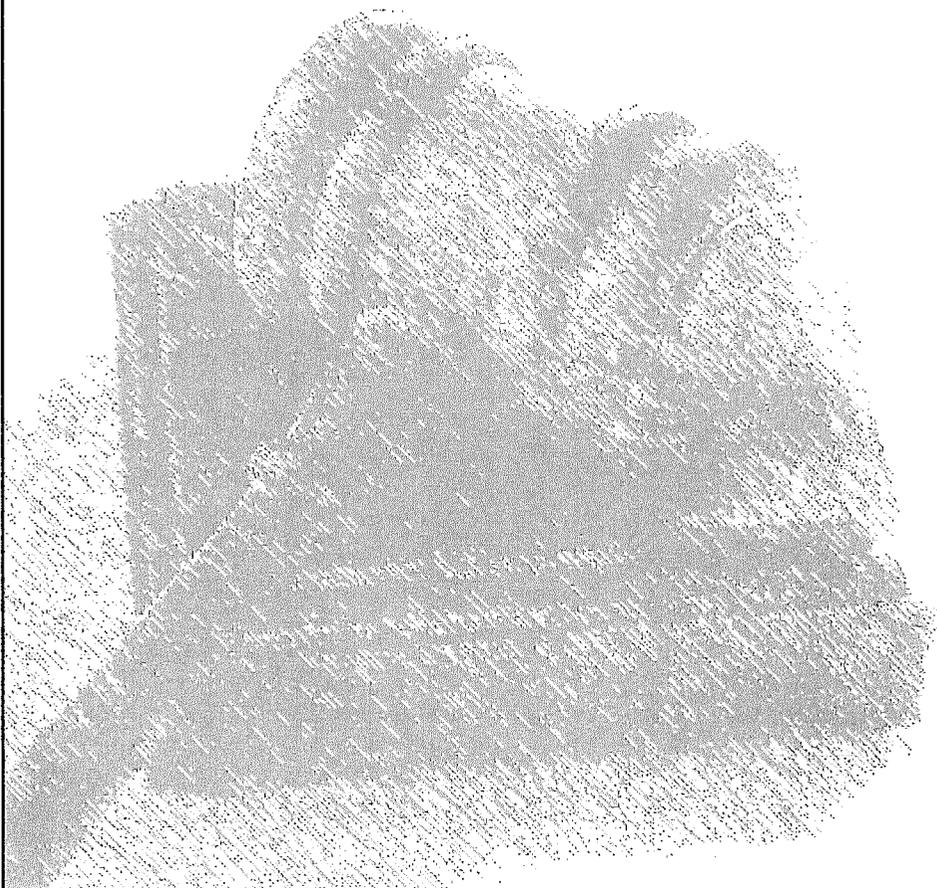


**Commonwealth Director
of
Public Prosecutions**

**Annual Report
1994 - 95**



Director's overview

The past year has been one of considerable work and steady achievement for the Office of the Commonwealth DPP. There will be setbacks for any organisation of the size, and with the range of functions, of the DPP, but there is much to be positive about.

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

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

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

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



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Director's overview

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

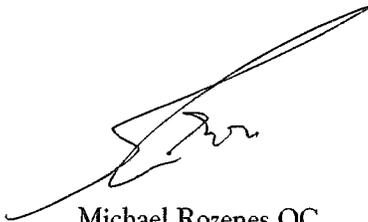
The remaining trials are likely to be lengthy and difficult. For example, a recently-completed trial - that arising from the collapse of Growth Industries - lasted 14 weeks. Taking into account the possibility that there will be appeals, it will be some time yet before all the remaining matters are concluded.

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

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

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

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



Michael Rozenes QC
Commonwealth Director of Public Prosecutions