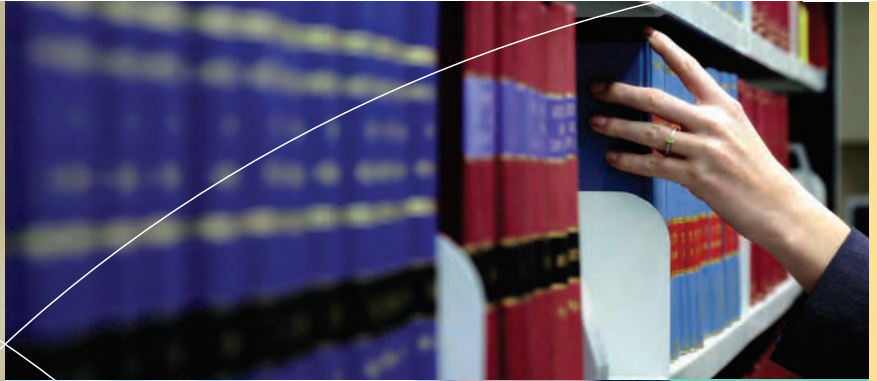




Commonwealth
Director of Public
Prosecutions



annual report 2009–10

COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS





Commonwealth
Director of Public
Prosecutions

annual report 2009–10

COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

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Commonwealth
Director of Public
Prosecutions

20 October 2010

Attorney-General
Parliament House
Canberra

Dear Attorney

I have the honour to submit my report on the operations of the Office of the Commonwealth Director Public Prosecutions for the year ended 30 June 2010, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully

CHRISTOPHER CRAIGIE SC
Commonwealth Director of Public Prosecutions

Office of the Commonwealth DPP

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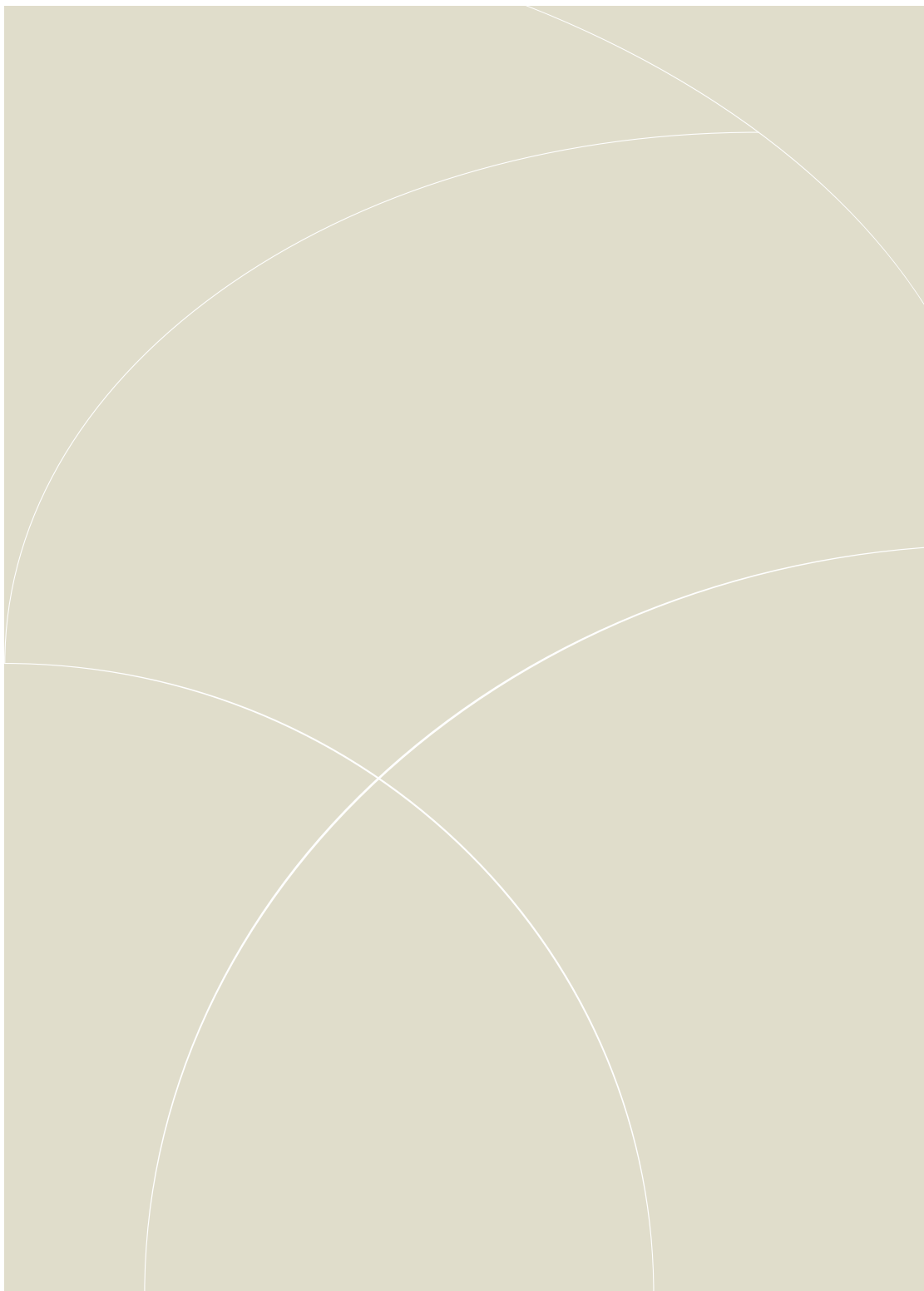
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Compliance statement

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 2009-2010 *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*.

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

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

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

The CDPP homepage can be accessed at www.cdpp.gov.au 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



Last year the CDPP celebrated its 25th Anniversary on 5 March 2009 and in my overview I reflected on the significance of this important milestone. This included recognising the commitment of the Commonwealth through successive Governments to the crucial principle of independence upon which the Office was founded and the commitment and dedication of the staff of the Office, past and present. I am pleased to report that this important commitment by the Commonwealth and CDPP staff has continued this year and I thank the Attorney-General, the Honourable Robert McClelland, and the Minister for Home Affairs, the Honourable Brendan O'Connor, for their ongoing support of the Office.

The CDPP's practice has expanded significantly in the last quarter century to encompass many subject areas such as national security, counter terrorism, border protection, people smuggling, people trafficking, cybercrime, and serious and organised crime. Prosecuting in these key areas is complex and in many instances involves very difficult legal and practical issues, many arising from the international character of the alleged offending and the need to rely on overseas evidence and overseas witnesses in order to prosecute.

The CDPP has been very pleased to contribute to the development and implementation of the Commonwealth Organised Crime Strategic Framework. This framework establishes an integrated and collaborative Commonwealth approach to address organised crime and sets the strategic policy direction for Commonwealth efforts against organised crime.

The CDPP remains committed to delivering an independent and high quality prosecution service. This year the Office has faced challenges posed by the continuing need for adaptation to the budgetary environment facing the public sector. The CDPP has been required to make savings that are proportionately amongst the highest required of any Commonwealth agency. As a result, the Office faced the need to make immediate savings in order to meet budgetary restrictions.

These savings were achieved by choices that maintained our focus on core prosecuting functions. Although our preference was to continue giving the broadest range of assistance to referring agencies, this has not been feasible and the CDPP has not been able to continue with the provision of the same range and level of services that have been valued by agencies when we were able to provide them in the past.

The CDPP is very conscious of the benefit of assistance to referring agencies and is continuing to provide pre-charge advice in specified areas such as counter-terrorism and people smuggling, and matters identified as being of particular seriousness, complexity or sensitivity. We are mindful that the CDPP may have to make further adjustments in the future in order to meet ongoing budgetary constraints. It remains worthy of note that the level of assistance provided by the CDPP to investigations remains unique amongst Australian prosecuting agencies.

I would like to thank the staff of the Office for their continued dedication throughout this period of

change and for maintaining the high standards expected from the CDPP. I would also like to thank referring agencies for their recognition of the need for the CDPP to make adjustments to the assistance we provide.

The CDPP receives briefs of evidence from 32 investigative agencies as well as some State and Territory agencies, covering diverse criminal activity. These agencies range from the Australian Federal Police, the Australian Securities and Investments Commission, the Australian Taxation Office and Centrelink to agencies with a relatively new investigative capacity. I am grateful for the dedicated work prosecutors carry out to assist these agencies and for the cooperation and effort of these agencies as they investigate alleged offences and refer matters to the CDPP.

The changing nature of practice in Commonwealth criminal law is reflected in the fact that the CDPP prosecutes an increasing number of offences involving individual victims. The CDPP has issued a *Victims of Crime Policy* recognising the importance of treating victims with courtesy, dignity and respect and this policy has been implemented throughout the Office.

On 24 June 2010, the CDPP was honoured to receive an award from the ACT Branch of the Defence Reserves Support Council in recognition of the support the Office has provided to the Australian Defence Force Reserves. The CDPP, which was one of ten recipients of the award, qualified for the honour as a result of its decision to release a senior lawyer to fill a military justice position as the Director

of Defence Counsel Services for an eight month period.

I am pleased to take this opportunity to report that officers from my Melbourne and Sydney Office Counter Terrorism Units were congratulated by Mr Enrico Casagrande CSM, General Counsel of the Australian Federal Police, for their outstanding service in achieving whole of government outcomes. It is noteworthy that this recognition acknowledged the additional stresses placed on individuals and their families during high profile and high pressure matters. As noted by Mr Casagrande, these positive results in terrorism matters could not have been achieved without significant cooperation between the AFP and the CDPP and our other partner agencies and through the professional and dedicated performance of all concerned. This cooperation provides a sound basis for future complex prosecutions.

This year the Office is delighted by the appointment of one of the CDPP's prominent in-house counsel, Glen Rice SC, as Senior Counsel. Glen's achievement was timely, in that it coincided with the completion of the CDPP's 25th Anniversary, and notable, given the relatively small number of silk appointed each year.

Once again, I record my thanks to the senior management of the CDPP in Head Office, particularly my First Deputy Director John Thornton, and senior executives around Australia for their ongoing support and leadership within the Office. This Report, which seeks to reflect the significance and breadth of the office's work, involves the contribution of many people and for its compilation



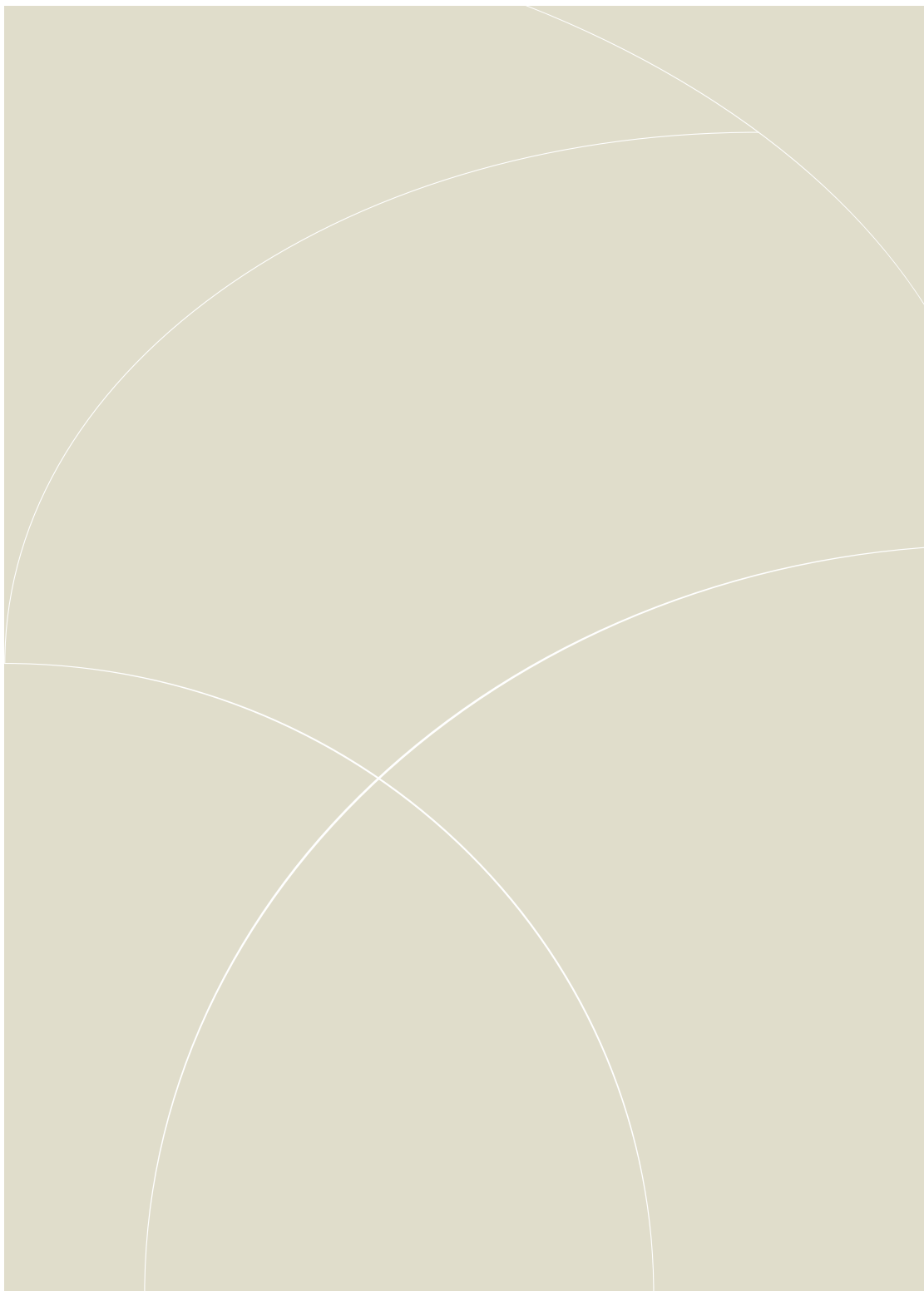
I thank James Carter, Deputy Director Legal, Practice Management and Policy, Penny McKay and Meredith Kershaw.

In conclusion, may I acknowledge each of the staff of the Office and again thank them for their valuable contribution and their dedication to the work of the CDPP and maintaining its high standing as an Office serving the Commonwealth.

I am pleased to present the Annual Report for 2009–2010.

Christopher Craigie SC

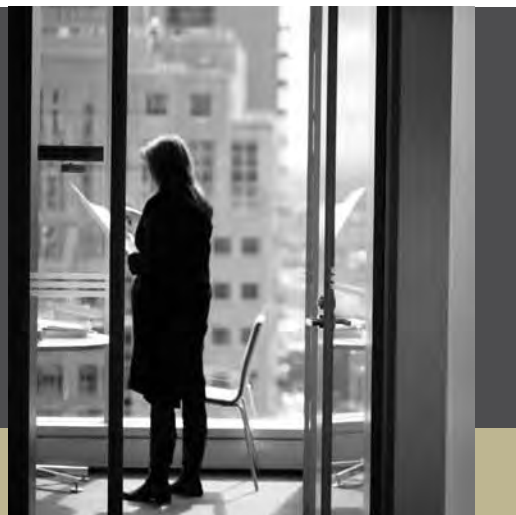
Commonwealth Director of Public Prosecutions





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 CDPP was established under the *Director of Public Prosecutions Act 1983* (the DPP Act) and began operations on 8 March 1984. The Office is under the control of the Director, who is appointed for a term of up to 7 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 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 2009–2010.

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, fraud on the Commonwealth (including tax and social security fraud) and commercial prosecutions. The CDPP has prosecuted these matters, as well as a range of regulatory offences, for many years. These matters have long formed the backbone of the CDPP's prosecution practice.

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, slavery and sexual servitude, child exploitation including on-line 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 assessing evidence, drafting charges and providing legal advice and assistance to investigators.

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

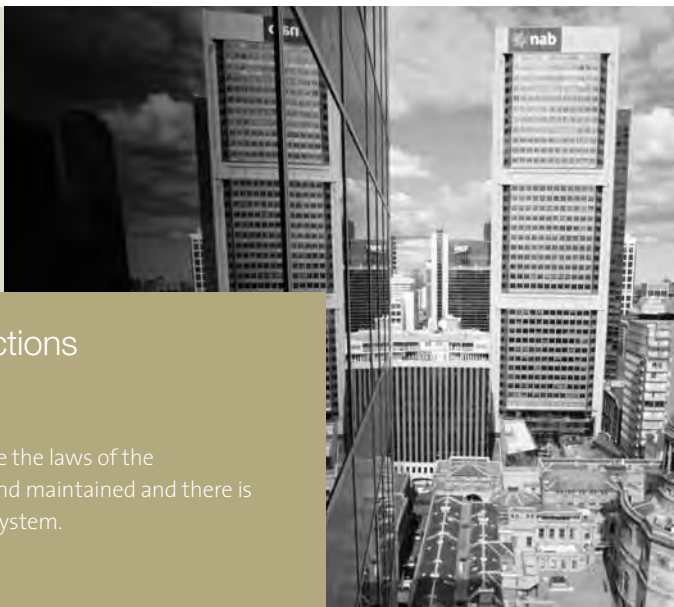
The work of the CDPP extends through all levels of the courts from Magistrates Courts to the High Court and CDPP lawyers are involved at all stages of the prosecution process. Lawyers appear on mentions, bail, summary matters, committals, trials and appeals. This differs somewhat from State and Territory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

Most Commonwealth prosecutions are conducted by the CDPP. However, there are a few areas where Commonwealth agencies conduct summary prosecutions for straightforward regulatory offences by arrangement with the CDPP. In 2009–2010, the ATO conducted prosecutions in which offences were found proved against 3,082 people. ASIC prosecuted 499 offenders for 893 offences, and obtained fines and costs totalling \$675,184.88. The AEC prosecutes some electoral offences. There are also some cases where a State or Territory agency conducts a Commonwealth prosecution, usually for reasons of convenience.

The public interest is served by cooperation among Commonwealth law enforcement agencies. This is reflected in the CDPP's Strategic Directions. The CDPP provides assistance to other agencies including in the form of online aids, guides and manuals. These resources address a range of topics relevant to the work of investigatory

agencies, including obtaining search, listening device or telephone interception warrants and the use of surveillance devices to gather evidence. They also provide commentary on a number of Commonwealth offences.

The CDPP can only prosecute 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 investigative role and the CDPP receives briefs of evidence from, and provides legal advice to, a wide range of agencies. In 2009–2010, the CDPP received briefs of evidence from 32 Commonwealth investigative agencies as well as some State and Territory agencies. Centrelink consistently remains the highest referral agency with 4,684 defendants dealt with throughout the year.



CDPP Strategic Directions

VISION:

A fair, safe and just society where the laws of the Commonwealth are respected and maintained and there is public confidence in the justice system.

PURPOSE:

To operate an ethical, high quality and independent prosecution service for Australia in accordance with the *Prosecution Policy of the Commonwealth*.

CORE VALUES:

We value:

- ▶ applying the highest ethical standards to prosecutions and proceeds of crime action;
- ▶ applying the highest professional standards of competence, commitment and hard work to prosecutions and proceeds of crime action;
- ▶ maintaining the CDPP's prosecutorial independence;
- ▶ providing, and being recognised as providing, a high quality, timely, efficient and cost effective prosecution service;
- ▶ treating everyone with courtesy, dignity and respect;
- ▶ giving due recognition to the status of victims;
- ▶ the knowledge, skills and commitment of our people;
- ▶ leadership from senior lawyers and managers;
- ▶ accountability and excellence in governance within the CDPP; and
- ▶ protecting the natural environment.

Social Justice and Equity

THE CDPP ADVANCES THE INTERESTS OF SOCIAL JUSTICE AND EQUITY BY WORKING WITH OTHER AGENCIES TO ENFORCE THE CRIMINAL LAW FOR THE BENEFIT OF THE COMMUNITY. THE CDPP RECOGNISES THE IMPORTANCE OF ADOPTING THE HIGHEST PROFESSIONAL AND ETHICAL STANDARDS IN PROSECUTIONS AND IN DEALING WITH PROCEEDS OF CRIME. THE *PROSECUTION POLICY* UNDERPINS ALL OF THE DECISIONS MADE BY THE CDPP THROUGHOUT THE PROSECUTION PROCESS AND PROMOTES CONSISTENCY IN DECISION MAKING.

The CDPP works to ensure that alleged offenders and other people affected by the criminal justice process are treated fairly. To support the CDPP's contribution to the criminal justice system, the CDPP takes action to promote and maintain an internal culture which values fairness, equity and respect. The CDPP expects conduct from its employees which reflects high ethical standards. The CDPP has issued *Guidelines on Official Conduct* for CDPP employees setting out the ethical standards expected of all employees. 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. This includes areas such as child sex tourism, online child sexual exploitation, and people trafficking including sexual servitude and slavery. The CDPP recognises that victims of Commonwealth offending have an important place in the criminal justice system, and has implemented a *Victims of Crime Policy*.

CDPP Strategic Themes

The CDPP's strategic themes are:

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

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

Prosecution Policy

The *Prosecution Policy* 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 matters such as the availability, competence and credibility of witnesses and their likely effect on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence open to the alleged offender and any other factors that could affect the likelihood or otherwise of a conviction.

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

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

- ▶ whether the offence is serious or trivial;
- ▶ any mitigating or aggravating circumstances;
- ▶ the youth, age, intelligence, physical health, mental health or special vulnerability of the alleged offender, witness or victim;
- ▶ the alleged offender's antecedents and background;
- ▶ the passage of time since the alleged offence;
- ▶ the availability and efficacy of any alternatives to prosecution;
- ▶ the prevalence of the alleged offence and the need for general and personal deterrence;
- ▶ the attitude of the victim;
- ▶ the need to give effect to regulatory or punitive imperatives;
- ▶ the likely outcome in the event of a finding of guilt.

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

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

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

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

Functions and Powers

The CDPP is created by statute and has the functions and powers given to the Director by legislation. Those functions and powers are found in sections 6 and 9 of the *DPP Act* and in specific legislation including the *POC 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*, 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.

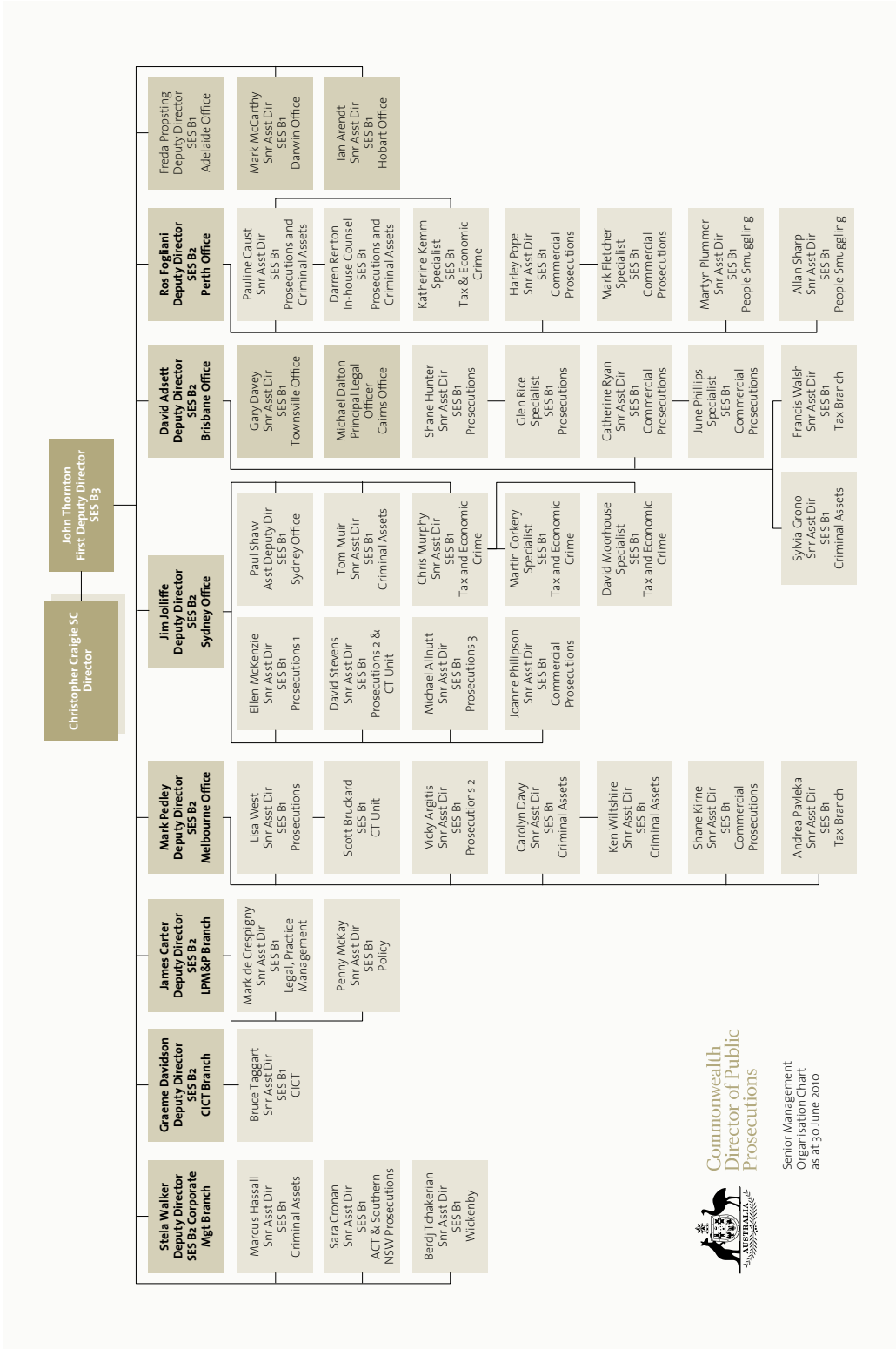
Corporate Governance and Organisation

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.

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

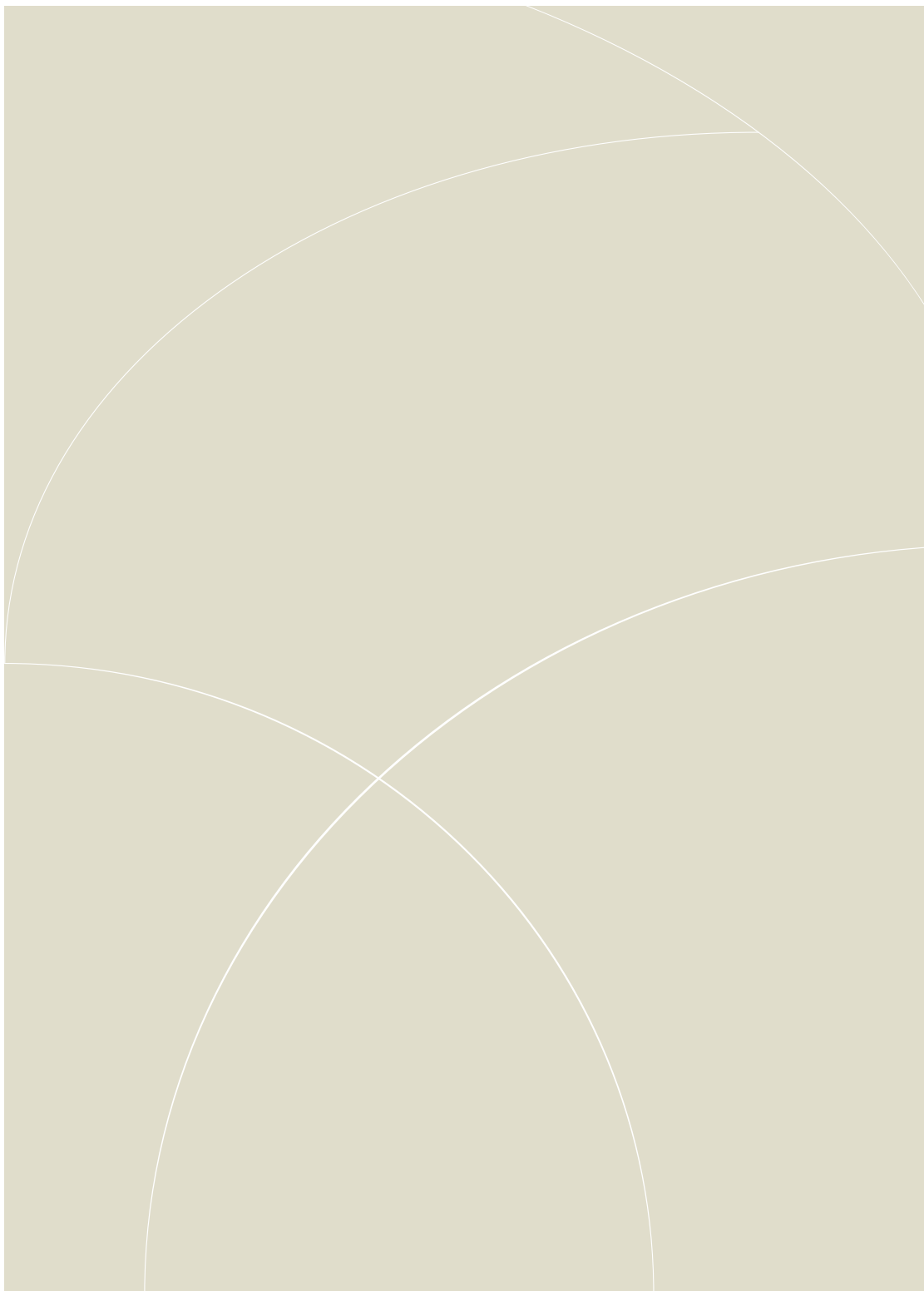
The CDPP has staff spread throughout its Offices Australia-wide, the largest being Sydney. The larger offices (Sydney, Melbourne, Brisbane and Perth) each have a Senior Management Committee which meets on a regular basis to assist the Deputy Director in charge of that office. There is a less formal structure within the other offices, which reflects the size of those offices. The Director and the Deputy Directors meet at least twice annually to discuss policy and management issues.

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



Outcome and Program Chart 2009-2010

DIRECTOR OF PUBLIC PROSECUTIONS	
Director: Christopher Craigie SC	
Total price of outputs	\$101.735 million
Departmental outcome appropriation	\$105.421 million
Outcome 1:	
Maintenance of law and order for the Australian community through an independent and ethical prosecution service in accordance with the Prosecution Policy of the Commonwealth.	
Total price	\$101.735 million
Departmental output appropriation	\$105.421 million
Program 1.1:	
An independent service to prosecute alleged offences against the criminal law of the Commonwealth, in appropriate matters, in a manner which is fair and just and to ensure that offenders, where appropriate, are deprived of the proceeds and benefits of criminal activity.	
Total price	\$101.735 million
Appropriation	\$105.421 million

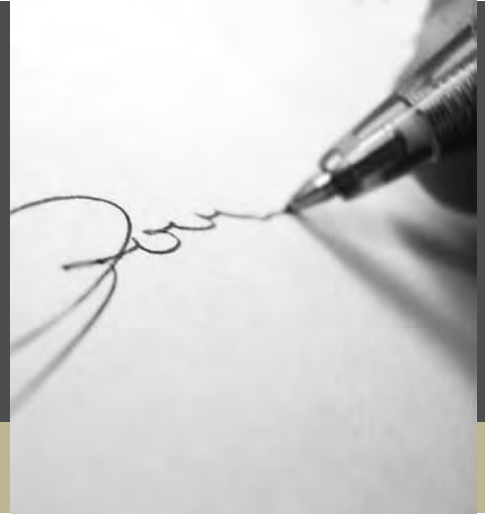


2

areas of practice

The CDPP seeks to apply the highest professional standards of competence, commitment and hard work to prosecutions

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.

MARITA QUETCHER

MEDICARE FRAUD

The defendant was employed by Medicare Australia as a Branch Manager at Shellharbour. During a routine inspection in February 2007 Medicare discovered a number of anomalies in claims processed in the Medicare database system under the defendant's operator number. Medicare subsequently discovered that between March 2002 and February 2007 the defendant had enrolled 65 false identities on the Medicare Program and had processed a total of 387 claims against those identities, amounting to \$156,034.50. The defendant was interviewed by Medicare investigators and denied any wrongdoing. During the interview she suggested that her co-workers may have engaged in the conduct.

The defendant was charged with 65 counts of obtaining property by deception pursuant to section 134.1(1) of the *Criminal Code*. She entered a plea of not guilty to all charges.

The defendant was found guilty of all the charges. In sentencing, the Court noted that the offences were above the mid-range of seriousness; the defendant abused the trust that she held through her position of authority; the offences were premeditated, deliberate and relatively sophisticated; the defendant had lied and denied her involvement in the conduct; and the amount of money involved was significant. The defendant was sentenced to a total of 8 years imprisonment to be released after serving 5 years.

The defendant is appealing against her sentence to the NSW Court of Criminal Appeal.

MOHAMMAD BASIR ARIA**EXCISE FRAUD**

The defendant imported 3,000,000 cigarettes into Australia concealed in a shipment of car batteries without declaring them. A cigarette importation of that size attracts an excise duty of \$715,200. ACBPS seized the cigarettes at the time of delivery. It was found that the defendant had used a false name in arranging the importation and in dealing with third parties in an attempt to avoid detection.

The defendant was charged with 1 count of dishonestly causing a loss to the Commonwealth pursuant to section 135.1(3) of the *Criminal Code*. The defendant pleaded guilty and was sentenced to 2 years imprisonment to be released forthwith on condition that he be of good behaviour for 2 years.

CL & PR HOLDINGS PTY LTD AND SHU MIN ZHANG**EXCISE FRAUD**

CL & PR Holdings Pty Ltd was predominantly involved in importing goods, mainly clothing, into Australia. Shu Min Zhang was 1 of 2 Directors of CL & PR Holdings Pty Ltd and held 50 shares of an issued 100 shares in the company.

On 57 occasions between 24 July 2001 and 10 January 2006, CL & PR Holdings Pty Ltd caused false invoices understating the value of the imported goods to be submitted to its customs brokers, who in turn declared the false values to ACBPS. The fraud involved arrangements with 6 separate Chinese companies for the preparation and provision of false invoices which were then used in connection with the false declarations to ACBPS.

By understating the value of the goods the company avoided excise duty of \$195,524.01. The excise duty avoided as a result of Shu Min Zhang's offending was \$140,161.93.

CL & PR Holdings Pty Ltd was charged with 57 counts of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code*.

Shu Min Zhang was charged with 45 counts of aiding, abetting, counselling or procuring CL & PR Holdings Pty Ltd to obtain a financial advantage by deception pursuant to sections 134.2(1) and 11.2 of the *Criminal Code*.

The defendants pleaded guilty and were convicted and sentenced in the Downing Centre Local Court in Sydney on 16 April 2010. CL & PR Holdings Pty Ltd was fined \$195,524.01. Shu Min Zhang was sentenced to a period of imprisonment for 16 months and released forthwith on condition that he be of good behaviour for 16 months.

DAVID MICHAEL WALKER**FALSE STATEMENT**

In October 2004 the defendant, an employee of the Royal Australian Navy, applied for rental allowance from the Defence Housing Authority for a rental property in St Leonards. The defendant lied on his application stating that he would not be sharing the premises, when in fact he intended to share it with a friend. In his application, the defendant stated that he would not be sharing the premises to ensure he would obtain the single occupancy rate of Rental Allowance and would not have to pay any rent. His friend had agreed to pay the \$50 per week shortfall between the Rental Allowance and the actual rent payable.

The defendant signed the lease in early November 2004 and the defendant's friend moved in later that month. As a result from December 2004 to April 2008 the defendant received rental allowance in the amount of \$34,196.71 to which he was not entitled.

The defendant was charged with 1 count of receiving a financial advantage from a Commonwealth entity pursuant to section 135.2(1) of the *Criminal Code*. He was convicted and sentenced to perform 200 hours of community service.

CRAIG QUILTY**FALSE STATEMENT**

The defendant was an ACBPS investigator at Sydney International Airport when he made 3 false declarations with Comcare for separate injuries he claimed to have sustained through incidents that occurred during the course of his employment.

On 21 April 2005 the defendant submitted a claim for workers compensation with Comcare. The claim was made for a lower back injury that originated in a bicycle accident on his way to work. The defendant signed declarations asserting that he was aware he must advise Comcare immediately if he engaged in any employment, or the running of a business, whether paid or not.

Between August 2005 and August 2006, the defendant conducted paid private investigation work for the LKA Group and Verifact Pty Ltd. He failed to advise Comcare or his assessing doctors of his additional employment.

Between 4 November 2005 and 7 March 2007 the defendant submitted 27 false claims for incapacity payments and falsely stated on a further 11 forms that he was totally unfit for work.

As a result of the defendant's failure to declare his earnings from the LKA Group and Verifact Pty Ltd, he dishonestly obtained \$19,185.37.

The defendant was charged with 1 count of dishonestly causing a loss to Comcare pursuant to section 135.1(5) of the *Criminal Code*.

The defendant pleaded guilty and was convicted on 1 October 2009 in the Downing Centre Local Court. He was released without passing sentence upon entering into a self recognizance in the amount of \$5,000 on condition that he be of good behaviour for 3 years.

ALESSANDRO TREVISANUT**AUSTRALIA POST FRAUD**

The defendant was the licensee of the Wollongong North Licensed Post Office. An audit of the Post Office conducted on 14 December 2007 revealed that \$58,002.39 in cash was unaccounted for. The defendant told the auditors that he did not know where the money was. He subsequently declined to participate in a record of interview.

The Post Office kept cash in a safe. The defendant could not access the safe by himself as it had to be opened with 2 keys – one held by the defendant and one held by a security firm. It was later established that the defendant had been taking cash rather than depositing it in the safe and concealing the missing cash by making false accounting entries in the Electronic Point of Sale computer system. The accounts appeared to balance, however the amount of money asserted to be held in the safe was incorrect.

On an evening prior to the security firm's monthly collection of the cash held in the safe, the defendant made an accounting entry which purported to withdraw cash from the safe, so that the amount of cash recorded as being in the safe matched the amount actually held. A security officer then collected the cash from the safe and recorded an amount matching the entry on the Post Office's accounts. After the collection the defendant made an electronic entry reversing the withdrawal of the previous evening.

The defendant was charged one count of dishonestly causing a loss to a Commonwealth entity pursuant to section 135.1(5) of the *Criminal Code*.

On 6 July 2009 the defendant pleaded guilty in the Wollongong Local Court. On 27 October 2009 he unsuccessfully applied to reverse his plea. The defendant was sentenced to a total of 11 months imprisonment to be served by way of periodic detention and a reparation order in an amount of \$58,002.39.

The defendant appealed against his conviction to the District Court of New South Wales. The appeal was dismissed on 19 March 2010.

JOHN DOUGLAS RICHARDSON**FUEL GRANT FRAUD**

The defendant, a truck driver, submitted 28 monthly claim forms in relation to the Diesel and Alternative Fuels Grant Scheme and the Energy Grants (Credits) Scheme on which he declared an inflated amount of fuel purchased for each period. As a result he obtained diesel fuel rebates to which he was not entitled totalling \$298,324.94.

The defendant was charged with 27 counts of obtaining a financial advantage by deception and 1 count of attempting to obtain a financial advantage by deception pursuant to section 134.2 of the *Criminal Code*.

The defendant pleaded not guilty at the committal hearing in the Magistrates Court of South Australia but subsequently entered a plea of guilty in the District Court of South Australia. He was sentenced to 3 years and 4 months imprisonment to be released after serving 18 months. At the same time he was also sentenced to 4 years and 6 months imprisonment for 20 State offences. This sentence was made cumulative on an existing State sentence of 2 years and a new non-parole period was set in relation to all the State

offences of 4 years. The Commonwealth sentence was ordered to commence at the expiry of the non-parole period fixed in relation to the State offences.

The defendant appealed to the Court of Criminal Appeal of South Australia against the severity of the sentences. The Court upheld the appeal and resented the defendant to a total sentence of 6½ years for the State offences, to be released after 4 years and effectively varied the non-parole period in relation to the Commonwealth sentence to 2 months.

JANE PHILLIPS

CHILD CARE BENEFITS FRAUD

The defendant was an approved Family Day Care Carer from 1997 until the cancellation of her accreditation on 22 December 2008. During this period, the defendant maintained timesheets regarding the attendance records for each child in care on a daily basis. Every two weeks, the defendant submitted the forms to Wagga Wagga Regional Family Day Care Service (FDCS) for processing. The FDCS then calculated the defendant's financial entitlement pursuant to the Child Care Benefits Scheme.

From November 2007 to November 2008 the defendant lodged timesheets with FDCS, indicating that two children were in her care for certain times during that period. The forms were signed by the defendant and appeared to be signed by the children's mother.

On 4 November 2008 the children's mother attended the office of FDCS and advised that her children were not in the defendant's care between 9 November 2007 and 21 September 2008 and confirmed that her signature had been forged on the defendant's timesheets.

As a result of lodging the forged timesheets, the defendant was overpaid a total amount of \$34,460.01.

The defendant was charged and convicted of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code*.

The Wagga Wagga Local Court sentenced the defendant to a total sentence of 6 months imprisonment with a 1 month non-parole period.

The defendant appealed against the sentence imposed. The District Court upheld her appeal and resented her to 6 months imprisonment to be released forthwith on condition that she be of good behaviour for 6 months.



Social Security Fraud

Centrelink refers the largest number of briefs of any agency to the CDPP and these generally relate to people allegedly receiving Centrelink benefits knowing that they were not entitled to receive them. Cases may involve receiving income from paid employment or receiving benefits on behalf of persons who are deceased. Other cases may involve using multiple false identities to obtain multiple Centrelink benefits.

Centrelink prosecutions can vary in the level of complexity involved. Cases involving multiple false identities or marriage-like relationships can be very complex and demanding. Prosecuting social security fraud involves technical evidence of Centrelink's benefits systems, often using electronic transactions. The CDPP and Centrelink work closely together to seek to achieve best practice in investigating and prosecuting in this important area.

THOMAS ALBERT BROOKS**SOCIAL SECURITY FRAUD AND IDENTITY CRIME**

The defendant claimed and was paid social security benefits as a result of failing to disclose the fact that he was already receiving Centrelink benefits in the name of Graham John Cooper. The fraud spanned a 19 year period and resulted in a total overpayment of \$187,564.17.

The defendant was charged with 1 count of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act* and 2 counts of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code*.

The defendant did not enter a plea at the committal hearing in the Magistrates Court of Queensland but subsequently entered a guilty plea in the District Court of Queensland. He was sentenced to a term of imprisonment of 3 years with a non-parole period of 1 year, conditional upon entering into a recognizance order in an amount of \$100 to be of good behaviour for 2 years.

ARTHUR MAHFOUD**SOCIAL SECURITY FRAUD**

The defendant's mother was in receipt of Widows and Age pension from Centrelink. The defendant was his mother's carer until her death on 4 May 1997. On 17 March 1998 the defendant represented to Centrelink that his mother was still alive and in receipt of her pension by applying for an advance payment, ostensibly on her behalf. Between 19 March 1998 and 19 June 2006 the defendant accessed his mother's bank account and obtained more than \$92,000. The defendant was in poor health and used the money for gambling.

The defendant was charged with 2 counts of making a false representation to obtain a benefit from the Commonwealth pursuant to section 29B of the *Crimes Act* and one count of dishonestly causing a loss pursuant to section 135.1(5) of the *Criminal Code*.

On 31 March 2010 in the District Court at Parramatta the defendant was sentenced to a total of 16 months imprisonment to be served by way of home detention, to be released on recognizance after 10 months.

DAVID KARL JUNHKE**ABSTUDY FRAUD**

Between 6 March 2004 and 10 August 2004 and 2 October 2004 and 20 March 2007, the defendant failed to advise Centrelink that he was receiving income from employment whilst in receipt of Abstudy. As a result he obtained \$13,706.52 to which he was not entitled.

The defendant was charged with 2 counts of obtaining a financial advantage knowing or believing that he was not eligible to receive it pursuant to section 135.2(1) of the *Criminal Code*. The defendant pleaded guilty in the Rockingham Magistrates Court in Western Australia and was fined \$3000.

KEVIN MCINERHENEY**SOCIAL SECURITY FRAUD**

Over a three month period the defendant, a Centrelink employee, created 26 Centrelink customer accounts in false names and caused benefits to be paid to those accounts. He then obtained the benefits paid.

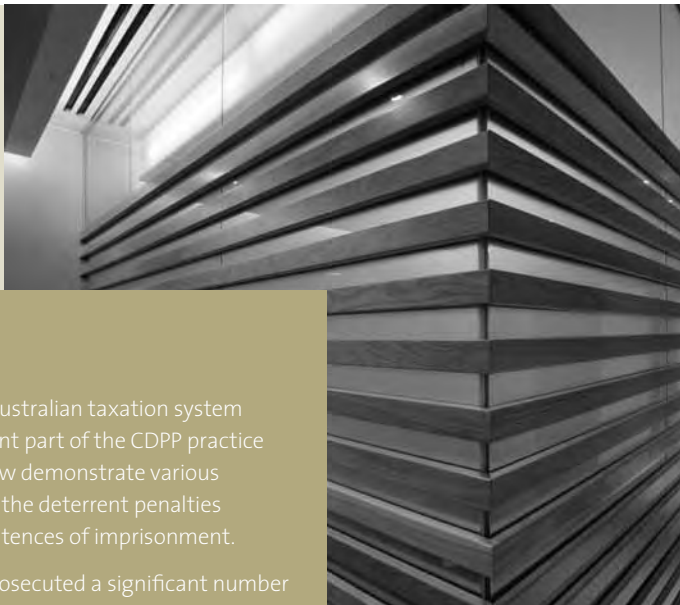
The defendant also caused payments in the form of Electronic Benefit Transfers to be made to 4 accounts of Centrelink customers known to him without their authorisation. The defendant obtained the money for himself.

The defendant obtained a total amount of \$66,120.36.

The defendant was charged with 30 counts of obtaining property by deception pursuant to section 134.1(1) of the *Criminal Code*. He pleaded not guilty at the committal hearing in the Magistrates Court of South Australia but subsequently pleaded guilty at his District Court trial.

The defendant was sentenced to a total sentence of 4 years imprisonment to be released after serving 18 months. In sentencing the defendant the Court stated:

“IT IS VERY SERIOUS OFFENDING INVOLVING GROSS BREACHES OF TRUST ON A SUSTAINED BASIS ... I MUST BEAR IN MIND THAT THE COURTS HAVE MADE IT CLEAR ON MANY OCCASIONS THAT IN DEALING WITH THIS SORT OF FRAUD, PARTICULARLY WHERE THE PERSON INVOLVED IS A GOVERNMENT EMPLOYEE, THERE IS A SIGNIFICANT NEED FOR THE SENTENCE TO BE SUCH THAT IT WILL DETER OTHERS IN A POSITION OF TRUST WHO ARE MINDED TO ATTEMPT TO DEFRAUD THE WELFARE SYSTEM.”



Tax Fraud

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

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

The CDPP prosecutes taxation frauds referred by the Serious Non-Compliance area of the ATO, the AFP and the ACC. In addition, the CDPP works closely with the In-House Prosecutions area of the ATO. By arrangement with the CDPP, the In-House Prosecutions area prosecutes most regulatory offences relating to taxation matters. If a matter becomes a defended hearing, the In-House Prosecutions area refers the matter to the CDPP to continue the prosecution. This cooperative relationship assists the ATO with its compliance program by enabling the efficient and effective prosecution of regulatory offences relating to the proper administration of Australia's taxation laws.

ROLAND RUHA, WIKITORIA RUHA AND GEORGINA HARRIS**GST FRAUD**

The defendants conspired to defraud the Commonwealth by lodging 50 false refund claims for GST with the ATO on behalf of a number of different business entities.

The conspirators utilised a total of 23 different business entities. Roland Ruha and Wikitoria Ruha were involved with all 23 entities whilst Georgina Harris was only involved with five entities. The entities consisted of Pty Ltd companies, partnerships and sole traders. In relation to the partnerships and sole traders, the conspirators utilised the names of a number of unrelated third parties and nominated them as partners and sole traders to the ATO.

The conspirators acquired ABNs and registered the business entities for GST with the ATO.

The conspirators began to deal with the ATO on behalf of the business entities and electronically lodged 50 false BAS with the ATO. Roland Ruha and Wikitoria Ruha were involved in the lodgement of all 50 BAS whilst Harris was involved with 13.

On occasion, an ATO officer would request documentary proof of the claims made in the BAS from the nominated contact person for the business entity, either Roland Ruha or Georgina Harris, who would then provide the ATO with false information and documents.

In relation to the 50 BAS Roland Ruha and Wikitoria Ruha were involved with, the total amount of refunds claimed was \$180,142.37. Of this amount, the refunds paid by the ATO totalled \$138,551.37.

In relation to Georgina Harris and the 13 BAS she was involved with, the total amount of refunds claimed was \$87,118.37. Of this amount, a total of \$62,872.37 was paid by the ATO.

The defendants were charged with 1 count of conspiring to dishonestly cause a loss to the Commonwealth pursuant to sections 135.4(3) and 11.5 of the *Criminal Code*.

The defendants entered a plea of not guilty at the committal hearing in the Magistrates Court of Queensland. At trial in the District Court of Queensland they changed their pleas to guilty.

The defendants were sentenced in the District Court on 31 August 2009. Roland Ruha and Wikitoria Ruha were each sentenced to 3 years imprisonment to be released on a recognizance after serving 12 months. Georgina Harris was sentenced to 20 months imprisonment to be released on a recognizance after serving 6 months.

The CDPP appealed against the inadequacy of the sentences imposed in relation to all three defendants. The appeals were upheld.

On 9 February 2010 the Queensland Court of Appeal handed down a decision in which it increased the sentences imposed in the District Court. Roland Ruha and Wikitoria Ruha were each resentenced to 3 years imprisonment to be released on a recognizance after serving 18 months. Georgina Harris was imprisoned for 20 months to be released on a recognizance after serving 12 months.

The Queensland Court of Appeal decision outlined a new approach as to how sentences are to be determined in Queensland for Commonwealth offences and disapproved of the approach to Commonwealth sentencing adopted by the same court in the earlier decision of *R v CAK & CAL; ex parte C'th DPP* [2009] QCA 23 which was reported on in last

year's Annual Report at page 32. In that case the Court of Appeal had held that normally offenders being sentenced to serve imprisonment for federal matters should serve 60–66% of their head sentence before being released on a bond or parole.

THE QUEENSLAND COURT OF APPEAL STATED:

'THE SENTENCING JUDGE DESCRIBED THE RESPONDENTS' CONSPIRACY AS SOPHISTICATED, ELABORATE, COLD-BLOODED, PARTICULARLY DELIBERATE, AND SUSTAINED; IT INVOLVED CONTINUING DECEPTION, DELIBERATE LIES, AND THE UNWITTING INVOLVEMENT OF INNOCENT THIRD PARTIES. THE SENTENCING JUDGE REFERRED TO AUTHORITATIVE STATEMENTS IN THIS COURT THAT SUCH FRAUD WAS TO BE VIEWED SERIOUSLY AND SHOULD ATTRACT ACTUAL IMPRISONMENT.'

AND FURTHER THAT:

'ACCORDINGLY, AND BECAUSE THE RELEVANT FACTORS AND THE RELATIVE DIFFERENCES IN THE WEIGHT TO BE AFFORDED TO EACH FACTOR IN THE DIFFERENT ASPECTS OF THE OVERALL SENTENCING PROCESS MAY DIFFER ACCORDING TO INFINITELY VARIABLE CIRCUMSTANCES, THERE CAN BE NO "MECHANISTIC OR FORMULAIC" APPROACH WHICH REQUIRES SENTENCING JUDGES TO ENSURE THAT THE PROPORTION WHICH THE PRE-RELEASE PERIOD BEARS TO THE SENTENCE OF IMPRISONMENT MUST OR MUST USUALLY FALL WITHIN A RANGE WHICH IS SUBSTANTIALLY NARROWER THAN THE WHOLE PERIOD OF THE IMPRISONMENT, WHICH IS THE RANGE THE STATUTE EXPRESSLY CONTEMPLATES FOR RECOGNIZANCE RELEASE ORDERS. THE PROPORTIONS COMMONLY ENCOUNTERED IN THE DECIDED CASES SHOULD THEMSELVES BE THE RESULTS OF APPLICATION OF CONVENTIONAL SENTENCING PRINCIPLES TO THE PARTICULAR CIRCUMSTANCES OF EACH CASE: THE APPELLANT'S ARGUMENT INVERTS THAT PROPER APPROACH BY REQUIRING THAT THE SENTENCE IN A PARTICULAR CASE BE SUBSTANTIALLY DICTATED BY A PRE-DETERMINED RANGE UNLESS THERE ARE UNUSUAL FACTORS.'

PROJECT WICKENBY

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

Project Wickenby is a joint project designed to enhance the strategies and capabilities of Australian and international agencies to collectively detect, deter and deal with international tax avoidance and evasion. It is also designed to improve community confidence in Australian regulatory systems, particularly confidence that steps are taken to address

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

As well as the CDPP, Project Wickenby involves a number of other Commonwealth agencies including the ATO, the ACC, ASIC and the AFP. It is also supported by AUSTRAC, AGD and AGS. The CDPP has a significant and important role to play in the prosecution of offences which arise out of the investigations, and action to recover the proceeds of crime under the *POC Act 2002*.

The CDPP has continued its participation in regular meetings of the Project Wickenby Chief Executive Officers and the Project Wickenby

Cross Agency Advisory Committee which were established to oversee the project. The CDPP plays a valuable advisory role in providing information about prosecutions and criminal asset recovery, both in a general sense and in relation to specific matters arising out of Project Wickenby. The CDPP also participates in many of the other cross agency governance processes which have been established around Project Wickenby.

During the period 1 July 2009 to 30 June 2010 7 individuals were convicted and sentenced to terms of imprisonment as a result of Project Wickenby prosecutions undertaken in Western Australia, Victoria, New South Wales and Queensland. During the same period, 1 individual in Queensland was acquitted.

As at the end of June 2010 the CDPP was prosecuting a total of 38 defendants for indictable offences arising out of investigations conducted by the ACC and AFP as part of Project Wickenby. These matters are currently at different stages of the court process in various jurisdictions, with a number due to proceed by way of guilty pleas in the coming months.

On 30 December 2008 Jersey Police arrested Philip Eric de Figueiredo in response to a request for his provisional arrest sent to Jersey by Australia. He is alleged to have committed a number of fraud and money laundering offences arising from his alleged involvement in a number of tax evasion schemes being investigated as part of Project Wickenby. These alleged offences were committed while de Figueiredo was employed by Strachans, a financial services organization which began its operations in Jersey, Channel Islands before moving to Switzerland in 2000. de Figueiredo appeared in a Jersey court the day after his arrest and was granted bail. The formal extradition hearing proceeded in Jersey in late 2009 and on 3 November 2009 the Magistrate handed down her decision in favour of the Commonwealth, with the Magistrate finding that there is no bar to de Figueiredo's extradition and sending the case to the Attorney-General of Jersey. In turn, the Attorney-General made a

decision ordering de Figueiredo's extradition. de Figueiredo has appealed to the Jersey Royal Court against the decisions of the Magistrate and the Attorney General and these appeals are yet to be concluded.

The CDPP has so far taken action to restrain property valued at approximately \$25 million in relation to a number of Wickenby matters. In 1 prosecution concluded in April 2010 the CDPP made an application by consent for a PPO in the amount of \$27,441.57. This amount represented the benefit from the commission of the offence, some \$22,000 secret commission and a \$1000 fee paid to the defendant's legal firm. An additional amount was calculated pursuant to section 125 of the *POC Act 2002* representing the present day value of the benefits that were obtained.

In addition to the amount referable to this matter, 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*. The requests have been made to a multitude of different jurisdictions and have resulted in the obtaining of important evidence.

It is anticipated that significant numbers of prosecution and criminal asset recovery matters arising out of Project Wickenby will be referred to the CDPP on an ongoing basis. The 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.

ADAM HARGRAVES, GLENN HARGRAVES AND DANIEL STOTEN**TAX FRAUD**

THIS WAS THE FIRST PROJECT WICKENBY MATTER TO PROCEED TO TRIAL AND WAS REPORTED IN LAST YEAR'S ANNUAL REPORT AT PAGES 32-33. EVIDENCE OBTAINED OVERSEAS PURSUANT TO MUTUAL ASSISTANCE REQUESTS TO SWITZERLAND, CHINA AND THE UNITED KINGDOM FORMED A SIGNIFICANT AND SUBSTANTIAL PART OF THE PROSECUTION CASE. THE CASE WAS PRESENTED ELECTRONICALLY USING E-TRIAL, A SYSTEM CREATED AND DEVELOPED BY THE QUEENSLAND COURTS.

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

The structure was perpetuated by the use of offshore trusts and in-house Strachans' companies. Strachans, upon direction from Adam Hargraves and Daniel Stoten, created false invoices for data listing services purportedly provided to Phone Directories Co. Pty Ltd (PDC). The defendants were Directors of PDC. PDC produces telephone directories for major regional cities in Queensland, the Northern Territory and New South Wales. Genuine data-listing expenses had been incurred by PDC with a Chinese company, QH Data.

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

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

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

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

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

The applications for forfeiture and pecuniary penalties were civil proceedings to recover the benefits derived from the alleged offences and were separate and independent of the criminal prosecution although both related to the same conduct. On 5 December 2006 orders were made staying the civil proceedings until determination by verdict

of the criminal proceedings. On 24 December 2009 the restraining order was varied by consent to permit restrained property to be used to pay assessments including penalties and interests issued by the ATO to Adam and Glenn Hargraves, Daniel Stoten and PDC, attributable to the conduct that was the subject of the confiscation proceedings. The assessments, penalties and interest imposed by the ATO relating to these transactions were paid in full and the confiscation proceedings were withdrawn.

The defendants were charged with one count of defrauding the Commonwealth pursuant to sections 29D and 86 of the *Crimes Act* and one count of conspiring to dishonestly cause a loss to a Commonwealth entity pursuant to section 135.4(3) of the *Criminal Code*.

The defendants entered a plea of not guilty in the Supreme Court of Queensland. Following a 28 day trial the jury retired to deliberate on 14 April 2009 and continued to deliberate until 20 April 2009 when the jury was discharged without having reached a verdict.

Following a second trial, Adam Hargraves and Daniel Stoten were convicted on 8 March 2010 of the second count only. Glenn Hargraves was acquitted on both counts.

On 8 June 2010 Adam Hargraves and Daniel Stoten were sentenced to 6 ½ years imprisonment with a non-parole period of 3 years and 9 months.

Adam Hargraves and Daniel Stoten have appealed against their convictions and sentences. The appeals were heard by the Queensland Court of Appeal in June 2010. Judgment has been reserved.

PAUL JOHN GREGORY

TAX FRAUD

The offending in this case was detected as a result of Project Wickenby.

The defendant and Glenn Wheatley had met whilst both were working with International Management Group of America (IMGA) in 1994. The defendant, a solicitor, was an alternate director of IMGA at the time. It was alleged that the defendant was involved in offending for which Wheatley was previously sentenced, in that he allegedly assisted Wheatley to evade tax on the profits of a John Farnham tour by use of a bogus loan arrangement.

Further, in January 2003 Wheatley was involved in the promotion of a boxing match between Kostya Tszyu and Jesse James Leija in Melbourne. The fight was very successful and Wheatley made a large profit. The defendant and Egglisshaw, the controller of a Swiss based company called Strachans SA (Strachans), formulated a plan and suggested it to Wheatley. The plan was to stage a bogus legal dispute which would ultimately enable Wheatley to under-declare the fight profits on the relevant tax return and therefore evade income tax. By this time the defendant was the CEO of the legal firm Dibbs Barker Gosling.

On 28 March 2003 the defendant set out the details of the plan in an email to Egglisshaw, his co-conspirator. The email was the centrepiece of the prosecution case and in essence it foreshadowed that an entity controlled by Strachans would write to Wheatley claiming a bogus share of the fight proceeds, purportedly for some services rendered in connection with the fight. A 'dispute' would ensue over how much would be paid by Wheatley for the fictitious services. The defendant would act as Wheatley's solicitor to 'settle' the dispute. It was agreed that ultimately they would settle the dispute for \$400,000.

The steps set out in the email were duly undertaken by the parties. A file was created by the defendant at Dibbs Barker Gosling pertaining to the bogus legal dispute between Wheatley and the Strachans' controlled entity known as Overseas Promotions Inc (OPI). The email of 28 March 2003 was not kept on the file. Ultimately, the 'dispute' was settled and thereupon Wheatley paid OPI the \$400,000 that he purportedly owed it. This in turn allowed him to reduce his bottom line profit on the fight and to pay less tax. OPI had in fact done nothing to earn the fee and Wheatley's money was secured in a Swiss bank account for him to later draw upon.

Wheatley's understanding was that he was paying Swiss tax of 11% on the \$400,000 and that the professional fees for the defendant and Strachans were to be around \$1000 each. In fact, there was no Swiss tax and the defendant and Strachans each took 50% of the 'tax'. The defendant's share of \$22,000 was paid into his own Swiss bank account managed by Strachans.

Wheatley did not declare \$400,000 of the profit from the boxing fight on the relevant tax return and as a result he evaded \$194,000 in income tax.

A PPO was made by the court pursuant to section 116 of the *POC Act 2002* in the amount of \$27,441.57. This amount represented the benefit from the commission of the offence, comprising a \$22,000 secret commission and a \$1000 fee paid to the defendant's firm, plus an additional amount calculated pursuant to section 125 of the *POC Act 2002* representing the present day value of the benefits that were obtained. The PPO was made by consent.

In relation to the alleged tax evasion arising from the John Farnham tour, the defendant was charged with 2 counts of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act*. In relation to the tax evasion arising from the boxing match, the defendant was charged with 1 count of conspiring to dishonestly cause a risk of loss to a Commonwealth entity pursuant to sections 135.4(5) and 11.5 of the *Criminal Code*.

Following a 14 day trial in the Supreme Court of Victoria in February 2010, the defendant was found guilty of conspiring to dishonestly cause a risk of loss to a Commonwealth entity in relation to the Kosta Tszu boxing match and was acquitted of the other 2 charges arising from the John Farnham Tour.

On 15 April 2010 the defendant was convicted and sentenced to a term of 2 years imprisonment to be released after serving a period of 12 months on condition that he be of good behaviour for 12 months.

THE SUPREME COURT OF VICTORIA STATED:

"I AM SATISFIED THAT THE PURPORTED NEGOTIATIONS, WHICH YOU SET OUT IN YOUR EMAIL OF 28 MARCH 2003 AND IN WHICH YOU ENGAGED THEREAFTER, REPRESENTED AN ELABORATE DECEPTION SET UP TO AFFORD THE REMITTANCE OF THE \$400,000 WITH LEGITIMACY WHICH IT DID NOT POSSESS AND TO ENABLE MR WHEATLEY TO EVADE TAX IN THE WAY IN WHICH HE DID."

"THE MOST IMPORTANT SENTENCING CONSIDERATION IS GENERAL DETERRENCE. YOUR CONDUCT INVOLVED BLATANT DISHONESTY AND THE EXPLOITATION OF YOUR POSITION AS A SOLICITOR. IT IS OF THE FIRST IMPORTANCE THAT OTHERS SIMILARLY PLACED APPRECIATE THAT THE CONSEQUENCES OF INVOLVING THEMSELVES IN THESE SORTS OF DECEPTIVE MANOEUVRES WILL BE SEVERE."

On 13 May 2010 the Director filed an appeal to the Victorian Court of Appeal against the inadequacy of the sentence imposed. The appeal has not yet been determined.

TREVOR NEIL THOMSON

CONSPIRACY TO DEFRAUD

THIS CASE WAS THE FIRST PROSECUTION CONDUCTED IN WESTERN AUSTRALIA AS A RESULT OF PROJECT WICKENBY.

The offending arose from a very complex tax scheme known as the 'Appointor Arrangement' which was successfully promoted to 2 prominent directors of a company within the mining industry in Western Australia. At the relevant time the defendant was the directors' accountant and tax agent.

In May 2000 the directors entered into the Appointor Arrangement. Under the arrangement they agreed to distribute the entire income of their family trusts in the 2000 and 2001 financial years to an entity controlled by the scheme promoter and were paid a 'tax-free' fee of \$22.5 million each. Before the arrangement began two trustee companies that were controlled by the directors and received income from the family trusts in 1999 were liquidated.

In August 2001 an audit of the company's accounts identified an unexpected profit of more than \$7 million in the 1999 financial year. This created a problem for the Appointor Arrangement, related in part to the liquidation of the trustee companies. To 'fix' the problem the scheme promoter devised the 'False Interest Scheme'. On his instructions the defendant fabricated company documents to 'cancel out' by way of a false interest expense the unexpected profit in 1999. The defendant then caused false tax returns based on those false documents to be lodged with the ATO.

The False Interest Scheme was never a stand-alone tax scheme. It was, from inception, a fraud that was devised to protect the Appointor Arrangement from being struck down by the ATO under Part IVA (the general anti-avoidance provisions) of the *Income Tax Assessment Act 1936*.

As a result of the False Interest Scheme and the Appointor Arrangement entities controlled by the directors were able to evade taxes of about \$27.6 million over the 1999, 2000 and 2001 financial years.

For his part in facilitating the Appointor Arrangement the defendant received \$457,900 in commissions from the scheme promoter.

The defendant was charged with 1 count of conspiracy to defraud the Commonwealth pursuant to sections 135.4(3) and 11.5 of the *Criminal Code*.

The defendant entered a plea of not guilty at the committal hearing but changed his plea to guilty on 12 December 2009 and undertook to cooperate with law enforcement authorities pursuant to section 21E of the *Crimes Act*.

On 13 May 2010 the defendant was convicted and sentenced in the Supreme Court of Western Australia to a total sentence of 3 years and 3 months imprisonment to be released after 13 months on condition that he be of good behaviour for 2 years. The Judge commented that if the defendant had not given the undertaking pursuant to section 21E

of the *Crimes Act*, his sentence would have been 4 years imprisonment to be released after 19 months pursuant to a recognizance release order.

THE SUPREME COURT OF WESTERN AUSTRALIA STATED:

‘I SPEAK FROM LONG EXPERIENCE WHEN I SAY THAT CONSPIRACIES, AND IN PARTICULAR DRUG CONSPIRACIES AND CONSPIRACIES TO DEFRAUD, ARE HARD TO DETECT AND INVESTIGATE WITHOUT INSIDE INFORMATION OF THE TYPE YOU HAVE SUPPLIED. A VITAL TOOL IN AN INVESTIGATOR’S ARMOURY CAN BE SOMEONE FROM THE INSIDE, SUCH AS YOU, WHO IS PREPARED TO TELL INVESTIGATORS WHAT THEY KNOW AND SUBSEQUENTLY GIVE EVIDENCE IN ANY PROSECUTION.

JUDGES ARE WARNED AGAINST REWARDING THAT FORM OF COOPERATION SO AS TO RESULT IN A SENTENCE THAT IS UNDULY LENIENT. THIS MEANS THERE IS A LIMIT TO THE EXTENT BY WHICH I CAN DISCOUNT YOUR SENTENCE WHILE HAVING REGARD TO THE OTHER ASPECTS OF SENTENCING TO WHICH I HAVE REFERRED SUCH AS GENERAL DETERRENCE. NEVERTHELESS THE FINAL STRUCTURE OF YOUR SENTENCE SHOULD SERVE AS A CLEAR SIGNAL TO OTHERS WHO HAVE ENGAGED IN CRIMINAL CONDUCT THAT IF THEY CHOOSE TO STAND FAST IN THE HOPE THAT THEY MAY NOT BE TRACKED DOWN, THE RISK WILL BE A SEVERE SENTENCE, WHEREAS IF THEY CHOOSE TO COME CLEAN EARLY AND GIVE ASSISTANCE TO THE PROSECUTION THEIR SENTENCE WILL BE MODERATED SIGNIFICANTLY.

THIS SHOULD ALSO COME WITH A WARNING. INVESTIGATORS AND THE PROSECUTION DO NOT NEED THE EVIDENCE OF EVERY MEMBER OF A CONSPIRACY; THEY JUST NEED ONE OR PERHAPS TWO. A PERSON IN YOUR POSITION NEEDS TO MAKE A CHOICE EARLY OR THEY MAY BE TOO LATE. YOU CHOSE WISELY.’



2.2 Serious drugs



THE PROSECUTION OF SERIOUS DRUG OFFENCES ARE A SIGNIFICANT PART OF THE CDPP'S PRACTICE AND ARE AMONG THE MOST SERIOUS COMMONWEALTH OFFENCES. THE INTERCEPTION OF ILLICIT DRUGS AND PRECURSORS AT THE BORDER PREVENTS THEM FROM ENTERING THE AUSTRALIAN COMMUNITY. DRUG OFFENCES ATTRACT SUBSTANTIAL PENALTIES, INCLUDING IMPRISONMENT FOR LIFE FOR OFFENCES INVOLVING A COMMERCIAL QUANTITY OF DRUGS.

THERE ARE A RANGE OF SERIOUS DRUG OFFENCES IN THE *CRIMINAL CODE* INCLUDING TRAFFICKING AND THE COMMERCIAL MANUFACTURE OF DRUGS. THE CDPP ALSO PROSECUTES STATE AND TERRITORY DRUG OFFENCES USUALLY WHERE THE INVESTIGATION INVOLVES A COMMONWEALTH AGENCY AND IT IS APPROPRIATE FOR THE CDPP TO CONDUCT THE PROSECUTION.

DAVID DEGHANI, DAWN BURLING AND KAREN GILL

ECSTASY IMPORTATION

Dawn Burling and her partner David Dehghani dispatched 4 boxes of ecstasy tablets by post from the UK to Karen Gill at her address near Brisbane. The boxes purported to contain toys, DVDs and childrens games, but in fact contained a total of 81,292 tablets with a gross weight of 26.096kg (5.2193kg pure weight of MDMA). Two of the boxes were selected by the AFP for a controlled delivery to Gill on 8 February 2007. Dehghani and Burling attended Gill's address shortly after the delivery of the boxes and all 3 were subsequently arrested.

For his role in the drug importation, Dehghani was charged with 1 count of importing a commercial quantity of a border controlled drug pursuant to section 307.1 of the *Criminal Code*. He was also charged with 2 counts of conducting transactions so as to avoid reporting requirements pursuant to section 31(1) of the *Financial Transaction Reports Act 1988*; 4 counts of conducting transactions so as to avoid reporting requirements relating to threshold transactions pursuant to section 142 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and 6 counts of dealing in proceeds of crime pursuant to section 400.4(1) of the *Criminal Code*.

Burling and Gill were charged with one count each of importing a commercial quantity of a border controlled drug pursuant to section 307.1 of the *Criminal Code*.

Dehghani initially entered a plea of not guilty in the Magistrates Court of Queensland but subsequently pleaded guilty and gave an undertaking to give evidence against Burling and Gill.

On 24 July 2009 in the Supreme Court of Queensland Dehghani received a reduced sentence as a result of his undertaking to give evidence against Burling and Gill. Dehghani was sentenced to 10 years and 10 months imprisonment with a non-parole period of 6½ years for his role in the drug importation, and to concurrent terms of 2 years imprisonment for the structuring offences involving cash deposits amounting to \$579,000 and money laundering transactions in excess of \$400,000.

Dehghani subsequently applied for leave to appeal against his sentence. In November 2009 the Queensland Court of Appeal refused his application.

The Queensland Supreme Court heard a number of pre-trial applications by Burling and Gill including an unsuccessful application by Burling to stay the indictment.

In March 2010 Dehghani gave evidence at the trial of Burling and Gill in relation to their role in the drug importation, however on the prosecution's application Dehghani was declared hostile. The prosecution appealed against Dehghani's sentence on the ground that he failed to cooperate with the prosecution after his sentence was handed down. The appeal is listed to be heard in the Queensland Court of Appeal on 25 October 2010.

On 12 March 2010 Burling and Gill were convicted following a trial in the Queensland Supreme Court. Burling was sentenced to 12 years imprisonment to be released after serving 7 years and 3 months. Gill was sentenced to 9 years imprisonment to be released after serving 5½ years. Burling and Gill have filed appeals against their convictions and sentences.

JORGE ERNESTO VELARDE SILVA**CONSPIRACY TO IMPORT COCAINE AND EXTRADITION**

At the time of this offence, this matter involved the largest importation of cocaine into Queensland. In 2007 the defendant was extradited from Costa Rica to Australia. His extradition was Australia's first extradition from Costa Rica, a country with which Australia does not have a bilateral extradition treaty.

The defendant, a Peruvian national, conspired with 2 others to bring 64kg of pure cocaine to Australia from Mexico. The drug was imported on the vessel '*Sparkles Plenty*' which sailed across the Pacific skippered by Peter Jackson. Jackson and another conspirator, Nudd, were convicted for their roles in 2002 and 2003 respectively. The defendant acted as the interface between Jackson and the suppliers of the drug and assisted Jackson to load and hide the drugs on the '*Sparkles Plenty*'.

The defendant was charged with 1 count of conspiring to import a commercial quantity of cocaine pursuant to section 233B(1)(cb) of the *Customs Act 1901*.

On 13 July 2009 the defendant was convicted following a trial in the Queensland Supreme Court. On 14 July 2009 he was sentenced to 24 years imprisonment with a non-parole period of 12 years.

In April 2010 the Queensland Court of Appeal dismissed the defendant's appeal against conviction and refused his application for leave to appeal against his sentence.

KEN QUYEN VAN TANG, TIEN TRINH, THUAN THANH LE, SON ANH PHAM**COCAINE, ICE AND ECSTASY IMPORTATION**

THIS MATTER INVOLVED THE IMPORTATION OF A VERY LARGE COMMERCIAL QUANTITY OF COCAINE, METHAMPHETAMINE (ICE) AND MDMA (ECSTASY) WHICH CARRIED A COMMERCIAL VALUE OF BETWEEN \$23 AND \$333 MILLION DEPENDING ON HOW THE DRUGS MAY HAVE BEEN SOLD. VERY LENGTHY SENTENCES WERE IMPOSED REFLECTING THE SCALE OF THE IMPORTATIONS AND THE CRIMINALITY INVOLVED.

The defendants were involved in importing narcotics that had been concealed within foot spas arriving from Canada in a shipping container. The foot spas contained 124kg of cocaine, 66kg of ice and 121kg of ecstasy.

The AFP removed the narcotics from the foot spas and replaced them with inert substances. Tang was involved in arrangements for the importation of the container from overseas and he and Pham were involved in arranging for the container to be delivered to a factory in Braybrook, Victoria. All 4 defendants were involved in unloading the container, accessing the substituted 'narcotics' inside the foot spas and packing them into various boxes. Trinh also left the factory with around 2kg of the substitute 'ice' in his vehicle. Arrests were made at the factory and in the surrounding area on 11 June 2008.

The case was heard in the Melbourne County Court.

Ken Quyen Van Tang

Tang is a Canadian national who came to Australia to oversee the importation. He was charged with 3 counts of importing a commercial quantity of a border controlled drug contrary to section 307.1(1) of the *Criminal Code*.

Tang entered an early plea of guilty and was sentenced on 27 November 2009 to a total effective sentence of 19 years imprisonment with a non-parole period of 14 years – 535 days of pre-sentence custody was declared as time served. The Court indicated that if Tang had not pleaded guilty he would have been sentenced to 24 years imprisonment with a non-parole period of 19 years.

Tien Trinh

Trinh was charged with 1 count of attempting to possess a commercial quantity of a border controlled drug contrary to sections 11.1(1) and 307.5(1) of the *Criminal Code*.

Trinh entered an early plea of guilty and was sentenced on 20 April 2009 to a total effective sentence of 5½ years with a non-parole period of 3 years – 195 days of pre-sentence custody was declared as time served.

Thuan Thanh Le

Le's role was confined to unloading the container that contained the narcotics. He had no known involvement prior to that. Le also gave evidence against Pham at Pham's trial.

Le was charged with 3 counts of attempting to possess a commercial quantity of a border controlled drug contrary to sections 11.1(1) and 307.5(1) of the *Criminal Code*.

Le entered an early guilty plea and was sentenced on 27 May 2010 to a total effective sentence of 6 years to be released after serving 4 years. The Court indicated that if Le had

not made an undertaking to cooperate with law enforcement authorities, he would have received a sentence of 8 years with a non-parole period of 6 years.

Son Anh Pham

Pham dealt with the Customs freight forwarders to secure delivery of the shipping container. Over a number of days prior to the delivery of the shipment he was observed, along with Tang, at the factory and elsewhere. He helped unload the shipping container and was found by police cutting open the foot spas to access the narcotics.

Pham was charged with 3 counts of attempting to possess a commercial quantity of a border controlled drug contrary to sections 11.1(1) and section 307.5(1) of the *Criminal Code*. He entered a plea of not guilty.

Pham gave evidence at his trial that he did not know that there were drugs in the footspas until they were unloaded. He claimed that once he became aware of the presence of drugs he wanted to leave the factory but was threatened by Tang, Trinh and Le and so decided to assist under duress. This claim was rejected by the jury and he was convicted.

On 23 July 2010 Pham was sentenced to 19 years imprisonment with a non-parole period of 14 years – 178 days of pre-sentence custody was declared as time served.

NIRMALA OTHEAN

INTERNAL HEROIN IMPORTATION

On 6 June 2009 the defendant, who was 5 months pregnant, arrived in Sydney on a flight from Bangkok with 25 pellets containing 189.2g of powder concealed internally. Subsequent analysis revealed that the powder contained 104.6g of pure heroin estimated to be worth between \$35,000 and \$40,000.

The defendant initially told ACBPS officers she had come to Australia for a short holiday and that she wanted to see Australian beaches. She subsequently admitted that she had drugs inside her and that her supplier had organised her flights and hotel accommodation and given her \$1000 cash.

The defendant was charged with 1 count of importing a marketable quantity of a border controlled drug pursuant to section 307.2(1) of the *Criminal Code*. She pleaded guilty in the NSW District Court but claimed that she had been told that the drugs were Panadol and that the supplier wanted to avoid paying import duty.

The defendant gave birth whilst awaiting sentence. On 14 January 2010 the defendant was sentenced to 5 years imprisonment with a non-parole period of 3 years.

KALILA YOUSIF

HEROIN IMPORTATION

On 24 May 2009 the defendant arrived in Sydney on a flight from Vietnam with packages in her shoes containing 683.6g of powder. Subsequent analysis revealed the powder contained 516.8g of pure heroin with an estimated street value of between \$603,050 and \$1,033,600.

In a recorded interview with the AFP, the defendant claimed that a man named 'Lee', to whom she had been introduced by her friend, had offered her \$20,000 to travel to Vietnam and that she had agreed to take part in the enterprise because she needed money to pay gambling debts. The defendant said that 'Lee' had paid for her airline tickets, had given her \$2,000 up front when he drove her to Sydney International Airport and had instructed her to contact him by telephone once she arrived at her hotel in Vietnam.

An unidentified man, believed to be 'Lee's' relative, brought shoes to the defendant at her hotel in Vietnam and gave her a further \$3,000. The defendant said she knew there was "something" in the shoes but claimed she had believed it was diamonds. The defendant said the shoes smelt like "medicine".

The defendant was charged with one count of importing a marketable quantity of a border controlled drug contrary to section 307.2(1) of the *Criminal Code*.

On 25 November 2009 the defendant was convicted following a trial in the Downing Centre District Court. On 14 April 2010 the defendant was sentenced to 7 years imprisonment with a non-parole period of 4½ years.

IN SENTENCING THE DEFENDANT THE COURT EMPHASISED THE GREAT HARM THAT DRUGS, ESPECIALLY HEROIN, CAUSE TO THE COMMUNITY AND YOUNG PEOPLE IN PARTICULAR. THE COURT REPEATED WHAT HAS BEEN SAID IN MANY OTHER CASES, THAT WHILE THE OFFENDER WAS OBVIOUSLY ONLY A COURIER, IT IS COURIERS WHO ALLOW THE DRUG TRADE TO FLOURISH AND STRESSED THE NEED FOR GENERAL DETERRENCE. THE COURT CONSIDERED THAT THE FACT THAT THE OFFENDER WAS MOTIVATED BY THE NEED TO PAY OFF GAMBLING DEBTS ONLY ADDED TO THE OBJECTIVE SERIOUSNESS OF THE OFFENCE.

WAYNSABI TRANDY, THAI DUY NGUYEN, CHI NGO, THANH TUNG PHAM, VAN VU LE AND TRAN TOM NGUYEN

CONSPIRACY TO TRAFFIC HEROIN

THE PROSECUTIONS OF THESE DEFENDANTS WERE THE RESULT OF A LARGE AND COMPLEX INVESTIGATION, KNOWN AS OPERATION GORDIAN-KATAKAN, WHICH UNCOVERED THE USE BY DRUG SYNDICATES OF CASH DEALER BUSINESSES TO TRANSFER LARGE SUMS OF MONEY IN A MANNER DESIGNED TO AVOID DETECTION BY AUTHORITIES. OPERATION GORDIAN-KATAKAN RESULTED IN THE PROSECUTION AND CONVICTION OF BOTH THE CASH REMITTERS AND THOSE INVOLVED IN VARIOUS DRUGS SYNDICATES, OF WHICH THIS WAS ONE.

In 2005 various Federal, Victorian and New South Wales law enforcement authorities combined with the ACC to investigate the money laundering activities of several cash dealers operating in Melbourne and Sydney. The investigation was known as Operation Gordian-Katakan.

The cash dealer businesses were suspected of being involved, *inter alia*, in the illegal transfer of funds between various persons involved in the importation and trafficking of commercial quantities of narcotics, primarily heroin. These persons were identified as operating within a number of separate, albeit sometimes intersecting, organised criminal syndicates.

Four cash dealer businesses, 2 in Melbourne and 2 in Sydney (the remitters) targeted by investigators were very closely inter-linked on both a business and personnel level. These businesses operated intrastate and interstate and had international ties. The businesses

were engaged in underground financial services which included assisting in the transfer of funds intrastate, interstate and overseas. Although the transactions were subject to the *Financial Transactions Reports Act 1988* no reports were made.

As a result of the investigation into the cash dealer businesses, investigators became aware of the existence of a group in Melbourne and Sydney using the cash dealer businesses. That group was identified as the 'Chickenman Syndicate' and was led by Waynsabi Trandy.

The investigation disclosed the existence of a large number of financial transactions between 1 August and 11 November 2005 totalling \$2,021,000. Trandy arranged for the money arising from these financial transactions to be delivered covertly from the cash dealer businesses in Melbourne to Thai Duy Nguyen and others in Sydney. The money was to be used for the bulk purchase of heroin and that heroin was then transported to Melbourne for sale.

The investigation further revealed similar conduct between 17 December 2005 and 12 October 2006 together with trafficking activities. The sums dealt with during this period totalled \$5,374,500. The quantity trafficked during this time was a commercial quantity.

The defendants were charged with the following offences:

- ▶ **Trandy and Thai Duy Nguyen:** 2 counts of conspiring to deal with an instrument of crime to the value of \$1,000,000 or more pursuant to sections 11.5(1) and section 400.3(1) of the *Criminal Code*; and 1 count of conspiring to traffic a commercial quantity of a controlled drug pursuant to sections 11.5(1) and 302.2(1) of the *Criminal Code*;
- ▶ **Ngo and Le:** 1 count of conspiring to traffic a commercial quantity of a controlled drug pursuant to sections 11.5(1) and 302.2(1) of the *Criminal Code*; and 1 count of conspiring to deal in an instrument of crime to the value of \$1,000,000 or more pursuant to sections 11.5(1) and 400.3(1) of the *Criminal Code*;
- ▶ **Pham:** 1 count of conspiring to traffic a marketable quantity of a controlled drug pursuant to sections 11.5 (1) and 302.3 (1) of the *Criminal Code* and 1 count of conspiring to deal in an instrument of crime to the value of \$100,000 or more pursuant to sections 11.5 (1) and 400.4 (1) of the *Criminal Code*;
- ▶ **Tran Tom Nguyen:** 1 count of trafficking a marketable quantity of a controlled drug pursuant to section 302.3(1) of the *Criminal Code*.

On 10 June 2008 following pleas of guilty, the defendants were sentenced as follows:

- ▶ **Trandy:** 13 years imprisonment to serve a minimum of 11 years – on 23 December 2009 the defendant successfully appealed against this sentence and was resentenced to 13 years imprisonment to serve a minimum of 9½ years. The court declared that 1169 days of the sentence was already served;
- ▶ **Thai Duy Nguyen:** 11 years imprisonment to serve a minimum of 9 years – on 23 December 2009 the defendant successfully appealed against this sentence and was resentenced to 11 years imprisonment to serve a minimum of 7½ years. The court declared that 1169 days of the sentence was already served;
- ▶ **Pham:** 4 years imprisonment to serve a minimum of 2½ years – on 23 December 2009 the defendant successfully appealed against this sentence and was resentenced to 3 years imprisonment to be released after serving 22 months on condition that he be of good behaviour for 3 years. The court declared that 601 days of the sentence was already served;

- ▶ **Ngo:** 5 years imprisonment to serve a minimum of 3½ years – on 23 December 2009 the Director successfully appealed against this sentence and the defendant was resentenced to 8 years imprisonment to serve a minimum of 5 years. The court declared that 1169 days of the sentence was already served;
- ▶ **Le:** 5 years imprisonment to serve a minimum of 3½ years;
- ▶ **Tran Tom Nguyen:** 3 years imprisonment with a non-parole period of 2 years.

MATTHEW SULLIVAN AND KATRINA CARTER

IMPORTATION OF METHCATHINONE ANALOGUES

On 8 occasions between June and December 2008 the defendants ordered methylone and mephedrone over the internet from overseas. Seven of the packages were forensically examined by officers from the National Measurement Institute and found to contain substances structurally similar to the border controlled drug, methcathinone.

When the AFP executed a search warrant at the defendants' home they found further methylone and mephedrone in a bedroom wardrobe and in Carter's handbag. Police also found MDMA tablets in both locations, as well as a small number of capsules subsequently confirmed to contain mephedrone. Most of the drugs had been packaged into more than 100 small plastic bags. In total the defendants imported 72.3g of mephedrone and 100.9g of methylone and possessed 6.7g of pure MDMA.

The defendants were charged with 1 count of importing methcathinone analogues pursuant to section 307.3(1) of the *Criminal Code* and 1 count of possessing MDMA pursuant to section 308.1(1) of the *Criminal Code*.

On 21 August 2009 the defendants pleaded guilty and were convicted and sentenced in the Northern Territory Supreme Court to 2 years and 3 months imprisonment, to be released forthwith on condition that they be of good behaviour for 3 years, that they not use or consume any illicit drugs for 3 years and that they remain subject to providing a urine sample upon the request of a police officer for analysis for illicit drugs for 3 years.

NORYATI BINTI JUNAIDI

INTERNAL HEROIN IMPORTATION

The defendant arrived at Perth Airport on 21 September 2009 from Asia. She was found to have 164.3g of pure heroin internally concealed and was arrested. It was subsequently established that the defendant was paid US\$1,000 for bringing the narcotics to Australia and that the defendant had a Nigerian boyfriend who played a role in the offending.

The defendant was charged with 1 count of importing a marketable quantity of a border controlled drug pursuant to section 307.2(1) of the *Criminal Code*.

The defendant pleaded guilty in the District Court of Western Australia and was sentenced to 7 years imprisonment with a non-parole period of 4½ years. The Judge also ordered that US\$1,000 be forfeited to the Crown pursuant to section 48(2) of the *POC Act 2002*.

DALIBOR PASINOVIC, JAMES LATTOUF AND TERENCE JOHN MCCRAW**CONSPIRACY TO IMPORT MDMA**

The AFP believes that the defendants in this matter were recruited by a major organised international criminal group involved in the ongoing trafficking of narcotics. This was a highly sophisticated and organised importation involving narcotics valued at up to \$18.5 million.

On 25 June 2007 a container vessel of the Mediterranean Shipping Line known as *'the Sophie'* departed for Australia from Antwerp, Belgium. On 9 August 2007 *the Sophie* berthed at the Port Botany container terminal at Sydney. Aboard the vessel in the custody of 2nd Officer Pasinovic was a quantity of MDMA in crystalline form weighing approximately 40kg, or 30.8kg in its pure form. McCraw was a senior waterside worker and team leader employed at the container terminal.

At about mid-morning on that day, McCraw met with Lattouf and another person at a suburban service station. Lattouf was a general labourer and the owner of a utility truck. Shortly after the meeting, McCraw drove to the container terminal approximately 2½ hours prior to his rostered start time. That afternoon Pasinovic transferred custody of 2 bags containing the narcotics to McCraw, who was then working on the unloading of *the Sophie* with his team.

A series of text messages recovered from mobile phones used by Pasinovic implicated him in the importation.

At about 5.10pm that day McCraw again met with Lattouf at a hotel in the vicinity of the container terminal. An hour later they drove to the terminal where McCraw used his swipe card to allow Lattouf unauthorised access to the employee car park. McCraw returned to work on *the Sophie* whilst Lattouf remained in his utility.

At about 9.30pm McCraw and another employee carried the 2 bags containing the MDMA from the container wharf to the car park and loaded them into the rear of Lattouf's truck. McCraw, Lattouf and the other employee then departed the terminal in convoy in their respective vehicles. They were arrested by an AFP surveillance team a short time later. AFP investigators later obtained CCTV footage depicting Pasinovic attending a suburban shopping centre several hours after the handover of the drugs to McCraw. At this location Pasinovic was covertly handed \$21,700 and €22,500 in cash by way of payment for successfully handing over the drugs. This money was found concealed beneath Pasinovic's clothing later that evening when ACBPS officers boarded *the Sophie*.

The defendants were charged with 1 count of conspiring to import a commercial quantity of a border controlled drug pursuant to section 207.1 and section 11.5(1) of the *Criminal Code*. Pasinovic was also charged with 1 count of dealing with money that was proceeds of crime worth more than \$50,000 contrary to section 400.5(1) of the *Criminal Code*.

The defendants pleaded not guilty and were committed to stand trial in the Downing Centre District Court. Whilst under cross examination by the Crown at his trial Pasinovic confessed his guilt to the importation then formally changed his plea from not guilty to guilty.

A jury found Lattouf and McCraw guilty on 17 July 2010.

The sentencing Judge found that Pasinovic and McCraw were part of a sophisticated international drug trafficking organisation and that they each played an important and critical intermediate role in the conspiracy to import drugs.

The defendants were sentenced as follows:

- ▶ **Pasinovic:** 15 years and 3 months imprisonment for conspiracy to import and a fixed term of 3 years imprisonment for money laundering – a single non-parole period of 10 years and 1 month was ordered.

A forfeiture order was made under the *POC Act 2002* against Pasinovic in respect of money in the sum of \$21,700 and €22,500.

- ▶ **Lattouf:** 15 years imprisonment with a non-parole period of 9 years.
- ▶ **McCraw:** 17 years imprisonment with a non-parole period of 11 years and 2 months.

2.3 Commercial prosecutions



EACH OF THE CDPP'S LARGER REGIONAL OFFICES HAS A SPECIALIST COMMERCIAL PROSECUTIONS BRANCH. THOSE BRANCHES ARE RESPONSIBLE FOR DEALING WITH MATTERS REFERRED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC), THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC) AND THE REGULATION AND ENFORCEMENT BRANCH OF THE INSOLVENCY AND TRUSTEE SERVICE AUSTRALIA (ITSA). THE COMMERCIAL PROSECUTIONS BRANCHES ALSO DEAL WITH LARGE FRAUD MATTERS WHERE THERE IS A CORPORATE ELEMENT. IN THE SMALLER REGIONAL OFFICES COMMERCIAL PROSECUTION MATTERS ARE HANDLED BY PROSECUTORS WHO SPECIALISE IN SUCH MATTERS.

ASIC is responsible for investigating alleged contraventions of the *Corporations Act*, the *Australian Securities and Investments Commission Act 2001* (ASIC Act), and any associated State or Territory offences. If an investigation appears to disclose the commission of a serious offence, ASIC will, where appropriate, refer a brief of evidence to the CDPP for consideration and prosecution action. By arrangement with the CDPP, ASIC conducts prosecutions for minor regulatory offences against the *Corporations Act* and the *ASIC Act*.

THE INVESTIGATION OF LARGE COMMERCIAL MATTERS CAN BE LONG AND RESOURCE INTENSIVE AND FREQUENTLY THE MATERIALS THAT ASIC PROVIDES TO THE CDPP IN RELATION TO SUCH MATTERS ARE BOTH VOLUMINOUS AND COMPLEX. THE PROSECUTION OF THESE MATTERS REQUIRES SPECIALIST SKILL. THERE IS REGULAR LIAISON BETWEEN ASIC AND THE CDPP AT HEAD OF AGENCY, MANAGEMENT AND REGIONAL OFFICE LEVELS.

Where an investigation by ASIC reveals both Commonwealth offences and State or Territory offences the CDPP will prosecute the State or Territory offences pursuant to arrangements with State and Territory Directors of Public Prosecutions.

The ACCC is responsible for investigating alleged contraventions of the *Trade Practices Act 1974*, including the serious cartel offences in sections 44ZZRF and 44ZZRG. There is regular liaison between the ACCC and the CDPP at head of agency, management and regional office levels.

Where the ACCC makes a recommendation to the Director that an applicant for conditional immunity under the ACCC's Immunity Policy for Cartel Conduct should be granted immunity from criminal prosecution the Director will decide whether to grant an undertaking under section 9(6D) of the *DPP Act* by applying the criteria in Annexure B of the *Prosecution Policy of the Commonwealth*.

ITSA investigates the majority of alleged contraventions of the *Bankruptcy Act 1966*. The CDPP and ITSA meet regularly at both the national and regional office level to discuss issues relevant to the prosecution of offences under the *Bankruptcy Act 1966*.

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

NEWTON CHAN**INSIDER TRADING**

At the time of the offences the defendant was a Senior Client Advisor with Macquarie Equities Limited and had 20 years experience as a broker. Using his position, he conducted a series of trading transactions designed to create an artificial share price, or maintain the price at a level that was artificial. The defendant used his own account, an account in his mother's name and 4 other accounts which he was not authorised to use, to purchase a total of 34,650,698 shares in Bill Express Pty Ltd (BXP). The shares were purchased by way of 344 bids resulting in 904 trades on the market in the period between 3 May 2006 and 26 March 2008. The total cost of the shares was \$6,150,521.01. The defendant was questioned on numerous occasions by his employer as to the nature of his trading and he consistently deflected the concerns raised and altered his trading practices to limit further detection.

The defendant also falsified records on the IRESS ordering system, the electronic management system used by Macquarie Equities Limited. The defendant entered false information regarding the 'Order Giver' for numerous transactions he conducted on the accounts over which he had no authority.

During an examination conducted by ASIC the defendant gave false answers in relation to who had been instructing him to trade and his holdings in BXP stock.

The defendant was charged with 8 counts of market manipulation pursuant to section 1041A of the *Corporations Act*, 4 counts of the falsification of records pursuant to section 1101F of the *Corporations Act* and 1 count of providing false or misleading information to ASIC pursuant to section 64 of the *ASIC Act 2001*.

The defendant was sentenced in the Supreme Court of Victoria to 20 months imprisonment to be released after serving 4 months on condition that he be of good behaviour for 20 months.

JOHN O'REILLY**INSIDER TRADING**

The defendant was a director of Lion Selection Limited (Lion). In this role he was privy to information regarding a pre-bid acceptance agreement Lion was to enter into with Xstrata Queensland Ltd (Xstrata) to purchase Lion's shares in Indophil Resources NL's (Indophil).

Negotiations took place between April 2008 and 15 May 2008 between Lion and Xstrata Queensland Ltd (Xstrata) concerning the sale of Lion's holding in Indophil to Xstrata, when Lion issued an announcement to the ASX regarding a formal offer received from Xstrata to acquire all Lion's Indophil shares at \$1 and disclosing a pre-bid acceptance agreement had been entered into.

During this period directors were regularly updated on the negotiations at board meetings and by the distribution of minutes of these meetings.

On 7 May 2008 a memorandum was sent to all the directors of Lion, including the defendant, that Xstrata was prepared to make a bid for Indophil and that they wanted a pre-bid agreement regarding Lion's stake in Indophil.

On 8 May 2008 the defendant telephoned Bell Potter Securities and instructed the purchase of 50,000 Indophil shares on his trading account, at which time an order was placed. A trade confirmation was generated showing the purchase on this date and this was sent to the defendant on or around this date. The settlement occurred on 13 May 2008. This purchase was contrary to Lion's share trading policy. The defendant already held nearly 188,000 Indophil shares.

During June and July 2008 the defendant sold his entire holding in Indophil. The defendant's profit on the 50,000 shares purchased in May was between \$16,545 and \$29,045.

The defendant was subsequently required to confirm his holdings in Indophil in a Target Statement document to be released to the Lion share holders and the ASX however he concealed the purchase of the 50,000 shares.

The defendant was charged with 1 count of insider trading pursuant to section 1043A of the *Corporations Act*.

The defendant was sentenced to 10 months imprisonment to be released forthwith on the condition that he be of good behaviour for a period of 18 months. The defendant was also fined \$30,000 and ordered to pay a pecuniary penalty of \$61,600. The Court stated that but for the defendant's guilty plea he would have been sentenced to 13 months imprisonment to be released after serving 5 months.

GEOFFREY NEWING

MARKET MANIPULATION

THIS MATTER DEMONSTRATES THAT PEOPLE WHO COMMIT MARKET MANIPULATION OFFENCES MAY BE SENTENCED TO ACTUAL TERMS OF IMPRISONMENT.

The matter of Rocco Musumeci and Richard Wade was reported in the 2008-2009 Annual Report at pages 47-48. The defendants were convicted in relation to taking part in transactions that had the effect of, or were likely to have the effect of, creating an artificial price for trading in, or maintaining at a level that is artificial, prices for trading in the shares of a listed company contrary to section 1041A of the *Corporations Act*. Both defendants had worked for 2 different stockbroking firms.

The defendant's offending largely arose out of instructions he had given to Richard Wade to purchase various lines of shares. At the time of the offending the defendant was a senior employee of a company. The instructions he gave Wade were to purchase various lines of shares in that company. The purpose of the purchases was to maintain the price of the shares at levels intended to minimise the calls being made under a margin lending facility that had been taken out by persons and entities closely associated with that company. The defendant was related by marriage to the family that had arranged to take out the margin lending facility.

The defendant was charged with 5 counts of market manipulation pursuant to section 1041A of the *Corporations Act*.

The defendant pleaded guilty and was sentenced on 18 March 2010 in the County Court of Victoria to a total effective term of 6 months imprisonment.

THE COURT STATED:

"I FIND THE CONDUCT AND CIRCUMSTANCES OF YOUR OFFENDING OBJECTIVELY SERIOUS IN TERMS OF CRIMINALITY. IT IS OF GRAVE CONCERN THAT THE MARKET WHICH AFFECTS SO MUCH OF THE OPERATION OF COMMERCIAL LIFE AND CORPORATE INTERESTS IN THIS NATION DOES NOT REFLECT THE FORCES OF GENUINE SUPPLY AND DEMAND. IT IS CLEARLY IN THE INTERESTS OF THE COMMUNITY THAT A MARKET FOR SECURITIES MUST BE FREE FROM MANIPULATION. IN EFFECT, YOUR ACTIVITIES UNDERMINED THE SYSTEM OF SHARE TRADING WHEN YOU ALLOWED YOUR INTEGRITY AND OBLIGATIONS TO COMPLY WITH THE LAW TO BE UNDERMINED BY THE TEMPTATION TO PROTECT YOUR WIFE'S FAMILY INTERESTS AND THOSE OF THE COMPANY YOU WERE WORKING FOR."

KEVIN TREVOR POLLOCK

COMMERCIAL FRAUD

The defendant was the principal of the Pollock Group, which comprised a number of proprietary limited companies. On dates between August 1999 and June 2001, companies in the Pollock Group obtained finance from a bank using false supplier invoices to support hire-purchase applications. In total, the companies fraudulently obtained over \$3,000,000.

The defendant was charged with 9 counts of causing a detriment to the bank with intent to defraud pursuant to section 409(1)(d) of the *Criminal Code* (WA).

The defendant pleaded not guilty to all counts and was convicted in the Supreme Court of Perth on 31 October 2008. The Court sentenced the defendant to a 2 year fully suspended sentence and a fine of \$60,000.

The defendant appealed against his conviction to the Court of Appeal of the Supreme Court of Western Australia. The Court accepted the defendant's application and quashed his convictions, set aside his sentence and ordered a re-trial and on 3 June 2009.

On 16 February 2010 the defendant was again convicted of all the charges. He was sentenced on 18 March 2010 to a total effective sentence of 5 years and 4 months imprisonment.

On 7 April 2010 the defendant lodged an appeal against conviction and sentence. One of the defendant's grounds of appeal in relation to his sentence is that the trial Judge presiding over the re-trial failed to apply the principle of double jeopardy in the exercise of his sentencing discretion. On 31 May 2010 the defendant's appeal against conviction was discontinued however, the appeal against sentence is pending.

RIVERS WINES PTY LTD AND ANDREW ERSOY HASHIM

COMMERCIAL FRAUD

Rivers Wines Pty Ltd (Rivers) was a winery based in the South Australian Riverland that was contracted to supply chardonnay grape juice to a number of large wineries for wine production. During the harvest of 2003, chardonnay juice was particularly sought after by wine manufacturers but was in short supply. Instead of supplying the wineries with juice made from chardonnay grapes, Rivers supplied juice made from sultana grapes.

During the relevant vintage, sultana grapes were selling at \$285 per tonne, whereas chardonnay grapes were selling at \$1000 per tonne. Rivers sold its sultana juice at chardonnay juice prices.

One winery became concerned that the juice supplied by Rivers did not have the characteristics of chardonnay juice and reported its concerns to the Australian Wine and Brandy Corporation (AWBC). Hashim, as director of Rivers, was advised by the AWBC that it intended to conduct an on-site audit and would arrive later that afternoon. Hashim then instructed an employee of the company to create a false delivery intake sheet showing a much greater intake of chardonnay grapes than had actually occurred by altering the intake of sultana grapes to chardonnay grapes. This false document was given to AWBC inspectors during the audit and formed the basis of the charges.

Hashim also instructed the employee to prepare false grower remittance advices showing payment to growers for delivery of chardonnay and other more expensive grape varieties, instead of sultana grapes. The employee and others were also directed to attend Hashim's house after work and prepare false delivery dockets on a second set of docket books especially printed for the purpose. Other supporting false documentation was created to substantiate the claim that Rivers had received a larger intake of chardonnay grapes than it actually had.

Following the audit, the AFP executed a search warrant on Rivers and seized duplicate documents.

Rivers was charged with 44 counts of intentionally making or keeping a record of a matter that was false, misleading or incomplete pursuant to section 39ZAAA(1)(b) of the *Australian Wine and Brandy Corporation Act 1980*. Rivers was also charged with 34 counts of committing further offences pursuant to the provision above, aided abetted counselled or procured by Hashim, pursuant to section 39ZAA(1)(b) of the *Australian Wine and Brandy Corporation Act 1980*.

Hashim was charged with 34 counts of intentionally making or keeping a record of a matter that was false, misleading or incomplete pursuant to section 39ZAAA(1)(b) of the *Australian Wine and Brandy Corporation Act 1980*.

Rivers pleaded guilty and was convicted in the Adelaide Magistrates Court and fined \$316,000.

Hashim pleaded not guilty and was convicted following a 37 day hearing. He was fined \$51,000 and ordered to pay prosecution costs of \$58,794.

HUGH CHARLES GORDON

DISHONEST CONDUCT

The defendant was a director of Whet Investments Limited (Whet). Using his position, the defendant dishonestly obtained \$473,570.29 from funds deposited with Whet by 2 investors. The defendant obtained the money to repay a personal loan of \$500,000.

The defendant also fraudulently removed Whet assets, being the proceeds of the sale of mining equipment, office equipment and a motor vehicle, immediately prior to the appointment of an administrator.

The defendant was charged with 1 count of using his position to dishonestly gain an advantage for himself pursuant to section 184(2)(a) of the Corporations Act and 3 counts of fraudulent removal of property of the company to the value of \$100 or more pursuant to section 590(1)(c)(i) of the *Corporations Act*.

On 27 May 2010 the defendant was sentenced to a total effective sentence of 18 months imprisonment to be served by way of periodic detention, to be released after serving 11 months on condition that he be of good behaviour for 2 years.

CHRISTOPHER PHILIP KOCH

COMMERCIAL FRAUD AND EXTRADITION

THE SENTENCE IMPOSED IN THIS MATTER IS THE HIGHEST SENTENCE IMPOSED IN A MATTER REFERRED BY ASIC.

Between 1996 and 2000 the defendant was the director of Koch & Associates Pty Ltd (Koch) providing services as a public speaker and sales/management consultant. In this period the defendant promoted a fictitious, international, high-yield investment program to friends and people he met through various public speaking engagements. Potential investors were told that they would receive returns of between 50 and 150 per cent up to 3 months after investing. The defendant told the investors that he personally guaranteed their capital. The defendant received a total of \$1,742,000 from 11 investors and used most of this for his own purposes. Only \$31,000 was repaid to the investors.

At trial, an Assistant Governor of the Reserve Bank of Australia gave evidence that the type of investment programs promoted by the defendant are non-existent and have been the subject of warnings issued by government regulatory bodies.

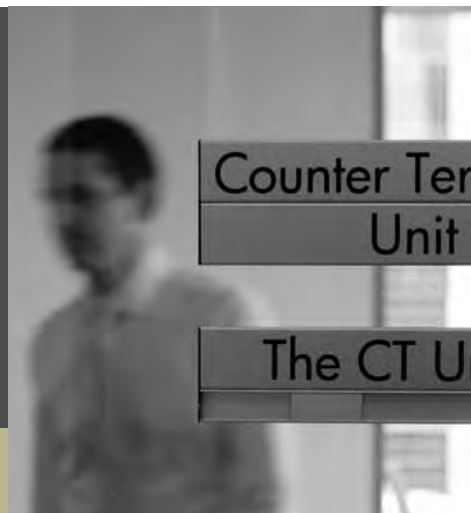
On 7 June 2001 investigators from ASIC and the AFP executed a search warrant on the defendant's residence. On 11 June 2001 a television segment was shown relating to the defendant and the ASIC investigation. On 13 July 2001 the defendant left Australia and in 2006 was located in New Zealand, having travelled through Malaysia, Sri Lanka, Europe, the United States and South America in the intervening period. The defendant was subsequently arrested by New Zealand Police and extradited to Australia on 10 January 2007.

The defendant was charged with 15 counts of obtaining property by deception pursuant to section 81(1) of the *Crimes Act 1958* (Vic); 7 counts of obtaining financial advantage by deception pursuant to section 82(1) of the *Crimes Act 1958* (Vic); and 1 count of making available a prescribed interest pursuant to section 1064 of the *Corporations Act*.

The defendant entered a plea of not guilty and was tried in the County Court of Victoria. Following an 8 week trial the defendant was found guilty on these counts.

On 22 July 2010 the defendant was sentenced to an effective sentence of 13 years and 2 months imprisonment with a non-parole period of 10 years.

2.4 Counter-terrorism



THE PROSECUTION OF TERRORISM OFFENCES UNDER PART 5.3 OF THE *CRIMINAL CODE* CONTINUES TO BE AN ESSENTIAL PART OF THE WORK OF THE CDPP.

These counter-terrorism provisions were first enacted by the *Security Legislation Amendment (Terrorism) Act 2002* in July 2002 and have been amended from time to time. Terrorism prosecutions are often factually complex and may involve large quantities of evidence. The CDPP's 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 and Head Office. These branches are staffed by experienced senior prosecutors. Head Office has oversight of the conduct of counter-terrorism prosecutions.

Following the provision of briefs of evidence, the CDPP evaluates whether the *Prosecution Policy* is satisfied and when appropriate conducts any prosecution. In addition to prosecuting such matters, the CDPP also makes itself available to investigative agencies to provide early advice during the course of the investigations. The CDPP enjoys positive and effective working relationships with these agencies.

The CDPP continues to provide advice to the Attorney-General's Department about the possible consequences of law reform proposals relating to *Criminal Code* counter-terrorism offences. The CDPP also participates in a range of committees by providing advice on issues of practice and procedure which arise in the context of terrorism prosecutions. The CDPP also participates in counter-terrorism related exercises facilitated by the Attorney-General's Department.

AS AT 30 JUNE 2010, THERE WERE TEN PEOPLE FACING CHARGES FOR COMMONWEALTH TERRORISM OFFENCES IN AUSTRALIA, ALL OF WHOM ARE HELD IN CUSTODY. TWO LARGE TRIALS ARE SCHEDULED TO COMMENCE IN THE SECOND HALF OF 2010, AND ANOTHER REMAINS PENDING. APPEALS RELATING TO 13 DEFENDANTS ARE PENDING. DURING THE 2009–2010 YEAR, TWO SIGNIFICANT TRIALS WERE COMPLETED.

OPERATION HAMMERLI

COUNTER-TERRORISM

This case was reported in the 2007-2008 Annual Report at page 49.

This operation involved a multi-agency investigation into the activities of 9 Sydney men. All defendants were arrested and charged with one offence of conspiring to do an act in preparation or planning for a terrorist act pursuant to sections 11.5(1) and 101.6(1) of the *Criminal Code*. The prosecution case alleged that each of the 9 defendants entered into an agreement to do acts in preparation for a terrorist act (or acts). It was alleged that

in accordance with this agreement the defendants sourced chemicals and materials that could be used either directly or indirectly in the preparation of an explosive device; possessed or attempted to purchase firearms and ammunition; and possessed large quantities of 'extremist' and instructional material.

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

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

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

ARURAN VINAYAGAMOORTHY, SIRAJAH YATHAVAN, & ARUMUGAN RAJEEVAN

COUNTER-TERRORISM

This case was reported in the 2008-2009 Annual Report at page 59, and in the 2007-2008 Annual Report at page 51.

Vinayagamoorthy and Yathavan were arrested by the AFP on 1 May 2007. Rajeevan was arrested on 10 July 2007. Pre-trial legal proceedings commenced before the Supreme Court of Victoria in the second half of 2008. The defendants pleaded guilty to charges alleging that each made assets available to a proscribed entity, namely the Liberation Tigers of Tamil Eelam, contrary to section 21 of the Charter of the *United Nations Act 1945*.

All of the defendants were convicted and on 31 March 2010, received suspended sentences of imprisonment, ranging from 12 to 24 months.

ABDIRAHMAN AHMED, SANEY EDWO AWYES, WISSAM MAHMOUD FATTAL, YACQUB KHAYRE, & NAYEF EL SAYED

ALLEGED COUNTER-TERRORISM

These 5 defendants were arrested by the AFP in Melbourne on 14 August 2009. Each was charged with conspiracy to do acts in preparation for a terrorist act contrary to sections 11.5 and 101.6(1) of the *Criminal Code*. It is alleged that the proposed terrorist act related to an attack on the Holsworthy Army Barracks.

On 26 October 2009 4 of the defendants were committed for trial and on 25 May 2010 the fifth defendant was committed for trial. Pre-trial hearings are expected to commence in the second half of 2010.

2.5 Money laundering



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 IS PROSECUTING AN INCREASING NUMBER OF MONEY LAUNDERING PROSECUTIONS SINCE THE ENACTMENT OF THE MONEY LAUNDERING OFFENCES IN THE *CRIMINAL CODE*.

The Federal Government enacted specific money laundering offences in 1987 with the passage of the *POC Act 1987*. The Act included 2 money laundering offences: section 81 (money laundering) and section 82 (possession of property suspected of being proceeds of crime).

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

RK AND LK

ALLEGED MONEY LAUNDERING

THIS MATTER WAS REPORTED IN THE 2008-2009 ANNUAL REPORT AT PAGES 64 AND 65.

About September 2003 LK met with a person called ‘Dallas’ or ‘Douglas’ who was interested in meeting someone for an investment. LK introduced ‘Dallas’ or ‘Douglas’ to Ralph Michael. Ralph Michael asked LK if he knew anyone who had a European bank account to be used for the investment. As a result, LK approached RK on numerous occasions for details relating to his Swiss bank account. RK eventually provided the account details to humour LK, expecting nothing to come of it.

On 24 December 2003, a number of persons other than the defendants defrauded the Commonwealth Superannuation Scheme (CSS) by way of a fraudulent fax. A fax was sent to JP Morgan, who was the bank acting as custodian for the CSS, instructing that funds of approximately AUD\$150 million be transferred to 4 designated bank accounts. One of the accounts to which the money was transferred was held in the name of RK.

RK held a Swiss bank account with Banque Cantonale Vaudoise (BCV) from about 1994. The account had been dormant between November 1994 and December 2003. On 24 December 2003, as a result of the fraudulent fax, JP Morgan transferred 24,876,432.87 Swiss Francs into RK's account.

On 26 December 2003, RK received a fax at his home from Ralph Michael instructing him to withdraw the full amount 'in cash and leave it until further instruction'.

LK disembarked a cruise ship in Hobart and returned to Sydney having commenced the cruise on 20 December 2003.

On 29 December 2003 LK travelled to RK's home in Leura, NSW. During that evening RK made telephone calls to Switzerland. At approximately 11:52pm Ralph Michael sent a fax to RK instructing him to transfer 23,632,611.23 Swiss Francs from his account to an account held with a New York bank. RK subsequently altered the addressee of the fax, the signature and the amount to 23 million Swiss Francs and sent it to BCV by fax at 12:37am on 30 December 2003.

On the same day JP Morgan detected the fraud and notified BCV seeking to stop the payment. Ultimately the entire amount was returned to JP Morgan.

Between 24 and 30 December 2003 LK, RK and Ralph Michael were in telephone contact with each other.

The defendants were charged with 1 count of conspiracy to recklessly deal with the proceeds of crime worth \$1 million or more pursuant to sections 11.5(1) and 400.3(2) of the *Criminal Code*.

DISTRICT COURT OF NEW SOUTH WALES

Both defendants pleaded not guilty to the charge and the matter proceeded to trial in the District Court of New South Wales. At the conclusion of the prosecution case legal representatives for both defendants made submissions that there was no case to answer. The submissions on behalf of LK were directed to the sufficiency of the evidence only. However, the submissions made on behalf of RK were that the prosecution could not prove the offence it had charged because in applying the conspiracy provision to the offence the prosecution was required to establish that the conspirators *knew* all of the facts that made their conduct criminal. However, the prosecution relied upon *recklessness* to prove the nature of the funds were the proceeds of crime and did not rely upon the fault element of knowledge/belief.

Following submissions from all parties the trial Judge took the view that she was bound to apply the law as the court understood it in *Ansari v R* (2007) 173 A Crim R 112 (*Ansari*). The trial Judge found that the charge on the indictment, on the case presented by the prosecution, was bad or unknown to the law. Accordingly, the trial Judge directed verdicts of acquittal in relation to both LK and RK.

NEW SOUTH WALES COURT OF CRIMINAL APPEAL

Following the directed verdicts the prosecution appealed the decision of the trial Judge to the New South Wales Court of Criminal Appeal. The prosecution submissions included that the trial judge had erred in her interpretation of *Ansari*.

On 22 December 2008 the appeal was dismissed for the following reasons:

- ▶ for a person to be guilty of the offence of conspiracy to commit an offence, both at common law and under the *Criminal Code*, they must know the facts that make the act or acts unlawful;
- ▶ the trial Judge had properly distinguished *Ansari* on the basis that, in that case, it was the prosecution case that the defendant actually did know all of the facts that made the conduct criminal. In the trial of RK and LK only recklessness was alleged; and
- ▶ it was open to the court to direct a verdict, rather than to quash the indictment.

HIGH COURT OF AUSTRALIA

On 17 February 2009 the Director lodged an application for Special Leave to Appeal to the High Court. The prosecution's primary ground was that the Court of Criminal Appeal erred in its interpretation of the offence of conspiracy found in section 11.5 of the *Criminal Code*. The High Court granted limited leave to appeal.

The appeal was heard before the full bench of the High Court on 1 and 2 December 2009. The judgment dismissing the appeal was delivered on 26 May 2010 and is referred to as *R v LK & RK* [2010] HCA 17. In that judgment the High Court considered 2 issues in relation to conspiracy in the Code in particular, namely what the elements of conspiracy under the Code are and what the prosecution needs to prove in relation to a conspiracy to commit an offence which contains recklessness.

In relation to the elements of conspiracy under the Code, the High Court stated:

“THE OFFENCE HAS A SINGLE PHYSICAL ELEMENT OF CONDUCT: CONSPIRING WITH ANOTHER PERSON TO COMMIT A NON-TRIVIAL OFFENCE. THE (DEFAULT) FAULT ELEMENT FOR THIS PHYSICAL ELEMENT OF CONDUCT IS INTENTION. AT THE TRIAL OF A PERSON CHARGED WITH CONSPIRACY IT IS INCUMBENT ON THE PROSECUTION TO PROVE THAT HE OR SHE MEANT TO CONSPIRE WITH ANOTHER PERSON TO COMMIT THE NON-TRIVIAL OFFENCE PARTICULARISED AS BEING THE OBJECT OF THE CONSPIRACY. IN CHARGING A JURY AS TO THE MEANING OF “CONSPIRING” WITH OTHER PERSON, IT IS NECESSARY TO DIRECT THAT THE PROSECUTION MUST ESTABLISH THAT THE ACCUSED ENTERED INTO AN AGREEMENT WITH ONE OR MORE OTHER PERSONS AND THAT HE OR SHE AND AT LEAST ONE OTHER PARTY TO THE AGREEMENT INTENDED THAT THE OFFENCE PARTICULARISED AS THE OBJECT OF THE CONSPIRACY BE COMMITTED PURSUANT TO THE AGREEMENT. PROOF OF THE COMMISSION OF AN OVERT ACT BY A PARTY TO THE AGREEMENT CONDITIONS GUILT AND IS PLACED ON THE PROSECUTION TO THE CRIMINAL STANDARD.”

In proving that the person intentionally entered into the agreement, the High Court made it clear that the prosecution must prove that the person had knowledge of, or belief in, the existence of the facts that make the conduct that is the subject of the agreement an offence. It is not sufficient for the prosecution to prove that a conspirator was reckless in relation to a physical element of circumstance of the substantive offence.

SEN HUNG CHEN, CHIU YUAN HSIAO, HI NGO, THANH HIEU TRUONG**MONEY LAUNDERING AND CONSPIRACY**

THIS MATTER INVOLVED LARGE SCALE DEFRAUDING OF THE COMMONWEALTH REVENUE WHICH WAS VERY DIFFICULT TO DETECT, INVESTIGATE AND PROSECUTE DUE TO THE DEFENDANTS' SYSTEMATIC UNAUTHORISED USE OF PASSPORTS AND THE FORGING OF INVOICES AND SHIPS' STAMPS. THE INVESTIGATION WAS SUCCESSFULLY FINALISED DUE TO THE COMBINED EFFORTS OF THE AFP, CUSTOMS AND THE ATO AND INVOLVED OVER 200 WITNESSES AND THOUSANDS OF DOCUMENTS.

Chen and Hsiao owned 2 duty free stores whose licenses restricted the sale of duty free goods to bona fide overseas travellers. They conspired with Ngo and Truong to sell cigarettes and tobacco products which were the subject of Customs or Excise duty into the domestic market without paying duty on the goods. To avoid alerting Commonwealth officials to the fact that the goods were being sold domestically, Chen and Hsiao created false invoices which purported to show that the goods had been sold to ships' crew. They forged the signature of ships' crew on the invoices and made unauthorised use of the passports of ships' crew who visited the port of Brisbane. They also obtained forged ships' stamps to authenticate the invoices.

The second duty free store was set up as a response to increasing ACBS interest in the first store. Chen and Hsiao attempted to distance themselves from that company by arranging for directorships and shareholdings of the second store to be in the names of their employees. Chen and Hsiao also carried out large scale money laundering activities through 12 accounts which they set up, some in their own names, some in the names of relatives and some using the names of their employees. These were in addition to a number of accounts operated by them in the names of their companies. Almost all deposits into these accounts were cash deposits under \$10,000 so as to avoid the reporting conditions of the *Financial Transactions Reports Act 1988*. While Hsiao made most of the deposits, the employees were instructed by the defendants to make some deposits on the defendants' behalf. The defendants defrauded the Commonwealth of \$8.28 million in revenue over 3½ years.

Chen and Hsiao were charged with 2 counts of conspiracy pursuant to section 135.4(3) of the *Criminal Code* and 1 count of money laundering pursuant to section 400.3(1) of the *Criminal Code*. Ngo and Truong were charged with 1 count of conspiracy pursuant to section 135.4(3) of the *Criminal Code*.

All defendants pleaded guilty and were sentenced on 28 August 2009 in the Supreme Court of Queensland.

Chen was sentenced to 6 years imprisonment in relation to each count of conspiracy and 10½ years imprisonment with a non-parole period of 7 years in relation to the money laundering charge.

Hsiao was sentenced to 5 years and 3 months imprisonment in relation to each count of conspiracy and 7½ years imprisonment with a non-parole period of 3 years in relation to the money laundering charge.

Ngo and Truong were both sentenced to 4½ years imprisonment with a non-parole period of 3 years.

The Court stated:

‘AGAIN, IT WAS SUBMITTED THAT TAX EVASION AND MONEY LAUNDERING ARE NOT TO BE VIEWED AS VICTIMLESS CRIMES BUT AS A FORM OF CORRUPTION, REQUIRING GENERAL DETERRENTS AS WELL AS PARTICULAR DETERRENTS. THAT SEEMS TO ME TO BE CORRECT.’

Ngo and Truong appealed against the severity of their sentences to the Queensland Court of Appeal. The Court of Appeal did not reduce their head sentences but reduced their non-parole periods by 1 year.

JOHN JAMES BYRNE

MONEY LAUNDERING AND FRAUD

The defendant agreed to pose as an existing bank account holder after he was approached and asked to do so by a group of Asian men in Sydney. He subsequently told the Supreme Court of Queensland that he was owed \$9,000 by a female acquaintance of the men and hoped to be repaid that money if he cooperated.

In October 2007 the defendant attended a bank branch in Brisbane, purporting to be the account holder, a resident of Victoria. He forged the account holder’s signature and provided information and bank issued identification relating to the customer’s accounts. The defendant withdrew \$1.83 million from a term deposit and transferred it to an ordinary bank account held by the same customer. The following day, after the funds had been cleared, he attended the bank and electronically transferred the money to a foreign named bank account in Hong Kong.

Approximately AUD\$250,000 was withdrawn from the Hong Kong account before the account was frozen. Two men, 1 an Australian national, were apprehended crossing the border to China in possession of a large amount of cash and documents relating to the Hong Kong account. They were charged with conspiracy to deal with the proceeds of crime. Investigations indicated that a bank officer in Sydney assisted in retrieving the account information. Approximately AUD\$250,000 remains unrecovered as a result of the defendant’s offending.

The defendant was charged with dishonestly inducing a person to deliver property to a person where the value of the property was \$3,000 or more pursuant to section 408C(1) (c) of the *Criminal Code Act 1899* (Qld). He was also charged with 1 count of dealing in proceeds of crime in excess of \$1 million contrary to section 400.3(1) of the *Criminal Code*.

The defendant pleaded guilty and was sentenced on 13 August 2009 in the Supreme Court of Queensland to imprisonment for 6 years for dealing in proceeds of crime and a fixed term of imprisonment for 3½ years for the State offence.

The defendant appealed to the Queensland Court of Appeal against his sentence. On 26 February 2010 the Court of Appeal allowed the appeal, confirmed the head sentences and reduced the non-parole period to 18 months.



2.6 People trafficking, slavery and sexual servitude

AUSTRALIA'S COMMONWEALTH PEOPLE TRAFFICKING OFFENCES INCLUDE THE OFFENCES OF SLAVERY, SEXUAL SERVITUDE, DECEPTIVE RECRUITING, TRAFFICKING IN PERSONS AND DEBT BONDAGE. THESE OFFENCES ARE CONTAINED IN DIVISIONS 270 AND 271 OF THE *CRIMINAL CODE*.

SINCE THE COMMENCEMENT OF DIVISIONS 270 AND 271 OF THE *CRIMINAL CODE*, 13 PEOPLE HAVE BEEN CONVICTED OF PEOPLE TRAFFICKING RELATED OFFENCES. NINE OF THOSE DEFENDANTS WERE CONVICTED OF SLAVERY OFFENCES, THREE OF SEXUAL SERVITUDE OFFENCES AND ONE OF TRAFFICKING IN PERSONS. AS AT 30 JUNE 2010, SIX PEOPLE TRAFFICKING MATTERS, INVOLVING EIGHT DEFENDANTS, WERE BEFORE THE COURTS. THREE OF THOSE SIX MATTERS WERE AT THE APPEAL STAGE.

ALL OF THE PROSECUTIONS TO DATE HAVE BEEN PARTICULARLY CHALLENGING. THEY HAVE INVOLVED THE CDPP BREAKING NEW GROUND IN COMPLEX LEGAL AND PRACTICAL ISSUES, MANY OF THE LATTER FLOWING FROM THE INTERNATIONAL CHARACTER OF THE OFFENDING. EACH CASE SO FAR HAS BEEN UNIQUE, ALTHOUGH PEOPLE TRAFFICKING CASES IN AUSTRALIA HAVE VERY LARGELY INVOLVED TRAFFICKING OF YOUNG WOMEN FOR SEXUAL PURPOSES TO WORK IN LEGAL AND ILLEGAL BROTHELS.

GIVEN THE CHALLENGES IN THIS AREA AN EFFECTIVE AND COORDINATED WHOLE OF GOVERNMENT RESPONSE IS REQUIRED IN INVESTIGATING, PROSECUTING AND SUPPORTING VICTIMS. THE CDPP WORKS CLOSELY WITH GOVERNMENT DEPARTMENTS IN THE AREA OF PEOPLE TRAFFICKING AND IS A MEMBER OF THE ANTI-PEOPLE TRAFFICKING INTERDEPARTMENTAL COMMITTEE. THE CDPP IS ALSO A MEMBER OF THE NATIONAL ROUNDTABLE ON PEOPLE TRAFFICKING AND CONTRIBUTED TO THE DEVELOPMENT OF THE NATIONAL *GUIDELINES FOR NGOS WORKING WITH TRAFFICKED PEOPLE*.

THESE PROSECUTIONS RELY ON EVIDENCE FROM VICTIMS OF THESE ALLEGED OFFENCES AND THE CDPP SEEKS TO ASSIST VICTIMS TO PARTICIPATE IN THE CRIMINAL JUSTICE SYSTEM. THE CDPP VICTIMS OF CRIME POLICY RECOGNISES THE IMPORTANCE OF TREATING VICTIMS WITH COURTESY, DIGNITY AND RESPECT.

KAM TIN HO, HO KAM HO, CHEE FUI HOO, SLAMET EDY RAHARDJO**SEXUAL SLAVERY**

This prosecution involved a well-planned scheme and a highly exploitative debt arrangement whereby Thai women were subjected to conditions of slavery. The investigation involved significant resources and included telephone intercepts and surveillance. This was a lengthy and strongly contested trial in the Supreme Court of Victoria.

Between 2003 and 2004 Kam Tin Ho and Ho Kam Ho were part of a well-planned scheme to bring Thai women to Australia and to profit from their willingness to work for minimal reward in the sex industry.

In each case, the women came into contact with a syndicate in Thailand who arranged Australian business visa applications based on false claims so that the women could enter Australia. The women were chaperoned into Australia and then handed over to their controllers. The scheme also involved applications for Protection Visas based on false claims of persecution so that the women could extend their stay in Australia. The women in this case came to work at two brothels in South Melbourne.

The women came to Australia knowing that they were to work in the sex industry. They were aware that they had to pay a price to secure their trip to Australia and the opportunity to earn money to assist their families in Thailand. That price was a 'contract' to incur a debt which meant that before earning money to keep, they would be required to service a number of specified clients.

Some women were required to service 650 clients, whilst for others it was 750 – each was a 30 minute sexual service. Clients were charged \$125 per 30 minutes. The debts owed by the women were therefore approximately \$81,000–\$94,000 each. The women received \$5 from each of these services and were required to work 6 days per week. They could work on a 7th day if they chose, enabling them to receive \$50 for each 30 minute sexual service on that day.

This highly exploitative debt arrangement with each of the women was one of the fundamental facts establishing that powers attaching to the right of ownership were being exercised over the women and that accordingly they were in the condition of slavery.

Further, the evidence showed that there was very strict control over almost every aspect of the women's lives. For at least the duration of their contracts, the women were not permitted to keep their passports. The women were effectively restricted to their residential premises and would be transported to brothels. There was a standard practice that they were not permitted keys to their residence and were given strict instructions not to go outside unaccompanied. The women's movements were controlled.

The defendants were charged with the following offences:

Kam Tin Ho:

- ▶ 5 counts of intentionally possess a slave pursuant to section 270.3(1)(a) of the *Criminal Code*;

- ▶ 1 count of intentionally use a slave pursuant to section 270.3(1)(a) of the *Criminal Code*; and
- ▶ 4 counts of structure cash transactions pursuant to section 31(1) of the *Financial Transactions Reports Act 1988*.

Ho Kam Ho:

- ▶ 4 counts of intentionally possess a slave pursuant to section 270.3(1)(a) of the *Criminal Code*; and
- ▶ 1 count of structure cash transactions pursuant to section 31(1) of the *Financial Transactions Reports Act 1988*.

Hoo:

- ▶ 1 count of intentionally use a slave pursuant to section 270.3(1)(a) of the *Criminal Code*; and
- ▶ 2 counts of intentionally possess a slave pursuant to section 270.3(1)(a) of the *Criminal Code*.

Rahardjo:

- ▶ 1 count of entering into a commercial transaction involving a slave pursuant to section 270.3(1)(c) of the *Criminal Code*.

The financial transaction offences involved structuring cash transactions with the sole or dominant purpose of avoiding reporting requirements. These payments related to remitting money to persons in Sydney from the sexual services earned by the women as well as payment for one of the women prior to her arrival in Melbourne.

Following a 10 week trial in the Supreme Court of Victoria Kam Tin Ho and Ho Kam Ho were found guilty by a jury. In relation to Hoo, he was found not guilty on 1 count of intentionally using a slave and the jury were unable to reach a verdict in relation to the 2 counts of intentionally possessing a slave. A decision was ultimately made to discontinue proceedings against Hoo. Rahardjo was found not guilty.

The defendants were sentenced on 29 September 2009. Kam Tin Ho was sentenced to a total effective sentence of 14 years imprisonment to serve a minimum of 11 years imprisonment before being eligible for parole. Ho Kam Ho was sentenced to a total effective sentence of 10 years imprisonment to serve a minimum of 7 years imprisonment before being eligible for parole.

In sentencing the Court stated:

“Slavery offences are properly described as offences against humanity. Australia has significant obligations as signatory to international conventions in relation to this subject matter, which transcends national boundaries and there is a strong national and international interest in its eradication. Human trafficking is a global blight.”

Both Kam Tin Ho and Ho Kam Ho have appealed against their convictions and sentences.



KAM TIN HO AND SARISA LEECH**SEXUAL SLAVERY****THIS WAS A FURTHER TRIAL IN THE VICTORIAN SUPREME COURT INVOLVING KAM TIN HO.**

In 2003 a Thai woman came to Australia from Thailand with the knowledge that she was going to work in the sex industry. She was also aware that she had to pay a price to secure her trip to Australia. That price was a 'contract' to incur a debt meaning that before earning money of her own to keep she would be required to service 650 clients.

The clients were charged \$125 per 30 minutes. The debt owed was therefore approximately \$80,000 and duration of the contract depended on how quickly the woman was able to see enough clients to erase the debt. This took approximately 3-4 months, with 6 days a week devoted to paying off the debt. On those 6 days she was paid \$5 for each \$125 service she performed and \$50 was deducted from the debt. The 7th day of each week was inaccurately called her 'free day' or 'day off' when she could work and keep \$50 from each \$125 service.

This highly exploitative debt arrangement was one of the fundamental facts establishing that powers attaching to the right of ownership were being exercised over the woman, and accordingly she was in the condition of slavery.

Further, the evidence showed that there were other controls over her life. For the duration of her 'contract' the woman was not permitted to keep possession of her passport and was effectively restricted to the premises where she lived. She had no key. She had no passport. She spoke no English. She knew nobody. She was under a 'contract'.

Even once the woman had fulfilled her 'contract', she was expected to continue working for at least the balance of 12 months after her arrival. Once her 'contract' had been completed, she was allowed to keep \$50 from each service she performed. However, not much else changed.

The defendants were charged with the following offences:

Kam Tim Ho:

- ▶ 1 count of intentionally use a slave pursuant to section 270.3(1)(a) of the *Criminal Code*.

Sarisa Leech:

- ▶ 1 count of intentionally possess a slave pursuant to section 270.3(1)(a) of the *Criminal Code*; and
- ▶ 1 count of intentionally use a slave pursuant to section 270.3(1)(a) of the *Criminal Code*.

Following a 9 day trial in the Supreme Court of Victoria, both defendants were found guilty by a jury on all charges. Kam Tin Ho was sentenced to 6 years imprisonment with 6 months of that term ordered to be served cumulatively upon the sentence he received on 29 September 2009.

Sarisa Leech was sentenced to a total effective sentence of 6 years imprisonment to serve a minimum of 3½ years before being eligible for parole.

Both defendants have appealed against their convictions and sentences.

TREVOR MCIVOR AND KANOKPORN TANUCHIT**SEXUAL SLAVERY**

This case was reported in the 2007-08 Annual Report at page 63.

The defendant, McIvor, owned and co-managed with his wife, Tanuchit, a brothel known as 'Marilyn's' in Fairfield, NSW. All 5 victims were recruited in Thailand to work in Australia between July 2004 and June 2006. Four of the 5 victims knew that they would be providing sexual services and 1 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 of 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 7 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 the victims were paid cash on only 1 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 1 to 2 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 7½ years. Tanuchit was sentenced to a total effective sentence of 11 years imprisonment with a non-parole period of 7 years.

The defendants appealed against their convictions to the NSW Court of Criminal Appeal.

On 28 October 2009 the Court of Criminal Appeal allowed the defendants appeals, quashed their convictions and ordered a new trial. This was due to the significant miscarriage of justice caused by the directions given to the jury based on the subsequently overruled judgment in *R v Wei Tang* (2007) 16 VR 454. The High Court appeal in *Tang* was reported in last year's Annual Report at pages 70-71.

On 30 July 2010, following the retrial, a jury found the defendants guilty of all the charges proven at the first trial. The defendants are awaiting sentence.

2.7 People smuggling



OFFENCES FOR SMUGGLING PEOPLE INTO AUSTRALIA ARE CONTAINED IN THE *MIGRATION ACT 1958*. OFFENCES INCLUDE ORGANISING OR FACILITATING THE BRINGING OF GROUPS OF NON-CITIZENS INTO AUSTRALIA, TAKING PART IN BRINGING A NON-CITIZEN INTO AUSTRALIA IN CONTRAVENTION OF THE *MIGRATION ACT 1958* AND CONCEALING A PERSON WHO HAS ILLEGALLY ENTERED OR INTENDS TO ENTER AUSTRALIA.

IN 2009–2010 THERE WAS AN INCREASE FROM THE PREVIOUS YEAR IN THE NUMBER OF MARITIME PEOPLE SMUGGLING MATTERS REFERRED TO THE CDDP. AS AT 30 JUNE 2010 THERE WERE 102 PEOPLE SMUGGLING PROSECUTIONS INVOLVING ORGANISERS, CAPTAIN AND CREW BEFORE THE COURTS.

HADI AHMADI

EXTRADITION AND PEOPLE SMUGGLING

THIS CASE WAS THE FIRST TRIAL OF AN EXTRADITED PEOPLE SMUGGLER INVOLVING MULTIPLE BOATS.

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

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

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

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

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

HASANUSI

PEOPLE SMUGGLING

The defendant, an Indonesian foreign national, was the owner, operator and sole crewman aboard a Suspected Irregular Entry Vessel (SIEV) that travelled from Indonesia to Christmas Island carrying 38 passengers of Iraqi origin. Each of the passengers was a non-citizen without a valid visa authorising their entry into Australia.

The defendant was charged with 1 count of facilitating the bringing of a group of 5 or more non-citizens to Australia pursuant to section 232A of the *Migration Act 1958* and entered a plea of not guilty in the District Court of Western Australia.

The defendant sought to defend the charge on the ground of duress. He claimed to have been recruited to take passengers on a fishing charter but was subsequently threatened and forced to take passengers to Christmas Island.

Passenger evidence at trial indicated that the boat was overcrowded. The majority of passengers received inadequate shelter in the form of a tarpaulin that only partially covered the vessel's front and rear decks. While most passengers were supplied with a life jacket at the commencement of the journey, rough seas and bad weather caused many passengers to fear for their lives.

At the conclusion of a 9 day District Court trial the defendant was found guilty. On 21 April 2010 the defendant was sentenced to 6½ years imprisonment with a non-parole period of 3½ years. The sentence was backdated to 8 April 2009, the date the defendant entered DIAC custody.

In sentencing the defendant, the Judge stated:

"I CAN ONLY SAY THAT IT MUST HAVE BEEN THE MONEY THAT MADE YOU DO THIS... IT WASN'T A LOT OF MONEY, ABOUT \$1,600, I THINK, BUT A LOT OF MONEY FOR YOU. THE PEOPLE SMUGGLERS WILL ALWAYS PREY UPON PEOPLE LIKE YOU... BUT THERE IS NOTHING I CAN DO ABOUT THAT. THE LAW REQUIRES ME TO PUNISH YOU, SO THAT OTHER FISHERMEN LIKE YOU DO NOT AGREE TO DO THINGS LIKE THIS FOR THE MONEY."

USMAN KIA, TITUS LOBAN, DAUD MAU AND YAN PANDU

PEOPLE SMUGGLING

Between 15 May and 24 May 2009 the defendants crewed a vessel carrying 74 asylum seekers from the vicinity of Makassar, Indonesia. The vessel was intercepted by the Royal Australian Navy within 4 nautical miles of Ashmore Island.

The 4 defendants claimed that they had not intended to go to Australia or realised that they were headed towards Australia, even after turning south from Roti Island, until the captain of the vessel departed shortly before international waters were reached. The defendants asserted that upon realising they were heading to Australia, they attempted to turn the vessel around but were threatened by passengers and forced to continue.

Three of the 4 defendants had sums of Indonesian Rupiah seized and forfeited when their vessel was intercepted. The value of these sums was between \$500 and \$1000 AUD.

The defendants were each charged with 1 count of facilitating the bringing of a group of 5 or more non-citizens to Australia pursuant to section 232A of the *Migration Act 1958*.

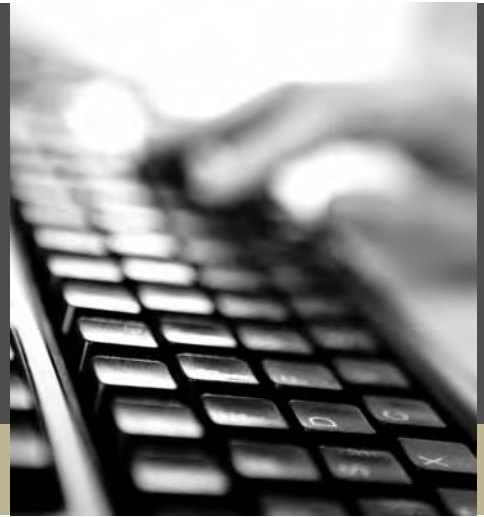
The defendants entered pleas of not guilty and were tried in the District Court of Western Australia. During the trial, the Judge excluded a conversation between the boarding party and the master of the intercepted vessel on the basis of non-compliance with the recording requirements set out in section 23V of the *Crimes Act*. Specifically, the Judge found that it would not have been impracticable for the boarding party to have recorded the conversation and emphasised that the body language of the defendants may be more important than what they said.

All 4 defendants received the mandatory minimum sentence of 5 years imprisonment with a 3 year non-parole period commencing from the date the Navy intercepted the vessel.

Three of the 4 defendants appealed against their convictions, primarily on the basis that the Judge erred in his summation of the elements of the charge. The appeals are pending.



2.8 Child exploitation



THE CDPP IS PROSECUTING AN INCREASING NUMBER OF OFFENCES INVOLVING THE ONLINE EXPLOITATION OF CHILDREN. THERE ARE MANY OFFENCES IN PART 10.6 OF THE *CRIMINAL CODE* RELATING TO CHILD PORNOGRAPHY MATERIAL, CHILD ABUSE MATERIAL, AND GROOMING AND PROCURING PERSONS UNDER THE AGE OF 16 TO ENGAGE IN, OR SUBMIT TO, SEXUAL ACTIVITY.

THE PURPOSE OF THE TELECOMMUNICATIONS-BASED CHILD EXPLOITATION OFFENCES IS TO COVER THE RANGE OF ACTIVITIES THAT A PERSON CAN ENGAGE IN WHEN USING THE INTERNET, EMAIL, MOBILE PHONES AND OTHER APPLICATIONS TO DEAL WITH CHILD PORNOGRAPHY AND CHILD ABUSE MATERIAL, INCLUDING VIEWING, COPYING, DOWNLOADING, SENDING, EXCHANGING AND MAKING AVAILABLE FOR VIEWING, COPYING OR DOWNLOADING.

THE GROOMING AND PROCURING OFFENCES ARE TARGETED AT ADULT OFFENDERS WHO USE THE ANONYMITY OF TELECOMMUNICATIONS SERVICES TO WIN THE TRUST OF A CHILD AS A FIRST STEP TO THE FUTURE SEXUAL ABUSE OF THE CHILD AND TO ALLOW LAW ENFORCEMENT TO INTERVENE BEFORE A CHILD IS ACTUALLY ASSAULTED.

PROSECUTING THESE OFFENCES MAY INVOLVE COMPLEX TECHNICAL AND EVIDENTIARY ISSUES. THE CDPP WORKS CLOSELY WITH THE AFP, ACBPS AND OTHER LAW ENFORCEMENT AGENCIES IN THIS GROWING AREA.

THESE OFFENCES ARE INCREASINGLY BECOMING MORE SOPHISTICATED THROUGH THE USE OF NETWORKS TO DISTRIBUTE MATERIAL AND THE PROTECTION OF MATERIAL BY ENCRYPTION. CASES CAN INVOLVE HUNDREDS OF THOUSANDS OF DEPRAVED AND DISTURBING IMAGES OF CHILDREN AND THE SCALE AND SERIOUSNESS OF THIS INDUSTRY POSES CHALLENGES FOR INVESTIGATION AND PROSECUTION.

DEALING WITH SUCH DISTRESSING MATERIAL REQUIRES PROSECUTORS TO HEAR OR READ STORIES OF A DISTURBING NATURE AND MAY INVOLVE VIEWING PORNOGRAPHIC MOVIES, PHOTOS AND/OR GRAPHIC MATERIAL DEPICTING EXPLICIT SEXUAL ACTS INVOLVING SERIOUS HARM TO CHILDREN. THE CDPP HAS ESTABLISHED AN EMPLOYEE WELLBEING PROGRAMME DESIGNED TO IMPLEMENT PRACTICAL POLICIES AND GUIDELINES TO SUPPORT EMPLOYEES WHO MAY BE AT RISK OF EXPERIENCING TRAUMA AS A RESULT OF EXPOSURE TO POTENTIALLY DISTRESSING MATERIALS.

ANOTHER FORM OF CHILD EXPLOITATION INVOLVES CHILD SEX TOURISM. THESE OFFENCES ARE CONTAINED IN DIVISION 272 OF THE *CRIMINAL CODE* AND ADDRESS SEXUAL ACTIVITY BY AUSTRALIAN CITIZENS AND PERMANENT RESIDENTS WITH CHILDREN UNDER THE AGE OF 16 WHICH OCCURS OVERSEAS. IT IS ALSO AN OFFENCE TO ENCOURAGE OR BENEFIT FROM AN OFFENCE OF THIS TYPE. PENALTIES OF UP TO 25 YEARS IMPRISONMENT APPLY TO THESE OFFENCES.

MICHAEL EDWYN WRIGHT**ONLINE CHILD PORNOGRAPHY**

Over an 11 month period the defendant created, registered and administrated 2 websites hosting child pornography material. The websites were linked and employed a secure electronic payment system which is commonly employed by legitimate commercial websites.

The defendant admitted that he had received approximately \$300 per week since registering his websites. Seized email records indicate he received \$5,760 from 189 subscribers in 22 different countries. The defendant hosted approximately 14,500 images of child pornography material involving a number of female pubescent and pre-pubescent children clothed or partially clothed in sexualised poses.

Police also located between approximately 42,000 to 85,000 images of child pornography in the defendant's possession.

The defendant had a prior criminal history from 24 January 2004, when he had posed as a 16 year old girl and sent an image of 2 children engaged in a sexual act. He was placed on probation for this offence for 2 years.

The defendant was charged with 1 count of using a carriage service to publish child pornography pursuant to section 474.19(1) of the *Criminal Code*; 1 count of using a carriage service to make available child pornography pursuant to section 474.19 (1) of the *Criminal Code*; 1 count of using a carriage service to transmit child pornography pursuant to section 474.19 (1) of the *Criminal Code* and 1 count of possessing child pornography with intention pursuant to section 474.20 of the *Criminal Code*.

The defendant was convicted on all counts in the Queensland District Court in Maroochydore and sentenced to 4 years imprisonment to be released after serving 21 months on condition that he be of good behaviour for a period of 5 years.

KENNETH JAMES ASPLUND**ONLINE GROOMING**

On 29 October 2006 the defendant and the victim met in a public chat room on a website known as '*The Friendship Page*'. At the time of the offences, the defendant was 61-62 years of age and he believed the victim was 14 years of age. The victim was in fact 13 years of age. The defendant concealed his true age and told the victim he was 28. They were known to each other by their online usernames, 'homie' and 'aussiegirl'.

The next day the defendant and the victim engaged in a private chat where they exchanged mobile telephone numbers.

Over the 3 month offence period, the defendant communicated frequently with the victim by mobile telephone and the internet. The communications included 7 public and private online chats on '*The Friendship Page*' and hundreds of telephone calls and text messages to the victim's mobile telephone. Throughout this period, the defendant also deposited \$2500 into the victim's bank account.

The nature of the communications were sexually explicit including the defendant questioning the victim about her sexual experience; requesting the victim to take an explicit photograph of herself; and asking the victim whether she would meet him for sexual activity in a hotel in Adelaide. The defendant also took an explicit photograph of himself and sent it to the victim's mobile phone.

The offences were discovered when the victim's mother discovered the photograph on the mobile phone and alerted South Australian Police.

The defendant was charged with 2 counts of using a carriage service to procure a person under 16 years of age for sex pursuant to section 474.27(1) of the *Criminal Code*.

The defendant pleaded not guilty to the charges and on 20 November 2009 the jury returned guilty verdicts on both counts. The defendant was sentenced on 19 March 2010 to a total effective sentence of 3 ½ years imprisonment with a non-parole period of 1 year and 9 months.

The Crown is appealing against this sentence.

DANIEL PECKHAM**ONLINE GROOMING**

On 18 June 2007 the AFP received an email referral from a member of the public relating to a MySpace website for the Rookwood Gothic society. The email stated that this site was soliciting minors for sex and a subsequent investigation by police identified the defendant.

Further investigation led to the discovery of 2 child victims (aged 13 and 15 years) who each stated they met the defendant on-line and at the request of the defendant sent him naked photographs of themselves. After numerous on-line communications, the defendant asked each of the victims to meet him at Rookwood Cemetery and also indicated his desire to have sex with them. The victims met the defendant at Rookwood Cemetery and the meetings resulted in sexual contact.

In relation to 1 child victim, the defendant posted a video of the child victim in her underwear on YouTube as 'punishment' for refusing to have sex with him. At the request of the victim, the defendant removed the video then subsequently threatened her that he would put the video back on public view if the victim did not send him naked photographs of herself and have sex with him.

Police identified a third child victim who stated that she met the defendant online. After an online relationship developed, she met with the defendant and an emotional and sexual relationship developed.

After the defendant's arrest, while he was in custody, he sent letters to 2 females requesting them to access his on-line email account and hide emails and pictures by transferring them to disc.

The defendant was charged with 2 counts of using a carriage service to procure a person under 16 years of age for sex pursuant to section 474.26(1) of the *Criminal Code*; 1 count of using a carriage service to menace, harass or offend pursuant to section 474.17(1) of the *Criminal Code*; 1 count of aggravated sexual assault pursuant to section 61(1) of the *Crimes Act 1900* (NSW); 1 count of attempting to pervert justice pursuant to section 43 of the *Crimes Act 1914*; and 3 counts of using a carriage service to have child pornography material transmitted pursuant to section 474.19(1)(a)(ii) of the *Criminal Code*.

The defendant pleaded guilty to the charges and was sentenced on 4 December 2009 to 9 years imprisonment with a non-parole period of 6 years.

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ONLINE CHILD PORNOGRAPHY

The defendant came to the attention of police after he paid for a subscription to a Belgian internet child pornography website. When a warrant was executed on the defendant's premises it was discovered that among the large amount of child pornography material found on his computer there were also images depicting his lineal granddaughter, who was a toddler at the time, being indecently treated and photographed by the defendant.

The defendant made some admissions and indicated his desire to consume child pornography but falsely denied some of the conduct for which he was subsequently convicted. The defendant also downplayed the number of times he had indecently treated his granddaughter.

Police discovered that the defendant had knowingly possessed 374,788 images, 1,270 videos and 54 written stories of child pornography material. A significant quantity of the material depicted sadistic and torturous acts performed by adults against children. Forensic analysis further revealed that there were 133 images and 1 short video file of the defendant's granddaughter being indecently treated on eight separate occasions over a 1½ year period at his house while he babysat her.

It was also discovered that the defendant had not only paid for some images but had traded approximately 400 images using 2 other internet pseudonyms. During the trading he made gratuitous editorial comments about the images and the children depicted in them.

The defendant was charged with 3 counts of using a carriage service for child pornography material pursuant to section 474.19(1) of the *Criminal Code* and 2 counts of indecent treatment of a child under 16 with circumstances of aggravation pursuant to section 210(1) of the *Criminal Code* (Qld) and one count of possessing child exploitation material pursuant to section 228D of the *Criminal Code* (Qld).

The defendant initially pleaded not guilty but subsequently changed his plea to guilty in the Brisbane District Court and was convicted of all charges on 10 May 2010. In relation to the 3 counts of using a carriage service for child pornography material the defendant was sentenced to 4½ years imprisonment to be released after serving 22 months. In relation to the remaining counts the defendant was sentenced to 18 months imprisonment to be served concurrently.

NENAD PANTELIC**ONLINE CHILD PORNOGRAPHY**

THIS CASE IS IMPORTANT IN CONSIDERING WHEN SENTENCING DEFENDANTS WHETHER MERCY CAN BE EXTENDED WHERE HARDSHIP TO FAMILY IS ESTABLISHED BUT DOES NOT MEET THE EXCEPTIONAL CIRCUMSTANCES THRESHOLD.

The defendant accessed just over 8,000 child pornography images and videos, many at the higher end of the scale of depravity. He made available and transmitted images to an undercover police officer during an online chat session and arranged to meet the officer to exchange child pornography images. When he went to meet the officer he was arrested.

The defendant was charged with 1 count of using a carriage service to access child pornography material pursuant to section 474.19(1)(a)(i) of the *Criminal Code*; 1 count of using a carriage service to transmit child pornography material pursuant to section 474.19(1)(a)(iii) of the *Criminal Code*; and 1 count of using a carriage service to make available child pornography material pursuant to section 474.19(1)(a)(iv) of the *Criminal Code*.

The defendant pleaded guilty to all counts. On 19 May 2009 the matter was heard in the Melbourne County Court. The defence submitted that the defendant's wife was unemployed and that if the defendant was incarcerated his wife would not be able to service their mortgage and the family home would be lost. Whilst the defence conceded that this hardship was not exceptional, it was argued that there should be some residual mercy extended to the defendant in the circumstances.

The defendant was convicted and sentenced to a total sentence of 24 months imprisonment to be released after serving 12 months on the condition that he be of good behaviour for 12 months.

The defendant appealed against the severity of his sentence to the Court of Appeal of Victoria. The Court of Appeal considered whether there is a residual discretion of mercy in a sentencing court where hardship to family does not meet the exceptional circumstances threshold referred to in precedent case law on section 16A(2)(p) of the *Crimes Act* and the similar State section; whether the impact on the defendant of contributing further to the hardship of the family is a separate consideration; and whether this is subject to the exceptional circumstances test.

On 30 October 2009 the defendant's appeal was dismissed by the Court of Appeal.

The Court of Appeal determined that:

- ▶ reliance on hardship to family members caused by a term of imprisonment imposed on the offender is an appeal for mercy;
- ▶ the purpose of the exceptional circumstances test should therefore be understood to be to limit the Court's discretion to exercise mercy on that basis;
- ▶ accordingly, there is no residual discretion to exercise mercy on the grounds of family hardship where exceptional circumstances are not made out; and
- ▶ the effect on the offender of the hardship that his or her imprisonment has caused to family is a separate consideration to which the exceptional circumstances test has no application.

JOZSEF FULOP**ONLINE CHILD PORNOGRAPHY**

THIS WAS THE FIRST APPEAL TO THE VICTORIAN COURT OF APPEAL DEALING WITH CHILD PORNOGRAPHY OFFENCES AND IS A LEADING CASE ESTABLISHING GENERAL PRINCIPLES APPLICABLE TO CASES INVOLVING ACCESS AND POSSESSION OF THE MOST DEPRAVED CHILD PORNOGRAPHY IMAGES.

In October 2006 the AFP were advised by the FBI that the defendant's ISP address was identified as one of many ISP addresses that had accessed a hyperlink on an internet message board involving child pornography.

Computers and 70 compact discs belonging to the offender were seized and on analysis found to contain 42,623 items of child pornography material including pictures, videos and text files. The picture and movie files located showed young children ranging in age from babies under one year old to pre-pubescent children. The files contained various types of child pornography including material classified as level 4 involving sexual intercourse with babies and material classified as level 5 involving bestiality.

Examination of the defendant's computer also revealed an elaborate and complex file structure which demonstrated the nature and extent of material collected and the manner in which this material was secreted within the computer system.

The defendant was charged with 1 count of using a carriage service to access child pornography material pursuant to section 474.19(1)(a)(i) of the *Criminal Code* and 1 count of possessing child pornography pursuant to section 70(1) of the *Crimes Act 1958* (Vic).

On 20 December 2007 in the County Court of Victoria the defendant was convicted and sentenced to 3½ years imprisonment with a non-parole period of 2 years. In relation to the State charge the defendant was convicted and sentenced to 2½ years imprisonment with 6 months of the sentence to be served cumulatively upon the non-parole period imposed in respect of the Commonwealth charge.

The defendant appealed to the Victorian Court of Appeal on the basis that the sentence was manifestly excessive.

On 7 December 2009 the Court of Appeal allowed the appeal and sentenced the defendant to 2½ years imprisonment on the Commonwealth count to be released after 2 years on condition that he be of good behaviour for 6 months. In relation to the State count the defendant was sentenced to 18 months imprisonment to commence 6 months after the commencement of the Commonwealth sentence.

LAURENCE TEMPLAR D'ALESSANDRO**ONLINE CHILD PORNOGRAPHY**

The AFP received information from the FBI that a particular user identification number was transferring child pornography images to a person in the United States. The AFP executed a search warrant at the defendant's address and found that the defendant was in possession of 1,094 child pornography images, 3 child pornography videos and 9 child abuse images. He was also found to have accessed 8,009 child pornography images, and 34 child abuse images, and had transmitted 8,211 child pornography images and 34 child abuse images. The images were at the higher end of the severity scale and involved children aged from infants to teenagers. Chat logs found on the defendant's computer revealed conversations in which the defendant discussed in graphic detail what he would like to do to children. The offending conduct occurred over a period of approximately 12 months from April 2007 to April 2008.

The defendant was charged with:

- ▶ 1 count of using a carriage service to access child pornography pursuant to section 474.19(1)(a)(i) of the *Criminal Code*;
- ▶ 1 count of using a carriage service to transmit child pornography material pursuant to section 474.19(1)(a)(iii) of the *Criminal Code*;
- ▶ 1 count of possessing child pornography material for use through a carriage service pursuant to section 474.20(1) of the *Criminal Code*;
- ▶ 1 count of using a carriage service to transmit child abuse material pursuant to section 474.22(1)(a)(iii) of the *Criminal Code*;
- ▶ 1 count of using a carriage service to access child abuse material pursuant to section 474.22(1)(a)(i) of the *Criminal Code*; and
- ▶ 1 count of possessing child abuse material for use through a carriage service pursuant to section 474.23(1) of the *Criminal Code*.

The defendant pleaded guilty to all counts. On 11 March 2009 in the Melbourne County Court the defendant was sentenced to a total effective sentence of 2 years imprisonment to be released forthwith on condition that he be of good behaviour for 3 years. The Court also ordered that the defendant be registered as a serious sexual offender.

The Crown successfully appealed against the inadequacy of the sentences to the Victorian Court of Appeal. The Appeal Court resentenced the defendant to a total effective sentence of 3 years to be released after serving 24 months on condition that he be of good behaviour for 12 months. The Appeal Court indicated that but for the plea of guilty the defendant would have been sentenced to a total effective sentence of 4½ years imprisonment with a non-parole period of 3 years.

The majority of the Court of Appeal accepted the prosecution's submission that the court assess the criminality of the images by viewing a representative sample of the images and one Judge did so on behalf of the court. The Court of Appeal found that the degree of criminality involved in the defendant's behaviour was very high indeed stating that where the criminality is at the top of the range, the determination of the appropriate sentence should reflect that, while also taking into account all the matters including current sentencing practices and any relevant mitigating factors.

The Court of Appeal accepted the sentencing Judge's comments that these are not victimless crimes.

The Court of Appeal noted that when construing and applying Commonwealth legislation the court follows the principles of comity in according respect to the decisions of intermediate appellate courts of other jurisdictions. In relation to these offences the courts across the jurisdictions have shown support for a number of propositions namely:

- ▶ the problem of child pornography is an international one;
- ▶ the prevalence and ready availability of pornographic material involving children, particularly on the internet, demands that general deterrence must be a paramount consideration;
- ▶ those inclined to exploit children by involving them in the production of child pornography are encouraged by the fact that there is a market for it;
- ▶ those who make up that market cannot escape responsibility for such exploitation;
- ▶ limited weight must be given to an offender's prior good character.

The Court of Appeal stated that a range of factors bore upon the objective seriousness of the offences to which the defendant pleaded guilty and they included:

- ▶ the nature and content of the pornographic material – including the age of the children and the gravity of the sexual activity portrayed;
- ▶ the number of images or items of material possessed by the offender;
- ▶ whether the possession or importation is for the purpose of sale or further distribution; and
- ▶ whether the offender will profit from the offence.

JULIAN RONALD MOTI**CHILD SEX TOURISM**

On 27 December 2007 the defendant was deported from the Solomon Islands and returned to Brisbane. On his arrival, he was arrested and charged with 7 counts of having sexual intercourse with a child whilst outside Australia contrary to section 50BA of the *Crimes Act*.

The defendant entered a plea of not guilty and submitted in the Queensland Supreme Court that the prosecution against him should be permanently stayed on grounds of abuse of process and bringing the administration of justice into disrepute.

The defendant argued that his deportation from the Solomon Islands was a 'disguised extradition' conducted at the behest of Australian authorities; that his removal from the Solomon Islands was unlawful and in contravention of his rights under Solomon Islands law; that the investigation was politically motivated and delayed; that the prosecution in Australia offended the principle of double jeopardy; that his arrest in Brisbane was unlawful; and that payments made to witnesses undermined confidence in the administration of justice.

On 15 December 2009 the Queensland Supreme Court determined that the prosecution should be permanently stayed as the payments made by the AFP to witnesses living in Vanuatu brought the administration of justice into disrepute. The Court found that all the other grounds advanced by the defendant lacked merit.

The Director appealed against the decision of the Queensland Supreme Court and the appeal was heard in the Queensland Court of Appeal on 1 June 2010. On 16 July 2010 the Court of Appeal delivered its judgment and ordered that the stay be set aside. The Court of Appeal determined that there were two crucial errors in the original decision in that it failed to recognise that the payments were not designed to, and did not, procure evidence from the prosecution witnesses and it failed to pay sufficient regard to the fact that the payments, whilst outside existing guidelines, were not illegal.

The Court of Appeal stated:

'THE CONCLUSION THAT THE MAKING OF THE PAYMENTS WAS SUCH AS TO BRING THE ADMINISTRATION OF JUSTICE INTO DISREPUTE IF THE PROSECUTION WERE ALLOWED TO PROCEED WAS NOT, IN MY VIEW, OPEN ON THE FACTS.'

On 13 August 2010 the defendant filed an application for Special Leave to Appeal in the High Court. The application has not yet been heard.

PATRICK WILLIAM CURRAN**IMPORTING CHILD PORNOGRAPHY**

In November 2005 the defendant imported child pornography material on a laptop computer when he returned to Western Australia from a 10 day holiday in Thailand. The computer contained 1 partially downloaded movie, 5 images and 101 written stories depicting child pornography.

The defendant was charged with 1 count of importing prohibited goods pursuant to section 233BAB(5) of the *Customs Act* and entered a plea of not guilty. On 7 October 2009, after a 3 day trial in the District Court of Perth, the defendant was found guilty and convicted. Whilst children may not be directly involved in fictitious writing as they would be in images and movies, the prosecution submitted that written works of child pornography involve a high level of criminality given that the production of fictitious works describing acts of depravity involving children has flow-on effects including the promotion of the child pornography industry.

The Court accepted these submissions and on 2 December 2009 the defendant was sentenced to 12 months imprisonment to be released after serving 8 months on condition that he be of good behaviour for 4 months.

YASSER ABDULKAREEM A MOHAMMAD**IMPORTING CHILD PORNOGRAPHY**

The defendant, a Saudi Arabian National, arrived at Perth International Airport in May 2009. ACBPS officers searched his luggage and found a laptop and 6 external hard drives. Examination of the laptop at the airport revealed that it contained child pornography. Subsequent examination revealed that the laptop and 3 of the external hard drives contained 250 images and 56 movies involving child pornography. The defendant maintained that he had no knowledge of the contents of any of the devices which he brought into Australia as he shared them with friends in Saudi Arabia.

The defendant was charged with 1 count of importing child pornography pursuant to section 233BAB(5) of the *Customs Act*.

The defendant pleaded not guilty and was convicted following a trial in the District Court of Western Australia. On 24 June 2010 he was sentenced to 15 months imprisonment to be released after serving 9 months on the condition that he be of good behaviour for a period of 6 months.

MATTHEW WILLIAM CHANDLER**OVERSEAS CHILD EXPLOITATION**

The defendant and the victim first met in about 2003 when the victim went to a camp where the defendant was a camp leader. After the camp the defendant continued a friendship with the victim and his brother. Between 12 and 22 September 2007 the victim, his brother and his mother went on a trip to Singapore with the victim's soccer team. The defendant was invited to join the trip so that he could see the victim play soccer.

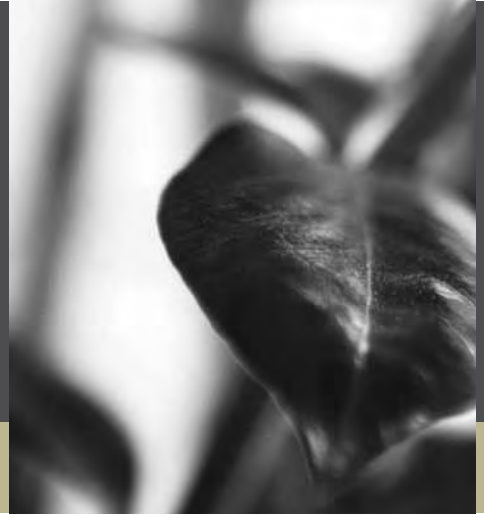
On 1 occasion during the trip, the victim, his brother and the defendant had been swimming in the hotel swimming pool. The victim left the pool, entered a shower cubicle in the change room and began showering with his bathers on. His brother was showering in the adjacent shower cubicle. The defendant followed the victim to the change room and entered his shower cubicle stating that he wanted to shower with the victim. The victim felt uncomfortable and scared. The victim's brother asked him to join him in the cubicle next door but the defendant blocked his way. The victim's brother then left the shower area. The victim was afraid to say anything. The defendant then committed an act of indecency on the victim. Shortly afterwards, the defendant stopped suddenly and let the victim leave the shower cubicle. The victim ran from the shower and left the change rooms.

The victim subsequently disclosed the incident to his mother and she reported the matter to the Australian police.

The defendant was charged with 1 count of committing an act of indecency on a person under 16 contrary to section 50BC(1)(a) of the *Crimes Act*.

The defendant pleaded not guilty but subsequently changed his plea to guilty. He was sentenced on 8 April 2010 in the District Court of Perth to 12 months imprisonment to be released after 8 months on condition that he be of good behaviour for 4 months. The Court also ordered that the defendant undergo psychiatric treatment.

2.9 Environment, safety and general prosecutions



THE PROSECUTION OF COMMONWEALTH OFFENCES THAT HAVE AN IMPACT ON THE ENVIRONMENT AND PUBLIC SAFETY ARE AN IMPORTANT PART OF THE PRACTICE OF THE CDPP. DUE TO THE BREADTH OF COMMONWEALTH CRIMINAL LEGISLATION, THE CDPP IS ALSO RESPONSIBLE FOR PROSECUTING A RANGE OF OFFENCES THAT DO NOT FALL WITHIN THE AREAS ADDRESSED IN THE PREVIOUS SUB-CHAPTERS.

WITH RESPECT TO CRIME IMPACTING UPON THE ENVIRONMENT AND SAFETY, THE CDPP WORKS CLOSELY WITH A NUMBER OF INVESTIGATIVE AGENCIES. THESE INCLUDE THE AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE (ACBPS); THE AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY (AFMA); THE AUSTRALIAN QUARANTINE AND INSPECTION SERVICE (AQIS); AND THE CIVIL AVIATION SAFETY AUTHORITY (CASA).

OFFENCES IN THESE AREAS CAN RAISE NOVEL FACTUAL, TECHNICAL AND EVIDENTIAL ISSUES AND HAVE CROSS-JURISDICTIONAL AND TRANSNATIONAL ASPECTS, ALL OF WHICH GIVE RISE TO CHALLENGES IN PROSECUTING.

OFFENCES PROSECUTED THIS YEAR COVER A DIVERSE RANGE OF SUBJECT AREAS INCLUDING ILLEGAL FOREIGN FISHING; UNLAWFULLY IMPORTING LIVE SPECIMENS INCLUDING FISH AND TARANTULAS; UNLAWFULLY IMPORTING RESTRICTED PLANTS; AND CIVIL AVIATION BREACHES.

THE CDPP HAS ALSO PROSECUTED IN OTHER AREAS SUCH AS BIGAMY, BREACH OF COPYRIGHT, AND UNAUTHORISED ACCESS TO RESTRICTED DATA.

Crimes Impacting upon Safety

GARY DAVIDSON MCLEAN

AVIATION SAFETY

The defendant held a commercial pilot's licence and a Grade 3 instructor licence. On 16 February 2003 he hired a single engine Cessna 172N aircraft from the Aero Club of Tasmania. His destination was Cloudy Bay, Bruny Island, Tasmania.

The defendant landed the Cessna on the beach at Cloudy Bay itself, rather than at an airstrip available on Bruny Island a few kilometres away. Later that day, he agreed to take 3 people for a short flight around the lighthouse at Cape Bruny before dark.

There was a headland at one end of the Bay and a rocky outcrop at the other. The Cessna had an effective take-off surface of 370 metres. The defendant accelerated down the beach towards the headland but suddenly aborted the take-off and then accelerated in the direction of the rocky outcrop and took off using a tail wind. The Cessna only reached an altitude of about 20 feet before it stopped and crashed into the Bay. The defendant and passengers did not sustain any permanent physical injuries as a result of the crash, however 1 passenger underwent psychiatric treatment to overcome a fear of flying she developed as a result of the accident.

At the time of take-off there was a strong wind blowing and the records kept by the Bureau of Meteorology showed the wind direction was 240 degrees and the wind speed was 22 knots with 10 minute gusts up to 27 knots. The 'Take-off Weight Chart' in the Cessna's flight manual indicates that the Cessna should not have flown when the head wind was more than 20 knots and the tailwind was more than 5 knots and when the take-off distance was less than 500 metres.

After initially denying any wrongdoing, the defendant subsequently pleaded guilty to 1 count of reckless operation of an aircraft pursuant to section 20A(2) of the *Civil Aviation Act 1988*.

On 23 March 2010 the defendant was sentenced to 6 months imprisonment to be released forthwith on condition that he be of good behaviour for 3 years and pay a surety of \$5000. He was also ordered to pay court costs.

Crimes Impacting upon the Environment

MUSLIMIN AKA MIMING

FOREIGN FISHING

This matter was reported in the 2008-2009 Annual Report at page 91.

On 23 April 2008 Royal Australian Navy patrol boat HMAS Broome sighted and intercepted an Indonesian flagged fishing vessel named '*Segara 07*' at a position that was 3.1 nautical miles south of the Australian/Indonesian Seabed Boundary Line (AISBL) in waters above a part of the Australian continental shelf not within the Australian Fishing Zone (AFZ). There were seven people onboard including the defendant who was the master of the vessel. A search of the vessel revealed that the vessel was equipped for fishing for sedentary organisms, namely trepang (sea cucumber), and had a GPS navigational unit, a wet compass, and two navigational charts. HMAS Broome then brought the vessel and crew to Darwin. The defendant admitted that he was the master of the *Segara 07* and that the vessel was equipped to fish for sedentary species, but said that he had only come south of the AISBL to look for another vessel after they were separated in a storm.

The defendant was charged with being at a place in the waters above a part of the Australian continental shelf in possession or charge of a foreign vessel equipped for fishing for sedentary species pursuant to section 101(2) of the *Fisheries Management Act 1991*. Section 12 of the *Fisheries Management Act 1991* extends the operation of provisions "in relation to fishing" inside the AFZ so that they apply to fishing for sedentary species in the waters above the Australian continental shelf not within the AFZ. The defendant elected to proceed to trial and in October 2008 was found guilty by a jury in the Supreme Court of the Northern Territory in Darwin. The jury rejected his claim that he had crossed the line as a result of an emergency.

On 9 December 2002 in the Supreme Court of the Northern Territory the defendant was convicted and fined \$1,500 and ordered, pursuant to section 26(2) of the *Sentencing Act* (NT), that if the fine was not paid within 28 days, the defendant was to be imprisoned until his liability to pay the fine was discharged.

The defendant appealed to the Northern Territory Court of Criminal Appeal against the conviction, arguing that section 12 of the *Fisheries Management Act 1991*, which extends the operation of section 101(2) into the waters above the Australian continental shelf outside the AFZ, was ambiguous and should be read subject to international law, and if so read, could only constitute an offence in cases where the master was proven to have had an intention to take sedentary species from the Australian continental shelf. By a majority of 2:1 the Northern Territory Court of Criminal Appeal dismissed the appeal, holding that section 12 was not ambiguous or contrary to international law and no such intention was necessary.

The defendant sought Special Leave to Appeal to the High Court of Australia against the conviction on the same grounds that were argued before the Northern Territory Court of Criminal Appeal.

In March 2010 the High Court allowed the defendant's appeal and overturned the conviction, ruling that section 12 of the *Fisheries Management Act 1991* does not extend the operation of section 101(2) into the waters above the Australian continental shelf outside the AFZ, as section 101 is a provision in relation to being in possession or charge of a fishing boat, not a provision "in relation to fishing".

French CJ, Gummow, Hayne, Heydon and Kiefel JJ said at paragraph 16 of the judgment:

"Section 101 is not directed to the activity of fishing. Section 101 is directed to having possession or charge of a particular kind of boat: a foreign boat equipped for fishing. Section 101 is not a provision of the FMA "made in relation to fishing in the AFZ". It is a provision in relation to having possession or charge of a particular kind of boat."

NATHAN ARNOLD**IMPORTATION OF LIVE SPECIMEN**

THIS CASE IS BELIEVED TO HAVE BEEN THE FIRST OCCASION AN ANIMAL CRUELTY OFFENCE UNDER THE ENVIRONMENT PROTECTION AND *BIODIVERSITY CONSERVATION ACT 1999* HAS BEEN PROSECUTED.

Whilst in Bali, the defendant posted a parcel or directed another person to post a parcel to Sydney containing a live plantain squirrel. The parcel was not addressed to the defendant but was posted to the defendant's neighbour and the contents were falsely described. The defendant tracked the progress of the parcel and conducted an internet search in relation to raising squirrels.

The parcel was detected and examined on its arrival in Australia by ACPBS officers. The squirrel died shortly after its arrival in Australia as a consequence of the conditions of its importation. When questioned by ACPBS and AQIS officers the defendant denied responsibility for importing the squirrel.

The defendant was charged with 1 count of importing a regulated live specimen pursuant to section 303EK(1) of the *Environment Protection and Biodiversity Conservation Act 1999* and 1 count of importing a live regulated animal in a cruel manner pursuant to section 303GP(3) of the *Environment Protection and Biodiversity Conservation Act 1999*. The defendant pleaded guilty to both counts.

On 2 February 2010 in the Downing Centre Local Court in Sydney the defendant was convicted and fined \$2,000 in relation to the first offence and convicted and released without sentence upon entering into a recognisance to be of good behaviour for 12 months in relation to the second offence.

ROSA CARRUTHERS**IMPORTATION OF LIVE SPECIMENS**

On 14 June 2009 a package originating from Sweden and addressed to the defendant was intercepted at the Sydney Gateway Facility and chosen for further examination.

The examination revealed 4 labelled film canisters with holes in the top covered with newspaper and cardboard. They were labelled with the words 'P. Imperator'; 'P. Imperator'; 'B. Emilia' and 'B. Smithi', which were subsequently found to be the names of scorpion and spider species. When the canisters were opened, they were found to contain a Mexican Red-Knee tarantula, a Mexican Red-Leg tarantula and two Emperor scorpions.

The Mexican Red-Leg tarantula and the Emperor scorpion are not listed on the '*List of Specimens taken to be Suitable for Live Import*'. The Mexican Red-Knee tarantula appears at Part 2 of the list however the defendant did not hold a permit to import the tarantula.

The defendant was charged with 3 counts of importing regulated live specimens pursuant to section 303EK(1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

The defendant entered a plea of guilty to all three counts and was fined \$2,500 and ordered to pay court costs. The Court found that there were significant environmental risks involved with these type of offences.

EVAN ALEXANDER PETERSON**IMPORTATION OF LIVE SPECIMENS**

On 20 February 2009 the defendant attended the Sydney International Airport to fly to Bangkok. After the defendant boarded the aircraft his suitcases were security screened and found to contain 44 regulated native specimens of reptile.

The reptiles were taken to Sydney Wildlife World where they were physically examined and placed in quarantine. Three days after their discovery several of the reptiles were found to be suffering from a range of conditions including respiratory compromise, parasites, jaw and eye infections and skin lesions. A further 29 reptiles were in very poor condition. Six reptiles died 2 weeks after their discovery in the defendant's suitcase.

The view of the examining veterinarian was that the reptiles suffered as a result of inappropriate heat and humidity levels and their compromised state was directly attributable to the defendant's failure to provide the reptiles with an appropriate environment.

The defendant was charged with 1 count of attempting to export a regulated native specimen without a permit/exemption pursuant to section 303DD(1) of the *Environment Protection and Biodiversity Conservation Act 1999* and section 11.1(1) of the *Criminal Code*.

On 28 August 2009 the sentencing Judge observed that Parliament has said that the trade in native animals is second only to the drug trade and that a message must be sent that harsh punishment can be expected for such offences. Accordingly, His Honour stated that a community service order or a suspended sentence would be insufficient for general deterrence and that if there were any suggestion that any of the animals had been an endangered species, full time custody would have been appropriate.

The defendant was sentenced to 18 months imprisonment to be served by way of periodic detention, to be released after 12 months on a recognisance to be of good behaviour for 6 months.

VINH THE TRAN**IMPORTATION OF LIVE SPECIMEN**

THIS CASE HAS INTERNATIONAL SIGNIFICANCE AS IT BROUGHT A METHOD OF IMPORTING LIVE FISH TO LIGHT. ASIAN AROWANA ARE COMMONLY IMPORTED AROUND THE WORLD AS THEY ARE CONSIDERED BY SOME CULTURES TO BRING GOOD LUCK AND IMPORTATIONS HAVE BEEN DIFFICULT TO DETECT. INTERNATIONAL CUSTOMS AUTHORITIES, INCLUDING AUTHORITIES IN SWEDEN, THE UNITED STATES OF AMERICA, THE UNITED KINGDOM AND CANADA HAVE EXPRESSED INTEREST IN THIS CASE.

On 18 January 2009 the defendant arrived in Sydney on a flight from Vietnam via Bangkok. He was found to be carrying a live fish, later identified as *Scleropages Formosus*, commonly known as Asian Arowana, concealed in a jar of pickled fish.

In a recorded interview the defendant stated that a friend of a friend had asked him to bring the fish back from Vietnam and that he was to be paid 'a couple of hundred dollars'. He had collected the fish from an aquarium shop on the day he left Vietnam. He knew the fish was an Asian Arowana as he had one at home.

The defendant was charged with 1 count of importing a regulated live specimen pursuant to section 303EK (1) of the *Environment Protection and Biodiversity Conservation Act 1999*.

The defendant was convicted and fined \$10,000.

DIANNE PARKINSON

IMPORTATION OF RESTRICTED PLANT

THIS CASE IS AN EXAMPLE OF THE ENFORCEMENT OF AUSTRALIA'S STRICT QUARANTINE LAWS AND THE ROLE OF PROSECUTION IN THE PROTECTION OF AUSTRALIA FROM EXTERNAL THREATS POSED BY DISEASES AND PESTS.

While visiting Las Vegas in December 2008, the defendant purchased 454g of a horse feed supplement called 'Silver Lining Herbs – Health Products for Horses'. The supplement contained plant material from a range of plants including garlic, olive leaf, plantain, red clover, rosehip, sarsaparilla, barberry, echinacea, parsley, wheat grass, cascara and liquorice. The defendant posted the supplement to her home in Australia and declared that the package contained 'Food Herbs (Cooking)'.

The parcel was intercepted at the Sydney International Mail Centre and examined by AQIS officers. AQIS determined that the parcel contained food for animals of plant origin. The defendant was prohibited from importing the supplement without a permit pursuant to the *Quarantine Act 1908* and the *Quarantine Proclamation 1998*.

When questioned by AQIS officers, the defendant denied wrongly describing the contents of the parcel, stating that whilst she had intended to feed some of the supplement to her horses to assist in their recovery from equine influenza, she also intended to give some to her father because she had been informed that the product was suitable for human consumption and that it may be useful in combating cancer. The defendant claimed that she was unaware that importing horse feed supplement without a permit was prohibited. The defendant also stated that the sellers of the product told her that other purchasers had imported the products into other countries, although not specifically Australia, and that the defendant had relied on this information and had not personally made enquiries with Australian authorities.

The defendant was charged with 1 count of importing the horse feed supplement pursuant to section 67(1) of the *Quarantine Act 1908* and pleaded guilty on the day the matter was listed for a defended hearing.

In sentencing the defendant on 5 February 2010 the Court noted that the offender was an experienced overseas traveller and was not naïve about Australia's strict quarantine laws and regulations. The defendant was convicted and fined \$1,000.

GENERAL PROSECUTIONS

MEGUMI OGAWA

USE OF A CARRIAGE SERVICE TO HARASS

The defendant was involved in a legal dispute with Melbourne University for which she was self-represented. The matter was listed before the Federal Court. Due to her dissatisfaction with the listing the defendant sent 82 emails over an 18 hour period to various staff members of the Federal Court.

On 14 April 2006 the defendant was arrested and subsequently charged with 1 count of using a carriage service to menace, harass or cause offence pursuant to section 474.17 of the *Criminal Code*. The defendant was granted bail on the condition that she have no contact with the Federal Court via email during the grant of bail.

Immediately after her release on bail and throughout the period 14 April to 14 May 2006, the defendant telephoned the registries and chambers of the Federal Court. She made 164 telephone calls in total. During a telephone call on 9 May 2006 to the then associate to the Chief Justice of the Federal Court, the defendant threatened to kill two Federal Court registrars. The call was reported to the police and the defendant was subsequently charged with 2 counts of using a carriage service to make a threat pursuant to section 474.15 of the *Criminal Code* and a further count of using a carriage service to menace, harass or cause offence pursuant to section 474.17 of the *Criminal Code*.

The defendant was tried by jury in the District Court of Queensland. The defendant disrupted the proceedings a number of times by screaming and was eventually removed from the court room. On 19 March 2009 the jury found the defendant guilty on all counts. The jury's verdict was delivered in the absence of the defendant due to her removal. When she was returned, the judge charged the defendant with contempt of Court pursuant to section 129 of the *District Court of Queensland Act 1967* (Qld).

On 27 March 2009 the judge convicted the defendant of contempt and sentenced her to 4 months imprisonment with a non-parole period of 2 months. In relation to the other charges, the defendant was sentenced to a total of 6 months imprisonment, to be released after 4 months upon giving security by recognizance in an amount of \$1000 on condition that she be of good behaviour for two years.

The defendant appealed against the convictions and the sentence for contempt of Court to the Court of Appeal of the Supreme Court of Queensland. On 18 June 2009 the defendant was granted bail pending her appeal. The CDPP appealed against the grant of bail and that appeal was dismissed on 9 July 2009. The defendant's appeal against the convictions and the sentence for contempt was dismissed on 13 October 2009.

The case dealt with the procedure to be followed where a defendant is disruptive and refuses to participate in the court process and the trial is conducted in their absence. The Court of Appeal examined the authorities with respect to the law in relation to fitness to be tried.

The Court of Appeal said in *R v Ogawa* (2009) QCA 307 at 49:

“His Honour [referring to the Learned Trial Judge] was, of course, firmly of the view that the appellant’s mental state was such that she was capable of participating in the trial had she chosen to do so. On this view, what is said to be the product of an unsoundness of mind can be seen to be the conduct of a contumacious litigant in defiance of the authority of the court.”

The defendant appealed to the High Court and her appeal was heard on 24 June 2010. The High Court dismissed the appeal on 25 August 2010.

KHALED TALEB**ASSAULTING A PROSECUTOR**

On 26 November 2009 the defendant appeared in the ACT Supreme Court. The defendant was facing the judge and standing to the left of the bar table behind a solid wooden lectern. A prosecutor from the ACT DPP was seated to the right of the bar table 30-45cm from the defendant.

The judge told the defendant that he intended to adjourn the matter for several weeks. The defendant became agitated at this and began yelling at the judge. The defendant yelled “No” several times and then picked up the lectern, raised it above his head and struck the prosecutor sitting to his right with speed and aggression. The defendant struck the victim again with the lectern to the rear of her head and right shoulder blade. The lectern broke into 3 pieces and fell to the floor, causing a large water jug to hit the left side of the prosecutor’s body. The prosecutor collapsed forward in her chair and landed face down on the bar table. The defendant was restrained by ACT Correction Officers and subsequently arrested by police.

The prosecutor sustained a lump to the rear of her head and bruising to her back near her shoulder blades.

This matter was prosecuted by the CDPP on behalf of the ACT DPP given that the victim was an officer of the ACT DPP.

The defendant pleaded guilty to 1 count of assault occasioning actual bodily harm pursuant to section 24 of the *Crimes Act 1900* (ACT) and was sentenced to 6 months imprisonment without a non-parole period. The defendant appealed against the severity of this sentence to the ACT Court of Appeal. The appeal was dismissed.

In relation to the defendant’s offending, the Court of Appeal said:

“[The victim] at the time was acting in her capacity as an officer of the court and in pursuit of her duty as an officer of the Director of Public Prosecutions Office. The assault therefore was not only on a person who deserved respect, both in terms of their person and in terms of their function, but was also contemptuous of the court having been committed in the face of the presiding Judge”.

SASHA DIMITRIJEVIC**COPYRIGHT ACT BREACHES**

While driving on the Hume Highway on 31 December 2008, the defendant was pulled over by the NSW highway patrol for speeding and driving in the overtaking lane. One of the police officers then observed what appeared to be numerous non-commercial CDs and some pieces of computer hardware in the back of the defendant’s station wagon. When questioned about the items, the defendant said he had ‘burned’ the CDs and was on his way to Canberra to sell them.

The defendant was arrested and the material seized. During a formal interview the defendant told police he had a shop in Melbourne called ‘Video Palma’ where he sold items such as those seized. He also admitted he made the seized compact discs with

the intention of selling them. There were 1,236 unauthorised copies of CDs seized from the defendant's vehicle, containing mainly Serbian music. Representative charges were laid in relation to 6 songs on 6 separate compact discs.

The defendant was charged with 6 counts of negligently possessing copies of a work with the intention to offer it for sale pursuant to section 132AJ(3)(v) of the *Copyright Act 1968* and 6 counts of negligently making infringing copies of work with the intention of sale, hire or commercial profit pursuant to section 132AD(3) of the *Copyright Act 1968*.

The defendant pleaded guilty to all 12 counts. On 4 March 2010 the defendant was found guilty on all charges and was fined a total of \$12,000. An order was also made for the destruction of all 1,236 compact discs.

NATHAN ASQUITH

FAILING TO DELIVER POST

Between August 2009 and January 2010 the defendant failed to deliver 6,967 items of unaddressed mail and 191 items of addressed mail that he was required to deliver as a sub-contractor for Australia Post.

The unaddressed mail was found unopened and stored in the defendant's garage. The failure to deliver the mail deprived the senders, including companies, charities and Local Government of a service for which they had paid. The addressed mail items that the defendant failed to deliver included correspondence from energy companies, insurance companies, banks and credit unions and courts.

The defendant was charged with 1 count of obstruct/hinder the carriage of articles by post pursuant to section 85U of the *Crimes Act*.

The defendant was convicted without passing sentence and released upon a recognizance order pursuant to section 20(1)(a) of the *Crimes Act* to be of good behaviour for a period of 24 months on giving surety in the sum of \$100.

ALEXANDER JOHN CLANCY

UNAUTHORISED ACCESS TO RESTRICTED DATA

The defendant was an AFP Officer. On 5 separate occasions the defendant used the AFP's database to access restricted data relating to a woman he was romantically interested in and the woman's boyfriend at the time. On 2 separate occasions the defendant disclosed to the woman's sister and her friend that there were police records relating to the man on the AFP's files. He also disclosed sensitive personal details.

The defendant was charged with 5 counts of unauthorised access to restricted data pursuant to section 478.1(1) of the *Criminal Code* and 2 counts of disclosure of information by a Commonwealth Officer pursuant to section 70(1) of the *Crimes Act*.

The defendant pleaded not guilty to all counts and the matter was heard on 26 and 27 March 2009. The charges were proven and on 26 August 2009 the defendant was fined a total of \$3,500.

On 5 March 2010 the defendant appealed against the conviction. The judgment has not yet been handed down.

NICHOLAS TRIKILIS**BIGAMY**

The defendant and his wife separated and entered into a property settlement. The defendant approached a marriage celebrant with the intention of marrying another woman. He declared that he was divorced and provided the celebrant with a forged Certificate of Divorce under seal of the Family Court bearing the Registrar's signature and the Family Court file number of the property settlement. The celebrant accepted the Certificate as genuine and performed the marriage ceremony.

The act of bigamy was discovered when the defendant's legal wife saw a wedding photograph in the local newspaper.

The defendant was charged with 1 count of bigamy pursuant to section 94(1) of the *Marriage Act 1961*; 1 count of giving a defective notice to an authorised celebrant pursuant to section 104(1) of the *Marriage Act 1961*; 1 count of giving false or misleading information pursuant to section 137.1(1) of the *Criminal Code*; 1 count of forgery pursuant to section 144.1(1) of the *Criminal Code*; and 1 count of using a forged document pursuant to section 145.1(1) of the *Criminal Code*.

The defendant entered a plea of guilty to all counts. The Hobart Court of Petty Sessions sentenced the defendant to 6 months imprisonment to be released immediately on a recognisance of \$3000 to be of good behaviour for 5 years. He was fined a total of \$2,300.

The background features a large, light gray number '3' on the left side. To its right is a dark gray rectangular area containing the text 'statistics and performance indicators'. Above this dark area is a wide, olive-green horizontal band. Below the dark area is a gray rectangular band. The entire composition is set against a white background with various colored rectangular blocks and thin white curved lines intersecting.

3

statistics and
performance
indicators

Statistics and performance indicators



Exercise of Statutory Powers

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

NO BILL APPLICATIONS

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

In the past year, there were 19 no bill applications received from defendants or their representatives. Of these, four were granted and 15 were refused. A further 20 prosecutions were discontinued on the basis of a recommendation from a regional office without prior representations from the defendant. The total number of cases discontinued was 24.

Of the 24 cases which were discontinued, in 15 cases the primary reason for discontinuing was because there was insufficient evidence. Three cases were discontinued because the public interest did not

warrant the continuation of the prosecution. In the remaining six cases, the reason for discontinuing the prosecution was both the insufficiency of evidence and the public interest.

Three of the 23 discontinued cases involved fraud offences, six involved drug offences, four involved corporations offences and 11 involved other types of offences.

Three of the 23 cases were discontinued after a previous trial.

INDEMNITIES

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

In the past year, the CDPP gave indemnities under sections 9(6) and 9(6D) to 17 people. The CDPP gave no indemnities under section 9(6B). Five witnesses were indemnified in drug prosecutions, six in prosecutions for fraud, three for corporations offences and three 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. The Director did not exercise this power in 2009–2010.

EX OFFICIO INDICTMENTS

The Director has the power pursuant to section 6(2D) of the *DPP Act* to file an indictment against a person

who has not been committed for trial. In 2009–2010 the Director exercised this power twice. In a number of other cases a defendant stood trial on different charges from those on which he or she 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 2009–2010 the Director consented to the commencement of conspiracy proceedings against 54 defendants in relation to 40 alleged conspiracies. Sixteen of the alleged conspiracies related to drug offences and 24 of the alleged conspiracies related to fraud offences.

Performance Indicators
2009–2010

In 2009–2010 the CDPP met all prosecution performance targets.

Table 1: Prosecution performance indicators for 2009–2010 – National Totals

Description	Target	Outcome	Details [successful (total)]
Prosecutions resulting in a conviction*	90%	99%	5679 (5737)
Defendants in defended summary hearings resulting in conviction	60%	79%	139 (177)
Defendants in defended committals resulting in a committal order	80%	98%	315 (322)
Defendants tried on indictment and convicted	60%	81%	85 (105)
Prosecution sentence appeals in summary prosecutions upheld	60%	67%	4 (6)
Prosecution sentence appeals in a prosecution on indictment upheld	60%	68%	13 (19)

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

Table 2: Prosecution performance indicators for 2006-2009 – National Totals

Description	Target	2006-07 Outcome	2007-08 Outcome	2008-09 Outcome
Prosecutions resulting in a conviction*	90%	98%	98%	99%
Defendants in defended summary hearings resulting in conviction	60%	68%	64%	73%
Defendants in defended committals resulting in a committal order	80%	99%	97%	95%
Defendants tried on indictment and convicted	60%	78%	72%	71%
Prosecution sentence appeals in summary prosecutions upheld	60%	50%	67%	71%
Prosecution sentence appeals in a prosecution on indictment upheld	60%	67%	39%	83%

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

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

In 2006-09 the CDPP met all its targets for prosecution performance except in relation to prosecution appeals against sentence in 2006-07 and 2007-08.

Prosecution appeals against sentence

The *Prosecution Policy* provides that the prosecution right to appeal against sentence should be exercised with appropriate restraint. In deciding whether to appeal, consideration is to be given as to whether there is a reasonable prospect that the appeal will be successful. Factors which may be considered when deciding to appeal include whether:

- the sentence is manifestly inadequate;
- the sentence reveals an inconsistency in sentencing standards;
- the sentence proceeded on the basis of a material error of law or fact requiring appellate correction;
- the sentence is substantially and unnecessarily inconsistent with other relevant sentences;

- an appeal to a Court of Appeal would enable the Court to lay down some general principles for the governance and guidance of sentencers;
- an appeal will enable the Court to establish and maintain adequate standards of punishment for crime;
- an appeal will ensure, so far as the subject matter permits, uniformity in sentencing; and
- an appeal will enable an appellate court to correct an error of legal principle.

In 2009–2010, appeal courts decided 19 prosecution appeals against sentence in indictable matters. In nine out of the 19 indictable appeals, the CDPP's appeal was upheld. In four of the dismissed appeals, the appeal court agreed with the CDPP that the sentences imposed at first instance were too low but declined to allow the appeals because of the principle of double jeopardy and other factors. Two of the appeals concerned child sex crime offences and the other two, who were co-offenders, concerned corporations offences. These appeals are regarded as being successful for the purposes of CDPP prosecution performance indicators as the outcome of these appeal decisions is that the sentences at first instance do not become precedents for future sentences in comparable cases. Six other prosecution appeals were dismissed.

Also in 2009–2010, in one of the three dismissed prosecution appeals against sentence following summary prosecution, the appeal judge found that the sentence imposed was manifestly inadequate but declined to intervene because of double jeopardy. The CDPP also regards this appeal as being successful for the purposes of CDPP prosecution performance indicators.

In 2007–2008 23 prosecution appeals against sentence in indictable matters were decided. In nine cases the CDPP appeal was upheld and in 14 cases the appeal was unsuccessful. Of the 14 unsuccessful appeals, 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.

In 2006–07 four appeals against sentence in summary prosecutions were decided during the

course of the year. The CDPP was successful in two appeals during the reporting period. The CDPP was successful in a third matter but the outcome of the appeal was not apparent until shortly after 30 June 2007. The effect of this is that the failure of the CDPP to meet that performance indicator was due to both the small number of matters involved and the fact that the outcome of one was not known at the end of the financial year.

Prosecution Statistics

In the course of the year the CDPP dealt with 6,692 people. The cases were referred by 32 Commonwealth investigative agencies as well as a number of State and Territory agencies. The following tables set out details of the prosecutions conducted in 2009–2010.

There has been an increase in the number of defendants prosecuted in 2009–2010 from 2008–2009, in particular a 15% increase in defendants prosecuted on indictment. This year the CDPP prosecuted 21 trials that exceeded 31 days in duration. One area where there has been a significant increase in charges dealt with is under the *Migration Act 1958*.

Table 3: Outcomes of successful prosecutions in 2009–2010

Description	No.
Defendants convicted of offences prosecuted summarily	5020
Defendants convicted of offences prosecuted on indictment	659
Defendants committed for trial or sentence	668

Table 4: Summary Prosecutions in 2009–2010

Description	No.
Defendants convicted after a plea of guilty	4881
Defendants convicted after a plea of not guilty	139
Total defendants convicted	5020
Defendants acquitted after a plea of not guilty	38
Total	5058

Table 5: Committals in 2009–2010

Description	No.
Defendants committed after a plea of guilty	353
Defendants committed after a plea of not guilty	315
Total defendants committed	668
Defendants discharged after a plea of not guilty	7
Total	675

Table 6: Prosecutions on indictment in 2009–2010

Description	No.
Defendants convicted after a plea of guilty	574
Defendants convicted after a plea of not guilty	85
Total defendants convicted	659
Defendants acquitted after a plea of not guilty	20
Total	679

Table 7: Prosecutions on indictment – duration of trials in 2009–2010

Length	No.
1-5 days	22
6-10 days	23
11-15 days	13
16-20 days	7
21-25 days	9
26-30 days	5
over 31 days	21
Total	100

Table 8: Prosecution appeals against sentence in 2009–2010

Appeal Type	Outcome	Summary	Indictable
Appeals against sentence	Upheld	3	9
	Dismissed	3	10
Total		6	19

Table 9: Defence appeals in 2009–2010

Appeal Type	Outcome	Summary	Indictable
Against Conviction Only	Upheld	7	5
	Dismissed	6	3
Against Sentence Only	Upheld	115	25
	Dismissed	45	17
Conviction & Sentence	Upheld	12	2
	Dismissed	1	10
Total		186	62

Table 10: Legislation under which charges were dealt with in 2009–2010

Legislation	Summary (Charges)	Indictable (Charges)
A New Tax System (Family Assistance) (Administration) Act 1999	7	
Agricultural and Veterinary Chemicals Code Act 1994	36	
Air Navigation Regulations	1	
Airports (Control of On-Airport Activities) Regulations 1997	8	
Anti-Money Laundering and Counter-Terrorism Financing Act 2006	14	23
Australian Crime Commission Act 2002	1	55
Australian Federal Police Act 1979	1	
Australian Passports Act 2005	70	15
Australian Postal Corporation Act 1989	5	
Australian Securities and Investment Commission Act 2001	1	1
Australian Transport Security Regulations 2005	32	1
Aviation Transport Security Act 2004	34	
Bankruptcy Act 1966	361	38
Charter of the United Nations Act 1945		5
Child Support (Registration and Collection) Act 1988	2	
Civil Aviation Act 1988	38	8
Civil Aviation Regulations 1988	104	
Classification (Publications, Films and Computer Games) Act 1995	13	
Commonwealth Electoral Act 1918	7	
Copyright Act 1968	377	82
Corporations Act 1989		5
Corporations Act 2001	80	114
Crimes (Aviation) Act 1991	30	3
Crimes (Currency) Act 1981	104	11
Crimes Act 1914	72	121
Criminal Code Act 1995	12543	1459
Customs Act 1901	191	72
Dairy Produce Act 1986	8	

Legislation	Summary (Charges)	Indictable (Charges)
Defence Act 1903	8	
Environment Protection and Biodiversity Conservation Act 1999	38	2
Excise Act 1901	3	1
Financial Management and Accountability Act 1997	27	1
Financial Transaction Reports Act 1988	41	89
Fisheries Management Act 1991	94	5
Foreign Passports (Law Enforcement and Security) Act 2005	15	2
Great Barrier Reef Marine Park Act 1975	15	
Great Barrier Reef Marine Park Regulations 1983	22	
Health Insurance Act 1973	326	4
Income Tax Assessment Act 1936	98	
Insurance (Agents and Brokers) Act 1984	2	
Marriage Act 1961	3	
Migration Act 1958	87	52
National Health Act 1953	26	
Navigation Act 1912	7	
Non Commonwealth Legislation	232	276
Northern Territory National Emergency Response Act 2007	1	
Passports Act 1938	7	5
Primary Industries Levies and Charges Collection Act 1991	64	
Protection of the Sea (Prevention of Pollution from Ships) Act 1983	3	
Public Order (Protection of Persons and Property) Act 1971	17	
Quarantine Act 1908	16	6
Radiocommunications Act 1992	1	
Social Security (Administration) Act 1999	891	
Social Security Act 1991	151	
Social Services Act 1947	12	
Statutory Declarations Act 1959	1	
Student Assistance Act 1973	1	
Superannuation Industry (Supervision) Act 1993		3
Taxation Administration Act 1953	643	
Telecommunications Act 1997	11	
Therapeutic Goods Act 1989	41	
Torres Strait Fisheries Act 1984	4	
Trade Marks Act 1995	59	
Workplace Relations Act 1996	13	
Total	17120	2459

Note: As noted in the CDP's 2008-2009 Annual Report, the CDP reviewed the way in which it calculated the number of charges dealt with in that year. As a result of this changed methodology figures in Annual Reports published prior to 2008-09 are not directly comparable.

Table 11: Crimes Act 1914 charges dealt with in 2009–2010

Section	Title	Summary (Charges)	Indictable (Charges)
3LA(3)	Person with knowledge of a computer or a computer system to assist access etc.	1	
20A(1)	Failure to comply with condition of discharge or release	2	
20A(5)	Failure to comply with condition of discharge or release	2	
29(1)	Destroying or damaging Commonwealth property	9	2
29B	False representation (repealed)	17	21
29C	Statements in applications for grant of money (repealed)		2
29D	Fraud (repealed)	9	75
30	Seizing goods in Commonwealth custody (repealed)	1	
36(A)	Fabricating evidence	1	
36(B)	Fabricating evidence		1
43(1)	Attempting to pervert justice	1	5
50BA	Sexual intercourse with child under 16		7
50BC(1)(A)	Sexual conduct involving child under 16	2	3
50DB(1)	Encouraging offence against this Part		4
70(1)	Disclosure of information by Commonwealth officers	4	1
71(1)	Stealing Commonwealth property (repealed)	3	
76B(2)(B)(V)	Unlawful access to data in Commonwealth and other computers (repealed)	3	
85U	Obstructing carriage of articles by post	13	
89(1)	Trespassing on Commonwealth land	4	
Total		72	121

Table 12: Criminal Code 1995 charges dealt with in 2009–2010

Part	Section	Description	Summary (Charges)	Indictable (Charges)
Part 5.3—Terrorism				23
	101.1	Terrorist acts		1
	101.4	Possessing things connected with terrorist acts		1
	101.5	Collecting or making documents likely to facilitate terrorist acts		2
	101.6	Other acts done in preparation for, or planning, terrorist acts		5
	102.3	Membership of a terrorist organisation		4
	102.6	Getting funds to, from or for a terrorist organisation		3
	102.7	Providing support to a terrorist organisation		7
Part 7.2—Theft and other property offences			21	10
	131.1	Theft	19	6
	132.1	Receiving	2	1
	132.5	Aggravated burglary		3

Part	Section	Description	Summary (Charges)	Indictable (Charges)
Part 7.3—Fraudulent conduct			11790	655
	134.1	Obtaining property by deception	11	111
	134.2	Obtaining a financial advantage by deception	256	405
	135.1	General dishonesty	211	124
	135.2	Obtaining financial advantage	11310	
	135.4	Conspiracy to defraud	2	15
Part 7.4—False or misleading statements			167	74
	136.1	False or misleading statements in applications	117	37
	137.1	False or misleading information	8	1
	137.2	False or misleading documents	42	36
Part 7.6—Bribery and related offences			1	14
	142.1	Corrupting benefits given to, or received by, a Commonwealth public official		14
	142.2	Abuse of public office	1	
Part 7.7—Forgery and related offences			67	7
	144.1	Forgery	22	
	145.1	Using forged document	38	5
	145.2	Possession of forged document		2
	145.4	Falsification of documents etc.	3	
	145.5	Giving information derived from false or misleading documents	4	
Part 7.8—Causing harm to, and impersonation and obstruction of, Commonwealth public officials			56	4
	147.1	Causing harm to a Commonwealth public official etc.	24	
	147.2	Threatening to cause harm to a Commonwealth public official etc.	4	4
	148.1	Impersonation of an official by a non official	1	
	149.1	Obstruction of Commonwealth public officials	27	
Part 7.20—Miscellaneous				22
	270.3	Slavery offences		22
Part 9.1—Serious drug offences			47	272
	302.2	Trafficking commercial quantities of controlled drugs		12
	302.3	Trafficking marketable quantities of controlled drugs		11
	302.4	Trafficking controlled drugs	1	10
	305.3	Manufacturing commercial quantities of controlled drugs		1
	306.2	Pre trafficking commercial quantities of controlled precursors		3
	307.1	Importing and exporting commercial quantities of border controlled drugs or border controlled plants		46
	307.2	Importing and exporting marketable quantities of border controlled drugs or border controlled plants	4	98
	307.3	Importing and exporting border controlled drugs or border controlled plants	6	20

Part	Section	Description	Summary (Charges)	Indictable (Charges)
	307.4	Importing and exporting border controlled drugs or border controlled plants—no defence relating to lack of commercial intent	18	1
	307.5	Possessing commercial quantities of unlawfully imported border controlled drugs or border controlled plants		31
	307.6	Possessing marketable quantities of unlawfully imported border controlled drugs or border controlled plants		12
	307.7	Possessing unlawfully imported border controlled drugs or border controlled plants	2	2
	307.9	Possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported		1
	307.1	Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported		2
	307.11	Importing and exporting commercial quantities of border controlled precursors		9
	307.12	Importing and exporting marketable quantities of border controlled precursors	1	8
	307.13	Importing and exporting border controlled precursors	3	1
	308.1	Possessing controlled drugs	11	2
	308.2	Possessing controlled precursors	1	1
	309.8	Procuring children for trafficking controlled drugs		1
Part 10.2—Money laundering			17	58
	400.3	Dealing in proceeds of crime etc.—money or property worth \$1,000,000 or more		22
	400.4	Dealing in proceeds of crime etc.—money or property worth \$100,000 or more		20
	400.5	Dealing in proceeds of crime etc.—money or property worth \$50,000 or more		5
	400.6	Dealing in proceeds of crime etc.—money or property worth \$10,000 or more	2	6
	400.7	Dealing in proceeds of crime etc.—money or property worth \$1,000 or more	1	2
	400.9	Possession etc. of property reasonably suspected of being proceeds of crime etc.	14	3
Part 10.5—Postal services			116	6
	471.1	Theft of mail receptacles, articles or postal messages	79	3
	471.3	Taking or concealing of mail receptacles, articles or postal messages	11	
	471.4	Dishonest removal of postage stamps or postmarks	1	
	471.6	Damaging or destroying mail receptacles, articles or postal messages	5	
	471.7	Tampering with mail receptacles	18	

Part	Section	Description	Summary (Charges)	Indictable (Charges)
	471.8	Dishonestly obtaining delivery of articles	1	
	471.12	Using a postal or similar service to menace, harass or cause offence	1	3
Part 10.6—Telecommunications Services			229	310
	474.15	Using a carriage service to make a threat	17	1
	474.16	Using a carriage service for a hoax threat	5	2
	474.17	Using a carriage service to menace, harass or cause offence	91	83
	474.18	Improper use of emergency call service	51	1
	474.19	Using a carriage service for child pornography material	63	167
	474.2	Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service		4
	474.22	Using a carriage service for child abuse material		7
	474.24A (1)	Aggravated offence (in relation to 474.19, 474.20, 474.22 and 474.23)	2	
	474.26	Using a carriage service to procure persons under 16 years of age	2	23
	474.27	Using a carriage service to “groom” persons under 16 years of age		20
Part 10.7—Computer offences			23	
	477.3	Unauthorised impairment of electronic communication	1	
	478.1	Unauthorised access to, or modification of, restricted data	20	
	478.3	Possession or control of data with intent to commit a computer offence	1	
	478.4	Producing, supplying or obtaining data with intent to commit a computer offence	1	
Part 10.8—Financial information offences			9	4
	480.4	Dishonestly obtaining or dealing in personal financial information	1	4
	480.5	Possession or control of thing with intent to dishonestly obtain or deal in personal financial information	6	
	480.6	Importation of thing with intent to dishonestly obtain or deal in personal financial information	2	
Total			12543	1459

Note: Some of the charges shown as dealt with summarily were indictable charges discontinued at an early stage. Some other charges shown as dealt with summarily were indictable charges which resulted in a warrant for the arrest of the defendant. Some summary charges were dealt with on indictment as they were scheduled under s16BA of the *Crimes Act 1914*.

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

Extension of Criminal Responsibility Act and Section		Principal Act and Section		Charges	
Act	Section	Act	Section	Summary	Indictable
Crimes Act 1914	5(1) Aid & Abet	Crimes Act 1914	29D		5
	6 Accessory	Criminal Code 1995	307.11(1)		1
	86(1) Conspiracy	Crimes Act 1914	29D		1
Criminal Code 1995	11.1(1) Attempt	Aviation Transport Security Act 2004	47(1)	1	
			47(3)	1	
			Crimes (Aviation) Act 1991	22(1)	1
			Crimes (Currency) Act 1981	7(A)	1
			Criminal Code 1995	101.1(1)	1
				134.1(1)	9
				134.2(1)	5
				135.1(5)	63
				135.2(1)	7
				302.2(1)	1
				302.3(1)	1
				302.4(1)	1
				306.2(1)	1
				307.1(1)	1
				307.12(1)	1
				307.5(1)	24
				307.6(1)	8
				308.2(1)	1
			Customs Act 1901	233B(1)(B)	1
				233B(1)(C)	1
			Environment Protection and Biodiversity Conservation Act 1999	303DD(1)	1
			Financial Transaction Reports Act 1988	24(1)	7
					3
	11.2(1) Complicity	Corporations Act 2001	911A		1
			Criminal Code 1995	134.2(1)	45
				135.2(1)	2
				135.4(3)	1
				302.2(1)	2
				307.1(1)	7
				307.11(1)	1
				307.2(1)	2
					11

Extension of Criminal Responsibility Act and Section		Principal Act and Section		Charges	
Act	Section	Act	Section	Summary	Indictable
			307.3(1)		2
		Customs Act 1901	233BAA(4)	1	
		Excise Act 1901	117D(1)		1
		Quarantine Act 1908	67(3)		3
	11.4(1) Incitement	Criminal Code	149.1(1)	1	
		Customs Act 1901	233B(1)(B)		1
	11.5(1) Conspiracy	Criminal Code 1995	101.6(1)		5
			135.1(5)		4
			302.2(1)		4
			302.3(1)		8
			305.3(1)		1
			306.2(1)		2
			307.1(1)		9
			307.11(1)		1
			307.13(1)	1	
			307.2(1)		4
			307.3(1)		6
			307.5(1)		6
			400.3(1)		6
		Customs Act 1901	233B(1)(A)(III)		1
			233B(1)(A)(VI)		1
			233B(1)(B)		3
Total				140	203

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

Table 14: Reparation orders and fines

	Actual 2009–2010 \$'000	Actual 2008–2009 \$'000
Reparation orders made	44,574	38,616
Fines and costs orders made	3,720	5,487

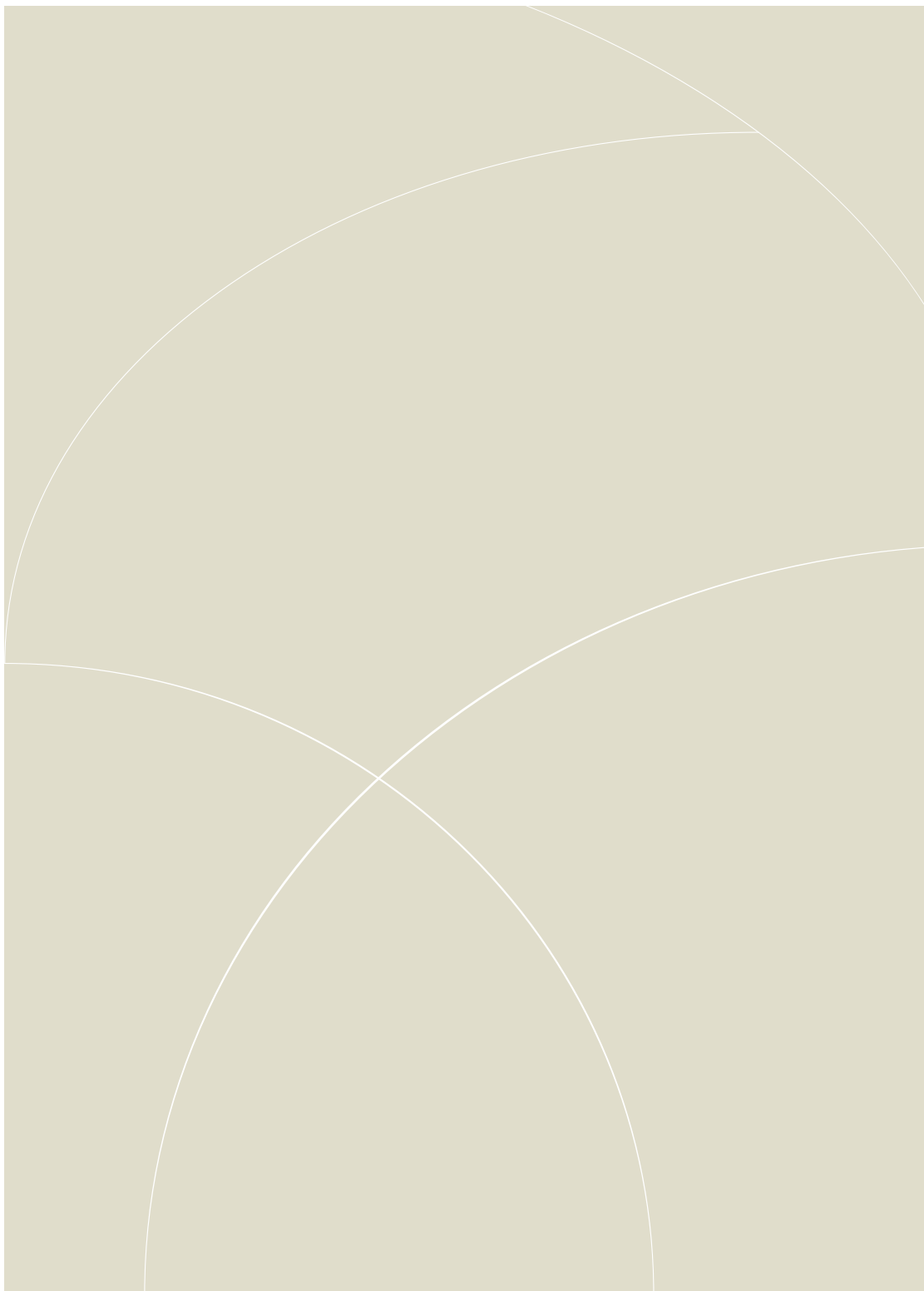
Table 15: Referring Agencies: defendants dealt with in 2009–2010

Referring Agency	Summary (Defendants)	Indictable (Defendants)
Australian Prudential Regulation Authority	1	
Australian Crime Commission	1	44
Australian Customs & Border Protection Service	69	21

Referring Agency	Summary (Defendants)	Indictable (Defendants)
Australian Customs Service	33	21
Australian Electoral Commission	7	
Australian Federal Police	338	361
Australian Fisheries Management Authority	62	3
Australian Maritime Safety Authority	5	
Australian Pesticides & Veterinary Medicines Authority	3	
Australian Postal Corporation	49	3
Australian Quarantine and Inspection Service	6	5
Australian Securities & Investments Commission	36	23
Australian Taxation Office	117	40
Australian Trade Commission		2
Centrelink	4616	68
Civil Aviation Safety Authority	12	4
COMCARE	4	
Department of Agriculture, Fisheries and Forestry	15	
Department of Defence	14	1
Department of Education, Employment and Workplace Relations	8	3
Department of Families, Housing, Community Services and Indigenous Affairs	1	
Department of Foreign Affairs and Trade	41	1
Department of Health and Ageing	2	
Department of Immigration and Citizenship	9	
Department of Resources, Energy and Tourism	1	
Department of the Environment, Water, Heritage and the Arts	4	
Dept of Innovation, Industry, Science and Research	1	
Great Barrier Reef Marine Park Authority	24	
Insolvency and Trustee Service, Australia	281	4
International Police		1
Medicare Australia	18	2
Non-Commonwealth Agencies including State or Territory Police	176	117
Therapeutic Goods Administration	5	
Workplace Ombudsman	9	
Total	5968	724

Note: In 2008-2009 the CDPP reviewed the way in which it calculates the number of defendants dealt with. As a result of these changes in methodology, figures in Annual Reports published prior to 2008-09 are not directly comparable.

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



4

criminal confiscation

Criminal confiscation



Overview

CONFISCATING THE PROCEEDS OF CRIME IS A CRITICAL MEASURE IN COMBATING THE WIDE RANGE OF FINANCIALLY MOTIVATED OFFENCES AND MAINTAINING PUBLIC CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM. THE 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.

CONFISCATION ACTION IS TAKEN IN A WIDE RANGE OF AREAS INCLUDING FRAUD, CORPORATIONS, MONEY LAUNDERING AND SERIOUS DRUGS.

Legislation

PROCEEDS OF CRIME ACT 2002

The *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 a regime for the tracing, restraint and confiscation of the proceeds and instruments of crime against

Commonwealth law. In some cases it may also be used to confiscate the proceeds of crime against foreign law or State and Territory law.

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

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

There are four types of final confiscation orders which may be made under the *POC Act 2002*:

- ▶ *Forfeiture orders* – where the court orders that property which is the proceeds or an instrument of crime be forfeited to the Commonwealth;
- ▶ *Pecuniary penalty orders* – where the court orders an offender to pay an amount equal to the benefit derived by the person from the commission of an offence; and
- ▶ *Unexplained wealth orders* – where the court orders a person to pay an amount calculated by reference to that part of the person's wealth which the person cannot demonstrate was lawfully acquired; and

- *Literary proceeds orders* – where the court orders an offender to pay an amount calculated by reference to benefits the person has derived through commercial exploitation of his or her notoriety resulting from the commission of an offence.

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

In order to preserve property pending the outcome of confiscation proceedings, the *POC Act 2002* provides for restraining orders over property to be made early on in an investigation. Restraining orders can be made either in reliance on the charging (or proposed charging) of a person, or on a civil basis.

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

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

Other Legislation

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

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*, the CDPP has power to take traditional civil remedies action on behalf of the Commonwealth in cases where there is a connection with a prosecution.

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

Operating Structure

The CDPP criminal assets work 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.

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, the Australian Crime Commission, the Australian Customs and Border Protection Service, the Australian Securities and Investments Commission, and the Australian Taxation Office. 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 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.

2009–2010 Financial Year

During 2009–2010 a total sum of \$34.87 million was recovered as a result of litigation under the *POC Act 2002*. As with previous years, this figure was in part achieved as a result of the resolution of a number of long-running, complex proceeds of crime matters. For example, the matter involving Queensland Duty Free reported later in this Chapter commenced in November 2004 and was concluded with a recovery of \$8.2 million in this financial year.

Since 1 January 2003 approximately \$112.99 million has been recovered as a result of action commenced under the *POC Act 2002*.

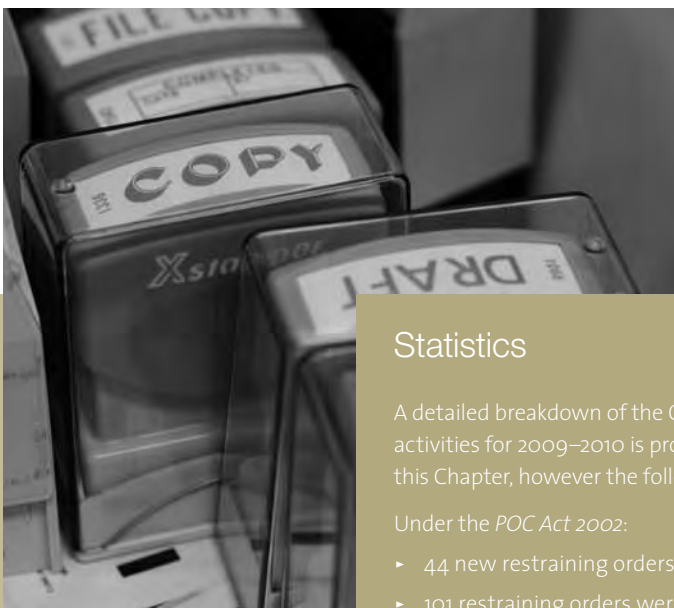
This year the number of new matters referred to CDPP for criminal confiscation action again decreased, resulting in the lowest number of new restraining orders obtained since the 2003–2004 financial year.

This year saw the enactment of significant amendments to the *POC Act 2002*. The *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* and the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010* came into effect on 19 February 2010. Amongst other things these Acts:

- removed the limitation period for the commencement of civil confiscation action under the *POC Act 2002*;
- introduced new provisions for the restraint and forfeiture of instruments of “serious offences”;
- inserted new information disclosure provisions into the Act; and
- incorporated new freezing order and unexplained wealth provisions.

Many of these amendments reflected recommendations made by Mr Tom Sherman AO in 2006 who reviewed the first three years of the *POC Act 2002*. The CDPP played a significant role in liaising with the Attorney-General’s Department and other stakeholders regarding these amendments.

The CDPP did not receive any referrals for action under the new unexplained wealth provisions during 2009–2010.



Statistics

A detailed breakdown of the CDPP's criminal confiscation activities for 2009–2010 is provided by the tables at the end of this Chapter, however the following is a summary of key data.

Under the *POC Act 2002*:

- ▶ 44 new restraining orders were obtained;
- ▶ 101 restraining orders were in force at as 30 June 2010;
- ▶ 18 pecuniary penalty orders were obtained;
- ▶ 104 forfeiture orders were obtained;
- ▶ automatic forfeiture occurred in 20 matters;
- ▶ 26 compulsory examinations were undertaken;
- ▶ the total estimated value of confiscation orders (including automatic forfeiture) obtained was \$25.44 million;
- ▶ the total amount recovered as a result of litigation (including automatic forfeiture) was \$34.87 million.

In relation to matters still continuing under the *POC Act 1987* one confiscation order was made and a total of \$0.124 million was recovered.

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

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

POC Act 2002 Performance Indicators

The CDPP's performance in cases under the *POC Act 2002* during 2009–2010 is measured against the following performance indicators. Information in relation to the previous three years is included and in each instance the CDPP has met or exceeded the applicable performance indicator.

Description	Number	Target	Outcome
Applications for restraining orders that succeeded	44	90%	98%
Figures for 2008–2009	52	90%	100%
Figures for 2007–2008	75	90%	100%
Figures for 2006–2007	75	90%	100%
Applications for pecuniary penalty orders that succeeded	18	90%	100%
Figures for 2008–2009	20	90%	100%
Figures for 2007–2008	17	90%	100%
Figures for 2006–2007	10	90%	100%
Applications for forfeiture orders that succeeded	104	90%	99%
Figures for 2008–2009	111	90%	100%
Figures for 2007–2008	62	90%	100%
Figures for 2006–2007	51	90%	98%
Damages awarded against undertakings	0		\$0
Figures for 2008–2009	0		\$0
Figures for 2007–2008	1		\$150,000
Figures for 2006–2007	0		\$0
Number of cases where costs awarded against DPP	4		\$2,319
Figures for 2008–2009	1		\$14,000
Figures for 2007–2008	5		\$100,701
Figures for 2006–2007	5		\$11,102

Case Reports

KEE SIEN LEE

On 30 July 2007 the Supreme Court of NSW made asset-directed orders pursuant to section 19 of the *POC Act 2002* restraining about \$4.25 million contained in several Australian bank accounts. It was alleged that this represented the proceeds of a fraudulent trading scheme operated by Lee and others from outside Australia. Investors were induced to purchase non-existent commodity options on non-existent foreign commodity exchanges. Lee was not charged with any offences in Australia relating to the operation of the scheme.

The CDPP applied for Lee to be examined pursuant to section 180 of the *POC Act 2002*, and for forfeiture of the restrained funds under section 49 of the *POC Act 2002*.

In April 2008 an application by Lee to strike out the restraining order was refused by the Supreme Court of NSW.

Lee made a further application for a stay of the proceedings and this was refused in March 2009. Lee sought leave to appeal against this decision to the NSW Court of Appeal. Lee argued that the confiscation proceedings should be stayed until he was informed either that he would not be charged with any offence to which the restraining order related, or he was informed of the precise nature of the charges he would face. Lee argued that allowing the proceedings to continue would potentially interfere with his privilege against self-incrimination.

On 22 October 2009 the NSW Court of Appeal delivered its judgment granting Lee leave to appeal but refusing to stay the proceedings. The Court expressed the view that, in considering a stay on any terms, it was important to distinguish between an order or proceeding which compelled the defendant to disclose information or documents which might place him or her in jeopardy of criminal proceedings, and proceedings where the privilege is available, but the defendant might effectively have to compromise that privilege if he or she wished to defend the proceedings. The NSW Court of Appeal stated:

“IT IS CLEAR THAT THE POWER TO PROCEED UNDER THE PROCEEDS OF CRIME ACT WAS NOT INTENDED TO PUT THE DIRECTOR TO AN ELECTION, REQUIRING THAT HE OR SHE FIRST INSTITUTE CRIMINAL PROCEEDINGS OR DISCLAIM AN ENTITLEMENT TO PROCEED LATER BY WAY OF CRIMINAL CHARGES. PUTTING TO ONE SIDE THE POWER TO REQUIRE AN EXAMINATION OF THE APPLICANT, THE STATUTORY SCHEME IS CONSISTENT WITH THE APPLICANT BEING REQUIRED TO MAKE A CHOICE AS TO WHETHER TO SEEK TO DEFEND THE FORFEITURE PROCEEDINGS, AT THE RISK OF REVEALING INCRIMINATING MATERIAL, OR TO HOLD HIS OR HER HAND AND PERMIT THE FORFEITURE OF THE PROPERTY. TO PERMIT THE PROCEEDINGS UNDER THE PROCEEDS OF CRIME ACT TO CONTINUE, ABSENT SOME SPECIFIC FACTOR, WILL NOT GENERALLY CONSTITUTE AN ABUSE OF THE STATUTORY SCHEME.”

The CDPP’s proceedings against Lee were ultimately settled in April 2010.

MUSTAFA SHAIL

In April 2005 the ATO commenced an investigation into the defendant’s affairs. He subsequently departed Australia for the Republic of Cyprus. It was suspected that Shail, previously a registered tax agent, had created 58 false identities for which he submitted income tax returns that gave rise to false claims for refunds and family tax benefits. It was alleged that the total value of the benefit received by Shail was about \$982,000.

In October 2005 the CDPP initiated non-conviction based confiscation proceedings under the *POC Act 2002*. Restraining orders were obtained in relation to real property and two luxury cars. The real property was commercial real estate registered in the name of Kismet Business Park Pty Ltd (KBP). Shail gave the two luxury cars to his wife, Nuriye Shail, immediately prior to his departure from Australia. The CDPP applied for a Pecuniary Penalty Order against Shail and also for a declaration that the property subject to the Restraining Orders was in the effective control of Shail and available to satisfy the Pecuniary Penalty Order. Shail did not return to Australia. Charges were filed and a warrant was issued for his arrest.

Despite Shail fleeing the jurisdiction, the CDPP was able to continue with the confiscation proceedings by proving on the balance of probabilities that Shail had committed serious offences as defined in *POC Act 2002*.

Nuriye Shail and KBP made applications for the real property and the two cars to be excluded from the restraining order. The proceedings were originally set down for trial in October 2007 however the matter was adjourned on a number of occasions due to requests for additional time and for access to examine documents. Protracted negotiations also ensued.

On 13 May 2010 the County Court of Victoria made a Pecuniary Penalty Order against Mustafa Shail in the amount of \$982,432.86. The application for that order was not opposed. The Court also made a declaration that the restrained property was under the effective control of Mustafa Shail and was available to satisfy the penalty amount. The exclusion application made by Nuriye Shail was discontinued on the basis that an amount of \$185,000 be released to her in recognition of her lawful contribution towards the acquisition of the restrained real property. The exclusion application made by KBP was struck out.

X & Y

X and Y were the wives of two men alleged to have been involved in the misappropriation of the equivalent of millions of dollars in funding from government-sponsored housing construction companies in China. One of the two men had been convicted and sentenced for offences in China. X and Y emigrated to Australia and subsequently became permanent residents.

X and Y acquired significant property holdings in Australia which, it was argued, could be traced back to unlawful conduct of their husbands in China.

In June 2007, the CDPP obtained non-conviction based restraining orders over real property, money in bank accounts and shares owned or suspected of being effectively controlled by X and Y worth approximately \$4.9 million. The restraining orders were based on a suspicion that X and Y had committed Australian offences by laundering the proceeds of offences alleged to have been committed by their husbands in China.

In March 2009, by consent, the District Court of Queensland made non-conviction based orders forfeiting property owned or controlled by Y valued at approximately \$1.28 million. In July 2009, similar orders were made in respect of property owned or controlled by X valued at approximately \$2.8 million. These orders were able to be obtained notwithstanding that there was insufficient evidence for either X or Y to be prosecuted for offences in Australia.

The forfeited monies were later returned to the government of China pursuant to equitable sharing provisions contained in the *POC Act 2002*.

QUEENSLAND DUTY FREE

In March 2004 the ACS, AFP and ATO commenced a joint investigation into the suspected evasion of customs and excise duty for manufactured tobacco products by a number of duty free stores operating in Brisbane.

It was suspected that the stores were selling tobacco products to distributors who then on-sold them to tobacco outlets in Brisbane. False documents were also suspected to have been provided to Customs to create the appearance that the tobacco products were

being sold in legitimate duty-free transactions to crews of overseas ships. No excise duty or customs duty was paid in relation to the diverted tobacco product.

One of the stores alleged to have been involved was operated by Queensland Jewellery and Gift Company Pty Ltd, trading as Queensland Duty Free (QDF). Sen-Hung Chen (Chen) and Chui-Yuan Hsiao (Hsiao) established and operated QDF.

In November 2004, the CDPP obtained civil orders under the *POC Act 2002* in the District Court of Queensland restraining property of three individuals and two corporations. The property covered by the restraining orders included bank accounts, two Rolls Royce motor vehicles and real estate including an office block in the Brisbane CBD.

The CDPP applied for forfeiture of the restrained property and for pecuniary penalty orders against QDF, Chen and Hsiao and carried out a number of examinations under the *POC Act 2002* in relation to the affairs and property of QDF, its directors and operators.

QDF, Chen and Hsiao filed applications to exclude property from forfeiture, or alternatively for an order that they be paid compensation in respect of that proportion of the property that the court was satisfied was not acquired using the proceeds of any offence.

In October 2006 the proceedings under the *POC Act 2002* were stayed pending the outcome of related criminal proceedings or until further order.

The parties ultimately agreed to settle the proceedings and on 23 July 2009 an order was made for Chen and Hsiao to pay a pecuniary penalty order in the sum of \$8,200,000. Chen and Hsiao were convicted of related offences on 27 July 2009.

The PPO was subsequently satisfied in full via the sale of restrained property.

Criminal Assets Confiscation Tables

The tables below set out details relating to the criminal confiscation work conducted by the CDPP in 2009–2010.

Table 1: *POC Act 2002: new orders and forfeitures in 2009–2010*

	Number	Value
Restraining orders	44	\$21,149,910
Pecuniary penalty orders	18	\$14,337,641
Forfeiture orders	104	\$8,178,063
Automatic forfeiture under section 92	20	\$2,928,676
Literary proceeds orders	–	–

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

Table 2: POC Act 2002: restraining orders obtained by reference to enforcement agency

	No.	Value
Australian Crime Commission	3	\$264,745
Australian Federal Police	39	\$18,509,215
Australian Securities & Investments Commission	2	\$2,375,950

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

	No.	Value
Corporations	3	\$3,267,394
Drugs	17	\$4,660,545
Fraud	13	\$4,879,506
Laundering	11	\$8,342,465

Table 4: POC Act 2002: restraining orders in force as at 30 June 2010

	Number	Value
Number of restraining orders in force	101	\$66,403,968

Table 5: POC Act 2002: money recovered in 2009–2010

	Amount Recovered
Pecuniary penalty orders	\$13,878,226
Forfeiture orders	\$11,139,474
Automatic forfeiture under section 92	\$1,373,791
Literary proceeds orders	\$4,244
Matters where money recovered but no formal orders made	\$8,478,198
Total recovered	\$34,873,928

Table 6: POC Act 2002: new post forfeiture orders in 2009–2010*

	Number	Value
Post forfeiture orders under section 102	7	\$3,997,570

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

Table 7: POC Act 1987: orders and forfeitures in 2009–2010

	Number	Value
Restraining orders	—	—
Pecuniary penalty orders	—	—
Forfeiture orders	1	\$114,000
Automatic forfeiture	—	—

Table 8: POC Act 1987: restraining orders in force as at 30 June 2010

	Number	Value
Number of restraining orders in force	3	\$298,613

Table 9: POC Act 1987: money recovered in 2009–2010

	Amount recovered
Pecuniary penalty orders	\$400
Forfeiture orders	–
Automatic forfeiture	\$124,144
Matters where money recovered but no formal orders made	–
Total recovered	\$124,544

Table 10: Criminal assets: summary of recoveries for 2009–2010

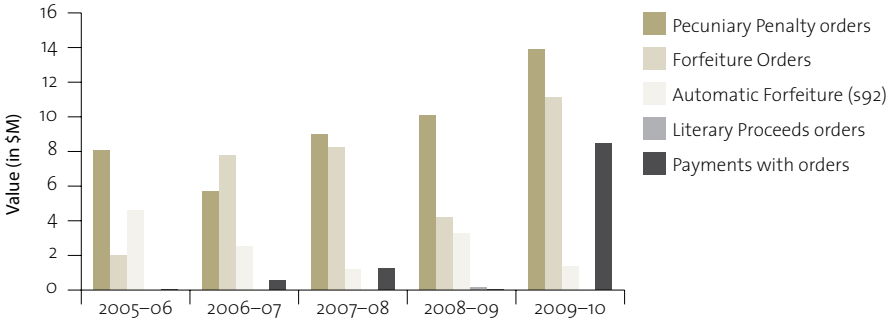
<i>POC Act 1987</i> pecuniary penalty orders	\$400
<i>POC Act 1987</i> forfeiture orders	
<i>POC Act 1987</i> automatic forfeiture	\$124,144
Matters where money recovered but no formal orders made	
<i>POC Act 1987</i> total	\$124,544
<i>POC Act 2002</i> pecuniary penalty orders	\$13,878,226
<i>POC Act 2002</i> forfeiture orders	\$11,139,474
<i>POC Act 2002</i> automatic forfeiture	\$1,373,791
<i>POC Act 2002</i> literary proceeds orders	\$4,244
Matters where money recovered but no formal orders made	\$8,478,198
<i>POC Act 2002</i> total	\$34,873,928
Customs Act condemnation	–
Customs Act total	–
Grand total	\$34,998,472

Table 11: CSB Act: orders made in 2009–2010

Name	State	Date
Studman	NSW	6 July 2009
Williams	NSW	11 August 2009
Maher	QLD	14 August 2009
Dwayhi	NSW	28 September 2009
Della-Vedova	NSW	8 March 2010
Abolofotouh	QLD	13 April 2010

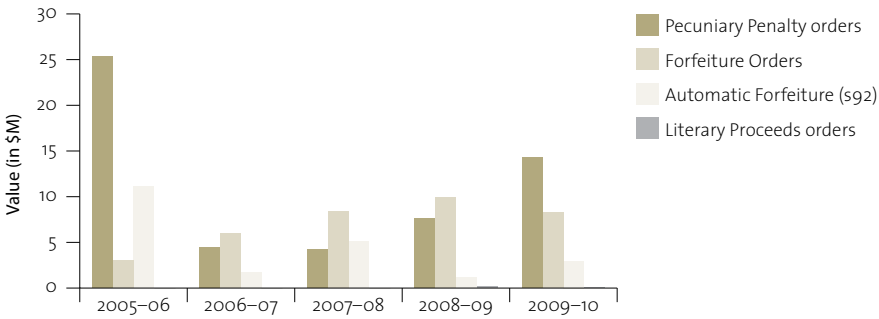
Money recovered POC Act 2002

2005–06 to 2009–10

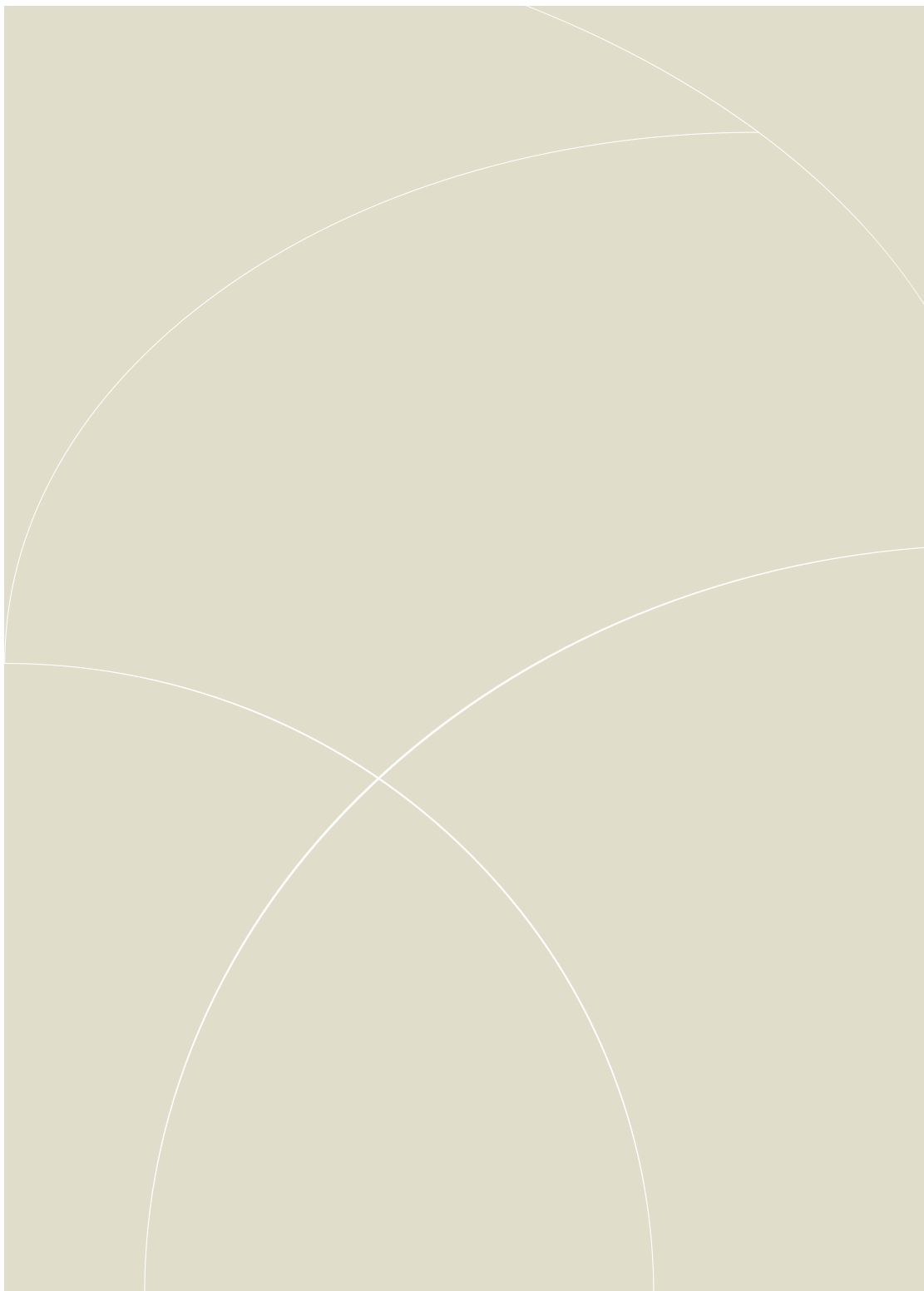


Value of Confiscation Orders recovered POC Act 2002

2005–06 to 2009–10









5 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 most commonly used when the request for assistance involves the use of coercive powers or when the material requested is required to be in a form that is admissible in criminal proceedings.

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

This international network is underpinned by a number of bilateral treaties and multilateral conventions. Australia has ratified 27 bilateral mutual assistance treaties, and a number of multilateral conventions, which bind the signatories to provide mutual assistance to each other, including:

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

Countries which are not signatories to mutual assistance treaties or conventions may also request mutual assistance from, and provide mutual assistance to, each other. This is done under the principle of reciprocity whereby countries agree to provide assistance to each other on a case by case basis on the understanding that they will receive similar assistance in return.

In relation to requests from other countries, the 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.

During 2009-2010 there was a change in the role of the CDPP in assisting in the execution of requests by foreign countries to Australia. In light of budgetary savings required to be made, the CDPP no longer assists members of the AFP in obtaining search warrants authorised under the *Mutual Assistance in Criminal Matters Act 1987* and no longer appears in court proceedings to obtain evidence requested by foreign countries. The CDPP continues to conduct applications authorised under the *Mutual Assistance in Criminal Matters Act 1987* to register and enforce orders made by foreign courts to restrain and forfeit the proceeds of crime.

In the past year, the CDPP provided assistance in executing 18 requests made by 13 countries.

The CDPP was also involved in assisting in the drafting of 73 outgoing requests made by Australia to 29 foreign countries. The outgoing requests were generally made in conjunction with Commonwealth investigative agencies, or joint taskforces comprising law enforcement officers from Commonwealth, State and Territory agencies.

As outlined in last year's Annual Report, as part of the 2009-2010 Budget measures it was decided that the CDPP will no longer assist in drafting mutual assistance requests on behalf of Commonwealth investigative agencies when the matters are in the investigative or pre-charge stage, apart from those cases where the CDPP has received a brief of evidence or where the CDPP has received specific funding to draft mutual assistance requests in respect of a particular matter or type of matter. This has resulted in a decrease of approximately 40% in the number of requests the CDPP has assisted in drafting.

The CDPP continues to assist in drafting mutual assistance requests once charges have been laid and a brief of evidence has been received from a Commonwealth investigative agency.

The CDPP also continues to provide mutual assistance training to Commonwealth investigative agencies, and to participate in capacity building forums with other countries in the region in conjunction with the AttorneyGeneral's Department.

Extradition

The CDPP views extradition as an important mechanism in law enforcement. Effective global law enforcement cooperation enhances the ability to bring to justice offenders who seek to avoid being dealt with for serious criminal conduct by fleeing the jurisdiction. This has important consequences for domestic law enforcement, especially in terms of deterring crime.

Until recently, the CDPP has had a role both in the execution of incoming extradition requests and making outgoing requests.

In the case of incoming requests, the CDPP has appeared for the foreign country in court proceedings in Australia and in any appeals arising from those proceedings. The CDPP has taken instructions on the conduct of those matters from AGD. In light of budgetary savings required to be made by the CDPP, from the end of 2009 responsibility for the conduct of extradition proceedings, other than those involving New Zealand, now rests solely with AGD.

In the case of outgoing extradition requests, the CDPP prepares documents in support of requests for extradition in serious cases where a person is wanted for prosecution for an offence against Commonwealth law 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 AGD.

Incoming Requests

In the past year, the CDPP appeared in proceedings arising from five new requests from foreign countries. All five of those matters have resulted in proceedings in Australia, with two of the people consenting to extradition. The remaining matters have resulted in contested hearings, the conduct of which has been taken over by AGD.

The CDPP also appeared on behalf of New Zealand in relation to eight requests for extradition received this year. Six people consented to their surrender. Two people contested their surrender, resulting in a Magistrate ordering the surrender of one of those persons. The other person's release was ordered by a Magistrate on the grounds that surrender would be oppressive. The CDPP has instituted review proceedings in the Federal Court in that matter.

In the last year, proceedings were also commenced in respect of two matters which had been referred to the CDPP in previous financial years. One person was subsequently released on the direction of the Minister for Home Affairs. One person was found eligible for surrender after a contested hearing and has filed an application for review of the Magistrate's order in the Supreme Court of Victoria.

The CDPP has continued to appear on behalf of foreign countries in a number of ongoing complex extradition matters before the courts throughout the year. All proceedings have been finalised and

resulted in two persons consenting and five persons being found eligible for surrender.

In addition to the CDPP appearing in proceedings arising from cases referred to it, the CDPP also provided advice to AGD 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 1988* and the relevant Treaty.

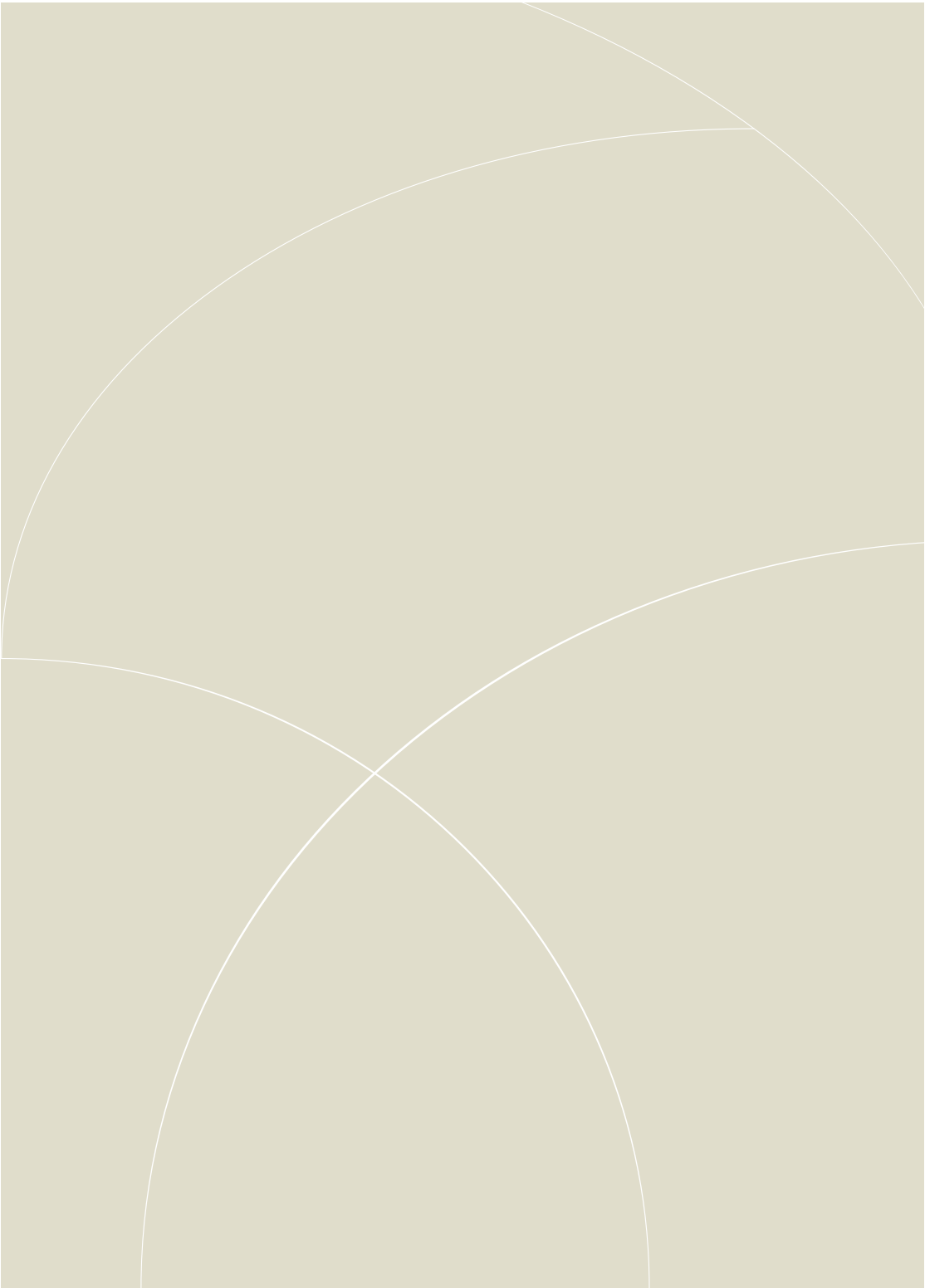
Outgoing Requests

During the course of the year, the CDPP asked AGD to make ten 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. One person consented to extradition and was surrendered to Australia. A further four people have been arrested in response to requests.

Four people were also surrendered to Australia during the year as a result of requests made in previous financial years, including two people charged with serious drug importation and money laundering offences.

Court proceedings in the relevant foreign countries continue in respect of two requests made in previous years.







international contribution

International contribution



THE CDPP ACTIVELY CONTRIBUTES INTERNATIONALLY BY SHARING KNOWLEDGE AND EXPERIENCE, PARTICULARLY IN SPECIALISED AREAS, WITH OTHER COUNTRIES TO ASSIST IN BUILDING THEIR CAPACITY TO PROSECUTE AND TAKE PROCEEDS OF CRIME ACTION. THE CDPP HAS A PARTICULAR FOCUS ON INITIATIVES IN THE ASIA PACIFIC REGION.

THIS YEAR THE CDPP'S INTERNATIONAL ACTIVITIES HAVE INCLUDED SEEKING TO DEVELOP AND STRENGTHEN REGIONAL AND BILATERAL TECHNICAL COOPERATION PROGRAMS IN THE ASIA PACIFIC REGION. MANY OF THESE ACTIVITIES INVOLVED THE CDPP COLLABORATING WITH OTHER COMMONWEALTH AGENCIES. SOME OF THESE 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.

Prosecutors' Pairing Program

The Prosecutors' Pairing Program is an initiative of the Anti-Money Laundering Assistance Team (AMLAT) within the Attorney-General's Department. A prosecutor from a Pacific Island Forum country is placed 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.

As reported last year, a prosecutor from the Samoan Attorney-General's Office undertook a two month placement to the Criminal Assets Branch of Head Office. This placement provided the opportunity for this prosecutor to gain experience in the preparation and presentation of proceeds of crime applications and to observe court proceedings in New South Wales and Queensland. One of the significant benefits of the placement was the preparation of a draft proceeds of crime manual for use in Samoa.

Visits by Delegations

The CDPP hosts visits by international delegations and these provide an opportunity to share experiences and to provide information about prosecuting in the Australian judicial system. In December 2009 the Acting Secretary of the Papua

New Guinean Attorney-General's Department visited the CDPP's Head Office in Canberra. This was a useful opportunity to discuss the provision of prosecuting services.

In April 2010 a delegation from Bangladesh visited the CDPP's Head Office in Canberra and the CDPP provided a presentation on the independent role of the prosecutor and the *Prosecution Policy*.

In May 2010 the Papua New Guinean Solicitor-General, Mr Neville Devete, and a delegation of senior officials from his office and the Papua New Guinea-Australia Law and Justice Partnership attended the CDPP's Brisbane office to discuss practical issues relating to the use of the *POC Act 2002*. Senior officers in the Brisbane office met with Mr Devete and the delegation and shared information of their practical experience in conducting successful proceeds of crime confiscations.

On 27 May 2010 the Director hosted a delegation from Sri Lanka in Sydney. The Director, with senior members of the Office, met with the Chief Justice of the Supreme Court of Sri Lanka, his Honour J.A.N. De Silva, Justice K.T. Chitrasiri, a Judge of the Court of Appeal, together with a senior official from the Sri Lankan Attorney-General's Department. The delegation's visit to Australia also involved meetings with the heads of jurisdiction and other senior figures in the criminal justice system. Against that background, discussion with the CDPP revolved around topics concerning court processes at various levels and the structure of the national prosecution entities in Australia and Sri Lanka.

The Sri Lankan Deputy Solicitor-General and the Senior State Prosecutor visited the CDPP's Head Office and Melbourne Office for two weeks in June 2010. This visit provided the opportunity to participate in preparing for court proceedings and attending court with CDPP officers. In addition, the CDPP provided detailed briefings on prosecuting in Australia and discussed areas including counter-terrorism, people smuggling, proceeds of crime, the CDPP's case management system and the Commonwealth Sentencing Database.

Meeting of Australian and Pacific Chief Prosecutors

In October 2009 the CDPP hosted the third meeting of Australian and Pacific Chief Prosecutors in Brisbane. The meeting brought together the heads of prosecution services and senior prosecutors from 11 Pacific Island Forum countries, as well as the heads of seven of Australia's State and Territory prosecution services. The Pacific Prosecutors Network is significant in supporting the continuing process of building prosecuting capacity within the region. Issues such as prosecution independence, prosecution policies and case management were discussed.

Australia and Sri Lanka Legal Training and Seminar Series

In February 2010 the CDPP provided assistance to AGD in delivering seminars to prosecutors in Colombo, Sri Lanka. The focus was the prosecution of transnational crimes, in particular, people smuggling, people trafficking and money laundering. The CDPP presented seminars providing an overview of the Australian Criminal Law System and the role of the CDPP as well as other issues associated with the prosecution of people smuggling cases. Other seminars were presented by AGD and Sri Lankan attendees. All participated in a panel discussion on common challenges faced by prosecutors in Sri Lanka and Australia.

These seminars contributed significantly to building linkages between Australian and Sri Lankan Government agencies to facilitate future cooperation to fight transnational crime.

Malaysia – Australia Technical Legal Working Group on People Smuggling and Trafficking in Persons

In February 2010 the CDPP provided assistance to AGD by participating in the Working Group

discussions on people smuggling and people trafficking. The CDPP presented on Australia's approach to the prosecution of people smuggling and people trafficking matters. Other presentations were given by AGD and AFP.

These workshops contribute significantly to building linkages between Australian and Malaysian Government agencies to facilitate future cooperation to prosecute people smuggling and people trafficking matters.

Visit by Palestinian Academic

In June 2010 the CDPP hosted a visit by an academic from the An Najah University Law School in Nablus, Palestine. The placement was part of a 3 month study trip organised by the An Najah University and the University of New South Wales. The purpose of the week long visit was to study the role of the prosecution in Australian criminal procedure. This visit included meeting with senior staff in Sydney, attending court and observing trials.

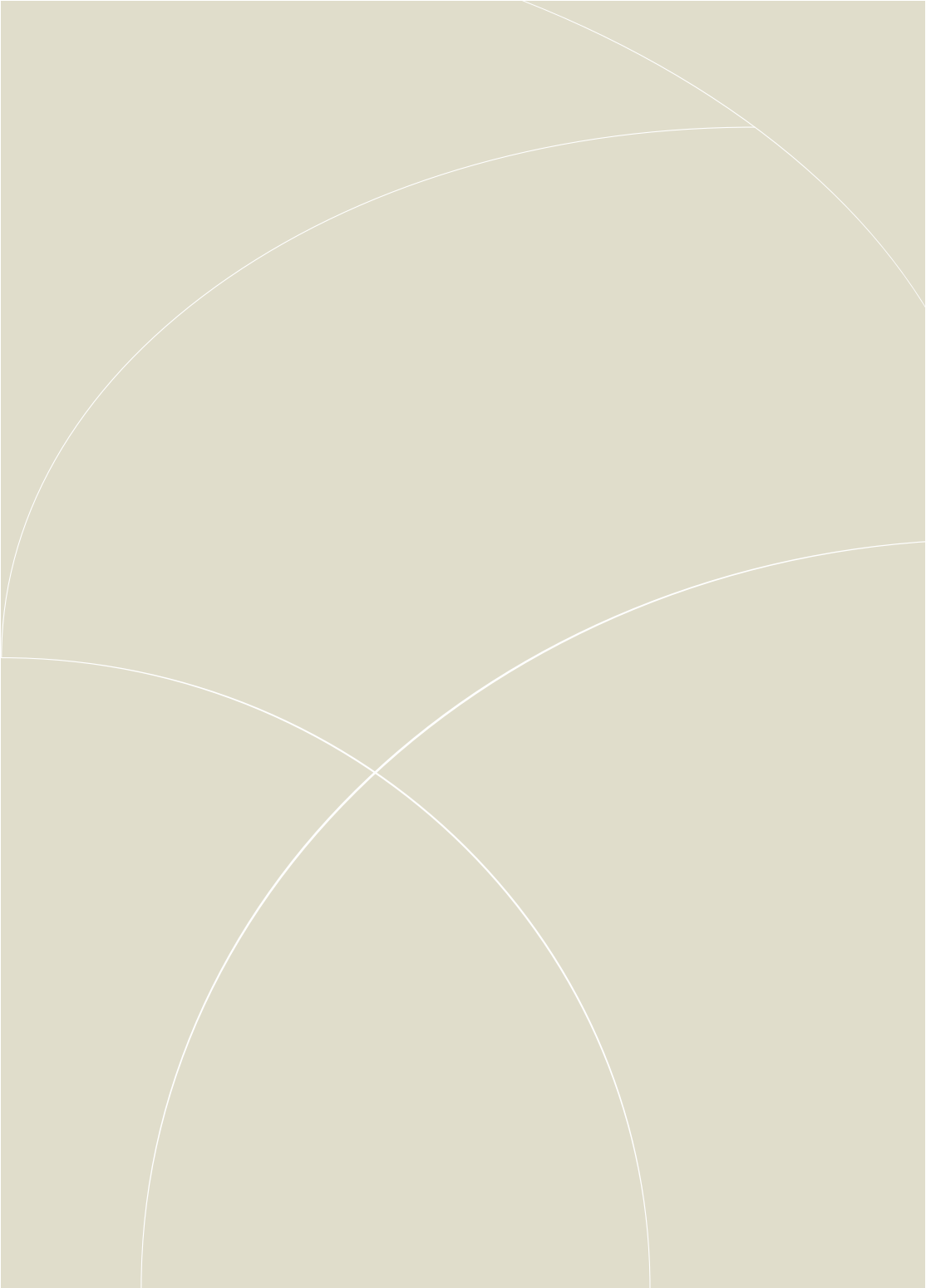
Other International Activities

This year CDPP lawyers have not participated as actively in international fora. The CDPP continues its association and involvement with the International Association of Prosecutors (IAP) and the International Society for the Reform of Criminal Law.

Although not convened this year, 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 in England, Scotland, New Zealand, Canada, Australia and the Republic of Ireland. This meeting focuses 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.







7 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 CDPP, 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 within the Legal, Practice Management and Policy Branch to establish

and maintain links between prosecutors in Regional Offices and Commonwealth law-makers.

The CDPP's contribution to law reform includes 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 (Serious and Organised Crime) Act 2010* received Royal Assent on 19 February 2010. The Act provided for a number of amendments to the *POC Act 2002* including the introduction of unexplained wealth provisions; the removal of the limitation period for civil confiscation action; provision for civil restraint and forfeiture for serious offences; and the introduction of information-sharing provisions;
- ▶ the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010* also contained provision for the concept of joint criminal enterprise in the *Criminal Code*, called joint commission. In previous Annual Reports the CDPP has indicated that the lack of joint commission in the *Criminal Code* has impacted on Commonwealth prosecutions and accordingly, the addition of joint commission into the *Criminal Code* is welcomed by the CDPP;
- ▶ the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010* received Royal Assent on 19 February 2010.

The Act included:

- ▶ numerous technical amendments to the *POC Act 2002*, to improve the effectiveness of the Act, remove anomalies, and increase internal consistency;
- ▶ amendments to search warrant provisions in the *Crimes Act* to assist in searching electronic equipment;
- ▶ amendments to the National Witness Protection Program;
- ▶ new offences of assisting and associating with organised crime groups to be inserted into the *Criminal Code*;
- ▶ a number of amendments to the money laundering offences in the *Criminal Code*, including amendments of a technical nature raised by the CDPP with AGD;
- ▶ a new definition of ‘import’ for the serious drug offences in the *Criminal Code* to address the limitations discussed by the NSW Court of Criminal Appeal in *Campbell v R* (2008) 188 A Crim R 1.
- ▶ the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* received Royal Assent on 14 April 2010. The Act included:
 - ▶ an amendment to move the Child Sex Tourism offences from the *Crimes Act* to the *Criminal Code*;
 - ▶ an offence for persistent sexual abuse of a child outside of Australia;
 - ▶ aggravated child sex tourism offences in relation to a defendant in a position of trust or authority, or involving a child with a mental impairment;
 - ▶ grooming and procuring offences in relation to children outside of Australia;
 - ▶ an offence in relation to preparing for or planning a child sex tourism offence;
 - ▶ offences of possessing child abuse or child pornography material outside of Australia;
 - ▶ postal offences in relation to child pornography or child abuse material and in relation to grooming or procuring children or sending indecent material to a child;
 - ▶ an aggravated offence for child pornography and child abuse material offences (committing an offence on three or more occasions involving two or more people);
 - ▶ an amendment to the penalties for the child pornography and child abuse material offences from ten years to 15 years;
 - ▶ an offence of using a carriage service to engage in sexual activity with a child;
 - ▶ an offence of using a carriage service to transmit an indecent communication to a child; and
 - ▶ forfeiture provisions in the *Crimes Act* in relation to child sex offences.
- ▶ the *Anti-People Smuggling and Other Measures Act 2010* received Royal Assent on 31 May 2010. The Act, amongst other things, harmonised the people smuggling offences in the *Migration Act 1958* with the people smuggling offences in the *Criminal Code*; and
- ▶ the *Model Work Health and Safety Bill* was endorsed by the Workplace Relations Ministers Council in 2009.

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.

Section 23YV of the *Crimes Act* requires an independent review of the operation of Part 1D of the *Crimes Act*. This review considered the extent to which forensic procedures have contributed to the conviction of suspects; as well as the effectiveness of independent oversight and accountability mechanisms for the DNA database system; disparities between Commonwealth and State

regimes; and privacy or civil liberty issues. Section 23YV provides that this review include a nominee from the CDPP and Mr James Carter, Deputy Director, Legal, Practice Management and Policy Branch was appointed as the Director's nominee.

In 2009, the Australian Law Reform Commission released *Discussion Paper 74: Review of Secrecy Laws*. The CDPP provided a submission to the Commission providing comments in relation to the offences proposed in the Discussion Paper.

In May 2010 the Australian Parliamentary Joint Select Committee on Cyber-Safety invited the CDPP to make a submission in relation to their inquiry. The CDPP provided a submission in relation to the prosecution by this office of offences relating to using a carriage service to access or distribute child pornography material or child abuse material and grooming and procuring children using carriage services.

The CDPP has also provided submissions to a number of reviews relating to criminal law and procedure conducted by the State and Territory Governments. As the expertise and knowledge in relation to State and Territory procedural issues reside in our regional offices, this work has been facilitated by regional offices of the jurisdiction involved.

The CDPP was represented by members of the Sydney office on the Criminal Trial Efficiencies Working Group established by the NSW Attorney-General. The CDPP's Melbourne office has also worked very closely with the Office of the DPP of Victoria in preparation for the implementation of the *Criminal Procedure Act 2009* (Vic) and the *Evidence Act 2008* (Vic). The CDPP Melbourne office contributed to a discussion paper on the use of appropriate dispute resolution in the criminal justice

system and made submissions to the bail reform project in Victoria. Detailed submissions were also provided on various criminal procedure issues in relation to the exposure draft of the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Bill 2009* (Qld) by the CDPP Brisbane office. The CDPP Brisbane Office also provided detailed responses to the Queensland Government's discussion paper 'Criminal Justice Procedure in Queensland' and the Queensland Law Reform Commission's discussion paper 'Review of Jury Directions'.

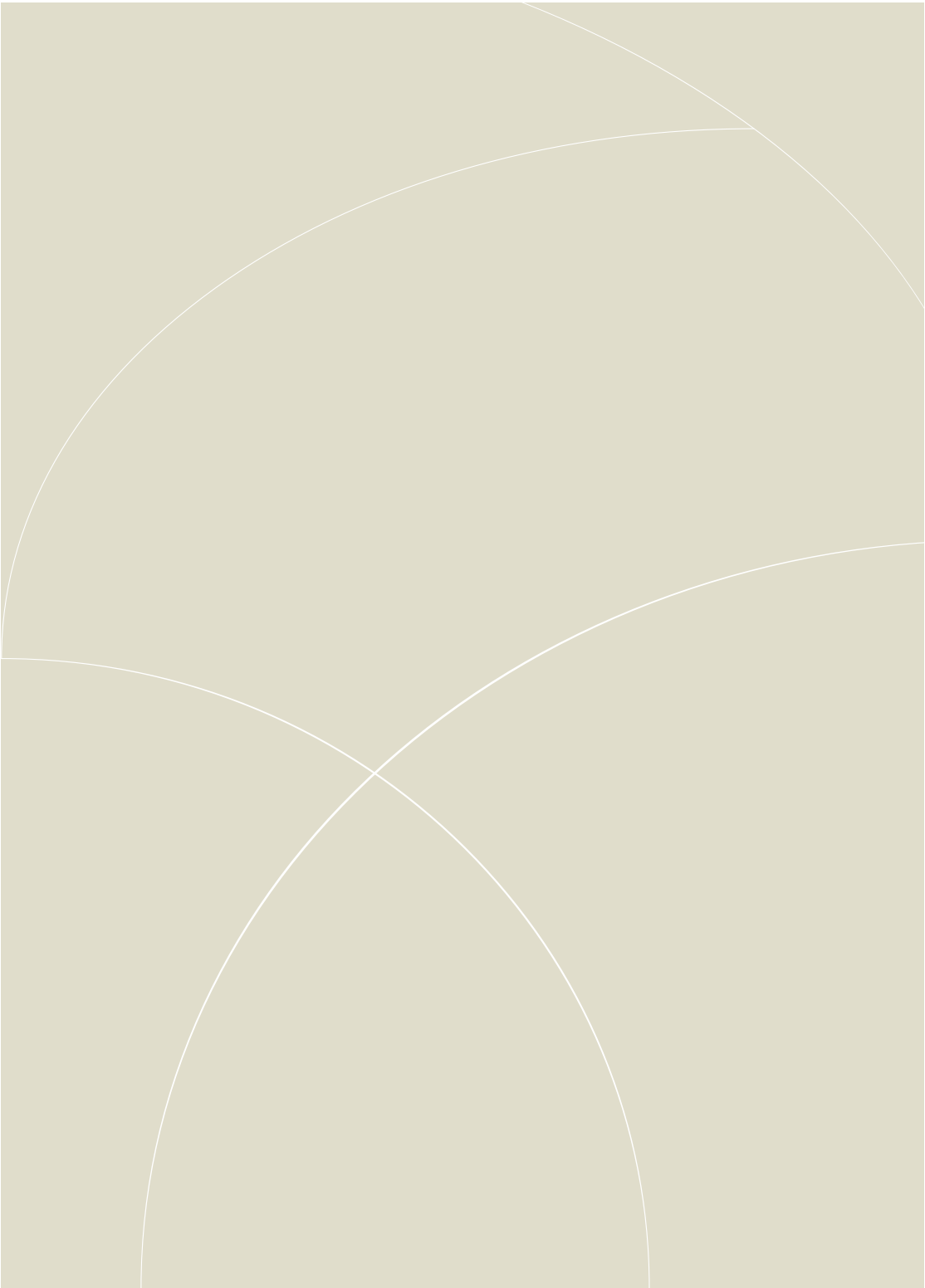
Liaison and Committees

The CDPP's input on legislative reform is facilitated by a close working relationship with AGD, in particular the Criminal Justice Division and the National Security Law and Policy Division. It is also facilitated by close liaison relationships with the Commonwealth departments and agencies that investigate Commonwealth offences or develop legislative proposals.

Where the CDPP identifies deficiencies in laws or aspects of laws that in the view of the CDPP should be clarified, these are brought to the attention of AGD or 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 at which law reform issues are raised.



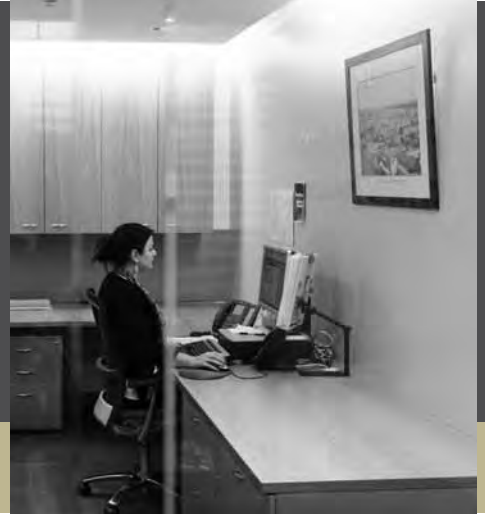




practice management

The CDPP seeks to provide
professional assistance
to referring agencies

Practice management



THE CDPP PROSECUTES A WIDE RANGE OF CRIMINAL OFFENCES REFERRED BY OVER 30 DIFFERENT INVESTIGATIVE AGENCIES IN EIGHT STATES AND TERRITORIES. THE LEGAL, PRACTICE MANAGEMENT AND POLICY 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 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.

Advice to the Director

One of the key areas of the CDPP's work is the provision of high-level legal advice to the Director on the exercise of the Director's statutory functions in accordance with the *Prosecution Policy*. This includes consideration of no bills, ex officio indictments, appeals against sentence, reference appeals, conspiracy consents and taking over and discontinuing prosecutions.

National Coordination

THE LEGAL, PRACTICE MANAGEMENT AND POLICY 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, there are networks in the areas of

people smuggling, 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 a range of agencies. The CDPP holds regular meetings at the national and regional level with many Commonwealth agencies. It also maintains relationships with other investigative agencies that from time to time refer briefs of evidence to the CDPP.

To support liaison relationships, on occasion the CDPP hosts national conferences addressing specific areas of work. These conferences provide a useful opportunity for prosecutors and investigators to discuss issues involved in dealing with specific types of criminal conduct and to strengthen prosecution action.

In June 2010, the CDPP held a prosecutors' conference in Canberra in relation to online child exploitation. The challenges of prosecuting in this area were discussed. Prosecutors also met with AFP officers involved in preparing briefs of evidence

including computer forensic evidence which forms a vital part of prosecuting these matters.

Victims

THE CDPP IS PROSECUTING AN INCREASING NUMBER OF MATTERS THAT INVOLVE INDIVIDUAL VICTIMS OF CRIME AS THE NATURE OF COMMONWEALTH CRIME CHANGES. THE CDPP RECOGNISES THE IMPORTANCE OF KEEPING VICTIMS INFORMED ABOUT MATTERS AND PROVIDING APPROPRIATE SUPPORT TO VICTIMS PARTICIPATING IN THE CRIMINAL JUSTICE PROCESS.

The *Prosecution Policy* states that it is important in all prosecution action that victims are treated with respect for their dignity. In the context of the *Prosecution Policy* a victim of crime is an identified individual who has suffered harm as the direct result of an offence or offences committed against Commonwealth law or prosecuted by Commonwealth authorities. 'Harm' includes physical or mental injury, emotional suffering and economic loss.

The *Prosecution Policy* provides for the views of any victims, where those views are available, and where it is appropriate, to be considered and taken into account when deciding whether it is in the public interest to:

- commence a prosecution;
- discontinue a prosecution;
- agree to a charge negotiation; or
- decline to proceed with a prosecution after a committal.

The *Prosecution Policy* also provides that the CDPP will comply with its *Victims of Crime Policy* in its dealings with victims.



CDPP Victims of Crime Policy

As discussed in last year's annual report, the Director approved the CDPP's *Victim of Crime Policy* on 15 June 2009. This has now been fully implemented and appropriate systems and procedures established.

The CDPP *Victims of Crime Policy* states that it is important that all CDPP staff treat victims with courtesy, dignity and respect. The CDPP recognises that in matters where there is a victim, that person has an important role in the prosecution process. The CDPP does not act on behalf of a victim as solicitors act for their clients. In carrying out its functions, the CDPP acts on behalf of the whole community. The role of the victim in the prosecution will depend on the circumstances of the case.

The *Victims of Crime Policy* addresses a number of matters including that victims should, on request, be kept informed of the progress of the prosecution in a timely manner, including:

- ▶ the charges laid;
- ▶ the date and place of hearing of any charges laid;
- ▶ the outcome of any bail proceedings; and
- ▶ the outcome of proceedings, including appeal proceedings.

Victims should be advised about the prosecution process, that is, the various stages in a matter being heard before a court. Where a victim may be required to give evidence, any inconvenience to the victim should be minimised, as far as possible. Victims should also be advised in relation to their role as a witness.

In people trafficking matters the Commonwealth has established the Support for Victims of People Trafficking Programme coordinated by the Office for Women.

The CDPP has produced a number of documents about the prosecution process which may be of assistance to victims, such as a step by step guide to the prosecution process, a guide to witnesses giving evidence in court, a glossary of commonly used terms and questions and answers for victims and witnesses. These resources are available at www.cdpp.gov.au.

Witness Assistance Service Pilot Project

The CDPP has a Witness Assistance Service officer located in the Sydney Office. This officer provides assistance to witnesses in the Sydney Office and acts as a resource for other offices. The CDPP has developed national resources and materials in relation to witnesses and our Witness Assistance Officer has been strategically involved in the implementation of the *Victims of Crime Policy*. A range of information and support services are provided to those referred to the Witness Assistance Service Officer including court tours; support at court; referrals to support services; and assistance with Victim Impact Statements.

Training

The CDPP recognises the importance of developing skills within the office through structured training. This year the CDPP has maintained its Continuing Legal Education training program.

The CDPP provides national online induction material for officers as they join the CDPP. This program has been developed to provide a comprehensive introduction to the Office and to cover all relevant procedures and policies to ensure that prosecutors are skilled for the work they perform. This includes areas such as the *Prosecution Policy*, the Guidelines and Directions Manual, and the respective roles and responsibilities of the CDPP and other agencies. This online resource is provided in addition to the training provided by supervisors.

Due to resourcing constraints the CDPP has not been able to contribute to the extent that it has previously to training courses for investigative officers conducted by referring agencies. Our contribution has been focussed on the role of the CDPP and the *Prosecution Policy*.

Manuals

The CDPP continues to maintain and update the Search Warrants Manual, the Telecommunications (Interception and Access) Manual and the Surveillance Devices Warrants

Manual. These manuals provide guidance on the legal requirements for obtaining and executing warrants under Commonwealth law. Given the technical nature of this area of law, the CDPP has an important role in ensuring that investigators are provided with clear and appropriate advice in relation to the exercise of powers under the relevant legislation and case law. Each of these Manuals is reviewed on a regular basis and is available electronically to CDPP officers and relevant Commonwealth investigators. 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.

Online Resources

The CDPP provides an *Information Service* to its Client Agencies via its Client Agencies website to update them on criminal law issues. The website covers Commonwealth criminal cases, new legislation, and recently published books, articles, conference papers and Government reports. This is in addition to the CDPP's online manuals for search warrants and electronic surveillance warrants.

This website also includes offence breakdowns and draft charges so that investigators are able to readily identify the physical and fault elements that must be proven in order to establish an offence and to assist in charges being formulated.

The *Commonwealth Sentencing Database* is a joint project of the CDPP, the National Judicial College of Australia and the Judicial Commission of NSW, based on sentencing information provided by the CDPP. The purpose of the Database is to provide judicial officers and other users with rapid and easy access to information about sentencing for Commonwealth offences and to assist judicial officers with their sentencing decisions. The Database is designed to provide primary research sources, such as judgments and legislation, linked to secondary resources including commentary on sentencing principles and sentencing statistics.

Contemporary prosecuting increasingly involves the management and presentation to court of voluminous evidential material. The CDPP has adopted the Ringtail computer litigation support system. Ringtail has replaced the previous LSS system as the method of handling electronic briefs of evidence and the innovative presentation of evidence using computers in court. This system enables the effective electronic management of large numbers of documents and is a particularly valuable resource in complex and protracted litigation.

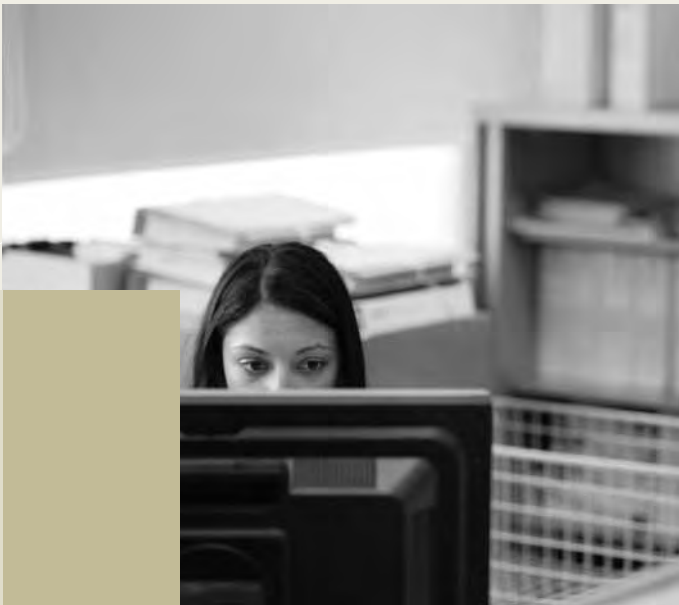
Joint Trials – State and Territory DPPs

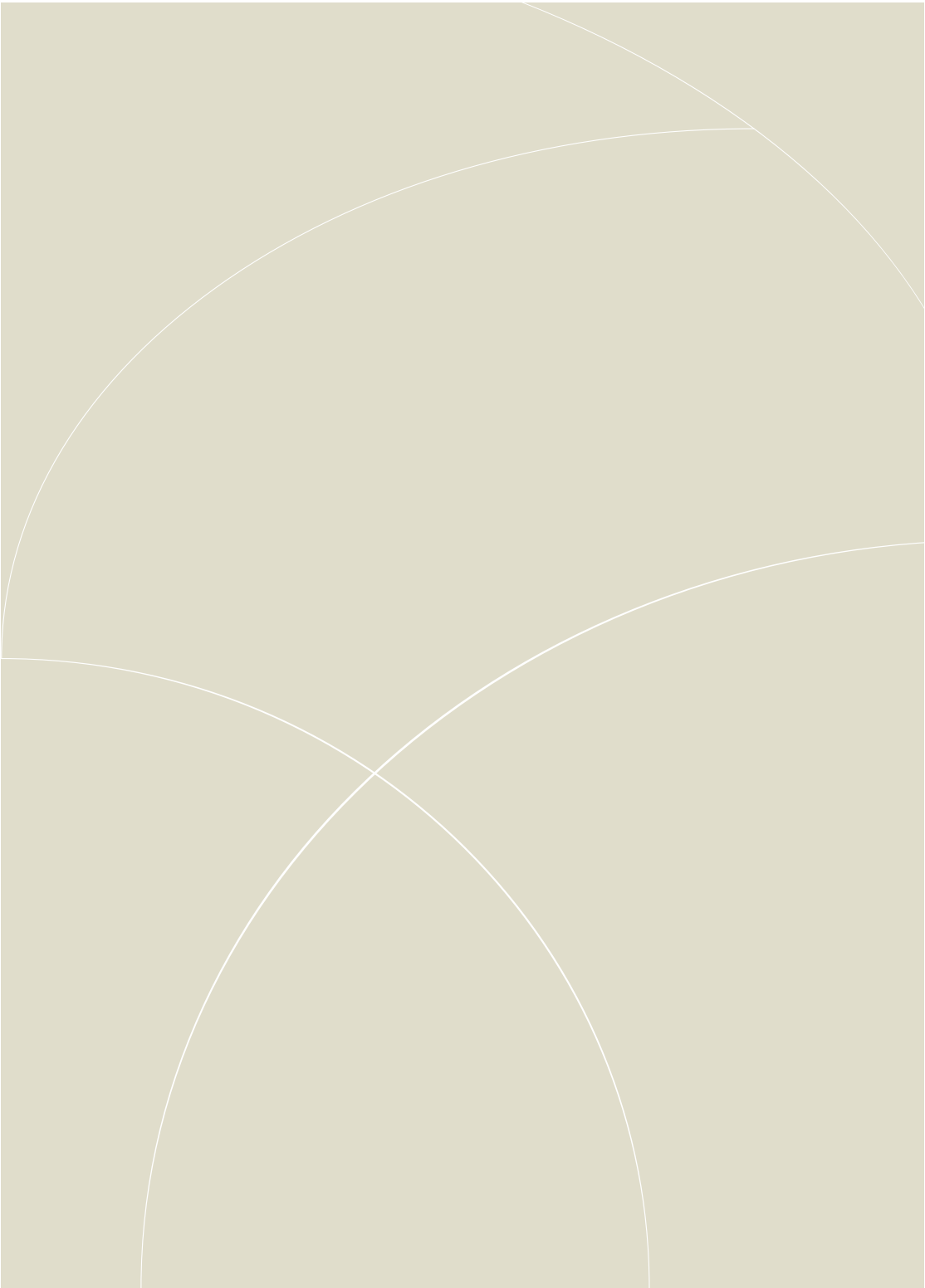
The Director is empowered to prosecute indictable offences against State and Territory laws where the Director holds an authority to do so under the laws of the relevant State or Territory. In addition, the Director is empowered to conduct committal proceedings and summary prosecutions for offences against State or Territory law where a Commonwealth officer is the informant.

The CDPP has arrangements in place with each of the Directors of Public Prosecutions in Australia concerning procedures for conducting trials which involve both Commonwealth and State or Territory offences. The CDPP is in the process of reviewing the arrangements with each of the State and Territory DPPs, with a view to putting all the arrangements in a similar format.

Disclosure

An important and ongoing issue in the CDPP's practice and in its work with Commonwealth investigative agencies is ensuring proper disclosure in prosecutions, as provided for in the CDPP *Statement on Prosecution Disclosure*. The CDPP is continuing to work with agencies to assist them to meet disclosure obligations by producing resources for investigators. The CDPP's *Statement on Prosecution Disclosure* is available at www.cdpp.gov.au.







corporate management

Corporate 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 Enterprise 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 a forum of Executive Officers and HR practitioners that meets regularly.

Staffing Profile

The employees of the CDPP are the most valuable resource of the Office. Fifty-five percent of staff members are lawyers. Forty-five percent of 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 2010 the total number of staff was 623. A breakdown of this figure appears in the tables at the end of this Chapter. The average staffing level for the year was 608.96. 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 2009-2010 the CDPP continued the emphasis of its workforce planning activities away from externally focussed recruitment campaigns to internally focused staff retention.

Initiatives have included an increased focus on developing our people through the Competency Framework project which commenced in 2010. This project incorporates programs such as leadership and management training and career development and management. These initiatives are discussed in more detail under the Learning and Development and Competency Framework sections below.

In addition to these initiatives, and to assist the CDPP to effectively manage its Information and Communication Technology (ICT) workforce into the future, work has commenced on an ICT workforce plan. The ICT workforce plan is proposed to be completed in late 2010.

Workplace Agreements

ENTERPRISE AGREEMENT

The CDPP Enterprise Agreement for 2009-2011 came into effect on 30 November 2009. The nominal expiry date of the Agreement is 30 June 2011. The Agreement covers all employees of the CDPP except

for Senior Executive Service (SES) employees and employees whose salaries are not paid by the CDPP.

The main features of the Enterprise Agreement are the Competency Framework project; flexible employment and leave provisions; a focus on developing our people; and recognition of those employees with additional responsibilities in providing a safe, secure and healthy workplace.

As at 30 June 2010, there were 593 employees covered by the Agreement.

COMMON LAW CONTRACTS

The CDPP has a Common Law Contract (CLC) in place for each substantive SES employee. As at 30 June 2010 there were 29 CLCs in place.

SECTION 24(1) DETERMINATION

In 2009-2010 the CDPP made 6 determinations pursuant to section 24(1) of the *Public Service Act 1999*.

WORKPLACE PARTICIPATION

The CDPP Enterprise Agreement includes provision for employees and their representatives to be consulted in relation to the implementation of major change. Consultation occurs mainly through regular workplace participation meetings, special purpose meetings called to discuss specific issues, or all staff communications.

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.

A program of leadership and management training was developed and a series of pilot courses conducted in 2009. The training focused on identified strategic themes that include the role of leaders; attracting and retaining staff; supporting employee wellbeing; and working with client

agencies. It is proposed that all non-SES staff across all regions will be offered this training.

Staff awareness and education programs on the CDPP Risk Management Framework and Security Guidelines are being offered to all staff.

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.

The CDPP has committed to providing Indigenous cultural awareness training in the Enterprise Agreement and as one of the key practical measures of the Reconciliation Action Plan. Pilot courses of Indigenous Cultural Awareness training were conducted in early 2010 and it is proposed that the training will be made available to all CDPP employees in late 2010.

Direct expenditure on external training for the year was \$205,475. There was also considerable in-house training and 'on the job' training, which was not costed.

Competency Framework

The concept of a competency framework was initially introduced into the CDPP with a focus on recruitment and selection. Five broad competencies were considered to capture the skills required for most CDPP positions and were used instead of selection criteria as the basis for selecting staff. Based on the Australian Public Service Commission's (APSC) Integrated Leadership System (ILS) but with greater emphasis on technical skills, the competencies are currently set out under the headings of Aptitude and Experience, Research and Advice, Working Relationships, Drive and Integrity and Communication.

A project commenced in 2010 to further develop and expand the Competency Framework so that it provides the structural link between the Strategic Priorities, the Enterprise Agreement and major HR activities. The framework will do so primarily by maintaining a focus on achieving organisational outcomes down to an individual level through

recruitment, learning and development, and performance management activities.

Employee Wellbeing Program

The CDPP recognises that a supportive work environment is an important factor in protecting employees against psychological harm and promoting psychological resilience. The Employee Wellbeing Program (EWP) incorporates a range of positive employment practices and support services that promote and protect employee wellbeing within the CDPP.

The practical implementation of the EWP has encompassed the provision of mental health literacy and education workshops for staff and managers across the CDPP and access to wellbeing assessments and counselling for employees working with potentially offensive or traumatic case materials. The CDPP also conducts regular and appropriate short courses related to employee wellbeing through its Employee Assistance Programme (EAP).

The EWP is reviewed regularly to ensure its continued application and relevance. The EWP was reviewed in early 2010 and feedback provided across CDPP offices indicates that the program has been valuable; the workshops well received; and the wellbeing assessments are proving to be a good preventative strategy.

Occupational Health and Safety

Information about the CDPP health and safety management arrangement in accordance with section 74 of the *OHS Act 1991* is at Appendix 3.

Workplace Diversity

The CDPP aims to integrate the principles of workplace diversity into all aspects of human resource management. This involves raising awareness of, and promoting, core values and standards of behaviour among all staff. It also involves embedding those principles into all human resource management policies and

practices, including the performance management scheme and selection and induction processes.

The CDPP's Workplace Diversity Program was revised during 2010 and builds on earlier workplace diversity plans and programs. The revised program recognises and incorporates more recent developments and progress the CDPP has made as an organisation in this area.

The CDPP's workplace diversity profile is shown in the tables at the end of this Chapter. The table is based on information volunteered by staff, and officers can choose not to disclose their status. Accordingly the information may not be complete.

RECONCILIATION ACTION PLAN

The CDPP's Reconciliation Action Plan (RAP) was approved in May 2010 following a period of development in consultation with employees, management and Reconciliation Australia. The RAP working group included representatives from CDPP Aboriginal and Torres Strait Islander employees, human resources and senior management with support from the Director.

The CDPP's RAP contains achievable targets to enable the organisation to implement the Plan. The RAP will be reviewed annually incorporating the views of the RAP working group, senior management and employees. The CDPP's RAP was officially launched and published in August 2010 and is at Appendix 4 to this Report.

STATUS OF WOMEN

As at 30 June 2010, women comprised 68.22% of CDPP employees, and 63.22% of lawyers.

Of the 43 full-time members of the SES, 14 were women. There were two part-time members of the SES, both of whom were women. In percentage terms, 35.55% of SES positions were filled by women.

As at 30 June 2010, there were 54 women working as legal officers on a part-time basis.

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

COMMONWEALTH DISABILITY STRATEGY

The CDPP reviews its employment practices to ensure that they comply with the requirements of the *Disability Discrimination Act 1992*. A report on the implementation of the Commonwealth Disability Strategy can be found in the Australian Public Service Commission's State of the Service agency survey.

Privacy

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

Performance Pay

The CDPP does not pay performance pay.

Financial management

FINANCIAL STATEMENTS

The audited financial statements 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 2009) 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 program. 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 *FMA 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 2009-2010 were \$1.340m (1.2%) less than 2008-2009. This decrease is largely due to decreased appropriations from government and as a result of the winding-up of measures announced in previous budgets.

Operating expenses for 2009-2010 were \$1.307m (1.3%) less than 2008-2009. This decrease is largely due to decreased appropriations from government. This has impacted CDPP's activities by:

- ▶ the average staffing level in 2009-2010, on a full-time equivalent basis, decreased by 21 (3.6%) from 2008-2009 which led to an decrease in employee expenses of \$0.288m;
- ▶ supplier expenses for prosecution legal costs decreased by \$0.534m;
- ▶ supplier expenses for property increased by \$0.421m as a result of general increase in lease payments;
- ▶ supplier expenses for other items decreased by \$0.328m as a result of the overall decrease in activity, including spending on information and communications technology services, staff training and travel; and
- ▶ depreciation expenses decreased by \$0.371m as a result of a small reduction in leased office space.

Cost Recovery Arrangements

The CDPP has a Memorandum of Understanding with the ATO. The ATO transfers part of their appropriation to the CDPP to cover the cost for the prosecutions of offences under GST legislation. The amount receipted under this arrangement was \$2 million, the same as in 2008-2009.

Purchasing

The CDPP adheres to the principles of value for money; encouraging competition amongst actual and potential suppliers; the 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* (CPGs).

Competitive Tendering and Contracting

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

Open Tender:	A procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are sought from the Australian Government AusTender internet site.
Select Tender:	A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. This procurement process may only be used under defined circumstances.
Direct Sourcing:	A form of restricted tendering, available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and/or services sought.
Panel:	An arrangement under which a number of suppliers, initially selected through an open tender process, may each supply property or services to an agency as specified in the panel arrangements. Quotes are sought from suppliers that have pre-qualified on agency panels to supply the government. This category includes standing offers and supplier panels where the supply of goods and services may be provided for a pre-determined length of time, usually at a pre-arranged price.

All consultancies with a value over \$80,000 are publicly advertised. Consultancies with a value of less than \$80,000 are either publicly advertised or sought by quote. Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of

Consultancy Services

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

As a general rule, consultancy services involve the development of an intellectual output that assists with the CDPP's decision making, and that the output reflects the independent views of the service provider. For more information on what constitutes a consultancy, refer to <http://www.finance.gov.au/procurement/>.

The methods of selection used for consultancies are categorised as follows:

contracts and consultancies is available on the AusTender website www.tenders.gov.au.

During 2009-2010, the CDPP did not enter into any new consultancy contracts with an estimated value of \$10,000 or more. Further details are provided in Table 6 at the end of this Chapter.

In addition, 6 ongoing consultancy contracts were active during the 2009-2010 year, involving total actual expenditure of \$356,826.

AUSTRALIAN NATIONAL AUDIT OFFICE ACCESS CLAUSES

During the reporting period, the CDPP did not let any contracts for \$100,000 or more (inclusive of GST) that do not provide for the Auditor-General to have access to the contractor's premises.

EXEMPT CONTRACTS

The CDPP has exempted the publication of details of legal counsel on the basis that to do so would disclose exempt matters under the *Freedom of Information Act 1982*.

Asset Management

The CDPP's major assets are office fit-out, office furniture, purchased software and library holdings. An asset revaluation of all assets, except for software and library holdings, was undertaken during the year. This resulted in a net increase in the value of these assets by \$2.721m. A stocktake was conducted during the year to ensure the accuracy of asset records. 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 ICT equipment. During the year, the CDPP vacated office space in Parramatta, Melbourne and Adelaide.

Audit Committee

The *FMA Act 1997* requires Chief Executives to establish an Audit Committee to assist them in the financial governance of their agency. The Committee reviews, monitors and recommends improvements to the CDPP's 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, Practice Management and Policy, 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 year.

Internal audit work is outsourced to provide an independent review of CDPP's processes and procedures. Like the previous two internal audits, the 2009-2010 internal audit was carried out by Deloitte Touche Tohmatsu. The review was undertaken at Head Office and three regional offices – Sydney, Adelaide and Perth. The following areas were reviewed:

- purchases and payables (including credit cards);
- domestic and international travel;
- human resources and payroll functions;
- nomination of counsel;
- use of Commonwealth vehicles;
- custody of keys and safe combinations; and
- accountable forms.

The overall results of the internal audit were good with minor procedural changes recommended that the CDPP will take action to implement during 2010-2011.

The CDPP has an integrated risk management framework which standardises all risk assessment methods and documentation.

Using this framework, the CDPP has prepared and implemented a Fraud Risk Assessment and Fraud Control Plan, which is in accordance with the *Commonwealth Fraud Control Guidelines 2002*. Agencies subject to the *Financial Management and Accountability Act 1997* are only required to undertake a total review of the effectiveness of fraud control arrangements, including conducting a fresh risk assessment, at least every two years providing that there is no major change in

functions. The CDPP Fraud Control Plan and Fraud Risk Assessment were last updated during 2008-2009.

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 2009-2010 financial statements.

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

- ▶ ANAO Audit Report No.17 *'Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2009'*.

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 ANAO website: <http://www.anao.gov.au>.

In addition, the CDPP was referred to in ANAO Report No.23 2009-10 *'Illegal Foreign Fishing in Australia's Northern Waters'*.

The CDPP was not referred to in any report by a Parliamentary Committee. In May 2010 a report by the Acting Commonwealth Ombudsman entitled 'Centrelink and Commonwealth Director of Public Prosecutions, Review of Circumstances leading to a fraud conviction' included two recommendations directed to the CDPP. The CDPP has provided a response to the Acting Ombudsman in relation to these and informed the Acting Ombudsman that the recommendations were accepted. 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

Information about advertising and market research undertaken by the CDPP is at Appendix 5 to this Report

Legal Services Expenditure

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

The Legal Services Directions are not intended to cover the handling of criminal prosecutions and

related proceedings (see General Note 4 to the Directions). The CDPP's report therefore relates to the CDPP's administrative activities only.

The total expenditure by the CDPP on legal services (excluding the handling of criminal prosecutions and related proceedings) during 2009-2010 was \$394,600. Further details are in Table 9 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. The basic office tools are Windows Vista and 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 continued implementation of Ringtail Legal 2005 for legal matters.

The CDPP completed an upgrade of its network infrastructure (routers and switches), consolidated and standardised its database systems and consolidated Exchange servers into two nodes cluster. The CDPP finalised its process of virtualising applications servers (incl. SAP). At the time of writing, the CDPP is in the process of implementing new PABXs including VOIP services and finalising the tender process for its financial and human resource systems.

INTRANET AND INTERNET

The CDPP continues its development of a Portal based platform to provide access to the CDPP's legal and administrative information. This year's work was focused on finalising legal and administrative reporting. The CDPP continued with development of administrative and legal tasks based on CDPP's case workflow and 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.

LIBRARIES

The CDPP has a library in each Regional Office that 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.

The library provides access to both external legal information resources and in-house materials on the CDPP Portal's Legal Resources page. 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 policy development in conjunction with the Deputy Directors; updating CDPP in-house databases; distributing in-house materials; disseminating information; cataloguing; and managing the library system. Regular librarians' meetings are held to co-ordinate activities and develop shared procedures. The library provides current awareness services to CDPP staff, and an external current awareness service for client agencies to assist investigators and client agencies to keep up-to-date with legal developments.

The CDPP uses the FIRST library management system. A major web based upgrade to the FIRST software is currently being implemented. Links to electronic copies are included on records when the material is available in an electronic format.

The results of a survey of CDPP lawyers conducted in 2010 is informing a review of library resources provided and services undertaken.

PUBLIC RELATIONS

All media inquiries are handled by a media contact officer in Head Office, Canberra, who can be contacted on (02) 6206 5606 during office hours.

The CDPP will provide accurate information on any matter that is on the public record but will not disclose information on cases that are yet to come before the courts.

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

ECOLOGICALLY SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL PERFORMANCE

Information about the CDPP's ecologically sustainable development and environmental performance is at Appendix 6 to this Report.

Business Regulation

The CDPP has no direct role in business regulation other than to prosecute criminal offences in appropriate cases. The CDPP's activities in the area of Commercial Prosecutions are reported in Chapter 2.3 of this Report.

Public Comment

Any person is free to write to the CDPP about any matter at the addresses shown at the front of this Report or email any comments, suggestions or queries about the office of the CDPP and its functions to inquiries@cdpp.gov.au.

Table 1(a): Staff as at 30 June 2010

	ACT	NSW	VIC	QLD	SA	WA	TAS	NT	Total
Director	1								1
SES Band 3	1								1
SES Band 2	3	1	1	1		1			7
SES Band 1	6	10	7	7	1	4	1	1	37
PLO	11	24	18	17	4	14		1	89
SLO	9	39	27	17	5	13	1	3	114
LO2	5	18	16	10	3	8	5		65
LO1	3	14	7	8	3			1	36
EXEC 2	11	2	1	1					15
EXEC 1	7	6	3	3	2	2			23
APS 6	8	4	2	2	1	1		1	19
APS 5	9	9	7	3		5	1	1	35
APS 4	12	18	9	16	2	12	1		70
APS 3	3	31	22	13	7	10	2	2	90
APS 2	1	11	2	1		5			20
APS 1		1							1
Total	90	188	122	99	28	75	11	10	623

* Includes inoperative staff. Staff on Temporary Assignment of Duties (TAD) for 3 months or more at 30 June 2010 reported at their TAD classification.

Table 1(b): Staffing Summary 2009-2010*

Category	Number
Statutory Office Holders	1
Total Staff Employed under the <i>Public Service Act 1999</i>	560
Total Staff Employed under the <i>DPP Act 1983</i>	62
Total	623

* Includes inoperative staff
The total number of non-ongoing staff in this table is 110.

Table 2: Staff as at 30 June 2010 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			7
Band 1	23	12		2	37
Legal Officers	85	164	1	54	304
Executive Officers	19	17	1	1	38
APS 1-6	58	140	4	33	235
Total	192	335	6	90	623

* Includes inoperative staff. Staff on Temporary Assignment of Duties (TAD) for 3 months or more at 30 June 2010 reported at their TAD classification.

Table 3: Staff usage by Office

Office	Actual Average Staffing 2009-2010
ACT	88.68
NSW	184.65
VIC	120.82
QLD	99.14
SA	29.83
WA	68.17
TAS	8.01
NT	9.66
Total	608.96

Table 4: Workplace diversity profile as at 30 June 2010*

Classification	Male	Female	ATSI**	PWD***	First Language English Plus Another	First Language Other than English
Director	1					
SES Band 3	1					
SES Band 2	5	2				2
SES Band 1	23	14			2	1
Legal Officers	86	218	2	4	34	19
Executive Officers	20	18			2	6
APS Employees	62	173	4	8	32	21
Total	198	425	6		70	49

* Includes inoperative staff. Staff on Temporary Assignment of Duties (TAD) for 3 months or more at 30 June 2010 reported at their TAD classification.

** Aboriginal and Torres Strait Islander

*** Person with a Disability

Table 5: Salary Scales as at 30 June 2010

Classification	Salary
SES Band 3	\$211,234 - \$225,780
SES Band 2	\$169,662 - \$193,023
SES Band 1	\$154,382 - \$163,115
Principal Legal Officer	\$111,666 - \$116,475
Executive Level 2	\$102,343 - \$113,590
Senior Legal Officer	\$84,227 - \$102,343
Executive Level 1	\$84,227 - \$90,899
APS 6	\$65,845 - \$75,541
Legal Officer 2	\$61,410 - \$73,509
APS 5	\$61,012 - \$64,659
Legal Officer 1	\$54,769 - \$59,412
APS 4	\$54,769 - \$59,412
APS 3	\$49,208 - \$53,060
APS 2	\$44,455 - \$47,928
APS 1	\$34,872 - \$42,286

Table 6: Consultancy services let during 2009-2010 of \$10,000 or more

Consultant Name	Description	Contract Price (inc. GST)*	Selection Process**	Justification++
Nil	N/A	-	N/A	N/A
Total		-		

Notes:

* Actual value if completed, estimated value at 30 June if not completed.

** Procurement Method

- Publicly advertised and an open tender process was adopted.
- Not publicly advertised. Firms may be approached through a selective tender process.
- Direct sourcing and receive an extension of an existing contract.
- Quotes sought from suppliers who were previously selected through an open tender process.

++ Reason for Contract

- Skills currently unavailable within CDP
- Need for specialised or professional skills
- Need for independent research or assessment

Table 7: Agency Resource Statement

	Actual Available Appropriation for 2009-10 \$'000 (a)	Payments Made 2009-10 \$'000 (b)	Balance Remaining 2009-10 \$'000 (a)-(b)
Ordinary Annual Services			
Departmental appropriation			
Prior year departmental appropriation	68,808	102,025	(33,217)
Departmental appropriation ¹	108,318		108,318
Reductions in appropriations		12,553	(12,553)
s.30 Repayments to the Commonwealth	234		234
s.30A GST Recoverable	3,571		3,571
s.31 Relevant agency receipts	3,040		3,040
Total	183,971	114,578	69,393
Administered Expenses			
s.28 Repayments required or permitted by law	-	52	(52)
Total	-	52	(52)

1. *Appropriation Act (No. 1) 2009-2010.*

Table 8: Resources for Outcome

Expenses and Resources for Outcome 1				
Outcome 1: Maintenance of law and order for the Australian community through an independent and ethical prosecution service in accordance with the Prosecution Policy of the Commonwealth.	Budget 2009-10 \$'000 (a)	Actual Expenses 2009-10 \$'000 (b)	Variation 2009-10 \$'000 (b)-(a)	Budget 2010-11 \$'000
Program 1.1: An independent service to prosecute alleged offences against the criminal law of the Commonwealth, in appropriate matters, in a manner which is fair and just and to ensure that offenders, where appropriate, are deprived of the proceeds and benefits of criminal activity.				
Administered Expenses				
Total Administered Expenses	2,300	2,202	(98)	2,300
Price of Departmental Outputs				
Program 1.1: Revenue from Government (Appropriations) for Departmental Outputs	108,318	105,421	(2,897)	99,600
Revenue from other sources	2,795	2,650	(145)	2,795
Total Price of Departmental Outputs	111,113	108,071	(3,042)	102,395
(Total price of Outputs and Administered Expenses)	113,413	110,273	(3,140)	104,695

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.	Payments \$ (GST inc.)
Agency's total legal services expenditure		394,600
Agency's total external legal services expenditure		394,600
External expenditure on solicitors		394,600
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

Notes:

1. Excludes the handling of criminal prosecutions and related proceedings.



Appendix one

Statement under the *Freedom of Information Act 1982* (Cth)

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 in Chapter 1.

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

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

- (c) Categories of documents that are maintained in the possession of the agency that are:

- (i) Documents referred to in paragraph 12(1)(b) or 12(1)(c) of the *Freedom of Information Act 1982*; or
- (ii) Documents that are customarily made available to the public, otherwise than under the *Freedom of Information Act 1982*, free of charge on request.

The following categories of documents are available (other than under the *Freedom of Information Act 1982*) via the CDPP website or can be requested as hardcopies:

- ▶ CDPP Annual Reports;
- ▶ *The Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process*;
- ▶ *Statement on Prosecution Disclosure*;
- ▶ *Guidelines on Brief Preparation*;
- ▶ *Guide to Witnesses of Commonwealth Crimes – Giving Evidence in Court*;
- ▶ *Steps in the Commonwealth Prosecution Process*;
- ▶ *Victims of Crime Policy*; 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 required, 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 8:30 to 5:00 p.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

A. CORPORATE PROFILE

Vision:

A fair, safe and just society where the laws of the Commonwealth are respected and maintained and there is public confidence in the justice system.

Purpose:

To operate an ethical, high quality and independent prosecution service for Australia in accordance with the *Prosecution Policy of the Commonwealth*.

Core values:

We value:

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

- ▶ leadership from senior lawyers and managers;
- ▶ accountability and excellence in governance within the CDPP; and
- ▶ protecting the natural environment.

Outcomes:

A contribution to the safety and well-being of the people of Australia by assisting in the protection of the resources of the Commonwealth through the maintenance of law and justice and by combating crime.

Output:

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

B. STRATEGIC THEMES

1. Conduct cases ethically and professionally;
2. Recruit, develop and retain high quality people;
3. Continuously improve CDPP performance;
4. Provide professional assistance to referring agencies; and
5. Actively contribute to law reform and whole of Government law enforcement initiatives.

C. STRATEGIC PRIORITIES

1	Conduct cases ethically and professionally	2	Recruit, develop and retain high quality people	3	Continuously improve CDDP performance	4	Provide professional assistance to referring agencies	5	Actively contribute to law reform & whole of Govt law enforcement initiatives
PRIORITIES 1.1 Adopt the highest professional and ethical standards in prosecutions and in dealing with proceeds of crime 1.2 Make all case decisions in accordance with: – the law; – the <i>Prosecution Policy of the Commonwealth</i> ; and – CDDP policy 1.3 Ensure compliance with the Director's instructions and CDDP policies 1.4 Capture and share important corporate knowledge amongst our people 1.5 Undertake case reviews 1.6 Ensure processes and programs maintain our people's adherence to ethical standards 1.7 Treat victims with respect and dignity 1.8 Decisions to be made: – in a timely fashion; and – by people at the appropriate level 1.9 Use our people's expertise throughout and between our offices 1.10 Meet challenges arising from changing technology		PRIORITIES 2.1 Recruit and retain high quality people 2.2 Implement strategies to build and sustain the CDDP as an employer of choice 2.3 Develop skilled people through: – training courses; – on the job experience; – mentoring; – the CDDP's performance management scheme; and – other innovative ways. 2.4 Foster and acknowledge good quality performance 2.5 Manage people effectively and professionally and have regard to feedback on performance		PRIORITIES 3.1 Monitor CDDP performance against standards and goals to improve quality, efficiency and effectiveness 3.2 Continue to develop national consistency recognising that the CDDP operates in different jurisdictions 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: • workforce planning; • performance management; and • employment practices 3.4 Provide a safe, secure and healthy workplace 3.5 Adhere to and promote: – Australian Public Service values; – APS and CDDP Codes of Conduct; and – diversity principles 3.6 Value our people's ideas 3.7 Ensure that the CDDP's library, IT and administrative people and systems continue to provide high level support		PRIORITIES 4.1 Provide professional and timely legal advice to investigators and agencies 4.2 Liaise effectively with referring agencies at regional and national level 4.3 Identify and co-operate with referring agencies' enforcement strategies 4.4 Advise on investigator training needs and assist Commonwealth agencies with training investigators on areas of CDDP legal expertise 4.5 Develop and provide high quality materials on areas of CDDP legal expertise 4.6 Conduct regular referring agency surveys 4.7 Continue to develop nationally consistent approaches to assistance for referring agencies		PRIORITIES 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 5.2 Encourage prosecutors to identify deficiencies in the application of Commonwealth law 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	

Appendix three

Occupational Health and Safety

The CDPP's Health and Safety Management Arrangements (HSMAs) were developed in accordance with the *Occupational Health and Safety Act 1991 (OHS Act)* and were first released in August 2008.

A recent Comcare review of agency HSMAs found that the CDPP HSMAs are compliant with the *OHS Act* and that there are appropriate processes in place to review and vary the agreement and resolve disputes in accordance with the *OHS Act*.

Updating and refining the HSMAs is a continuing process and has included amendments to the travel safety arrangements during 2009 to provide clarification. Additional information on risk management and new Rehabilitation and Return to Work Arrangements were also implemented.

The first formal review of the HSMAs is scheduled for the second half of 2010.

The measures contained in the HSMAs and supplementary policies assist the CDPP to achieve its strategic priority to 'provide a safe, secure and healthy workplace'.

The CDPP managed 24 non-compensable cases and six compensable cases during 2009-2010.

Two accidents and one dangerous occurrence under section 68 of the *OHS Act* were reported during the year. There were no investigations under sections 29, 46 or 47 of the *OHS Act* reported during the year.

Appendix four

Reconciliation Action Plan

DIRECTOR'S MESSAGE

I congratulate the Reconciliation Action Plan working group, led by the Brisbane Deputy Director David Adsett, on bringing the Reconciliation Action Plan into being. I also thank Reconciliation Australia for their assistance and guidance during the processes of consultation that have led up to this day.

My Office is committed to a system of justice, not just a system of law, although we must work within the framework of law that Parliament sets for us. The substance of our commitment to justice can be seen in the *Prosecution Policy of the Commonwealth* and in the reflected values of an ethical approach to prosecuting effectively and fairly for the benefit of all Australians. This approach guides our day to day work.

It is therefore particularly appropriate that we should as an office embrace reconciliation as part of our working ethos, expressed in our case through the Reconciliation Action Plan. The plan is designed to ensure that in our work we exemplify respect for the unique place of Indigenous people, both within the community and as valued members of this office joining us in its service.

The journey towards true reconciliation is a long and continuing one but one which is very worthwhile for all Australians.

I have great pleasure in launching the Reconciliation Action Plan and commending it to all who work within the national offices of the CDPP.

Christopher Craigie SC

Director

Our Vision For Reconciliation

Our vision is one of a national organisation that understands the history and aspirations of Aboriginal and Torres Strait Islander peoples, is culturally aware and demonstrates this in the way we do our business.

Our Business

The role of the CDPP is to prosecute offences against Commonwealth law and to confiscate the proceeds of Commonwealth crime. We do this by operating an ethical, high quality and independent prosecution service for Australia in accordance with the *Prosecution Policy of the Commonwealth*.

The core values of the CDPP are valuing the knowledge, skills and commitment of our people and treating everyone with courtesy, dignity and respect.

The CDPP Strategic Priorities are:

- ▶ 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 and whole of Government law enforcement initiatives.

Our Reconciliation Action Plan

The CDPP's Reconciliation Action Plan (RAP) has been developed by the RAP Working Group in consultation with CDPP management and employees. The RAP working group included representatives from our Aboriginal and Torres Strait Islander employees, human resources, a representative of senior management Deputy Director of CDPP Queensland, and is supported by the Director. The RAP and the action we have committed to will be reviewed annually incorporating the views of the RAP working group, CDPP senior management and employees.

The development of our RAP was facilitated by drawing on Reconciliation Australia models and liaison with our Reconciliation Australia Adviser and Relationship Manager. Review of other RAPs, published material related to reconciliation such as the 'Closing the Gap' report, the National Indigenous Justice Strategy, and the Prime Minister's apology speech provided inspiration during the development of our RAP.

The continuing support of senior management through participation in the RAP working group, consultation and endorsement of the final RAP assisted greatly in its development and will enable the CDPP to deliver on the action committed to in this RAP.

1. Relationships – *Building respectful relationships between Aboriginal and Torres Strait Islander peoples and other Australians will assist the CDPP contribute toward a fair, safe & just society where there is public confidence in the justice system.*

Action	Responsibility	Timeline	Measurable Target
1.1. Develop opportunities for staff to network internally and within Attorney-General's portfolio.	HR/RAP Working Group	December 2010	Information on portfolio Indigenous networks provided to employees. Number of employees participating in networks.
1.2. Provide employees with information regarding APS-wide initiatives e.g. Indigenous networks, Indigenous portal.	HR/RAP Working Group	June 2011	Information distributed to employees via Reconciliation page on Intranet.

Action	Responsibility	Timeline	Measurable Target
1.3. Use the RAP launch to encourage existing employees to update the Equity and Diversity information on their HR record.	HR	June 2010	Number of employees identifying as Indigenous.
1.4. Develop and maintain a Reconciliation page on the CDPP intranet, including a calendar of significant National events.	RAP Working Group/IT	June 2011	Web page containing relevant links and information is established.
1.5. Develop relationships with the Indigenous Legal Community by utilising and building on existing networks with external bodies such as the National Indigenous Lawyers Association and State equivalents.	RAP working group/ Executive Officers/HR	June 2011	Establishment and extent of liaison and communication with external organisations.

2. Respect – *Mutual respect is important to set the foundations of reconciliation outcomes for the CDPP. The development of respect will be achieved through delivering cultural awareness training to staff, improving communication and raising organisational awareness of Indigenous issues.*

Action	Responsibility	Timeline	Measurable Target
2.1. Provide cultural awareness training and encourage all CDPP employees to participate.	HR/Deputy Directors	June 2011	Training provided at all CDPP sites. Number of staff attended.
2.2. Support employee attendance at external seminars and forums promoting cultural awareness and recognition of Indigenous issues e.g. National Indigenous Legal Conference.	Deputy Directors	June 2011	Number of events attended by staff. Number of staff providing feedback.
2.3. Review policies to ensure they provide a culturally supportive environment and workplaces e.g. HR policy, CDPP Victims of Crime policy.	HR/LPM & P/ RAP Working Group	October 2010	Number of revised policies. Number of newly developed policies that support reconciliation.
2.4. Use the Continuing Legal Education (CLE) forums or equivalent opportunities to provide information and education on legal issues affecting Indigenous people.	LPM & P/ RAP Working Group	December 2010	Indigenous issues included on CLE agenda.
2.5. Support national and local Indigenous reconciliation events, particularly those focused on employment and legal issues.	Deputy Directors/ HR/ RAP working group	December 2010	Details of events published on CDPP Intranet. Number and type of event supported.
2.6. Develop and inform employees about Acknowledgement of Country protocols.	HR/RAP working group	July 2011	Protocols developed and distributed to all staff. All staff utilising protocols as appropriate.

3. Opportunities – *Creating opportunities for Aboriginal and Torres Strait Islander peoples is important for the CDPP to optimise our cultural diversity, to demonstrate we value our people and to enhance the knowledge, skill and commitment of our workforce.*

Action	Responsibility	Timeline	Measurable Target
3.1. Investigate and establish opportunities in legal and non-legal areas such as work experience, secondment opportunities and portfolio trainee/cadet placements.	HR/Executive Officers/ Deputy Directors	December 2010	Opportunities identified and established.
3.2. Increase the number of Indigenous applicants for positions by advertising all new jobs in Indigenous media e.g. Koori Mail.	HR/Executive Officers	June 2011	No. of advertisements in Indigenous media. Number of Indigenous staff recruited.
3.3. Ensure all job advertisements contain the statement “The CDPP welcomes diversity and encourages people from all backgrounds, including Aboriginal and Torres Strait Islander peoples, women, and people with disabilities to apply.”	HR/Executive Officers	December 2010	All job advertisements contain this statement.
3.4. Encourage and support attendance at specific Aboriginal and Torres Strait Islander development programs including whole of Government APS conferences e.g. National Indigenous APS Employees’ Conference.	Deputy Directors	June 2011	Number of employees attending these programs and National conferences.
3.5. Provide opportunities for employees to monitor Indigenous issues by subscribing to relevant Indigenous media and making these available in libraries.	Library	June 2011	Number of sites with these publications available.
3.6. Support Indigenous staff to access opportunities for career development through management & leadership training and mentoring arrangements.	HR/Executive Officers	July 2011	Number of Indigenous employees participating in these programs.

4. Tracking Progress and Reporting

Action	Responsibility	Timeline	Measurable Target
4.1. Monitor RAP progress.	Director/ RAP Working Group	Twice annually	2 x half yearly reports. 1 annual report against RAP submitted to Executive and Reconciliation Australia.
4.2. Refresh RAP.	RAP Working Group	June 2011	Refreshed RAP developed in consultation with Reconciliation Australia.
4.3. Publish reports and refreshed RAP.	RAP Working Group/ IT/ Reconciliation Australia	June 2011	Refreshed final RAP on RA and CDPP website.
4.4. Report on progress in CDPP Annual Report.	RAP Working Group (Deputy Director representative)	Dec 2011	Progress reported in annual report.

Appendix five

Advertising and Market Research

Payments to media advertising organisations during 2009-2010 totalled \$83,276 (including GST) (\$215,813 for 2008-2009). No advertising campaigns were undertaken by the CDPP during 2009-10. The CDPP did not use the services of any creative advertising

agencies to develop advertising campaigns, market research organisations, direct mailing or polling organisations.

Details of payments of \$11,200 (including GST) and above, as required under section 311A of the *Commonwealth Electoral Act 1918*, are in the table below.

Advertising and Market Research Payments

Organisation	Purpose	Payments ² \$ (inc. GST)
Adcorp Australia Ltd	Recruitment and Procurement Advertising	36,284
CRE8IVE Australasia Pty Ltd ¹	Annual Report and Publications Production	45,980

1. The services provided by Cre8ive Australasia Pty Ltd were for annual report and publications production and did not include any creative advertising or advertising campaigns.
2. Does not include particulars of payments of \$11,200 or less (inclusive of GST) as per reporting requirements contained in section 311A of the *Commonwealth Electoral Act 1918*.

Appendix six

Ecologically Sustainable Development and Environmental Performance

One of the core values of the CDPP is 'protecting the natural environment'. One of its priorities is the ongoing efficient and effective management of its resources. In this context, the CDPP is in the process of developing a number of initiatives which will contribute to a more sustainable environment.

During the reporting year, the CDPP commenced development of a reporting framework to assist it in managing its progress and performance in this area. That framework will be in place in the coming reporting year. The table below provides details of performance in this area for the 2008-2009 reporting year. This will be used to establish a baseline for future reporting.

The CDPP uses energy saving methods in its operations. The CDPP uses technology to minimise

energy use, including automatic power down 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 provides staff with access to video and teleconferencing facilities in our main offices and sub offices with the aim of reducing the overall amount of air travel undertaken.

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 demand for paper.

Environmental Performance

The following tables summarises the environmental performance of CDPP sites during 2008-2009:

	Performance 2008-2009	Move from previous year
Office – Tenant Light and Power		
Electricity	1,537,336 (kWh)	-3%
Green power	274,186 (kWh)	-6%
Total	6,521 (GJ)	-3%
Total electricity consumed per employee	10,586 (MJ)	-6%
Passenger Vehicles		
Petrol	24,239 (L)	0%
Total	829 (GJ)	0%
Distance	250,341 (km)	4%
MJ/km	3.31	-4%
L/100km	9.68	-4%
Total Agency Consumption	7,350 (GJ)	-3%
General Waste		
Total waste generated	45.9 (tonnes)	not available
Total packaging generated	6.7 (tonnes)	not available
Total Packaging landfilled	5.5 (tonnes)	not available
Total packaging recycled	1.2 (tonnes)	not available

Notes:

1. CDPP sites for the reporting period included Canberra (Head Office), Sydney, Melbourne, Brisbane, Perth, Adelaide, Hobart and Darwin. There are also sub offices of the Brisbane office in Townsville and Cairns and a sub office of the Sydney office in Parramatta.

Appendix seven

List of Requirements

Ref	Location of Information	Description	Requirement
A.4	Preliminary	Letter of transmittal	Mandatory
A.5	Preliminary	Table of contents	Mandatory
A.5	Following Financials	Index	Mandatory
A.5	Following Financials	Glossary	Mandatory
A.5	Compliance Statement -Preliminary	Contact officer(s)	Mandatory
A.5	Compliance Statement – Preliminary	Internet home page address and Internet address for report	Mandatory
Review by Secretary			
9.1	Director's Overview – Preliminary	Review by departmental secretary	Mandatory
9.2	Chapters 1-9	Summary of significant issues and developments	Suggested
9.2	Chapters 1-9	Overview of department's performance and financial results	Suggested
9.2	–	Outlook for following year	Suggested
9.3	Not applicable	Significant issues and developments – portfolio	Portfolio departments – suggested
Departmental Overview			
10	Chapter 1	Overview description of department	Mandatory
10.1	Chapter 1	Role and functions	Mandatory
10.1	Chapter 1	Organisational structure	Mandatory
10.1	Chapter 1	Outcome and program structure	Mandatory
10.2	Not applicable, structures do not differ	Where outcome and program structures differ from PB Statements/PAES or other portfolio statements accompanying any other additional appropriation bills (other portfolio statements), details of variation and reasons for change	Mandatory

Ref	Location of Information	Description	Requirement
10.3	Not applicable, the CDP is a portfolio agency	Portfolio structure	Portfolio departments – mandatory
Report on Performance			
11.1	Chapter 1	Review of performance during the year in relation to programs and contribution to outcomes	Mandatory
11.1	Chapter 3	Actual performance in relation to deliverables and KPIs set out in PB Statements/PAES or other portfolio statements	Mandatory
	Not applicable	Performance of purchaser / provider arrangements	If applicable, suggested
11.1	Not applicable	Where performance targets differ from the PBS/PAES, details of both former and new targets, and reasons for the change	Mandatory
11.1	Chapter 3	Narrative discussion and analysis of performance	Mandatory
11.1	Chapter 3	Trend information	Mandatory
11.1	Not applicable	Significant changes in nature of principal functions/services	Suggested
11.1	Chapter 3	Factors, events or trends influencing departmental performance	Suggested
11.1	Chapter 9	Contribution of risk management in achieving objectives	Suggested
11.1	Chapter 1	Social justice and equity impacts	Suggested
11.2	Not applicable	Performance against service charter customer service standards, complaints data, and the department's response to complaints	If applicable, mandatory
11.3	Chapter 9	Discussion and analysis of the department's financial performance	Mandatory
11.3	Chapter 9	Discussion of any significant changes from the prior year or from budget.	Suggested
11.4	Chapter 9	Agency resource statement and summary resource tables by outcomes	Mandatory
11.5	Not applicable	Developments since the end of the financial year that have affected or may significantly affect the department's operations or financial results in future	If applicable, mandatory
Management Accountability			
Corporate Governance			
12.1	Chapter 1	Statement of the main corporate governance practices in place	Mandatory
12.1	Chapter 1	Names of the senior executive and their responsibilities	Suggested
12.1	Chapter 1	Senior management committees and their roles	Suggested
12.1	Chapter 1 Appendix 2	Corporate and operational planning and associated performance reporting and review	Suggested

Ref	Location of Information	Description	Requirement
12.1	Chapter 9	Approach adopted to identifying areas of significant financial or operational risk	Suggested
12.1	Chapter 9	Agency heads are required to certify that their agency comply with the Commonwealth Fraud Control Guidelines	Mandatory
12.1	Chapter 1	Policy and practices on the establishment and maintenance of appropriate ethical standards	Suggested
12.1	Chapter 9	How nature and amount of remuneration for SES officers is determined	Suggested
External Scrutiny			
12.2	Chapter 9	Significant developments in external scrutiny	Mandatory
12.2	Chapter 9	Judicial decisions and decisions of administrative tribunals	Mandatory
12.2	Chapter 9	Reports by the Auditor-General, a Parliamentary Committee or the Commonwealth Ombudsman	Mandatory
Management of Human Resources			
12.3	Chapter 9	Assessment of effectiveness in managing and developing human resources to achieve departmental objectives	Mandatory
12.3	Chapter 9	Workforce planning, staff turnover and retention	Suggested
12.3	Chapter 9	Impact and features of enterprise or collective agreements, determinations, common law contracts and AWAs	Suggested
12.3	Chapter 9	Training and development undertaken and its impact	Suggested
12.3	Chapter 9	Occupational health and safety performance	Suggested
12.3	-	Productivity gains	Suggested
12.3	Chapter 9	Statistics on staffing	Mandatory
12.3	Chapter 9	Enterprise or collective agreements, determinations, common law contracts and AWAs	Mandatory
12.3	Chapter 9	Performance pay	Mandatory
Assets Management			
12.4	Chapter 9	Assessment of effectiveness of assets management	If applicable, mandatory
Purchasing			
12.5	Chapter 9	Assessment of purchasing against core policies and principles	Mandatory

Ref	Location of Information	Description	Requirement
Consultants			
12.6	Chapter 9	The annual report must include a summary statement detailing the number of new consultancy services contracts let during the year; the total actual expenditure on all new consultancy contracts let during the year (inclusive of GST); the number of ongoing consultancy contracts that were active in the reporting year; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST). The annual report must include a statement noting that information on contracts and consultancies is available through the AusTender website. (Additional information as in Attachment D to be available on the Internet or published as an appendix to the report. Information must be presented in accordance with the pro forma as set out in Attachment.)	Mandatory
Australian National Audit Office Access Clauses			
12.7	Chapter 9	Absence of provisions in contracts allowing access by the Auditor-General	Mandatory
Exempt Contracts			
12.8	Chapter 9	Contracts exempt from the AusTender	Mandatory
Commonwealth Disability Strategy			
12.9	Not applicable – employer role	Report on performance in implementing the Commonwealth Disability Strategy	Mandatory
Financial Statements			
13	Financials	Financial Statements	Mandatory
Other Information			
14.1	Appendix 3	Occupational health and safety (section 74 of the <i>Occupational Health and Safety Act 1991</i>)	Mandatory
14.1	Appendix 1	Freedom of Information (subsection 8(1) of the <i>Freedom of Information Act 1982</i>)	Mandatory
14.1	Appendix 5	Advertising and Market Research (Section 311A of the <i>Commonwealth Electoral Act 1918</i>) and statement on advertising campaigns	Mandatory
14.1	Appendix 6	Ecologically sustainable development and environmental performance (Section 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i>)	Mandatory
Other			
14.2	Not applicable	Grant programs	Mandatory
14.3	Not applicable	Correction of material errors in previous annual reports	If applicable, mandatory
F	Appendix 7	List of Requirements	Mandatory

Financials

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2009-2010

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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2009-2010

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Balance Sheet
Statement of Changes in Equity
Cash Flow Statement
Schedule of Commitments
Schedule of Contingencies
Schedule of Asset Additions
Schedule of Administered Items
Notes to and forming part of the Financial Statements

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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

INDEPENDENT AUDIT REPORT 2009-2010



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 2010, which comprise: the Statement by the Commonwealth Director of Public Prosecutions and Deputy Director of Corporate Management; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Schedule of Asset Additions; 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 Chief Executive 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. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance 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

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the Office of the Commonwealth Director of Public Prosecution's 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 Prosecution's 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 Prosecution's financial position as at 30 June 2010 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
1 October 2010

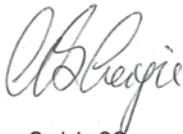
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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2009-2010

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

In our opinion, the attached financial statements for the year ended 30 June 2010 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.



Christopher Craigie SC
Director

30 SEP 2010



Stela Walker
Deputy Director Corporate Management

30 SEP 2010

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

For the period ended 30 June 2010

	Notes	2009-2010 \$'000	2008-2009 \$'000
EXPENSES			
Employee benefits	3	59,265	59,553
Suppliers	4	37,241	37,681
Depreciation and amortisation	5	4,706	5,077
Write-down and impairment of assets	6	70	1
Losses from sale of assets	7	16	8
Other expenses	8	437	722
TOTAL EXPENSES		101,735	103,042
LESS: OWN-SOURCE INCOME			
Own-source revenue			
Sale of goods and rendering of services	9	2,105	2,099
Other revenue	10	364	398
Total own-source revenue		2,469	2,497
Gains			
Sale of assets	11	10	-
Other gains	12	171	131
Total gains		181	131
TOTAL OWN-SOURCE INCOME		2,650	2,628
NET COST OF SERVICES		99,085	100,414
Revenue from Government	13	105,421	106,783
Surplus before income tax on continuing operations		6,336	6,369
SURPLUS ATTRIBUTABLE TO THE AUSTRALIAN GOVERNMENT		6,336	6,369
OTHER COMPREHENSIVE INCOME			
Changes in asset revaluation reserves		2,721	2,045
Total other comprehensive income after income tax		2,721	2,045
Total comprehensive income		9,057	8,414
TOTAL COMPREHENSIVE INCOME ATTRIBUTABLE TO THE AUSTRALIAN GOVERNMENT		9,057	8,414

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 2010

	Notes	2009-2010 \$'000	2008-2009 \$'000
ASSETS			
Financial Assets			
Cash and cash equivalents	14	438	230
Trade and other receivables	15	69,117	69,043
Total Financial Assets		69,555	69,273
Non-Financial Assets			
Land and buildings	16,18	10,979	11,895
Infrastructure, plant and equipment	17,18	5,864	4,800
Intangibles	19	537	700
Other non-financial assets	20	675	293
Total Non-Financial Assets		18,055	17,688
TOTAL ASSETS		87,610	86,961
LIABILITIES			
Payables			
Suppliers	21	2,004	1,592
Other payables	22	5,505	5,168
Total payables		7,509	6,760
Non-interest bearing liabilities			
Lease incentives	23	607	832
Total non-interest bearing liabilities		607	832
Provisions			
Employee provisions	24	14,489	13,876
Other provisions	25	5,309	5,198
Total Provisions		19,798	19,074
TOTAL LIABILITIES		27,914	26,666
NET ASSETS		59,696	60,295
EQUITY			
Parent Entity Interest			
Contributed equity		(9,296)	360
Reserves		12,983	10,262
Retained surpluses		56,009	49,673
Total Parent entity interest		59,696	60,295
TOTAL EQUITY		59,696	60,295

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 2010

	Retained Earnings		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000
Opening balance								
Balance carried forward from previous period	49,673	43,304	10,262	8,217	360	360	60,295	51,881
Adjustment for errors	-	-	-	-	-	-	-	-
Adjustment for changes in accounting policies	-	-	-	-	-	-	-	-
Adjusted opening balance	49,673	43,304	10,262	8,217	360	360	60,295	51,881
Comprehensive income								
Other comprehensive income	-	-	-	-	-	-	-	-
Surplus (Deficit) for the period	6,336	6,369	2,721	2,045	-	-	2,721	2,045
Total comprehensive income	6,336	6,369	2,721	2,045	-	-	6,336	6,369
Transactions with owners								
<i>Distributions to owners</i>								
Returns of capital:	-	-	-	-	(9,656)	-	(9,656)	-
Appropriation	-	-	-	-	(9,656)	-	(9,656)	-
Sub-total transactions with owners	-	-	-	-	(9,656)	-	(9,656)	-
Closing balance at 30 June	56,009	49,673	12,983	10,262	(9,296)	360	59,696	60,295

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 2010

	Notes	2009-2010 \$	2008-2009 \$
OPERATING ACTIVITIES			
Cash received			
Goods and services		2,287	2,207
Appropriations		97,463	94,995
Net GST received		3,269	3,587
Other	A	977	3,556
Total cash received		103,996	104,345
Cash used			
Employees		58,668	58,916
Suppliers		41,550	43,508
Other	B	476	1,121
Appropriation cash returned to the OPA		1,774	-
Total cash used		102,468	103,545
Net cash flows from (used by) operating activities	26	1,528	800
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		11	9
Lease incentives receipt	C	-	285
Total cash received		11	294
Cash used			
Purchase of property, plant and equipment		1,204	2,528
Other		127	-
Total cash used		1,331	2,528
Net cash flows from (used by) investing activities		(1,320)	(2,234)
FINANCING ACTIVITIES			
Cash received			
Nil		-	-
Total cash received		-	-
Cash used			
Nil		-	-
Total cash used		-	-
Net cash flows from (used by) financing activities		-	-

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
CASH FLOW STATEMENT

For the period ended 30 June 2010

	Notes	2009-2010 \$	2008-2009 \$
<i>Net increase (decrease) in cash held</i>		208	(1,434)
Cash and cash equivalents at the beginning of the reporting period		<u>230</u>	<u>1,664</u>
<i>Cash and cash equivalents at the end of the reporting period</i>	14	<u>438</u>	<u>230</u>

- A Employee and supplier expense recoveries
- B Costs awarded, CDDA and *Public Service Act 1999* s73 payments
- C Lease incentives received as cash

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 2010

		2009-2010	2008-2009
		\$'000	\$'000
BY TYPE			
Commitments receivable			
Sub-lease rental income		(109)	(190)
Legal services income	A	-	(2,000)
Other income		(18)	(56)
Net GST receivable on commitments		<u>(3,900)</u>	<u>(5,471)</u>
Total commitments receivable		<u>(4,027)</u>	<u>(7,717)</u>
Commitments payable			
Capital commitments			
Infrastructure, plant and equipment	C	<u>518</u>	<u>42</u>
Total capital commitments		<u>518</u>	<u>42</u>
Other commitments			
Operating leases	D	<u>37,020</u>	<u>44,909</u>
Legal services commitments	E	<u>7,282</u>	<u>11,412</u>
Goods and services (excluding legal services)		<u>1,211</u>	<u>4,111</u>
Total other commitments		<u>45,513</u>	<u>60,432</u>
Net commitments by type		<u><u>42,004</u></u>	<u><u>52,757</u></u>
BY MATURITY			
Commitments receivable			
One year or less		(1,797)	(4,401)
From one to five years		(2,224)	(3,314)
Over five years		<u>(5)</u>	<u>(2)</u>
Total commitments receivable		<u>(4,026)</u>	<u>(7,717)</u>
Commitments payable			
Capital commitments			
One year or less		518	42
From one to five years		-	-
Over five years		<u>-</u>	<u>-</u>
Total capital commitments		<u>518</u>	<u>42</u>
Operating lease commitments			
One year or less		11,159	11,625
From one to five years		25,860	33,284
Over five years		<u>-</u>	<u>-</u>
Total operating lease commitments		<u>37,019</u>	<u>44,909</u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
SCHEDULE OF COMMITMENTS

As at 30 June 2010

	2009-2010	2008-2009
	\$'000	\$'000
Other commitments		
One year or less	4,143	13,423
From one to five years	4,290	2,080
Over five years	60	20
Total other commitments	8,493	15,523
Net commitments by maturity	42,004	52,757

NB: Commitments are GST inclusive where relevant.

- A Legal services income commitments relates to an MOU with the ATO for taxation prosecutions.
As at 30 June 2010, the new MOU had not been signed.
- B Land and building commitments are primarily contracts related to fitout under construction.
- C Plant and equipment commitments are primarily contracts for purchase of communications equipment.
- D 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.

- E Legal services commitments relate to the engagement fees of external counsel for legal services.

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
SCHEDULE OF CONTINGENCIES

As at 30 June 2010

	2009-2010	2008-2009
	\$'000	\$'000
Contingent Assets		
Guarantees	-	-
Indemnities	-	-
Claims for damages or costs	-	68
Total contingent assets	-	68
Contingent Liabilities		
Guarantees	-	-
Indemnities	-	-
Claims for damages or costs	-	555
Total contingent liabilities	-	555
Net contingent assets (liabilities)	-	487

Details of each class of contingent liabilities and assets listed above are disclosed in Note 27 - Contingent liabilities and assets, along with information on significant remote contingencies and contingencies that cannot be quantified.

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
SCHEDULE OF ASSET ADDITIONS
As at 30 June 2010

The following non-financial non-current assets were added in 2009-2010

	Buildings	Infrastructure, plant & equipment	Intangibles	Total
	2009-2010 \$'000	2009-2010 \$'000	2009-2010 \$'000	2009-2010 \$'000
By purchase - appropriation ordinary annual services	89	1,097	-	1,186
By purchase - other	A	373	-	373
Total additions	89	1,470	-	1,559

A Other purchases relates to asset purchased funded by creditors, that is assets purchased close to financial year end that had not yet been paid.

The following non-financial non-current assets were added in 2008-2009

	Buildings	Infrastructure, plant & equipment	Intangibles	Total
	2008-2009 \$'000	2008-2009 \$'000	2008-2009 \$'000	2008-2009 \$'000
By purchase - appropriation ordinary annual services	1,662	1,004	8	2,674
By purchase - other	-	14	-	14
Total additions	1,662	1,018	8	2,688

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS SCHEDULE OF ADMINISTERED ITEMS			
	Notes	2009-2010 \$	2008-2009 \$
Income administered on behalf of Government for the period ended 30 June 2010			
Revenue			
Non-taxation			
Fines and costs	31	3,720,091	5,486,771
Other administered revenue	32	-	850
Reversal of previous asset write-downs	33	344,503	302,296
Total non-taxation		4,064,594	5,789,917
Total revenue administered on behalf of Government		4,064,594	5,789,917
Expenses administered on behalf of Government for the period ended 30 June 2010			
Write-down and impairment of assets	34	2,201,961	3,047,643
Total expenses administered on behalf of Government		2,201,961	3,047,643
This schedule should be read in conjunction with the accompanying notes.			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)			
	Note	2009-2010 \$	2008-2009 \$
Assets administered on behalf of Government as at 30 June 2010			
Financial assets			
Cash and cash equivalents	35	-	932
Receivables	36	<u>1,268,197</u>	<u>1,539,923</u>
Total financial assets		<u>1,268,197</u>	<u>1,540,855</u>
Total assets administered on behalf of Government		<u>1,268,197</u>	<u>1,540,855</u>
Liabilities administered on behalf of Government as at 30 June 2010			
Payables			
Other payables	37	<u>1,414</u>	<u>4,920</u>
Total payables		<u>1,414</u>	<u>4,920</u>
Total liabilities administered on behalf of Government		<u>1,414</u>	<u>4,920</u>
The schedule should be read in conjunction with the accompanying notes.			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)			
	Note	2009-2010 \$	2008-2009 \$
Administered Cash Flows for the period ended 30 June 2010			
Operating Activities			
Cash received			
Fines and costs		2,183,114	2,315,717
Other		-	850
Total cash received		<u>2,183,114</u>	<u>2,316,567</u>
Cash used			
Refund of fines and costs		<u>52,261</u>	<u>49,934</u>
Total cash used		<u>52,261</u>	<u>49,934</u>
Net cash flows from (used by) operating activities		<u>2,130,853</u>	<u>2,266,633</u>
Net increase / (decrease) in cash held		<u>2,130,853</u>	<u>2,266,633</u>
Cash and cash equivalents at the beginning of the reporting period		932	-
Cash from Official Public Account for Special Appropriation S28 FMA Act		52,261	49,934
Cash to Official Public Account for Revenues		<u>2,184,046</u>	<u>2,315,635</u>
Cash and cash equivalents at the end of the reporting period		<u>-</u>	<u>932</u>
The schedule should be read in conjunction with the accompanying notes.			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)			
	Note	2009-2010 \$	2008-2009 \$
Administered Commitments as at 30 June 2010		<u>Nil</u>	<u>Nil</u>
Administered Contingencies as at 30 June 2010	40	<u>Nil</u>	<u>Nil</u>
Details of each class of contingent liabilities and assets listed above are disclosed in Note 39 - Administered contingent liabilities and assets, along with information on significant remote contingencies and contingencies that cannot be quantified.			
The schedule should be read in conjunction with the accompanying notes.			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

Note	Description
1	Summary of significant accounting policies
2	Events after the balance sheet date
3	Employee benefits
4	Suppliers
5	Depreciation and amortisation
6	Write-down and impairment of assets
7	Losses from asset sales
8	Other expenses
9	Sale of goods and rendering of services
10	Other revenue
11	Sale of assets
12	Other gains
13	Revenue from government
14	Cash and cash equivalents
15	Trade and other receivables
16	Land and buildings
17	Infrastructure, plant and equipment
18	Analysis of property, plant and equipment
19	Intangibles assets
20	Other non-financial assets
21	Suppliers
22	Other payables
23	Non-interest bearing liabilities
24	Employee provisions
25	Other provisions
26	Cash flow reconciliation
27	Contingent liabilities and assets
28	Senior executive remuneration
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30	Financial instruments
31	Administered fines and costs revenue
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33	Reversal of previous administered asset write-downs
34	Write-down and impairment of administered assets
35	Administered cash
36	Administered receivables
37	Administered payables
38	Administered reconciliation table
39	Administered contingent liabilities and assets
40	Administered financial instruments
41	Appropriations
42	Special accounts
43	Compensation and debt relief
44	Reporting of outcomes

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the year ended 30 June 2010

Note 1 - Summary of Significant Accounting Policies

1.1 Objectives of the Office of the Director of Public Prosecutions

The Office of the 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:

Maintenance of law and order for the Australian community through an independent and ethical prosecution service in accordance with the Prosecution Policy of the Commonwealth.

Agency activities contributing toward the outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, 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 CDPP in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the CDPP's administration and programs.

1.2 Basis of Preparation of the Financial Statements

The financial statements 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 2009; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Boards (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and is in accordance with historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial statements are presented in Australian dollars. The values disclosed in the departmental statements are rounded to the nearest thousand dollars unless otherwise specified. The values disclosed in the administered statements are rounded to the nearest dollar except for Notes 41, 42 and 44 where the administered amounts are rounded to the nearest thousand dollars.

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

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

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 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, income and expenses are recognised in the Statement of Comprehensive Income when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

Administered revenues, expenses, assets and liabilities and cash flows 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 1.18.

1.3 Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in this note, the CDPP has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of 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 CDPP has made a judgement that has a significant impact on the amount recorded as administered receivables. The collectability of fines and costs debts are assessed at balance date by reviewing the debt, by age and amount, against the past payments history of similar debts. A provision for doubtful debt is then made based on that judgement.

1.4 New Australian Accounting Standards

Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standard.

A number of new standards, amendments to standards, interpretations and amending standards were issued by the Australian Accounting Standards Board prior to the signing of the statement by the Director and Deputy Director Corporate Management and are applicable to the current reporting period. These are not expected to have a future financial impact on the CDPP.

Future Australian Accounting Standard requirements

A number of new standards, amendments to standards, interpretations and amending standards were issued by the Australian Accounting Standards Board prior to the signing of the statement by the Director and Deputy Director Corporate Management and are applicable to the future reporting period. These are not expected to have a future financial impact on the CDPP.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the year ended 30 June 2010

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 CDPP gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

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 CDPP.

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 CDPP.

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 impairment allowance account. Collectability of debts is reviewed at balance date. Allowances are made when collectability of the debt is no longer probable.

Resources received free of charge

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Resources received free of charge are recorded as either revenue or gains depending on their nature.

1.6 Gains

Grants

Grants revenue is predominantly amounts received from the Department of Defence, and relate to Defence Reserve Service Subsidies.

These are recognised as gains when, and only when, a fair value can be reliably determined.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the year ended 30 June 2010

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 2009-2010, by agreement with the Department of Finance and Deregulation, CDPP relinquished control of surplus output appropriation funding of \$12,553,084 which was returned to the Official Public Account (2008-2009 \$527,944).

1.8 Employee Benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the CDPP is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will apply at the time the leave is taken, including the CDPP employer superannuation

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the year ended 30 June 2010

contribution rates to the extent that the leave is likely to be taken during the 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.

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.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 2010

1.10 Cash

Cash and cash equivalents include notes and coins held in bank accounts. Cash is recognised at its nominal amount.

1.11 Financial Assets

The CDPP classifies its financial assets in the following categories:

- financial assets at fair value through profit or loss; 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.

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 CDPP 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.

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.

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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the year ended 30 June 2010

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 amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the Statement of Comprehensive Income.
- *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 Statement of Comprehensive Income.
- *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).

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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 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 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 CDPP's accounts immediately prior to the restructuring.

1.15 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 the CDPP where there exists an obligation to restore the property to its original condition. These costs are included in the value of the CDPP's leasehold improvements with a corresponding provision for the 'makegood' recognised.

Revaluations

Fair values for each class of asset are determined as shown below

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.

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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.

During 2009-2010 an independent valuation of all land and buildings and infrastructure, plant and equipment, excluding library holdings and artwork, was carried out by Daryl G Bird, Certified Practising Valuer AVAA, of Preston Rowe Paterson NSW Pty Limited.

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 in the surplus / deficit except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date 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

Class	2009-2010	2008-2009
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 2010. 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.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

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1.16 Intangibles

The CDPP's intangibles comprise software licenses and configuration costs of purchased software. These assets are carried at cost less accumulated amortisation and accumulated impairment losses. Purchases of intangibles are recognised initially at cost in the balance sheet, except for purchases costing less than \$5,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the CDPP's software are 3 to 20 years (2008-2009: 3 to 20 years).

All software assets were assessed for indications of impairment as at 30 June 2010.

1.17 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
- for receivables and payables.

Competitive neutrality

No part of CDPP operations is subject to competitive neutrality arrangements.

1.18 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 CDPP is administered revenue.

Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the CDPP on behalf of the Government and reported as such in the Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 38.

The Schedule of Administered Items largely reflects the Government's transactions, through the Agency, with parties outside the Government.

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Revenue

All administered revenues relate to the ordinary activities performed by the CDPP on behalf of the Australian Government.

Fines and costs are set down in a decision by a Court and are recorded as revenue on the date of the Court's decision. Where applicable, changes to the amount of fines and costs by subsequent appeals are recorded as a variation to the revenue (plus or minus) on the date of the Court's decision in respect of the appeal.

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 2010 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.

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.

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Note 2 - Events after the Balance Sheet Date

There were no other events occurring after balance date that has any material effect on the 2009-2010 financial statements.

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	2009-2010 \$'000	2008-2009 \$'000
Note 3 - Employee benefits		
Wages and Salaries	43,840	43,773
Superannuation		
Defined contribution plans	2,811	2,686
Defined benefit plans	5,419	5,395
Leave and other entitlements	5,676	6,078
Separation and redundancies	283	3
Other employee benefits	1,236	1,618
Total employee benefits	59,265	59,553
Note 4 - Suppliers		
Goods and services		
Prosecution Legal Costs	17,316	17,849
ICT	3,053	2,977
Property (excl operating lease rentals)	2,532	2,411
Library	1,520	1,558
Other	2,642	3,055
Total goods and services	27,063	27,850
Goods and Services are made up of		
Provision of goods - related entities	2	13
Provision of goods - external entities	3,136	2,900
Rendering of services - related entities	3,647	1,261
Rendering of services - external entities	20,278	23,676
Total goods and services	27,063	27,850
Other supplier expenses		
Operating lease rentals		
Minimum lease payments	9,669	9,378
Rental expense for sub-leases	74	65
Workers' compensation premiums	435	388
Total other supplier expenses	10,178	9,831
Total supplier expenses	37,241	37,681

Goods and services expenses have been disaggregated this year for the first time. Operating lease rentals have not been included in the disaggregation as these are separately disclosed as Other supplier expenses.

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	2009-2010 \$'000	2008-2009 \$'000
<u>Note 5 - Depreciation and amortisation</u>		
Depreciation		
Leasehold improvements	3,514	3,895
Other infrastructure, plant and equipment	1,030	1,016
Total depreciation	4,544	4,911
Amortisation		
Intangibles		
Computer software	162	166
Total amortisation	162	166
Total depreciation and amortisation	4,706	5,077
<u>Note 6 - Write-down and impairment of assets</u>		
Asset write-downs and impairments from		
Impairment of leasehold improvements	63	-
Impairment of plant and equipment	7	1
Total write-down and impairment of assets	70	1
<u>Note 7 - Losses from asset sales</u>		
Infrastructure, plant and equipment		
Proceeds from disposal	(1)	(1)
Carrying value of assets sold	17	9
Selling expense	-	-
Net loss from sale of assets sold	16	8
<u>Note 8 - Other expenses</u>		
Costs awarded against the Commonwealth	366	722
Payments under s.73 of the <i>Public Service Act 1999</i>	2	-
Payments under the CDDA scheme	69	-
Total other expenses	437	722

Refer to Note 44 for details in relation to the payments made under s.73 *Public Service Act 1999* and the CDDA scheme.

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	2009-2010 \$'000	2008-2009 \$'000
<u>Note 9 - Sale of goods and rendering of services</u>		
Provision of goods to		
Provision of goods - related entities	-	-
Provision of goods - external entities	2	1
Rendering of services - related entities	2,076	2,070
Rendering of services - external entities	A 27	28
Total sale of goods and rendering of services	2,105	2,099
A An amount relating to the rendering of services by external entities of \$26,971 was incorrectly classified in 2009-2010 as a related entities amount. The comparative has been corrected.		
<u>Note 10 - Other revenue</u>		
Resources received free of charge - external entities	364	398
Total other revenue	364	398
<u>Note 11 - Sale of assets</u>		
Infrastructure, plant and equipment		
Proceeds from sale	10	-
Carrying value of assets sold	-	-
Selling expense	-	-
Net gain from sale of assets	10	-
<u>Note 12 - Other gains</u>		
Grants	29	-
Resources received free of charge - related entities	83	80
Other	59	51
Total other gains	171	131
<u>Note 13 - Revenue from government</u>		
Appropriations		
Departmental outputs	105,421	106,783
Total revenue from Government	105,421	106,783

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For the year ended 30 June 2010

	2009-2010 \$'000	2008-2009 \$'000
<u>Note 14 - Cash and cash equivalents</u>		
Cash at bank	411	201
Cash on hand	27	29
<i>Total cash and cash equivalents</i>	438	230
<u>Note 15 - Trade and other receivables</u>		
Goods and services receivables		
Goods and services - related entities	139	308
Goods and services - external entities	-	93
<i>Total goods and services receivables</i>	139	401
Appropriations receivable		
Appropriations receivable - for existing outputs	68,275	68,200
<i>Total appropriations receivable</i>	68,275	68,200
Other receivables		
GST receivable from the Australian Taxation Office	674	378
Other	29	64
<i>Total other receivables</i>	703	442
<i>Total trade and other receivables (gross)</i>	69,117	69,043
Less impairment allowance account Goods and services	-	-
<i>Total trade and other receivables (net)</i>	69,117	69,043
Receivables are expected to be recovered in		
No more than 12 months	69,112	69,038
More than 12 months	5	5
<i>Total trade and other receivables (net)</i>	69,117	69,043

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	2009-2010 \$'000	2008-2009 \$'000
Note 15 - Trade and other receivables (Cont)		
Receivables are aged as follows		
Not overdue	69,117	69,009
Overdue by		
Less than 30 days	-	21
30 to 60 days	-	1
61 to 90 days	-	12
More than 90 days	-	-
Total receivables (gross)	69,117	69,043
The impairment allowance account is aged as follows		
Not overdue	-	-
Overdue by		
Less than 30 days	-	-
30 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	-	-
Total impairment allowance account	-	-

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For the year ended 30 June 2010

Note 15 - Trade and other receivables (Cont)

Reconciliation of the impairment allowance account

	Goods and services	Other	Total
Movements in relation to 2009-2010	2009-2010	2009-2010	2009-2010
	\$'000	\$'000	\$'000
Opening balance	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/(decrease) recognised in net surplus	-	-	-
<i>Closing balance</i>	-	-	-

	Goods and services	Other	Total
Movements in relation to 2008-2009	2008-2009	2008-2009	2008-2009
	\$'000	\$'000	\$'000
Opening balance	(1)	-	(1)
Amounts written off	1	-	1
Amounts recovered and reversed	-	-	-
Increase/(decrease) recognised in net surplus	-	-	-
<i>Closing balance</i>	-	-	-

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	2009-2010 \$'000	2008-2009 \$'000
Note 16 - Land and buildings		
Leasehold improvements		
Fair value	38,627	33,537
Accumulated amortisation	(27,648)	(21,642)
Total leasehold improvements	10,979	11,895
Total land and buildings (non-current)	10,979	11,895

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 17 - Infrastructure, plant and equipment

Infrastructure, plant and equipment

Computer equipment at fair value	2,092	1,358
Accumulated depreciation	(443)	(767)
	1,649	591
Furniture at fair value	7,527	6,565
Accumulated depreciation	(5,375)	(4,553)
	2,152	2,012
Office equipment at fair value	880	2,023
Accumulated depreciation	(632)	(1,757)
	248	266
Artwork at fair value	153	153
Accumulated depreciation	(144)	(135)
	9	18
Library holdings at fair value	3,169	3,169
Accumulated depreciation	(1,363)	(1,256)
	1,806	1,913
Total infrastructure, plant and equipment (non-current)	5,864	4,800

All revaluations are conducted in accordance with the revaluation policy

Revaluation increments of \$2.572m for leasehold improvements [\$2.175m in 2008-2009] and \$0.648m for plant and equipment [nil in 2008-2009] were credited 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.

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Note 18 - Analysis of property, plant and equipment

Table A. Reconciliation of the opening and closing balances of property, plant and equipment (2009-2010)

Item	Buildings- Leasehold Improve- ments 2009-2010 \$'000	Other Infrastructure, plant and equipment 2009-2010 \$'000	Total 2009-2010 \$'000
As at 1 July 2009			
Gross book value	33,537	13,268	46,805
Accumulated depreciation and impairment	(21,642)	(8,468)	(30,110)
Net Book Value 1 July 2009	11,895	4,800	16,695
Additions			
by purchase	89	1,470	1,559
Revaluation and impairment recognised in other comprehensive income	2,572	648	3,220
Depreciation expense	(3,514)	(1,030)	(4,544)
Disposals			
Write-offs	(63)	(7)	(70)
Other disposals	-	(17)	(17)
Net Book Value 30 June 2010	10,979	5,864	16,843
Net book value as of 30 June 2010 represented by			
Gross book value	38,627	13,821	52,448
Accumulated depreciation	(27,648)	(7,957)	(35,605)
Net Book Value 30 June 2010	10,979	5,864	16,843

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Note 18 - Analysis of property, plant and equipment (Cont)

Table B. Reconciliation of the opening and closing balances of property, plant and equipment (2008-2009)

Item	Buildings- Leasehold Improvements 2008-2009 \$'000	Other Infrastructure, plant and equipment 2008-2009 \$'000	Total 2008-2009 \$'000
As at 1 July 2008			
Gross book value	30,390	12,285	42,675
Accumulated depreciation and impairment	(18,437)	(7,478)	(25,915)
Net Book Value 1 July 2008	11,953	4,807	16,760
Additions			
by purchase	1,662	1,018	2,680
Revaluation and impairment recognised in other comprehensive income	2,175	-	2,175
Depreciation expense	(3,895)	(1,016)	(4,911)
Disposals			
Write-offs	-	(1)	(1)
Other disposals	-	(8)	(8)
Net Book Value 30 June 2009	11,895	4,800	16,695
Net book value as of 30 June 2009 represented by			
Gross book value	33,537	13,268	46,805
Accumulated depreciation	(21,642)	(8,468)	(30,110)
Net Book Value 30 June 2009	11,895	4,800	16,695

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	2009-2010 \$'000	2008-2009 \$'000
Note 19 - Intangibles assets		
Computer software		
Purchased software at cost	2,933	2,972
Accumulated amortisation	(2,396)	(2,272)
	<u>537</u>	<u>700</u>
Total intangibles (non-current)	<u>537</u>	<u>700</u>

No indicators of impairment were found for intangible assets

**Table C. Reconciliation of the opening and closing
balances of intangibles (2009-2010)**

Item	Computer software purchased 2009-2010 \$'000
As at 1 July 2009	
Gross book value	2,972
Accumulated amortisation and impairment	(2,272)
Net Book Value 1 July 2009	<u>700</u>
Additions	
by purchase	-
Amortisation expense	(162)
Disposals	-
Write-offs	-
Net Book Value 30 June 2010	<u>537</u>
Net book value as of 30 June 2010 represented by	
Gross book value	2,933
Accumulated amortisation and impairment	(2,396)
	<u>537</u>

No indicators of impairment were found for intangible assets

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	2009-2010 \$'000	2008-2009 \$'000
Note 19 - Intangibles assets (Cont)		
Table D. Reconciliation of the opening and closing balances of intangibles (2008-2009)		
Item		Computer software purchased 2008-2009 \$'000
As at 1 July 2008		
Gross book value		2,964
Accumulated amortisation and impairment		(2,106)
Net Book Value 1 July 2008		858
Additions		
by purchase		8
Amortisation expense		(166)
Disposals		-
Write-offs		-
Net Book Value 30 June 2009		700
Net book value as of 30 June 2009 represented by		
Gross book value		2,972
Accumulated amortisation and impairment		(2,272)
Net Book Value 30 June 2009		700
No indicators of impairment were found for intangible assets		

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	2009-2010 \$'000	2008-2009 \$'000
<u>Note 20 - Other non-financial assets</u>		
Prepayments	675	293
<i>Total other non-financial assets</i>	675	293
No indicators of impairment were found for other non-financial assets		
Other non-financial assets are expected to be recovered in		
No more than 12 months	675	293
More than 12 months	-	-
<i>Total other non-financial assets</i>	675	293
<u>Note 21 - Suppliers</u>		
Trade Creditors	2,004	1,592
<i>Total supplier payables</i>	2,004	1,592
Supplier payables expected to be settled within 12 months		
Related entities	64	50
External parties	1,940	1,542
	2,004	1,592
Supplier payables expected to be settled in greater than 12 months		
Related entities	-	-
External parties	-	-
	2,004	1,592
<i>Total supplier payables</i>	2,004	1,592
Settlement is usually made net 30 days		
<u>Note 22 - Other payables</u>		
Accrued expenses	2,536	2,542
Salaries and wages	916	740
Superannuation	1,659	1,500
Other	394	386
<i>Total other payables</i>	5,505	5,168
Other payables are expected to be settled in		
No more than 12 months	5,204	4,936
More than 12 months	301	232
<i>Total other payables</i>	5,505	5,168

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	2009-2010 \$'000	2008-2009 \$'000
<u>Note 23 - Non-interest bearing liabilities</u>		
Lease incentives	A 607	832
<i>Total non-interest bearing liabilities</i>	607	832
Payable within		
Within one year	161	245
In one to five years	446	587
In more than five years	-	-
<i>Total non-interest bearing liabilities</i>	607	832

A Lease incentives are incentives offered by building owners during lease negotiations to entice lessee's into entering a lease contract. All lease incentives are not interest bearing.

Note 24 - Employee provisions

Leave	14,489	13,876
<i>Total employee provisions</i>	14,489	13,876
Employee provisions are expected to be settled in		
No more than 12 months	4,576	4,908
More than 12 months	9,913	8,968
<i>Total employee provisions</i>	14,489	13,876

Due to a change in the reporting requirements during 2009-2010, current and non-current employee provisions are no longer required to be disclosed. This disclosure has been replaced with an estimate of the amount of leave expected to be taken in less than, and in excess of, 12 months. The 2008-2009 amounts are disclosed for the first time this year.

Note 25 - Other provisions

Restoration obligations	2,725	2,447
Provision for lease payment under straight-line basis	2,584	2,751
<i>Total other provisions</i>	5,309	5,198
Other provisions are expected to be settled in		
No more than 12 months	342	183
More than 12 months	4,967	5,015
<i>Total other provisions</i>	5,309	5,198

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Note 25 - Other provisions (Cont)

Movement Table

	Provision for restoration	Provision for lease payment under straight- line basis	Total
	\$'000	\$'000	\$'000
Carrying amount 1 July 2009			
Additional provisions made:	2,447	2,751	5,198
Additions	-	-	-
Revaluation	499	-	499
Amounts used	(147)	(167)	(314)
Change in discount rate	(74)	-	(74)
Closing balance 30 June 2010	2,725	2,584	5,309

The CDPP currently has 13 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 2010

	2009-2010 \$'000	2008-2009 \$'000
Note 26 - Cash flow reconciliation		
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Cash and cash equivalents as per		
Cash flow statement	438	230
Balance sheet	438	230
Difference	-	-
Reconciliation of operating result to net cash from operating activities		
Net cost of services	(99,085)	(100,414)
Add revenue from Government	105,421	106,783
Adjustments for non-cash items		
Depreciation /amortisation	4,706	5,077
Loss on disposal of assets	6	8
Net write-down of non-financial assets	70	1
Changes in assets / liabilities		
(Increase) / decrease in net receivables	(9,730)	(11,869)
(Increase) / decrease in prepayments	(382)	664
Increase / (decrease) in incentives	(225)	30
Increase / (decrease) in employee provisions	613	1,426
Increase / (decrease) in supplier payables	(314)	(961)
Increase / (decrease) in other payables	337	240
Increase / (decrease) in other provisions	111	(185)
Net cash from / (used by) operating activities	1,528	800

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
CONTINGENT ASSETS AND LIABILITIES
As at 30 June 2010

Note 27 - Contingent liabilities and assets

Contingent Assets	Guarantees		Indemnities		Claims for damages or costs		Total	
	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000
Balance from previous period	-	-	-	-	68	137	68	137
New	-	-	-	-	-	-	-	-
Re-measurement	-	-	-	-	(68)	(69)	(68)	(69)
Assets recognised	-	-	-	-	-	-	-	-
Expired	-	-	-	-	-	-	-	-
Total contingent assets	-	-	-	-	-	68	-	68
Contingent Liabilities	Guarantees		Indemnities		Claims for damages or costs		Total	
	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000
Balance from previous period	-	-	-	-	555	443	555	443
New	-	-	-	-	-	318	-	318
Re-measurement	-	-	-	-	(555)	-	(555)	-
Liabilities recognised	-	-	-	-	-	-	-	-
Obligations expired	-	-	-	-	-	(206)	-	(206)
Total contingent liabilities	-	-	-	-	-	555	-	555
Net contingent assets (liabilities)	-	-	-	-	-	-	-	487

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2010

Note 27 – Contingent liabilities and assets (cont)

Quantifiable contingencies

The Schedule of Contingencies reports contingent asset in respect of claims for damages/costs of \$0 (2008-2009: \$68,646).

The Schedule also reports contingent liabilities in respect of claims for damages/costs of \$0 (2008-2009: \$555,488).

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 2010

	2009-2010	2008-2009
Note 28 - Senior executive remuneration		
Table A. Actual remuneration paid to senior executives		
The number of senior executives who received		
less than \$ 145,000	A 2	1
\$145,000 to \$159,999	1	2
\$160,000 to \$174,999	4	2
\$175,000 to \$189,999	4	11
\$190,000 to \$204,999	13	14
\$205,000 to \$219,999	10	8
\$220,000 to \$234,999	2	4
\$235,000 to \$249,999	7	2
\$250,000 to \$264,999	1	2
\$265,000 to \$279,999	-	1
\$280,000 to \$294,999	-	1
\$295,000 to \$309,999	2	1
\$430,000 to \$444,999	-	1
\$445,000 to \$459,999	1	-
Total	47	50
	2009-2010	2008-2009
	\$	\$
Total expense recognised in relation to senior executive employment		
Short-term employee benefits		
Salary (including payment for leave taken)	7,937,247	7,970,991
Movement in annual leave provisions	17,700	72,915
Other	B 375,647	459,331
Total short-term employee benefits	8,330,594	8,503,237
Long-term benefits		
Movement in long service leave provisions	50,841	352,370
Superannuation	1,562,651	1,562,737
Total remuneration	9,944,086	10,418,344

A Excluding acting arrangements and part year service

B Includes allowances and reportable fringe benefits

During 2009-2010, no termination benefits were paid to senior executives (2008-2009: nil)

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 2010

Note 28 - Senior executive remuneration (Cont)

Table B. Salary packages for senior executives as at 30 June

Average annualised remuneration packages for substantive senior executives

	As at 30 June 2010				As at 30 June 2009		
	No. of SES	Base salary (including annual leave)	Total remuneration package	A	No. of SES	Base salary (including annual leave)	Total remuneration package
Total remuneration	-	-	-		1	112,441	135,082
less than \$ 145,000	1	130,492	156,739		2	125,900	151,815
\$145,000 to \$159,999	1	130,492	162,814		-	-	-
\$160,000 to \$174,999	-	-	-		2	158,364	185,417
\$175,000 to \$189,999	14	163,115	199,420		10	158,364	191,525
\$190,000 to \$204,999	4	166,599	207,875		8	164,254	210,564
\$205,000 to \$219,999	5	186,317	230,494		2	175,159	226,591
\$220,000 to \$234,999	2	193,023	240,475		3	186,586	241,835
\$235,000 to \$249,999	1	214,499	260,927		-	-	-
\$250,000 to \$264,999	-	-	-		1	208,251	265,765
\$265,000 to \$279,999	1	247,256	298,514		1	240,054	305,393
\$295,000 to \$309,999	-	-	-		1	369,463	419,580
\$415,000 to \$429,999	1	380,550	438,516		-	-	-
\$430,000 to \$444,999	-	-	-		-	-	-
Total	30				31		

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2010

Note 28 - Senior executive remuneration (Cont)

Table B. Salary packages for senior executives as at 30 June (Cont)

Non-salary elements available to senior executives include

- (a) Superannuation (post-employment benefits)
- (b) Other allowances

A Excluding acting arrangements and part-year service

Major differences between Tables 28A and 28B

Note 28A discloses senior executive remuneration based upon

- (a) Actual salary paid during the year (including payment for leave taken)
- (b) Movement in annual leave and long service leave provisions (including revaluations of provisions)
- (c) Superannuation (post-employment benefits)
- (d) Other allowances
- (e) Reportable fringe benefits

These amounts may differ to the remuneration package disclosed in Note 28B depending upon the amount of leave taken during the year, part-year service, periods of leave without pay, acting arrangements, changes to base salary, salary for superannuation purposes and allowances during the year, and revaluation of employee provisions.

Table A includes acting arrangements and part year service where the \$145,000 threshold was reached during the year. Table B reflects only substantive senior executive packages in existence as at 30 June.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

	2009-2010 \$'000	2008-2009 \$'000
Note 29 - Remuneration of auditors		
Financial statement audit services are provided free of charge to the CDPP		
The fair value of services provided was	83	80
Total	83	80
No other services were provided by the Auditor-General		
Note 30 - Financial instruments		
(a) Categories of financial instruments		
Loans and receivables		
Cash and cash equivalent	438	230
Trade receivables	139	401
Carrying amount of financial assets	577	631
Financial Liabilities		
Payables - suppliers	2,004	1,592
Other payables	5,505	5,168
Non-interest bearing liabilities	607	832
Carrying amount of financial liabilities	8,116	7,592
(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 2010.		
(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 2010.		
(d) Credit risk		

The CDPP is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The CDPP has policies and procedures that guide debt recovery techniques that are to be applied. The 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 2010

Note 30 - Financial instruments (cont)

(d) Credit risk

	2009-2010 Not Past Due Nor Impaired \$'000	2008-2009 Not Past Due Nor Impaired \$'000	2009-2010 Past due or impaired \$'000	2008-2009 Past due or impaired \$'000
Loans and receivables				
Cash and cash equivalents	438	230	-	-
Trade receivables	139	367	-	34
Total	577	597	-	34

	2009-2010 \$'000	2008-2009 \$'000
--	-----------------------------	-----------------------------

Ageing of financial assets that are past due but not impaired for 2010

Loans and receivables

Trade receivables		
0 to 30 days	-	21
31 to 60 days	-	1
61 to 90 days	-	12
Over 90 days	-	-
Total	-	34

(e) Liquidity risk

The CDPP's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the CDPP will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the CDPP (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 2010

Note 30 - Financial instruments (cont)

(e) Liquidity risk (cont)

The following tables illustrates the maturities for financial liabilities

Financial Instrument	On demand		within 1 year		1 to 5 years		> 5 years		Total	
	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000	2009-2010 \$'000	2008-2009 \$'000
Other Liabilities										
Payables - Suppliers	-	-	2,004	1,592	-	-	-	-	2,004	1,592
Total	-	-	2,004	1,592	-	-	-	-	2,004	1,592

The CDPP is appropriated funding from the Australian Government. The CDPP manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the CDPP has policies in place to ensure timely payment are made when due and has no past experience of default.

(f) Market risk

The CDPP holds basic financial instruments that do not expose the CDPP to certain market risks. The CDPP is not exposed 'Currency risk' or 'Other price risk'.

Interest Rate Risk

The CDPP does not have any interest-bearing items on the balance sheet. The 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 2010		
	2009-2010 \$	2008-2009 \$
Note 31 - Administered fines and costs revenue		
Fines and costs	A 3,720,091	5,486,771
Total administered fees and fines revenue	3,720,091	5,486,771
A An amount of \$168 was reinstated in during 2009-2010 that related to a prior year amount.		
Note 32 - Administered other revenue		
Other	-	850
Total administered other revenues	-	850
Note 33 - Reversal of previous administered asset write-downs		
Reinstate receivable previously written-off	344,503	302,296
Total reversal of previous administered asset write-downs	344,503	302,296
Note 34 - Write-down and impairment of administered assets		
Financial Assets		
Write-off	3,045,363	6,069,396
Prison sentence	84,818	36,198
Community service orders	50,576	45,617
Received by other agencies	616,904	70,600
(Decrease) Increase in provision for doubtful debts	(1,595,700)	(3,174,168)
Total write-down of administered assets	2,201,961	3,047,643
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.		

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

	2009-2010 \$	2008-2009 \$
Note 35 - Administered cash		
Cash and cash equivalents	-	932
Total cash and cash equivalents	-	932
Note 36 - Administered receivables		
Fines and costs	A 6,694,048	8,561,474
Less : Impairment allowance account	(5,425,851)	(7,021,551)
Total receivables (net)	1,268,197	1,539,923
Fines and costs receivable (gross) are aged as follows		
Not overdue	A 382,441	375,369
Overdue by:		
Less than 30 days	266,142	369,013
30 to 60 days	391,759	290,322
61 to 90 days	380,246	231,611
More than 90 days	5,273,460	7,295,159
Total receivable (gross)	6,694,048	8,561,474
Fines and costs receivables are with entities external to the Australian Government. Credit terms are net 30 days (2008-2009: 30 days).		
A An amount of \$168 was reinstated in during 2009-2010 that related to a prior year amount.		
The impairment allowance account is aged as follows		
Not overdue	(117,958)	(220,917)
Overdue by:		
Less than 30 days	(107,351)	(156,049)
30 to 60 days	(97,117)	(135,889)
61 to 90 days	(244,547)	(162,128)
More than 90 days	(4,858,878)	(6,346,568)
Total impairment allowance account	(5,425,851)	(7,021,551)
Reconciliation of the impairment allowance account		
Opening balance	(7,021,551)	(10,195,719)
Increase/decrease recognised in net surplus	1,595,700	3,174,168
Closing balance	(5,425,851)	(7,021,551)

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS For the year ended 30 June 2010		
	2009-2010 \$	2008-2009 \$
Note 37 - Administered payables		
Other payables	1,414	4,920
Total administered payables	1,414	4,920
Other payables are expected to be settled in		
No more than 12 months	1,414	4,920
More than 12 months	-	-
Total other payables	1,414	4,920
All payables are entities that are not part of the Australian Government.		
Note 38 - Administered reconciliation table		
Opening administered assets less administered liabilities as at 1 July	A 1,535,935	1,059,361
Plus: Administered revenues	4,064,594	5,789,917
Less: Administered expenses	(2,201,961)	(3,047,643)
Administered transfers to/from Australian Government:		
Less: Transfers to OPA	(2,184,046)	(2,315,635)
Plus: Transfers from OPA	52,261	49,934
Closing administered assets less administered liabilities as at 30 June	A 1,266,783	1,535,935
A An amount of \$168 was reinstated in during 2009-2010 that related to a prior year amount.		

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2010

Note 39 – Administered contingent liabilities and 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.

Matters before the courts at the reporting date may result in fines, costs and reparations being awarded to the Commonwealth.

The CDPP is unable to declare an estimate of contingent gains or losses not recognised due to the uncertainty of the outcome of matters, but more particularly, due to the sensitivity of the information related to matters still before the courts.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

	2009-2010 \$	2008-2009 \$
Note 40 - Administered financial instruments		
The administered assets and liabilities of the CDPP, other than cash, do not constitute as financial instruments.		
<u>(a) Categories of financial instruments</u>		
Loans and receivables		
Cash and cash equivalent	-	932
Carrying amount of financial assets	-	932
Financial Liabilities		
Nil	-	-
Carrying amount of financial liabilities	-	-
<u>(b) Net income and expense from financial assets</u>		
Loans and receivables		
Nil	-	-
Net gain/(loss) from financial assets	-	-
There is no interest expense from financial liabilities not at fair value through profit or loss in the year ending 2010.		
<u>(c) Net income and expense from financial liabilities</u>		
Other liabilities		
Nil	-	-
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 2010.		
<u>(d) Credit risk</u>		
The CDPP is exposed to minimal credit risk as loans and receivables are cash. 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 2010

Note 40 - Administered financial instruments (cont)

(d) Credit risk

	2009-2010 Not Past Due Nor Impaired \$	2008-2009 Not Past Due Nor Impaired \$	2009-2010 Past due or impaired \$	2008-2009 Past due or impaired \$
Loans and receivables				
Cash and cash equivalents	-	932	-	-
Total	-	932	-	-

Ageing of financial assets that are past due but not impaired for 2009

	2009-2010 \$	2008-2009 \$
Loans and receivables		
Nil	-	-
Total	-	-

(e) Liquidity risk

The CDPP does not have any administered financial liabilities.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

Note 40 - Administered financial instruments (cont)

(e) Liquidity risk (cont)

The following tables illustrates the maturities for financial liabilities:

Financial Instrument	On demand		within 1 year		1 to 5 years		> 5 years		Total	
	2009-2010	2008-2009	2009-2010	2008-2009	2009-2010	2008-2009	2009-2010	2008-2009	2009-2010	2008-2009
Other Liabilities										
Nil	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total	-	-	-	-	-	-	-	-	-	-

The CDPP is appropriated funding from the Australian Government. The CDPP manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the CDPP has policies in place to ensure timely payment are made when due and has no past experience of default.

(f) Market risk

The CDPP holds basic financial instruments that do not expose the CDPP to certain market risks. The CDPP is not exposed 'Currency risk' or 'Other price risk'.

Interest Rate Risk

The CDPP does not have any interest-bearing items on the administered balance sheet. The 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 2010

	2009-2010 \$'000	2008-2009 \$'000
Note 41 - Appropriations		
Table A: Acquittal of authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations		
Balance carried from previous period	68,808	58,167
Appropriation Act		
<i>Appropriation Act (No. 1) 2009-2010</i>	108,318	107,356
Reductions (<i>Appropriation Act</i> s.10)		
<i>Appropriation Act (No. 1) 2004-2005</i> A	(4,214)	
<i>Appropriation Act (No. 1) 2009-2010</i> B	(1,273)	-
<i>Appropriation Act (No. 1) 2006-2007</i> A	(5,442)	-
<i>Appropriation Act (No. 1) 2009-2010</i> B	(1,624)	-
<i>Appropriation Act (No. 1) 2008-2009</i> C	-	(573)
FMA Act		
Repayments to the Commonwealth (<i>FMA Act</i> s.30)	234	504
Appropriations to take account of recoverable		
GST (<i>FMA Act</i> s.30A)	3,571	3,874
Relevant agency receipts (<i>FMA Act</i> s.31)	3,040	5,554
Total appropriations available for payments	171,418	174,882
Cash payments made during the year (GST inclusive)	102,025	106,074
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and as represented by	69,393	68,808
Cash at bank and on hand	438	230
Departmental appropriations receivable	68,275	68,200
Net GST receivable from the ATO	680	378
Total	69,393	68,808

A Reduction relates to a prior year appropriation

B Reduction relates to the current year appropriation

C Prior year reduction relates to that prior year appropriation

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

	2009-2010 \$'000	2008-2009 \$'000
Note 41 - 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)		
<i>Financial Management and Accountability Act 1997 - Section 28</i>		
<i>Purpose</i> - A section to allow for the expenditure of amounts the Commonwealth is legally required to pay, but for which there is no other appropriation.		
<i>Nature</i> - Administered		
Cash payments made during the year	52	50
Appropriations credited to special accounts	-	-
Repayments to the Commonwealth (net) (<i>FMA Act s.30</i>)	-	-
Total charged to special appropriation	52	50
Budget estimate (<i>FMA Act section 28</i>)	250	250

Note - Cash payments made are refunds of amounts paid to the CDPP in error.

Note 42 - Special accounts

A. Other Trust Monies Special Account

Appropriation - Financial Management and Accountability Act 1997 s.20

Establishing instrument - Initial Determination to Establish Components of the Reserved Money Fund

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

There were no transactions during either year.

The Other Trust Monies Special Account was abolished on 3 September 2009 in accordance with a determination by the Minister for Finance and Deregulation.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the year ended 30 June 2010

2009-2010	2008-2009
\$'000	\$'000

Note 42 - Special accounts (Cont)

B. Service for Other Governments & Non-Agency Bodies Account

*Appropriation - Financial Management and Accountability Act
1997 s.20*

*Establishing instrument - Initial Determination to Establish
Components of the Reserved Money Fund*

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.

The Service for Other Governments & Non-Agency Bodies Special Account was abolished on 3 September 2009 in accordance with a determination by the Minister for Finance and Deregulation.

C. Services for Other Entities and Trust Moneys - Office of the Director of Public Prosecutions Special Account

*Appropriation - Financial Management and Accountability Act
1997 s.20*

*Establishing instrument - Financial Management and
Accountability Determination 2009/29*

Purpose - (a) disburse amounts held on trust or otherwise for the benefit of a person other than the Commonwealth; (b) disburse amounts in connection with services performed on behalf of other governments and bodies that are not FMA Act agencies; (c) repay amount where an Act or other law requires or permits the repayments of an amount received; and (d) reduce the balance of the Special Account (and, therefore, the available appropriation for the Account) without making a real or notional payment.

This account is non-interest bearing.

There were no transactions during the year.

The Service for Other Entities and Trust Moneys - Office of the Director of Public Prosecutions Special Account was established on 3 September 2009 in accordance with a determination by the Minister for Finance and Deregulation.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

	2009-2010 \$	2008-2009 \$
Note 43 - Compensation and debt relief		
Departmental		
One payment was provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period. (2008-2009: No payments made)	68,645	Nil
One payment was provided in special circumstances relating to APS employment pursuant to s73 of the <i>Public Service Act 1999</i> during the reporting period (2008-2009: No payments made)	1,761	Nil
Total	\$ 70,406	\$ -
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	\$ -	\$ -

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

	2009-2010 \$'000	2008-2009 \$'000
Note 44 - Reporting of outcomes		
(a) Net Cost of Outcome Delivery		
The CDPP has only one outcome. Therefore no attribution is required.		
	Outcome 1	
Expenses		
Administered	2,202	3,048
Departmental	101,735	103,042
Total expenses	103,937	106,090
Other external revenues		
Administered		
Fines and costs	3,720	5,487
Other administered revenue	-	1
Reversal of previous asset write-downs	345	302
Total Administered	4,065	5,790
Departmental		
Goods and services revenue	2,105	2,099
Gains from disposal of assets	10	-
Other revenues	364	398
Other gains	171	131
Total Departmental	2,650	2,628
Income from Non-Government sector	6,715	8,418
Net cost/(contribution) of outcome	97,222	97,672

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget Outcome.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

	2009-2010 \$'000	2008-2009 \$'000
Note 44 - Reporting of outcomes (Cont)		
(b) Major Classes of Departmental Revenues, Expenses, Assets and Liabilities by Outcomes		
	Outcome 1	
Departmental expenses		
Employees	59,265	59,553
Suppliers	37,241	37,681
Depreciation and amortisation	4,706	5,077
Other expenses	523	731
Total departmental expenses	101,735	103,042
Departmental income		
Revenues from government	105,421	106,783
Sales of goods and services	2,105	2,099
Other non-taxation revenues	545	529
Total departmental income	108,071	109,411
Departmental assets		
Cash	438	230
Receivables	69,117	69,043
Land and buildings	10,979	11,895
Infrastructure, plant and equipment	5,864	4,800
Intangibles	537	700
Other non-financial assets	675	293
Total departmental assets	87,610	86,961
Departmental liabilities		
Suppliers	2,004	1,592
Other payables	5,505	5,168
Non-interest bearing liabilities	607	832
Employee provisions	14,489	13,876
Other provisions	5,309	5,198
Total departmental liabilities	27,914	26,666

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2010

2009-2010	2008-2009
\$'000	\$'000

Note 44 - Reporting of outcomes (Cont)

**(c) Major Classes of Administered Revenues, Expenses,
Assets and Liabilities by Outcomes**

	Outcome 1	
Administered Revenues		
Fines and costs	3,720	5,487
Other administered revenues	-	1
Other non-taxation revenues	345	302
Total administered income	4,065	5,790
Administered Expenses		
Write-down of assets	2,202	3,048
Total Administered Expenses	2,202	3,048
Administered Assets		
Cash	-	1
Receivables	1,268	1,539
Total administered income	1,268	1,540
Administered Liabilities		
Payables	1	5
Total Administered Expenses	1	5

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Acronyms & Abbreviations

ABN	Australian Business Number
ABS	Australian Bureau of Statistics
ABS team	Australian Border Security Team
ACBPS	Australian Customs and Border Protection Service
ACBPS officers	Australian Customs and Border Protection Service officers
ACC	Australian Crime Commission
ACCC	Australian Competition and Consumer Commission
ACS	Australian Customs Service (former)
ACS officers	Australian Customs Service officers (former)
ACT DPP	Australian Capital Territory Director of Public Prosecutions
AEC	Australian Electoral Commission
AFMA	Australian Fisheries Management Authority
AFP	Australian Federal Police
AGD	Attorney-General's Department
AGS	Australian Government Solicitor
AFZ	Australian Fishing Zone
ASBL	Australian/Indonesian Seabed Boundary Line
AME	Aircraft Maintenance Engineer
AMLAT	Anti-Money Laundering Assistance Team
AMSA	Australian Maritime Safety Authority
APS	Australian Public Service
AQIS	Australian Quarantine and Inspection Service
ASIC	Australian Securities and Investments Commission

ASIO	Australian Security Intelligence Organisation
ASX	Australian Stock Exchange
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission (former)
AUD	Australian dollars
AUSTRAC	Australian Transaction Reports and Analysis Centre
AWA	Australian Workplace Agreement
AWBC	Australian Wine and Brandy Corporation
BAS	Business Activity Statement
CARS	Criminal Assets Recording System
CASA	Civil Aviation Safety Authority
CCB	Child Care Benefit
CDPP	Commonwealth Director of Public Prosecutions
CITES	Convention on International Trade in Endangered Species
COAG	Council of Australian Governments
CPG	Commonwealth Procurement Guideline
CRIMS	Case Reporting and Information Management System
defendant	a person who has been charged with an offence
DEWHA	Department of Environment, Water, Heritage and the Arts
DEWR	Department of Employment and Workplace Relations (former)
DPP	Director of Public Prosecutions
EAP	Employee Assistance Program
EEO	Equal Employment Opportunity
ESS	Employee Self Service Scheme
EWP	Employee Wellbeing Program
FAO	Family Assistance Office
FBI	Federal Bureau of Investigation (USA)
GBRMPA	Great Barrier Reef Marine Park Authority
GST	Goods and Services Tax
HOCOLEA	Heads of Commonwealth Law Enforcement Agencies
HOPAC	Heads of Prosecutors Agencies Conference
HR	Human Resources
HSMA	Health and Safety Management Arrangement

IAP	International Association of Prosecutors
ISP	Internet Service Provider
IT	Information Technology
ITSA	Insolvency and Trustee Service Australia
LAME	Licensed Aircraft Maintenance Engineer
LSS	Litigation Support System
MDMA	methylenedioxymethamphetamine (otherwise known as ecstasy)
MOPED	Managing Officers, Prosecutors and Executive Directors
NOPSA	National Offshore Petroleum Safety Authority
PBS	Pharmaceutical Benefits Scheme
PPO	Pecuniary Penalty Order
<i>Prosecution Policy</i>	<i>Prosecution Policy of the Commonwealth</i>
RAAF	Royal Australian Air Force
SES	Senior Executive Service
SIEV	suspected irregular entry vessel
SKSA	Sydney Kingsford Smith Airport

Legislation Abbreviations

<i>ACC Act</i>	<i>Australian Crime Commission Act 2002 (Cth)</i>
<i>AFP Act</i>	<i>Australian Federal Police Act 1979 (Cth)</i>
<i>ASIC Act</i>	<i>Australian Securities and Investments Commission Act 2001 (Cth)</i>
<i>Corporations Act</i>	<i>Corporations Act 2001 (Cth)</i>
<i>Criminal Code</i>	<i>Commonwealth Criminal Code (Criminal Code Act 1995 (Cth))</i>
<i>Crimes Act</i>	<i>Crimes Act 1914 (Cth)</i>
<i>CSB Act</i>	<i>Crimes (Superannuation Benefits) Act 1989 (Cth)</i>
<i>Customs Act</i>	<i>Customs Act 1901 (Cth)</i>
<i>DPP Act</i>	<i>Director of Public Prosecutions Act 1983 (Cth)</i>
<i>FMA</i>	<i>Fisheries Management Act 1991 (Cth)</i>
<i>OHS Act</i>	<i>Occupational Health and Safety Act 1991 (Cth)</i>
<i>POC Act 1987</i>	<i>Proceeds of Crime Act 1987 (Cth)</i>
<i>POC Act 2002</i>	<i>Proceeds of Crime Act 2002 (Cth)</i>

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