



annual report 2007-08

COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS





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2007–08

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DPP

Commonwealth Director of Public Prosecutions

16 October 2008

Attorney-General
Parliament House
Canberra

Dear Attorney

I have the honour to submit my report on the operations of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2008, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully

A handwritten signature in black ink that reads "C. Craigie".

CHRISTOPHER CRAIGIE SC
Commonwealth Director of Public Prosecutions

Office of the Commonwealth DPP



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Compliance statement

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

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

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

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

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

- ▶ *The Prosecution Policy of the Commonwealth*
- ▶ CDPP Strategic Directions 2008
- ▶ Portfolio Budget Statements for the Attorney-General's Portfolio.

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

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

Director's overview



My first year as Director of Public Prosecutions has been one of challenge and commitment for both the Office and myself. Since commencing my tenure on 13 October 2007, I have been engaged in the continuous and rewarding task of assimilating knowledge of the Office and its varied national prosecution practice. As the Office approaches its first quarter century, the practice landscape has extended to new and complex work referred to the Office by over forty investigative agencies. In meeting the task of acquiring necessary knowledge of the Office, its people and functions, I have been greatly assisted by members of the Office at all levels.

Working in each of the offices around the Commonwealth over the past year has been of enormous value in appreciating the work and corporate culture of the organisation. I complete my first year impressed by the obvious enthusiasm and pride taken by officers across Australia in their work. From my vantage point and experience of the office, they have much of which they can be justly proud.

The CDPP is responsible for the prosecution of crimes against the laws of the Commonwealth and the recovery of the proceeds of crime. The *Director of Public Prosecutions Act 1983* (the Act) came into operation on 5 March 1984 and established the office of the CDPP. From its inception, prosecution decisions have been made independently, effectively removing such decisions from the political arena. The Act ensures separation of the investigative and prosecutorial functions in the Commonwealth criminal justice system as the decision whether to proceed with a prosecution is made independently of those responsible for the investigation.

The CDPP does not have any investigative function, but has an important role to play in providing legal advice when requested in the course of investigations, on issues such as appropriate charges, admissibility of evidence and obtaining warrants, particularly in complex matters or matters involving new areas of law. The decision of whether or not to prosecute is governed in every case by the *Prosecution Policy of the Commonwealth*.

The *Prosecution Policy* is a public document that may be accessed on our website. It sets out the criteria governing the decision to prosecute, including the public interest factors that must also be considered. A prosecution should not proceed if there is no reasonable prospect of a conviction being secured. If that test is met, then a matter will be prosecuted unless it is not in the public interest to do so.

The consistent application of the *Prosecution Policy* to each and every case that is referred to the CDPP is designed to ensure that the practice of the CDPP is consistent and fair. The *Prosecution Policy* assists officers in making a decision on the basis of sound judgement and the sensible exercise of discretion. The CDPP has been conducting an ongoing review of the *Prosecution Policy* as it is some years since the last edition was released but it continues to be very significant in promoting consistency and informing the public of the principles upon which prosecution decisions are made.

This year has also seen an increased focus on the strategic direction of our Office. On 11 June 2008 I approved the CDPP Strategic Directions 2008. This document builds on previous CDPP Corporate Plans. One important change is that our core values, that have always been an important part of the CDPP, have now been articulated as part of our Strategic Directions.

We strive to apply the highest ethical standards to prosecutions and proceeds of crime action and the highest professional standards of competence, commitment and hard work. We are committed to maintaining the CDPP's prosecutorial independence and recognising the knowledge, skills and commitment of our people. In light of the changing face of Commonwealth prosecutions, we are further committed to giving due recognition to the status of victims. The Office will continue to develop national consistency, recognising that the CDPP operates in different jurisdictions around Australia.

Effective prosecution action relies on productive relationships between the CDPP and referring agencies. This year the CDPP received briefs of evidence from over forty investigative agencies, including some non-Commonwealth agencies, covering diverse criminal activity. The CDPP is working with an increasing number of referring agencies ranging from agencies that refer large numbers of matters to the CDPP such as the Australian Federal Police, the Australian Fisheries Management Authority, the Australian Securities and Investments Commission, the Australian Taxation Office and Centrelink, to agencies with a new investigative capacity. I am grateful for the hard work and assistance provided to prosecutors by these agencies and their dedicated investigators. I have appreciated the opportunity

of meeting with many of the heads of these agencies and look forward to continuing to work with them.

Prosecuting new offences in a range of areas gives rise to new challenges for the Office. It is important to note that the *Prosecution Policy* applies to all cases, and a matter which tests the law but does not have a reasonable prospect of conviction, should not be proceeded with. The process of determining the bounds of new provisions must be through the appellate courts. An example of this is to be found in the body of law developing as superior courts consider the effect of the general provisions of criminal responsibility contained in the *Criminal Code* when interpreting new offence provisions.

This year the CDPP brought an appeal in the matter of Tang to the High Court of Australia. The appeal entailed seeking the Court's guidance on the interpretation of the *Criminal Code* with respect to the slavery offences contained in section 270.3(1)(a). On 28 August 2008 the High Court allowed the appeal, upheld the convictions and gave a detailed judgment regarding the required elements of the offences and the matters that the prosecution is required to prove.

The matter of Tang highlights the changing face of Commonwealth prosecuting. One aspect of this change is that increasingly, the CDPP is prosecuting matters that involve individual victims of crime. Areas of prosecution such as people trafficking, slavery and child sex tourism present new challenges to the CDPP including addressing the needs of victims as they participate as persons vital to an effective and responsive criminal justice system. The CDPP is continuing to focus on these new areas and is gaining experience in effectively prosecuting these matters.

This Report features a chapter providing information about the CDPP's international contribution which has a particular focus on initiatives in the Asia Pacific region. The CDPP is involved in a range of activities to share our knowledge and experience in prosecuting and taking proceeds of crime action to assist in regional capacity building. This year I was delighted to co-host, with the New South Wales DPP, a conference of senior prosecutors from sixteen Pacific countries. I saw the two day meeting as important in several respects, particularly in supporting the rule of law. Strengthening the concept of independent prosecutors is an indispensable element in ensuring the rule of law.

I am keenly aware of the important contribution of my staff to the effective and efficient practice of the CDPP. This Report presents an opportunity to acknowledge each of them for their hard work and commitment during the year. The CDPP is committed to recruiting and retaining high quality people and has successfully undertaken national recruitment campaigns designed to attract a broader range of applicants. This year has seen our capacity increase by more than forty new officers. I welcome each of them as they contribute to the important work of the CDPP.

The CDPP recognises the importance of developing our people through training and this has been reflected in the development of new training modules, from the point of induction onwards. The employees of the CDPP are the most valuable resource of an Office relying on high levels of skill, commitment and professional probity.

The Office was saddened this year by the untimely deaths of Rick Benthien and Matthew Bracks. Each had made a significant professional and personal contribution to the Office. Rick Benthien worked in Head Office and played an important role in further developing the CDPP's prosecution database and in statistical analysis and was highly regarded for this work. Beyond that he worked quietly in the community as a dedicated supporter of a local school for intellectually disabled children.

Matthew Bracks joined the CDPP as a young lawyer and developed his career in several CDPP Offices, including by managing the Darwin Office and being responsible for Commonwealth prosecutions in the Northern Territory. Matthew was later appointed as an in-house counsel for the

CDPP in Sydney Office before being called to the NSW Bar where he continued his association with the Office as trial counsel. Matthew frequently represented the Office, always with competence and grace and had the high ethical sense essential to a prosecutor. Although we are a national organisation I have found the CDPP to be a close knit community. Rick and Matthew will be sorely missed and remembered with affection.

I wish to record my particular thanks to the former Director, Damian Bugg AM QC, for his warmth of welcome and considerable assistance as I joined the Office. I particularly appreciated the opportunity in the hand-over period to discuss the work of the CDPP with him and benefit from his experience as the longest serving Commonwealth Director of Public Prosecutions. The CDPP is a highly professional prosecuting authority that reflects the tremendous leadership provided by Damian over more than eight years and the work of his five distinguished predecessors.

The senior management of the CDPP in Head Office and around Australia have provided me invaluable support and unfailingly prompt and concise advice, often under considerable time pressures. For the preparation of this Annual Report which seeks to reflect the significance and breadth of the work of the Office, I thank all those who provided the information that constitutes the body of this Report, Deputy Director Legal and Practice Management, James Carter, and Penny McKay in Head Office.

I would like to thank current and former Ministers, namely the former Attorney-General, the Honourable Philip Ruddock MP, and the former Minister for Justice and Customs, Senator the Honourable David Johnston, and the Attorney-General, the Honourable Robert McClelland MP, and the Minister for Home Affairs, the Honourable Bob Debus MP, for their commitment to the independence of the CDPP and their support for the work of the Office.

I am pleased to present the Annual Report for 2007–2008.



Christopher Craigie SC

Commonwealth Director of Public Prosecutions





office of
the CDPP

Office of the CDPP



The Office of the Commonwealth Director of Public Prosecutions (CDPP) is an independent prosecuting service established by Parliament to prosecute alleged offences against Commonwealth law and to deprive offenders of the proceeds and benefits of criminal activity.

The CDPP's vision is for a fair, safe and just society where the laws of the Commonwealth are respected and maintained and there is public confidence in the justice system. It aims to provide an effective national criminal prosecution service to the community. The CDPP's purpose is to provide an ethical, high quality and independent prosecution service for Australia in accordance with the *Prosecution Policy of the Commonwealth*.

Establishment

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

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

The CDPP is within the portfolio of the Commonwealth Attorney-General, but the Office operates independently of the Attorney-General and of the political process. The Commonwealth Attorney-General has power under section 8 of the *DPP Act* to issue directions or guidelines to the Director. Directions or guidelines must be in writing and tabled in Parliament, and there must be prior consultation between the Attorney-General and the Director. There were no directions or guidelines issued under section 8 in 2007–2008.

Role

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

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

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

Commonwealth offending can often involve very large and complex briefs of evidence which may take significant time and expertise to consider. In this way, prosecuting is not limited to litigation itself. Rather, prosecuting includes a range of other work such as preparing cases for hearing, providing legal advice and assistance to investigators, assessing evidence, drafting charges, and settling applications for warrants.

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

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

Most Commonwealth prosecutions are conducted by the CDPP. However, there are a few areas where Commonwealth agencies conduct summary prosecutions for straight-forward regulatory offences by arrangement with the CDPP. In 2007–2008, the Australian Taxation Office (ATO) conducted prosecutions in which offences were found proved against 2,731 people. The Australian Securities and Investments Commission (ASIC) prosecuted 752 company officers for 1455 contraventions, and obtained fines and costs of \$1.07 million. The Australian Electoral Commission prosecutes some electoral offences. There are also some cases where a State or Territory agency conducts a Commonwealth prosecution, usually for reasons of convenience.

The public interest is served by cooperation among Commonwealth law enforcement agencies. This is reflected in the CDPP's Strategic Directions. The CDPP regularly provides legal advice to other agencies in the course of investigations, for example:

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

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

The CDPP can only prosecute or take confiscation action when there has been an investigation by an investigative agency. The CDPP does not have an investigative function. A large number of Commonwealth agencies have an investigating role and the CDPP receives briefs of evidence from, and provides legal advice to, a wide range of agencies. In 2007–2008, the CDPP received briefs of evidence from over 40 different agencies, including some non-Commonwealth agencies. Centrelink consistently remains the highest referral agency with 3,739 briefs being referred throughout the year.

CDPP Strategic Directions

In last year's Annual Report it was noted that a review of the CDPP Corporate Plan was planned for 2008 following a client survey. On 11 June 2008 the Director approved the CDPP Strategic Directions for 2008 replacing the Corporate Plan. This document builds upon previous CDPP Corporate Plans, but there are some important changes.

There is a new section stating the CDPP's core values:

- applying the highest ethical standards to prosecutions and proceeds of crime action;
- applying the highest professional standards of competence, commitment and hard work to prosecutions and proceeds of crime action;
- maintaining the CDPP's prosecutorial independence;
- providing, and being recognised as providing, a high quality, timely, efficient and cost effective prosecution service;
- treating everyone with courtesy, dignity and respect;
- giving due recognition to the status of victims;

- the knowledge, skills and commitment of our people;
- leadership from senior lawyers and managers;
- accountability and excellence in governance within the CDPP; and
- protecting the natural environment.

The CDPP's strategic themes are:

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

Each of these themes is underpinned by strategic priorities which are detailed in the Strategic Directions 2008 document at Appendix 2 of this report.



Social Justice and Equity

The CDPP advances the interests of social justice and equity by working with other agencies to enforce the criminal law for the benefit of the community. The CDPP recognises the importance of adopting the highest professional and ethical standards in prosecutions and in dealing with proceeds of crime. The *Prosecution Policy of the Commonwealth* underpins all of the decisions made by the CDPP throughout the prosecution process and promotes consistency in decision making.

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

Traditionally, in terms of numbers of prosecutions, much of the CDPP's work has not involved crime directed at individual victims. A range of new offences have been introduced into Commonwealth law, leading to an increased number of Commonwealth offences involving individual victims. These include areas such as child sex tourism, online child sexual exploitation, and people trafficking including sexual servitude and slavery. The CDPP recognises that victims of Commonwealth offending have an important place in the criminal justice system, and has developed materials to assist victims and witnesses through the court process.

The CDPP seeks to contribute to the safety and well-being of the people of Australia by assisting in the protection of the resources of the Commonwealth through the maintenance of law and justice and by combating crime.

Prosecution Policy

The *Prosecution Policy of the Commonwealth* is a public document which sets out guidelines for the making of decisions in the prosecution process. It applies to all Commonwealth prosecutions whether or not conducted by the Commonwealth Director of Public Prosecutions. The *Prosecution Policy* is publicly available from any of the CDPP offices listed at the front of this Report or at www.cdpp.gov.au.

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

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

- ▶ there must be sufficient evidence to prosecute the case; and
- ▶ it must be evident from the facts of the case, and all the surrounding circumstances, that the prosecution would be in the public interest.

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

In making this decision, the prosecutor must evaluate how strong the case is likely to be when presented in court. The evaluation must take into account such matters as the availability, competence and credibility of witnesses and their likely effect on the arbiter of fact, and the

admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence open to the alleged offender and any other factors that could affect the likelihood or otherwise of a conviction.

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

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

- ▶ whether the offence is serious or trivial;
- ▶ any mitigating or aggravating circumstances;
- ▶ the age, intelligence, health or any special infirmity of the alleged offender, any witness or victim;
- ▶ the alleged offender's antecedents;
- ▶ the staleness of the offence;
- ▶ the availability and efficacy of any alternatives to prosecution;
- ▶ the attitude of the victim;
- ▶ the likely outcome in the event of a finding of guilt; and
- ▶ the need for deterrence.

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

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

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

by any political advantage or disadvantage to the Government.

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

Functions and Powers

The CDPP is created by statute and has the functions and powers given to the Director by legislation. Those functions and powers are found in sections 6 and 9 of the *DPP Act* and in specific legislation including the *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 CDPP a general power to recover pecuniary penalties under Commonwealth law.

The CDPP 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 CDPP prosecutes all criminal matters arising under the *Customs Act*, including offences of importing and exporting narcotic goods and offences of importing and exporting ‘tier 1’ and ‘tier 2’ goods.

Summary Prosecutions, Committals and Trials

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

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

In this Report, a reference to a committal proceeding is a reference to a preliminary hearing before a Magistrate to determine whether a case which involves a serious offence should proceed to trial before a judge and jury. A reference to a trial is a reference to a defended hearing before a judge and jury.

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

Corporate Governance and Organisation

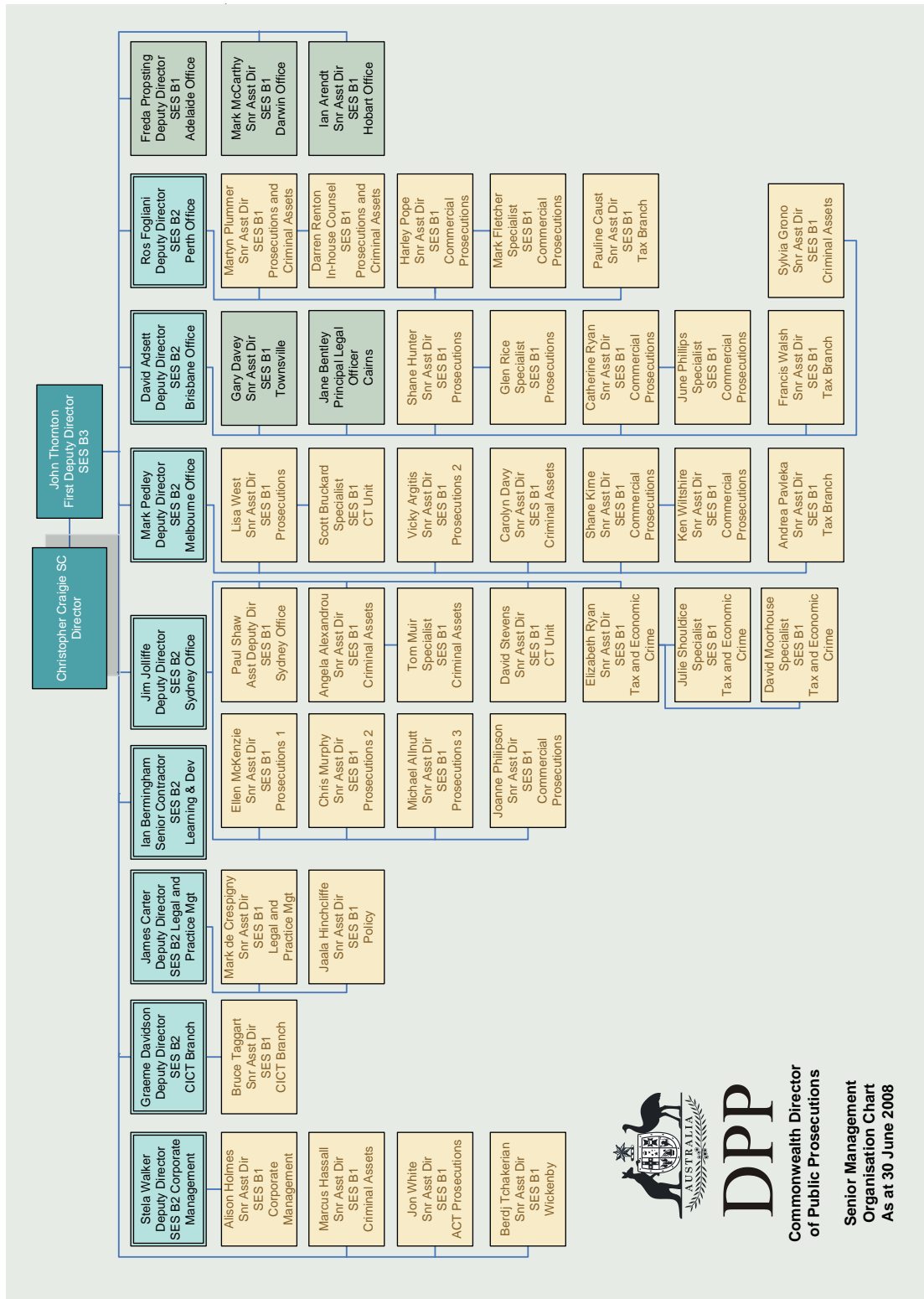
The CDPP has a Head Office in Canberra and Regional Offices in Sydney, Melbourne, Brisbane, Perth, Adelaide, Hobart and Darwin. There are sub-offices of the Brisbane Office in Townsville and Cairns, which perform prosecution and asset confiscation work in central and north Queensland. There is also a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

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

The CDPP has approximately 600 staff spread throughout its Offices Australia-wide. The largest office is Sydney with approximately 150 staff.

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 CDPP and their different areas of responsibility.



DPP

**Commonwealth Director
of Public Prosecutions**

**Senior Management
Organisation Chart
As at 30 June 2008**

Outcomes and Outputs

Outcome and Output Chart 2007–2008

DIRECTOR OF PUBLIC PROSECUTIONS Director: Christopher Craigie SC

Total price of outputs	\$104.735 million
Departmental outcome appropriation	\$102.797 million

Outcome 1:

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

Total price	\$104.735 million
Departmental output appropriation	\$102.797 million

Output 1.1

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

Total price	\$104.735 million
Appropriation	\$102.797 million





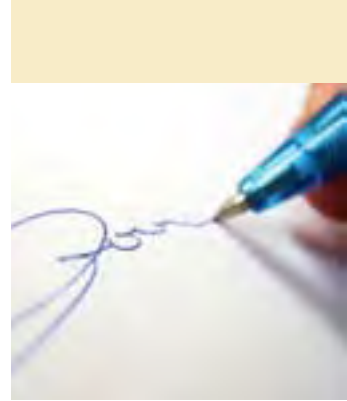
areas of
practice



In 2007–2008 the CDPP prosecuted over 6,000 defendants across Australia. The cases reported demonstrate the importance and diversity of our work.



2.1 Fraud



The CDPP assists in protecting the resources of the Commonwealth through the prosecution of fraud offences. Fraud plays a major role in the practice of the CDPP and offences involving fraudulent conduct account for the highest volume of matters referred to the CDPP.

OPERATION JILLAROO

ATSIC FRAUD

This matter involved a complex fraud on the former Aboriginal and Torres Strait Islander Commission (ATSIC).

HAROLD CARY, ELIZABETH QUINCE, LINDSAY WATSON, NEIL CAMM AND BRENDAN GODFREY

In 2001, Cary and Quince obtained approval for a loan from ATSIC to purchase a rural property. After two proposed purchases fell through, they settled upon a property known as ‘The Ville’ at Maude via Hay. The property was available for purchase for \$750,000 however Cary and Quince advised ATSIC that the purchase price was \$2.8 million. They were successful in obtaining a loan from ATSIC of \$2.1 million, purportedly to assist in the purchase of the property.

Elements of the conspiracy included misrepresenting the existence of water rights on the property and preparing an inflated valuation of the property by another person, who received an indemnity from prosecution in return for his agreement to give evidence at trial. There were then back-to-back sales of the property, on the same day, from the original vendor for \$750,000, and then on to Cary and Quince via a “middle-man” (a company owned by Camm) for the amount of \$2.8 million. Camm also arranged the valuation. There was a private agreement between Camm and Cary and Quince that Cary and Quince would not be required to pay a deposit of \$700,000 set out in the contract of sale, and in addition that Cary and Quince would receive an “early settlement rebate” of \$603,000 upon settlement of the sale. Neither of these matters was disclosed to ATSIC.

The prosecution alleged that Cary, Quince and Watson misrepresented the financial position of Cary and Quince to ATSIC during the process of obtaining loan approval. Throughout the conspiracy, Watson acted as financial adviser to Cary and Quince. Godfrey provided advice in relation to the matter and arranged legal representation for Cary and Quince on the deal.

The five defendants were charged with conspiring to dishonestly obtain a gain from the former Aboriginal and Torres Strait Islander Commission (ATSIC) between 24 May 2001 and 15 May 2002.

The trial was scheduled to commence on 4 February 2008. On 6 and 7 February respectively, Watson and Godfrey pleaded guilty to a charge of general dishonesty, contrary to section 135.1 of the *Criminal Code*. The other three defendants maintained their pleas of not guilty and proceeded to trial at the conclusion of which Cary and Camm were convicted and Quince was acquitted.

Cary was sentenced to imprisonment for 3 years to be released on recognisance after serving 18 months. Camm was sentenced to 4 years imprisonment with a non-parole period of 2 1/2 years. Godfrey received a fully suspended sentence of 1 year and 10 months, taking into account his ill health and lesser role in the scheme. Watson was sentenced to 2 years imprisonment to be released on recognisance after 10 months.

On 20 May 2008, Camm lodged a Notice of Intention to Appeal against his conviction and sentence. The forfeiture proceedings in relation to this matter are reported in the Criminal Confiscation chapter of this Report.

MYRJANA STANOJCIC

This matter involved a serious breach of trust and a high degree of criminality. The defendant was a co-licensee of a post office and issued money orders to pay her legal and commercial expenses, prior to and during her prosecution on indictment for dishonesty offences which related to general cash deficiencies totalling approximately \$90,000 at the same post office.

The defendant was the co-licensee of Blakehurst Licensed Post Office (LPO) which had the facility to issue money orders. Between 7 March 2006 and 16 March 2006 the defendant was tried for two charges of dishonest appropriation which related to general cash deficiencies identified by Australia Post auditors at the Blakehurst LPO dating back to November 2002. The defendant was acquitted of both charges, but incurred legal fees in the process.

Between 22 December 2005 and 17 March 2006 the defendant issued 36 money orders at the Blakehurst LPO, to the value of \$35,000, without depositing the corresponding amounts of money. She gave 11 of these money orders (totalling \$10,000) to the landlord of the commercial premises for rental arrears and the balance (totalling \$25,000) to her solicitor and counsel in payment of legal fees associated with the trial in March 2006.

The defendant admitted issuing the money orders and stated that she intended to repay the money thinking that costs would be awarded in relation to the trials. The other co-licensee repaid the money in full after the deficiency was discovered.

The defendant was charged with 36 counts of unlawfully obtaining a financial advantage pursuant to section 135.2(1) of the *Criminal Code*. In sentencing the defendant was ordered to pay \$8,800 in fines and \$7,400 in pecuniary penalties. She was also sentenced to 12 months imprisonment that was fully suspended subject to a \$5,000 recognisance for a period of 12 months, and a \$2,000 recognisance bond to be of good behaviour for 3 years.

AUSTRALIA
POST FRAUD

GEOFFREY NOEL LAKE**MEDIFRAUD**

From October 1996 to 28 April 2008 the defendant operated a pharmacy in Clermont in Central Queensland as a registered pharmacist. The defendant came to the attention of Medicare as a result of an internal audit. An investigation revealed that the defendant had been submitting false claims under the Pharmaceutical Benefits Scheme (PBS), by preparing false repeat prescriptions; claiming scripts for deceased patients; substituting less expensive pharmaceuticals and claiming for the more expensive; and creating false original supply deferred scripts.

During the 2 years and 4 months of the charge period, the defendant lodged a total of 49 claims for payment from Medicare, claiming a total of \$2,160,345.66. Of that total, \$400,000 was fraudulently obtained.

The defendant pleaded guilty to two representative charges of fraud pursuant to sections 29D of the *Crimes Act* and 134.2(1) of the *Criminal Code* and was sentenced on 12 June 2008 to an effective total sentence of 4 ½ years imprisonment with a non-parole period of 12 months. On 23 May 2008, prior to sentencing, the defendant consented to a pecuniary penalty order in the amount of \$400,000 in addition to paying the Official Trustee's costs of administering his restrained property.

GRANT RUSSELL MULLINS AND EDWARD ARTHUR DEWEY**DEFENCE FRAUD**

This matter involved a serious breach of trust placed in the defendant Mullins, by his employer, the Department of Defence. There was also a significant loss to the Commonwealth of more than \$1.3 million from the unauthorised disposal of 183 turbine wheels and spacers.

The defendant Mullins, was employed as a Technical Officer within the Air Lift Systems Programs Office that operated out of the Royal Australian Air Force (RAAF) Base at Richmond, NSW. The defendant Dewey, was a businessman who was Company Secretary and Director of EJ Aviation and NAC Australia.

Dewey and Mullins developed a private commercial relationship involving the unauthorised disposal of aircraft parts which were RAAF property. Their dealings involved the disposal of 183 turbine wheels and spacers. At the time of disposal these parts had up to another 12 years' life left in RAAF aircraft engines. The RAAF did not receive any payment for the disposal of the parts which were assessed to have a replacement value of \$US1,377,187.19. Dewey gave Mullins corrupt payments totalling \$8,494. Mullins also requested gift vouchers from Dewey.

Mullins was charged with three offences contrary to the *Criminal Code* for causing a loss to the Commonwealth, asking for a corrupt benefit as a Commonwealth public official and receiving a corrupt benefit as a Commonwealth public official. Dewey was charged with causing a loss to the Commonwealth and 3 counts of giving a corrupt benefit to a Commonwealth public official.

On 30 November 2007 Mullins was sentenced to a total effective sentence of 3 years imprisonment to be served by way of periodic detention, to be released after 1 year and 9 months on a recognisance in the sum of \$100 to be of good behaviour for 1 year and 9 months. He was also ordered to pay \$1,560,689.58 in reparation.

On 7 March 2008 Dewey was sentenced to a total effective sentence of 27 months imprisonment to be released forthwith on a recognisance of \$1000 to be of good behaviour for a period of 16 months. He was also ordered to pay \$1,560,689.58 in reparation.

OPERATION HICKEY

This operation arose out of ongoing investigations by the multi-agency Identity Security Strike Force. The taskforce investigated a large scale organised criminal network engaged in fraud offences against financial institutions involving high quality forged documents. The total exposure to the financial institutions was in excess of \$1 million.

LESLIE BANTON, KEITEN BOOTH, DARREN CRANSHAW, JAY DOWLING, ALLAN DUFF, EVA EL ASSAAD, CRAIG IRVINE, EDY KUSWOYO, JONATHAN MARVEN, MELISA MERILLO, ENDOFLINT PURBA, KULWINDER SHARMA, OLIVER YU

This network had a number of different syndicates, with each syndicate comprising its own 'heads' and 'runners'. The syndicates would use forged documents and take over the identities of legitimate individuals and companies and then conduct fraudulent activities against financial institutions. Some of the syndicates also corrupted officers within the financial institutions and used their access to systems to obtain confidential details.

The 13 defendants pleaded guilty to a variety of forgery and fraud related offences. Their roles ranged from syndicate heads and second in charge to low level runners. Ten of the defendants have been sentenced. Two syndicate heads (Kuswoyo and Yu) were respectively sentenced to 5 years imprisonment with a non parole period of 3 years, and 4 years imprisonment to be released on recognizance after serving 2 ½ years. One 'lieutenant' or second-in-charge (Dowling) was sentenced to 6 years imprisonment with a non parole period of 2 years. The runners' (Cranshaw, Merillo, Duff, El Assaad, and Sharma) sentences ranged from 3 years and 10 months imprisonment with a non parole period of 2 years 10 months to 5 months periodic detention. Two bank employees (Purba and Booth) were respectively sentenced to 2 ½ years imprisonment to be released on a recognizance after 18 months and a fully suspended sentence of 12 months imprisonment.

IDENTITY
FRAUD AND
CORRUPTION



Social security fraud

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

Centrelink prosecutions can vary in the level of complexity involved, for example, cases involving multiple false identities or marriage-like relationships can be very complex and demanding.

Centrelink and the CDPP work closely together to seek to achieve best practice in investigating and prosecuting in this important area. In 2007–2008 Centrelink introduced a new electronic fraud investigation manual and the CDPP provided advice and assistance to Centrelink in developing the manual.

In May 2008 the CDPP held its annual prosecutors' conference on Centrelink prosecutions. Prosecutors from all CDPP Regional Offices and Head Office attended the conference. A range of matters were discussed including charging practices, the admissibility of evidence, and issues raised by the introduction of new technology.

MICHAEL ANTHONY TIMOTHY O'RYAN

This matter was a large multiple identity fraud committed over about an eight year period and involved the defendant claiming in his defence that he had multiple personality disorder.

Between 1995 and 2003 the defendant received social security benefits to which he was not entitled in three names: Matthew Vincent Ryan, Vincent Matthew Ryan and Michael Anthony Timothy O'Ryan. The benefits totalled \$125,463.40.

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

The defendant pleaded not guilty on the basis that he suffered a mental impairment, namely dissociative identity disorder ("DID", formerly known as multiple personality disorder), and argued he was not criminally responsible pursuant to section 7.3 of the *Criminal Code* as he was suffering from a mental impairment. He maintained that Matt and Vince were separate people. The prosecution case was largely uncontested and the trial focussed almost entirely on the mental impairment issue.

The prosecution's medical expert gave an opinion that a diagnosis of DID was inconsistent with the level of planning and organisation required to maintain the receipt of benefits in each of the three names over about an 8 year period. The defendant attended various interviews with Centrelink personnel and was able to present himself each time as the relevant claimant, lodge periodic review forms, and provide medical certificates or treating doctor's reports in relation to each of the

**SOCIAL
SECURITY
FRAUD**

benefits. He attended different doctors and different Centrelink offices in relation to each relevant identity.

A systematic filing system was uncovered on the execution of a search warrant at his mother's house. Officers found a filing cabinet containing documents relating to Centrelink benefits, banking accounts and medical documents in the three different names, stored in numerous labelled suspension folders.

During cross-examination, the defendant purported to switch personalities into the Vince state.

The defendant was found guilty of all the offences by a jury. On 1 November 2007 the defendant was sentenced to a total effective term of 4 years imprisonment with a non-parole period of 18 months. He was also ordered to pay reparation of \$120,516.98.

In sentencing the defendant, the Court noted that the jury rejected the defence advanced on behalf of the defendant that he suffered from DID, stating:

"...the prosecution case clearly evidenced a course of highly organised dishonesty over a period in excess of eight years involving what must have been careful planning and attention to detail to ensure that Centrelink did not become aware of your deception."

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

GORDON WALDOCK

The significance of this case lies in the large amount of money defrauded from Centrelink over an extended period of time. Over a period of 9 years and 9 months, the defendant received \$81,098.97 in Newstart payments that he was not entitled to.

Between 1 July 1997 and 6 March 2007 the defendant received payments of Newstart allowance from Centrelink. Each fortnight, he made false representations to Centrelink on review forms concerning his employment and earnings. On most occasions he declared that he had not done any work, when in fact he was employed and in receipt of income. On other occasions he under-declared his income to Centrelink. During the period of offending, Waldock received \$266,953.92 gross in earnings, or an average of \$26,695.39 gross per year, however he declared a total of only \$5,330 in gross earnings to Centrelink. The offending behaviour was discovered by way of a data match between Centrelink and the Australian Taxation Office.

The defendant pleaded guilty to charges of defrauding the Commonwealth and was sentenced to a total effective sentence of 30 months imprisonment to be released after serving ten months imprisonment upon entering into a recognisance in the amount of \$1,000 to be of good behaviour for 2 years.

The sentencing judge reconfirmed the principle that a significant penalty is warranted whether the offences were committed for reasons of need or greed as both types of fraud are widespread and equally difficult to detect.

**SOCIAL
SECURITY
FRAUD**

ELEONORA SPINIELLO

The defendant had the care of her mother and exercised a power of attorney over her mother's financial affairs. The defendant received fortnightly payments of the Age Pension by cheque from Centrelink, on her mother's behalf. The defendant banked her mother's cheques. When her mother died in July 1999, the defendant failed to notify Centrelink and continued to receive, and bank, her mother's fortnightly Pension cheques. The fraud was not detected until June 2006. The defendant defrauded a total of \$81,977.58.

The defendant was charged with one count contrary to section 29D of the *Crimes Act* and 9 counts contrary to section 135.1(1) of the *Criminal Code*.

On 19 November 2007 the defendant pleaded guilty to all charges and was sentenced to 3 years imprisonment to be released forthwith upon entering into a recognisance in the sum of \$500 to be of good behaviour for a period of 3 years. In reaching the decision to release the defendant forthwith, the sentencing Judge took into account the defendant's age (72), her lack of prior convictions, her addiction to gambling on poker machines, her major depressive illness and the fact that a charge had been registered over the family home in favour of Centrelink.

**SOCIAL
SECURITY
FRAUD**

MOHAMMAD CHARKAWI

These offences were well planned and relatively sophisticated, involving the obtaining and use of false identification documentation, including tax file numbers. The offences were committed over a significant period of time and were only discovered when a comparative analysis was conducted. The Court of Criminal Appeal emphasised the need for general deterrence in social security matters.

Between 6 January 1998 and 4 May 2004, the defendant dishonestly obtained financial benefits from the Commonwealth in the sum of \$106,095.57. Other charges taken into consideration involved a further \$9,151.89 and the obtaining of false tax file numbers. Three false identities were used and false documents were produced to prove an identity when making an application for social security benefits. The defendant had been in receipt of social security benefits in his own name, Mohammad Charkawi, and as Ali Al-Charkawi, Mohammad Sharkauoi and Mounir El Cherkawe. At the same time as receiving some or all of these payments the defendant was also in receipt of employment income. The defendant repeatedly made false statements in forms lodged with the Commonwealth Services Delivery Agency throughout the period of the offences.

The defendant pleaded guilty to 6 offences of dishonestly obtaining financial benefits from the Commonwealth pursuant to section 29B of the *Crimes Act* and section 135.1(5) of the *Criminal Code*. A further 8 offences were taken into account as sentence.

On 24 August 2007 the defendant was sentenced to a total effective sentence of 4 years imprisonment with a non-parole period of 2 ½ years. The defendant will be eligible for parole on 31 November 2009.

On 4 July 2008 the NSW Court of Criminal Appeal dismissed the defendant's appeal against his sentence.

**SOCIAL
SECURITY
FRAUD**

Tax fraud

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

The CDPP was pleased to assist the Australian Taxation Office (ATO) this year in the roll out of a national training package for ATO investigators

focussing on the importance of disclosure in criminal prosecutions. This training package was jointly presented by the ATO and the CDPP and was warmly received by ATO participants.

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



NIKYTAS NICHOLAS PETROULIAS

CORRUPTION

This significant corruption case involved a senior Commonwealth official. The case ran for over 8 years and involved numerous court proceedings including a lengthy committal proceeding, pre-trial arguments, three trials and appeal proceedings.

Between May 1997 and April 1999 the defendant was employed by the ATO. During his employment he was appointed as Acting Assistant Commissioner in 1997 and then head of the Strategic Intelligence Network with the title, 'First Assistant Commissioner of Taxation' in 1998. The defendant resigned from the ATO on 4 April 1999. During his employment the defendant used his position, which specifically required investigation and regulation of tax schemes, to profit from a joint venture established to plan, promote and implement tax schemes. The defendant was to receive one third of the profits from the sale of the tax schemes.

During the period of offending, the defendant used his position to:

- ▶ Ensure favourable Advance Opinions (AOs) and Private Binding Rulings (PBRs) were made in relation to his joint venture and failed to leave any records of these decisions;
- ▶ Provide lists of rival promoters of tax schemes to his joint venture;
- ▶ Ensure unfavourable AOs and PBRs were made in relation to other promoters of similar tax schemes as those promoted by his joint venture.

The defendant was charged with one offence of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act*, one offence of corruption of a Commonwealth officer pursuant to section 73 of the *Crimes Act* and one offence of disclosure of information by a Commonwealth officer pursuant to section 70 of the *Crimes Act*.

This case proceeded to trial three times over 2 ½ years. The first trial resulted in a hung jury. The second trial was aborted after 30 days following the arrest of one of the jurors. The defendant was convicted on 17 December 2007 of corruption and disclosure of information by a Commonwealth Officer following proceedings that lasted 115 days. The jury was discharged without reaching a verdict in relation to the offence of defrauding the Commonwealth.

On 20 June 2008, following six days of hearing the sentencing proceedings, the defendant was sentenced to a total effective term of 3 years and 2 months imprisonment with a non-parole period of 2 years. The defendant will be eligible for parole on 19 June 2010.

On 20 August 2008 the defendant sought and was granted an extension of time to lodge a Notice of Intention to Appeal his conviction and sentence in this matter. The notice was lodged on the same date. He has not yet lodged an appeal.

PETER LESLIE AMBROSY

TAX FRAUD

This case involved a mass marketed tax scheme which operated over the 1997–1999 financial years and resulted in claims for deductions in the amount of \$185 million. The matter was resolved as a guilty plea to three representative counts of defrauding the Commonwealth contrary to section 29D of the *Crimes Act* based on one charge for each year of misconduct.

The offending related to a particular partnership or joint venture that had been formed to undertake a specified commercial activity. Approximately 80% of the capital was said to have been invested by overseas entities which agreed to forego their right to claim tax deductions in favour of the Australian based investors with the result that the Australian investors were said to be entitled to deductions equal to about 45% of what they actually invested. In reality, contrary to the representations contained in the relevant documentation, the overseas capital was not invested in the ventures and the funds invested were not expended in an amount or to an end that justified the deductions claimed by the Australian investors.

Those false representations and the concealment of material facts defrauded the Commonwealth by prejudicially affecting the Commissioner of Taxation in his lawful right or interest in administering the income tax law, in particular his right to make correct assessments of income tax by a proper consideration of claims for deductions. The defendant promoted the scheme and was, by means of various companies he controlled, the project manager of all the partnerships and joint venture.

In total the schemes for the three years produced claims for tax deductions of losses of approximately \$185 million.

On 22 February 2008 the defendant was sentenced to a total effective sentence of 7 years imprisonment with a non-parole period of 5 years.

An application for leave to appeal the sentence has been filed, but has not yet been heard.

DARREN KENNETH RAY

IDENTITY THEFT AND GST FRAUD

The defendant, using the names of eight individuals without their knowledge or permission, registered four entities with the Australian Taxation Office (ATO) for Goods and Services Tax (GST) and obtained Australian Business Numbers (ABNs) for those entities. He also set up accounts with two financial institutions in the names of two of those individuals, again without their knowledge or permission.

The defendant was able to obtain the details of the individuals, including name, address, date of birth, drivers licence details and Tax File Numbers in most cases

by placing false advertisements on an employment internet site. Following initial enquiries from applicants for these positions, the accused would send a template in which applicants were asked to provide details including identity details as well as information relevant to non-existent employment positions.

The defendant fraudulently lodged a total of 33 Business Activity Statements (BASs) with the ATO in the names of these entities and received refunds of GST credits totalling \$182,281.42 in relation to 31 of those BASs and attempted to obtain a further \$10,753.00 relating to two BAS where the ATO did not pay the refunds. The total fraud, including attempts, was \$193,034.42. The BASs were completed to result in refunds being issued by including significantly greater purchases, upon which GST credits can be claimed to sales upon which GST is ordinarily payable to the ATO.

The defendant was convicted of four offences of contravening the *Financial Transactions Reports Act 1988* for opening and operating an account in a false name, and six offences of contravening the *Criminal Code* by attempting to or dishonestly obtaining a financial advantage by deception.

The defendant was sentenced to a total effective sentence of 20 months imprisonment to be released after serving 6 months upon entering into a recognisance in the sum of \$1,000 on condition that he be of good behaviour for a period of 2 years.

SEDAT CEYLAN

GST FRAUD

The defendant, using an entity called Ceylan Investments Pty Ltd, lodged Business Activity Statements (BASs) with the Australian Taxation Office (ATO) relating to the months of December 2000 to September 2001 (inclusive). In relation to each of the BASs lodged, the defendant claimed that all of the sales were export sales, upon which Goods and Services Tax (GST) was not payable. The information contained in the BASs was false, in that the export sales did not occur and the purchases, upon which GST refunds were claimed, were not made. The defendant was contacted by the ATO following the submission of each BAS and provided false explanations and documentation to satisfy the ATO as to the accuracy of the statements. As a result of the lodgement of the fraudulent BASs, the defendant obtained a total of \$2,643,973 from the ATO.

The defendant was convicted of 10 counts of obtaining property by deception from the Commonwealth, contrary to section 134.1(1) of the *Criminal Code*.

The defendant was sentenced to total effective sentence of 5 years imprisonment with a non-parole period of 3 years. This sentence was to commence immediately making it concurrent with a sentence the defendant was already serving in relation to Victorian charges.

MARK WILLIAM ROWSON**GST FRAUD**

The defendant obtained, and attempted to obtain, fraudulent Goods and Services Tax (GST) refunds between October 2002 and October 2004. The scheme involved the registration of two companies, Callards Pty Ltd and Pavon Pty Ltd, using identities of persons who had previously had identity documents stolen from them as the nominated directors. The places of business given for these companies were 'virtual offices' at serviced premises in the Melbourne CBD. Documentation was created and presented to the ATO via accountants, purporting to show transactions between the companies totalling \$42 million in value. These transactions were detailed in Business Activity Statements submitted to the Australian Tax Office (ATO) in which GST refunds were claimed. As a result of the submission of these claims, refunds totalling \$2,453,102.22 were paid to Callards Pty Ltd by the ATO into a bank account in the company's name. Subsequently, a person purporting to be the director of the company attended at the bank on numerous occasions and withdrew large amounts of cash. Documentation claiming further GST refunds totalling \$1,334,173 was submitted to the ATO, however, these claims were not paid. The defendant was arrested on 12 October 2004 in the course of a controlled operation involving the issue of a refund cheque for \$871,386.

The defendant was convicted of two offences of obtaining, and attempting to obtain, a financial advantage by deception from a Commonwealth entity pursuant to sections 134.2(1) and 11.1(1) of the *Criminal Code*. The defendant was sentenced to a total effective sentence of 3 years and 1 day imprisonment with a non-parole period of 18 months. A period of 18 days was declared as already served by way of pre-sentence detention. An order was made pursuant to sub-section 116(1) of the *Proceeds of Crime Act 2002*, that the defendant pay a pecuniary penalty to the Commonwealth, namely the ATO, in the sum of \$2,447,271.80 (being the balance of the amount fraudulently obtained after deduction of the funds recovered by way of forfeiture from false bank accounts).

The CDPP lodged an appeal based upon the inadequacy of the sentence imposed upon the defendant.

On 8 August 2007, the Victorian Court of Appeal heard the appeal. In a judgment delivered on 31 August 2007 the appeal was allowed and the sentences imposed by the sentencing judge were set aside. The defendant was resentenced to a total effective head sentence of 5 years imprisonment with a non-parole period of 3 years.

The defendant subsequently lodged an application for special leave to appeal to the High Court against the decision of the Court of Appeal.

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 taxation 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 in relation to serious non-compliance with tax laws, and reform of administrative practice, policy and legislation.

Project Wickenby involves a number of investigating agencies including the Australian Taxation Office (ATO), the Australian Crime Commission (ACC), the Australian Securities and Investments Commission and the Australian Federal Police (AFP). It is also supported by AUSTRAC, the Attorney-General's Department (AGD) and the Australian Government Solicitor. The CDPP has a significant and important role to play in the prosecution of offences arising from this investigation and taking action to recover the proceeds of crime under the *Proceeds of Crime Act 2002 (POC Act 2002)*.

The CDPP participated in regular meetings of the Project Wickenby Cross Agency Advisory Committee, a committee which was established in order to oversee the project. The CDPP provides information about prosecutions and criminal asset recovery, both in a general sense and in relation to specific matters arising out of Project Wickenby. The CDPP 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* 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. 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 came before the court on 29 November 2007 and after a warning from the court that there was a risk of the sentence being increased, Wheatley abandoned his appeal.

The CDPP is currently prosecuting a total of 26 persons arising out of investigations conducted as part of Project Wickenby by the ACC and AFP. These matters are currently at different stages of the court process in various jurisdictions.

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

The CDPP has played a significant role in requests made to foreign jurisdictions for assistance pursuant to the *Mutual Assistance in Criminal Matters Act 1987*. Requests have been to a multitude of different jurisdictions and have resulted in obtaining important evidence. On 24 April 2008 the Federal Court in Melbourne ruled in favour of the Respondents (ACC, AGD and CDPP) in two related matters: *Dunn & Misty Mountain, and Strachans AG*. In each case the applicants challenged the validity of mutual assistance requests made in connection with Operation Wickenby. The applicants have appealed to the Full Federal Court and the appeal will be heard in November 2008. *Dunn & Misty Mountain* is further reported in Chapter 5 of this Report.

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



2.2 Serious drugs



Offences involving the importation of drugs into Australia are among the most serious Commonwealth offences and comprise a significant part of the CDPP's practice. The interception of drugs at the border prevents those drugs from entering the Australian community. Drug offences attract substantial penalties, including imprisonment for life for offences involving a commercial quantity of drugs.

Previously, drug offences were contained in the *Customs Act* reflecting an emphasis on the

importation of drugs. Offences that have occurred after 6 December 2005 are prosecuted under the *Criminal Code*. The serious drug offences in the *Criminal Code* also extend to drug trafficking, the commercial cultivation and selling of controlled plants, the commercial manufacture of controlled drugs, and pre-trafficking in the precursor chemicals used to manufacture drugs. The CDPP also prosecutes State/Territory drug offences usually where the investigation involves a Commonwealth agency and it is appropriate for the CDPP to conduct the prosecution.

JASON BROPHY, JOHN ROLLASON, DARREN JENKINS AND ROBERT GREEN

This case involved the seizure of approximately 108kg of MDMA (ecstasy) tablets with a wholesale value of about \$8 million. The charges were the result of an investigation into the distribution and sale of ecstasy tablets on the Gold Coast. This case is an example of the CDPP conducting a prosecution of State offences.

The defendants were involved in high level drug trafficking progressively distributing a stockpile of approximately 480,000 ecstasy tablets into Queensland from New South Wales. Brophy was the contact for an overseas drug supplier. On 20 October 2004 Green and an unknown person travelled to Gosford and acquired 90,000 ecstasy tablets. On 17–18 November 2004 Green and Jenkins travelled to Gosford at the request of Rollason. In Gosford, Green met another person and exchanged \$250,000 for 91,000 ecstasy tablets. All of the defendants were arrested after the exchange had taken place. A few days later police found the balance of the stockpile, about 298,000 ecstasy tablets, at a residence in Sydney.

This case involved a joint AFP and Queensland Police operation. The defendants were originally charged with a Commonwealth offence of conspiracy to import as well as state offences regarding the unlawful trafficking and supply of dangerous drugs. The CDPP discontinued the Commonwealth offence and conducted the prosecution of the State offences.

Brophy and Jenkins were both found guilty by a jury and sentenced respectively to 17 years imprisonment and 12 years imprisonment (cumulative on his present term of imprisonment). Both defendants were declared to be 'serious violent offenders' according to Queensland sentencing legislation.

ECSTASY TRAFFICKING

Jenkins and Green pleaded guilty and were sentenced respectively to 10 years imprisonment and 6 years imprisonment with a recommendation for parole on 3 April 2009. Jenkins was also declared to be a 'serious violent offender'.

MEIR YAIR RAKACH & OLLIE AZRIEL

This case involved one of the largest importations of MDMA (ecstasy) prosecuted by the CDPP.

In August 2005 Rakach organised the importation of a crate containing bedroom furniture from Belgium. It arrived in Melbourne on 6 September 2005. The tubular metal furniture contained 23kg of MDMA tablets, with a purity of 10.02kg. The MDMA was detected by way of a Customs x-ray and the AFP fully substituted the drugs. The crate was then delivered to Frank Gaut, Rakach's father in law, and it sat in his carport until 18 September 2005 when Rakach and Gaut unpacked the furniture from the crate. Later that day, after a number of coded telephone calls, Rakach and Azriel hired a trailer and moved the furniture to Rakach's residence. Both defendants were arrested that night. Azriel did not provide any explanations or admissions in his interview with police. In his interview, Rakach admitted that he had organised for the crate to be imported, but claimed that Azriel had asked him to organise it. He claimed that Azriel had told him it was just furniture for some friends. Rakach denied all knowledge that the furniture contained MDMA.

Azriel pleaded guilty to one count of attempting to possess a commercial quantity of a MDMA, contrary to section 11.1 of the *Criminal Code* and section 233B(1)(b) of the *Customs Act*.

Rakach pleaded not guilty to one count of importing a commercial quantity of MDMA contrary to section 233B(1)(b) of the *Customs Act*, and one count of attempting to possess a commercial quantity of MDMA, contrary to section 11.1 of the *Criminal Code* and section 233B(1)(b) of the *Customs Act*.

On 19 May 2008 Rakach was convicted on both counts after a two week trial.

On 27 June 2008 the defendants were sentenced in the County Court of Melbourne. Rakach was sentenced to a total effective sentence of 8 ½ years imprisonment with a non-parole period of 6 years. Azriel was sentenced to 3 ½ years imprisonment with a non-parole period of 2 years.

HERNAN JAVIER ANDRADE & ANTON ENGLISH

This case highlights the use of undercover police operatives when investigating drug crimes. Both defendants were recidivist drug importers who reoffended shortly after being released from prison.

This case involved an importation of MDMA (ecstasy) contained in three hard cover books secreted in the front and back covers. In total 6117 tablets were located inside the books, weighing a total of 1780.4g with a purity of 31.2% or 555.48g.

Andrade had offered to obtain ecstasy for an undercover police operative (UCO). He explained the system for decoding the consignment number for the ecstasy to the UCO; negotiated with his co-accused English as to the profit margin required and the price to be paid by the UCO; reached an agreement with the UCO to pay

ECSTASY
IMPORTATION



ECSTASY
IMPORTATION

\$25,000 for 3000 tablets; requested that the ecstasy be sent to Australia; obtained consignee details from the UCO; provided the consignment number via code to the UCO; collected payment from the UCO; and handed over the payment for the tablets to Englisch.

Englich negotiated with Andrade and unknown others as to the cost to be charged to the UCO; received the faxed address and by inference forwarded the address to Bulgaria; utilized his contacts in Bulgaria to source the drugs; and forwarded money to Bulgaria to pay for the drugs.

The defendants agreed to split the profit margin with Englisch to receive 1/3 and Andrade 2/3.

Both defendants pleaded guilty to one count of aid and abet the importation of a commercial quantity of MDMA, contrary to subsection 307.1(1) of the *Criminal Code* and section 11.2 of the *Criminal Code*.

Englich pleaded guilty on 23 August 2007 and was sentenced in the County Court of Victoria on 19 November 2007 to a term of 7 1/2 years imprisonment with a non-parole period of 5 years. Englisch had previously been sentenced on 13 May 2004 in relation to very similar offences also involving tablets hidden inside the front and back covers of books. On that occasion he was sentenced to a total effective sentence of 3 years to be released after 18 months upon entering a recognisance in the sum of \$1000 to be of good behaviour for 18 months and he was ordered to pay a pecuniary penalty in the sum of \$25,000.

Andrade pleaded guilty on 9 April 2008 and was sentenced on 15 April 2008. Andrade was in breach of a previous sentencing order by this offending. On 23 July 2004 he was sentenced in the County Court of Victoria on one count of aid, abet, counsel or procure the importation of a trafficable quantity of the prohibited import, cocaine, contrary to s233B(1)(b) of the *Customs Act* and section 11.2 of the *Criminal Code*. The pure quantity of the cocaine was approximately 1300g. The cocaine was sent by air freight hidden inside a cylinder.

The breach was found proved and the court ordered that the recognisance be revoked. Andrade was ordered to be imprisoned to serve the balance of his unserved term on the original offence (being 18 months), and the sentence ordered to commence on 15 April 2008. In relation to the new offence, Andrade was convicted and sentenced to a term of 7 years imprisonment. That sentence was ordered to commence on 15 October 2008. This resulted in a total effective head sentence of 7 1/2 years with a non-parole period of 5 years.

Englich has lodged an appeal against his sentence.

CC, SC, KL, SO, BS, SS, SY, AND PS

This case involved an importation of heroin using internally concealed packages. Six drug couriers assisted in the investigation and prosecution of the organiser of the importation.

On 9 October 2006 a tour group consisting of fourteen Cambodian citizens flew from Phnom Penh in Cambodia to Sydney via Bangkok. Two of the tour group members were taken to hospital on arrival in Bangkok, having fallen unconscious on board. They were discovered to have internally concealed packages of heroin.

During the flight to Sydney, one more member of the tour group (CC) became unconscious. On arrival in Sydney on 10 October 2006, CC was taken to St George Hospital and 176 pellets, about a centimetre or so round, were surgically removed from his body.

After arrival at the airport, the other members of this tour group consented to a CT scan. Six of them were found to have similar balloons of heroin contained inside them. The total pure weight of heroin imported by the seven Cambodian tour group members was approximately 1.1kg.

Six of the couriers signed statements and undertakings to give evidence against PS, who they alleged was the organiser of the tour group importation. In essence, PS's involvement was alleged to have included paying for the passports and airline tickets, and handing the drugs to the couriers with instructions to swallow them while in Phnom Penh. SC later declined to give evidence and was not called in the trial of PS. He received no discount on sentence for his assistance.

Between 19 May 2008 and 19 June 2008 PS was tried on six counts of aiding, abetting, counselling or procuring the importation of a marketable quantity of heroin, in respect of each of the importations carried out by the six couriers giving evidence. The six couriers gave evidence as to PS's involvement, and on 19 June 2008 the jury returned verdicts of guilty on all counts. PS is due to be sentenced on 12 December 2008.

Each of the seven couriers pleaded guilty to one count of importing a marketable quantity of heroin, contrary to section 307.2(1) of the *Criminal Code*. On 26 October 2007 and 2 November 2007 the couriers were sentenced to periods of imprisonment ranging from 3 years and 2 months with a non-parole period of 2 years and 2 months for SS, to 5 ½ years imprisonment with a non-parole period of 3 ½ years for SC.

The CDPP appealed against the inadequacy of the sentences imposed upon the couriers. SY and SO appealed against the head sentence on the basis that it did not accurately reflect the discount which the sentencing Judge stated he gave for the assistance.

The Crown appeals were dismissed on 21 April 2008. SY and SO's appeals were allowed and their head sentences reduced from 5 ½ years imprisonment to 5 years and 3 months imprisonment to commence from 10 October 2006. SY and SO will be eligible for parole on 9 October 2009.



BELINDA MARY CAMPBELL**PRECURSOR
IMPORTATION**

This matter involved the importation into Australia of 92.91kg of pseudoephedrine, being just over 77 times the commercial quantity applicable to pseudoephedrine. This quantity could be used to manufacture methylamphetamine hydrochloride with an estimated value of several million dollars. At the time of the defendant's sentence, this matter involved the largest seizure of pseudoephedrine that had been dealt with to finality.

In June 2006, 92.91kg of pure pseudoephedrine was imported into Australia in a container consigned to Chic Teak Pty Ltd said to contain furniture. The defendant was the sole director of that company. The defendant arranged for the clearance of the container through Customs and arranged with her husband to unload the container, secure the container overnight at her business premises at Leichhardt pending its removal by others, and hand over possession of the boxes containing pseudoephedrine to another person. That person was an employee of the overseas supplier of pseudoephedrine who flew into Australia and took delivery of it on the same day.

The defendant was charged with one offence of importing a commercial quantity of a border controlled precursor, namely pseudoephedrine, contrary to section 307.11(1) of the *Criminal Code*.

The trial commenced as a joint trial with the defendant's two co-accused who were subsequently acquitted following a direction from the Judge that section 307.14 of the *Criminal Code* was not a special liability provision and did not apply to the co-accused.

On 24 August 2007 the jury returned a guilty verdict in relation to the defendant who was sentenced to 2 ½ years imprisonment to be released after 18 months on a recognisance in the sum of \$1,000 to be of good behaviour for 12 months.

The CDPP appealed against the manifest inadequacy of the sentence and the defendant appealed against her conviction based upon a matter of law. The NSW Court of Criminal Appeal heard the appeals on 24 July 2008 and on 16 September 2008 allowed the defendant's appeal and remitted the matter for re-trial.

IKENNA CALISTUS ONUORAH**ATTEMPTED
POSSESSION
OF COCAINE**

This case involved the prosecution relying upon section 11.1(4)(a) of the *Criminal Code*, which provides that a person may still be found guilty of attempt even if committing the offence attempted is impossible. During this investigation, authorities completely substituted the cocaine, so no cocaine was imported into Australia. This case involved obtaining overseas evidence regarding the seizure, detection and analysis of the cocaine and international cooperation to obtain the required evidence in admissible form.

A package was sent via an international courier company from Venezuela to an address in NSW. Following inspection by Venezuelan authorities, the package was found to contain 229.6g of cocaine secreted in a jewellery box. Venezuelan authorities seized the cocaine and forwarded the consignment note and a substitute package to Australia. Upon arrival in Australia, the package was intercepted by Australian law enforcement authorities and a substitute jewellery box was prepared. The intended address in Australia was a mail box connected to a newsagency. The defendant

had opened this mail box in a false name a number of months earlier. Using public telephones, the defendant contacted the law enforcement agent who was posing as a delivery driver, in order to arrange for the delivery of the package. The defendant requested that the package be delivered at an address of a third person and he attended and signed for the delivery of the package.

The defendant was charged with one offence of attempting to possess a marketable quantity of cocaine contrary to sections 307.6(1) and 11.1 of the *Criminal Code*.

The defendant pleaded not guilty and the matter proceeded to trial in the NSW District Court. Following a 10 day trial, the jury returned a guilty verdict.

On 20 June 2008 the defendant was sentenced to 7 years and 10 months imprisonment with a non-parole period of 4 years and 10 months. Pre-sentence custody of 15 months was taken into account in reducing the sentence which otherwise would have been 9 years with a non-parole period of 6 years.

PETER CAO, ANA THU PHAN, THI ROT NGUYEN, ANH DUNG VU, KIM ANG LY, KIM UT LY, DUC AN TRAN, THI MY HANH NGUYEN

**HEROIN
IMPORTATION**

Cao and his defacto wife, Phan, were residents of Sydney and formed a syndicate that organised a series of importations of heroin into Australia from Vietnam between 2005 and 2006. The syndicate used Vietnamese-Australians as couriers to bring heroin concealed in suitcases into Australia on their return flights from Vietnam. The main point of entry for these importations was Perth International Airport. The police investigation intercepted the mobile phones used by various syndicate members. Police ultimately identified six importations of heroin organised by this syndicate between November 2005 and April 2006. Throughout most of the investigation, Cao and Phan remained in Sydney but maintained regular phone contact with the other participants who travelled variously to Vietnam or Perth.

Each defendant played a role in the syndicate. Cao and Phan were the principal offenders as they recruited couriers and financed the couriers' air fares, expenses and fees for the importation and remained in contact with the other participants to ensure the importation occurred to plan. Cao was also responsible for supplying the heroin to various purchasers in Sydney.

All the defendants were sentenced on 22 February 2008 in the District Court of NSW.

Cao and Phan pleaded guilty to one offence of conspiracy to import a commercial quantity of heroin contrary to section 233B(1)(a)(iii) of the *Customs Act* and section 11.5 of the *Criminal Code*. Cao was sentenced to 24 years imprisonment with a non-parole period of 14 ½ years. He will be eligible for parole on 9 November 2020. Phan was sentenced to 18 years imprisonment with a non-parole period of 11 years. She will be eligible for parole on 9 May 2017.

Thi Rot Nguyen ('Rot') and her husband, Vu, were involved in 4 importations between December 2005 and April 2006. Rot's primary role was to meet and greet the couriers on their arrival in Perth and she also assisted with courier travel arrangements. Vu's main role was to directly liaise with the person known as 'the Uncle' in Vietnam who concealed the heroin in the suitcases. Vu relayed instructions from Cao to the Uncle and accompanied Rot to Perth to meet one of the couriers.

Rot and Vu were also charged with one offence of conspiracy to import a commercial quantity of heroin. Rot pleaded guilty to the offence and a jury returned a guilty verdict with respect to Vu. Rot was sentenced to 15 years imprisonment with a non-parole period of 8 ½ years. She will be eligible for parole on 9 November 2014. Vu was sentenced to 16 years imprisonment with a non-parole period of 9 ½ years. He will be eligible for parole on 11 June 2016.

Kim Anh Ly was involved in two importations in November 2005 as well as acting as a heroin courier for an importation on 5 February 2006. She was the syndicate's Perth contact. She also transported heroin from Perth to Sydney on two occasions. Kim Anh Ly pleaded guilty to one offence of conspiracy to import a trafficable quantity of heroin contrary to section 233B(1)(a)(iii) of the *Customs Act* and section 11.5 of the *Criminal Code* and one offence of conspiracy to import a marketable quantity of heroin contrary to sections 307.2 and 11.5 of the *Criminal Code*. She was sentenced to a total effective sentence of 8 years imprisonment with a non-parole period of 5 years. She will be eligible for parole on 23 July 2011.

Kim Ut Ly was a heroin courier in respect of an importation on 12 November 2005. Kim Ut Ly pleaded guilty to one offence of conspiracy to import a trafficable quantity of heroin contrary to section 233B(1)(a)(iii) of the *Customs Act* and section 11.5 of the *Criminal Code*. She was sentenced to 8 years imprisonment with a non-parole period of 4 ½ years. She will be eligible for parole on 11 June 2011.

Tran was a heroin courier in respect of an importation on 20 December 2005. He also transported the heroin from Perth to Sydney for an additional fee. Tran was charged with one offence of conspiracy to import a trafficable quantity of heroin contrary to section 233B(1)(a)(iii) of the *Customs Act* and section 11.5 of the *Criminal Code*. He was sentenced to 8 ½ years of imprisonment with a non-parole period of 5 years and 2 months. He will be eligible for parole on 19 December 2011.

Thi My Hanh Nguyen travelled to Perth with her sister, Rot, to meet a courier and deliver the heroin to Sydney. She was charged with one offence of conspiracy to import a commercial quantity of heroin contrary to sections 307.1 and 11.5 of the *Criminal Code*. She was sentenced to 3 years, 5 months and 11 days imprisonment with a non-parole period of 1 year, 7 months and 11 days. She will be eligible for parole on 25 June 2009.

**CARLOS GARCIA CERVANTES, CESAR ANIBAL MALDONADO
AND DANIEL LEONARDUS WETERINGS**

On 23 December 2005, 1,168kg of *Lucuma* powder contained in 45 bags was imported into Australia from Peru via air freight. At an unknown time in early 2006 the powder was delivered. The *Lucuma* powder was treated with chemicals and petrol to extract approximately 34kg of cocaine secreted within the *Lucuma* powder. The cocaine was extracted and pressed in a house which Weterings had rented to the syndicate for that purpose. Quantities were stored by Garcia Cervantes and trafficked by Maldonado to a network of dealers.

The purity of the cocaine ranged from 56.8% to 73.4% and based on AFP information, the street value of the cocaine would have been between about \$16.3 million and about \$22.8 million, and the wholesale value would have been between about \$6 million to about \$9.6 million.

Maldonado was convicted of one offence of trafficking a commercial quantity of cocaine contrary to section 302.2(1) of the *Criminal Code* and one offence of possessing a marketable quantity of cocaine contrary to section 307.9 of the *Criminal Code*, as well two money laundering offences involving a total of \$750,000, with an additional two offences being taken into account on a section 16BA schedule. On 18 April 2008 he was sentenced to an effective head sentence of 36 years imprisonment with a non-parole period of 22 years. He will be eligible for parole on 11 June 2028.

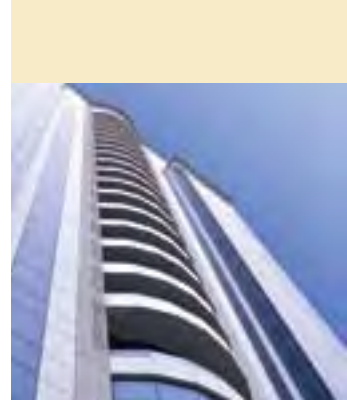
Garcia Cervantes pleaded guilty to one offence of possessing a commercial quantity of cocaine. On 18 June 2007 he was sentenced to 9 years imprisonment with a non-parole period of 6 years. He will be eligible for parole on 11 June 2010.

Weterings was convicted of one offence of aiding and abetting the manufacture of approximately 30kg of cocaine for a commercial purpose. On 18 May 2007 he was sentenced to 7 ½ years imprisonment with a non-parole period of 4 ½ years. He will be eligible for parole on 11 December 2010.

A note on the money laundering prosecution action involved in this matter appears in Chapter 2.5 of this Report.



2.3 Commercial prosecutions



The larger Regional Offices of the CDPP have specialist Commercial Prosecutions branches, which are responsible for prosecuting offences under the *Corporations Act* and the *Australian Securities and Investments Commission Act 2001* (the *ASIC Act*). In the smaller Regional Offices, the CDPP has nominated prosecutors who specialise in commercial prosecutions.

Responsibility for investigating alleged contraventions of the *Corporations Act* and the *ASIC Act* rests with the Australian Securities and Investments Commission (ASIC). By arrangement with the CDPP, ASIC conducts minor regulatory prosecutions for offences against those Acts. More serious alleged contraventions are referred by ASIC to the CDPP for consideration and prosecution action where appropriate.

The investigation of more serious commercial matters can be long and resource intensive and the materials that ASIC provides to the CDPP in relation to such matters are often voluminous and complex. The prosecution of such matters requires specialist skill.

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

The CDPP's Commercial Prosecutions branches are also responsible for dealing with large fraud matters where there is a corporate element, and all prosecutions for offences against the *Trade Practices Act 1974* and offences against the *Bankruptcy Act 1966*.

The responsibility for investigating alleged contraventions of the *Trade Practices Act* rests with the Australian Competition and Consumer Commission (ACCC). The CDPP meets regularly with the ACCC to discuss specific cases and for general liaison.

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

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

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 three Annual Reports.

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

DANIEL WILKIE AND ASHRAF KAMHA

FALSE
ACCOUNTING

This case was reported in last year's Annual Report at page 55.

The defendants are former officers of FAI Ltd and directors of FAI General Insurance Company Ltd (FAIG) which was a wholly owned subsidiary of FAI. It is alleged that on 2 January 1998 alterations were made to FAIG's claims database without any proper basis. As a result of the alterations the profit recorded in FAI's accounts released to the Australian Stock Exchange (ASX) for the six months to 31 December 1997 was artificially inflated.

The defendants were each charged with two offences against sections 1317FA(1) and 232(2) of the *Corporations Act* of knowingly failing to act honestly in the exercise of his powers with the intention of deceiving the ASX and the actuary; and with a further offence against section 509(1)(c)(iii) of the *Corporations Act* for fraudulently being privy to the alteration of a book affecting or relating to affairs of the company.

On 7 July 2008, Wilkie made an application to the NSW Supreme Court for a permanent stay of the proceedings against him. The application was dismissed on 17 July 2008 and his trial commenced on 25 August 2008.

On 7 July 2008, Kamha pleaded guilty to the charge under section 590(1)(c)(iii) of the *Corporations Act* and the other two charges were discontinued. On 25 July 2008 Kamha was sentenced to 6 months imprisonment to be released forthwith upon entering a recognisance to be of good behaviour for 12 months.

DOMINIC FODERA

FALSE
ACCOUNTING

This case was reported in last year's Annual Report at pages 53–54.

The defendant was an executive director of HIH and its Chief Financial Officer. 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 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.

The defendant was convicted of an offence against section 996(1) of the *Corporations Act* for making an omission from a prospectus, and offences against sections 1317FA(1) and 232(1) of the *Corporations Act* for knowingly or recklessly failing to

act honestly in the exercise of his powers with the intention of obtaining a gain.

As was reported in last year's Annual Report, on 4 April 2007 the defendant was found guilty by a jury on the section 996(1) charge and on 7 June 2007 he was sentenced on that charge to imprisonment for a term of three years and was ordered to serve two years of that term.

At the time of Fodera's conviction on the section 996(1) charge he had also been indicted on two offences against sections 232(2) and 1317FA of the *Corporations Act* and four offences against section 1309(1) of the same Act of making available and furnishing information that was to his knowledge false or misleading. These other six charges related to reinsurance arrangements that HIH had entered into in August 1999 with reinsurer, Hannover Re. Although the reinsurance arrangements were financial reinsurance arrangements, and no real insurance risk had transferred from HIH to Hannover Re, HIH had accounted for the arrangements as if they were traditional reinsurance arrangements that involved a transfer of risk.

On 26 September 2007 the defendant pleaded guilty to a further charge under sections 1317FA(1) and 232(2) of the *Corporations Act* with respect to the Hannover Re reinsurance arrangements and the remaining five charges were discontinued. He was sentenced on that further charge on 6 November 2007 to a term of imprisonment of 3 years and 4 months (which will expire on 8 March 2012) and a single non-parole period of 3 years was imposed in relation to both charges, which will expire on 9 May 2010.

On 14 February 2008 the appeal that the defendant had lodged against his conviction and sentence on the section 996(1) charge was stood out of the list indefinitely because he was not yet ready to file grounds of appeal.

GEOFFREY ARTHUR COHEN

This case was reported in last year's Annual Report at page 53.

The defendant was a non-executive director of HIH and Chairman of the Board. At the Annual General Meeting of HIH on 15 December 2000 the defendant read an address to shareholders that contained statements about HIH receiving \$200 million in cash from Allianz Australia Limited. It is alleged that this statement was misleading as the \$200 million was to be paid into a trust and therefore would not be available to HIH to meet its the day-to-day cash flow requirements.

The defendant was charged with an offence against section 1309(1) of the *Corporations Act* of knowingly making a statement to shareholders that was false or misleading, and alternatively he was charged with a summary offence against section 1309(2) of the *Corporations Act* of making a false or misleading statement to shareholders without having taken reasonable steps to ensure that the statement was not false or misleading.

On 27 April 2007 the defendant was committed for trial on the charge under section 1309(1). On 8 February 2008, in accordance with the *Prosecution Policy of the Commonwealth*, the prosecution of the indictable offence under section 1309(1) was discontinued and the summary offence under section 1309(2) was remitted back to the NSW Local Court for hearing. The hearing of the remaining charge is listed to commence on 26 November 2008.

Other commercial cases

DOJOO PTY LTD AND SANTO PENNISI

Between 14 September 2004 and 21 June 2007 Dojoo Pty Ltd owned and operated thirteen BP service stations in the Northern Rivers area of NSW. Santo Pennisi was a director and hands-on operator of Dojoo Pty Ltd. At the direction of Santo Pennisi, tanker drivers regularly mixed unleaded fuel into the tanks at those service stations which contained premium fuel. The result was that the pumps marked as containing premium fuel in fact contained fuel with a lesser amount of octane. Therefore the representations that Dojoo Pty Ltd made concerning the particular quality or composition of the fuel offered at the service stations were false.

Both defendants pleaded guilty to 28 offences against section 75AZC(1)(a) of the *Trade Practices Act 1974*. Prior to sentencing the defendants made a donation of \$200,000 to a local charity as an act of contrition and assisted investigating agencies from the time the offence was detected.

Dojoo Pty Ltd was fined \$400,000 and Santo Pennisi was fined \$70,000.

TRADE
PRACTICES



SIMON HANNES

This matter has been reported in previous Annual Reports.

The defendant was convicted and sentenced in 1999 for one offence under section 1002G(2) of the *Corporations Act* of insider trading and two structuring offences under section 31(1) of the *Financial Transactions Reports Act 1998*. However these convictions were set aside by the NSW Court of Criminal Appeal in October 2000 and a retrial was ordered.

The retrial in the Supreme Court of NSW concluded on 11 September 2002 when the defendant was again convicted of the offences. The effect of the defendant's re-sentencing on 13 December 2002 was that he was ordered to serve a further period of imprisonment of 4 months and 9 days in addition to the period of 15 months and 22 days that he had already served.

The charge under the *Corporations Act* related to the purchase of a large number of call options in TNT at a time when Macquarie Corporate Finance Ltd, a company of which the defendant was an executive director, was acting for TNT in relation to a proposed takeover by a Dutch company. It was alleged that the defendant had purchased the TNT call options in a false name before the takeover negotiations became public knowledge. The charges under the *Financial Transactions Reports Act* related to action which the defendant allegedly took to conceal his purchase of the call options.

In November 2006 the NSW Court of Criminal Appeal dismissed his appeal against his convictions.

In June 2008 the High Court of Australia dismissed the defendant's application for special leave to appeal his convictions.

INSIDER
TRADING

NEIL AUSTIN BURNARD**COMMERCIAL
FRAUD**

The defendant was a director of Kebbel (NSW) Pty Limited (“Kebbel”), which promoted investments in the form of mezzanine financing through Westpoint Mezzanine companies to be utilised in the realisation of Westpoint projects.

The defendant had, in the context of promoting financial investments to members of the public who were unsophisticated investors, falsely represented himself as the director of Kebbel Investment Bank, an entity which did not exist.

In the period from 1 August 2003 to 1 November 2004 Kebbel raised a total of \$80,297,729 from investors for which the company received a total of \$8,181,338 in commissions from Westpoint Corporation Limited. The financial advantage that the defendant obtained for the Westpoint Mezzanine companies during the period to which the charges relate was substantial, at \$1,175,000.

On 6 May 2008, following a trial in the District Court of NSW, the jury found the defendant guilty of all nine charges of making a false statement with intent to obtain a financial advantage on the indictment, all of which were under section 178BB of the *Crimes Act 1900* (NSW).

On 22 August 2008 the defendant was sentenced to a fully suspended 12 month term of imprisonment and fined \$50,000.

KOVELAN BANGARU**INVESTMENT
FRAUD**

The defendant was the managing director of a group of companies known variously as Colosseum or Streetwise. It is alleged that during the period from June 2003 to July 2005 he fraudulently obtained approximately \$23.1 million in loan facilities from financial institutions by providing false financial statements.

During the period from December 2002 to July 2005 the defendant induced people to invest in Streetwise property developments by making false representations to them as to how their funds would be invested. It is alleged that he fraudulently misappropriated approximately \$3.5 million of investors’ funds.

On 18 July 2005, the defendant placed the Colosseum/Streetwise group of companies into administration. The liquidator of the Colosseum and Streetwise groups has assessed that the group owed secured creditors \$14.520 million and unsecured creditors, including investors, \$16.988 million. The liquidator has estimated that unsecured creditors will receive no return from the winding up of the companies.

It is alleged that on 26 July 2005 the defendant gave an undertaking to the administrator to surrender his passport and that on the same day, in breach of that undertaking, he travelled to New Zealand and then on to the United States. In February 2007, following an ASIC investigation, sixteen warrants for the arrest of the defendant were issued at the Downing Centre Local Court. In April 2007 the defendant was arrested in the United States following a request by Australia for his provisional arrest.

In December 2007 the defendant appeared in the U.S. Federal Court, Central District of California where he consented to his extradition. The defendant was extradited to Australia in relation to the following 16 offences:

- ▶ Five charges under section 178BB of the *Crimes Act 1900* (NSW) for making a false statement with intent to obtain a financial advantage;
- ▶ Three charges under section 178BA of the *Crimes Act 1900* (NSW) for dishonestly obtaining a financial advantage by deception; and
- ▶ Eight charges under section 178A of the *Crimes Act 1900* (NSW) for fraudulent misappropriation.

It is expected that the matter will be listed for a committal hearing later in 2008.

BRIAN MILLWOOD SMITH & STUART ADRIAN CORP

SHARE WAREHOUSING

This was a high profile case involving allegations of share warehousing in Australia. It was a resource intensive investigation for the Australian Securities and Investments Commission. It involved extensive use of material derived under the *Mutual Assistance in Criminal Matters Act 1987*. Three weeks of evidence from the most significant witnesses was obtained during pre-trial hearings in Jersey.

The defendants were directors of two publicly listed junior mining companies, Welcome Stranger Mining Company NL (“WSM”) and Hallmark Gold NL (“HLM”).

The defendants were charged with the following offences before the District Court of Western Australia:

False statement contrary to section 1308(2) of the <i>Corporations Act</i>	6 charges against Corp and 5 charges against Smith
Procure false statement contrary to section 1308(2) of the <i>Corporations Act</i> and section 5 of the <i>Crimes Act</i>	Corp only
False statement contrary to section 1309(1) of the <i>Corporations Act</i>	1 charge against each defendant
Failing to act honestly contrary to section 232(2) of the <i>Corporations Act</i>	6 charges against each defendant
Voting to obtain a financial benefit contrary to section 243ZF(6) of the <i>Corporations Act</i>	6 charges against Corp and 8 charges against Smith
Procure another to destroy books contrary to section 67(i)(a) of the <i>Australian Securities Commission Act 1989</i> and section 5 of the <i>Crimes Act</i>	Corp only

The charges concerned allegations that between 1991 and 1998 Smith and Corp had warehoused shares in HLM and WSM through trusts and private companies based in overseas jurisdictions, principally Jersey but also Gibraltar and the British Virgin Islands.

The prosecution presented its case at trial on the basis that the defendants had voted the warehoused shares at meetings of the members of WSM and HLM on resolutions that conferred benefits on them in the form of executive options and issues of contributory shares.

The defendants had failed to declare their interests in the warehoused shares in documents lodged with the Australian Securities Exchange (ASX) and the Australian Securities Commission (ASC). The lodging of these documents formed the subject of charges against sections 1308 and 1309 of the *Corporations Act*.

On 22 January 2008, in accordance with the *Prosecution Policy*, the Director discontinued the prosecution of other charges against the defendants under sections 64(1)(b) and 65(1)(a) *Australian Securities Commission Act 1989*.

On 4 October 2007, after a jury trial that ran for almost 9 weeks, Smith was found guilty of 14 charges and acquitted of 6 charges [6 x section 243ZF(6) *Corporations Act*] and Corp was found guilty of 15 charges and acquitted of 6 charges [1 x section 1308(2) *Corporations Act* & section 5 *Crimes Act*; 4 x section 243ZF(6) *Corporations Act* and 1 x section 67(1)(a) *ASC Act*].

The District Court sentenced each of the defendants to a total effective term of 3 years imprisonment, to be released after 16 months upon entering into a recognisance in the sum of \$20,000 to be of good behaviour for 20 months.

Each defendant appealed both conviction and sentence. The Court of Appeal quashed all of the convictions against both defendants and entered verdicts of acquittal on 6 charges under section 232(2) of the *Corporations Act* against each defendant. In respect of the verdicts of acquittal the Court of Appeal held the evidence did not establish that the defendants actually voted the warehoused shares. All of the remaining charges against each defendant were remitted to the District Court of Western Australia for re-trial.

On 22 August 2008, in accordance with the *Prosecution Policy*, the Director discontinued all of the remaining charges against each defendant.

DEAN GEORGE SCOOK AND JEFFREY JOSEPH BRAYSICH

MARKET MANIPULATION

This matter involved a large and complicated stock market manipulation. The trading spanned almost two months, involved a large pool of traders and trading account entities and the trading of several million shares in a lightly traded stock.

Between 2 January 1998 and 27 February 1998 Scook, who was based in Western Australia, orchestrated a number of transactions in the shares of Intrepid Mining Corporation NL (“IRO”), including transactions resulting in no change in beneficial ownership and the placing of corresponding buy and sell orders designed to substantially match in price and volume. Section 998(5) of the *Corporations Act* deems these types of trading to create a false or misleading appearance of active trading. Scook also orchestrated trades in IRO shares between third parties who traded at his direction. Such trades were often designed to substantially match, thereby keeping the defendant-controlled IRO shares in constant circulation. The share trades that were the subject of the charges utilised over 11 million IRO shares and represented 50% of the total volume of IRO shares traded during the period of the charges.

Scook’s co-accused, Braysich, who was a director of stockbroking firm, Paul Morgan Securities Ltd, facilitated much of Scook’s unlawful trading, particularly trades involving no change in beneficial ownership, whilst knowing of Scook’s unlawful purpose.

On 10 November 2007 Scook and Braysich were convicted of 158 and 24 counts respectively of creating a false appearance of active trading pursuant to section 998(1) of the *Corporations Act*.

The defendants were sentenced on 23 November 2007. Scook was sentenced to 3 years imprisonment to be released after 14 months upon entering into a recognisance release order in the sum of \$5,000 to be of good behaviour for 22 months. Braysich was fined \$1,000 for each count, totalling \$24,000.

Scook appealed to the Court of Appeal against both his conviction and sentence. The appeal against conviction was abandoned before the hearing and the appeal against sentence was dismissed.

Braysich has also appealed against his conviction and his appeal is listed to be heard on 1 October 2008.



ROBIN POUMAKO AND ANN-MARIE DONALDSON

UNLAWFUL FUNDRAISING

This case represents the first contested prosecution of the unlawful fundraising offences contained in sections 727(1) and (4) of the *Corporations Act*.

The defendants were the directors and shareholders of International Finance Corporation Ltd (“IFC”) and procured investors to make loans to IFC by way of debentures. During the period between December 2002 and December 2003 IFC raised \$2,915,000 from 36 investors.

The *Corporations Act* requires that offers of securities such as debentures require disclosure to investors if the offers result in either the issue of securities to more than 20 investors, or the raising of more than \$2 million, in any 12 month period. The *Corporations Act* also requires that a disclosure document must be lodged with the Australian Securities and Investments Commission (ASIC) and be provided to investors in relation to any issue of securities which breaches the 20 investor or \$2 million ceilings.

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

The offences with which the defendants were prosecuted relate to 22 loans totalling \$1,228,000 that were made by 19 investors from 14 July 2003.

On 30 April 2008 the defendants were jointly convicted in the District Court of South Australia of 22 offences of unlawfully offering securities pursuant to section 727(1) of the *Corporations Act* and 22 offences of unlawfully issuing securities pursuant to section 727(4) of the *Corporations Act*.

The defendants are currently awaiting sentence.

With respect to Poumako, prior to trial the Court ruled that the *Criminal Law (Legal Representation) Act 2001* (SA) applied to persons charged with Commonwealth offences: *R v Poumako* (2007) 252 LSJS 397. This ruling led to the Legal Services Commission of SA (LSC) funding Poumako for trial. The LSC had previously refused Poumako aid.

CHRISTOPHER PAUL WOOLGROVE AND LAWRENCE JAMES PHILLIPS**UNREGISTERED
FUNDRAISING**

This case involved significant cooperation between Australia and New Zealand to investigate the case. The defendants had set up a managed investment scheme in a manner to try and circumvent the control of the Australian regulatory authority (ASIC) whilst deliberately targeting Australian investors.

The defendants made arrangements to set up the Hatcher Unit Trust in New Zealand and operated it in Australia. The documentation sent to investors stated that the money invested would be used to locate and salvage sunken treasure. Investor's funds were transferred to accounts in New Zealand.

The Hatcher Unit Trust was a managed investment scheme and as such could not be operated in Australia unless it was registered as a managed investment under Part 5C of the *Corporations Act*. The scheme was not registered. Both defendants kept in regular contact with lawyers and accountants in New Zealand and exercised control over the investors' funds deposited there.

Both defendants were convicted of operating an unregistered managed investment scheme, which was required to be registered, contrary to section 601ED(5) of the *Corporations Act*.

The defendant Woolgrove, was ordered to be imprisoned for 2 years, to be released after serving 6 months upon giving security by recognisance in the sum of \$2,000, conditioned that he be of good behaviour for a period of 2 years.

The defendant Phillips, was ordered to be imprisoned for 2 years, to be released after serving 5 months upon giving security in the sum of \$2,000 on condition that he be of good behaviour for a period of 2 years. Seventy-one days spent in pre-sentence custody was deemed time already served on sentence.

Both defendants lodged appeals against the severity of the sentence, and those appeals were heard in the Queensland Court of Appeal on 8 July 2008. The court reserved its decision.

Woolgrove paid a pecuniary penalty order in the sum of \$381,000 being the balance of the funds from the sale of a unit which he agreed to transfer to the Public Trustee.

MARK ANDREW CYRIL STANLEY**INVESTMENT
FRAUD**

This offending involved a sophisticated and calculated course of conduct over a long period of time. It not only involved systematic fraud on the public revenue, but a significant financial and emotional impact on a number of victims who tendered victim impact statements at the sentencing of the defendant.

In 2000 the defendant purchased ten luxury cars from dealers. He falsely represented to the dealers that he was purchasing the vehicles on behalf of charitable organisations which were exempt from the requirement to pay sales tax, and that the vehicles would be sold at auctions as part of the fund raising activities of those organisations. The vehicles were therefore supplied to the defendant free of sales tax. The defendant in fact sold most of the vehicles to third parties for a profit. Sales tax of \$884,733 was defrauded.

The defendant was also involved in a joint venture to purchase and develop a property in St Leonards, New South Wales. One of the joint venture partners loaned money to pay the GST on the purchase. The GST was refundable and when the refund was received from the Australian Taxation Office, it was to be repaid to the lender. The GST was refunded on 11 January 2002, but instead of repaying the loan, the defendant used the \$651,621.51 for other purposes.

During 2003 and 2004, the defendant received approximately \$5 million from investors, to be applied towards the purchase of land and the construction and management of a retirement village. The construction of the retirement village and its management were to be a joint venture between Primelife and the investors. The contract price for the project was \$12 million, payable to Primelife. Although the defendant failed to settle the purchase of the land by the due date, Primelife continued to negotiate with him and agreed to accept a deposit of \$1.2 million on the basis of a letter from him stating that he had sufficient funds to settle the purchase. Attached to the letter were several other documents which he represented were from investors willing to take part in the joint venture. These documents were either completely false or untrue or misrepresented the true position of the person from whom they purported to be. Between May 2003 and May 2005 the defendant stole \$2,791,480.19 of investors' funds which he used for his own purposes.

The defendant pleaded guilty to one offence of defrauding the Commonwealth contrary to section 29D of the *Crimes Act* in relation to the sales tax offence; one offence of dishonestly using his position as a company director to gain an advantage for himself contrary to section 184(2)(a) of the *Corporations Act* in relation to the St Leonards offence; one offence of aiding, abetting, counselling or procuring dishonest conduct in the course of carrying on a financial services business contrary to section 1041G of the *Corporations Act* in relation to the false representation to Primelife; and two offences of theft contrary to section 74 of the *Crimes Act 1958* (VIC) in relation to the theft of funds from investors.

On 27 June 2008 the defendant was sentenced to a total effective sentence of 5 ½ years imprisonment with a minimum non-parole period of 3 ½ years.

PETER WOODLAND

Kanowna Consolidated Gold Mines Limited (“KCG”) was a mineral exploration company listed on the Australian Stock Exchange (ASX). In late 2003 KCG was engaged in negotiations to acquire an interest in the Cerro Negro Gold project in Argentina. On 10 December 2003 KCG announced to the ASX that it had secured an option to acquire the Cerro Negro Gold project.

The defendant had obtained inside information about the proposed acquisition by KCG of the interest through his acquaintance with a director of KCG and his work in developing a website for KCG.

During the latter part of 2003 the defendant, whilst in possession of the inside information, acquired via five trades a total of 584,000 KCG shares.

Furthermore, the defendant, who was registered with HotCopper, an internet-based financial services chat site, during the relevant period from August to December 2003 communicated the inside information to a number of persons via postings on



INSIDER TRADING

Hotcopper and Australian Securities Exchange (ASX), knowing or ought reasonably to have known that those persons would be likely to acquire KCG shares.

The defendant pleaded guilty to an offence of acquiring shares whilst in possession of inside information contrary to section 1043A(1) of the *Corporations Act* and an offence of communicating that inside information to others contrary to section 1043A(2) of the *Corporations Act*.

On 21 December 2007 the defendant was sentenced to a total effective sentence of 18 months imprisonment to be released forthwith upon entering a recognisance in the sum of \$500 to be of good behaviour for 2 years.

WALLACE CAMERON

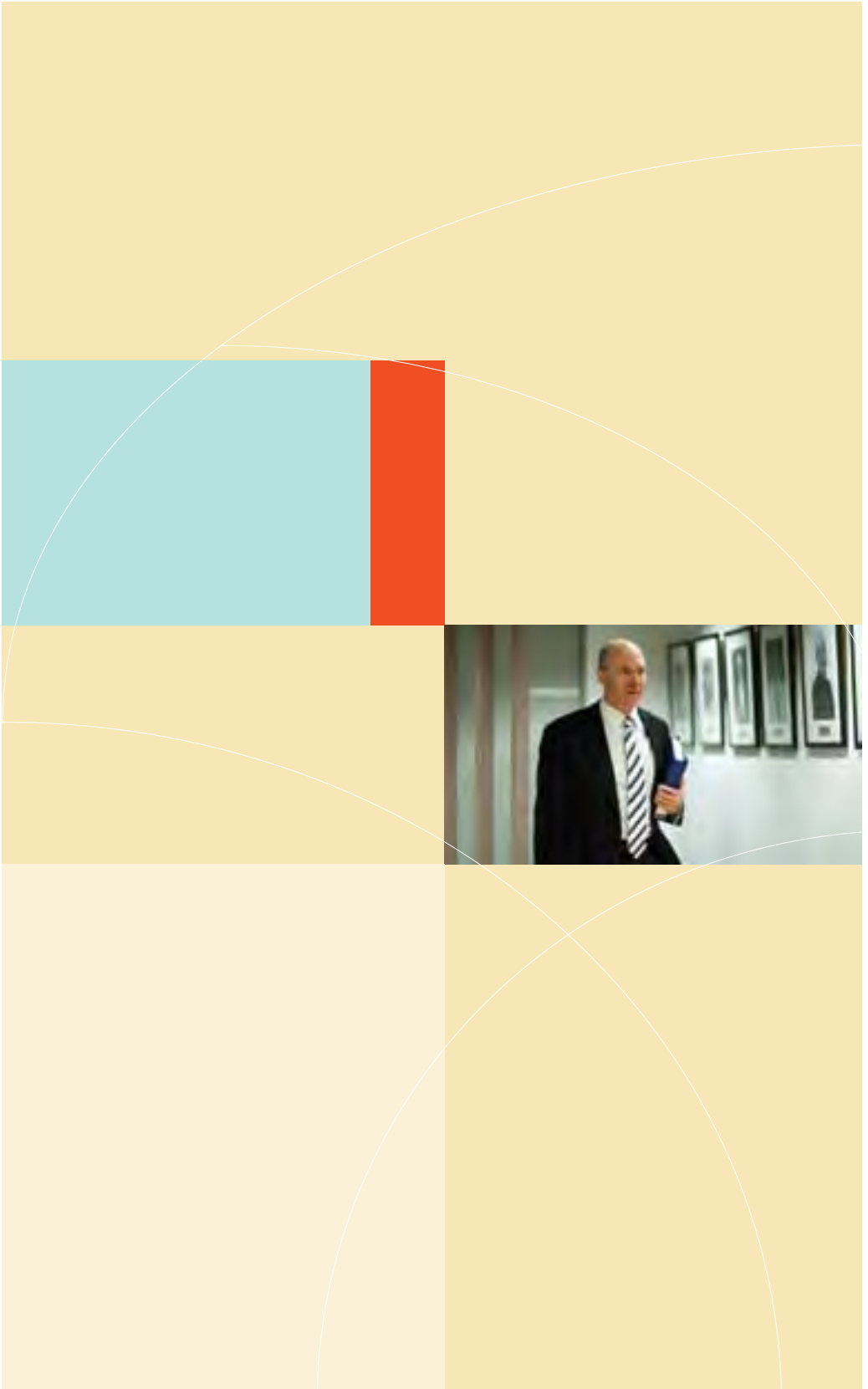
This case involved the prosecution of an officer of a listed company in respect of non-disclosure of a substantial share holding in that company.

The defendant was formerly the Chief Executive Officer and a director of the listed company, The Gribbles Group Ltd (“Gribbles”). He pleaded guilty in the Melbourne Magistrates’ Court on 6 June 2008 to six offences under the *Corporations Act* relating to dishonestly using his position as a director of Gribbles to gain an advantage for himself, making misleading statements in Gribbles’ annual directors’ reports, and failing to give information to Gribbles and the Australian Securities Exchange (ASX) relating to changes in his substantial holding in Gribbles shares. He also pleaded guilty to an offence contrary to the *Australian Securities and Investments Commission Act 2001* of hindering a person in their exercise of ASIC powers.

The defendant held a substantial interest in the issued shares of Gribbles that varied between 43.05% and 46.40% of total shares issued, which were valued at approximately \$122.5 million by the end of 2004. The shares were held in the name of a Belgian company called EC Medical Investments NV (ECMI). In relation to these shares, the defendant:

- ▶ dishonestly failed to inform Gribbles’ bankers of his interest in the Gribbles shares held in the name of ECMI when asked, with an intention to gain an advantage for himself by keeping secret the true nature of his interest;
- ▶ signed Gribbles’ annual Directors’ Reports for the years ending 30 June 2001, 30 June 2002, and 30 June 2003 that omitted to disclose his relevant interest in the Gribbles shares held in the name of ECMI;
- ▶ failed to give Gribbles and the ASX notices of changes in his substantial holding in the Gribbles shares that occurred in November 2001, February 2002, and December 2003; and
- ▶ obstructed or hindered ASIC during the course of an examination under oath by claiming an inability to recall certain facts relating to the Gribbles shares held in the name of ECMI when questioned.

On 6 June 2008 the defendant was convicted on all charges and fined a total of \$16,000 and ordered to pay \$4,000 in costs.



2.4 Counter-terrorism



An important part of the work of the CDPP is the prosecution of the terrorism offences in Part 5.3 of the *Criminal Code*. These provisions were first enacted by the *Security Legislation Amendment (Terrorism) Act 2002* in July 2002 and have been amended from time to time in response to issues which have arisen in the consideration of the operation of these provisions. The CDPP continues to provide assistance to the Attorney-General's Department on law reform proposals which may affect terrorism offences, or the way in which such offences are prosecuted.

The CDPP also assists in a number of inter-departmental committees by providing advice on issues of practice and procedure which arise in the context of terrorism prosecutions.

In February 2008 a review (the Street Review) was completed into interoperability between the Australian Federal Police (AFP) and its national security partners. This review was undertaken by former NSW Chief Justice, Sir Laurence Street, former Director of Defence Signals Directorate, Martin Brady and former NSW Police Commissioner, Ken Moroney. The Street Review included recommendations concerning the operational decision making process, joint task force arrangements, and training and education. All of the recommendations of the Street Review were accepted by the Commissioner for the AFP, the Director-General of Security and the Commonwealth Director of Public Prosecutions. A significant amount of work has been carried out in implementing the recommendations of that review.

Terrorism prosecutions are often factually complex and may involve large quantities of evidence. The CDPP experience has been that

terrorism prosecutions are often subject to numerous interlocutory appeals and challenges. To respond to these challenges, the CDPP has designated specialist counter-terrorism prosecutors in each regional office and has established Counter-Terrorism Branches in the Sydney and Melbourne Offices.

The AFP is responsible for the investigation of persons suspected to have committed Commonwealth terrorism offences. Following the provision of the AFP's briefs of evidence, the CDPP evaluates whether the *Prosecution Policy of the Commonwealth* is satisfied and when appropriate conducts any prosecution. The AFP and the CDPP maintain a positive relationship and the CDPP provides early legal advice to the AFP during their investigations.

As at 30 June 2008, 26 people were charged with Commonwealth terrorism offences in Australia, 21 were currently in custody, and five had been granted bail pending their trial. One matter was completed during the year and another matter was discontinued.

As at 30 June 2008, there were two large terrorism trials underway involving twelve and nine accused persons respectively. Two further trials are expected to commence shortly. Another person's convictions were quashed by the Victorian Court of Appeal and will be re-tried.

There are also another four people charged with non-terrorism offences which, because of the nature of the weapons or explosives concerned, were sufficiently serious for the cases to be allocated to counter-terrorism prosecutors. Three of those matters have been finalised, and one matter is expected to be finalised shortly.

JOHN HOWARD AMUNDSEN**EXPLOSIVES**

The considerable public concern surrounding this case contributed to the review and tightening up of procedures for identity checking prior to the purchase of explosives in Queensland. The defendant in this case was a secondary school teacher.

In early 2006 Queensland police received information that a person had purchased 50kg of powergel (a high strength, detonator sensitive emulsion explosive) and 10 electric detonators using false identification documents. On 9 May 2006 police executed a search warrant at the defendant's home and found two electronic devices apparently designed to enable explosives to be remotely triggered, and two plastic containers each containing about 5kg of the powergel and 22 five-inch nails. They also found the remainder of the powergel and the detonators and numerous colour-printed copies of \$50 notes and parts of \$50 notes.

Following further investigation, police were able to link the defendant to two emails that had been sent on 9 May 2006 from an internet cafe at a shopping centre to the Queensland Police Counter-Terrorism Co ordination Unit. The text of each email was the same but the second attached a photographic image that appeared to be a photograph of one of the electronic devices found at the suspect's home. The emails claimed to have been sent by "Zelcari Le Sahaenda", with an email address qldjihad@hotmail.com, and the author claimed to be "Operation Chief El Quaeda Australia." The claims in the emails included: *"High yield high population centre targets have been selected. As a new El Quaeda initiative we will be targeting suburban streets and homes at random all acorss (sic) South east Queensland."*

The defendant was refused bail by a Magistrate after his arrest. Before his committal hearing he applied to a judge of the Supreme Court for release on bail. He was not legally represented. In support of his bail application he tendered two documents as medical reports, one by a general practitioner and the other by a psychiatrist. Subsequent police enquiries revealed that although the medical practitioners were genuine, the reports were fabrications, and had been prepared by the defendant using a computer that had been provided to him by jail authorities to assist him in preparing his defence. He was charged with additional offences relating to the forgery and uttering of the "reports".

The defendant was charged with offences relating to his obtaining the explosives by fraud, possessing the explosives in his vehicle, possessing weapons (the two devices), using a telecommunications service to make a threat to kill, beginning to make counterfeit money, and other offences. He represented himself at the committal hearing, which involved 21 sitting days.

On 25 February 2008 the defendant pleaded guilty to all offences and was sentenced by the District Court of Queensland. He was sentenced to 6 years imprisonment with a non-parole period of 3 years in respect of the hoax email offence with other penalties to be served concurrently with that penalty.

IZHAR UL-HAQUE**TERRORIST
TRAINING**

This case was previously reported in the 2005–06 Annual Report at page 20.

The defendant travelled to Pakistan in December 2002. It was alleged that he formed an intention to fight in Kashmir, and between 12 January 2003 and 2 February 2003 he attended a training camp of terrorist group, Lashkar-e-Taiba, near Lahore, Pakistan.

The defendant returned to Australia on 2 March 2003 and was subjected to a search by Australian Customs Service Officers. He was arrested and charged on 15 April 2004. He was committed for trial in the Supreme Court of NSW.

A voir dire commenced on 18 October 2007, prior to a jury being empanelled. On 2 November 2007, in his judgment following the voir dire, His Honour Justice Adams excluded evidence of admissions made by the defendant to officers of the Australian Federal Police in records of interview. On 12 November 2007, the Director filed a *nolle prosequi* in the proceedings and the defendant was dismissed.

SHANE MALCOLM DELLA-VEDOVA**POSSESSION
OF WEAPONS**

This case involved the theft of rockets and rocket launchers by a serving Australian Regular Army officer, in a position of trust. The weapons were on-sold within the 'black market', leading to the release of the weapons into the community.

Prior to the defendant's arrest in 2007, he had been in the Australian Army for 27 years. In 2007 the defendant received an officer's commission and the rank of Captain. The defendant was an ammunitions technical officer and an ordnance specialist. He came into possession of the rocket launchers and rockets in 2001 as he was to arrange for their decommissioning and destruction. The defendant claimed he kept them accidentally as he overlooked his possession of them. In October 2003 the defendant provided the weapons to a person known as Harrington. He claims he received about \$5000, however Harrington claims the defendant was paid about \$60,000.

Only one of the ten rocket launchers and rockets has been recovered. An Australian Defence Force ordnance specialist examined the recovered launcher and rocket. The ordnance specialist stated that the recovered armed rocket launcher appeared capable of being fired and that the fact that a rocket launcher was due for decommissioning did not mean that it was inoperable.

The defendant was charged with one offence of possessing prohibited weapons, namely 10 rocket launchers containing rockets, contrary to section 7(1) of the *Weapons Prohibition Act 1998* (NSW) and one offence of stealing Commonwealth property, namely 10 rocket launchers containing rockets, the property of the Australian Defence Force contrary to section 131.1(1) of the *Criminal Code*.

The defendant pleaded guilty to both offences in the District Court of NSW on 28 November 2007. He was sentenced to 6 years imprisonment with a non-parole period of 4 years in relation to the Commonwealth offence, and 8 years imprisonment in relation to the State offence. The defendant will be eligible for parole on 4 April 2014.

Two other persons were charged, both in relation to receiving stolen Commonwealth property and individually in relation to possessing prohibited weapons and buying prohibited weapons. One has been acquitted following trial. The other has entered pleas of guilty and will be sentenced in September 2008.

OPERATION HAMMERLI

This operation relates to a multi-agency investigation into the activities of nine Sydney men. These men are before the Supreme Court of NSW in relation to the charge of conspiring to do an act in preparation or planning for a terrorist act, contrary to sections 11.5 and 101.6(1) of the *Criminal Code*. Pre-trial hearings have occupied the first half of 2008 and a jury is expected to be empanelled before the end of 2008.

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

The prosecution case alleges that each of the nine defendants entered into an agreement to plan for a terrorist act (or acts). It is alleged that in accordance with this agreement, the defendants sourced chemicals and materials that could be used either directly or indirectly in the preparation of an explosive device; possessed or attempted to purchase firearms and ammunition; and possessed in common large amounts of 'extremist' and instructional material.

Each defendant has been charged with one offence of conspiring to do an act in preparation or planning for a terrorist act contrary to sections 11.5(1) and 101.6(1) of the *Criminal Code*.

Pre-trial proceedings in the Supreme Court of NSW have so far taken over 6 months and the jury trial is also expected to be lengthy.

OPERATION PENDENNIS

ABDUL NACER BENBRIKA, AIMEN JOUD, SHANE KENT, FADL SAYADI, HANY TAHA, ABDULLAH MERHI, BASSAM RAAD, AHMED RAAD, SHOUE HAMMOUD, EZITT RAAD, MAJED RAAD, AMER HADDARA, IZZYDEEN ATIK

Ten men were arrested in Melbourne in November 2005 and charged with terrorism offences under Part 5.3 of the *Criminal Code*. A further three men were arrested in March 2006 and charged with similar and related offences. All 13 accused were alleged to be members of a local unnamed terrorist organization led by Benbrika. It was alleged that the organization was committed to preparing, planning, assisting in or fostering the doing of a terrorist act.

The prosecution alleged that the organization was committed to violent 'jihad' against those they perceived to be enemies of Islam. One of the objectives discussed by the members of the organisation was to engage in an act of terrorism in Australia, in an effort to influence the Australian government to withdraw its troops from Iraq and Afghanistan.

The prosecution case relied upon a large volume of electronically intercepted conversations recorded during the course of a lengthy police investigation.

On 5 July 2007 one of the 13 accused men, Atik, was arraigned and pleaded guilty before the Victorian Supreme Court to being a member of a terrorist organization contrary to section 102.3(1) of the *Criminal Code* and providing support or resources to a terrorist organization contrary to section 102.7 of the *Criminal Code*. Atik made a statement to police concerning his involvement in these offences and undertook

to assist the Crown in the prosecution of his co-accused. On 23 August 2007 Atik was sentenced to a total effective sentence of 5 ½ years imprisonment. The Court ordered that he serve a minimum of 4 years, 1 month and 14 days before being eligible for parole. The Court declared that but for his undertaking to cooperate with law enforcement agencies, he would have been sentenced to an aggregate of 7 ½ years imprisonment with a minimum non-parole period of 5 years 7 months and 15 days.

On 8 February 2008 a jury was empanelled and the prosecution of the remaining 12 accused commenced before the Victorian Supreme Court. Atik gave evidence in support of the Crown case at the trial. In the course of his evidence Atik said that he had discussed with Benbrika a plan to commit an act of terrorism at the AFL Grand Final, Crown Casino and or AFL pre-season competition grand final.

On 15 and 16 September 2008 the jury returned verdicts with respect to all but one of the 27 counts on the indictment. Benbrika, Joud, Sayadi, Merhi, Ahmed Raad, Ezzit Raad and Haddara were each found guilty of intentionally being a member of a terrorist organization. Joud, Ahmed Raad and Sayadi were also each found guilty of intentionally providing resources to the terrorist organization. Ahmed Raad, Joud, and Ezzit Raad were found guilty of attempting intentionally to make funds available to the terrorist organization. Joud and Benbrika were found guilty of possessing a thing connected with the preparation for a terrorist act. Benbrika was also convicted of intentionally directing the activities of the terrorist organisation. Bassam Raad, Taha, Hammoud and Majed Raad were acquitted of all charges. The jury was unable to reach a verdict with respect to the remaining defendant, Kent. The defendants were found guilty by the jury in September 2008 and are awaiting sentence.

JOSEPH TERENCE THOMAS

COUNTER-TERRORISM

This case was reported in the 2005–2006 Annual Report at pages 19–20.

On 4 January 2003 the defendant was apprehended attempting to leave Pakistan on a Qantas Airways ticket for Australia. At the time the defendant was apprehended by Pakistani officials it is alleged that he was in possession of an Australian passport which had been falsified together with USD\$3,500 cash which had allegedly been provided to him by the terrorist organisation Al Qaeda.

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

The defendant has been charged with receiving funds from a terrorist organisation and possession of an Australian passport which had been falsified. His trial is expected to proceed before the Victorian Supreme Court in September 2008.

ARURAN VINAYAGAMOORTHY, SIVARAJAH YATHAVAN, & ARUMUGAM RAJEEVAN

The three defendants are presently awaiting trial before the Victorian Supreme Court charged with various offences under Part 5.3 of the *Criminal Code* including being a member of a terrorist organisation, making funds available to a terrorist organisation and providing support or resources to a terrorist organisation. Offences of making an asset available to a prescribed entity under the *Charter of the United Nations Act 1945* have also been laid in this case.

Vinayagamoorthy and Yathavan were arrested by the Australian Federal Police on 1 May 2007 whilst Rajeevan was arrested on 10 July 2007. The prosecution alleges that the defendants were members of the Liberation Tigers of Tamil Elam (“the LTTE”). It is further alleged that the defendants represented the senior leadership of the Australian branch of the LTTE. It is alleged that the defendants carried out activities on behalf of the LTTE in Australia which included raising money and providing support or resources to the LTTE.

The LTTE is not a prescribed terrorist organisation under the *Criminal Code* and the prosecution will need to establish to the satisfaction of the jury that the LTTE is an organisation that is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act. The trial is likely to commence before a jury in the Victorian Supreme Court in the first half of 2009.

DR MOHAMED HANEEF

Dr Haneef was charged on 14 July 2007 that “on or about the 25th of July 2006 in the United Kingdom, he intentionally provided resources, namely a subscriber information module (SIM) card to a terrorist organisation consisting of a group of persons including Sabeel Ahmed and Kafeel Ahmed, being reckless as to whether the organisation was a terrorist organisation”, contrary to section 102.7(2) of the *Criminal Code*.

On Friday 27 July 2007, the Director of Public Prosecutions discontinued the prosecution of Dr Mohamed Haneef for the alleged. This decision was made after the case was assessed in accordance with the *Prosecution Policy of the Commonwealth*.

On 27 July 2007 the former Director, Damian Bugg QC, in explaining his decision to discontinue the prosecution against Dr Haneef, said:

“I appreciate the importance of this decision and want to set out what has occurred.

Let me say at the outset that there is an ongoing investigation against the backdrop of extremely serious and dangerous conduct of potentially great harm to the public in the United Kingdom. Much of the information is located overseas and is the subject of ongoing investigations in other jurisdictions. The position and information is constantly developing and critical decisions have to be made in circumstances of incomplete and changing information.

The decision to charge will, in some circumstances, have to be made during the process and against the background of an ongoing investigation.

In this situation, once a person has been charged a prosecution commences. The Prosecution Policy of the Commonwealth, requires that for that prosecution to continue there must be a reasonable prospect of conviction on all the admissible evidence which is available.

If, at any stage in the conduct of a matter, there is concern about whether the prosecution test will be satisfied then the Office will review a matter regardless of where it is at in the court process.

The AFP made a decision to charge Dr Haneef with one count under section 102.7(2) of the Criminal Code in relation to providing a SIM card to a terrorist organisation in July 2006 being reckless as to whether the organisation was a terrorist organisation.

This decision was made following advice provided to the AFP by one of my officers that on the basis of the information available at that stage and what was said to be likely to be available and other potential sources of information, the police could have reasonable grounds for believing that Dr Haneef had committed that offence.

Following the Magistrate's decision to grant bail I requested the appropriate material to enable me to consider the bail decision. Having considered that material I decided to undertake a wider review of this matter and requested further material in relation to the case. The process of supplying this further material has taken time in order to put together as comprehensive a picture as is possible. The AFP is undertaking overseas inquiries and the pursuit of fresh inquiries within Australia. I have now received an updated report on this matter from the AFP based on the information available at this time. I have also considered what evidence may become available. I have assessed this case against the evidentiary criteria in the Prosecution Policy, acknowledging that it has necessarily required a judgment to be made during a continuing investigation.

In order to prove an offence under section 102.7(2) the prosecution must prove beyond reasonable doubt that:

- a) the defendant intentionally provided resources to an organisation,*
- b) the resources would help the organisation engage in preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs) and the defendant was reckless as to that*
- c) the organisation is a terrorist organisation*
- d) the defendant is reckless as to whether the organisation is a terrorist organisation.*

The definition of a terrorist organisation for these purposes is an organisation that is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs). Recklessness in relation to circumstances under the Criminal Code means a person is aware of a substantial risk that the circumstances exist or will exist and having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

For a prosecution to succeed all of these elements have to be proved beyond reasonable doubt. While there are circumstances in which the provision of a SIM card to a terrorist organisation will amount to an offence against s 102.7(2), I am not convinced that the evidence establishes a reasonable prospect of conviction against Dr Haneef under s102.7(2) relating to the provision of a SIM card in 2006. In my view there is insufficient evidence to establish the elements of the offence as set out above to the requisite standard. While there are inferences that are available from the material I have, I am of the view they are not sufficiently strong to exclude reasonable hypotheses consistent with innocence. In the circumstances of this case I do not believe that evidence to prove the case to the requisite standard will be obtained.

There is information which would lead to a reasonable expectation that it could be established that the SIM card was used in connection with the events in the UK in 2007.

However the SIM card was provided in July 2006 and there are no reasonable prospects of proving all of the elements of the offence at that time.

I will emphasise, because there has been speculation on this subject, that at no stage of either the charging process or my consideration of this matter have I been subject to any contact, request, submission or attempt to influence my decision from Government, any politician or political office. My office is independent from the political process and in my 21 years as a DPP I can say that successive Attorneys-General have respected that independence, none more so than the current Federal Attorney-General.

I also acknowledge that one of my officers put two errors of fact before the court. The first related to the SIM card and was based on a misunderstanding of the facts. The second related to the residence of Dr Haneef in the UK and was based on incorrect material provided by the AFP. The prosecution is of course under a duty to inform the court promptly of any errors that are made in submissions to the court. The hearing in which these errors were made was determined in Dr Haneef's favour and when the errors were recognised it was decided to correct them when the matter was next before the court.

My Office strives to ensure it does its work to the highest possible standard. We review our performance and apply the lessons learned and we will do so in this case.

The CDPP has a separate function from the AFP. We do not investigate. While we work closely with the AFP as with any investigative agency a clear separation of these roles should be maintained, and I have initiated, with Commissioner Keelty a review of the current arrangements."

On 13 March 2008 the Attorney-General, the Hon. Robert McClelland MP announced the appointment of the Hon. John Clarke QC to conduct an inquiry into the case of Dr Mohamed Haneef. At a preliminary hearing of the Clarke Inquiry held on 30 April 2008 the CDPP formally offered its commitment to cooperate fully with the Inquiry and to assist the Inquiry in any way that it can.

On 21 May 2008 the CDPP provided the Inquiry with a comprehensive submission addressing the involvement of the Office in the prosecution of Dr Haneef and addressing the Inquiry's Terms of Reference. Documents relating to the prosecution of Dr Haneef were also provided to the Inquiry.



2.5 Money laundering



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

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

Money laundering prosecutions are typically complex prosecutions, involving complicated factual circumstances and often including conduct overseas, which requires overseas cooperation and evidence to assist the investigation and prosecution. The prosecution of these offences often requires detailed financial analysis and evidence.

The CDPP has continued to deal with an increasing number of prosecutions of money laundering matters since the enactment of the money laundering offences in the Code. This year there has been further judicial consideration and interpretation of these offences. There has also been further superior court consideration of the appropriate sentences for such offences. The case studies below provide examples of this judicial consideration.

BIN HUANG & SEE HON (PAUL) SIU

The defendants were each recruited and directed by Zhen Chi (Peter) Chen to conduct cash transactions at various branches of banks in the Sydney metropolitan district involving numerous deposits of cash, each less than \$10,000 with the intention of circumventing the reporting requirement under the *Financial Transactions Reports Act 1988* and thereby avoiding the attention of law enforcement agencies.

Huang made structured deposits of cash totalling \$3,088,311 often using false names and addresses at over 60 bank branches during an 11 month period. Siu, also using false names and addresses, structured cash deposits totalling \$556,400 at over 40 bank branches during a 3 month period.

Huang pleaded guilty to an offence of dealing in proceeds of crime worth \$1 million or more pursuant to section 400.3(1) of the *Criminal Code* and Siu pleaded guilty to an offence of dealing in proceeds of crime worth \$100,000 or more pursuant to section 400.4(1) of the *Criminal Code*.

On 9 March 2007 Huang was sentenced to imprisonment for 3 years with an order that he be released after serving 1 year and 9 months. Siu was sentenced to imprisonment for 2 years and 11 months with an order that he be released after serving 12 months.

MONEY LAUNDERING

The Crown viewed the sentences imposed by the District Court of New South Wales to be manifestly inadequate and lodged separate appeals to the Court of Criminal Appeal against the sentences.

The appeals were jointly heard by the Court of Criminal Appeal on 28 March 2007. On 4 September 2007 the Court of Criminal Appeal allowed the Crown appeals and quashed the sentences imposed by the court below. Huang was resentenced to 5 ½ years imprisonment with a non-parole period of 3 years and 4 months. Siu was resentenced to imprisonment for 5 years with a non-parole period of 2 ½ years.

OPERATION SHIKRA

Operation Shikra was one of the first large scale operations by the AFP since Australia strengthened its money laundering provisions. A sophisticated money laundering syndicate was involved and significant sentences were imposed.

MONEY LAUNDERING

JOSE CORNEJO-ACOSTA, JULIAN GALLEGO-LAVALLE, CARLOS GARCIA CERVANTES, CESAR ANIBAL MALDONADO, MARIA MALDONADO, DANIEL LEONARDUS WETERINGS

On 23 December 2005, 1,168kg of *Lucuma* powder, in 45 bags, was imported into Australia from Peru via air freight. At an unknown time in early 2006 the shipment was delivered. The *Lucuma* powder was treated with chemicals and petrol, to extract approximately 34kg of cocaine which had been secreted within the *Lucuma* powder. The cocaine was extracted and pressed in a house which Weterings had rented to the syndicate for that purpose. Quantities were stored by Cervantes and trafficked/sold by Cervantes and Cesar Maldonado to a network of dealers who were in regular contact with Cesar Maldonado.

The purity of the cocaine ranged from 56.8% to 73.4% and based on AFP information the street value of the cocaine would have been between about \$16,338,813.90 and about \$22,874,341.50, and the wholesale value would have been between about \$6,061,554 to about \$9,622,272.

From about early 2006, Maria Maldonado, Gallego-Lavalle and Cornejo-Acosta remitted cash, being the proceeds from the sale of cocaine, to Peru, with a small amount remitted to Colombia. Between 2 February 2006 and 5 May 2006 \$740,034.12 of cash proceeds were remitted overseas. On 4 May 2006 Cornejo-Acosta remitted \$7,995.70 overseas. Between 10 May 2006 and 31 May 2006 \$249,851 was remitted to Peru via International Telegraphic Transfers. Between 1 June 2006 and 4 June 2006 Gallego-Lavalle, with a number of international students, transferred a total of \$131,088.22 to Peru. Between 3 June 2006 and 7 June 2006 Maria Maldonado made two cash remittances totalling \$2,750.06.

The total amount of cash remittances overseas was \$1,110,261.85.

Cornejo-Acosta pleaded guilty to one offence of possessing proceeds of crime to the value of \$334,943 and remitting it overseas. On 19 September 2007 he was sentenced to 4 years and 3 months imprisonment with a non-parole period of 2 years and 7 months to expire on 11 January 2009.

Gallego-Lavalle was found guilty by a jury of 3 money laundering offences involving a total of \$489,277.02. On 22 November 2007 he was sentenced to 8 years and 8 months imprisonment with an effective non-parole period of 5 years and 3 months. He will be eligible for parole on 11 September 2011.

Garcia Cervantes pleaded guilty to one offence of possessing a commercial quantity (5,607g pure) of a border controlled drug (cocaine). On 18 June 2007 he was sentenced to 9 years imprisonment with a non-parole period of 6 years. He will be eligible for parole on 11 June 2010.

Cesar Maldonado was convicted of two serious drug offences and two money laundering offences involving a total of \$750,000 with an additional two offences being taken into account on a section 16BA schedule. On 18 April 2008 he was sentenced to an effective head sentence of 36 years imprisonment with a non-parole period of 22 years. He will be eligible for parole on 11 June 2028.

Maria Maldonado was convicted of three money laundering offences involving a total of \$480,211.23. On 21 September 2007 she was sentenced to an effective head sentence of 6 ½ years with a non-parole period of 4 years. She will be eligible for parole on 30 June 2011.

Weterings was convicted of one offence of aiding and abetting the manufacture of approximately 30 kilograms of cocaine for a commercial purpose. On 18 May 2007 he was sentenced to 7 ½ years imprisonment with a non-parole period of 4 ½ years. He will be eligible for parole on 11 December 2010.

PETER CLARENCE FOSTER

This matter involved fraud on an overseas bank with money being laundered to Australia. It involved assistance from the Republic of Fiji and the Federated States of Micronesia.

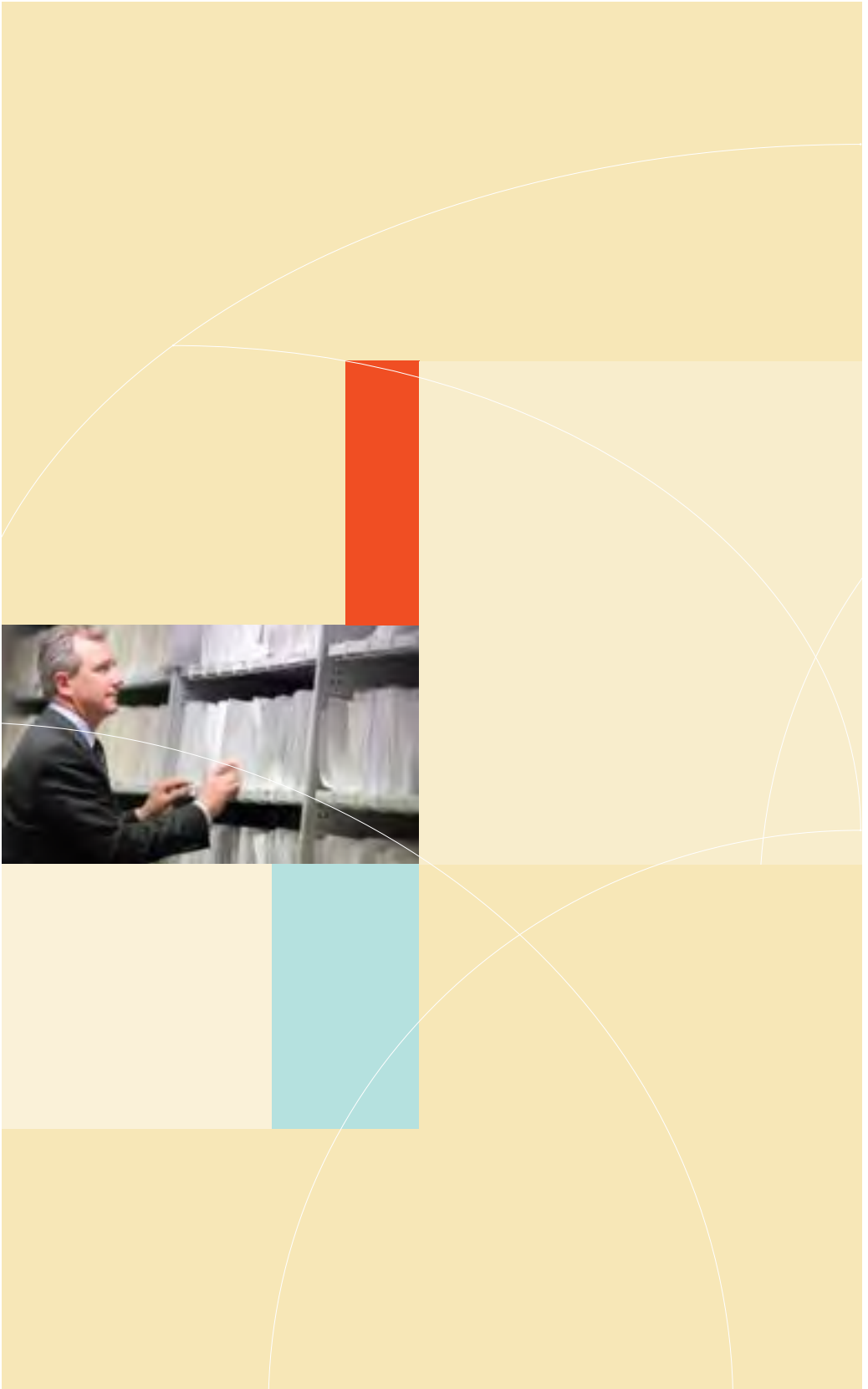
In 2006 the defendant, acting on behalf of a company called Kai Viti Liku Beach Ltd (“KVLB”), obtained a loan of USD\$580,000 from the Bank of the Federated States of Micronesia. The loan was by way of a line of credit and was secured by a mortgage over a leasehold property owned by KVLB in Fiji. The purpose of the loan was to develop the leasehold property as a resort.

It was agreed as a condition of the loan that before the funds could be drawn down KVLB was required to supply written instructions with documentation from the third party payees. On nine occasions between 4 August 2006 and 13 October 2006 the defendant sent email requests to the bank to pay three third party entities, reportedly doing work on behalf of KVLB in development of the resort.

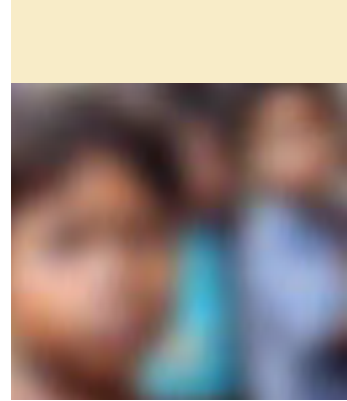
No work was performed by these entities for the resort. The bank acted on the applicant’s misrepresentations and forwarded funds, at the defendant’s direction, to accounts in Australia. Eight of the nine payments forwarded to Australian accounts were used for expenses not associated with the resort development and the ninth payment was returned to the bank after steps were taken to recover it.

The defendant pleaded guilty to an offence of money laundering a total amount of \$306,772.58 which related to the fraud committed by the defendant on an overseas bank which was then transferred the proceeds of foreign indictable offences to Australia. On 7 December 2007 the defendant was sentenced to 4 ½ years imprisonment with a non-parole period of 2 years and 3 months. The defendant’s appeal to the Queensland Court of Appeal against the severity of the sentence was dismissed.

MONEY LAUNDERING



2.6 People trafficking & child sex tourism



People trafficking prosecutions encompass slavery, sexual servitude and deceptive recruitment prosecutions under Division 270 of the *Criminal Code* and trafficking in persons and debt bondage prosecutions under Division 271 of the *Criminal Code*. Offences relating to child sex tourism are in Part IIIA of the *Crimes Act*.

As at 30 June 2008, the CDPP was prosecuting 11 defendants for people trafficking matters. Five defendants had their matters under appeal. Two defendants were awaiting sentence following conviction.

Most of the cases prosecuted have involved women trafficked from Thailand or South Korea

to work in the sex industry. In 2007 the CDPP prosecuted its first labour trafficking case.

The CDPP engages internationally on people trafficking issues. The CDPP was part of the Australian delegation to the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) Vienna forum and played the role of observer for awareness training provided to Malaysian prosecutors and judges by the Asian Regional Trafficking in Persons (ARTIP) Project.

An important dimension of prosecuting in these areas is assisting victims to participate in the criminal justice system. The international character of these matters can present challenges in marshalling the necessary evidence and presenting it in court.

WEI TANG

This matter was reported in last year's Annual Report at pages 45 and 46.

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

The defendant was charged with 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 women who had worked at a brothel in metropolitan Melbourne owned by the defendant.

While in Thailand each complainant entered into an agreement to come to Australia to work in the sex industry. The 'contract' required them to incur a debt of between \$35,000 and \$45,000 which they would pay off by servicing clients of the brothel. Upon their arrival in Australia, the complainants' passports were confiscated and kept at the brothel. According to the complainants, they were required to work at the brothel 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 the \$50 per client that would otherwise be used to reduce their debt for that day.

SEXUAL SLAVERY

The complainants had restrictions placed on their freedom of movement whilst they were repaying their debts.

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

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

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

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

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

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

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

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

YOGALINGAM RASALINGAM

This case represents the first labour exploitation matter prosecuted in Australia. It involved a visa which was issued to the victim on the basis of forms lodged to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) (as it was then) containing false information.

The defendant was an Australian citizen who owned and operated four Indian restaurants in the Blue Mountains. The victim was introduced to the defendant in India. It was alleged that during this meeting the defendant offered the victim employment in his restaurants in Australia. The employment arrangement involved the victim working 365 days a year, without payment for the first year, but during this time the defendant would provide money to the victim's family each time he returned to India.

**LABOUR
EXPLOITATION**

The defendant directed the victim to a particular travel agent in India who made all the travel arrangements including obtaining a visa. It was alleged that the victim did not sign an application for a visa nor any other documentation in relation to his intended travel. He was, however, asked by the travel agent to sign his name seven times on a blank piece of paper. This piece of paper was found later during a search warrant executed at one of the defendant's restaurants in the Blue Mountains, with 3 signatures on it and part of the page cut out, along with documents relating to a falsified visa application and work contract. DIMIA found that a visa application and work contract had been submitted to them on behalf of the victim.

The victim arrived in Australia on 1 June 2006 and the defendant took possession of his passport, ticket and other documents. The victim was required to work long hours at the restaurants owned by the defendant and was not allowed any days off. He did not receive any payment for his work and there was no evidence to suggest any payments were made to his family in India.

On 13 July 2006 the AFP executed a search warrant at one of the defendant's restaurants and subsequently located the victim. He had been working for the defendant for approximately one month.

The defendant was charged with one offence of organising or facilitating the entry or receipt of a person into Australia being reckless as to whether that person would be exploited after entry into Australia contrary to section 271.2(1B) of the *Criminal Code* and one offence of submitting to DIMIA a document with the intention of dishonestly influencing a Commonwealth public official in the exercise of the official's duties as public official contrary to section 135.1(7) of the *Criminal Code*.

There were issues at trial in relation to whether the circumstances involved exploitation as defined by the Code. The Code definitions of 'exploitation', 'forced labour' and 'threat' meant that to prove the offence the Crown had to satisfy the jury that because of an implied threat made by the defendant, the victim was not free to leave the place where he was providing his labour. The threat relied upon by the Crown was an implied threat that the complainant would be sent back to India if he did not conform to the working conditions.

Following a trial in the District Court of NSW, the defendant was found guilty of dishonestly influencing a Commonwealth public official. The jury found the defendant not guilty of the people trafficking offence.

The defendant was sentenced to 4 months imprisonment to be released forthwith upon entering a recognisance in the sum of \$5,000 to be of good behaviour for 12 months.

CHILD SEX
TOURISM**FREDERICK ARTHUR MARTENS**

The defendant was an Australian pilot who flew planes carrying passengers and cargo to and from Bensbach Wildlife Lodge in the Western Province 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 of his 14 year old daughter in Australia. The defendant flew the girl to Port Moresby where he took her to a club and then back to his house in Port Moresby where he had sexual intercourse with her on a date between 10 September and 16 September 2001. The girl was a virgin at the time.

After the incident the defendant took the girl to her father who was staying in Port Moresby and returned to see whether the girl would fly with him back to the Western Province, but she refused. The defendant later returned to the Western Province where he again contacted the girl and asked if she would come to Australia with him, but she refused and he retained her passport.

The matter was referred to the AFP by the PNG police. The defendant pleaded not guilty and required full evidence from all witnesses, including a number of witnesses from PNG, at both the committal and the Supreme Court trial. He denied having sexual intercourse with the girl.

A jury found the defendant guilty of engaging in sexual intercourse with a person who was under 16 years old, while outside Australia contrary to section 50BA of the *Crimes Act*.

On 30 October 2006 the defendant was sentenced to 5 ½ years imprisonment with a non-parole period of 3 years.

The defendant appealed against both his conviction and his sentence. On 20 April 2007 the Queensland Court of Appeal dismissed the appeal against conviction and refused leave to appeal against sentence.

MELITA KOVACS AND ZOLTAN KOVACS

SLAVERY

The defendants formed a plan to travel to the Philippines and organise for a woman from the Philippines to be married to an Australian citizen of Hungarian background. The woman was then to apply for a visa and come to Australia where she would be made to work for the defendants in both their takeaway shop at Weipa and in their residence as a child minder and housekeeper until the debts were repaid for the travel to Australia. There was a suggestion that this would take 5 years. The marriage was a sham and evidence was called at the trial from the woman and the person she married who had already pleaded guilty to breaches of the *Migration Act 1958* arising from the sham marriage.

When the victim arrived in Australia she was met by Zoltan Kovacs and taken to a hotel where she was raped. She was then driven to Weipa where she was put to work in the shop working 12-hour days for 5 ½ days per week. When she would return to the residence of the defendants (where she lived) she was required to care for three small children and do household duties. She often worked until 11pm at night. She was treated poorly by the defendants and was the subject of their continual complaints about the way she completed her duties. Zoltan Kovacs regularly sexually abused her when he drove her to the takeaway shop early in the morning. He also raped her at the residence when his wife was not present. After raping her he would sometimes throw

\$20–30 at her. She was paid little for her duties and there was some evidence that a small amount of money had been sent to her family on her behalf. She tried to escape on one occasion and ran away to the residence of a person that she worked with, but Melita Kovacs took her home, taking her passport from her. The victim spoke very little English and was isolated culturally. Eventually when both of the defendants were away, she spoke to the daughter of Zoltan Kovacs from a former marriage who loaned her some money that allowed her to escape from Weipa to Cairns.

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

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

On 21 December 2007 the defendants filed appeals against conviction and sentence in the Court of Appeal.

The appeal was listed for hearing in Townsville on 29 May 2008, however, the appeal was subsequently de-listed pending the decision of the High Court in the matter of *R v Wei Tang*. The Court of Appeal did, however, hear an application for appeal bail by Melita Kovacs. The application was successful on the basis that the legislation was new and it could not be foreseen how the High Court would interpret it and also, that she may have served a substantial part of her sentence by the time the appeal was dealt with. The appeal has subsequently been re-listed for 29 October 2008.

Zoltan Kovacs was also convicted of raping the victim twice, which were State prosecutions and was sentenced to 8 years imprisonment on 2 October 2006. The defendant appealed against his State convictions and they were overturned by the Court of Appeal on 27 April 2007. A re-trial was ordered.

Zoltan Kovacs was also convicted of indecent assault and also rape on two occasions in relation to another complainant and on 23 February 2007 was sentenced to seven years imprisonment with a parole eligibility date of 3 October 2012. His appeal on those convictions was dismissed.

TREVOR MCIVOR AND KANOKPORN TANUCHIT

This case resulted in the first convictions for slavery in New South Wales.

The defendant, McIvor, owned and co-managed with his wife, Tanuchit, a brothel known as 'Marilyn's' in Fairfield, NSW. All five victims were recruited in Thailand to work in Australia between July 2004 and June 2006. Four of the five victims knew that they would be providing sexual services and one of the victims was given the false impression that she was coming to work as a masseuse.

When the victims arrived at Marilyn's, the defendants enforced an artificial 'debt contract' to repay an amount between \$35,000 and \$45,000 by servicing clients at the brothel. The evidence at trial revealed that the defendants forced all victims to work seven days a week, on average for 16 hours a day. Normally for each sexual service performed, the worker would be paid a portion of the full amount and the remainder went to the 'house'. However, for the victims, they were paid cash on only one day of the week and the amount earned on the remainder of the week went to clearing their 'debt'.

During the victims' period of slavery the defendants forced the victims to work and sleep in locked premises. The victims were not allowed to leave the brothel without being in the company of the defendants or a trusted associate. The defendants confiscated the victims' passports on their arrival and for a period of one to two months restricted their access to telephones by confiscating their mobile telephones and locking brothel telephones with a PIN code. The defendants forced the victims to work during their menstruation and during severe illnesses and vaginal infections.

These offences were discovered by the AFP when one of the victims, (the victim who thought she was to work as a masseuse), covertly obtained the telephone number of the Thai Consul General and requested assistance.

Following a jury trial the defendants were each convicted of 5 counts of possessing a slave contrary to section 270.3(1)(a) of the *Criminal Code* and 5 counts of exercising over a slave powers attaching to the right of ownership, namely the power to use, contrary to section 270.3(1)(a) of the *Criminal Code*.

The defendants were sentenced on 29 August 2008. McIvor was sentenced to a total effective sentence of 12 years imprisonment with a non-parole period of 7 ½ years. He will be eligible for parole on 2 May 2015. Tanuchit was sentenced to a total effective sentence of 11 years imprisonment with a non-parole period of 7 years. She will be eligible for parole on 5 November 2014.



2.7 Technology enabled crime



Technology enabled crime, or ‘cybercrime’, is a rapidly expanding area of practice for the CDPP. The increase in the availability and sophistication of online technology has led to an increase in crime perpetrated over the internet or through the use of emerging technology. This increase is reflected in the number and complexity of matters referred to the CDPP that have both commercial and public safety implications, such as the infringement of intellectual property, online banking fraud, online child sexual exploitation, online child sex procurement and grooming, and hacking and spamming offences.

Prosecuting in these areas presents challenges given the often complex technical and evidentiary issues involved. As these are new areas, there may be little in the way of decided authority to assist prosecutors or the courts.

The CDPP works closely with the Australian Federal Police, in particular High Tech Crime Operations; other law enforcement agencies and a range of Commonwealth Government agencies on the challenging jurisdictional, technical and evidentiary issues that are part of this expanding area of practice.

DARREN TECTOR

On 15 July 2006 a 13 year old boy was at an internet café in Kogarah, NSW. The defendant sat down at a nearby computer and passed him a note requesting to be included on his MSN chat group. The boy complied with this request and shortly after the defendant began conversing with him via the chat facility. During the following hours the defendant asked the victim via online chat, “If I gave you \$10 would you touch me ...”. During these conversations the defendant referred to himself as “Dan”. The victim declined this request and returned home and informed his mother of the incident.

The following day the victim’s mother found emails from the defendant in her son’s e-mail account. The victim’s mother assumed his online identity and commenced online conversations with the defendant for a number of days.

On 30 July 2006 and 5 August 2006 the victim received phone calls from the defendant on his mobile. The defendant said, “Are you still interested in me playing with your ...” on the first occasion and “Do you want me to tell you how I will touch you?” on the second occasion. Call records show that the defendant used public phone booths to make these calls.

On 19 August 2006 investigators assumed the online identity of the victim and engaged the defendant in online chat. The defendant expressed a desire to meet with the victim, but was reluctant unless the victim confirmed his identity via telephone. Inquiries were made with the Internet Service Providers from which the original email contacts had been sent by the offender. Those enquiries identified 3 internet cafes as being used by the offender to publish the emails.

**ON-LINE
CHILD SEX
PROCUREMENT**

On 25 August 2006 the defendant was arrested. He had previous convictions for offences of a serious nature against young children.

The defendant was charged with three counts of using a carriage service to transmit a communication to someone under the age of 16 with the intention of procuring the recipient to engage in sexual activity contrary to subsection 474.26(1) of the *Criminal Code* and was sentenced to 11 years imprisonment with a non-parole period of 7 years.

The defendant appealed to the NSW Court of Criminal Appeal on two grounds, namely that the sentencing Judge erred by not taking into account the type of sexual activity intended to be procured, and that the sentence was manifestly excessive.

The Court of Criminal Appeal stated that the type of sexual activity proposed is only one factor amongst others to be taken into account in assessing the objective seriousness of the offending. The Court also stated that a communication with a child may strategically suggest a lower level of sexual activity in order to enhance the prospects of initially establishing a relationship with the child and that therefore it may be open to a sentencing judge to not accept the terms of a communication as a true reflection of the level of sexual activity the offender had in mind.

The court identified the factors which, in addition to the nature of the sexual activity proposed, were relevant to the determination of the sentence in that case. This included a monetary offer being made by way of inducement, persistence in pursuing the victim, the degree of the age difference between the victim and offender, the degree to which the victim was below 16 years of age and steps taken by the offender to preserve his anonymity.

The court found that the sentence imposed in the District Court was outside the appropriate range for a case of its kind and quashed the original sentence. The defendant was re-sentenced to 8 years imprisonment with a non-parole period of 5 years.

NEENA MCNAIR-SWIRSKI

Bogus overseas companies advertised on the internet seeking out persons to be 'employees'. The employee's function was to provide legitimate bank account details for the company to transfer unauthorised funds into. The overseas company would hack into other people's accounts and conduct unauthorised electronic banking transactions to transfer funds from the victim's bank account in Australia into the bank account of the company's employee. Later, the employee would withdraw these funds (less a commission for the employee) and send the funds to the overseas company. This scheme required a local bank account of an employee or 'mule' for the fraudulent activity to take place.

The defendant applied online to become an employee with an overseas company and provided her bank account details. The overseas company emailed the defendant when they had transferred funds into her account. The defendant then withdrew the funds, less a commission for herself, and sent them to an overseas address.

Between 21 December 2005 and 15 March 2006 the defendant's bank accounts were used to transfer unauthorised funds, namely \$56,774.28. The defendant withdrew \$43,953.69 from her accounts.

The defendant was convicted of one offence of dealing with proceeds of crime over \$10,000 contrary to section 400.6 of the *Criminal Code* and one offence of using

ON-LINE BANKING FRAUD

a telecommunications network with intent to commit a serious offence contrary to section 474.14 of the *Criminal Code*.

On 12 February 2008 the defendant was sentenced to 2 years imprisonment to be released after serving 8 months upon entering into a recognisance in the sum of \$30,000, on condition that she be of good behaviour for a period of 4 years. The defendant was also ordered to pay reparation in the sum of \$37,026.83.

QUINTON FREDERICK NICOL

The defendant in this matter was found to be part of an international network of paedophiles who were actively involved in the trading of exploitative material. The defendant was the subject of prosecution by State authorities for offences ranging from rape and incest to the making and selling of objectionable computer games. In addition, he was the subject of prosecution for Commonwealth offences by the CDPP. At the time these offences were discovered, the Queensland Police advised that it was the most extreme written child exploitation material ever recovered by Task Force Argos.

The Commonwealth offences in this matter related to the distribution over the internet of child sexual exploitation between 31 March 2005 and 3 May 2006. In all, the defendant forwarded 90 e-mails containing child pornography and/or child abuse material during that period. The defendant was found to have accessed child abuse material, namely a book called 'The Book of Disgusting Perversions', in his e-mail account on 29 June 2005. The defendant disseminated a video of himself and his step-daughter depicting various sexual acts on 33 occasions. The conduct portrayed in the video was the rape and incest of a child who was five years old at the time of the offences. The video files had been sent to countries such as the United States, Germany and France.

Investigations revealed an element of sophistication in the defendant's offending in that attempts were made to disguise any identifying marks or features as to where the events took place. This had the effect of masking the defendant's involvement and made detection more difficult.

The defendant was effectively sentenced to 15 years imprisonment. The term of 4 years imprisonment ordered in relation to the Commonwealth offences was ordered to be served concurrently with the sentence imposed for the State offences.

The defendant lodged an appeal against the severity of the sentence, and the appeal was heard in the Queensland Court of Appeal on 17 June 2008. Judgment has been reserved.

ON-LINE
CHILD SEXUAL
EXPLOITATION

KENNETH ROY LANG

This case involved the transmission of child sexual exploitation material by way of text messages.

On 15 November 2006 the defendant travelled to Thailand. On 5 December 2006 the defendant and another person, Lawson, commenced communicating via Short Message Service (SMS) from their mobile phones. Between 6 December 2006 and 13 December 2006 the defendant sent 27 SMS text messages to Lawson, five of which contained child pornography and two of which contained child abuse material. These 7 messages contained graphic descriptions of the defendant engaging in sexual

SMS CHILD
SEXUAL
EXPLOITATION

intercourse with numerous Thai children between the ages of 12 and 15 years.

On 17 July 2007 the defendant was arrested whilst attempting to leave Australia to travel to Thailand and agreed to participate in a taped record of interview. The defendant admitted to sending the messages from his mobile phone from Thailand in December 2006. He stated the messages were pure fantasy and phone sex.

The defendant was charged with five counts of using a carriage service (mobile phone SMS) to transmit child pornography pursuant section 474.19(1)(iii) of the *Criminal Code* and two counts of using a carriage service (mobile phone SMS) to transmit child abuse material pursuant to section 474.22(1)(iii) of the *Criminal Code*.

The defendant was convicted and sentenced on 9 July 2008 to 12 months imprisonment to be released after serving 129 days upon entering into a recognizance in the sum of \$200 on condition that he be of good behaviour for 3 years. The Court made a declaration that 129 days pre-sentence custody be time served under the sentence.

A DEFENDANT

At the time of offending, the defendant in this case was a serving NSW Police Officer.

On 2 August 2007 (US Eastern Standard Time), the defendant had an email conversation with an undercover police officer in the United States of America. During the conversation, the defendant advised the undercover officer that he was interested in having sex with pre-pubescent children and that he was interested in watching the undercover officer have sex with a pre-pubescent child over the internet. During the same conversation, the defendant transmitted a video and seven still images which constituted child pornography under the *Criminal Code*.

Subsequent investigation of the defendant's internet usage revealed that on 6 August 2007 he had visited an internet site containing child sexual exploitation material hosted on a computer in Japan. Analysis of this site revealed that he had transmitted and posted seven images of child pornography to this site.

On 11 August 2007, the Australian Federal Police executed a search warrant at the defendant's residence. During the search of the premises, the AFP located and seized the computer used by the defendant to access and transmit the above images of child pornography. They also located 61 compact discs concealed in the defendant's bedroom. Forensic analysis of the computer hard drive and the compact discs revealed the existence of 204 videos and 4,908 still images which all constituted child pornography under the *Criminal Code*.

The defendant was convicted of two offences against sections 474.19(1)(a)(iii) and 474.19(1)(a)(i) of the *Criminal Code* for using a carriage service to transmit and access child pornography, and one offence against the *Crimes Act 1900* (NSW) for possessing child pornography. On 20 June 2008 the defendant was sentenced to a total effective term of 3 years and 3 months imprisonment with a non-parole period of 2 years and 2 months. The defendant will be eligible for parole on 15 August 2010.

The court made a forfeiture order under the *Proceeds of Crime Act 2002* in relation to the computer hard drive and 61 compact discs which were the subject of the charges.

ON-LINE
CHILD SEXUAL
EXPLOITATION

2.8 Environment, safety & general prosecutions



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

With respect to crime impacting upon the environment and safety, the CDPP works closely with a number of investigative agencies. These include the Australian Customs Service (ACS); the Australian Fisheries Management Authority (AFMA); the Australian Maritime Safety Authority (AMSA); the Australian Quarantine and Inspection Service (AQIS); the Civil Aviation Safety Authority (CASA); the Department of the Environment, Heritage and Water Resources (Environment);

the Great Barrier Reef Marine Park Authority (GBRMPA) and the National Offshore Petroleum Safety Authority (NOPSA).

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

Offences prosecuted this year cover a diverse range of subject areas including illegal foreign fishing; importing live snakes and birds eggs that are listed specimens under the Convention on International Trade in Endangered Species (CITES) without authority; failing to provide safe facilities in which to work on an offshore petroleum facility; and civil aviation breaches.

The CDPP has also prosecuted in other areas such as contempt of court, passport offences, and offences in connection with the 2006 Census.

Crime impacting upon the Environment

MEYNDERT JACOBUS BORNMAN

This case involved the illegal importation of 4 green tree pythons from South Africa. The illegal importation of endangered species has potentially serious repercussions for the ecology of Australia. Risks include the spread of disease which may endanger wildlife and affect bio-diversity in Australia and other countries.

On four occasions between 19 March 2008 and 2 April 2008, AQIS Officers at the Sydney Gateway Facility examined international mail parcels from South Africa. Each parcel was addressed to a different person in Melbourne. The content of the parcels was variously declared to be “promotional rugby material”, “Lonely Planet guides to South Africa” and a “Springbok jersey”, however on each occasion, the parcels contained a live green tree python in a pillow case surrounded by shredded paper.

ENDANGERED SPECIES

The defendant, a South African national, was arrested on 2 April 2008. He was then interviewed and made full admissions, stating he intended to breed the snakes and sell the offspring. He was charged with four offences of importing a specimen that is a CITES specimen, contrary to section 303CD(i) of the *Environment Protection and Biodiversity Conservation Act 1999*.

On 15 May 2008 the defendant pleaded guilty to the charges and was convicted and fined a total of \$3,000. He was also ordered to pay costs of \$300.

ANTONIUS GERARDUS DUINDAM

On 7 November 2007 the defendant, a Dutch foreign national, arrived at Sydney International Airport on a flight from Hong Kong. Customs officers found the defendant was wearing a singlet with pockets containing 10 eggs underneath his clothing. The eggs were analysed and found to be Senegal parrot eggs. This species is listed under Appendix II of CITES, meaning that the species may be threatened due to overexploitation in trade.

The defendant was convicted of offences contrary to the *Environment Protection and Biodiversity Conservation Act* and the *Quarantine Act 1908* and sentenced to 4 months and 25 days imprisonment.

ENDANGERED
SPECIES

Fisheries prosecutions

Fisheries prosecutions arising from referrals from the Australian Fisheries Management Authority (AFMA) continue to form an important and sizable part of the practice of the CDPP.

Prosecutions in this area relate to matters involving breaches by domestic and foreign fishers of the *Fisheries Management Act*, particularly in Australia's northern waters.

During this year 293 foreign fishers were prosecuted by this Office for illegal fishing in Australia's northern waters. The CDPP's Darwin Office continues to work closely with AFMA, the Australian Customs Service and the Royal Australian Navy in prosecuting these matters.

ROSARIO BAGNATO

The defendant was the master of the commercial fishing vessel 'Jody Ann' and was charged with one offence of fishing commercially in the Australian Fishing Zone (AFZ) without an authorisation contrary to section 95(1)(a)(i) of the *Fisheries Management Act 1991*.

It was alleged that the defendant conducted commercial fishing activities within the Commonwealth 'Trawl Sector' of the AFZ. The Trawl Sector extends along the coastal waters of South Australia, Victoria and New South Wales. A fisher must hold a valid Commonwealth fishing concession to conduct commercial fishing activities within this area.

UNLAWFUL
DOMESTIC
FISHING

The Jody Ann was intercepted by a NSW Fisheries Patrol at a position approximately 1.5 nautical miles inside the boundary of the Southern and Eastern Scalefish and Shark Fishery (SESSF). The SESSF is within the Commonwealth Trawl Sector which is part of the AFZ. Fisheries officers subsequently boarded the vessel and the officers noticed that the trawl lines were extended from the stern of the vessel. Inspection revealed that the vessel's net contained a quantity of fish.

The defendant did not hold a Commonwealth fishing permit. The Jody Ann was directed to port and the vessel, fish, nets and equipment seized by AFMA.

The defendant pleaded guilty to the charge of fishing commercially without an authorisation and was fined \$5,000 with court costs. The fish found on board were sold and the proceeds from their sale in the amount of \$2,428.75 were forfeited.

HARUMA ALIMUDIN AND SURIYADI NURDIN

On 2 November 2007 Haruma Alimudin was the captain of the Indonesian foreign fishing vessel the 'Bintang Laut' which was detected 7.95 nautical miles inside the territorial sea limit of Ashmore Reef and boarded by Australian Fisheries officers when 5.36 nautical miles inside that limit. When the vessel was apprehended it had approximately 40 kg of fresh Beche-de-mer (also known as trepang) on board. Trepang is a sedentary organism to which the *Fisheries Management Act* applies. The vessel was equipped for fishing for sedentary organisms.

ILLEGAL
FOREIGN
FISHING

On 2 November 2007 Suriyadi Nurdin was the captain of the Indonesian foreign fishing vessel the 'Aidi Subeti Jaya' which was detected 120 nautical miles inside the Australian Fishing Zone and 20 nautical miles east of Scott Reef. On 3 November 2007 the vessel was boarded 209 nautical miles inside the Australian Fishing Zone and 8 nautical miles off Adele Island, inside Australia's territorial waters. No fish product was found onboard, but the vessel was equipped for fishing for sedentary organisms.

Both defendants were charged with offences against sections 101AA of the *Fisheries Management Act* for having a foreign boat equipped for fishing with the Australian Fishing Zone, and 100B of the *Fisheries Management Act* for using a foreign boat in the Australian Fishing Zone.

On 11 December 2007 both defendants pleaded guilty. Haruma Alimudin was convicted and sentenced to 5 months imprisonment to be released after serving 2 months upon entering into a recognisance in the sum of \$2,000 to be of good behaviour for 3 years.

Suriyadi Nurdin was convicted and sentenced to an effective head sentence of 4 months imprisonment to be released after 21 days upon entering into a recognisance in the sum of \$1,500 to be of good behaviour for 2 years.

In sentencing both defendants the magistrate stated that he took into account the time they had spent in detention.

Both defendants appealed against their sentences to a single judge of the Supreme Court of the Northern Territory. They submitted that the sentencing magistrate failed to sufficiently take into account the periods of time that the appellants had spent in detention and that the sentencing magistrate erred in not backdating the sentence of imprisonment to 2 November 2007 and 3 November 2007 being the dates the appellants were apprehended.

A Supreme Court Judge allowed the appeal on the above grounds and ordered that

the sentences of imprisonment be backdated to 21 November 2007 being the date that AFMA determined to proceed against the defendants.

Alimudin and Nurdin appealed to the Court of Appeal of the Northern Territory on 19 August 2008. The Court of Appeal held that in the circumstances it was appropriate that the sentences imposed upon the appellants be backdated to the date upon which they were taken into custody being 2 November 2007 and 3 November 2007 respectively.

Crime impacting upon Safety

COOGEE RESOURCES (ASHMORE CARTIER) PTY LTD

This matter represents the first successful criminal prosecution on behalf of the National Offshore Petroleum Safety Authority and involved the petroleum industry.

The defendant was the registered operator of the Jabiru Venture, a Floating Production, Storage and Offloading facility which is located in the Timor Sea approximately 600km west of Darwin. From 6 May 2006 to 10 May 2006, employees on the Jabiru Venture were working inside cargo tank number 4. On 11 May 2006, a relief integrated operator was injured when he fell 4.7 metres to the tank floor. The injury occurred due to the failure of the defendant to ensure that all work at the facility was carried out in a manner that was safe and without risk to the health of any person at the facility. For example it was alleged the defendant failed to erect temporary barriers or fall prevention equipment where maintenance work was occurring and failed to ensure the work area was adequately illuminated.

The defendant pleaded guilty to one offence of failing to take all reasonable practicable steps to ensure that the facility was safe and without risk to the health of any person at or near the facility and that all work or other activities carried out on the facility were carried out in a manner that was safe and without risk to the health of any person at or near the facility, contrary to the *Petroleum (Submerged Lands) Act 1967*.

The defendant was convicted and fined \$180,000.

OCCUPATIONAL
HEALTH & SAFETY

IAN DUDLEY READ

The defendant stole a very large amount of Commonwealth property from the Department of Defence over a 15 year period from various locations in Victoria to which he had access in the course of his employment with the army. He worked in a variety of positions as a storeman, culminating in being a Quartermaster Sergeant. In these positions Mr Read had virtually unlimited access to Army Q stores and equipment. He also at times had access to weapons, and ammunition and explosive ordnance at the School of Artillery, and Defence Force vehicles including a unimog truck.

The stolen property was discovered by Victoria Police in December 2006 when they searched the defendant's residence, a block of land owned by the defendant, and the defendant's mother's residence. The stolen property included general military property, military weapons parts, explosive ordnance, and petrol oils and lubricants.

FIREARMS

The value of the stolen property (if replaced as new) was \$690,719.05.

The explosive ordinance located included a number of grenades. All of the grenades were high explosive hand grenades and included 12 F1 Frag hand grenades located in a locked cabinet inside a shipping container located on the defendant's block of land, and 10 M26 hand grenades located among the cache of weapons and ammunition situated under a book shelf in the sun room at the defendant's mother's residence.

Police also located during the course of their searches 35 unregistered firearms which were illegally in the possession of the defendant. Read was an active member of several associations connected with the use of firearms in sport and competition. During the police investigation and searches conducted at the properties, a total of 100 complete firearms were located. Of these 35 were found to be unregistered. This total is made up of 13 handguns and 22 long arms (including machine-guns).

The defendant was charged with a combination of four State firearms offences and six Commonwealth offences pursuant to the *Commonwealth Places (Application of Laws) Act 1970*, the *Crimes Act* and the *Criminal Code*. The defendant pleaded guilty and was sentenced to a total effective sentence of 5 years imprisonment with a non-parole period of 2 ½ years—256 days of pre-sentence custody was deemed to be time already served.

The defendant filed an application for leave to appeal against the sentence, but withdrew it prior to the hearing of the application.

JET CARE PTY LTD

Jet Care, an aviation maintenance company owned by the Virgin Group, was convicted on 1 Feb 2008 in the NSW District Court of carrying dangerous goods contrary to section 23 (2A) of the *Civil Aviation Act 1988*. On 7 December 2006 the company consigned for carriage dangerous goods, namely an unserviceable oxygen generator on board a Virgin Blue passenger aircraft without the written permission of CASA and not in accordance with the regulations under the *Civil Aviation Act*. Jet Care pleaded guilty to the charge.

It was submitted that the offence was caused by inadvertence rather than by wilful disregard for the legislation in that an unknown person accidentally placed the oxygen generator in a storage box that had been temporarily left unsupervised. When the storeman returned to the storage box, he was unaware that the oxygen generator had been placed in the box, and then proceeded to seal the box and authorise its transport from Sydney to Brisbane on board a Virgin Blue 737 aircraft. The Court accepted Jet Care's submission, however it found that the offence is a serious one and stated that it is incumbent upon companies to ensure that effective procedures are in place to prevent such a serious breach. The Court further commented that given the potential for disaster, absolute compliance with the legislation must be demanded.

The Court noted the cooperation Jet Care gave to CASA and also its very early guilty plea. It further noted the company's contrition and willingness to enact procedures in this area. The Court convicted the company and imposed a fine of \$24,750.

**CIVIL AVIATION
BREACH**

**CIVIL AVIATION
BREACH****PETER SIMON LUSTIG**

On 6 April 2006 the defendant, a solicitor, boarded a Qantas flight from Sydney to Melbourne. Whilst boarding the aircraft, the defendant asked the Customer Service Manager (CSM) if he could store his suit bag in the coat locker. The CSM informed him that the coat locker was reserved for business class passengers. As the defendant and his travelling partner passed the coat locker, he opened the locker and saw that it had plenty of space for his suit bag. He again asked if he could put his suit bag in the locker. At that point his travelling partner began abusing the CSM and called him a liar.

The pair were asked to leave the aircraft so a discussion could occur on the aerobridge. The CSM warned the pair about aggressive and threatening behaviour and stated if it did not cease they could be removed from the aircraft. The CSM told the defendant that he could reboard the aircraft if he apologised for his behaviour and agreed to refrain from any further bad behaviour. The defendant suggested that the CSM should apologise to him for lying and shirt fronting him. The defendant then unsuccessfully attempted to gain entry to the cockpit to speak with the Captain and tried to take a photograph of the CSM. The defendant then began to yell and abuse the CSM in front of the other passengers in an aggressive and threatening fashion, whilst demanding to see the Captain. Whilst the CSM was speaking to the Captain via the crew intercom, the defendant returned to his assigned seat.

A short time later, the CSM, the Airport Operations Co-ordinator and two private security officers approached the defendant and asked him to leave the aircraft. The defendant refused to leave and asked several times why he was being asked to leave. After further arguing and refusals to leave, the AFP Protective Services were contacted. When they arrived, they waited at the aerobridge, and the CSM again approached the defendant and told him that if he didn't leave the aircraft, he would be forcibly removed. At this point the defendant and his partner left the aircraft.

The defendant was charged with one offence of intimidating a crew member in a manner that results in an interference with the member's performance of functions or duties connected with the operation of the aircraft contrary to section 21(1)(a) of the *Crimes (Aviation) Act 1991* and elected to have the matter dealt with on indictment. On 12 December 2007 the jury handed down a guilty verdict. On 15 February 2008 the defendant was convicted of the offence and released on a \$500 bond to be of good behaviour for a period of 2 years. He was also fined \$5,000.

ALBERT EDWARD SELWANESS**ASSAULT &
CIVIL AVIATION
BREACH**

On 23 March 2008 the defendant boarded a Qantas flight from Sydney to Perth. The defendant had consumed a large amount of alcohol before boarding the aircraft. Shortly after departure, the accused became abusive towards fellow passengers, and at a later point during the flight, passed out whilst in the aircraft toilet. After discovering the defendant passed out in the toilet, the cabin crew helped him back to his seat. A short time later, the defendant approached a Qantas crew member in the aircraft galley and asked for more alcoholic beverages. The crew refused to serve him as they considered that he was heavily intoxicated.

After being refused further alcohol, the defendant abused the cabin crew and directed offensive expletives at the Customer Service Manager (CSM). The defendant was asked to return to his seat, however he approached the CSM and at very close

personal proximity grabbed his tie, pulling it off and then kicked him in the leg. Nearby passengers had to intervene to help restrain the defendant. Whilst he was restrained he continued abusing and threatening the CSA, crew members and other passengers.

Upon arrival at Perth airport, the aircraft was met by officers from the AFP. Whilst one of the AFP officers was handcuffing the defendant he strenuously resisted the officer's efforts and struggled violently. After the handcuffs were placed on the defendant, he continued to violently struggle with the AFP officers as they were escorting him off the aircraft and down the aerobridge.

On 2 September 2008 the defendant pleaded guilty to one offence of interfering with the functions of a crew member contrary to section 21(1)(a) of the *Crimes (Aviation) Act 1991* and one offence of obstruction of a Commonwealth official contrary to section 149.1(1) of the *Criminal Code*. The defendant was convicted and fined \$2,500.

General Prosecutions

ELISABETH SEXTON AND JOHN FAIRFAX PUBLICATIONS PTY LTD

CONTEMPT

This matter involved the prosecution of the common law offence of contempt.

On 1 May 2007 the CDPP commenced proceedings in the Supreme Court of New South Wales against Elisabeth Sexton and John Fairfax Publications Pty Limited for contempt of court.

The contempt alleged was in relation to the discharge of a jury in District Court proceedings of 21 November 2006. The discharge of that jury was as a result of an article authored by Sexton and published in *The Sydney Morning Herald* on 20 November 2006. The article, said to be prejudicial to the parties involved in the trial, included comments in relation to the criminal proceedings commenced and, in particular, mentioned the District Court proceedings then underway. The article stated that the defendant on trial “failed in a bid to derail his District Court trial”. This comment was in reference to an unsuccessful application under section 5F of the *Criminal Appeal Act 1912* (NSW) to the New South Wales Court of Criminal Appeal.

The matter was heard on 31 January 2008.

On 3 March 2008 the judgement was published. The summons was dismissed on the basis that the article “avoided being a contempt by the narrowest of margins”. His Honour determined that the application to the Court of Criminal Appeal was, in effect, a “pre-trial proceeding” of which directions could be made to the jury informing it that the defendant on trial was exercising a legal right available to him by legislation. On 22 April 2008, the Court made a costs order against the CDPP.

STEPHEN JOSEPH ROXON

With the relatively recent enactment of the *Australian Passports Act 2005*, the Commonwealth has indicated its intention to bolster the integrity of the passports regime with offences carrying heavy penalties for passport fraud. This matter illustrates the use of the new provisions in policing this difficult and expanding area in Commonwealth criminal law.

In order to obtain a passport for a child under 18 years of age it is necessary for both parents to sign an application form granting their consent. The defendant had, unbeknown to his wife, forged her signature on an application for an Australian passport for their son so as to indicate her consent. While the defendant was an Australian citizen, his wife was a Philippines national and they were at the time of the commission of the offence resident in the Philippines.

The wife's signature was queried with her by an Australian consular officer in the Philippines and the passport was not issued. Some time afterwards, in a letter to the Australian foreign minister, Mr Alexander Downer, the defendant admitted to the forgery, claiming that it was a desperate measure to remove the child from the Philippines.

The defendant was charged pursuant to section 29(1) of the *Australian Passports Act* with making a false or misleading statement in an application for an Australian passport. The section carries a penalty of up to 10 years imprisonment or a fine of \$110,000.

In sentencing the Court acknowledged the defendant's motive and considered that the defendant's actions were not so sinister as to warrant a sentence of imprisonment. The defendant was convicted and fined \$10,000 plus costs of \$6,000.

Census 2006

The Nation Census of Population and Housing (the Census) is the largest statistical operation undertaken by the Australian Bureau of Statistics (ABS). Its scope extends to all people in Australia on Census night. The Census aims to accurately measure the number of people in Australia on Census night, their key characteristics and the dwellings in which they live. The Census is an important tool for the Government and other organisations to effectively allocate resources, particularly for infrastructure planning and community requirements for the future, such as the location of schools and hospitals.

On 8 August 2006 each household in Australia was required to fill in a census form on that date and provide it to the ABS. In the event a census form was not provided to the ABS, the Statistician could issue a Notice of Direction pursuant to section 10(4) of the *Census and Statistics Act 1905* (the Act) to fill up and supply the census form within 14 days.

Pursuant to section 14(2) of the Act, it is a criminal offence to fail to comply with a Notice of Direction. The offence is a strict liability offence and carries a penalty of one penalty unit (\$110). In 2007–2008 the CDPP prosecuted 176 people who failed to comply with a Notice of Direction to complete a Household Form as part of the 2006 National Census of Population and Housing.

The ABS and the CDPP worked closely together to develop and implement national best practice guidelines on the conduct of the prosecutions flowing from the census which will be used for the next Census in 2011.

ROY BARNES

The defendant in this case was a conscientious objector to the 2006 National Census of Population and Housing.

As an Australian householder, on 8 August 2006, the defendant was required to complete a Household Survey Form as part of the 2006 National Census of Population and Housing (“the Census”).

In correspondence with the ABS and Census collection staff, the defendant indicated that he would not complete the Household Form. The defendant indicated that he was a conscientious objector.

On 19 October 2006, a Notice of Direction signed by a delegate of the Australian Statistician was despatched to the defendant. The Notice of Direction directed the defendant to complete the enclosed Household Form and return it in the envelope provided within 15 days after service of the notice.

The ABS did not receive a completed Household Form from the defendant.

The defendant was convicted of 6 counts of refusing or failing to comply with a direction and fined a total of \$250, plus court costs of \$70.

CENSUS PROSECUTION







statistics &
performance
indicators

Statistics & performance indicators



Exercise of Statutory Powers

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

NO BILL APPLICATIONS

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

In the past year, there were 11 no bill applications received from defendants or their representatives. Of these, four were granted, and seven were refused. A further 16 prosecutions were discontinued on the basis of a recommendation from a regional office of the CDPP without prior representations from the defendant. The total number of cases discontinued was 20.

Of the 20 cases which were discontinued, eight were discontinued for the primary reason that there was insufficient evidence. Five cases were discontinued because the public interest did not warrant the continuation of the prosecution. In the remaining seven cases, the reason for discontinuing the prosecution was both the insufficiency of evidence and the public interest.

Six of the 20 discontinued cases involved fraud offences, two involved drugs offences, seven involved corporations offences and five involved other types of offences.

Four of the 20 cases were discontinued after a previous trial and in one case the defendant died before the trial.

INDEMNITIES

The *DPP Act 1983* empowers the Director to give an indemnity to a potential witness. Section 9(6) of the *DPP Act* authorises the Director to give an indemnity to a potential witness in Commonwealth proceedings that any evidence the person may give, and anything derived from that evidence, will not be used in evidence against the person, other than in proceedings for perjury. Section 9(6D) empowers the Director to give an indemnity to a person that he or she will not be prosecuted under Commonwealth law in respect of a specified offence or specified conduct. Section 9(6B) empowers the Director to give an indemnity to a person that any evidence he or she may give in proceedings under State or Territory law will not be used in evidence against them in a Commonwealth matter.

In the past year, the CDPP gave indemnities under sections 9(6) and 9(6D) to nine people. The CDPP gave no indemnities under section 9(6B). Three witnesses were indemnified in drugs prosecutions, one in a prosecution for fraud, one in a corporations prosecution and four in prosecutions for other offences.

TAKING MATTERS OVER— PRIVATE PROSECUTIONS

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

Under section 9(5) of the *DPP Act*, the Director has the power to take over a prosecution for a Commonwealth offence that has been instituted by another person. The Director is empowered to either carry on the prosecution or, if appropriate, to discontinue it. In 2007–2008 the power to take over and discontinue a prosecution was exercised over one private prosecution.

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 2007–2008 the Director exercised this power once. In a number of other cases, a defendant stood trial on different charges from those on which he or she was committed, or the defendant stood trial in a different State or Territory jurisdiction from that in which the person was committed. The indictments filed in those cases are sometimes referred to as *ex officio* indictments, but they are not treated as *ex officio* indictments for the purpose of these statistics.

CONSENT TO CONSPIRACY PROCEEDINGS

The consent of the Director is required before proceedings for Commonwealth conspiracy offences can be commenced. In 2007–2008 the

Director consented to the commencement of conspiracy proceedings against 27 defendants in relation to twelve alleged conspiracies. Ten of the alleged conspiracies (involving 24 of the defendants) related to drugs offences and two of the alleged conspiracies (involving three of the defendants) related to fraud offences.

Performance Indicators 2007–2008

In 2007–2008 the CDPP met all prosecution performance targets except the 60% target for successful prosecution appeals against sentence in indictable matters. In 2007–2008, 23 prosecution appeals against sentence in indictable matters were decided. In 9 cases, the CDPP appeal was upheld, and in 14 cases the appeal was unsuccessful. Of the 14 unsuccessful appeals this year, seven defendants were co-offenders in one drug prosecution and two were co-offenders in another drug prosecution.

In a number of these cases where the appeals were unsuccessful, the appeal court agreed that the sentences imposed at first instance were too low but declined to allow the appeals because of the principle of double jeopardy and other factors. An effect of the appeal court findings is that the sentences at first instance do not become precedents for future sentences in comparable cases.

The following table lists the CDPP's performance indicators for the conduct of all prosecutions for 2007–2008 and compares them with figures for the previous year.



Prosecution Performance Indicators for 2007–2008

Description	Target	Outcome	Details (successful (total))
Prosecutions resulting in a conviction*	90%	98%	5009 (5106)
Figures for 2006–2007	90%	98%	4894 (4981)
Defendants in defended summary hearings resulting in a conviction	60%	64%	123 (192)
Figures for 2006–2007	60%	68%	143 (210)
Defendants in defended committals resulting in a committal order	80%	97%	233 (241)
Figures for 2006–2007	80%	99%	316 (320)
Defendants tried and convicted	60%	72%	73 (101)
Figures for 2006–2007	60%	78%	72 (92)
Prosecution sentence appeals in summary prosecutions upheld	60%	67%	6 (9)
Figures for 2006–2007	60%	50%	2 (4)
Prosecution sentence appeals in a prosecution on indictment upheld	60%	39%	9 (23)
Figures for 2006–2007	60%	67%	6 (9)

* 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.

Prosecution Statistics

In the course of the year the CDPP dealt with 6145 people. The cases were referred by over 40 investigative agencies as well as a number of

State and Territory agencies. The following tables set out details of the prosecutions conducted in 2007–2008.

Table 1: Outcomes of successful prosecution action 2007–2008

Defendants convicted of offences prosecuted summarily	4522
Defendants convicted of offences prosecuted on indictment	487
Defendants committed for trial or sentence	453

Table 2: Summary prosecutions in 2007–2008

Defendants convicted after a plea of guilty	4399
Defendants convicted after a plea of not guilty	123
Total defendants convicted	4522
Defendants acquitted after a plea of not guilty	69
Total	4591

Table 3: Committals in 2007–2008

Defendants committed after a plea of guilty	220
Defendants committed after a plea of not guilty	233
Total defendants committed	453
Defendants discharged after a plea of not guilty	8
Total	461

Table 4: Prosecutions on indictment in 2007–2008

Defendants convicted after a plea of guilty	414
Defendants convicted after a plea of not guilty	73
Total defendants convicted	487
Defendants acquitted after a plea of not guilty	28
Total	515

Table 5: Prosecutions on indictment—duration of trials in 2007–2008

1–5 days	41
6–10 days	24
11–15 days	16
16–20 days	9
21–25 days	6
26–30 days	6
Over 31 days	16
Total trials	118

Table 6: Prosecution appeals against sentence in 2007–2008

	Summary	Indictable
Number of appeals upheld	6	9
Number of appeals dismissed	3	14
Total number of appeals	9	23
Percentage of appeals upheld	67%	39%

Table 7: Defence appeals in 2007–2008

	Summary	Indictable
Appeals against sentence upheld	84	12
Appeals against sentence dismissed	41	21
Appeals against conviction upheld	4	7
Appeals against conviction dismissed	7	8
Appeals against conviction & sentence upheld	1	3
Appeals against conviction & sentence dismissed	6	10
Total appeals	143	61

Table 8: Legislation under which charges were dealt with in 2007–2008

In last year's Annual Report the CDPP reported on charges dealt with by offence provision/legislation. The CDPP is reviewing the way in which it reports charges dealt with in the financial year. As a result, the total number of charges has not been reported in this year's Annual Report.

<i>Air Navigation Regulations 1947</i>
<i>Airports (Control of On-Airport Activities) Regulations 1997</i>
<i>A New Tax System (Australian Business Number) Act 1999</i>
<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
<i>Australian Citizenship Act 1948</i>
<i>Australian Crime Commission Act 2002</i>
<i>Australian Federal Police Act 1979</i>
<i>Australian Passports Act 2005</i>
<i>Australian Postal Corporation Act 1989</i>
<i>Australian Securities & Investment Commission Act 2001</i>
<i>Aviation Transport Security Act 2004</i>
<i>Aviation Transport Security Regulations 2005</i>
<i>Bankruptcy Act 1966</i>
<i>Census & Statistics Act 1905</i>
<i>Civil Aviation Act 1988</i>
<i>Civil Aviation Regulations 1988</i>
<i>Classification (Publications, Films and Computer Games) Act 1995</i>
<i>Commonwealth Authorities and Companies Act 1997</i>
<i>Commonwealth Electoral Act 1918</i>
<i>Copyright Act 1968</i>
<i>Corporations Act 1989</i>
<i>Corporations Act</i>
<i>Crimes (Aviation) Act 1991</i>
<i>Crimes (Currency) Act 1981</i>
<i>Crimes Act 1914</i>
<i>Criminal Code Act 1995</i>
<i>Customs Act 1901</i>
<i>Defence Act 1903</i>
<i>Environment Protection & Biodiversity Conservation Act 1999</i>
<i>Environment Protection & Biodiversity Conservation Regulations 2000</i>
<i>Excise Act 1901</i>

Financial Management and Accountability Act 1997
Financial Transaction Reports Act 1988
Fisheries Management Act 1991
Foreign Passports (Law Enforcement and Security) Act 2005
Fuel Quality Standards Act 2000
Great Barrier Reef Marine Park Act 1975
Great Barrier Reef Marine Park Regulations 1983
Health Insurance Act 1973
Historic Shipwrecks Act 1976
Income Tax Assessment Act 1936
Industrial Chemicals (Notification & Assessment) Act 1989
Migration Act 1958
Migration Regulations 1994
National Health Act 1953
Navigation Act 1912
Non Commonwealth Legislation
Passports Act 1938
Petroleum (Submerged Lands) Act 1967
Primary Industries Levies and Charges Collection Act 1991
Proceeds of Crime Act 1987
Public Order (Protection of Persons & Property) Act 1971
Quarantine Act 1908
Radiocommunications Act 1992
Social Security (Administration) Act 1999
Social Security Act 1947
Social Security Act 1991
Statutory Declarations Act 1959
Student Assistance Act 1973
Superannuation Industry (Supervision) Act 1993
Sydney Airport Curfew Act 1995
Taxation Administration Act 1953
Telecommunications Act 1997
Telecommunications (Interception & Access) Act 1979
Therapeutic Goods Act 1989
Torres Strait Fisheries Act 1984
Trade Marks Act 1995
Trade Practices Act 1974
Veterans Entitlements Act 1986
Workplace Relations Act 1996



**Table 9: *Crimes Act 1914:*
Sections under which charges were dealt with in 2007–2008**

Fail to comply with order (s.3LA(3))
Destroy or damage Commonwealth property (s.29)
False pretences (s.29A)
False Representation (s.29B)
Fraud (s.29D)
Administration of justice offences (Part III)
Sexual conduct children overseas (s.50)
Forgery (ss.65–69)
Disclosure of information (s.70)
Stealing Commonwealth property (s.71)
Corruption and bribery (s. 73)
Postal offences (ss.85E–85ZA)
Telecommunications offences (ss.85ZB–85ZKB)
Trespass on Commonwealth land (s.89)

**Table 10: *Criminal Code 1995*
Sections under which charges were dealt with in 2007–2008**

Part 2.4	Extensions of criminal liability (ss.11.1–11.6)
Part 5.3	Terrorism (ss. 101.4–103.2)
Part 7.2	Theft and other property offences (ss.131.1–132.8)
Part 7.3	Fraudulent conduct offences (ss.134.1–135.4)
Part 7.4	False or misleading statements (ss.136.1–137.2)
Part 7.6	Bribery and related offences (ss.141.1–142.2)
Part 7.7	Forgery and related offences (ss.144.1–145.5)
Part 7.8	Causing harm to, impersonating, obstructing Commonwealth officials (ss.147.1–149.1)
Part 7.20	Slavery, sexual servitude and deceptive recruiting offences (ss.270.3–270.7)
Part 9.1	Serious drug offences (ss. 302.1–310.3)
Part 10.2	Money laundering offences (ss.400.3–400.9)
Part 10.5	Postal offences (ss.471.1–471.15)
Part 10.6	Telecommunications offences (ss.474.1–474.27)
Part 10.7	Computer offences (ss.477.1–478.4)
Part 10.8	Financial information offences (ss. 480.4 – 480.6)

Table 11: Reparation orders and fines and costs

	Actual 2007-2008 \$'000	Actual 2006-2007 \$'000
Reparation orders made	39,346	31,782
Fines and costs orders made	4,879	9,401

Table 12: Referring agencies: defendants dealt with in 2007–2008

	Summary	Indictable
Australian Bureau of Statistics	209	
Australian Communications and Media Authority	1	
Australian Competition and Consumer Commission	3	
Australian Crime Commission	10	50
Australian Customs Service	79	16
Australian Federal Police	343	276
Australian Fisheries Management Authority	317	1
Australian Government Solicitor	3	
Australian Passport Office	9	
Australian Postal Corporation	51	
Australian Prudential Regulation Authority		1
Australian Quarantine and Inspection Service	3	
Australian Securities and Investments Commission	29	48
Australian Taxation Office	178	43
Australian Trade Commission	3	
Centrelink	3669	71
Child Support Agency	1	
Civil Aviation Safety Authority	9	2
Comcare	1	1
Commonwealth Rehabilitation Service		1
Department of Agriculture, Fisheries and Forestry	4	
Department of Defence	17	4
Department of Education, Employment and Workplace Relations	9	
Department of the Environment, Water, Heritage and the Arts	8	
Department of Families, Housing, Community Services & Indigenous Affairs	2	8
Department of Finance and Deregulation		1
Department of Foreign Affairs and Trade	33	
Department of Health and Ageing	2	
Department of Immigration and Citizenship	11	1
Department of the Treasury		
Department of Veterans' Affairs	11	1
Great Barrier Reef Marine Park Authority	20	
Insolvency and Trustee Service Australia	266	1
Medicare Australia	63	5
Non-Commonwealth Agencies	7	5
National Offshore Petroleum Safety Authority	1	
Office of the Australian Building and Construction Commissioner	1	
State DPP	1	3
State or Territory Police	174	48
Therapeutic Goods Administration	4	1
Workplace Ombudsman	5	
Total	5557	588

Note that 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.





criminal
confiscation

Criminal confiscation



Confiscating the proceeds of crime is a critical measure in combating the wide range of financially motivated offences and maintaining public confidence in the criminal justice system. The CDPP has the key function of taking criminal confiscation action under Commonwealth legislation.

Criminal confiscation legislation is aimed at depriving criminals of the proceeds of offences against Commonwealth laws and punishing and deterring offenders. It prevents the reinvestment of proceeds of crime in further criminal activities and gives effect to Australia's obligations under international conventions and agreements regarding proceeds of crime and anti-money laundering.

Legislation

PROCEEDS OF CRIME ACT 2002

The *Proceeds of Crime Act 2002* (*POC Act 2002*) is the principal legislation under which the CDPP currently operates in the area of criminal confiscation. The *POC Act 2002* came into effect on 1 January 2003, and provides an elaborate regime for the tracing, restraint and confiscation of the proceeds and instruments of crime against Commonwealth law. In some cases it may also be used to confiscate the proceeds of crime against foreign law or State or Territory law.

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

Conviction based action relies 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 offences.

There are three types of final confiscation orders which may be obtained under the *POC Act 2002*. These are:

- ▶ 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 an amount equal to the benefit derived by the person from the commission of an offence; and
- ▶ Literary proceeds orders—where a court orders an offender to pay an amount calculated by reference to benefits the person has derived through commercial exploitation of his or her notoriety arising from the commission of an offence.

Statutory or automatic forfeiture (i.e. forfeiture of restrained property without express order of the court) is also available in certain circumstances. This can occur where a person has been convicted of a serious offence within the meaning of the *POC Act 2002*, and involves the forfeiture of restrained property, after a waiting period, without further order of a court.

In order to preserve property pending the outcome of confiscation proceedings, the *POC Act*

2002 provides for restraining orders over property to be made at an early stage of an investigation. Restraining orders can be made either in reliance on the charging (or proposed charging) of a person with a Commonwealth indictable offence, or on a civil basis.

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

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

OTHER LEGISLATION

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

The CDPP also has statutory duties under the *Crimes (Superannuation Benefits) Act 1989* (the *CSB Act*) and Part VA of the *Australian Federal Police Act 1979* (the *AFP Act*). The CDPP has the function of bringing applications to forfeit the employer-funded component of superannuation payable to Commonwealth and AFP employees who have been convicted of corruption offences.

The CDPP has two further responsibilities in this area which are now used infrequently following the enactment of proceeds of crime legislation, namely:

- ▶ Under Division 3 of Part XIII of the *Customs Act* the CDPP is vested with power to bring proceedings to recover profits earned from “prescribed narcotic dealings”; and
- ▶ Under the *DPP Act 1983*, the CDPP has power to take traditional civil remedies action on

behalf of the Commonwealth in cases where there is a connection with a prosecution.

Each State and Territory in Australia has legislation dealing with the confiscation of property derived from State and Territory offences. The CDPP is not involved in proceedings pursuant to State and Territory proceeds of crime legislation.

Operating Structure

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

CDPP criminal assets lawyers consider the appropriateness of criminal confiscation action in particular matters, decide on the type of action which ought to be taken and, where appropriate, commence and conduct confiscation litigation. In large and complex cases the CDPP may also be involved in the provision of advice during the investigative phase of a criminal confiscation matter.

The CDPP’s confiscation work relies on referrals from, and close cooperation with, relevant Commonwealth law enforcement agencies. Key responsibility in this area rests with the Australian Federal Police (AFP), the Australian Crime Commission (ACC), the Australian Customs Service (ACS), the Australian Securities and Investments Commission (ASIC), and the Australian Taxation Office (ATO). Each is an enforcement agency under the *POC Act 2002* and exercises specific investigative and other powers under this Act. All Commonwealth agencies with the capacity to investigate crime, particularly fraud, play a role in identifying and referring proceeds of crime matters and supporting proceeds of crime litigation.

The CDPP also works closely with the Insolvency and Trustee Service of Australia (ITSA). ITSA has specific responsibilities under the *POC Act 2002* in relation to the management of restrained property, the realisation of confiscated property, and management of the Confiscated

Assets Account.

2007–2008 Financial Year

2007–2008 was the fifth full financial year of operation of the *POC Act 2002*. The level of confiscation work on hand is comparable with previous years, with 173 restraining orders in force as at 30 June 2008, compared with 182 orders as at 30 June 2007 and 179 orders as at 30 June 2006.

Confiscation action has been taken in a range of areas including fraud, corporations, money laundering and in relation to drug offences. An emerging feature of the CDPP's confiscation work is a significant number of applications being made to forfeit equipment used in offences relating to the use of telecommunications services against Division 474 of the *Criminal Code*. Twenty-one applications were made for forfeiture of computers, mobile telephones and other items used to download or transmit child pornography or child abuse images, or grooming offences.

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 Sherman Report made recommendations for changes to the *POC Act 2002* and the CDPP has provided input to the Attorney-General's Department in relation to the development of specific legislative reform proposals.

In 2007–2008 the CDPP continued to participate in extensive proceeds of crime training activities with referring agencies and also took part in international legal programs relating to proceeds of crime. Some of the CDPP's activities in this regard are set out in Chapter 6 of this Report.

Statistics

A detailed breakdown of the CDPP's criminal confiscation activities for the 2007–2008 year is provided in the tables at the end of this Chapter, however the following is a summary of key data.

Under the *POC Act 2002*:

- ▶ 75 new restraining orders were obtained;
- ▶ 173 restraining orders were in force at as 30 June 2008;
- ▶ 17 pecuniary penalty orders were obtained;
- ▶ 62 forfeiture orders were obtained;
- ▶ automatic forfeiture occurred in 17 matters;
- ▶ 43 compulsory examinations were undertaken;
- ▶ the total estimated value of confiscation orders (including automatic forfeiture) obtained was \$17.65 million; and
- ▶ the total amount recovered as a result of litigation under the *POC Act 2002* was \$19.56 million.

A total of \$5.19 million was recovered under the *POC Act 1987* in relation to previously finalised matters. There have been no new confiscations under this Act.

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

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

POC ACT 2002 PERFORMANCE INDICATORS

The CDPP's performance in cases under the *POC Act 2002* during 2007–2008 is measured against the following performance indicators.

Description	Number	Target	Outcome
Applications for restraining orders that succeeded	75	90%	100%
Figures for 2006–2007	75	90%	100%
Applications for pecuniary penalty orders that succeeded	17	90%	100%
Figures for 2006–2007	10	90%	100%
Applications for forfeiture orders that succeeded	62	90%	100%
Figures for 2006–2007	51	90%	100%
Damages awarded against undertakings	01		\$150,000
Figures for 2006–2007	0		\$0
Number of cases where costs awarded against CDPP	5		\$100,701
Figures for 2006–2007	5		\$11,102

Case Reports

TECK LENG CHIA

CIVIL CONFISCATION

Between 1999 and 2003 Teck Leng Chia, a Singaporean national, used his position as Finance Manager for Asia Pacific Breweries to fraudulently obtain around SD\$117 million from various banks in Singapore. Chia used the funds to support his extensive international gambling practices, which took him, among other places, to Crown Casino in Melbourne and Aspinalls Club (Aspinalls) in London, United Kingdom.

In the course of his activities, Chia opened a number of bank accounts in Australia. Chia used the accounts to deposit and withdraw the proceeds of his gambling activities.

In August 2003, whilst in London, Chia wrote two cheques in favour of Aspinalls for the payment of gambling debts. The cheques drew on Chia's Australian account for a sum of about AUD\$7 million.

On 2 September 2003 Chia was arrested in Singapore. At the time his account in Australia held funds in excess of AUD\$29 million. Arrangements were made for the sum of AUD\$22 million from this account to be repatriated directly to Singaporean authorities. The remaining sum was retained by the Australian bank pending the resolution of issues relating to the two cheques made out by Chia in August 2003 in London.

On 24 September 2003 civil based confiscation action was commenced by the CDPP in the Supreme Court of Victoria to restrain all funds remaining in Chia's account with the Australian bank (about AUD\$7 million). The restraining orders were obtained on the basis that the funds in the account were suspected of being the proceeds of a foreign indictable offence, namely the frauds committed in Singapore.

Chia later pleaded guilty to the alleged fraud and was sentenced in Singapore to 42 years imprisonment.

In January 2004 Aspinalls instituted proceedings in NSW against the Australian bank for an alleged breach of the *Cheques Act 1986*. Aspinalls alleged that, even if the money in the Chia account was no longer available, the Australian bank was still liable under the *Cheques Act 1986* to pay the amount referred to in the cheques because it had failed to honour or dishonour the cheques within a reasonable time.

Subsequently, the Australian bank lodged various proceedings challenging the CDPP's action under the *POC Act 2002*. Among other things these included an application under the *POC Act 2002* for the funds in the Chia account to be excluded from restraint; a transfer of the proceedings to the Federal Court; an application seeking an order of review under the *Administrative Decisions (Judicial Review) Act 1977* and for relief under the *Judiciary Act 1903*; and an application to the High Court challenging the Constitutional validity of the *POC Act 2002*.

Ultimately in October 2007 the Federal Court made orders with the consent of the CDPP and the Australian bank for the forfeiture of part of the funds from the Chia account, with \$4.75 million to be returned to the Australian bank.

The monies forfeited under the *POC Act 2002* were later shared with Singaporean authorities by the Australian Government pursuant to equitable sharing provisions contained in the *POC Act 2002*.

KELLI LOWE

Between June 1992 and February 2004 in the United Kingdom, Michael Hart, a financial adviser, stole money from his clients totalling in excess of £550,000. Part of this sum, an amount of £173,000, was subsequently gifted by him to an Australian citizen, Kelli Lowe. Lowe and her husband then used part of that sum to help build a residence on the Gold Coast in Queensland. There was no evidence to indicate that Lowe had known that the monies received from Hart were proceeds of crime, however Lowe had not provided any goods or services in exchange for the gift.

On 19 November 2004 Michael Hart was convicted in England of 14 counts of theft. On the same date the Norwich Crown Court in England made a confiscation order in respect of Hart in the amount of £556,600.36.

In September 2007 the CDPP commenced civil action under the *POC Act 2002* to restrain the Gold Coast property of the Lowes on the basis that it was partly the proceeds of a foreign indictable offence committed by Hart in the UK.

In April 2008 an amount of AUD\$281,796 was forfeited from the Lowes, which represented the value of the proportion of the Lowes' property which had been acquired with the proceeds of crime.

MOTHER GOOSE CHILD CARE CENTRES

This matter involved an alleged fraud on the Child Care Benefit Scheme by Child Care Visions Pty Ltd, a company which conducted a child care business under the name 'Mother Goose Child Care Centres' and operated 12 child care centres in Queensland.

The Child Care Benefit Scheme, previously administered by Centrelink, assists families with the costs of child care. Receipt of benefits under the Scheme is dependent on a family's income and is paid according to the number of days per week a child is in child care. Under the scheme families can elect to have the benefits paid directly to the child care centre and then pay only the gap between the benefits and the level of fees charged by the relevant centre.

Mother Goose Child Care Centres ran promotions offering parents 'free' child care. It was alleged that the promotions targeted low income families as well as families who had accumulated debts for child care which they found difficult to repay. Under the free child care promotions it was alleged that parents were required to book their children into one of the centres for five days per week and sign attendance sheets for five days regardless of the days that their children actually attended. Mother Goose then allegedly claimed the Child Care Benefit for five days per week for each child instead of the number of days that the children actually attended, thereby obtaining benefits from Centrelink to which neither they nor the parents were entitled. In exchange, it was alleged that Mother Goose relieved the parents of any obligation to pay gap fees in respect of any child care provided to their children.

In April 2006, following an investigation by Centrelink and the AFP, the CDPP commenced civil confiscation proceedings under the *POC Act 2002* and obtained restraining orders over various items of real estate owned by Child Care Visions Pty Ltd. Subsequently an application for a pecuniary penalty order was lodged.

In April 2008 with the consent of the parties, but without admissions, Child Care Visions Pty Ltd was ordered to pay a civil-based pecuniary penalty to the Commonwealth in the amount of \$772,234. This amount has now been fully recovered.

The proceedings against Child Care Visions Pty Ltd were able to be initiated and resolved notwithstanding that no criminal charges had been laid.

MARK NORMAN AND ROBERT NORMAN

STATUTORY FORFEITURE

A note on the prosecution action taken in this matter appeared in last year's Annual Report at page 38.

Between August 1993 and April 2003, Mark and Robert Norman, registered tax agents, conducted a systematic fraud on the revenue using their accounting and tax agents business. A joint investigation by the AFP and ATO revealed that, without their clients' knowledge, they 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. This resulted in the payment of unlawfully obtained and improperly due income tax refunds which were appropriated by the defendants and used for their own purposes. The total loss to the revenue was \$2,824,108. In addition Mark Norman was alleged to have stolen a client's cheque which had been made out to the ATO to the value of \$744,225.

In April 2005 the CDPP obtained civil based restraining orders relating to a number of residential properties, cash, cars and commercial real estate located in two States. Some of the items of property were owned by Mark and Robert Norman, whilst others, though nominally owned by third parties, were suspected of being subject to their effective control. Their spouses and a number of other third parties challenged the CDPP's restraining orders, applying, among other things, for the orders to be revoked and for exclusion of various items of property from restraint and/or forfeiture.

In February 2006 the defendants were charged with various fraud offences and ultimately pleaded guilty to the charges. On 29 June 2007 each was sentenced to a term of imprisonment.

Because the defendants were convicted of serious offences within the meaning of the *POC Act 2002*, all of the property which had been restrained became potentially liable to forfeiture six months after the dates of their convictions. Following an extension of this period and negotiations between the parties, in April and June 2008 respectively final orders were obtained by consent by which certain property was excluded and the balance was forfeited. The value of the forfeited property was estimated at around \$2.1 million.

OPERATION JILLAROO

This matter involved a complex alleged fraud in 2002 on the Aboriginal and Torres Strait Islander Commission (ATSIC). It was alleged that Harold Cary and his defacto partner, with assistance from four accomplices (Lindsay Watson, Neil Camm, Anthony Petch and Brendan Godfrey) had conspired together to dishonestly obtain a loan of \$2.1 million from ATSIC. The loan was obtained under ATSIC's Business Development Program, and was purportedly for the purpose of assisting Cary and his partner to purchase a farming property for \$2.8 million. In fact, however, the property was valued at only \$750,000, and the various alleged offenders split a leftover sum obtained from ATSIC between them, which they then used for their own purposes.

The elements of the alleged fraud on ATSIC included:

- ▶ an inflated valuation of the relevant property (provided by Petch, a registered valuer), which was supplied to and relied on by ATSIC;
- ▶ back-to-back sales of the property, on the same day, from the original vendor for \$750,000, and then on to Cary and his partner via a nominated intermediary (a company owned by Camm) for the amount of \$2.8 million; and
- ▶ a private agreement as between Camm and Cary and his partner that they would not be required to pay a deposit of \$700,000 set out in the contract of sale, and in addition that Cary and his partner would receive an "early settlement rebate" of \$603,000 upon settlement of the sale (neither of these matters was disclosed to ATSIC).

Following an investigation by ATSIC and the AFP, in 2003 the CDPP commenced civil confiscation action against Cary and his partner, Petch, Camm and Watson under the *POC Act 2002*. Restraining orders were obtained over various items of property owned or controlled by the five suspects. Pursuant to court orders a series of examinations were also conducted regarding the affairs and property of each of the suspects.

In 2007 action was also commenced against Godfrey, a Canberra-based business consultant who was alleged to have been complicit in aspects of the fraud.

As a result of the action taken by the CDPP, the following sums were ultimately able to be confiscated on a civil basis from the offenders: \$50,000 from Petch; \$220,000 from Watson; \$131,000 from Godfrey; and property valued at \$75,000 from Cary. Camm and his partner were found to have no assets capable of satisfying final orders under the *POC Act 2002*.

In addition, following default by Cary and his partner on their loan repayments, ATSIC took action to repossess the purchased property which it was then able to sell for a sum of \$1.1 million.

CDPP's confiscation action was initiated before the charging of any of the suspects, and was able to be resolved in advance of their criminal trials.

A note on the prosecution action appears in Chapter 2.1 of this Report.

MICHAEL STUDMAN**STATUTORY
FORFEITURE**

This matter was reported on page 53 of the 2004–2005 Annual Report. Since that time the matter has been appealed to the NSW Court of Appeal.

Michael Studman was a former employee of Insolvency and Trustee Service Australia (ITSA) who used his position as an employee to steal monies and to otherwise commit a fraud in excess of \$380,000. On 15 February 2005 Studman pleaded guilty to various offences against the *Crimes Act 1914* (Cth) and the *Crimes Act 1900* (NSW). In April 2005, Studman filed an application seeking to prevent statutory forfeiture of property, which had been the subject of restraining orders under the *POC Act 2002*. Some of the restrained property was money which Studman had deposited into an account in a false name.

On 18 August 2005, Hulme J of the Supreme Court of NSW dismissed Studman’s application. His Honour found that the restrained property could not be excluded from restraint as it was the ‘proceeds of unlawful activity’, in particular, opening and operating a bank account in a false name. Studman appealed the decision of Hulme J to the NSW Court of Appeal. The Court delivered a unanimous judgment in October 2007.

As Studman had not sought an expedited hearing, his appeal was not heard until more than 15 months after his conviction date. By that time, Studman’s property had been forfeited by operation of law to the Commonwealth, and there was no order the Court could have made to reverse this. As a result the Court dismissed Studman’s appeal on the primary ground that it was futile.

Significantly, however, the Court went on to say that it would have dismissed the appeal in any event. The Court reaffirmed the decision of Hulme J that the restrained property represented ‘proceeds of unlawful activity’. In respect of the money held in false name bank accounts, the Court observed that “*the right to the monies was derived directly from the commission of the offence [of opening an account in a false name]*”. In addition, the Court found that the property in question could also be regarded as an ‘instrument’ of unlawful activity within the meaning of the *POC Act 2002* and that none of the property could be regarded as being ‘lawfully acquired’. For these reasons, the Court found that it would not have excluded the restrained property from forfeiture in any event.

Y

It was alleged that between March and June 2003 Y participated in a scheme to defraud the ATO. Pursuant to the scheme companies associated with Y made payments to offshore entities controlled by an Australian registered tax agent, purportedly for brokerage services connected with sales of mining equipment. Y’s companies then claimed these amounts as non-capital purchases in their tax returns thereby reducing their income tax liability.

**PECUNIARY
PENALTY**

Following investigations by the ATO and the AFP it was alleged that, in fact, no services had ever been provided to Y’s companies and that the relevant payments (less a 10% commission to the Australian tax agent) had been returned to Y via a round-robin series of transactions.

In March 2006, the CDPP commenced civil confiscation proceedings against Y and related entities under the *POC Act 2002*. Restraining orders were obtained in relation

to various items of property owned by Y or suspected of being subject to his effective control.

In November 2007 with the consent of the parties, but without admissions, the court made orders for Y to pay a pecuniary penalty to the Commonwealth in the sum of \$955,000. This amount was fully recovered from proceeds of the sale of one of the properties under Y's effective control.

The proceedings against Y were able to be commenced and resolved notwithstanding that no criminal charges had been laid in respect of the matter.

Criminal Assets Confiscation Tables

The tables below set out details relating to the criminal confiscation work conducted by the CDPP in 2007–2008.

TABLE 1: POC Act 2002: new orders and forfeitures in 2007–2008

	No.	Value
Restraining orders	75	\$40,417,835
Pecuniary penalty orders	17	\$4,230,809
Forfeiture orders	62	\$8,353,240
Automatic forfeiture under section 92	17	\$5,066,565
Literary proceeds orders	0	0

The fact that a pecuniary penalty order (PPO) has been made against a person does not necessarily mean that all the money involved will be recovered by the CDPP. A pecuniary penalty order may be made for an amount that exceeds the value of the defendant's property.

TABLE 2: POC Act 2002: restraining orders obtained by enforcement agency

	No.	Value
Australian Crime Commission	8	\$4,051,916
Australian Customs Service	2	\$169,955
Australian Federal Police	63	\$30,545,964
Australian Securities & Investments Commission	2	\$5,650,000

TABLE 3: POC Act 2002: restraining orders obtained by offence type

	No.	Value
Corporations	2	\$5,650,000
Drugs	25	\$5,698,433
Fraud	30	\$22,450,738
Money laundering	18	\$6,618,664

TABLE 4: *POC Act 2002*: restraining orders in force as at 30 June 2008

	No.	Value
Number of restraining orders in force	173	\$119,607,126

TABLE 5: *POC Act 2002*: money recovered in 2007–2008

	Amount Recovered
Pecuniary penalty orders	\$8,957,325
Forfeiture orders	\$8,200,982
Automatic forfeiture under section 92	\$1,163,998
Literary proceeds orders	-
Matters where money recovered but no formal orders made	\$1,232,044
Total recovered	\$19,554,349

TABLE 6: *POC Act 1987*: restraining orders in force as at 30 June 2008

	No.	Value
Number of restraining orders in force	7	\$2,941,124

TABLE 7: *POC Act 1987*: Money recovered in 2007–2008

	Amount recovered
Pecuniary penalty orders	\$219,216
Forfeiture orders	-
Automatic forfeiture	\$4,966,372
Matters where money recovered but no formal orders made	-
Total recovered	\$5,185,588

TABLE 8: Criminal assets: summary of recoveries for 2007–2008

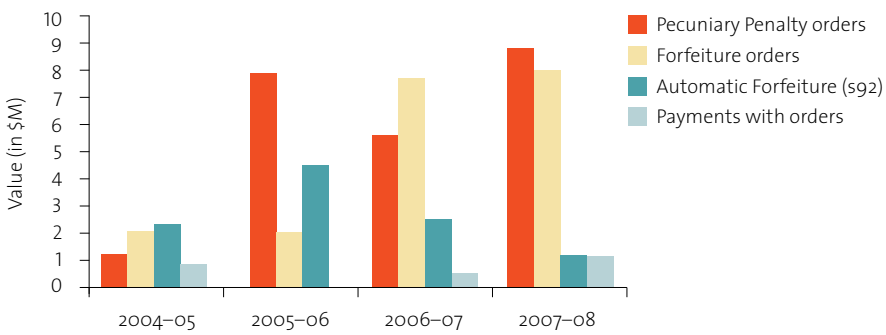
<i>POC Act 1987</i> pecuniary penalty orders	\$219,216
<i>POC Act 1987</i> forfeiture orders	-
<i>POC Act 1987</i> automatic forfeiture	\$4,966,372
Matters where money recovered but no formal orders made	-
<i>POC Act 1987 total</i>	\$5,185,588
<i>POC Act 2002</i> pecuniary penalty orders	\$8,957,325
<i>POC Act 2002</i> forfeiture orders	\$8,200,982
<i>POC Act 2002</i> automatic forfeiture	\$1,163,998
Matters where money recovered but no formal orders made	\$1,232,044
<i>POC Act 2002 total</i>	\$19,554,349
<i>Customs Act</i> condemnation	-
<i>Customs Act total</i>	-
Grand total	\$24,739,937

TABLE 9: CSB Act—orders made in 2007–2008

Name	State	Date
Bowerman	NSW	3 October 2007
Murphy	NSW	29 April 2008
Pickert	SA	16 April 2008

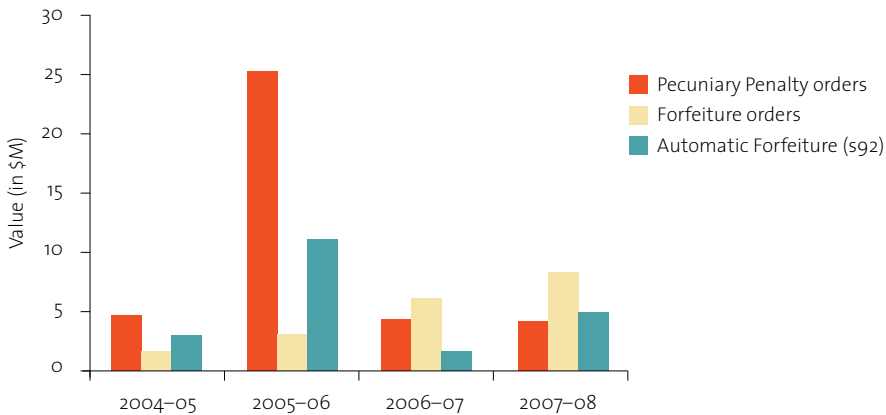
Money Recovered *POC Act 2002*

2004–05 to 2007–08

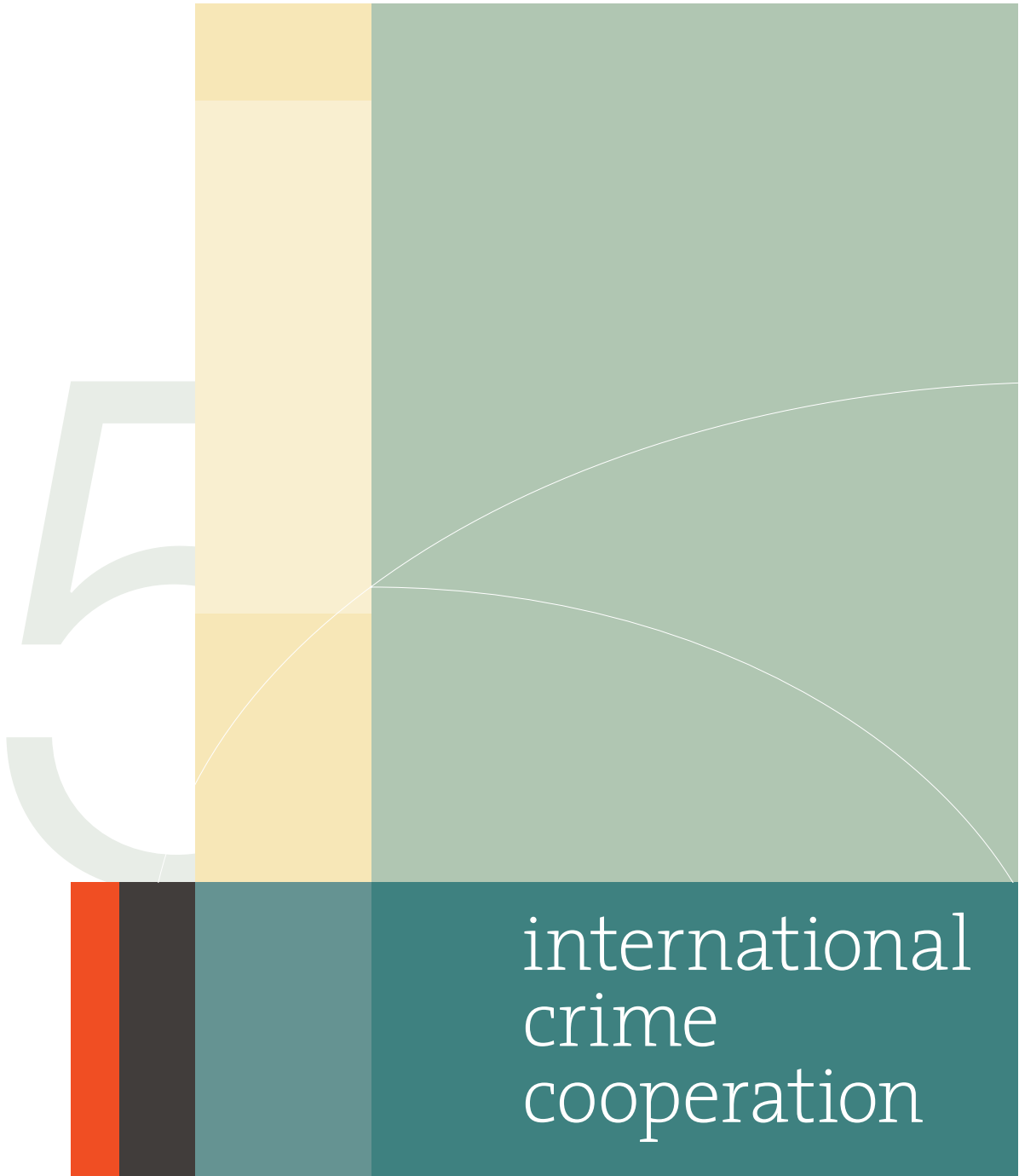


Value of Confiscation Orders *POC Act 2002*

2004–05 to 2007–08







international
crime
cooperation

International crime cooperation



There is a growing recognition of the importance of international cooperation in the prosecution of serious crime. Prompt cooperation and timely assistance both to and from other countries is vital to ensure that cases with an international dimension are investigated and prosecuted efficiently and effectively. Increasingly, many of the offences prosecuted by the CDPP, including terrorist offences, people smuggling, sexual servitude, drug trafficking and fraud on the revenue involve cooperation and assistance from other countries.

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

The CDPP is involved in two main areas of international criminal cooperation: Extradition and Mutual Assistance. Both areas involve the dedication of specialised resources and this reflects the priority placed by the CDPP on this important area of work.

Mutual Assistance

Mutual assistance is a formal process used by countries to provide assistance to each other to investigate and prosecute criminal offences and to recover the proceeds of crime. The 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 Australia the mutual assistance in criminal matters regime rests on a Commonwealth Act, the *Mutual Assistance in Criminal Matters Act 1987*, together with a network of international relations and obligations.

This international network comprises a number of bilateral treaties and multilateral conventions. Australia has ratified 26 bilateral mutual assistance treaties, and a number of multilateral conventions, including:

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

These treaties and conventions bind the signatories to provide mutual assistance to each other in accordance with their terms. Countries which are not signatories to mutual assistance treaties or conventions may also request mutual assistance from, and provide mutual assistance to, each other. This is done under the principle of reciprocity whereby 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 relation to requests from other countries, the main types of assistance provided under the mutual assistance regime involve the use of coercive powers, and include:

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

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

In the past year, the CDPP provided assistance in executing 41 requests made by 25 countries.

The CDPP was also involved in 180 outgoing requests made by Australia to 49 foreign countries. The CDPP prepares draft outgoing requests for consideration by the Attorney-General's Department, which is responsible for making formal requests under the Mutual Assistance regime. The outgoing requests were made in conjunction with Commonwealth investigative agencies, or joint taskforces comprising law enforcement officers from Commonwealth, State and Territory agencies and were aimed at the collection of foreign evidence for use in either prosecutions or investigations into serious Commonwealth offences. The CDPP is generally not involved in mutual assistance requests initiated by State and Territory agencies where Commonwealth offences are not involved.

The CDPP continues to provide mutual assistance training to Commonwealth investigative agencies, and to participate in capacity building forums with other countries in the South East Asia and Pacific region.

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



GREGORY JOHN DUNN & MISTY MOUNTAIN PTY LTD**OVERSEAS
TAX FRAUD
OPERATION
WICKENBY**

This matter considered the role of the CDPP in the making of Mutual Assistance Requests, particularly in relation to Operation Wickenby.

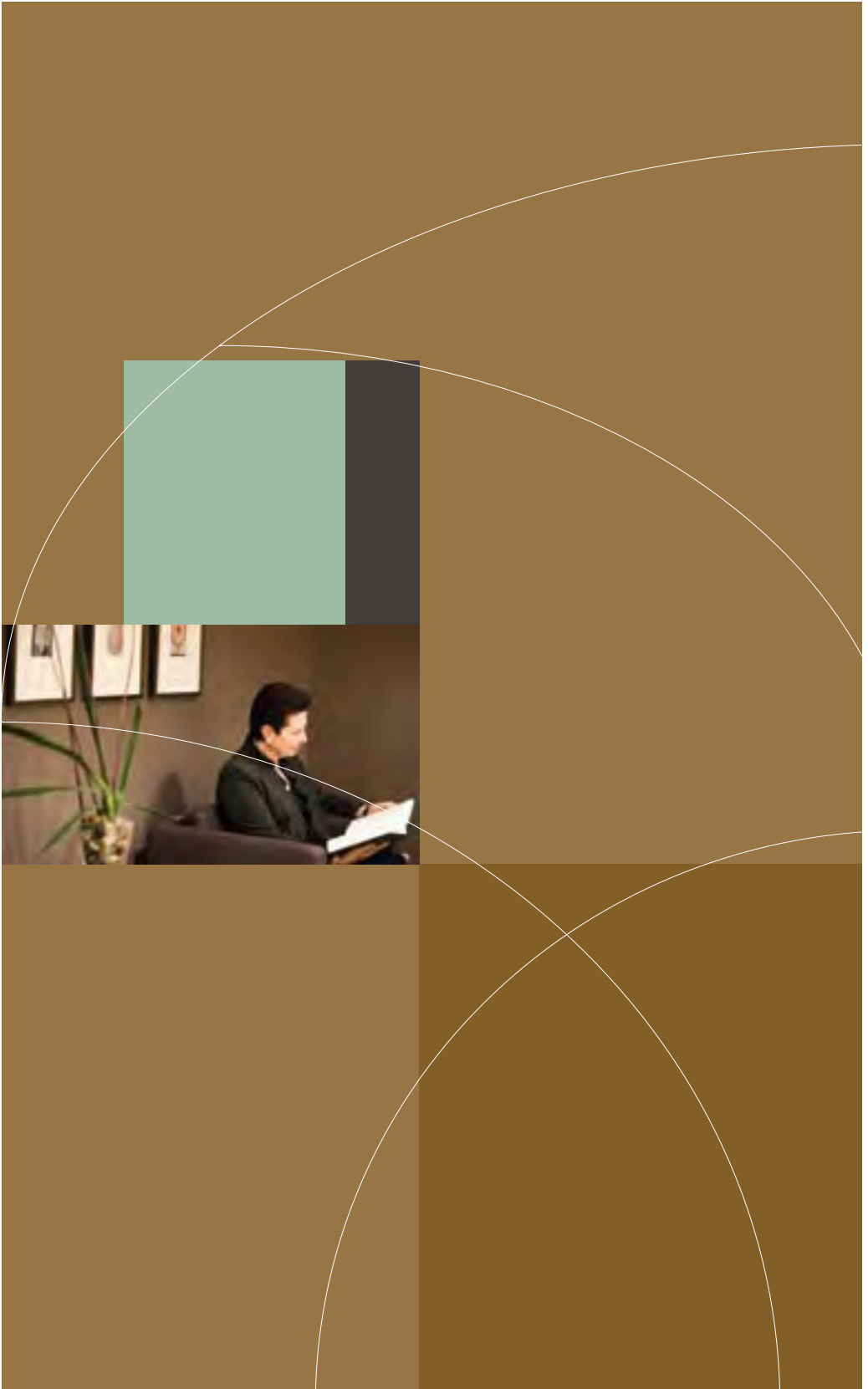
On 16 March 2005, a delegate of the Attorney-General made a request to Switzerland in accordance with the *Mutual Assistance in Criminal Matters Act 1987* and the *Treaty between Australia and Switzerland on Mutual Assistance in Criminal Matters done at Berne in Switzerland on 25 November 1991*.

The Mutual Assistance Request asked the Swiss authorities to obtain business records from Strachans SA, an accountancy services firm in Geneva, and from a private banking institution. The Mutual Assistance Request stated that the records were required for “the investigation into, and possible prosecution of” 17 named individuals who were suspected of tax fraud and conspiracy offences against laws of the Commonwealth. The applicants were clients of Strachans named in the Mutual Assistance Request.

Under both the *Administrative Decisions (Judicial Review) Act 1977* and the *Judiciary Act 1903*, the applicants sought judicial review of various acts they asserted were decisions and/or conduct relating to the making of the Mutual Assistance Request. They sought, among other things, that the Mutual Assistance Request be quashed, and challenged the statutory authority of the CDPP to participate in the making of the Mutual Assistance Request.

On 24 April 2008, the judgement in the appeal was delivered and the application was dismissed with costs. The court held that the CDPP played a ‘limited, but nonetheless, an important role in Operation Wickenby,’ and supported the actions undertaken by the CDPP in the course of Operation Wickenby as conducive to the performance of one or more of the prosecutorial functions of the CDPP.

The defendants have lodged an appeal against this judgement to the Full Federal Court. The appeal is listed to be heard in November 2008.



Extradition

The CDPP regards extradition as an important mechanism in law enforcement. The use of available extradition procedures challenges the perception that offenders can avoid being dealt with by law enforcement authorities by fleeing the jurisdiction. This has important consequences, not only for global law enforcement cooperation, but also in terms of domestic law enforcement, especially in terms of the deterrence of crime. The CDPP has an important role to play in the efficiency of the extradition system in Australia.

The CDPP is involved in the execution of all incoming extradition requests and the preparation of supporting documentation for outgoing extradition requests relating to Commonwealth offences. In the case of incoming requests, the CDPP appears in the court proceedings in Australia and in any appeals arising from those proceedings. The CDPP appears for the foreign country in the proceedings, receiving instructions from the Attorney-General's Department.

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

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 CDPP received instructions from the Attorney-General's Department to act, or requests to provide advice or other assistance, in relation to 25 new requests from foreign countries. Four of those matters have resulted in court proceedings in Australia, with two of the people consenting to extradition, and two persons being found eligible for surrender after contested proceedings before a Magistrate. The CDPP also

appeared on behalf of New Zealand in relation to seven requests for extradition received this year. All seven people sought consented to their surrender.

In the last year, proceedings were able to be commenced in respect of six matters which had been referred in previous financial years. Those proceedings resulted in five persons consenting to extradition and one person being found eligible for surrender after a contested hearing.

The CDPP has continued to appear on behalf of foreign countries in a number of continuing extradition matters before the Courts throughout the year, including an unsuccessful challenge by three persons in the High Court to the jurisdiction of State Magistrates to conduct proceedings under the *Extradition Act 1988*. The number and extent of legal challenges results in significant delay in the extradition proceedings being finalised.

In addition to the CDPP's role in formal cases referred to it, the CDPP also provides advice to the Attorney-General's Department on a preliminary basis on a number of matters referred to it as the Central Authority from foreign countries. The technical nature of extradition proceedings requires that documents submitted in support of an extradition request must meet the requirements of the *Extradition Act* and the relevant Treaty. Given the widely differing legal systems throughout the world, assistance is often provided to foreign countries to ensure that requests meet the standard required.

OUTGOING REQUESTS

During the course of the year, the CDPP asked the Attorney-General's Department to make eight extradition requests to foreign countries in relation to prosecutions being conducted by the CDPP. These requests were either formal requests, or requests for provisional arrest pending the submission of a formal request. Two persons have been returned to Australia as a result of the requests. A further three requests are the subject of extradition proceedings before the Courts of the relevant foreign country. One person has been found eligible to be surrendered but has not yet returned. One person voluntarily returned to Australia.

Six persons were also surrendered to Australia during the year as a result of requests made in previous financial years.

One request for extradition was made to New Zealand, and is currently the subject of proceedings before the New Zealand Court.

Extradition requests involving the CDP*: source country

Country	Incoming Requests	Outgoing Requests#
Albania	1	
Argentina	1	
Belgium	1	
Canada		1
Germany	1	
Greece	2	
India	1	
Indonesia	2	1
Israel	1	
Malaysia	1	
Netherlands		1
New Zealand	7	1
Poland	3	
Slovak Republic	1	
Slovenia	1	
Switzerland	1	
Thailand	2	3
Turkey		1
United Kingdom	2	
United States	4	1
Total Requests	32 (No. for previous year 22)	9 (No. for previous year 14)

* 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 CDP*: type of matter

Type of Matter	Incoming Requests	Outgoing Requests
Theft/Robbery	3	
Fraud	14	2
Sexual offences/indecent assault	6	
Drugs	3	5
Murder/assault	3	
Computer hacking	2	
Child Pornography	1	
People Smuggling		1
Corporations		1
Total Requests	32	9





international
contribution

International contribution



The CDPP actively contributes internationally by attending and organising conferences and providing education and training with a particular focus on initiatives in the Asia Pacific region. The CDPP seeks to share our knowledge and experience, particularly in specialised areas, with other countries to assist in building their capacity to prosecute and take proceeds of crime action.

In 2007–2008 the CDPP’s international activities have included multilateral engagement with overseas agencies and international organisations, as well as developing and strengthening regional and bilateral technical cooperation programs in the Asia Pacific region.

Many of these activities have involved the CDPP collaborating with other Commonwealth agencies. A number of programs have been delivered through the framework of the Australian Government’s development cooperation program administered by AusAID and assisted by external funding.

The CDPP’s international work reflects a commitment to strengthening prosecution services in other countries and building mutually beneficial relationships. This is very important given the increasingly international character of contemporary criminal activity and the need to respond by coordinated international law enforcement.

The CDPP’s international engagement provides a valuable way to keep up to date with international developments and models of best practice for national prosecution services.

International Crime Cooperation Workshop

The CDPP hosted an International Crime Cooperation Workshop in Brisbane in April 2008. The workshop was an initiative of the Anti-Money Laundering Assistance Team (AMLAT) within the Attorney-General’s Department. The object of the workshop was to continue to build the capacity of Pacific Island Forum countries in the areas of Proceeds of Crime, Mutual Assistance and Extradition. Workshop participants included prosecutors and law enforcement officers from the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Palau, Papua New Guinea, Nauru, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. The workshop was opened by the Parliamentary Secretary for Pacific Island Affairs, the Honourable Duncan Kerr SC MP.

The CDPP and AFP developed a program to train participants in the practical skills required to prepare and conduct proceeds of crime action. CDPP criminal assets lawyers prepared an exercise based on a real case and acted as mentors, providing practical support throughout the workshop. The CDPP presented sessions on technical aspects and answered questions that arose during the workshop. Participants prepared legal documents utilising their respective country’s proceeds of crime legislation. The workshop culminated in the participants making an application for a restraining order to a Judge. Two Queensland District Court Judges kindly participated in this part of the workshop. Participants valued the experience of preparing materials and making an application in a moot court environment with the assistance of experienced CDPP lawyers.

Meeting of Australian and Pacific Chief Prosecutors



The second meeting of Australian and Pacific Chief Prosecutors was held in Sydney in June 2008, following a successful meeting last year. The meeting was co-hosted by the CDPP and the NSW Office of the Director of Public Prosecutions. The meeting brought together the heads of prosecution services and senior prosecutors from ten Pacific Island Forum countries, as well as the heads of four of Australia's State and Territory prosecution services. Participants committed to maintaining and strengthening a Pacific Prosecutor's Network, recognising the benefits of closer liaison between prosecutors, particularly in relation to emerging areas such as money laundering and proceeds of crime action.

The meeting identified the fundamental importance of conducting prosecutions in accordance with a Prosecution Policy and the importance of the prosecution discretion being exercised consistently in accordance with an articulated test. Participants analysed the important elements of effective case management systems and their potential application in the Pacific environment of agencies operating with limited resources. The meeting also affirmed the importance of developing effective working relationships with client agencies and identified strategies to assist with developing and maintaining these relationships. Support for the meeting was provided by AusAID through its Pacific Governance Support Program.

Prosecutors' Pairing Program

The Prosecutors' Pairing Program is a joint initiative of the CDPP and AMLAT which places a prosecutor from a Pacific Island Forum country in one of the CDPP's proceeds of crime teams. The purpose of the program is to strengthen the capacity of prosecution services in Pacific countries to conduct effective proceeds of crime action, through practical experience, training and mentoring. In 2007–2008 the program included the following three placements:

- ▶ A prosecutor from the Papua New Guinea Office of the Public Prosecutor was based in the Criminal Assets Branch of the Brisbane Office for a period of three months;
- ▶ A prosecutor from the Vanuatu Office of the Public Prosecutor was based in the Criminal Assets Branch of the Melbourne Office for a similar period;
- ▶ A prosecutor from the Solomon Islands Office of the Director of Public Prosecutions commenced a two month placement with the Criminal Assets Branch of the Brisbane Office on 18 June 2008.

Asia Pacific Group on Money Laundering

The CDPP is an active contributor to the work of the Asia Pacific Group on Money Laundering (APG). The APG is an autonomous and collaborative international organisation committed to reducing serious crime in the Asia Pacific through the adoption, implementation and enforcement of international standards against money laundering and the financing of terrorism. In the past year senior prosecutors have attended APG annual meetings, participated in training workshops and contributed to the APG's mutual evaluation assessment work.

In 2007 a senior prosecutor was appointed as Australia's legal expert to an international Assessment Team responsible for preparing the second APG Mutual Evaluation of Malaysia. The

report was considered at the annual meeting of the APG, held in Perth in July 2007, which was co-chaired by the Australian Federal Police Commissioner and the Head of the Indonesian Financial Transaction Reports and Analysis Centre. The APG evaluation process has proved an excellent opportunity to apply the CDPP's knowledge and to observe more broadly the development of anti-money laundering and combating of financing of terrorism regimes by Australia's regional neighbours.

Asian Development Bank (ADB) and Organisation for Economic Cooperation and Development (OECD) Steering Group Meeting on Anti-Corruption in the Asia Pacific and Regional Seminar on Asset Recovery and Mutual Legal Assistance

A senior CDPP lawyer jointly chaired an expert panel session at the 10th Steering Group Meeting of the ADB/OECD Anti-Corruption Initiative for Asia Pacific in Bali in September 2007. The meeting reviewed the progress of the implementation of the *Anti-Corruption Action Plan for Asia and the Pacific* by the 28 countries and economies that had endorsed the Plan. This meeting was followed by an ADB/OECD Regional Seminar on Asset Recovery and Mutual Legal Assistance. The CDPP's representative presented a paper on 'Tracing, freezing, confiscating and repatriating the proceeds of corruption.' The Seminar focussed on strengthening capacity, fostering dialogue and encouraging policy reform amongst participating countries and economies.

Vienna Forum to Fight Human Trafficking

A senior CDPP lawyer attended the Vienna Forum to Fight Human Trafficking in February 2008. The international gathering was an initiative of the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT). The Vienna

Forum was organized around three central themes reflecting the key issues that need to be addressed in an anti-human trafficking strategy: vulnerability, impact and action. The meeting included workshops on criminal justice responses to human trafficking and the effectiveness of legal frameworks and anti-trafficking legislation.

Association of Southeast Asian Nations (ASEAN) Pilot Awareness Course on Trafficking in Persons for Judges and Prosecutors (Malaysia)

At the invitation of the Asia Regional Trafficking in Persons (ARTIP) Project, two senior CDPP lawyers experienced in people trafficking matters attended an ASEAN Pilot Awareness Course on Trafficking in Persons for Judges and Prosecutors, in Kuala Lumpur, Malaysia, in April 2008. The course included an introduction to people trafficking and modules on the international and Malaysian legal framework. It also covered the prosecution and adjudication of people trafficking cases and a specialist training needs analysis.

The role of the CDPP's senior lawyers was to participate in a critical evaluation of the course and to assist in identifying specialist training needs to be covered in advanced courses. The course provided an important opportunity for the CDPP to learn more about the international people trafficking legal framework and practical and policy issues involved in prosecuting people trafficking cases in Southeast Asia.

OECD Bribery Conference (Paris)

In June 2008 a senior CDPP lawyer attended a meeting of the OECD Working Group on Bribery in International Business Transactions. The CDPP was part of an Australian Government delegation who attended to report following Australia's written report on the phase 2 evaluation of Australia's implementation of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Australia

implemented this convention in 1999. The CDPP also attended a preliminary informal meeting of prosecutors from OECD countries to exchange experiences and techniques used in prosecuting the bribery of foreign government officials.

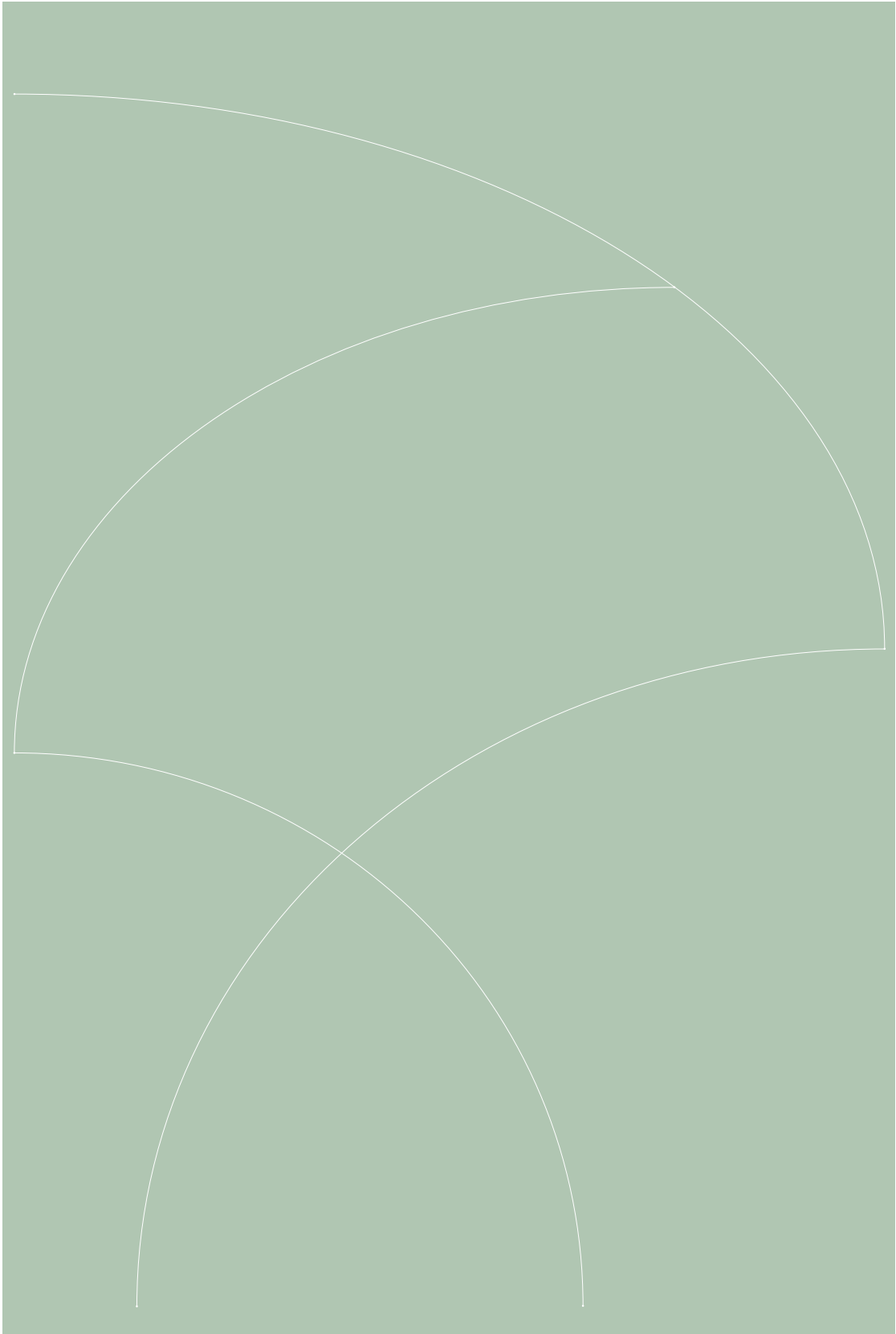
Other international activities

CDPP lawyers are active participants in a number of international fora for prosecutors. These include meetings of the International Association of Prosecutors (IAP) and the International Society for the Reform of Criminal Law.

The CDPP participates in international meetings of prosecution agencies from countries with criminal justice systems based on the common law. The Heads of Prosecutors Agencies Conference (HOPAC) brings together the heads of prosecution services. The Managing Officers, Prosecutors and Executive Directors meeting (MOPED) is an international meeting of key operational officers from prosecution agencies with a focus on management and areas such as professional development and information technology.

The CDPP's international activities provide valuable opportunities to contribute to strengthening prosecution capacity and to benefit from international experience.





An abstract graphic design featuring a grid of colored rectangles. A vertical yellow bar is on the left, with a grey horizontal bar intersecting it. Below the yellow bar are red and black vertical bars. The right side is a large green rectangle with two white curved lines. The text 'law reform' is in white on a dark teal background at the bottom right.

law reform

Law reform



The CDPP's contribution to law reform includes providing advice about the practical implications of:

- ▶ existing legislation,
- ▶ new policy proposals, and
- ▶ proposed legislation.

The CDPP's ongoing contribution to law reform stems from its practical experience conducting criminal prosecutions and taking proceeds of crime actions in courts across Australia.

As the agency responsible for the conduct of prosecutions against the laws of the Commonwealth in all Australian jurisdictions, the CDPP is in a unique position to provide feedback to policy formulators and law-makers about the operation of Commonwealth laws and the CDPP's experience working with these laws in the courts.

The CDPP also has an interest in ensuring that Commonwealth legislation regarding the criminal law is clear, consistent and practical. However, it is important to recognise that the CDPP does not develop criminal law policy.

The Policy Branch in Head Office coordinates the CDPP's work in the area of law reform. The Policy Branch acts as a coordination point for the various areas of specialist expertise within the 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.

The DPP has contributed to law reform in the following areas:

Legislative proposals

The CDPP commented on a wide range of legislative proposals and draft legislation during the course of the year, including the *Crimes Legislation Amendment (Child Sex Tourism Offences and Related Measures) Bill 2007* (which did not pass through Parliament before the 41st Parliament was dissolved), the *Australian Crime Commission Amendment Act 2007*, the *Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2007* (which did not pass through Parliament before the 41st Parliament was dissolved), the *Evidence Amendment Bill 2008* and the *Crimes Legislation Amendment (Miscellaneous Matters) Act 2008*. The CDPP has also contributed to the policy development of a number of law reform proposals which have not at this stage been introduced into Parliament.

Reviews

The CDPP has participated in a number of reviews throughout this year providing submissions or comments on discussion papers.

Participating in reviews is an important part of the CDPP's contribution to law reform because it is a mechanism to discuss how the law currently operates or to comment on proposed changes to the law.

By way of examples, this year the Australian Law Reform Commission (ALRC) released Discussion Paper 73 titled *Client Legal Privilege and Federal Investigatory Bodies*. The CDPP provided submissions on the discussion paper, reiterating the concerns that the CDPP has in relation to the impact that client legal privilege can have in delaying investigations and providing comments on various options suggested by the ALRC.

The New South Wales Law Reform Commission (NSW LRC) released a consultation paper on complicity and asked the CDPP to specifically comment on the codification of extensions of criminal liability undertaken by the Commonwealth. The CDPP provided detailed submissions on the operation of the *Criminal Code* and discussed the impact that the lack of a joint commission provision in the *Criminal Code* has had on Commonwealth prosecutions.

Liaison and committees

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

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

In addition, the CDPP is active in law reform through its discussions with departments and agencies, particularly through its liaison function, and at various interdepartmental committees where law reform issues are raised.





practice
management

Practice management



The CDPP prosecutes a wide range of criminal offences referred by over forty different investigative agencies in eight States and Territories. The Legal and Practice Management Branch in Head Office plays an important role in implementing the strategic priorities of the CDPP that are critical to ensuring that the CDPP delivers an efficient, effective and independent federal prosecution service to the Australian community.

The Branch deals with a broad range of legal, policy and liaison responsibilities and supports the CDPP's Regional Offices and Executive in connection with the work of the General Prosecution, Taxation and Centrelink Branches around Australia. This includes providing legal and strategic advice in significant and sensitive prosecutions; responsibility for national liaison with referring agencies; coordinating the review of national policies and guidelines; and designing and implementing national training programs for prosecutors.

The Branch provides specialist coordination, advice and training in specific areas of the CDPP's practice, particularly in new areas, and assists with the sharing of knowledge and experience within the CDPP. It also monitors and seeks to enhance CDPP performance.

The CDPP works hard to maintain effective working relationships with investigative agencies and departments. A system of national liaison with the CDPP's major referring client agencies complements liaison conducted at the regional level. The CDPP maintains a number of manuals and policies designed to assist law enforcement agencies in their role in investigating Commonwealth offending. The CDPP also provides a valuable system of training and other support to investigators.

The Branch contributes to policy development and law reform in the Commonwealth criminal justice system through a close liaison relationship with the Commonwealth Attorney-General's Department. The CDPP is closely involved in the development of offences and legislation relating to criminal law.

With the changing nature of Commonwealth offending, the CDPP's practice has expanded from traditional areas such as fraud on the Commonwealth and the importation of drugs, to encompass new areas such as people trafficking, child sex tourism, offences relating to the use of the internet and cybercrime.

Prosecuting in these new areas presents new challenges to the CDPP in conducting and managing these matters. People trafficking prosecutions are particularly difficult, with the cultural and language diversity of victims and witnesses providing additional challenges to already lengthy and complex matters.

Advice to the Director

One of the key areas of the CDPP's work is the provision of high-level legal advice to the Director on the exercise of the Director's statutory functions in accordance with the *Prosecution Policy of the Commonwealth*. This includes consideration of no bills, *ex officio* indictments, appeals against sentence, reference appeals, conspiracy consents and taking over and discontinuing prosecutions.

National Coordination

The Legal and Practice Management Branch assists in coordinating and supporting the CDPP's national practice.

The Branch seeks to build expertise within the CDPP and develop national consistency including facilitating the sharing of information around Australia, establishing networks for prosecutors working in specialised areas, providing on-line legal resources, and arranging national meetings. For example, this year there have been meetings in relation to taxation, Centrelink prosecutions, people trafficking, child pornography and money laundering.

There is liaison between Commonwealth and State prosecuting authorities at national and regional levels. The Conference of Australian Directors of Public Prosecutions provides a forum for Directors of Public Prosecutions to discuss best practice in prosecuting, professional standards, training and liaison. The National Executive Officers' Meeting of the heads of legal practice and corporate services of the Commonwealth and State and Territory prosecution services provides a valuable opportunity to share information and discuss the management of prosecuting agencies.

The CDPP also gains from international experience in areas such as the management of prosecution agencies, professional development and information technology by attending the Managing Officers, Prosecutors and Executive Directors meeting (MOPED).

Liaison with Investigative Agencies

The CDPP works closely with Commonwealth agencies that refer matters for prosecution.

The CDPP has in place General Guidelines for Dealing with Investigative Agencies and also Memoranda of Understanding with some agencies. The General Guidelines have been recently reviewed and comments sought from investigative agencies. The CDPP holds regular meetings at the national and regional level with

many Commonwealth agencies. It also maintains relationships with other investigative agencies that from time to time refer briefs of evidence to the CDPP.

To support liaison relationships, on occasion the CDPP hosts national conferences addressing specific areas of work. These conferences provide a useful opportunity for prosecutors and investigators to discuss issues involved in dealing with specific types of criminal conduct and to strengthen prosecution action.

In May 2008, the CDPP held its annual prosecutors' conference on Centrelink prosecutions. Prosecutors from all CDPP Regional Offices and Head Office attended the conference. A range of issues were discussed including charging practices, evidence issues and issues raised by the introduction of new technology. Continued discussion of these issues promotes national consistency in dealing with prosecutions across Australia in this important area.

Other national conferences held throughout the year which have been attended by representatives of investigative agencies have focussed on areas such as people trafficking prosecutions, tax prosecutions and prosecutions arising from the use of the internet to receive and supply child sexual exploitation material.

Victims

The CDPP is prosecuting an increasing number of matters that involve individual victims of crime as the nature of Commonwealth crime changes. The CDPP recognises the importance of keeping victims informed about matters and providing appropriate support to victims participating in the criminal justice process.

Victims are recognised in the *Prosecution Policy of the Commonwealth* and the personal circumstances of any victim of the offence are matters that a court must take into account in sentencing in accordance with the *Crimes Act*. Victim impact statements may be tendered in Commonwealth sentencing proceedings including for offences such as people trafficking, threatening



and offensive phone calls, and corporate fraud.

In people trafficking matters the Commonwealth has established the Support for Victims of People Trafficking Programme coordinated by the Office for Women. In relation to participating in the court process the CDPP has engaged appropriate support services when required. For example, in one matter the CDPP engaged Thai support personnel. In another, the CDPP funded a Thai support person to come to Australia to support the victim through the court process.

The CDPP has developed materials for victims and witnesses that explain the criminal justice system and their place in it.

The CDPP is engaged in training officers who prosecute in matters involving victims. For example, cross-cultural training and training in assisting victims for officers prosecuting people trafficking matters. In December 2007, a group of prosecutors dealing with on-line child exploitation matters were trained in the area of child eyewitness testimony and interviewing.

Training

Training is an integral part of the CDPP's operations, with training being provided for CDPP officers and the CDPP providing training for referring agencies and investigators.

The CDPP recognises the importance of developing skills within the office through structured training. The Office is developing resources to facilitate career development within the CDPP and at the same time enhance the efficiency and capability of the CDPP as the prosecuting authority for the Commonwealth.

Training is increasingly important given developments in technology, management and leadership techniques and the continuing need to attract and retain staff. The work of the CDPP is becoming increasingly specialised and accordingly there is a need for training addressing the legal and practical issue in specific subject areas. In light of Commonwealth prosecutors now dealing with disturbing material in some of these areas, training

is also necessary to address the welfare of our officers who may experience distress or trauma.

The CDPP has appointed a National Training and Development Coordinator responsible for assessing the training needs of the Office and implementing structured programs. A national induction program has been developed to provide a comprehensive introduction to the Office and to cover all relevant procedures and policies to ensure that prosecutors are skilled for the work they perform. This includes areas such as the *Prosecution Policy of the Commonwealth*, the Guidelines and Directions Manual, and the respective roles and responsibilities of the CDPP and other agencies. This online resource is provided in addition to the training provided by supervisors.

A training and development program is being implemented to cover core competencies, which includes training in areas such as advocacy and leadership and management skills. Training materials covering a range of subject areas are being made available on-line. This national training is in addition to Continuing Legal Education programs conducted in individual CDPP offices.

The CDPP is a regular contributor to the training courses for investigative officers conducted by referring agencies. These cover a range of areas such as the *Prosecution Policy of the Commonwealth*, prosecution disclosure and proceeds of crime, as well as training addressing particular offences.

For example, in June 2008, the CDPP provided expert witness training to Centrelink officers. The training covered the process by which a witness gets to court, jury trials and judge-only trials, court etiquette, examination in chief and cross-examination and what the court expects of the witnesses. The training included mock court sessions in which Centrelink officers practised giving evidence.

Also, at the start of 2008 the CDPP in conjunction with the Australian Taxation Office (ATO) ran a series of training courses nationally designed to train all investigators in the Serious Non Compliance areas of the ATO in relation to the prosecutions, disclosure obligations

and in the use of tools developed by the ATO in conjunction with the CDPP to assist in the meeting of these obligations.

Manuals

This year the CDPP released updated versions of the Search Warrants Manual, the Telecommunications and Access Interception Manual and the Surveillance Devices Warrants Manual. These manuals provide guidance on the legal requirements for obtaining and executing warrants under Commonwealth law. Given the technical nature of this area of law, the CDPP has an important role in ensuring that investigators are provided with clear and appropriate advice in relation to the exercise of powers under the relevant legislation and case law. Each of these Manuals is reviewed on a regular basis and is available electronically to CDPP officers and relevant Commonwealth investigators. The CDPP has also produced a Copyright Prosecutions Outline and a Trademark Prosecutions Outline which provide guidance regarding the investigation and prosecution of offences relating to intellectual property.

Statistics

An important element of the CDPP's practice management is the collection and analysis of statistical information regarding Commonwealth prosecutions. Statistical information is collected in the CDPP's Case Recording Information Management System (CRIMS) and is used internally and externally to measure the work of the CDPP against performance indicators and provide information to referring agencies. CRIMS is a very important resource for the CDPP and is under continuous development. A major project to standardise the CRIMS data collection procedure is currently in progress.

On-Line Resources

The CDPP has put in place several initiatives to better communicate with and assist investigative agencies, including a new Information Service to its Client Agencies website to update them on criminal law issues. The website covers Commonwealth criminal cases, new legislation, and recently published books, articles, conference papers and Government reports. This is in addition to the CDPP's online manuals for search warrants and electronic surveillance warrants.

This website will also include offence breakdowns and draft charges so that investigators are able to readily identify the physical and fault elements that must be proven in order to establish an offence and to assist in charges being formulated.

The Commonwealth Sentencing Database is a joint project of the CDPP, the National Judicial College of Australia and the Judicial Commission of NSW, based on sentencing information provided by the CDPP. The purpose of the Database is to provide judicial officers and other users with rapid and easy access to information about sentencing for Commonwealth offences and to assist judicial officers with their sentencing decisions. The Database is designed to provide primary research sources, such as judgments and legislation, linked to secondary resources including commentary on sentencing principles and sentencing statistics.

Contemporary prosecuting increasingly involves the management and presentation to court of voluminous evidential material. This year the CDPP adopted the Ringtail computer litigation support system. Ringtail will be used as a replacement for the previous LSS system as the method of handling electronic briefs of evidence and the innovative presentation of evidence using computers in court. The CDPP is developing protocols for the use of the new system and it is expected that it will be fully operational in the coming financial year.



Joint Trials— State and Territory DPPs

The Director is empowered to prosecute indictable offences against State and Territory laws where the Director holds an authority to do so under the laws of the relevant State or Territory. In addition, the Director is empowered to conduct committal proceedings and summary prosecutions for offences against State or Territory law where a Commonwealth officer is the informant.

The CDPP has arrangements in place with each of the Directors of Public Prosecutions in Australia concerning procedures for conducting trials which involve both Commonwealth and State or Territory offences. The CDPP is in the process of reviewing the arrangements with each of the State or Territory DPPs, with a view to establishing similar arrangements with each State and Territory DPP. The CDPP has entered into a new joint trial arrangement with the New South Wales Director of Public Prosecutions and consultations are continuing with other jurisdictions.

Prosecution Policy

As discussed in last year's Report, the CDPP 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* have been considered by the CDPP and consultation has been commenced with Commonwealth agencies on these. 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 CDPP, and in informing the public of the principles that underlie those decisions.

Disclosure

An important and ongoing issue in the CDPP's practice and in its work with Commonwealth investigative agencies is ensuring proper disclosure in prosecutions, as provided for in the CDPP Statement on Prosecution Disclosure. The CDPP has raised the importance of disclosure with the Heads of Commonwealth Law Enforcement Agencies. A disclosure working group comprised of major Commonwealth law enforcement agencies has been established to improve the capacity of these agencies to adequately deal with the often large amounts of material involved in prosecuting Commonwealth matters.

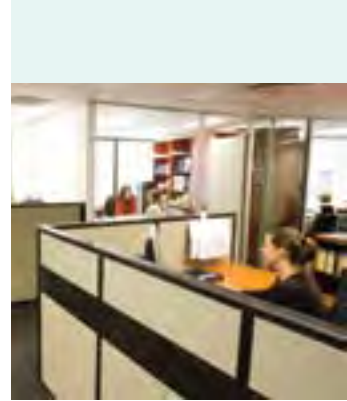






resource
management

Resource management



Human Resources

There is a central Human Resource (HR) section in Head Office supplemented by staff in all regions who deal with HR issues at a local level.

The Head Office section is responsible for providing policy direction and guidelines to the Regional Offices to ensure consistency of practice throughout the CDPP. The Section also provides national payroll services, advice on entitlements and conditions of service, and is responsible for negotiating and implementing Collective Agreements and other employment instruments.

The Regional HR representatives provide day to day HR services on local matters. They also contribute to national HR initiatives through regular forums.

STAFFING PROFILE

The employees of the CDPP are the most valuable resource of the Office. Fifty-five percent of staff members are lawyers. Other staff 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 2008 the total number of staff was 599, there having been 545 as at 30 June 2007. A breakdown of this figure appears in the tables at the end of this Chapter. The average staffing level for the year was 532.86. All staff members are employed under the *Public Service Act 1999* or section 27 of the *DPP Act 1983*.

WORKFORCE PLANNING AND STAFF RETENTION AND TURNOVER

In 2008 the CDPP developed national recruitment campaigns for all legal levels to plan for and address future workforce requirements. As in 2007, the CDPP elected to implement a centrally coordinated process encompassing the needs of all regions. The campaign also used new recruitment processes to generate interest from a broader market and to introduce efficiencies.

Strategies included engaging expert assistance to provide the CDPP with a more attractive image or “brand” and a more creative advertising campaign. The CDPP also conducted an Employee Valuation Proposition (EVP) to identify what factors influenced employee retention and turnover.

In addition, the application process was made more efficient and user friendly by implementing an online recruitment tool. A wider market of candidates was targeted by moving from the traditional Australian Public Service (APS) criteria based selection process to a competency based selection process.

WORKPLACE AGREEMENTS

COLLECTIVE AGREEMENT

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

The main features of the collective Workplace Agreement are innovative and flexible employment and leave provisions.

As at 30 June 2008, there were 520 employees covered by the Agreement.

AUSTRALIAN WORKPLACE AGREEMENTS

The CDPP has an Australian Workplace Agreement (AWA) in place for each substantive Senior Executive Service (SES) employee and for some employees selected to act as SES employees for a period of six months or more. As at 30 June 2008 there were 34 AWAs in place.

Options for replacing AWAs under the new Government's Bargaining Framework are currently being considered.

WORKPLACE PARTICIPATION

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

LEARNING AND DEVELOPMENT

A key strategic theme for the CDPP is *"to recruit, develop and retain high quality people"* and core values of the CDPP are *"knowledge, skills and commitment of our people"* and *"leadership from senior lawyers and managers"*. The CDPP is rolling out a number of initiatives to translate this theme and values into tangible learning and development programmes for all staff at all levels.

The first stage was the implementation of a more integrated, accessible and nationally consistent induction program designed to provide employees with a comprehensive introduction to the CDPP.

Senior management leadership training developed in 2007–2008 will be provided to SES staff in 2008–2009.

This training focuses on identified strategic themes that include the role of leaders, attracting and retaining staff, supporting employee wellbeing and working with client agencies.

A range of training and development courses will also be rolled out for middle management that will cover supervision and people management issues. Training for new recruits will cover advocacy and focus on the types of legal matters that employees will be dealing with.

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

Direct expenditure on external training for the year was \$315,794. There was also considerable in-house training and 'on the job' training, which was not costed.

OCCUPATIONAL HEALTH AND SAFETY

Over the last 12 months a range of measures were put in place to support staff and to ensure a healthy and safe working environment, including:

- ▶ A project to review health and safety practices and to develop Health and Safety Management Arrangements (HSMAs) in accordance with the *Occupational Health and Safety Act 1991*;
- ▶ Establishing the National Health and Safety Committee (HSC) to oversee the development of HSMAs to be implemented by 15 September 2008;
- ▶ A dedicated 'health and safety' information section on the Intranet;
- ▶ The introduction of a policy for workstation assessments for all new starters and anyone experiencing discomfort in their work area;
- ▶ Rolling out Eliminating Bullying and Harassment workshops for all staff with 63% of staff attending sessions. In addition the network of Workplace Harassment Contact Officers was reviewed, with new officers being appointed and trained in several offices;

- ▶ A review of the *Trauma Management Program* that was reported in last year's annual report. The program was originally introduced in recognition that staff may experience distress or trauma in response to dealing with some types of matters, for example, matters involving the sexual exploitation of children or terrorism offences. During 2007–2008 expert assistance was engaged to undertake a review of the effectiveness of the program and to make recommendations for improvements. As a result, a number of initiatives are being implemented to increase awareness of mental health issues, improve support structures for staff and to reduce the impact of risk factors. These initiatives include training for management and staff in mental health and revised program guidelines and policies.

The CDPP managed four non-compensable cases during 2007–2008 and eight compensable cases.

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

WORKPLACE DIVERSITY

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

The CDPP's workplace diversity profile is shown in the tables at the end of this Chapter. The table is based on information volunteered by staff, and people can choose not to disclose their status. Accordingly the information may not be complete.

STATUS OF WOMEN

As at 30 June 2008, women made up 67.28% of CDPP employees and 63.75% of lawyers.

Of the 45 full-time members of the SES 16 were women. There were 4 part-time members of the SES, 3 of whom were women. In percentage terms, 38.77% of SES positions were filled by women.

As at 30 June 2008, there were 35 women working as legal officers on a part-time basis.

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

COMMONWEALTH DISABILITY STRATEGY

The CDPP reviews its employment practices to ensure that they comply with the requirements of the *Disability Discrimination Act 1992*. The tables at the end of this Chapter include a report on the implementation of the Commonwealth Disability Strategy.

PRIVACY

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

Financial management

FINANCIAL STATEMENTS

The audited financial statements at the end of this Report were prepared in accordance with the *Financial Management and Accountability (Financial Statements for reporting periods ending on or after 1 July 2007) 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 CDPP has only one outcome with one output. Further information about the CDPP's budget is in the Attorney-General's Portfolio Budget Statements.

FINANCIAL PERFORMANCE

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

In accordance with the *DPP Act 1983*, the CDPP prosecutes offences that result in fines and costs being ordered. The revenue is accounted for as administered funds, and when received as cash, is paid directly into Consolidated Revenue.

OPERATING RESULTS

Operating revenues for 2007–2008 were \$9.790m (10.3%) more than 2006–2007. This increase is largely due to increased appropriations from government for increased prosecutions as a result of the measures announced in the 2007–2008 Budget, 2007–2008 Additional Estimates and from phased increases for measures announced in previous Budgets.

Operating expenses for 2007–2008 were \$13.407m (17.2%) more than 2006–2007. This increase is largely due to expenses for the above Budget measures and their impacts on CDPP's activities:

- ▶ the average staffing level in 2007–2008, on a full-time equivalent basis, increased by 51 (10.0%) more than 2006–2007 which lead to an increase in employee expenses of \$6.619m;
- ▶ supplier expenses for prosecution legal costs increased by \$3.660m as a result of increased prosecution activity;
- ▶ supplier expenses for property increased by \$1.714m as a result of additional space being leased;

- ▶ supplier expenses for other items increased by \$1.038m as a result of the overall increase in activity, including on information and communications technology services, staff training and travel; and
- ▶ depreciation expenses increased by 0.497m as a result of additional fitout and furniture acquired for the additional space.

COST RECOVERY ARRANGEMENTS

The CDPP has a Memorandum of Understanding with the Australian Taxation Office (ATO). The ATO transfers part of their appropriation to the CDPP to cover the cost for the prosecutions of offences under Goods and Services Tax legislation. The amount receipted under this arrangement was \$1.25 million (2006–2007: \$1 million).

PURCHASING

The CDPP adheres to the principles of value for money; encouraging competition amongst actual and potential suppliers; efficient, effective and ethical use of resources; and accountability and transparency during the procurement process. These policies and principles are set out in the *Commonwealth Procurement Guidelines* (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 CDPP's decision making, and that the output reflects the independent views of the service provider. For more information on what constitutes a consultancy, refer to 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.

During 2007–2008, the CDPP entered into one new consultancy contract with an estimated value of \$10,000 or more. Further details of these consultancies are provided in Table 6 at the end of this Chapter.

During 2007–2008, the CDPP spent a total of \$0.526 million on consultancy contracts.

ASSET MANAGEMENT

The CDPP's major assets are office fit-out, office furniture, purchased software and library holdings. A stocktake was conducted during the year to ensure the accuracy of asset records. The

CDPP reviewed its assets management procedures and guidelines during the year. The CDPP leases most of the desktop and notebook computers, servers and printers. This has resulted in cost savings to the CDPP and a reduction in the administrative work involved in acquiring and maintaining IT equipment.

During the year:

- ▶ additional space in Darwin, Perth and Melbourne was fitted out and furnished;
- ▶ planning additional space for Canberra, Sydney CBD and Parramatta; and
- ▶ a litigation support software package was purchased and implemented.

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 CDPP's corporate governance framework, with a focus on risk management, internal controls, compliance and financial reporting. As part of this role it oversees CDPP's internal and external audit processes. Through internal audits, the Committee reviews key processes, systems and financial accountabilities across the whole CDPP.

The CDPP's Audit Committee is appointed by the Director. It comprises four members: the First Deputy Director, the Deputy Director Legal and Practice Management, the Deputy Director Corporate Management and the Deputy Director Melbourne Office. In addition, there is a standing invitation to the Australian National Audit Office to observe committee meetings.

INTERNAL AUDIT AND FRAUD CONTROL

Internal audits are carried out every two years. An Internal Audit was carried out this financial year which was conducted by Deloitte Touche Tohmatsu. They reviewed Head Office and three Regional Offices. The following areas were reviewed:

- ▶ Asset Management
- ▶ Purchases and Payables

(including credit cards)

- ▶ Travel
- ▶ Revenue and Receivables
- ▶ Administered Fines and Costs
- ▶ Human Resources and payroll functions
- ▶ Information Technology Management
- ▶ Nomination of Counsel
- ▶ Performance Management
- ▶ Certificate of Compliance process.

The overall results of the internal audit were good with minor procedural changes recommended which the CDPP will take action to implement during 2008–2009.

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

In accordance with the *Commonwealth Fraud Control Guidelines 2002*, the CDPP has in place fraud risk assessments and a fraud Control Plan. Agencies subject to the *Financial Management and Accountability Act* 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 Fraud Risk Assessment and Fraud Control Plan are due to be updated in December 2008.

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 CDPP's 2007–2008 financial statements.

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

ANAO Audit Report No. 18 2007–08 “Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2007”.

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

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

ADVERTISING AND MARKET RESEARCH

Payments to media advertising organisations during 2007–2008 totalled \$0.224 million including Goods and Services Tax (GST) (\$0.018 million for 2006–2007). The CDPP did not use the services of any creative advertising agencies, direct mailing or polling organisations.

Details of payments of \$10,300 (including GST) and above, as required under Section 311A of the *Commonwealth Electoral Act 1918*, are in Table 10 at the end of this chapter.

LEGAL SERVICES 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 CDPP report therefore relates to the CDPP's administrative activities.

The total expenditure by the CDPP on legal services (excluding the handling of criminal prosecutions and related proceedings) during 2007–2008 was \$0.164 million. Further details are provided at the end of this chapter.



Other Areas

INFORMATION TECHNOLOGY

The CDPP has a computer installation which is made up of personal computers with local and wide area networks and in-house applications running in a client-server environment. During the year, the CDPP upgraded its basic tools from Microsoft Windows XP to Vista and from Office 2003 to Office 2007. Most IT assets are leased.

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

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

The CDPP maintains the following in-house systems:

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

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

During the year, the CDPP finalised its tender for the Supply and Implementation of a Litigation Support Software Solution. At the time of writing, the implementation of the selected system, Ringtail Legal 2005, was in its final stage.

INTRANET AND INTERNET

The CDPP continues its development of a Portal based platform to provide access to CDPP legal and administrative information. The Portal's administrative site was implemented in 2006 and its legal site in 2007. This year's work focused on maintaining and consolidating information on the Portal and continuing with development of administrative and legal tasks based on the CDPP's case workflow, which was accessible via the Portal.

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

During the year, the CDPP revised its Internet site and developed a more user friendly design offering a broader range of information related to CDPP functions and the Office's contribution to the criminal justice system. This information is targeted at both the general public and Commonwealth investigators. At the time of writing, the implementation process is still in progress.

LIBRARIES

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

In 2007–2008 two new library current awareness services were launched. Following the CDPP client survey of referring agencies to assist investigators and client agencies keep up-to-date with legal developments, the CDPP launched

a Legal Information Service in December 2007. Access to the Service and archive documents is via the CDPP Internet page. In March 2008 the first issue of a new national library current awareness service for CDPP legal staff was published. Produced in Head Office, the service is issued weekly and is available online.

When the office moved to portal software the librarians developed user friendly legal resource pages to provide access to in-house and external legal information. In-house legal information includes databases containing CDPP materials. External access includes direct links to commercial legal publishers' services as well as to free legal information sites on the Internet. Responsibility for updating the legal resources pages is shared across the CDPP library network. Regular training sessions are provided by library staff on the use of these electronic resources.

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

The CDPP uses the FIRST library management system. The system is customised to meet the needs of the CDPP legal environment. Records for new material including all court decisions of interest to the office are added to the system by library staff in all offices. Links to electronic copies are included on records when the material is available in an electronic format. The library catalogue provides access to bibliographic and full text material through basic, advanced and specific material type search screens.

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 CDPP will provide accurate information on any matter that is on the public record but will not disclose information on cases that are yet to come before the courts.

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

The CDPP has developed a comprehensive Intranet site for use by staff which includes research material, manuals, guidelines, directions and other documents which were once distributed in paper form. In addition, the Employee Self Service scheme gives employees electronic access to personnel records, which has further reduced the demand for paper.

BUSINESS REGULATION

The CDPP has no direct role in business regulation other than to prosecute criminal offences in appropriate cases. The CDPP's activities in the area of Commercial Prosecutions are reported in Chapter 2.3 of this Report.

PUBLIC COMMENT

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



Table 1(a): Staff as at 30 June 2008*

	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	7	11	7	7	1	5	1	1	40
PLO	11	22	21	17	5	8			84
SLO	12	28	21	18	6	4		2	91
LO 2	5	25	14	11	4	9	2	2	72
LO 1	3	9	8	11	2	1	2		36
Exec 2	10	2	1	1					14
Exec 1	10	4	2	3	1	2			22
APS 6	7	4	3	1	2	1		1	19
APS 5	9	4	7	4	1	5	1	1	32
APS 4	9	18	7	17	2	12		2	67
APS 3	4	22	19	19	9	10	2	2	87
APS 2	1	10	10			2			23
APS 1		1	1						2
TOTAL	94	161	122	110	33	60	8	11	599

*Includes inoperative staff

Table 1(b): Staffing summary 2007–2008*

Category	Number
Statutory Office Holders	1
Total Staff Employed under the <i>Public Service Act 1999</i>	554
Total Staff Employed under the DPP Act	44
Total	599

*Includes inoperative staff

The Total number of non-ongoing staff in this table is 85

Table 2: Staff as at 30 June 2008 by gender and category*

Category	Full-Time		Part-Time		
	Male	Female	Male	Female	
Director	1				1
Senior Executives-					
Band 3	1				1
Band 2	5	2	1		8
Band 1	23	14		3	40
Legal Officers	89	159		35	283
Executive Officers	18	16	1	1	36
APS 1–6	53	149	4	24	230
Total	190	340	6	63	599

*Includes inoperative staff

Table 3: Staff usage by Office

Office	Actual Average Staffing 2007–2008
ACT	85.58
NSW	150.96
VIC	107.20
QLD	88.83
SA	27.93
WA	51.78
TAS	8.83
NT	11.75
Total	532.86

Table 4: Workplace diversity profile as at 30 June 2008*

Classification	Male	Female	ATSI**	PWD***	First Language English Plus Another	First Language Other Than English
Director	1					
SES Band 3	1					
SES Band 2	6	2				2
SES Band 1	23	17		1	2	1
Legal Officers	89	194	3	4	27	14
Executive Officers	19	17			3	5
APS Employees	57	173	4	11	26	17
Total	196	403	7	16	58	39

* Includes Inoperative Staff **Aboriginal and Torres Strait Islander ***Person with Disability.

Table 5: Salary Scales as at 30 June 2008

Classification	Salary
SES Band 3	\$205,082–\$219,204
SES Band 2	\$164,720–\$187,401
SES Band 1	\$149,885–\$158,364
Principal Legal Officer	\$107,890–\$112,536
Executive Level 2	\$98,882–\$109,749
Senior Legal Officer	\$81,379–\$98,882
Executive Level 1	\$81,379–\$87,825
Legal Officer 2	\$59,333–\$71,023
APS 6	\$63,618–\$72,986
APS 5	\$58,949–\$62,472
Legal Officer 1	\$52,917–\$57,403
APS 4	\$52,917–\$57,403
APS 3	\$47,544–\$51,266
APS 2	\$42,952–\$46,307
APS 1	\$22,215–\$40,856

Table 6: Consultancy services let during 2007–2008 of \$10,000 or more

Consultant Name	Description	Contract Price (inc. GST)*	Selection Process **	Justification ++
Deloitte Touche Tohmatsu	Internal Audit	\$66,599	1	B
TOTAL		\$66,599		

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* 2007–2008 \$'000 (1)	Actual expenses 2007–2008 \$'000 (2)	Variation \$'000 (2–1)	Budget** 2008–2009 \$'000
Administered Expenses				
Total Administered Expenses	3,500	2,431	(1,069)	2,300
Price of Departmental Outputs				
Output 1.1:				
Revenue from Government (Appropriations) for Departmental Outputs	105,760	102,797	(2,963)	107,356
Revenue from other sources	1,891	1,938	47	2,564
Total Price of Departmental Outputs	107,651	104,735	(2,916)	109,920
TOTAL FOR OUTCOME 1 (Total Price of Outputs and Administered Expenses)	107,651	104,735	(2,916)	109,920

* Full year budget, including additional estimates.

** Budget prior to additional estimates.

Table 8: Average Staffing Level

	2007–2008	2008–2009 (estimate)
Average staffing level (number)	556	617

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

Table 9: 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		163,926
Agency's total external legal services expenditure		163,926
External expenditure on solicitors		163,926
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

Table 10: Advertising and Market Research payments of \$10,300 or more

Organisation	Purpose	Payments \$ (inc. GST)
HMA Blaze Pty Ltd	Recruitment and Procurement Advertising	224,306

Commonwealth Disability Strategy Report

Performance Indicator	Performance Measure	Current level of performance	Goals for 2008–2009	Actions for 2008–2009
1. Employment policies, procedures and practices comply with requirements of the <i>Disability Discrimination Act 1992</i> .	Number of employment policies, procedures and practices that meet the requirements of the <i>Disability Discrimination Act 1992</i> .	During 2007–2008 the following employment policies and programs were developed and/or implemented: - OH&S policies and procedures; - Mental health awareness training; - Eliminating bullying and harassment training; - Induction program; - Learning and development program.	Ongoing assessment of existing policies to ensure that they are relevant for all employees of the DPP. All new employment policies and practices to be consistent with the <i>Disability Discrimination Act 1992</i> .	A new Workplace Diversity Plan is to be developed in 2008–2009. 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: - accessible electronic format; and - accessible formats other than electronic. Average time taken to provide accessible information in: - electronic format; and - formats other than electronic.	100% available via fax, email, online and mail. Email and online 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 within agreed timeframes.

Performance Indicator	Performance Measure	Current level of performance	Goals for 2008–2009	Actions for 2008–2009
3. Agency recruiters and managers apply the principle of reasonable adjustment.	Percentage of recruiters and managers provided with information on reasonable adjustment.	Reasonable adjustment principles are applied and workplaces are appropriately modified as necessary to accommodate staff with disabilities.	Formal training for selection committee members during 2008–2009 including covering the principles of reasonable adjustment.	Maintain staff awareness of principles and practices.
4. Complaint/grievance mechanism, including access to external mechanism in place to address issues and concerns by staff.	Established complaints/grievance mechanisms, including access to external mechanism in operation.	The DPP has a well established process for complaints and grievance handling and developed a Personnel Instruction during the year: “Review of Actions”. Employees also have access to external mechanisms, e.g. the Employee Assistance Program and the Merit Protection Commission. The network of Workplace Harassment Contact Officers was reviewed and training was conducted.	All employees will be provided with access to Employee Assistance Program services and complaints/grievance mechanisms.	New employees have access to a comprehensive induction program that includes Values and Code of Conduct. Information on complaints and grievance mechanisms will be reviewed as necessary.



Appendix one



Statement under the *Freedom of Information Act 1982*

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

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

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

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

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

- (c) Categories of documents that are maintained in the possession of the agency that are:
- (i) Documents referred to in paragraph 12(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:

- ▶ CDPP Annual Report;
- ▶ The *Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process*;
- ▶ The CDPP's *Statement on Prosecution Disclosure*;
- ▶ *Guidelines on Brief Preparation*;
- ▶ *Guide to Witnesses of Commonwealth Crimes: Giving Evidence in Court*;
- ▶ *Steps in the Commonwealth Prosecution Process*; and
- ▶ Budget Statements.



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

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

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

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

Appendix two



Commonwealth Director of Public Prosecutions Strategic Directions 2008

A. CORPORATE PROFILE

VISION:

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

PURPOSE:

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

CORE VALUES:

We value:

- ▶ applying the highest ethical standards to prosecutions and proceeds of crime action;
- ▶ applying the highest professional standards of competence, commitment and hard work to prosecutions and proceeds of crime action;
- ▶ maintaining the CDPP's prosecutorial independence;
- ▶ providing, and being recognised as providing, a high quality, timely, efficient and cost effective prosecution service;
- ▶ treating everyone with courtesy, dignity and respect;
- ▶ giving due recognition to the status of victims;
- ▶ the knowledge, skills and commitment of our people;

- ▶ leadership from senior lawyers and managers;
- ▶ accountability and excellence in governance within the CDPP; and
- ▶ protecting the natural environment.

OUTCOMES:

A contribution to the safety and well-being of the people of Australia by assisting in the protection of the resources of the Commonwealth through the maintenance of law and justice and by combating crime.

OUTPUT:

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

B. STRATEGIC THEMES

1. Conduct cases ethically and professionally;
2. Recruit, develop and retain high quality people;
3. Continuously improve CDPP performance;
4. Provide professional assistance to referring agencies; and
5. Actively contribute to law reform and whole of Government law enforcement initiatives.

C. STRATEGIC PRIORITIES

1	2	3	4	5
Conduct cases ethically and professionally	Recruit, develop and retain high quality people	Continuously improve CDPP performance	Provide professional assistance to referring agencies	Actively contribute to law reform & whole of Government law enforcement initiatives
<p>PRIORITIES</p> <p>1.1 Adopt the highest professional and ethical standards in prosecutions and in dealing with proceeds of crime</p> <p>1.2 Make all case decisions in accordance with: - the law; - the Prosecution Policy of the Commonwealth; and - CDPP policy</p> <p>1.3 Ensure compliance with the Director's Instructions and CDPP policies</p> <p>1.4 Capture and share important corporate knowledge amongst our people</p> <p>1.5 Undertake case reviews</p> <p>1.6 Ensure processes and programs maintain our people's adherence to ethical standards</p> <p>1.7 Treat victims with respect and dignity</p> <p>1.8 Decisions to be made: - in a timely fashion; and - by people at the appropriate level</p> <p>1.9 Use our people's expertise throughout and between our offices</p> <p>1.10 Meet challenges arising from changing technology</p>	<p>PRIORITIES</p> <p>2.1 Recruit and retain high quality people</p> <p>2.2 Implement strategies to build and sustain the CDPP as an employer of choice</p> <p>2.3 Develop skilled people through: - training courses; - mentoring; - the CDPP's performance management scheme; and - other innovative ways.</p> <p>2.4 Foster and acknowledge good quality performance</p> <p>2.5 Manage people effectively and professionally and have regard to feedback on performance</p>	<p>PRIORITIES</p> <p>3.1 Monitor CDPP performance against standards and goals to improve quality, efficiency and effectiveness</p> <p>3.2 Continue to develop national consistency recognising that the CDPP operates in different jurisdictions</p> <p>3.3 Continuously review and adopt the highest professional and ethical standards in: - prosecutions; - proceeds of crime action; - resource management; - the use of technology; and - personnel management including: o workforce planning; o performance management; and o employment practices</p> <p>3.4 Provide a safe, secure and healthy workplace</p> <p>3.5 Adhere to and promote: - Australian Public Service values; - APS and CDPP Codes of Conduct; and - diversity principles</p> <p>3.6 Value our people's ideas</p> <p>3.6 Ensure that the CDPP's library, IT and administrative people and systems continue to provide high level support</p>	<p>PRIORITIES</p> <p>4.1 Provide professional and timely legal advice to investigators and agencies</p> <p>4.2 Liaise effectively with referring agencies at regional and national level</p> <p>4.3 Identify and co-operate with referring agencies' enforcement strategies</p> <p>4.4 Advise on investigator training needs and assist Commonwealth agencies with training</p> <p>4.5 Develop and provide high quality materials on areas of CDPP legal expertise</p> <p>4.6 Conduct regular referring agency surveys</p> <p>4.7 Continue to develop nationally consistent approaches to assistance for referring agencies</p>	<p>PRIORITIES</p> <p>5.1 Assist with development of law reform proposals and whole of Government law enforcement initiatives by providing: - timely, high quality legal and strategic advice; and - useful, timely and accurate statistical reports</p> <p>5.2 Encourage prosecutors to identify deficiencies in the application of Commonwealth law</p> <p>5.3 Review and identify prosecutions and proceeds related issues requiring law reform and/or whole of Government law enforcement initiatives and contribute to solutions and strategies to address them</p>

Financials

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2007-2008

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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2007-2008

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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

INDEPENDENT AUDIT REPORT 2007-2008



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 2008, which comprise: a Statement by the Commonwealth Director of Public Prosecutions and Deputy Director of Corporate Management; Income Statement; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Schedule of Administered Items and Notes to and forming part of the Financial Statements, including a Summary of Significant Accounting Policies.

The Responsibility of the Commonwealth Director of Public Prosecutions for the Financial Statements

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

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. 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

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19 National Circuit BARTON ACT
Phone (02) 6203 7900 Fax (02) 6203 7777

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 requirements of the Australian accounting profession.

Auditor's Opinion

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

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Office of the Commonwealth Director of Public Prosecutions financial position as at 30 June 2008 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



Simon Kidman

Executive Director

Delegate of the Auditor-General

Canberra

17 October 2008

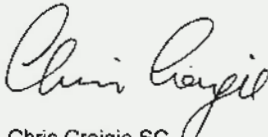
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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2007-2008

STATEMENT BY THE
CHIEF EXECUTIVE OFFICER
AND
CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2008 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Chris Craigie SC
Director

17th October 2008



Thomas Jeffers
A/g Deputy Director Corporate Management

17 October 2008

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
INCOME STATEMENT

For the period ended 30 June 2008

	Notes	2007-2008 \$'000	2006-2007 \$'000
INCOME			
<i>Revenue</i>			
Revenue from government	3	102,797	93,297
Sale of goods and rendering of services	4	1,346	1,173
Total revenue		104,143	94,470
<i>Gains</i>			
Sale of assets	5	-	-
Other gains	6	592	475
Total gains		592	475
TOTAL INCOME		104,735	94,945
Expenses			
Employee benefits	7	52,518	45,839
Suppliers	8	34,052	28,269
Depreciation and amortisation	9	3,797	3,300
Write-down and impairment of assets	10	11	4
Losses from sale of assets	11	34	4
Other expenses	12	932	521
TOTAL EXPENSES		91,344	77,937
Surplus		13,391	17,008
Surplus attributable to the Australian Government		13,391	17,008

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 2008

	Notes	2007-2008 \$'000	2006-2007 \$'000
ASSETS			
Financial Assets			
Cash and cash equivalents	13	1,664	244
Trade and other receivables	14	57,174	43,203
Total Financial Assets		58,838	43,447
Non-Financial Assets			
Land and buildings	15,17	11,953	11,615
Infrastructure, plant and equipment	16,17	4,807	5,853
Intangibles	18	858	334
Other non-financial assets	19	1,292	730
Total Non-Financial Assets		18,910	18,532
TOTAL ASSETS		77,748	61,979
LIABILITIES			
Payables			
Suppliers	20	2,403	1,448
Other payables	21	2,685	2,151
Total payables		5,088	3,599
Non-interest bearing liabilities			
Lease incentives	22	802	1,013
Total non-interest bearing liabilities		802	1,013
Provisions			
Employee provisions	23	14,594	13,796
Other provisions	24	5,383	4,572
Total Provisions		19,977	18,368
TOTAL LIABILITIES		25,867	22,980
NET ASSETS		51,881	38,999
EQUITY			
Parent Entity Interest			
Contributed equity		360	909
Reserves		8,217	8,177
Retained surpluses		43,304	29,913
Total Parent entity interest		51,881	38,999
TOTAL EQUITY		51,881	38,999
Current Assets		60,129	44,177
Non-Current Assets		17,619	17,802
Current Liabilities		17,780	16,647
Non-Current Liabilities		8,087	6,333

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 2008

	Retained Earnings		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2007-2008 \$'000	2006-2007 \$'000	2007-2008 \$'000	2006-2007 \$'000	2007-2008 \$'000	2006-2007 \$'000	2007-2008 \$'000	2006-2007 \$'000
Opening balance								
Balance carried forward from previous	29,913	12,905	8,177	7,568	909	1,507	38,999	21,980
Adjustment for errors	-	-	-	-	-	-	-	-
Adjustment for changes in accounting policies	-	-	-	-	-	-	-	-
Adjusted opening balance	29,913	12,905	8,177	7,568	909	1,507	38,999	21,980
Income and Expenses								
Revaluation adjustment (a)	-	-	40	609	-	-	40	609
Sub-total income and expenses recognised directly in Equity	-	-	40	609	-	-	40	609
Surplus (Deficit) for the period	13,391	17,008	-	-	-	-	13,391	17,008
Total income and expenses	13,391	17,008	40	609	-	-	13,431	17,617
Transactions with owners								
<i>Distributions to owners</i>								
Returns of capital:								
Appropriation	-	-	-	-	(549)	(598)	(549)	(598)
Sub-total transactions with owners	-	-	-	-	(549)	(598)	(549)	(598)
Closing balance at 30 June	43,304	29,913	8,217	8,177	360	909	51,881	38,999

(a) The change to the asset revaluation reserve in 2007-2008 comprises an increase from the revaluation of assets of \$0.977m (as per note 17 table A), offset by the increase in restoration obligations liability of minus \$0.937m.

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
CASH FLOW STATEMENT

For the period ended 30 June 2008

	Notes	2007-2008 \$'000	2006-2007 \$'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		1,166	904
Appropriations		88,415	72,951
Net GST received		3,468	2,538
Other (a)		1,968	265
Total cash received		95,017	76,658
Cash used			
Employees		51,802	46,078
Suppliers		38,035	29,648
Cost awarded		529	486
Total cash used		90,366	76,212
Net cash flows from (used by) operating activities	25	4,651	446
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		6	-
Total cash received		6	-
Cash used			
Purchase of property, plant and equipment		3,237	424
Total cash used		3,237	424
Net cash flows from (used by) investing activities		(3,231)	(424)
FINANCING ACTIVITIES			
Cash used			
Return of contributed equity		-	-
Total cash used		-	-
Net cash flows from (used by) financing activities		-	-
Net increase (decrease) in cash held		1,420	22
Cash and cash equivalents at the beginning of the reporting period		244	222
Cash and cash equivalents at the end of the reporting period	13	1,664	244

(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 2008

	2007-2008	2006-2007
	\$'000	\$'000
BY TYPE		
Capital commitments		
Land and buildings (1)	692	-
Infrastructure, plant and equipment (2)	5	468
Total capital commitments	697	468
Other commitments		
Operating leases (3)	44,636	45,836
Legal services	12,938	8,238
Goods and services (excluding legal services)	5,337	6,794
GST payable on commitments receivable	23	29
Total other commitments	62,934	60,897
Commitments receivable		
Sub-lease rental	(248)	(323)
GST receivable on commitments payable	(5,783)	(5,576)
Total commitments receivable	(6,031)	(5,899)
Net commitments by type	57,600	55,466
BY MATURITY		
Net commitments		
Capital commitments		
One year or less	563	304
From one to five years	71	121
Over five years	-	-
Total capital commitments	634	425
Operating lease commitments		
One year or less	9,417	7,358
From one to five years	26,946	25,496
Over five years	3,990	8,522
Total operating lease commitments	40,353	41,376
Other commitments		
One year or less	12,134	8,317
From one to five years	4,479	5,348
Over five years	-	-
Total other commitments	16,613	13,665
Net commitments by maturity	57,600	55,466

NB: Commitments are GST inclusive where relevant.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
SCHEDULE OF COMMITMENTS**As at 30 June 2008

- (1) Land and building commitments are primarily contracts related to fitout under construction.
- (2) Plant and equipment commitments are primarily contracts for purchase of mailing equipment.
- (3) Operating leases included are effectively non-cancellable and comprise:

Nature of lease/General description**Leases for office accommodation.**

Lease payments are subject to annual increases in accordance with terms and conditions of each lease.
The initial term of the leases vary, as do the options to renew.

Leases for motor vehicles (for general office use).

No contingent rentals exist. There are no renewal or purchase options available to the CDPP.

Leases in relation to computer and printing equipment.

There are two separate agreements, the first master planned rental agreement commenced on 1 July 2001 and the second commenced on 1 Oct 2004. Lease payments are determined at the start of the lease made under the master planned rental agreement, are based on the prevailing interest rates at that time and are fixed for the lease period. The term of the lease can be extended.

Sub-lease for shared office accommodation.

Lease payments are subject to increase in accordance with the terms and conditions of the head-lease.
There is an option to renew in the head-lease.

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS			
SCHEDULE OF ADMINISTERED ITEMS			
For the period ended 30 June 2008			
	Note	2007-2008	2006-2007
		\$'000	\$'000
Income administered on behalf of Government			
<i>For the period ended 30 June 2008</i>			
Revenue			
Non-taxation			
Fees and fines	31	4,879	9,401
Reversal of previous asset write-downs	32	272	60
Total non-taxation		<u>5,151</u>	<u>9,461</u>
Total income administered on behalf of Government		<u>5,151</u>	<u>9,461</u>
Expenses administered on behalf of Government			
<i>for the period ended 30 June 2008</i>			
Write-down of assets	33	2,431	8,979
Total expenses administered on behalf of Government		<u>2,431</u>	<u>8,979</u>
This schedule should be read in conjunction with the accompanying notes.			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS			
SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)			
As at 30 June 2008			
	Note	2007-2008 \$'000	2006-2007 \$'000
Assets administered on behalf of Government			
<i>As at 30 June 2008</i>			
Financial Assets			
Receivables	34	1,065	1,018
Total financial assets		<u>1,065</u>	<u>1,018</u>
Total assets administered on behalf of Government		<u>1,065</u>	<u>1,018</u>
Liabilities administered on behalf of Government			
<i>As at 30 June 2008</i>			
Payables			
Other payables	35	5	2
Total Payables		<u>5</u>	<u>2</u>
Total liabilities administered on behalf of Government		<u>5</u>	<u>2</u>
Current assets		538	305
Non-current assets		527	713
Current liabilities		5	2
Non-current liabilities		-	-
The schedule should be read in conjunction with the accompanying notes.			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS			
SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)			
For the period ended 30 June 2008			
	Note	2007-2008	2006-2007
		\$'000	\$'000
Administered Cash Flows			
<i>For the period ended 30 June 2008</i>			
Operating Activities			
Cash received			
Fines and costs		2,718	1,938
Cash from Official Public Account - refunds		42	27
Total cash received		2,760	1,965
Cash used			
Cash to Official Public Account		2,718	1,941
Refund of fines and costs		42	27
Total cash used		2,760	1,968
Net cash flows from (used by) operating activities		-	(3)
Net increase / (decrease) in cash held		-	(3)
Cash and cash equivalents at the beginning of the reporting period		-	3
Cash and cash equivalents at the end of the reporting period		-	-
The schedule should be read in conjunction with the accompanying notes.			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS			
SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)			
As at 30 June 2008			
	Note	2007-2008 \$'000	2006-2007 \$'000
Administered Commitments			
<i>As at 30 June 2008</i>		<u>Nil</u>	<u>Nil</u>
Administered Contingencies			
<i>As at 30 June 2008</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 37: Administered contingent liabilities and assets.</p>			
<p>The schedule should be read in conjunction with the accompanying notes.</p>			

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For the year ended 30 June 2008

Note	Description
1	Summary of significant accounting policies
2	Events after the balance sheet date
3	Revenue from government
4	Sale of goods and rendering of services
5	Sale of assets
6	Other gains
7	Employee benefits
8	Suppliers
9	Depreciation and amortisation
10	Write-down and impairment of assets
11	Losses from asset sales
12	Other expenses
13	Cash and cash equivalents
14	Trade and other receivables
15	Land and buildings
16	Infrastructure, plant and equipment
17	Analysis of property, plant and equipment
18	Intangibles assets
19	Other non-financial assets
20	Suppliers
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22	Non-interest bearing liabilities
23	Employee provisions
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25	Cash flow reconciliation
26	Contingent liabilities and assets
27	Senior executive remuneration
28	Remuneration of auditors
29	Average staffing level
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31	Administered fees and fines revenue
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34	Administered receivables
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37	Administered contingent liabilities and assets
38	Administered financial instruments
39	Appropriations
40	Special accounts
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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 is structured to meet 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.

Agency activities contributing toward the outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Agency in its own right. Administered activities involve the management or oversight by the Agency, on behalf of the Government, of items controlled or incurred by the Government.

Departmental activity is identified under one output:

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

The continued existence of the Agency in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the Agency's administration and programs.

1.2 Basis of Preparation of the Financial Report

The Financial Statements and notes are required by section 49 of the *Financial Management and Accountability Act 1997 (FMA)* and are a General Purpose Financial Report.

The Financial Statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMOs) for reporting periods ending on or after 1 July 2007; 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 an alternative treatment is specifically required by an Accounting Standard or the FMOs, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the Entity or a future sacrifice of economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised

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unless required by an Accounting Standard. Liabilities and assets that are unrealised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the income statement when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for departmental items, except where otherwise stated at Note 1.19.

1.3 Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in this note, CDDP has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of plant and equipment has been taken to be the market value of similar items 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 CDDP has made a judgement that has a significant impact on the amount recorded as administered receivables. The collectability of fines and costs debts are assessed at balance date by reviewing the debt, by age and amount, against the past payments history of similar debts. A provision for doubtful debt is then made based on that judgement.

1.4 Statement of Compliance

Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standard. The following new standards are applicable to the current reporting period:

Financial instrument disclosure

AASB 7 *Financial instruments: Disclosures* is effective for reporting periods beginning on or after 1 January 2007 (the 2007-2008 financial year) and amends the disclosure requirements for financial instruments. In general, AASB 7 requires greater disclosure than that previously required. 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 117, AASB 133, AASB 139, AASB1, AASB 4, AASB 1023 & AASB 1038]. These changes have no financial impact but will affect the disclosure presented in future financial reports.

The following new standards, amendments to standards or interpretations for the current financial year have no material financial impact on CDDP.

2007-4 Amendments to Australian Accounting Standards arising from ED 151 and Other Amendments and Erratum: Proportionate Consolidation

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2007-7 Amendments to Australian Accounting Standards

UIG Interpretation 11 AASB 2 – *Group and Treasury Share Transactions* and 2007-1 *Amendments to Australian Accounting Standards arising from AASB Interpretation 11*

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.

AASB Interpretation 12 Service Concession Arrangements and 2007-2 *Amendments to Australian Accounting Standards arising from AASB Interpretation 12*

AASB 8 Operating Segments and 2007-3 *Amendments to Australian Accounting Standards arising from AASB 8*

2007-8 *Amendments to Australian Accounting Standards arising from AASB 123*

AASB Interpretation 13 Customer Loyalty Programmes

AASB Interpretation 14 AASB 119 – The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction

Other

The following standards and interpretations have been issued but are not applicable to the operations of CDPP:

AASB 1049 Whole of Government and General Government Sectors by Governments [specifies the reporting requirements for the General Government Sector, and therefore, has no effect on CDPP's financial statements].

1.5 Revenue

Revenue from Government

Amounts appropriated for departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the agency gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

Other Types of Revenue

Revenue from the sale of goods is recognised when:

- The risks and rewards of ownership have been transferred to the buyer;
- The seller retains no managerial involvement nor effective control over the goods;
- The revenue and transaction costs incurred can be reliably measured; and
- It is probable that the economic benefits associated with the transaction will flow to the Entity.

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Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction will flow to the Entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debt is reviewed at balance date. Provisions are made when collectability of the debt is no longer probable.

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement*.

1.6 Gains

Other Resources Received Free of Charge

Resources received free of charge are recognised as gains when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements (Refer to Note 6).

Resources received free of charge are recorded as either revenue or gains depending on their nature.

Sale of Assets

Gains from disposal of non-current assets are recognised when control of the asset has passed to the buyer.

1.7 Transactions with the Government as Owner

Other distributions to owners

The FMOs require that distributions to owners be debited to Contributed Equity unless in the nature of a dividend. In 2006-2007, by agreement with the Department of Finance and Deregulation, CDPP relinquished control of surplus output appropriation funding of \$598,000 which was returned to the Official Public Account. On 24 June 2008, the Finance Minister issued a determination to reduce Departmental Output Appropriations by \$549,000.

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.

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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 termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

Staff of CDPP are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

CDPP makes employer contributions to the employee superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government of the superannuation entitlements of the Agency's employees. CDPP accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the year.

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1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Lease assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is the representative of the pattern of benefits derived from the leased assets.

The CDPP has no finance leases.

1.10 Cash

Cash and cash equivalents include notes and coins held and any deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.11 Financial Assets

CDPP classifies its financial assets in the following categories:

- financial assets 'at fair value through profit or loss';
- 'held-to-maturity investments';
- 'available-for sale' financial assets; and
- 'loans and receivables'.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition.

Financial assets are recognised and derecognised upon 'trade date'.

Effective interest method

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts over the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets 'at fair value through profit or loss'.

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Financial assets at fair value through profit or loss

Financial assets are classified as financial assets at fair value through profit or loss where the financial assets:

- have been acquired principally for the purpose of selling in the near future;
- are a part of an identified portfolio of financial instruments that the agency manages together and has a recent actual pattern of short-term profit-taking; or
- are derivatives that are not designated and effective as hedging instrument.

Assets in this category are classified as current assets.

Financial assets at fair value through profit or loss are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest earned on the financial asset.

Available-for-sale financial assets

Available-for-sale financial assets are non-derivatives that are either designated in this category or not classified in any of the other categories. They are included in non-current assets unless management intends to dispose of the asset within 12 months of the balance sheet date.

Available-for-sale financial assets are recorded at fair value. Gains and losses arising from changes in fair value are recognised directly in the reserves (equity) with the exception of impairment losses. Interest is calculated using the effective interest method and foreign exchange gains and losses on monetary assets are recognised directly in profit or loss. Where the asset is disposed of or is determined to be impaired, part (or all) of the cumulative gain or loss previously recognised in the reserve is included in profit for the period.

Where a reliable fair value cannot be established for unlisted investments in equity instruments, cost is used. CDPP has no such instruments.

Held-to-maturity investments

Non-derivative financial assets with fixed or determinable payments and fixed maturity dates that the group has the positive intent and ability to hold a maturity are classified as held-to-maturity investments. Held-to-maturity investments are recorded at amortised cost using the effective interest method less impairment, with revenue recognised on an effective yield basis.

Loans and receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. They are included in current assets, except for maturities greater than 12 months after the balance sheet date. These are classified as non-current assets. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

Impairment of financial assets

Financial assets are assessed for impairment at each balance date.

- *Financial Assets held at amortised cost* - If there is objective evidence that an impairment loss has been incurred on loans and receivables or held to maturity investments held at

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amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the income statement.

- *Available-for-sale financial assets* – If there is objective evidence that an impairment loss on an available-for-sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to the income statement.
- *Available-for-sale financial assets (held at cost)* – If there is objective evidence that an impairment loss has been incurred the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

1.12 Financial liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities.

Financial liabilities are recognised and derecognised upon 'trade date'.

Financial liabilities at fair value through profit or loss

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

Other financial liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a short period.

Supplier and other payables

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.13 Contingent Liabilities and Contingent Assets

Contingent Liabilities and Contingent Assets are not recognised in the balance sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be

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reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

1.14 Financial Guarantee Contracts

Financial guarantee contracts are accounted for in accordance with AASB 139. They are not treated as a contingent liability, as they are regarded as financial instruments outside the scope of AASB 137.

1.15 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring.

1.16 Property, Plant and Equipment

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the balance sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total). The \$2,000 threshold is not applied to fitout, furniture, library holdings, original artworks and limited edition prints.

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by CDPP where there exists an obligation to restore the property to its original condition. These costs are included in the value of CDPP's leasehold improvements with a corresponding provision for the 'makegood' recognised.

Revaluations

Fair values for each class of asset are determined as shown below:

Asset class	Fair value measured at
Leasehold improvements	Depreciated replacement cost
Infrastructure, plant and equipment	Market selling price

Following initial recognition at cost, property plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets. Formal revaluations are carried out at least every three years. As the value of leasehold improvements is significant, in years when a formal revaluation is not undertaken an in-house revaluation is undertaken using an appropriate index.

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During 2006-2007:

- an in-house revaluation was undertaken and leasehold improvement values were adjusted in line with movements in the Building Economist Cost Index published by the Australian Institute of Quantity Surveyors.
- Library holdings were independently revalued by Kim Adams, AAPI, Certified Practising Valuer AVAA, of the Australian Valuation Service.
- All other asset classes were reviewed and were deemed to be at fair value.

During 2007-2008 an independent valuation of all land and buildings and infrastructure, plant and equipment, excluding library holdings, was carried out by Nigel Spoljaric, Certified Practising Valuer AVAA, of Pickles Valuation Services.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through operating result. Revaluation decrements for a class of assets are recognised directly through the operating result except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is restated proportionately with the change in the gross carrying amount of the asset so that the carrying amount of the asset after revaluation equals the revalued amount.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to CDPP using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates applying to each class of depreciable asset are based on the following useful lives:

<u>Class</u>	<u>2007-2008</u>	<u>2006-2007</u>
Leasehold improvements	Lease Term	Lease Term
Plant and equipment	2 – 30 years	2 – 30 years

Impairment

All assets were assessed for impairment at 30 June 2008. 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.

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1.17 Intangibles

CDPP's intangibles comprise software licenses and configuration costs of purchased software. These assets are carried at cost less accumulated amortisation and accumulated impairment losses. Purchases of intangibles are recognised initially at cost in the balance sheet, except for purchases costing less than \$5,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the CDPP's software are 3 to 20 years (2006-2007: 3 to 20 years).

All software assets were assessed for indications of impairment as at 30 June 2008.

1.18 Taxation / Competitive Neutrality

CDPP is exempt from all forms of taxation except fringe benefits tax (FBT) and the goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

Competitive Neutrality

No part of CDPP operations is subject to competitive neutrality arrangements.

1.19 Reporting of Administered Activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Schedule of Administered Items and related notes.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

Administered Cash Transfers to and from the Official Public Account

Revenue collected by CDPP for use by the Government rather than the Agency is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Agency on behalf of the Government and reported as such in the Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 36. The Schedule of Administered Items largely reflects the Government's transactions, through the Agency, with parties outside the Government.

Revenue

All administered revenues are revenues relating to the ordinary activities performed by the CDPP on behalf of the Australian Government.

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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 2008 the value of the Fines and Cost debts is recognised at fair value which is based upon the actuary assessment methodology developed by the Australian Government Actuary.

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 2007-2008 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 2008

	2007-2008	2006-2007
	\$'000	\$'000
Revenue		
Note 3 - Revenue from government		
Appropriations:		
Departmental outputs	102,797	93,297
Total revenue from Government	102,797	93,297
Note 4 - Sale of goods and rendering of services		
Goods	2	2
Services	1,344	1,171
Total sales of goods and services	1,346	1,173
Provision of goods to:		
Provision of goods - related entities	-	-
provision of goods - external entities	2	2
Rendering of services - related entities	1,344	1,144
Rendering of services - external entities	-	27
Total sale of goods and rendering of services	1,346	1,173
Gains		
Note 5 - Sale of assets		
Infrastructure, plant and equipment:		
Proceeds from sale	-	2
Carrying value of assets sold	-	(2)
Net gain from sale of assets	-	-
Note 6 - Other gains		
Subsidies	46	40
Resources received free of charge - Related entities	106	74
Resources received free of charge - External entities	384	334
Other	56	27
Total other gains	592	475

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008	2006-2007
	\$'000	\$'000
Note 7 - Employee benefits		
Wages and Salaries	38,586	33,745
Superannuation		
Defined contribution plans	-	-
Defined benefit plans	7,204	6,535
Leave and other entitlements	4,702	3,977
Separation and redundancies	93	64
Other employee benefits	96	155
Other employee cost	1,837	1,363
Total employee benefits	52,518	45,839

A An amount of \$0.060m for Comcare oncosts was included in leave and other entitlements expense in 2006-2007. It has now been reclassified into the Workers' compensation premiums expense, see Note 8.

Note 8 - Suppliers

Provision of goods - related entities	37	29
Provision of goods - external entities	2,449	2,108
Rendering of services - related entities	1,289	1,083
Rendering of services - external entities	21,439	17,168
Operating lease rentals:		
Minimum lease payments	8,392	7,492
Rental expense for sub-leases	64	63
Workers' compensation premiums	382	326
Total supplier expenses	34,052	28,269

A Refer to Note 7.

Note 9 - Depreciation and amortisation

Depreciation:		
Leasehold improvements	2,632	2,169
Other infrastructure, plant and equipment	1,049	1,037
Total depreciation	3,681	3,206
Amortisation		
Intangibles :		
Computer software	116	94
Total amortisation	116	94
Total depreciation and amortisation	3,797	3,300

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008 \$'000	2006-2007 \$'000
Note 10 - Write-down and impairment of assets		
Asset write-downs from financial assets	3	-
Non-financial assets - write-off		
Leasehold improvements	-	-
Plant and equipment	8	4
Sub-total	<u>8</u>	<u>4</u>
Total write-down and impairment of assets	<u>11</u>	<u>4</u>
Note 11 - Losses from asset sales		
Infrastructure, plant and equipment:		
Proceeds from disposal	(6)	(5)
Carrying value of assets sold	40	9
Net loss from sale of assets sold	<u>34</u>	<u>4</u>
Note 12 - Other expenses		
Costs awarded against the Commonwealth	932	521
Total other expenses	<u>932</u>	<u>521</u>
Note 13 - Cash and cash equivalents		
Cash at bank	1,639	220
Cash on hand	25	24
Total cash and cash equivalents	<u>1,664</u>	<u>244</u>
Note 14 - Trade and other receivables		
Goods and services	428	247
Appropriations receivable:		
- for existing outputs	56,412	42,579
GST receivable from the Australian Taxation Office	264	245
Lease incentives receivable	-	-
Other	71	132
Total trade and other receivables (gross)	<u>57,175</u>	<u>43,203</u>
Less allowance for doubtful debts:		
Goods and services	(1)	-
Total trade and other receivables (net)	<u>57,174</u>	<u>43,203</u>
Receivables are represented by:		
Current	57,174	43,203
Total trade and other receivables (net)	<u>57,174</u>	<u>43,203</u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008 \$'000	2006-2007 \$'000
Note 14 - Trade and other receivables (Cont)		
Receivables are aged as follows:		
Not overdue	57,066	43,131
Overdue by:		
Less than 30 days	-	30
30 to 60 days	-	30
61 to 90 days	-	-
More than 90 days	109	12
Total receivables (gross)	57,175	43,203
The allowance for doubtful debts is aged as follows:		
Not overdue	-	-
Overdue by:		
Less than 30 days	-	-
30 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	(1)	-
Total allowance for doubtful debts	(1)	-
Reconciliation of the allowance for doubtful debts:		
	Goods and services	Total
Movements in relation to 2007-2008	2007-2008 \$'000	2007-2008 \$'000
Opening balance	-	-
Amounts written off	-	-
Amounts recovered and reversed	-	-
Increase/decrease recognised in net surplus	(1)	(1)
Closing balance	(1)	(1)
	Goods and services	Total
Movements in relation to 2006-2007	2006-2007 \$'000	2006-2007 \$'000
Opening balance	-	-
Amounts written off	-	-
Amounts recovered and reversed	-	-
Increase/decrease recognised in net surplus	-	-
Closing balance	-	-

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008	2006-2007
	\$'000	\$'000
Note 15 - Land and buildings (disclose each class)		
Leasehold improvements		
Fitout at fair value	30,390	23,921
Accumulated amortisation	(18,437)	(12,306)
Total leasehold improvements	11,953	11,615
Total land and buildings (non-current)	11,953	11,615

No indicators of impairment were found for land and buildings.

All revaluations are conducted in accordance with the revaluation policy stated at Note 1.

Note 16 - Infrastructure, plant and equipment (disclose each class)

Infrastructure, plant and equipment		
Computer equipment at fair value	939	807
Accumulated depreciation	(635)	(522)
	304	285
Furniture at fair value	6,071	5,426
Accumulated depreciation	(3,978)	(2,808)
	2,093	2,618
Office equipment at fair value	1,954	1,888
Accumulated depreciation	(1,588)	(1,111)
	366	777
Artwork at fair value	153	142
Accumulated depreciation	(127)	(94)
	26	48
Library holdings at fair value	3,168	3,169
Accumulated depreciation	(1,150)	(1,044)
	2,018	2,125
Total plant and equipment	4,807	5,853
Total infrastructure, plant and equipment (non-current)	4,807	5,853

All revaluations are conducted in accordance with the revaluation policy stated at Note 1.

Revaluation increments of \$1.524m for leasehold improvements [\$0.931m in 2006-2007] and revaluation decrements of \$0.548m for plant and equipment [\$0.294m in 2006-2007] were credited/debited to the asset revaluation reserve by asset class and included in the equity section of the balance sheet. No decrements were expensed in either year.

No indicators of impairment were found for infrastructure, plant and equipment

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2008

Note 17 - Analysis of property, plant and equipment

Table A. Reconciliation of the opening and closing balances of property, plant and equipment (2007-2008)

Item	Buildings- Leasehold Improvements \$'000	Other Infrastructure, plant and equipment \$'000	Total \$'000
As at 1 July 2007			
Gross book value	23,921	11,432	35,353
Accumulated depreciation/amortisation and impairment	(12,306)	(5,579)	(17,885)
Net Book Value 1 July 2007	11,615	5,853	17,468
Additions:			
by purchase	1,446	632	2,078
Net revaluation increment/(decrement)	1,524	(547)	977
Depreciation / amortisation expense	(2,632)	(1,049)	(3,681)
Other movements	-	(34)	(34)
Disposals:			
Write-offs	-	(8)	(8)
Other disposals	-	(40)	(40)
Net Book Value 30 June 2008	11,953	4,807	16,760
Net book value as of 30 June 2008 represented by:			
Gross book value	30,390	12,285	42,675
Accumulated depreciation / amortisation and impairment	(18,437)	(7,478)	(25,915)
	11,953	4,807	16,760

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

Note 17 - Analysis of property, plant and equipment (Cont)

Table B. Reconciliation of the opening and closing balances of property, plant and equipment (2006-2007)

Item	Buildings- Leasehold Improve- ments \$'000	Other Infrastructure, plant and equipment \$'000	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	12,823	7,001	19,824
Additions:			
by purchase	30	198	228
Net revaluation increment/(decrement)	931	(294)	637
Depreciation / amortisation expense	(2,169)	(1,037)	(3,206)
Other movements	-	-	-
Disposals:			
Write-offs	(1)	(4)	(5)
Other disposals	1	(11)	(10)
Net Book Value 30 June 2007	11,615	5,853	17,468
Net book value as of 30 June 2007 represented by:			
Gross book value	23,921	11,432	35,353
Accumulated depreciation / amortisation and impairment	(12,306)	(5,579)	(17,885)
	11,615	5,853	17,468

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008 \$'000	2006-2007 \$'000
Note 18 - Intangibles assets (disclose each class)		
Computer software:		
Purchased software at cost	2,964	2,324
Accumulated amortisation	<u>(2,106)</u>	<u>(1,990)</u>
	<u>858</u>	<u>334</u>
Total intangibles (non-current)	<u>858</u>	<u>334</u>

No indicators of impairment were found for intangible assets

**Table C. Reconciliation of the opening and closing
balances of intangibles (2007-2008)**

Item	Computer software purchased \$'000
As at 1 July 2007	
Gross book value	2,324
Accumulated depreciation/amortisation and impairment	<u>(1,990)</u>
Net Book Value 1 July 2007	<u>334</u>
Additions:	
by purchase	640
Amortisation	(116)
Other movements	-
Disposals:	
Write-offs	-
Net Book Value 30 June 2008	<u>858</u>
Net book value as of 30 June 2008 represented by:	
Gross book value	2,964
Accumulated depreciation/amortisation and impairment	<u>(2,106)</u>
	<u>858</u>

No indicators of impairment were found for intangible assets

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008 \$'000	2006-2007 \$'000
Note 18 - Intangibles assets (disclose each class) (Cont)		
<i>Table D. Reconciliation of the opening and closing balances of intangibles (2006-2007)</i>		
Item		Computer software purchased \$'000
As at 1 July 2006		
Gross book value		2,298
Accumulated depreciation/amortisation and impairment		(1,896)
Net Book Value 1 July 2006		402
Additions:		
by purchase		26
Amortisation		(94)
Other movements		-
Disposals:		
Write-offs		-
Net Book Value 30 June 2007		334
Net book value as of 30 June 2007 represented by:		
Gross book value		2,324
Accumulated depreciation/amortisation and impairment		(1,990)
		334

No indicators of impairment were found for intangible assets

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 2008

	2007-2008 \$'000	2006-2007 \$'000
<u>Note 19 - Other non-financial assets</u>		
Prepayments	958	263
Other	334	467
<i>Total other non-financial assets</i>	<u>1,292</u>	<u>730</u>
All other non-financial assets are current assets.		
No indicators of impairment were found for other non-financial assets.		
<u>Note 20 - Suppliers</u>		
Trade Creditors	2,192	1,237
Operating lease rentals	211	211
<i>Total supplier payables</i>	<u>2,403</u>	<u>1,448</u>
Supplier payables are represented by:		
Current	2,403	1,448
Non-current	-	-
<i>Total supplier payables</i>	<u>2,403</u>	<u>1,448</u>
Settlement is usually made net 30 days.		
<u>Note 21 - Other payables</u>		
Prepayments received	-	-
Accrued expenses	2,685	2,151
<i>Total other payables</i>	<u>2,685</u>	<u>2,151</u>
All other payables are current liabilities.		
<u>Note 22 - Non-interest bearing liabilities</u>		
Lease incentives	802	1,013
<i>Total non-interest bearing liabilities</i>	<u>802</u>	<u>1,013</u>
Current	212	211
Non-current	590	802
<i>Total non-interest bearing liabilities</i>	<u>802</u>	<u>1,013</u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

		2007-2008	2006-2007
		\$'000	\$'000
Note 23 - Employee provisions			
Salaries and wages		480	290
Leave	A	12,449	11,870
Superannuation	A	1,402	1,332
Separations and redundancies		-	-
Sub-total employee benefits liability		<u>14,331</u>	<u>13,492</u>
Other		263	304
Total employee provisions		<u>14,594</u>	<u>13,796</u>
Employee provisions are represented by:			
Current	B	12,771	12,191
Non-current	B	1,823	1,605
Total employee provisions		<u>14,594</u>	<u>13,796</u>

A In 2006-2007 an amount of \$0.801m for leave provisions was incorrectly shown against superannuation provisions, this has been corrected in this year's financial statements.

B The classification of current employee provisions includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date is \$4,402,000 (2006-2007 \$3,767,000), in excess of one year \$10,192,000 (2006-2007 \$9,971,000)

Note 24 - Other provisions

Restoration obligations (a)		2,048	1,136
Provision for surplus office rent		24	-
Provision for lease payment under straight-line basis		3,311	3,436
Total other provisions		<u>5,383</u>	<u>4,572</u>
Other provisions are represented by:			
Current		24	-
Non-current		5,359	4,572
		<u>5,383</u>	<u>4,572</u>

(a) The CDPP currently has 18 agreements for the leasing of premises which have provisions requiring the CDPP to restore the premises to their original condition at the conclusion of the lease. The CDPP has made a provision to reflect the present value of this obligation.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2008

Note 24 - Other provisions (Cont)

Movement Table

	Provision for restoration	Provision for surplus space	Provision for lease payment under straight- line basis	Total
	\$'000	\$'000	\$'000	\$'000
Carrying amount 1 July 2007	1,136	-	3,436	4,572
Additional provision made	912	24		936
Amounts used	-	-	(125)	(125)
Closing balance 2008	2,048	24	3,311	5,383

The CDPP currently has 18 agreements for the leasing of premises which have provisions requiring the CDPP to restore the premises to their original condition at the conclusion of the lease. The CDPP has made a provision to reflect the present value of this obligation.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008	2006-2007
	\$'000	\$'000
Note 25 - Cash flow reconciliation		
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Report cash and cash equivalents as per:		
Cash flow statement	1,664	244
Balance sheet	1,664	244
Reconciliation of operating result to net cash from operating activities:		
Operating result	13,391	17,008
Depreciation /amortisation	3,797	3,300
Loss on disposal of assets	34	4
Net write-down of non-financial assets	8	4
(Increase) / decrease in net receivables	(13,970)	(20,620)
(Increase) / decrease in prepayments	(562)	203
Increase / (decrease) in incentives	(212)	(212)
Increase / (decrease) in employee provisions	799	(44)
Increase / (decrease) in supplier payables	1,366	787
Increase / (decrease) in other payables	-	16
Net cash from / (used by) operating activities	4,651	446

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2008

Note 26 – Contingent liabilities and assets

Quantifiable contingencies

The Schedule of Contingencies reports contingent asset in respect of claims for damages/costs of \$137,000 (2007: \$ Nil). The Agency is expecting to lodge a claim with Comcover. The estimate is based on the current claim from other party.

The Schedule also reports contingent liabilities in respect of claims for damages/costs of \$443,000 (2007: \$9,000). The amount represents an estimate of the Agency's liability based on precedent cases. The Agency is defending the claims.

Unquantifiable contingent liabilities

If a matter prosecuted by the CDPP is defended successfully, the court may order that the CDPP meet certain costs incurred by the defence.

If a matter is being prosecuted by the CDPP and assets are frozen under the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*, the CDPP gives an undertaking against potential losses in respect of assets administered by the Commonwealth. If the related prosecution is unsuccessful, damages can be awarded against the CDPP. Costs and damages so awarded are met from the CDPP or client organisations annual appropriations.

Although costs and damages have been awarded against the CDPP and will continue to be awarded from time to time, the CDPP is unable to declare an estimate of liabilities not recognised nor undertakings due to the uncertainty of the outcome of matters, but more particularly, due to the sensitivity of the information related to matters still before the courts.

Unquantifiable contingent assets

Nil.

Remote contingent liabilities

The CDPP has a number of contracts with suppliers that include indemnities for any default by the CDPP or its agents. These are standard contract conditions and the CDPP is satisfied that there is no foreseeable risk of any of the indemnities being called upon.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

2007-2008 2006-2007

Note 27 - Senior executive remuneration

The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:

\$130,000 to \$144,999	5	1
\$145,000 to \$159,999	4	3
\$160,000 to \$174,999	7	10
\$175,000 to \$189,999	14	12
\$190,000 to \$204,999	11	6
\$205,000 to \$219,999	2	3
\$220,000 to \$234,999	1	3
\$235,000 to \$249,999	3	1
\$250,000 to \$264,999	-	-
\$265,000 to \$279,999	1	-
\$280,000 to \$294,999	-	-
\$295,000 to \$309,999	1	-
\$310,000 to \$324,999	-	1
\$325,000 to \$339,999	1	-
\$390,000 to \$399,999	-	1
Total	50	41

The aggregate amount of total remuneration of senior executives shown above.

\$ 9,529,102 \$ 7,951,169

The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above.

Nil Nil

Note 28 - Remuneration of auditors

Financial statement audit services are provided free of charge to the CDPP.

The fair value of services provided was:

	\$ 106,000	\$ 74,000
Total	\$ 106,000	\$ 74,000

No other services were provided by the Auditor-General.

Note 29 - Average staffing level

The average full-time equivalent staffing level during each year was:

556 **506**

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008 \$'000	2006-2007 \$'000
Note 30 - Financial instruments		
<u>(a) Categories of financial instruments</u>		
Loans and receivables		
Cash and cash equivalent	1,664	244
Trade receivables	428	247
Carrying amount of financial assets	2,092	491
Financial Liabilities		
Payables - suppliers	2,403	1,448
Other payables	2,685	2,151
Non-interest bearing liabilities	802	1,013
Carrying amount of financial liabilities	5,890	4,612

(b) Net income and expense from financial assets

Loans and receivables

Interest revenue

-

-

Net gain/(loss) from financial assets

-

-

There is no interest income from financial assets not at fair value through profit or loss in the year ending 2008.

(c) Net income and expense from financial liabilities

Other liabilities

Interest expense

-

-

Net gain/(loss) from financial liabilities

-

-

There is no interest expense from financial liabilities not at fair value through profit or loss in the year ending

(d) Credit risk

The CDPP is exposed to minimal credit risk as loans and receivables are cash and trade receivables. CDPP has policies and procedures that guide debt recovery techniques that are to be applied. CDPP holds no collateral to mitigate against credit risk. Credit quality of financial instruments not past due or individually determined as impaired.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2008

Note 30 - Financial instruments (cont)

(d) Credit risk

	2007-2008 Not Past Due Nor Impaired \$'000	2006-2007 Not Past Due Nor Impaired \$'000	2007-2008 Past due or impaired \$'000	2006-2007 Past due or impaired \$'000
Loans and receivables				
Cash and cash equivalents	1,664	244	-	-
Trade receivables	319	175	109	72
Total	1,983	419	109	72

Ageing of financial assets that are past due but not impaired for 2008

	2007-2008 \$'000	2006-2007 \$'000
Loans and receivables		
Trade receivables		
0 to 30 days	-	30
31 to 60 days	-	30
61 to 90 days	-	-
Over 90 days	109	12
Total	109	72

(e) Liquidity risk

CDPP's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the Agency will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Entity (eg. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2008

Note 30 - Financial instruments

(e) Liquidity risk (contd)

The following tables illustrates the maturities for financial liabilities:

Financial Instrument	On demand		within 1 year		1 to 5 years		> 5 years		Total	
	2007-2008 \$'000	2006-2007 \$'000	2007-2008 \$'000	2006-2007 \$'000	2007-2008 \$'000	2006-2007 \$'000	2007-2008 \$'000	2006-2007 \$'000	2007-2008 \$'000	2006-2007 \$'000
Other Liabilities										
Payables - Suppliers	-	-	2,403	1,448	-	-	-	-	2,403	1,448
Total	-	-	2,403	1,448	-	-	-	-	2,403	1,448

CDPP is appropriated funding from the Australian Government. The Agency manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, CDPP has policies in place to ensure timely payment are made when due and has no past experience of default.

(f) Market risk

CDPP holds basic financial instruments that do not expose the Agency to certain market risks. CDPP is not exposed 'Currency risk or 'Other price risk.

Interest Rate Risk

CDPP does not have any interest-bearing items on the balance sheet. CDPP is not exposed interest rate risk.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS		
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS		
For the year ended 30 June 2008		
	2007-2008	2006-2007
	\$'000	\$'000
Note 31 - Administered fees and fines revenue		
Fines and Costs	4,879	9,401
Total Income Administered on Behalf of Government	4,879	9,401
Note 32 - Reversal of previous administered asset write-downs		
Reinstate receivable previously written-off	272	60
Total reversal of previous administered asset write-downs	272	60
Note 33 - Write-down of administered assets		
Financial Assets		
Write-off	11,922	5,274
Prison sentence	252	1,101
Community service orders	35	26
Received by other agencies	95	388
(Decrease) Increase in provision for doubtful debts	(9,873)	2,190
Total write-down of administered assets	2,431	8,979
<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>		
Note 34 - Administered receivables		
Fines and Costs	11,261	21,087
Less : Allowance for doubtful debts	(10,196)	(20,069)
Total receivables (net)	1,065	1,018
Fines and costs receivable (gross) are aged as follows:		
Not overdue	879	1,038
Overdue by:		
Less than 30 days	237	354
30 to 60 days	275	664
61 to 90 days	1,997	6,624
More than 90 days	7,873	12,407
Total receivable (gross)	11,261	21,087
<p>Fines and costs receivables are with entities external to the Australian Government. Credit terms are net 30 days (2006-2007: 30 days).</p>		
Reconciliation of the impairment		
Opening balance	(20,069)	(17,879)
Increase/decrease recognised in net surplus	9,873	(2,190)
Closing balance	(10,196)	(20,069)

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS		
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS		
For the year ended 30 June 2008		
	2007-2008	2006-2007
	\$'000	\$'000
Note 35 - Administered payables		
Other payables	5	2
Total Administered Payables	5	2
All payables are entities that are not part of the Australian Government. Settlement is usually made net 30 days.		
Note 36 - Administered reconciliation table		
Opening administered assets less administered liabilities as at 1 July	1,016	2,448
Plus: Administered revenues	5,151	9,461
Less: Administered expenses	(2,431)	(8,979)
Administered transfers to/from Australian Government:		
Less: Transfers to OPA	(2,718)	(1,941)
Plus: Transfers from OPA	42	27
Closing administered assets less administered liabilities as at 30 June	1,060	1,016

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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2008

Note 37 – 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.

Note 38 – Administered financial instruments

The administered assets and liabilities of the CDPP do not constitute as financial instruments.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008 \$'000	2006-2007 \$'000
Note 39 - Appropriations		
Table A: Acquittal of authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations		
Balance carried from previous period	42,939	23,195
Appropriations Act:		
Appropriations Act (No. 1) 2007-2008	104,862	94,054
Appropriations Act (No. 3) 2007-2008	898	-
Departmental Adjustments by the Finance Minister (Appropriation Acts)	-	400
Reductions:		
prior years	(549)	(598)
current year	(2,963)	(1,157)
FMA Act:		
Refunds credited (FMA section 30)	444	117
Appropriations to take account of recoverable GST (FMA section 30A)	3,443	2,513
Annotations to 'net appropriations' (FMA s.31)	2,696	1,051
Total appropriations available for payments	<u>151,770</u>	<u>119,575</u>
Cash payments made during the year (GST inclusive)	<u>93,603</u>	<u>76,636</u>
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and as represented by:	<u>58,167</u>	<u>42,939</u>
Cash at bank and on hand	1,664	244
Departmental appropriations receivable	56,412	42,579
GST receivable from the ATO	264	245
GST receivable from customers	17	7
GST payable payable to suppliers	(190)	(136)
Total	<u>58,167</u>	<u>42,939</u>

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 24 June 2008, the Finance Minister determined reduction in departmental outputs appropriations following a request by the Attorney-General. The amount determined under Appropriation Act No.1 (s.9(1)) of 2007-2008 was \$2,963,000.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2008

2007-2008 \$'000	2006-2007 \$'000
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Note 39 - 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

Cash payments made during the year	<u>42</u>	<u>27</u>
<i>Budget estimate (FMA Act section 28)</i>	250	250

Note: Cash payments made are refunds of amounts paid to the CDPP in error.

Note 40 - Special accounts

A. Other Trust Monies Special Account

Legal authority - *Financial Management and Accountability Act 1997*; s20

Purpose - (a) for expenditure of moneys temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth, and (b) to credit another Special Account to which amounts held on trust or otherwise for the benefit of a person other than the Commonwealth may be credited.

This account is non-interest bearing.

(i) Administered Component

There were no transactions during either year.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008 \$'000	2006-2007 \$'000
Note 40 - Special accounts (Cont)		
(ii) Comcare Component (Departmental)		
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> .	-	3
Available for payments	-	3
Less: Payments made to employees	-	(3)
Balance carried to the next period	-	-
Represented by:		
Cash - transferred to the Official Public Account	-	-
Cash - held by the entity	-	-
Total balance carried to the next period	-	-

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 - (a) for expenditure for expenditure in connection with services performed on behalf of other Governments and bodies that are not Agencies under the FMA Act, and (b) to credit another Special Account to which amounts held on trust or otherwise for the benefit of a person other than the Commonwealth may be credited.

This account is non-interest bearing.

There were no transactions during either year.

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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

	2007-2008 \$	2006-2007 \$
Note 41 - Compensation and debt relief		
Departmental		
No payments were made under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme. (2006-2007: No payments made)	Nil	Nil
No payments were made under s73 of the <i>Public Service Act 1999</i> during the reporting period (2006-2007: No payments made)	Nil	Nil
Total	<u>\$ -</u>	<u>\$ -</u>
Administered		
No 'Act of Grace' expenses were incurred during the reporting period	Nil	Nil
No waivers of amount owing to the Australian Government were made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> .	Nil	Nil
No ex-gratia payments were provided for during the reporting period.	Nil	Nil
Total	<u>\$ -</u>	<u>\$ -</u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 2008

2007-2008
\$'000

2006-2007
\$'000

Note 42 - Reporting of outcomes

(a) Net Cost of Outcome Delivery

The CDPP has only one outcome. Therefore no attribution is required.

	Outcome 1	
<i>Expenses</i>		
Administered	2,431	8,979
Departmental	91,344	77,937
Total expenses	93,775	86,916
<i>Other external revenues</i>		
Administered		
Fee and fines	4,879	9,401
Reversal of previous asset write-downs	272	60
Total Administered	5,151	9,461
Departmental		
Goods and services revenue	1,346	1,173
Gains from disposal of assets	-	-
Other	592	475
Total Departmental	1,938	1,648
Total other external revenues	7,089	11,109
Net cost/(contribution) of outcome	86,686	75,807

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget Outcome.

(b) Major Classes of Departmental Revenues & Expenses by Output groups and Outputs

The CDPP has only one output.

	Outcome 1	Output 1
Departmental expenses		
Employees	52,518	45,839
Suppliers	34,052	28,269
Depreciation and amortisation	3,797	3,300
Other expenses	977	529
Total departmental expenses	91,344	77,937
Funded by:		
Revenues from government	102,797	93,297
Sales of goods and services	1,346	1,173
Other non-taxation revenues	592	475
Total departmental revenues	104,735	94,945

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

2007-2008	2006-2007
\$'000	\$'000

Note 42 - Reporting of outcomes (Cont)

(c) Major Classes of Administered Revenues & Expenses by Outcomes

Administered Revenues		
Fees and Fines	4,879	9,401
Other non-taxation revenues	272	60
Total administered income	5,151	9,461
Administered Expenses		
Write-down of assets	2,431	8,979
Total Administered Expenses	2,431	8,979

Acronyms & Abbreviations



ABN	Australian Business Number
ACC	Australian Crime Commission
ACCC	Australian Competition and Consumer Commission
ACS	Australian Customs Service
AFMA	Australian Fisheries Management Authority
AFP	Australian Federal Police
AMSA	Australian Maritime Safety Authority
APS	Australian Public Service
AQIS	Australian Quarantine and Inspection Service
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission (former)
AWA	Australian Workplace Agreement
BAS	Business Activity Statement
CARS	Criminal Assets Recording System
CASA	Civil Aviation Safety Authority
CDPP	Commonwealth Director of Public Prosecutions
CITES	Convention on International Trade in Endangered Species
COAG	Council of Australian Governments
<i>Corporations Act</i>	<i>Corporations Act 2001 (Cth)</i>
<i>Criminal Code</i>	<i>Commonwealth Criminal Code (Criminal Code Act 1995 (Cth))</i>
<i>Crimes Act</i>	<i>Crimes Act 1914 (Cth)</i>

CRIMS	Case Reporting and Information Management System
CSB Act	<i>Crimes (Superannuation Benefits) Act 1989 (Cth)</i>
Customs Act	<i>Customs Act 1901 (Cth)</i>
Defendant	a person who has been charged with an offence
DPP	Director of Public Prosecutions
DPP Act	<i>Director of Public Prosecutions Act 1983 (Cth)</i>
EEO	Equal Employment Opportunity
ESS	Employee Self Service Scheme
GBRMPA	Great Barrier Reef Marine Park Authority
GST	Goods and Services Tax
HOCOLEA	Heads of Commonwealth Law Enforcement Agencies
IT	Information Technology
ITSA	Insolvency and Trustee Service Australia
LSS	Litigation Support System
NOPSA	National Offshore Petroleum Safety Authority
POC Act 1987	<i>Proceeds of Crime Act 1987 (Cth)</i>
POC Act 2002	<i>Proceeds of Crime Act 2002 (Cth)</i>
PPO	Pecuniary Penalty Order
Prosecution Policy	<i>Prosecution Policy of the Commonwealth</i>
RAAF	Royal Australian Air Force
SES	Senior Executive Service

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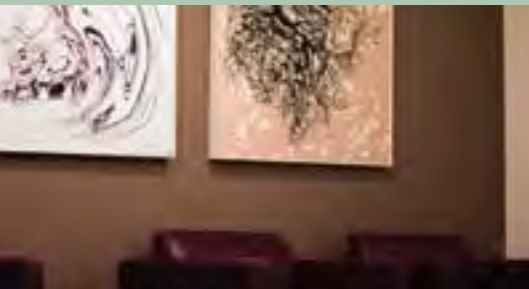
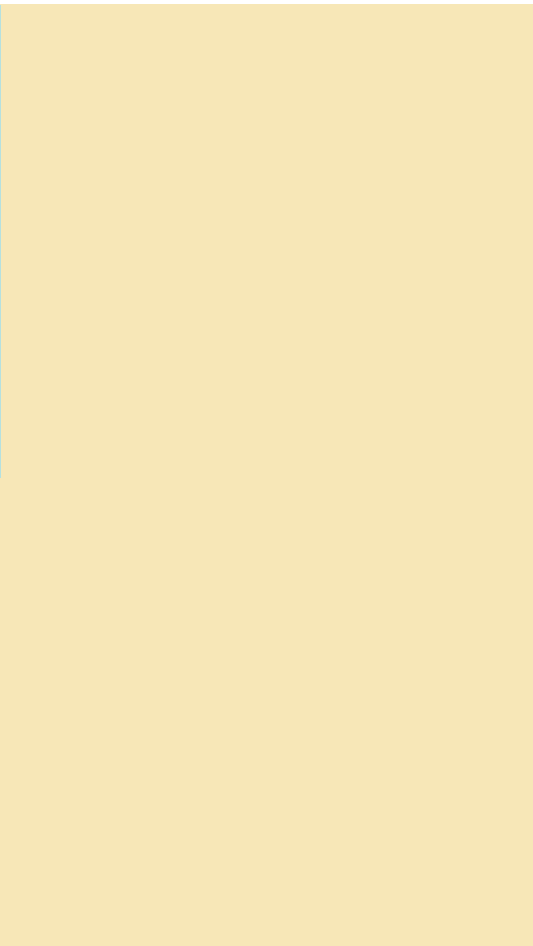
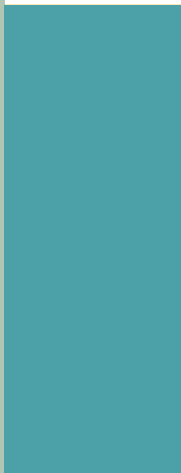
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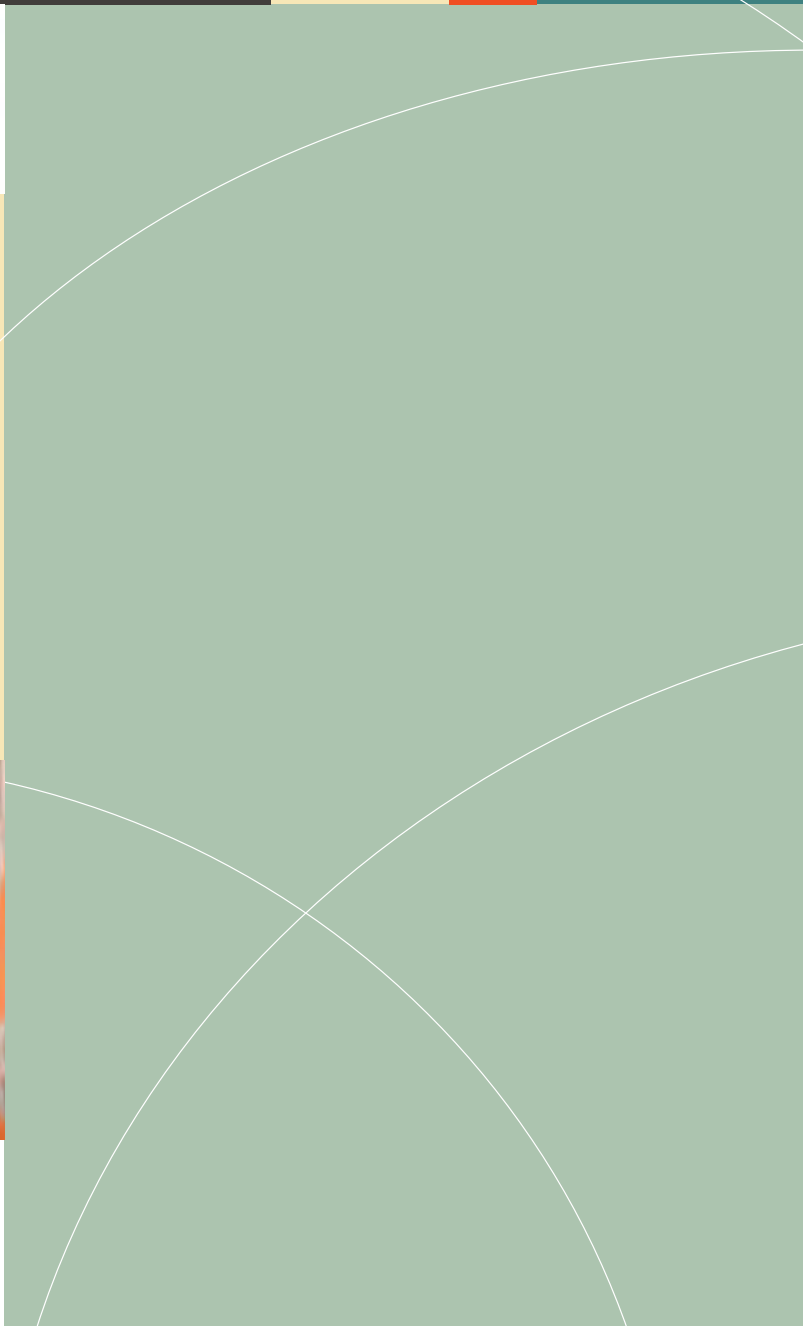
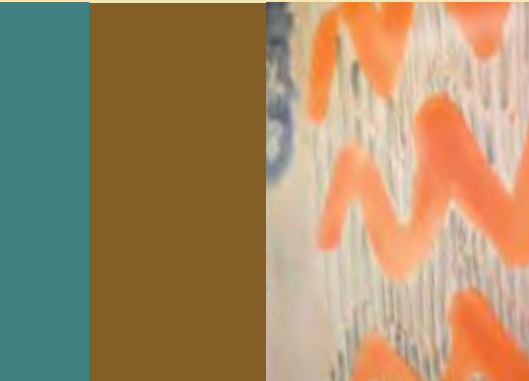
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