assets and Liabilities**

	Note	2006-2007		2005-2006	
		Total \$ '000	Aggregate \$ '000	Total \$ '000	Aggregate \$ '000
<b>Financial Assets</b>					
Cash	34	-	-	3	3
Receivables - Fees and Fines (net)	35	1,018	1,018	2,449	2,449
<b>Total Financial Assets</b>		<b>1,018</b>	<b>1,018</b>	<b>2,452</b>	<b>2,452</b>
<b>Financial Liabilities</b>					
Payables - other	36	2	2	4	4
<b>Total Financial Liabilities</b>		<b>2</b>	<b>2</b>	<b>4</b>	<b>4</b>

**Financial Assets**

The net fair values of fees and fines receivable is the carrying amount less the provision for doubtful debts.

**Financial Liabilities**

The net fair values for other payables are short term in nature and approximated by their carrying amounts.

**(c) Credit Risk Exposures**

The Agency's maximum exposures to credit risk at the reporting date in relation to each class of recognised financial asset is the carrying amount of those assets as indicated in the Administered Schedule of Administered Items.

There are no significant exposures to any concentrations of credit risk in relation to the Administered receivables.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

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

For the year ended 30 June 2007

	2006-2007 \$ '000	2005-2006 \$ '000
<b>Note 40 - Appropriations</b>		
<b>Table A: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and borrowings</b>		
Balance carried from previous period	23,195	15,196
Appropriations Act:		
Appropriations Act (No. 1)	94,054	79,240
Appropriations Act (No. 3)	-	819
Departmental Adjustments by the Finance Minister (Appropriation Acts)	400	-
Reductions:		
prior years (Note)	(598)	-
current year (Note)	(1,157)	-
FMA Act:		
Refunds credited (FMA s.30)	117	109
Appropriations to take account of recoverable GST (FMA s.30A)	2,513	2,707
Annotations to 'net appropriations' (FMA s.31)	1,051	1,711
Total appropriations available for payments	<u>119,575</u>	<u>99,782</u>
Cash payments made during the year (GST inclusive)	<u>76,636</u>	<u>76,587</u>
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	<u>42,939</u>	<u>23,195</u>
<b>Represented by:</b>		
Cash at bank and on hand	244	222
Departmental appropriations receivable	42,579	22,832
GST receivable from the ATO	245	251
GST receivable from customers	7	-
GST payable payable to suppliers	(136)	(110)
<b>Total</b>	<u>42,939</u>	<u>23,195</u>

(Note) Departmental and non-operating appropriation do not lapse at financial year end. However, the responsible Minister may decide that part or all of a departmental or non-operating appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. On 26 June 2007, the Finance Minister determined reduction in departmental outputs appropriations following a request by the Attorney-General. The amount determined under Appropriation Act No.3 (s.10(2)) of 2003-2004 was \$598,000 and the amount determined under Appropriation Act No.1 (s.9(1)) of 2006-2007 was \$1,157,000.

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

For the year ended 30 June 2007

2006-2007	2005-2006
\$ '000	\$ '000

**Note 40 - Appropriations (Cont)**

**Table B: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations**

There were no equity injections, loans or carryovers in the reporting period.

**Table C: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund - Special Appropriations (Refund Provisions)**

***Financial Management and Accountability Act 1997 - Section 28***

Purpose: A section to allow for the expenditure of amounts the Commonwealth is legally required to pay, but for which there is no other appropriation.

All transactions under this Act are recognised as administered items.

Cash payments made during the year	<u>27</u>	<u>28</u>
<i>Budget estimate (FMA Act s28)</i>	<u>250</u>	<u>250</u>

Note: Cash payments made are refunds of amounts paid to the CDPP in error.

**Note 41 - Special Accounts**

**A. Other Trust Monies Special Account**

Legal authority - *Financial Management and Accountability Act 1997*; s20

Purpose - for the receipt of money temporarily held on trust or otherwise for the benefit of a person or entity other than the

This account is non-interest bearing

**(i) Administered Component**

- \* There were no transactions during either year.

The receipts reported in the 2005-2006 financial statements under this note were paid directly to CRF and not processed through a Special Account. Refunds of any of these receipts are processed under a S.28 Special Appropriation, see Note 40 Table C.

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

For the year ended 30 June 2007

	<b>2006-2007</b>	2005-2006
	<b>\$ '000</b>	\$ '000
<b>Note 41 - Special Accounts (Cont)</b>		
<b>(ii) Comcare Component (Departmental)</b>		
Balance carried from previous period	-	-
Appropriation for reporting period	-	-
Cost recovered	-	-
Other receipts - Comcare receipts paid in accordance with the <i>Safety Rehabilitation and Compensation Act 1998</i> .	<u>3</u>	<u>34</u>
Available for payments	<u>3</u>	<u>34</u>
Less: Payments made to employees	<u>(3)</u>	<u>(34)</u>
Balance carried to the next period	<u>-</u>	<u>-</u>
Represented by:		
Cash - transferred to the Official Public Account	-	-
Cash - held by the entity	<u>-</u>	<u>-</u>
<b>Total balance carried to the next period</b>	<u>-</u>	<u>-</u>

Note on usage - for the receipt of money temporarily held on trust and advanced to the Agency by Comcare for the purpose of distributing compensation payments made in accordance with the *Safety Rehabilitation and Compensation Act 1988*.

**B. Service for other Governments & Non-Agency Bodies Account**

Legal authority - *Financial Management and Accountability Act 1997*; s20

Purpose - for expenditure in connection with services performed on behalf of other Governments and bodies that are not FMA agencies.

\* There were no transactions during either year.

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

For the year ended 30 June 2007

	2006-2007	2005-2006
	\$ '000	\$ '000
<b>Note 42 - Reporting of Outcomes</b>		
<b>(a) Net Cost of Outcome Delivery</b>		
The CDPP has only one outcome. Therefore no attribution is required.		
	<b>Outcome 1</b>	
<i>Expenses</i>		
Administered	8,979	10,431
Departmental	<u>77,937</u>	<u>76,156</u>
<b>Total expenses</b>	<b><u>86,916</u></b>	<b><u>86,587</u></b>
<i>Other external revenues</i>		
Administered		
Fee and fines	9,401	10,748
Reversal of previous asset write-downs	60	50
<i>Total Administered</i>	<u>9,461</u>	<u>10,798</u>
Departmental		
Goods and services revenue	1,173	1,126
Other gains	475	540
<i>Total Departmental</i>	<u>1,648</u>	<u>1,666</u>
<b>Total other external revenues</b>	<b><u>11,109</u></b>	<b><u>12,464</u></b>
<b>Net cost/(contribution) of outcome</b>	<b><u>75,807</u></b>	<b><u>74,123</u></b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget Outcome.

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

For the year ended 30 June 2007

<b>2006-2007</b>	2005-2006
<b>\$ '000</b>	\$ '000

**Note 42 - Reporting of Outcomes (Cont)**

**(b) Major Classes of Departmental Revenues & Expenses by Output groups and Outputs**

The CDPP has only one output.

	<b>Outcome 1</b>	<b>Output 1</b>
<b>Departmental expenses</b>		
Employees	<b>45,899</b>	42,947
Suppliers	<b>28,209</b>	29,317
Depreciation and amortisation	<b>3,300</b>	3,175
Other expenses	<b>529</b>	717
<b>Total departmental expenses</b>	<b>77,937</b>	76,156
<b>Funded by:</b>		
Revenues from Government	<b>93,297</b>	80,059
Sales of goods and services	<b>1,173</b>	1,126
Other non-taxation revenues	<b>475</b>	540
<b>Total departmental revenues</b>	<b>94,945</b>	81,725

**(c) Major Classes of Administered Revenues & Expenses by Outcomes**

<b>Administered Revenues</b>		
Fees and Fines	<b>9,401</b>	10,748
Other non-taxation revenues	<b>60</b>	50
<b>Total Administered Revenues</b>	<b>9,461</b>	10,798
<b>Administered Expenses</b>		
Write-down of assets	<b>8,979</b>	10,431
<b>Total Administered Expenses</b>	<b>8,979</b>	10,431

## INDEX

### A

- abbreviations, 140
- ACC, *see* Australian Crime Commission
- ACCC, *see* Australian Competition and Consumer Commission
- acronyms and abbreviations, 140
- admissible evidence, 3
- advertising, 122
- advocacy training, 103
- AFMA, *see* Australian Fisheries Management Authority
- AFP, *see* Australian Federal Police
- Air Border Security Team, 29
- Aisbett, Mark Andrew, 24
- Amoedo, Alfonso Dacruz, 19–20
- Ansari, Abdul Azees Mohamed, 21–22
- Ansari, Hajamaideen Mohamed, 21–22
- Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, 100
- appeals against sentence, 16, 43, 67
- appendixes, 135–139
- Asia/Pacific Group on Money Laundering, 102
- Asia Pacific region
  - conferences and regional forum, 106
  - international contribution, 102, 106
  - legal assistance and training, 106
  - promotion of justice in, xiii
  - prosecutor's pairing programme, 106–107
  - workshop, 78
- ASIC, *see* Australian Securities and Investments Commission
- assets, confiscation of criminal assets, statistics, 86–89
- assets management, 120–121
- ATO, *see* Australian Taxation Office
- Attorney General, Commonwealth, 1, 4, 49, 77, 106
  - Australian Central Authority, 91
  - extradition, 91–93
  - law reform, 99–101, 102
- Audit Committee, 121
- audit report, 122
- audits, 121, 122
- AusAID (Australian Agency for International Development), 22, 106
- AUSTRAC (Australian Transaction Reports and Analysis Centre), 14
- Australia Post, 11
- Australian Competition and Consumer Commission, 51
- Australian Crime Commission, 2, 11, 14, 36, 77
- Australian Customs Service, 11, 17, 26–27, 49, 77, 83
  - Air Border Security Team, 29
  - drug importation, 20, 24, 46
- Australian Electoral Commission, 2
- Australian Federal Police, 2, 23, 29, 38, 82, 84
  - investigation of drug offences, 24, 25, 44, 46
  - investigation of terrorism offences, 18
- Australian Federal Police Act 1979*, 76
- Australian Fisheries Management Authority, 17, 20, 26

Australian Fishing Zone, 19–20, 25–26, 27–28  
Australian Government Solicitor, 4, 14  
Australian Law Reform Commission, papers and reports, 47, 101  
Australian Maritime Safety Authority, 11  
Australian National Audit Office, reports, 122  
Australian Quarantine and Inspection Service, 50  
Australian Securities and Investments Commission, 2, 14, 51, 56, 77  
*Australian Securities and Investments Commission Act 2001*, 51  
Australian Taxation Office, 2, 11, 13–14, 77  
    excise fraud, 82, 83–84  
    GST fraud, 23, 30–31, 36–37, 42–43, 84–85  
    income tax fraud, 14, 38, 82–83  
    Memorandum of Understanding, 119  
AWAs (Australian Workplace Agreements), 114

## **B**

Ball, Ted, 22–23  
bank accounts, operating in false name, 86  
*Bankruptcy Act 1966*, 51  
bankruptcy fraud, 52  
Batchelor, Martin, 22–23  
'best practice' prosecution service, xiii, 103  
border security, 29–30  
Boulden, Antony, 52  
Bowerman, Paul Reginald, 80–81  
business regulation, 126

## **C**

Carstein, Jamie Alan, 32–33  
Case Recording and Information Management System, 123  
case work, developments in  
    Centrelink, 13  
    counter terrorism prosecutions, 18–19  
    fisheries prosecutions, 17–18  
    money laundering prosecutions, 15–16  
    online child sexual exploitation offences, 16  
    people trafficking, 17  
    Project Wickenby, 14–15  
    tax prosecutions, 13–14  
Centrelink, 11, 13  
    fraud against, 28, 119  
challenging authority, 41–42  
child abuse, 14, 33–34  
child care fraud, 119  
child pornography, 16, 35, 43  
child sex tourism, 11, 16, 48–49, 107  
child sexual exploitation, 11, 16  
children, 'grooming' for sexual activity, 16, 40–41, 43  
children, offences against, xi, 11, 16, 34, 40–41, 43, 48–49  
    identifiable victims, 107  
    trauma management for staff, 115  
Chinese medical products, 49–50  
Christiansz, Joseph George, 23, 81–82  
civil forfeiture, 84  
Civilian Aviation Safety Authority, 11  
Claite, Anton, 24

- client agencies survey, 108–112
- cocaine, 24–25, 32–33, 44, 84
- Cocaj Family, 82–83
- Cohen, Geoffrey Arthur, 53
- commercial prosecutions, 51–60
  - Commercial Prosecutions Branch, 51–52
  - insurance fraud, 52–55
  - significant cases, 52–60
  - see also* general prosecutions; prosecutions
- Commercial Prosecutions Branch, 51–52
- Commissioner of Taxation, 14
- committal proceedings, 5
- Commonwealth Criminal Code, 5
- Commonwealth Disability Strategy, 118
  - report, 132
- compliance statement, ix
- computer offences, 48
- conferences, 13, 16, 104, 106
- conferences and forums, international, 106
- Confiscated Assets Account, 76
- confiscation, *see* criminal confiscation
- conspiracy law, 32
- conspiracy proceedings, consent to, 63
- consultancies, 120, 130
- contact details, iv–v
- contracting and tendering, 119
- contracts, 119, 120
- Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 27, 50
- Cook, Glen Christopher, 24–25
- cooperation, international, 78, 91, 95–96, 106
- Copyright Amendment Act 2006*, 100
- Copyright Prosecution Outline, 104
- corporate fraud, 1, 11, 12
- corporate governance, 5–8
  - Audit Committee, 121
  - corporate plan, 3, 137–139
  - Fraud Control Plan, 121
  - Fraud Risk Assessment Plan, 121
  - internal audits, 121
  - remuneration, staff, 129
  - risk management, 121
  - Senior Management Committee, 6
- corporate plan, 3, 137–139
- Corporations Act 2001*, 51
- correction, 2005–2006 Annual Report, 123
- corrupting benefits case, 22–23
- cost recovery, 119
- counter-terrorism, xi, 1, 11, 98
  - financing, 102, 106
  - law reform, 99
  - prosecutions, 18–19, 47–48
- County Court, 5
- Courier Mail*, 37–38
- crime, transnational, 91–98
- Crimes Act 1914*, 14
- Crimes Legislative Amendment (National Investigative Powers and Witness Protection) Bill 2006*, 100

*Crimes (Superannuation Benefits) Act 1989*, 76  
Criminal Assets Branch, 77–78  
Criminal Assets Recording System, 123  
Criminal Code (Commonwealth), 5  
criminal confiscation, 75–89  
    civil action, 82, 84  
    Criminal Assets Branch, 77–78  
    legal framework, 75–77  
    money recovered, 81–86  
    overview, 78  
    performance indicators, 80  
    significant cases, 80–86  
    statistics, 79, 86–89  
    *see also* proceeds of crime  
*Customs Act 1901*, 4

## D

*Daily Telegraph*, 37–38  
*De Yuan Yu 02*, 25  
*Defence Force Discipline Act 1982*, 107  
defendant, 5  
Delin, Lan, 25–26  
Delmark Holdings Pty Ltd, 26  
Department of Immigration and Citizenship, 11  
Department of the Attorney-General, 14  
Department of the Environment and Heritage, 11, 50  
directions or guidelines issued, 1  
Director of Military Prosecutions, 107  
*Director of Public Prosecutions Act 1983*, 1  
Director's overview, xi–xiii  
disability, people with, 118  
disability strategy, 118, 132  
dishonestly obtaining property, 56–57  
District Court, 5  
Dominguez, Enrique Soto, 19–20  
double jeopardy, 102  
DPP Act, *see* *Director of Public Prosecutions Act 1983*  
DPP-Net, 121  
DPP role, functions and statutory powers, 1–2, 4, 61–63, 75  
    independence of, xiv  
drugs, importation of, 11  
    cocaine, 24–25, 32–33, 44, 84  
    ecstasy, 24  
    heroin, 46–47  
    methamphetamine, 31–32, 45–46  
    pseudoephedrine, 20–21  
Du, Quoc Kinh Truong, 20–21

## E

ecologically sustainable development, 125–126  
ecstasy, 24  
electronic communication, impairment of, 48  
Elimination of Workplace Harassment, policy, 115  
Employee Health and Fitness Initiative, 115  
employees, *see* staff  
energy use, minimisation, 125

Environment and Heritage, Department of, 11  
*Environment Protection and Biodiversity Conservation Act 1999*, 27  
environmental performance, 125–126  
Equal Employment Opportunity, 117, 128  
equity, 2  
ethical standards, 2  
evidence to prosecute, 3  
*ex-officio* indictments, 63  
excise fraud, 82–83, 83–84  
expenditure, 119, 122–123, 133  
exploitation of children, sexual, xi, 11, 16, 107, 115  
external scrutiny, 122  
external territories, offences against laws of, 1  
extradition, 91–94  
    Australian Central Authority, 91  
    incoming requests, 92–93  
    outgoing requests, 93–94  
    statistics, 93–94  
*Extradition Act 1988*, 4

## F

fairness, 2  
false accounting, 58–59  
Fed-link, 123  
File Registry System, 123  
financial management, 118–123  
    financial performance, 118–119  
    financial statements, 118, 141–198  
financial services, false representation of, 56–57, 57  
financial statements, 118  
*Financial Transactions Reports Act*, 85  
financially motivated crime, 75  
financing counter-terrorism, 102, 106  
*Fisheries Management Act 1991*, 17  
fisheries offences, 11, 17–18, 19–20, 25–26, 26–27, 27–28  
fishing zone, Australian, 19–20, 25–26, 27–28  
fitness, employees, 115  
Floyd, Wayne Frederick, 26–27  
Fodera, Dominic, 53–54  
foreign fishing vessels, 19–20, 25–26  
forfeiture orders, 76  
    proceeds from, 18, 23, 26, 84  
    statistics, 79  
    superannuation, 4  
    *see also* criminal confiscation; proceeds of crime  
forums and conferences, international, 106  
fraud, 1, 11, 12, 13–14  
    bankruptcy fraud, 52  
    child care fraud, 119  
    corporate fraud, 11, 12  
    criminal confiscation of proceeds of, 75–89  
    excise fraud, 82–83, 83–84  
    fraud against Australia Post, 39–40  
    prosecutions of large matters, 51  
    social security, 28, 119  
    tax fraud, 13–15, 23, 30–31, 36–37, 38, 42–43

Fraud Control Plan, 121  
Fraud Risk Assessment Plan, 121  
Freedom of Information Act 1982, statement under, 135–136  
*Friendly Societies (Queensland) Code 1997*, 56  
friendly society, failing to act honestly as an officer, 56

## G

Garchow, Raymond John, 33–34  
Geerlings, Glenn James, 32–33  
general prosecutions, 11–50  
    case work, 13–18  
    fisheries cases, 17–18, 19–20, 25–26, 26, 27–28  
    illegal trafficking in native fauna, 26–27, 49–50  
    importation of drugs, 20–21, 24–25, 31–33, 44, 45–47, 84  
    legal framework, 12  
    money laundering, 15–16, 21–22  
    offences against agencies, 22–23, 28, 29–30, 36, 39  
    people smuggling and people trafficking, 17, 29, 30, 45  
    sex offences, 16, 33–35, 40–41, 43, 48–49  
    significant cases, 19–50  
    tax offences, 13–15, 23, 30–31, 36–37, 38, 42–43  
    terrorism offences, 18–19, 47–48  
    types of matters, 11  
    types of work, 11–12  
    *see also* commercial prosecutions; prosecutions  
Giampaolo, Antonio, 24  
Goods and Services Tax fraud, 14, 23, 30–31, 36–37, 42–43, 84–85  
governance, corporate, *see* corporate governance  
green energy, 125  
'grooming' children for sexual activity, 16, 40–41, 43  
Guidelines for Dealings between Commonwealth Investigators and the Commonwealth Director of Public Prosecutions, 105–106  
Guidelines on Official Conduct, for DPP employees, 2  
guidelines or directions issued, 1  
gummy shark, 26  
Gunawan, Ciamtao, 27–28  
Gunderson, Esbil Honore, 24–25

## H

harassment in the workplace, policy, 115  
health and fitness, employees, 115  
heroin, 46–47  
HIH Insurance Ltd, prosecutions following collapse of  
    Boulden, Antony, 52  
    Cohen, Geoffrey Arthur, 53  
    Fodera, Dominic, 53–54  
    Kamba, Ashraf, 55  
    Kelly, Robert, 54  
    Lo, Frederick, 54–55  
    Wilkie, Daniel, 55  
HMAS *Dubbo*, 27  
HMAS *Ipswich*, 25  
Hodgson, Alan, 59  
Holland, Judith Anne, 50  
Hoy, Shane William, 56–57  
Hughes, Carolyn Joy, 28

human resource management, 113  
national recruitment campaign, 114

## I

illicit substances, *see* drugs, importation of  
immigration offences, 11, 85  
In House prosecution Section, ATO, 13–14  
income tax fraud, 14, 38, 82–83  
indecentry against boys, 33–35  
indemnities, 62  
independence of DPP, xiv  
indictments, *ex-officio*, 63  
information technology, 113, 123–124  
internet, 124  
intranet, 124  
portal implementation, 124  
insider trading, 83  
Insolvency and Trustee Service Australia, Bankruptcy Fraud Investigations Unit, 52, 77  
insurance fraud, 52–55  
internal audits, 121  
international cooperation, 78, 91, 95–96, 106  
international crime, 91–98  
International Crime Cooperation Workshop for the Pacific Region, 78  
international forums and conferences, 106  
international legal programs, 78  
international tax evasion, 14–15  
international treaties and conventions, 95  
investigative agencies, xi, xii, 3, 11, 96, 104, 105–106  
and international crime, 91  
ITSA, *see* Insolvency and Trustee Service Australia

## J

Jervis Bay, offences against laws of, 1  
joint trials, 105  
judicial and tribunal decisions, 122  
jurisdictions, differences in prosecutions, xii, 12

## K

Kamha, Ashraf, 55  
Karam, Rob, 24  
Karuppiah, Subramaniam, 29  
Kelly, Robert, 54  
Kessing, Allan Robert, 29–30  
*KM Karya Mulya*, 27  
Kong, Danny Hon Yeong, 30–31  
Kupusamy, Logambal, 30

## L

Labanon, Andrew Lester, 31–32  
Lake, John William, 32–33  
Lam, The Vinh Khanh, 20–21  
law of conspiracy, 32  
law reform, 99–102  
Lebler, William John, 33–34  
legal assistance, Asia Pacific Region, 106  
legal framework, general prosecutions, 12

legal programs, international, 78  
legal services expenditure, 122–123, 133  
legislation, charges dealt with under, 69–71  
letter of transmittal, iii  
Liberation Tigers of Tamil Eelam, 47  
libraries, 113, 124–125  
literary proceeds orders, 76  
    *see also* criminal confiscation; proceeds of crime  
litigation support system, 124  
Lo, Frederick, 54–55  
Local Court, 5  
LTTE, *see* Liberation Tigers of Tamil Eelam  
Ly, Phuoc Thua, 20–21  
lying under oath, 36

## **M**

Magistrates Court, 5  
management  
    assets, 120–121  
    financial, 113, 118–123  
    human resource, 113  
    practice, 103–112  
    resource, 113–123  
    risk, 121  
management chart, 7–8  
*Marcos Dias*, 44  
market research, 122  
Martens, Frederick Arthur, 34  
McIntosh, Andrew Dean, 35  
McKay, Margot Olive, 83  
medical products, Chinese, 49–50  
Medicare Australia, 11, 47  
medifraud, 1  
Memorandum of Understanding, Australian Taxation Office, 119  
Memorandum of Understanding, Director of Military Prosecutions, 107  
Mercanti, Jason Dean, 36  
methamphetamine, 45–46  
methamphetamine, 20, 31  
*Migration Act 1958*, 29  
mission statement, 3, 137  
Mohammadi, Mehdi, 31–32  
Moloney, Rodger William, 33–34  
money laundering, 1, 15–16, 21–22, 102  
mutual assistance, 91, 95–98  
*Mutual Assistance in Criminal Matters Act 1987*, 4, 95

## **N**

*National Security Information (Criminal and Civil Proceedings) Act 2004* (NSI Act), 18  
Nationwide News Pty Ltd, 37–38  
native fauna, illegal trafficking in, 26–27, 49–50  
New Zealand, extradition of defendants to, 33–34  
Nguyen, Paul Trieu Thanh Tuan, 20–21  
no bill applications, 61  
non-publication orders, 37–38  
Norfolk Island, 1  
Norman, Mark Edward, 38  
Norman, Robert John, 38

## O

- occupational health and safety, 115
- offences against children, xi, 11, 16, 34, 40–41, 43, 48–49
  - identifiable victims, 107
  - trauma management for staff, 115
- Office of the DPP, 1–9
  - outcome and output chart, 9
  - Senior Management Chart, 7–8
- ombudsman, 122
- O'Meara, Kenneth, 36–37
- 'on indictment', 5
- Operation Pendennis, 37–38
- organisational chart, 7–8
- Orlov, Guennadi, 39
- outcomes, 137
  - outcome and output chart, 9
  - resources for, 131
- outputs, 137
  - outcome and output chart, 9

## P

- Pacific Prosecutor's Pairing Programme, 106–107
- Pacific Region, *see* Asia Pacific region
- parliamentary committees, 122
- Patagonian Toothfish, 19–20
- pecuniary penalty orders, 4, 76
  - civil orders, 82, 84
  - prosecutions resulting in, 15, 40, 81–86
  - see also* criminal confiscation; proceeds of crime
- people smuggling, 1, 29, 30, 107
- people trafficking, 1, 11, 17, 107
- people with a disability, 118, 128, 132
- performance
  - environmental, 125–126
  - financial, 118–119
- Performance Management Scheme, 114
- performance pay, 114
- Pham, Minh Tan, 20–21
- pornography, child, 16, 35, 43
- portal implementation, information technology, 124
- Poynder, Michael John, 40–41
- practice management
  - advocacy training, 103
  - client agencies survey, 108–112
  - Copyright Prosecution Outline, 104
  - guidelines, review of, 105–106
  - international contribution, 106
  - joint trials - State and Territory DPPs, 105
  - liaison with investigative agencies, 104
  - memorandum of understanding, 107
  - pairing programme, 106–107
  - prosecution policy, 105
  - victims of Commonwealth offending, 107–108
  - warrants manuals, 104
- prima facie case, 3

- privacy, 118
- private prosecutions, 62
- proceeds of crime, 1, 4, 14, 23, 30, 39, 40
  - client agency survey, 108–109
  - legislation, 75, 76
  - money laundering, 15–16
  - mutual assistance to recover, 95, 96
  - prosecutor's pairing programme, Pacific, 106–107
  - training, 78, 106
  - see also* criminal confiscation
- Proceeds of Crime Act 1987*, 76–77
  - functions under, 76–77
  - further responsibilities, 77
- Proceeds of Crime Act 2002*, 4, 75–76
  - equitable sharing provisions, 86
  - functions under, 75
  - orders, 76
  - overview of 2006–2007, 78
  - performance indicators, 80
  - review, report of, 78
  - significant cases, 80–86
  - statistics, 79, 86–89
- procurement process, 119
- procuring children for sexual activity, 16, 40–41, 43
- Project Wickenby, 14–15
- property developer, misleading information, 57
- Prosecution Policy of the Commonwealth*, xi, 3, 105
- prosecutions, 1, 3–4, 5, 62
  - appeals against sentence, 16, 43
  - performance indicators, 63–64
  - statistics, 65–73
  - see also* commercial prosecutions; general prosecutions
- prosecutors' conference, Centrelink, 13
- Prosecutor's Pairing Programme, Pacific, 106–107
- prospect of conviction, 3
- pseudoephedrine, 20–21
- public comment, 126
- public interest, 3
- public relations, 125
- purchasing, 119

## **Q**

- Queen Street Mall Duty Free, 83–84
- Queensland Newspapers Pty Ltd, 37–38
- Quick, Christopher, 84

## **R**

- Rajeevan, Arumugan, 47–48
- recruiting, deceptive, 17
- recruitment campaign, national, 114
- regulatory offences, 1
- remuneration, staff, 129
- reparation to the Commonwealth, 28, 73
- resource management, 113–133
  - occupational health and safety, 115
  - organisation of, 113

- Performance Management Scheme, 114
- recruitment, 114
- staff, 116–118
  - workplace agreements, 114
- Resource Management Information System, 124
- restrained assets, *see* criminal confiscation; proceeds of crime
- retail business, unethical behaviour, 59
- revenue, 119
- Rhodes, Cecil Ronald aka Wagamunga, 41–42
- risk management, 121
- role, functions and statutory powers of DPP, 1–2, 61–63, 75
- Rowson, Mark William, 42–43
- Royal Australian Navy, 17, 25, 27–28

## S

- Sage, John Gerard, 57
- salaries, 129
- Same Crime, Same Time*, sentencing of federal offenders, 47, 101
- Search Warrants Manual, DPP, 104
- Searle, Roger William, 43
- Security Legislation Amendment (Terrorism) Act 2002*, 18
- sentencing, 12, 16, 43
  - appearing in proceedings, 103
  - Same Crime, Same Time*, 101
- Sergi, Antonio, 24
- Serious Computer Offences Division, Criminal Code, 48
- Sevilla, Jose Melgar, 44
- sex industry, 17, 45
- sex tourism, children, 11, 16, 48–49, 107
- sexual assault of children, 34, 48–49
- sexual exploitation of children, xi, 11, 16, 107, 115
- Sexual Offenders Registration Act 2004*, 49
- sexual servitude, 1, 17
- sexual slavery, 1, 17, 45
- shark, 26
- significant cases, 19–50, 52–60, 80–86
- smuggling, people, 1, 29, 30, 107
- social justice and equity, 2
- social security fraud, 28, 119
- sodomy against boys, 33–34
- staff
  - by gender and category, 127
  - by location and category, 127
  - equal employment opportunity, 117, 128
  - female staff, 117, 127
  - full-time, 127
  - Indigenous, 128
  - location, 126, 128
  - male staff, 127
  - non-ongoing, 127
  - occupational health and safety, 115
  - overview, 116
  - part-time, 127
  - Performance Management Scheme, 114
  - privacy, 118
  - recruitment, 114

- salaries, 129
- senior management, 7
- training and development, 116
  - with disabilities, 118, 128
  - workplace agreements, 114
  - workplace diversity, 116–117
  - workplace harassment, policy, 115
  - workplace participation, 117
- statistics, 61–73
- Stavreff, Christopher Stephen, 24
- stealing money from bank accounts, 39
- Steering Committee of Women in Law Enforcement Strategy, 117
- street crime, 1
- Sukkar, David, 44
- Suleman, Karl, 58
- summary offences, 5
- superannuation, 76–77
- Surveillance Devices Warrants Manual, 104
- surveillance operation, Australian Crime Commission, 36
- surveys
  - client agencies, 108–112
  - clients, 3
- sustainable development, 125–126

## T

- taking over a prosecution, 62
- Tang, Wei, 45
- Taruman*, 19–20
- tax evasion, 14–15
- tax fraud, 1, 11, 12, 13–14
  - cases, 14–15, 23, 30–31, 36–37, 38, 42–43
  - criminal confiscation of proceeds, 80–83, 83–84, 84–85
- tax minimisation schemes, 14
- tax prosecutions, 13–15, 23, 30–31, 36–37, 38, 42–43
- Taxation Administration Act 1953, 31
- Taxation Secrecy and Disclosure Provisions, Treasury review, 101
- Telecommunications and Access Interception Warrants Manual, 104
- tendering and contracting, 119
- terrorism, *see* counter-terrorism
- theft, 47
- Therapeutic Goods Administration, 22
- Timleris, Mark Antony, 58–59
- To, Si Thanh, 45–46
- tobacco, illicit activities, 82–83
- Trade Practices Act 1974*, 51
- trafficking, people, 1, 11, 17, 107
- training
  - for investigators, 103
  - for prosecutors, 103
  - in advocacy, 103
  - in Asia Pacific region, 106
  - in mutual assistance, 96
  - in proceeds of crime, 78, 106
  - in use of electronic resources, 125
- training and development, staff, 116
- Tran, Anh Kiet, 46–47

transnational crime, 91–98  
Trauma Management Programme, 115  
Treasury review, 101  
treaties, international, 95  
Trescowthick, Adam John, 59  
trials, 5, 105  
tribunal and judicial decisions, 122  
trolley collection business, unethical behaviour, 58  
Turyn, Julie, 47

## **U**

undertakings, 62

## **V**

Vest, Neil, 22–23  
victims of Commonwealth offences, 107–108  
Vinayagamoorthy, Aruran, 47–48  
vision statement, 137

## **W**

Wagamunga, aka Rhodes, Cecil Ronald, 41–42  
warrants manuals, 104  
Watson, Gavin, 22–23  
Wee, Derek, 48  
Wheatley, Glenn Dawson, 14–15  
wildlife, illegal trafficking in, 26–27, 49–50  
Wilkie, Daniel, 55  
women, status of, 117  
working relationships  
    in Pacific Region, xiii, 106  
    with agencies and departments, xii  
workplace agreements, 114  
workplace diversity, 116–117  
workplace harassment, policy, 115  
workplace participation, 117

## **X**

X, 84–85  
XYZ, 48–49

## **Y**

Yan, Yongming, 85–86  
Yathavan, Sivarajah, 47–48  
Yu, Yu Long, 49–50

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