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Commonwealth Director  
of Public Prosecutions

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Annual Report 2000 – 2001

Commonwealth of Australia 2000

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DPP

Commonwealth Director of Public Prosecutions

10 September 2001

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

My Dear Attorney

I have the honour to submit my report on the operations of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2001, in accordance with section 33(1) of the Director of Public Prosecutions Act 1983.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Damian Bugg', with a stylized flourish at the end.

DAMIAN BUGG, QC  
Director of Public Prosecutions



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## Compliance statement

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

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

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

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

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

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

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

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



## Director's overview

I am pleased to present my second Annual Report as Commonwealth Director of Public Prosecutions. It has been an interesting, and in some ways a challenging, year but I can look back with satisfaction on what we have achieved.

The challenges faced during the year, and the things achieved, are dealt with in the body of this Report. There have, of course, been disappointments as well as successes. That is to be expected. No prosecuting agency can expect to secure a conviction in every case. It is not our role to judge guilt or innocence, but to present the evidence to the court so that the trier of fact can decide whether the defendant is guilty as charged. If we only ran the cases where we were certain to secure a conviction, we would not be performing our proper role in the criminal process.

What we can do is prosecute fairly, effectively and without favour and we can endeavour to draw lessons from every case, including those where things do not go as planned. An organisation can only become stronger if it is prepared to learn from experience.

One of the most significant developments in the past year was the introduction of a new Corporations Act following the referral of corporations law powers by the States to the Commonwealth. The new Act is designed to overcome the legal uncertainties referred to in the last Annual Report and should put beyond doubt the DPP's power to prosecute offences relating to corporate misconduct. The new Act came into operation on 15 July 2001.

Another major development has seen the repeal of the theft and fraud offences in the Crimes Act 1914 and their replacement by new offences in the Criminal Code. The new offences came into force on 24 May 2001. They are designed to cover the same range of conduct as the old offences but there are differences in the way the provisions are drafted and in the elements which have to be proved.

Fraud prosecutions form a significant part of the DPP's practice and there is a considerable body of case law in relation to the old offences as well as a substantial body of operational expertise. It is likely to take time for people to develop the same level of expertise in relation to the new offences and to resolve the issues of interpretation which will inevitably arise.

The DPP is also facing the imminent extension of the general principles of criminal responsibility set out in Chapter 2 of the Criminal Code to all offences against Commonwealth law. The general principles were enacted in 1995 but at present they only apply to offences against the Code and offences against other specified Acts.

The general principles will apply to every offence against Commonwealth law after 15 December 2001. The general principles differ in a number of ways from the rules of criminal responsibility that have previously applied in Commonwealth prosecutions. This change has already had a resource impact on the DPP, because of the need to provide training to lawyers and investigators in relation to the new principles, but it has the potential to have a greater affect on the DPP's work.

The Criminal Code was developed as a model law but the general principles have not yet been universally adopted. The task of explaining to the courts what principles apply in Commonwealth cases, and how those principles operate, is likely to fall on the DPP prosecutors. We are prepared to take on that task. However, I would hope that all parties involved in the criminal process will show patience and forbearance until people become familiar with the principles set out in Chapter 2.

We are also facing a potentially significant development in relation to the recovery of the proceeds of crime. The pursuit of criminal assets has traditionally been seen as an adjunct to the prosecution process, a second string to the prosecution bow. However, the work in this area may be given a heightened status in the near future.

On 18 April 2001 the government announced that it would introduce legislation for a civil based confiscation regime, to stand alongside the existing conviction based provisions. At the time of this Report, the government has issued an exposure draft of a Bill. Under the current proposal, the DPP will be given the function of taking recovery action under both civil based confiscation provisions and conviction based provisions.

If the Bill is enacted it will mark a significant step in the fight against organised and serious crime. It will give the DPP the capacity to pursue the proceeds of crime even if it is not possible to prosecute and it should streamline the process of recovering the proceeds of crime. The civil based provisions are based on NSW legislation which has worked well in that State. The Bill will also mark a significant development in the functions of the DPP. The recovery of criminal assets will no longer be an adjunct to the prosecution function. It will be a primary function in its own right.

This poses significant challenges for the DPP. We will have to ensure that recovery action is given appropriate priority in case planning, and does not take a back seat to prosecution, but that we do not succumb to the temptation to just target the money in cases where it may not be easy to build a case for prosecution. We will also have to ensure that there is a proper degree of separation between the two functions within the Office and that the DPP works together with other affected agencies to achieve a proper level of coordination and overall supervision of the work under the new legislation.

I am confident that the DPP can meet these challenges. However, there may need to be some internal reorganisation. The DPP, and the investigative agencies, may also need additional resources to give full effect to the new legislation.

I have previously commented on attempts to reform and streamline the listing and trial procedures in Australia. It has been pleasing this year to see that initiatives undertaken in NSW under the direction of the Chief Judge of the District Court have significantly reduced case backlogs in that court and have provided certainty of trial dates. The benefits of trial certainty to a prosecuting office and to witnesses from investigative agencies are substantial and it is to be hoped that reform proposals in other jurisdictions have a similar effect.

It has been said in previous years that the DPP does not work in a vacuum. In particular, we depend on the investigating agencies to investigate cases and refer them for prosecution and assets recovery action. I am pleased to report that the DPP has excellent operating arrangements with all the Commonwealth's investigating agencies, particularly the Australian Federal Police, the National Crime Authority and the Australian Securities and Investments Commission, and with the other agencies we deal with on a regular basis, including the Attorney-General's Department, Centrelink and Insolvency and Trustee Service Australia.

I would like to thank the heads of all the agencies we deal with, particularly those represented on the Heads of Commonwealth Law Enforcement Agencies (otherwise known as HOCOLEA) for their continued cooperation.

One of the great successes of the DPP has been to maintain its status as an independent agency free from political influence and political pressure. I think it is important that the DPP continues to operate independently from the political process. However, that does not mean that the DPP cannot maintain good working relations with the Attorney-General and the Minister for Justice and Customs.

I would like to thank the Attorney-General, the Honourable Daryl Williams AM QC MP, and the current Minister for Justice and Customs, Senator the Honourable Christopher Ellison, for their continued support for the DPP. I would also like to thank the former Minister for Justice and Customs, Senator the Honourable Amanda Vanstone, for her support during her time as Minister for Justice and Customs.

It is with deep regret that I note the death of Harold Seymour, a former prosecutor in the Perth office of the DPP, who left the Office in recent years to join the WA Bar. He was a highly respected member of the Office and was building a successful career at the Bar. It is always hard to see a former colleague die. It is especially hard to see young talent wasted. My sympathies go to his family and to his present and former colleagues.

Finally, I would like to thank all employees of the DPP for their continued efforts over the last year. The Office is fortunate to have a skilled and dedicated workforce. The work over the past year was of a very high standard and I am very grateful for the efforts of all members of staff.

**Damian Bugg QC**  
**Director of Public Prosecutions**

## CHAPTER 1

# Office of the DPP

### Establishment

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

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

The DPP is within the portfolio of the Commonwealth Attorney-General, but the Office operates independently of the political process. Under section 8 of the DPP Act the Attorney-General has power to issue guidelines and directions to the DPP. There were no directions under section 8 during 2000-2001.

The DPP has a staff of approximately 400, of whom just over half are lawyers.

### Role

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

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

The DPP does not generally prosecute street crimes or crimes against the person. Those matters are normally covered by the criminal laws of the States and, except in Jervis Bay and Australia's external territories, the offences are prosecuted by the State and Territory DPP's.

The main cases prosecuted by the DPP involve drug importations and money laundering, offences against the Corporations Act, fraud on the Commonwealth (including tax fraud, medifraud and social security fraud) and people smuggling. The remaining part of the DPP's practice involves the prosecution of offences committed against Commonwealth legislated schemes and covers a range of matters which cannot be easily categorised.

The majority of Commonwealth prosecutions, other than the occasional private prosecution, are conducted by the DPP. The remaining cases consist of high-volume summary matters which, for reasons of convenience, are conducted by Commonwealth agencies under arrangement with the DPP. State authorities also conduct some Commonwealth prosecutions, again for reasons of convenience

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

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

## **Corporate plan**

The DPP settled a new Corporate Plan in the course of the year. A copy of the new Plan appears as Appendix 2 at the end of this Report.

The DPP's vision is a fair and just society where laws are respected and obeyed and there is public confidence in the justice system.

The Corporate Plan sets out strategies and an action plan for achieving that vision.

## **Social justice and equity**

The DPP aims to advance the interests of social justice and equity by helping to enforce the criminal law, for the benefit of all members of the community, and by helping to ensure that alleged offenders who come before the criminal courts are treated fairly and equally.

## **Prosecution policy**

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

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

- there must be sufficient evidence to prosecute the case (which requires not just that there be a prima facie case but that there also be reasonable prospects of conviction); and



- it must be clear from the facts of the case, and all the surrounding circumstances, that prosecution would be in the public interest.

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

## Functions and powers

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

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

- to prosecute indictable offences against State law where, with the consent of the Attorney-General, the Director holds an authority to do so under the laws of that State;
- to conduct committal proceedings and summary prosecutions for offences against State law where a Commonwealth officer is the informant;
- to appear in extradition proceedings and proceedings under 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 the then Attorney-General signed an instrument under section 6(1)(g) which has general application.

The DPP does not conduct Customs prosecutions under Part XIV of the Customs Act 1901. The responsibility for prosecuting those matters, which are enforced by quasi-criminal proceedings, rests with the Australian Government Solicitor.

The DPP does, however, prosecute all criminal offences against the Customs Act. Those include offences against section 233B of the Act, involving the importation and exportation of narcotic goods, and offences against sections 233BAA and 233BAB, involving the importation and exportation of "tier 1" and "tier 2" goods as defined in the Act.

## **Organisation**

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

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

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

## **Corporate Governance**

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

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

The DPP has issued Guidelines on Official Conduct for DPP employees. The document sets out the ethical standards expected of DPP employees. All DPP employees have signed a copy of the document to indicate that they are aware of the ethical standards expected from them.

## **Outcomes and outputs**

An outcome and output chart for 2000-2001 appears at the end of this Chapter.

## **Best practice**

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

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

## Senior management chart

(as at 30 June 2001)

<b>Director</b> <b>Damian Bugg QC</b>  <b>First Deputy Director</b> <b>B3 (P Walshe)</b>  <b>Principal Advisor,</b> <b>Commercial &amp; Policy</b> <b>B3 (G Delaney)</b>	<b>Head Office</b>	<b>Dep Dir B2 Legal and Prac. Mgt (J Thornton)</b> <b>Dep Dir B2 Corp Mgt (S Walker)</b> <b>Dep Dir B2 Special Projects (I Bermingham)</b>	<b>SES B1 Commercial Pros (G Davidson)</b> <b>SES B1 Policy (J McCarthy)</b> <b>SES B1 Crim Assets and International (G Gray)</b> <b>SES B1 Tax Branch (A Oakey)</b> <b>SES B1 ACT Prosecutions (G Lalor)</b>
	<b>Sydney Office</b>	<b>Deputy Director B2 (J Jolliffe)</b>	<b>SES B1 Prosecutions (G Drennan)</b> <b>SES B1 Prosecutions (C Murphy)</b> <b>SES B1 Prosecutions and Tax (J Shouldice)</b> <b>SES B1 Criminal Assets (A Alexandrou)</b> <b>SES B1 Commercial Pros (P Shaw)</b>
	<b>Melbourne Office</b>	<b>Deputy Director B2 (M Pedley)</b>	<b>SES B1 Prosecutions (S Bruckard)</b> <b>SES B1 Prosecutions (B Tchakerian)</b> <b>SES B1 Tax Branch (L West)</b> <b>SES B1 Crim Assets (K Wiltshire)</b> <b>SES B1 Commercial Pros (S Kirne)</b>
	<b>Brisbane Office</b>	<b>Deputy Director B2 (P Evans)</b>	<b>SES B1 Prosecutions (C Porritt)</b> <b>SES B1 Crim Assets (S Grono)</b> <b>SES B1 Commercial Pros (C Barker)</b> <b>SES B1 Townsville (G Davey)</b> <b>Legal 2 Cairns (P Edson)</b>
	<b>Perth Office</b>	<b>Deputy Director B2 (D Adsett)</b>	<b>SES B1 Executive (M Plummer)</b> <b>SES B1 Commercial Pros (P Bevilacqua)</b>
	<b>Adelaide Office</b>	<b>Deputy Director B1 (J Phillips)</b>	
	<b>Hobart Office</b>	<b>Assistant Director Legal 2 (J Read)</b>	
	<b>Darwin Office</b>	<b>Assistant Director Legal 2 (F Propsting)</b>	

## Outcome and output chart 2000-2001

### DIRECTOR OF PUBLIC PROSECUTIONS Director: Damian Bugg QC

Total price of outputs	\$60 447 000
Departmental outcome appropriation	\$58 105 000

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

Total price	\$60 447 000
Departmental output appropriation	\$58 105 000

#### Output 1.1

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

Total price	\$60 447 000
Appropriation	\$58 105 000

## CHAPTER 2

# Prosecutions

### General prosecutions

#### Practice

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

The conduct of litigation is the most visible part of the prosecution function. However, there is considerable work involved in preparing cases for hearing, providing advice and other assistance to investigators, drafting charges, and settling applications for search warrants and other warrants. A lot of work is put into cases which, for one reason or another, do not proceed to court or which result in guilty pleas without a trial.

Prosecution work also involves a high level of liaison with investigators and with the investigative agencies. In the past year, DPP lawyers attended over 650 liaison meetings with investigative agencies. That was in addition to meetings held to discuss details of specific cases.

DPP lawyers also regularly participate in training courses for investigators. In the last year, DPP lawyers provided training at over 170 different training sessions. It is important for the DPP to maintain effective relations with the investigating agencies and to assist in ensuring that investigators are properly equipped to perform their duties. However, the work places considerable resource demands on the Office.

The Commonwealth does not have its own criminal courts. The DPP prosecutes almost entirely in State and Territory courts, which are vested with jurisdiction to deal with Commonwealth matters by section 68 of the Judiciary Act 1903. The result is that DPP prosecutors operate under different procedures, and sometimes different rules of evidence, in each jurisdiction.

The majority of court work is conducted in-house by DPP lawyers or in-house counsel. However, the DPP briefs counsel from the private Bar if the case requires expertise or resources that are not available in-house. The DPP also often briefs local solicitors or police prosecutors to represent it on mentions and pleas of guilty in country areas.

The DPP currently employs nine in-house counsel, four in Sydney, three in Melbourne, one in Brisbane and one in Perth.

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

the prosecuting function appear later in this chapter. Reports on some of the more significant cases dealt with during the year appear in Chapter 6.

### **Summary prosecutions, committals and trials**

In this Report, a reference to a summary prosecution is a reference to a matter that is dealt with to completion by a magistrate. As a general rule, less serious offences can be dealt with in the magistrates courts and the more serious offences are dealt with by a judge and jury in a superior court. All States and Territories have a Supreme Court. Some, but not all, also have an intermediate court normally called either a District Court or a County Court.

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 in a superior court.

A reference to a trial is a reference to a defended hearing before a judge and jury in a superior court.

### **Developments in case work**

As in previous years the mainstay of the General Prosecutions practice in 2000-2001 was the prosecution of drug crime, money laundering and fraud. However there was continued work in relation to organised people smuggling and the evasion of excise on various products, particularly "chop-chop" tobacco.

There was a steady flow of illegal entrants to Australia throughout the year. Most of the boats arrive in Western Australia or the Northern Territory and that is where the bulk of these prosecutions are conducted. There are some signs of an increasing level of organisation on the part of the people who are sending the boats to Australia. For the most part, those people tend to stay outside Australia and leave the crew members and the passengers to face the risks of the voyage and the risk of imprisonment when they arrive in Australia.

There was also a steady flow of "chop-chop" cases during the year. Details on the work in this area are set out below.

The past year also saw the first prosecution for organised fraud against the GST system. The case involves a person who is alleged to have obtained over \$500 000 in rebates to which he was not entitled by setting up false company structures and lodging false BAS returns. At the time of reporting, the case is still before the courts. This may not be the last case of its kind.

The remainder of the cases prosecuted by the General Prosecutions Branches involved a wide range of offences against Commonwealth law including fisheries offences, electoral offences, air navigation offences and

environmental crime. Most Commonwealth Acts create criminal offences and the range of the general prosecutions practice is as wide as the reach of Commonwealth law.

### **The Criminal Code**

The past year saw the enactment of a new range of theft and fraud offences in the Criminal Code and the extension of the range of offences which are covered by the general principles of criminal responsibility set out in Chapter 2 of the Criminal Code. Both developments have had an impact on the DPP and have the potential to affect the DPP's operations in the foreseeable future.

The new theft and fraud offences came into force on 24 May 2001 and replaced the offences in the Crimes Act which have been the mainstay of the DPP's fraud prosecution practice. The new offences cover the same range of conduct as the old offences but there are some differences in the drafting of the provisions and in the elements which have to be proved under them.

The DPP has provided training to prosecutors and investigators in relation to the new provisions. However, it is likely to take time for people to become familiar with the new offences, especially since offences committed prior to 24 May 2001 will still have to be prosecuted under the old provisions.

The general principles of criminal responsibility in Chapter 2 of the Criminal Code were enacted in 1995 but at this stage they only apply to offences against the Code and against a number of other specified Acts. The plan is that the general principles will apply to every offence against Commonwealth law as from 15 December 2001. At the time of reporting, the Attorney-General's Department is undertaking a major harmonisation exercise with other affected Departments and agencies with a view to ensuring that all Commonwealth offences that appear outside the Criminal Code will be Code compliant by 15 December 2001.

### **Chop chop and other excise cases**

In February 1999 the Australian Taxation Office took over responsibility for administering the excise system from the Australian Customs Service. However until May 2001, the CEO of Customs still administered the Excise Act, with some officers from ATO being authorised to act as Customs officers. From 4 May 2001, the responsibility for administering the various Excise Acts was transferred to ATO.

ATO recruited and trained a large number of investigators to handle the new function and there has been an increase in the number of excise cases referred to the DPP. These cases have involved a range of matters, including the evasion of alcohol excise and fraud on the fuel penalty surcharge scheme and the diesel fuel rebate scheme. However the most marked increase has been in the number of tobacco excise cases referred to the DPP. These cases typically involve "chop-chop", or backyard tobacco.



Queensland and Victoria, being the main tobacco growing regions, have seen the bulk of the cases. In the first six months of last year DPP Melbourne received four new excise cases. In the second six months there were 35 new cases in the office.

The indications are that chop chop is a burgeoning industry which promises greater profits than growing cannabis and is seen to involve less risk. Many of the cases referred to DPP have involved the evasion of more than a hundred thousand dollars worth of excise. Some have involved the evasion of over a million dollars worth of excise. In the more serious cases, the DPP normally brings charges under the Crimes Act (for conduct before 24 May 2001) or the Criminal Code (for conduct after 24 May 2001). These offences attract penalties of up to 10 years imprisonment.

### **Electronic commerce**

The development of electronic commerce poses a significant challenge to the DPP, and other law enforcement agencies. We are already seeing cases where fraud and other crimes have been committed using the Internet. The number of such cases is likely to increase as the Internet becomes more widely used and ever more businesses and government agencies provide services on-line.

In cases that involve electronic crime, a successful prosecution depends on two factors. The first is the ability of the investigators to conduct a criminal investigation in an electronic environment and prepare a brief for prosecution. The second is the capacity of the prosecuting agency to present a case based on electronic evidence.

It is not an easy task to investigate electronic crime. Electronic crime is committed at the speed of light, it can be committed from a remote location and it can be committed in conditions approaching anonymity. Even if it can be shown that a particular transaction was conducted under cover of a PIN number or password, that will show only that the person who conducted the transaction knew what the PIN number or password was. It will not, by itself, show that the transaction was conducted by the person to whom the PIN number or password was issued. It can be a difficult, time consuming and costly task to investigate a crime committed by electronic means.

It can also be a difficult task to prosecute electronic crime. The DPP's experience suggests that there are no insurmountable barriers facing the prosecution, as long as the matter has been properly investigated and the investigators have been able to put together a brief for prosecution. The rules of evidence treat electronic documents in much the same way as paper documents and, so far, those rules have proved sufficiently robust to cope with the challenges raised by electronic evidence. However, the prosecutors still need to understand the nature of the evidence they are dealing with, how that evidence came into existence and how to present it in court.



The DPP has appointed an officer to act as national coordinator on electronic commerce issues. That officer is currently the officer in charge of the Criminal Assets and International Branch of Head Office.

That officer also represents the DPP on the Action Group into the Law Enforcement Implications of Electronic Commerce, or AGECE. AGECE is a multi-agency group established by the Heads of Commonwealth Law Enforcement Agencies to report and make recommendations on the law enforcement implications of electronic commerce. AGECE is chaired by the Australian Transaction Reports and Analysis Centre and includes representatives from the Australasian Centre for Policing Research, the Australian Competition and Consumer Commission, the Australian Customs Service, the Australian Federal Police, the Australian Securities and Investments Commission, the Australian Taxation Office, the Commonwealth Attorney-General's Department, the Department of Immigration and Multicultural Affairs and the National Crime Authority.

## **Commercial prosecutions**

### **Practice**

The DPP Commercial Prosecutions Branches conduct prosecutions for offences arising under the Corporations Law of the States and the Corporations Act 2001. They also prosecute all large fraud prosecutions where there is a corporate element and all prosecutions for offences against the Trade Practices Act 1974.

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

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

The responsibility for investigating breaches of the Trade Practices Act rests with the Australian Competition and Consumer Commission. The DPP also meets with the ACCC to discuss specific case and general liaison issues.

### **Developments**

The main development in the past year was the introduction of a new Commonwealth Corporations Act following the referral by the States of

corporations law powers to the Commonwealth. The new Act came into operation on 15 July 2001.

One of the main effects of the new Act, from the DPP's perspective, is that offences against the State Corporations Laws are translated into offences against Commonwealth law and they can be prosecuted by the DPP in the same way as any other offence against Commonwealth law. The uncertainties concerning the DPP's powers that were created by the High Court decisions in Hopwood and Byrnes, Hughes and Bond have been resolved.

Where a liability or a right had arisen under the Corporations Law of a State, an equivalent liability or right is enacted under the Corporations Act. In addition the Act provides, in effect, that criminal proceedings that were commenced under the old provisions and have not been completed are to be treated as if they had been commenced under the new provisions. That avoids any need that might otherwise arise for the DPP to lay fresh charges in current cases.

There is no general fraud offence in the new Corporations Act. If a case that has been investigated by the ASIC involves a fraud on a company, or a fraud by using a company structure, it is often necessary for the DPP to lay charges under the fraud or theft provisions in State law. In the matter of Fukusato the defence has challenged the DPP's power to prosecute offences against the Criminal Code of Queensland.

The defendant in that case has been charged with a mixture of offences against the Queensland Criminal Code and the Corporations Law of Queensland. It is alleged that the defendant and another person used the positions which gave them control of two companies which owned real estate in Australia to raise mortgages on the properties without authority.

On 1 December 2000 the defence applied to the trial judge to have the indictment quashed on the basis that the DPP had no power to prosecute State offences. On the same day the defence applied to have the issue removed to the High Court. The High Court dismissed the application on the basis that the issue should first be argued before the Supreme Court of Queensland. The defence has now brought an application to remove the matter to the Queensland Court of Appeal.

The outcome of that case could have significant implications for the conduct of the DPP's work in this area.

### **Specialist units**

The DPP has tax prosecution units in Sydney, Melbourne, Brisbane, Adelaide, Perth and Head Office. The DPP also has Centrelink units in Sydney and Melbourne.

The use of specialist units allows the DPP to develop expertise in particular areas of the law and give the investigators a single point of contact with the DPP and a single source of advice.

The DPP does not have the capacity to set up specialist units for every area of work. However, every office has appointed a liaison officer to deal with each of the agencies that regularly refer cases to the DPP. The liaison officers are the first point of contact with the relevant agency and they oversee the provision of legal advice and prosecution services to that agency.

## **Exercise of statutory powers**

- **No bill applications**

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

In the past year there were 39 no bill applications received from defendants or their representatives. Of these, 13 were granted and 26 refused. A further 21 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 34.

Of the matters discontinued, the sufficiency of evidence was the main factor in 18 cases. Public interest was the main factor in nine of the remaining cases. In seven cases prosecutions were discontinued for both evidential and public interest reasons.

Nine no bills were granted in fraud cases, 15 in drugs cases, two in commercial prosecutions and eight in other matters.

- **Indemnities**

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

In the past year the DPP gave undertakings under sections 9(6) and 9(6D) to 36 people in a total of 17 matters. In some cases, indemnities were given to more than one witness in a single matter. For example, in one large fraud case eight witnesses were indemnified.

The Director also has power under section 30(5) of the National Crime Authority Act 1984 to give an undertaking to a person who has been summonsed to appear before the NCA that any evidence they may give, and

anything derived from that evidence, will not be used in a prosecution against that person for an offence against Commonwealth law, other than perjury. The DPP gave no undertakings under that Act in the past year.

- **Taking matters over**

Under section 9(5) of the DPP Act the Director has power to take over a prosecution for a Commonwealth offence that has been instituted by another person and either carry it on or bring it to an end. This power was not exercised during 2000-2001.

- **Ex-officio indictments**

The Director has power under section 6(2D) of the DPP Act to file an indictment against a person when they have not been committed for trial. In 2000-2001 the Director exercised the power in relation to eight defendants in four matters. In each case there was a contested committal but the magistrate declined to commit for legal or evidential reasons which the Director considered were wrong.

There were also a number of cases where a defendant stood trial on different charges from those on which they were committed or where a defendant was dealt with in a different place from the State or Territory where a committal order was made. The indictments filed in those cases are sometimes called ex officio indictments, but are not treated as ex officio indictments for the purpose of the above statistics.

- **Consent to conspiracy proceedings**

Conspiracy proceedings under Commonwealth law can only be commenced with the consent of the Director. In 2000-2001 the Director gave consent to the commencement of conspiracy proceedings against 24 defendants in relation to ten alleged conspiracies.

## Performance indicators

The following table lists the DPP's performance indicators for the conduct of all prosecutions for 2000-2001 and compares them with the figures for the previous year.

### Prosecution performance indicators for 2000-2001

Description	Target	Outcome	Details (by no. of defs)
Prosecutions resulting in a conviction	90%	98%	4 756 (out of 4 865)
Figures for 1999-2000	90%	97%	4 771 (out of 4 912)
Defended summary hearings resulting in conviction	60%	71%	169 (out of 239)
Figures for 1999-2000	60%	67%	214 (out of 319)
Defended committals resulting in a committal order	80%	95%	376 (out of 397)
Figures for 1999-2000	80%	97%	373 (out of 384)
Defended trials resulting in a conviction	60%	70%	93 (out of 132)
Figures for 1999-2000	60%	73%	96 (out of 132)
Prosecution sentence appeals upheld in summary matters	60%	84%	16 (out of 19)
Figures for 1999-2000	60%	82%	18 (out of 22)
Prosecution sentence appeals upheld in indictable matters	60%	55%	12 (out of 22)
Figures for 1999-2000	60%	60%	9 (out of 15)

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

## Prosecution statistics

In the course of the year the DPP completed criminal proceedings against 4 865 defendants involving a total of 7 623 charges. The DPP received cases from more than 34 agencies.

The tables which follow set out details of the prosecutions conducted in 2000-2001.

**Table 1: Outcomes of successful prosecution action by DPP 2000-2001**

No of defendants convicted of summary offences	4 153
No of defendants convicted of indictable offences	603
No of defendants committed for trial or sentence	586

**Table 2: Summary prosecutions in 2000-2001**

Defendants convicted after a plea of guilty	3 984
Defendants convicted after a plea of not guilty	169
Total defendants convicted	4 153
Defendants acquitted after a plea of not guilty	70
<b>Total</b>	<b>4 223</b>

**Table 3: Committals in 2000-2001**

Defendants committed after a plea of guilty	210
Defendants committed after a plea of not guilty	376
Total defendants committed	586
Defendants discharged after a plea of not guilty	21
<b>Total</b>	<b>607</b>

**Table 4: Prosecutions on indictment in 2000-2001**

Defendants convicted after a plea of guilty	510
Defendants convicted after a plea of not guilty	93
Total defendants convicted	603
Defendants acquitted after a plea of not guilty	39
<b>Total</b>	<b>642</b>

**Table 5: Prosecutions on indictment – duration of trials in 2000-2001**

1 – 5 days	49
6 – 10 days	41
11 – 15 days	20
16 – 20 days	9
21 – 25 days	10
26 – 30 days	6
Over 30 days	10
<b>Total trials</b>	<b>145</b>

**Table 6: Prosecution appeals against sentence in 2000-2001**

	<b>Summary</b>	<b>Indictable</b>
Number of appeals upheld	16	12
Number of appeals dismissed	3	10
<b>Total number of appeals</b>	<b>19</b>	<b>22</b>
<b>% of appeals upheld</b>	<b>84.2%</b>	<b>54.5%</b>

**Table 7: Defence appeals in 2000-2001**

	<b>Summary</b>	<b>Indictable</b>
Number of appeals against sentence upheld	101	29
Number of appeals against sentence dismissed	54	28
Number of appeals against conviction upheld	12	6
Number of appeals against conviction dismissed	9	8
Number of appeals against conviction and sentence upheld	6	14
Number of appeals against conviction and sentence dismissed	5	10
<b>Total number of appeals</b>	<b>187</b>	<b>95</b>

**Table 8: Legislation: charges dealt with in 2000-2001**

	Summary	Indictable
Agriculture and Veterinary Chemicals Act	9	
Air Navigation Act	8	
ANTS (Australian Business Number) Act	1	
Audit Act	1	
Australian Citizenship Act	2	
Australian Federal Police Act	7	
Australian Postal Corporation Act	4	
Australian Securities and Investments Commission Act	7	2
Australian Wine and Brandy Corporation Act	1	
Banking Act		1
Bankruptcy Act	41	6
Child Support (Registration and Collection) Act	1	
Childcare Rebate Act	3	
Civil Aviation Act and Regulations	102	
Commonwealth Electoral Act	6	
Copyright Act	8	
Corporations Law	30	27
Crimes (Aviation) Act	20	3
Crimes (Confiscation) Act	1	
Crimes (Currency) Act	46	11
Crimes Act	577	273
Customs Act	92	249
Defence Act and Regulations	13	
Education Services for Overseas Students	2	
Environment Protection and Biodiversity Conservation Act	6	
Excise Act	6	
Export Market Development Grants Act	1	
Export Meat Orders	1	
Family Law Act	1	
Financial Transaction Reports Act	167	40
Fisheries Management Act	271	
Great Barrier Reef Marine Park Act and Regulations	66	
Health Insurance Act	30	
Insurance (Agents and Brokers) Act	12	



Marriage Act	6	
Migration Act	121	378
Motor Vehicle Standards Act	2	
National Crime Authority Act	1	
National Health Act	11	
National Parks and Wildlife Regulations	12	
Navigation Act	6	
Non-Commonwealth legislation: Drugs	54	31
Non-Commonwealth legislation: Other	140	50
Occupation Health and Safety (Cth Employment) Act	3	
Ozone Protection (Product Control) Regulations	1	
Passports Act	22	5
Primary Industries Levy Collection	4	
Proceeds of Crime Act	3	5
Public Order (Protection of Persons and Property) Act	41	
Quarantine Act	4	
Radiocommunications Act	14	
Referendum (Machinery Provisions) Act	154	
Royal Commissions Act	2	
Service and Execution of Process Act	2	
Social Security Act	3 953	
Statutory Declarations Act	2	
Student Assistance Act	63	
Superannuation Industry (Supervision) Act	1	1
Taxation legislation	291	2
Telecommunications Act	2	
Therapeutic Goods Act	9	
Torres Strait Fisheries Act	15	
Trade Marks Act	15	
Trade Practices Act	6	
Veterans Entitlements Act	14	7
Wildlife Protection (Regulation of Exports and Imports) Act	14	1
<b>Total</b>	<b>6 531</b>	<b>1 092</b>

**Table 9: Crimes Act 1914: charges dealt with in 2000-2001**

	Summary	Indictable
Requirement to furnish name (s.3V)	1	
Aiding and abetting (s.5)	5	
Accessory after the fact (s.6)	1	
Incitement (s.7A)	9	
Breach of recognisance (ss.20A, 20AC)	6	
Damage property (s.29)	16	1
False pretences (s.29A)	5	2
Imposition (s.29B)	116	55
False statements (s.29C)		1
Fraud (s.29D)	104	159
Seizing Commonwealth goods (s.30)	2	
Administration of justice (ss.32-50)	7	6
Forgery (ss.65-69)	59	13
Disclosure of information (s.70)		1
Stealing or receiving (s.71)	59	16
Falsification of books (s.72)	2	1
Bribery (ss.73 and 73A)		1
Personating public officers (s.75)	2	
Resisting public officers (s.76)	7	
Computer offences (ss.76A – 76E)	15	9
Espionage and official secrets (ss.77 – 85D)	1	
Postal offences (ss.85E – 85ZA)	64	3
Telecommunications offences (ss.85ZB – 85ZKB)	94	1
Conspiracy (s.86)		4
Trespass on Commonwealth land (s.89)	2	
<b>Total</b>	<b>577</b>	<b>273</b>

**Table 10: Defendants dealt with in 2000-2001: referring agencies**

	Summary	Indictable
Aboriginal and Torres Strait Islander Commission	3	
Attorney General's Department		1
Australian Communications Authority	7	
Australian Competition and Consumer Commission	4	
Australian Customs Service	23	12
Australian Electoral Commission	155	
Australian Federal Police	582	565
Australian Fisheries Management Authority	92	
Australian Maritime Safety Authority	1	
Australian National Parks and Wildlife Service	9	
Australian Postal Corporation	53	8
Australian Protective Service	1	
Australian Quarantine and Inspection Service	5	2
Australian Securities and Investments Commission	35	40
Australian Taxation Office	236	15
Australian Wine and Brandy Corporation	1	
Centrelink	2 948	29
Civil Aviation Safety Authority	32	
Comcare	2	
Dept of Agriculture Fisheries and Forestry	7	
Dept of Defence	7	1
Dept of Education Training and Youth Affairs	10	
Dept of Employment Workplace Relations and Small Business	4	
Dept of Environment and Heritage	15	
Dept of Immigration and Multicultural Affairs	45	13
Dept of Transport and Regional Services	1	
Dept of Veterans Affairs	13	7
Health Insurance Commission	49	2
Insolvency and Trustee Service Australia	10	1
National Crime Authority	11	22
National Registration Authority	7	
Non-Commonwealth agencies		
– State police	196	16
– Other	131	
Therapeutic Goods Administration	5	
<b>Total</b>	<b>4 700</b>	<b>734</b>



## CHAPTER 3

# Criminal assets and international

### Criminal assets

#### Practice

The DPP's criminal assets work is performed by separate Criminal Assets Branches. The larger branches include, or have access to, the services of DPP financial analysts.

The object of the work is to ensure that criminal offenders are not only prosecuted for their crimes but also stripped of the profits and instruments of crime. However, there is little that can be done if the money has been spent and the offender has no assets that can be pursued. It follows that it is not always possible to recover the proceeds of crime.

The DPP's effectiveness in this area depends heavily on the support we receive from the Australian Federal Police, the National Crime Authority and the other agencies which do the investigative work. The DPP also works closely with Insolvency and Trustee Service Australia which is responsible for securing, managing and realising restrained property. ITSA operates independently from the DPP, and does not take directions or instructions from the DPP, but that does not prevent the two agencies coordinating their activities in this area.

#### Developments

The total amount recovered under the criminal assets initiative for 2000-2001 was \$6.25 million. As at 30 June 2001, the total value of property that was subject to restraining orders was approximately \$20 million, although not all that property may eventually be confiscated.

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

One feature of the year was the large number of forfeiture orders made under section 19 of the Proceeds of Crime Act that resulted in small recoveries of money. There were a total of 94 orders under section 19, a significant increase on the figure for 1999-2000 when there were 61 orders, but the total recovered under section 19 was down from \$1.58 million to \$852 000.

The reason is that a significant number of the orders under section 19 were made in relation to money found by police when they arrested the crew members of vessels used to bring unlawful non-citizens to Australia. In most cases of this kind, there is clear evidence that the money is part of the amount paid to the crew member for their services.

If a crew member is convicted of offences against the Migration Act, then it is open to the DPP to apply for a forfeiture order against the money under section 19 of the Proceeds of Crime Act on the basis that it is part of the proceeds of the relevant crime, and is hence tainted property for the purpose of section 19.

The amount of money involved in these matters is often small by Australian standards. However, it can be a significant amount in the eyes of the crew member. It would be against the public interest to return the money at the completion of the prosecution in cases of this kind.

### **Legislation**

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

- **The Proceeds of Crime Act**

The Proceeds of Crime Act provides a scheme to trace, freeze and confiscate criminal assets. The Act is conviction based, which means that no final orders can be made unless a person has been convicted of an indictable offence against Commonwealth law. However, there are provisions which allow the courts to make restraining orders to ensure that property is not dissipated while the criminal proceedings run their course.

There are also provisions which enable the courts to look behind the corporate veil, to determine whether a defendant has effective control over property even if they have no legal or equitable title to it.

Once a person has been convicted of an indictable offence, a court can order the forfeiture of tainted property (defined to mean the proceeds of crime and property used to commit a crime) or can make a pecuniary penalty order requiring the defendant to pay to the Commonwealth an amount equal to the benefits derived from the crime.

There is also provision for automatic forfeiture in relation to some types of serious crime, as defined in the Act. If a person's property has been placed under restraint and the person is convicted of an offence of the relevant kind there is, in effect, a rebuttable presumption that the restrained property is the proceeds of crime. The defendant bears the onus of bringing proceedings to show that the property was derived from a lawful source.

- **The Customs Act**

Division 3 of Part XIII of the Customs Act contains a scheme which is similar to that in the Proceeds of Crime Act but which varies in some key respects. The scheme under the Customs Act applies only to drug offences and it is not conviction based. The Federal Court can make an order under the Customs Act provisions even if there has been no conviction.

However the only order that can be made under the Customs Act provisions is a pecuniary penalty order. There is no provision for automatic forfeiture. That is a major limitation in the provisions. In many Commonwealth drug cases the offenders are detected and arrested at the point where the drugs are being imported and before the offenders have derived a benefit from the conduct which can be proven against them.

The DPP also conducts the court proceedings in any case where drug related property has been seized as forfeited property under the provisions of the Customs Act and the owner of the property contests forfeiture.

- **Civil remedies function**

The DPP is given a civil remedies function under sections 6(1)(fa) and 6(1)(h) of the DPP Act. The function is to take, or coordinate or supervise the taking of, civil remedies in matters connected with an actual or proposed prosecution. The function does not involve any new powers of recovery. What it does is to enable the DPP to enforce, or coordinate the enforcement of, traditional civil remedies in cases where the money at issue represents the proceeds of crime.

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

### **Review of the Proceeds of Crime Act**

In 1999 the Australian Law Reform Commission presented a report to government on the Proceeds of Crime Act and related legislation. The report is entitled *Confiscation that Counts, a review of the Proceeds of Crime Act 1987*. The main recommendation of the report was that the Commonwealth enact a civil based confiscation scheme to supplement the existing conviction based provisions in the Proceeds of Crime Act.

On 18 April 2001 the government announced that it had decided to introduce legislation for a civil based confiscation regime. At the time of this Report, the government has issued an exposure draft of a Bill for a new Proceeds of Crime Act to provide for both civil based and conviction based

confiscation. Under the Bill, the DPP will be given the function of taking recovery action under both regimes.

### **Superannuation orders**

The Criminal Assets Branches are responsible for proceedings under the Crimes (Superannuation Benefits) Act 1989 and Part VA of the Australian Federal Police Act 1979. Under the CSB Act, a Commonwealth employee who has been convicted of a corruption offence as defined, and who has been sentenced to more than 12 months imprisonment with at least some time to serve, can lose the government funded component of their superannuation benefits. Under Part VA of the AFP Act, members of the AFP can also lose government funded superannuation if found guilty of a corruption offence or of some types of disciplinary misconduct.

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

In 2000-2001 the DPP obtained six superannuation orders under the CSB Act. There were no orders under Part VA of the AFP Act. Details of the orders obtained under the CSB Act are set out in the following table.

<b>Name</b>	<b>State</b>	<b>Date</b>
Kelly	QLD	7 August 2000
Wilson	QLD	18 August 2000
Rosser	QLD	16 February 2001
Perry	QLD	23 March 2001
Reynolds	VIC	22 May 2001
Parker	ACT	8 June 2001

### **Criminal Assets Liaison Group**

The Criminal Assets Liaison Group was set up in 1998 to provide a forum to discuss issues which have national implications and to provide an increased level of inter-agency coordination. The agencies which participate are the DPP, the AFP, the NCA, ITSA and the Attorney-General's Department.

In 2000-2001 CALG met on four occasions. Two of the meetings were in Canberra, one was in Sydney and one in Melbourne.



### Performance indicators

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

Description	No.	%	Target
Applications for restraining orders that succeeded	21	100%	90%
Figures for 1999-2000	39	97%	
Applications for pecuniary penalty orders that succeeded	12	100%	90%
Figures for 1999-2000	11	100%	
Applications for forfeiture orders that succeeded	94	99%	90%
Figures for 1999-2000	61	98%	
Damages awarded against DPP under undertakings	Nil	—	—
Figures for 1999-2000	Nil	—	—
No of cases legal costs awarded against DPP (i)	2	—	—
Figures for 1999-2000	1	—	—
Amounts paid for costs awarded against DPP	\$4 809	—	—
Figures for 1999-2000	\$14 500	—	—

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

The performance indicators show that the DPP exceeded targets in all applicable areas in 2000-2001.

## International

### Practice

International work is an important part of the DPP's practice. Crime is a matter of global concern. Criminals rarely respect international boundaries and law enforcement agencies cannot afford to look at crime in purely national terms.

The work in this area falls into two main categories, being extradition and mutual assistance. The work in both areas is coordinated by the Criminal Assets and International Branch in Head Office. The Criminal Assets and International Branch liaises with the International Branch of the Attorney-General's Department and provides an information and support service to DPP officers.

### Extradition

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

The DPP has a role in relation to both incoming and outgoing extradition requests. In the case of incoming requests, the DPP appears in the court proceedings in Australia to determine eligibility for surrender and in any appeals relating to orders made in those proceedings. The DPP appears for the foreign country on the basis of instructions from the Attorney-General's Department. In the case of outgoing requests, the DPP prepares the request for extradition in all cases where a person has been charged with offences against Commonwealth law.

In the past year the DPP was instructed to appear in 16 new incoming extradition requests. Not all of those matters have yet resulted in proceedings before a magistrate in Australia. In the same time, Australia made six requests for extradition in relation to prosecutions being conducted by the DPP.

### **Mutual assistance**

Mutual assistance is the formal process under which countries provide assistance to each other to investigate and prosecute criminal offences and to recover the proceeds of crime. There is also international cooperation between investigating agencies at a less formal level.

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

In the past year the DPP was involved in 14 incoming mutual assistance cases. In the same time, Australia made 27 mutual assistance requests in matters involving the DPP. The incoming cases involved six requests for evidence to be taken in Australia, seven requests for search warrants and one request for action to be taken to recover the proceeds of crime.

## Criminal assets recovery tables

**Table 1: PoC Act: orders made and forfeitures secured in 2000-2001**

No. of restraining orders obtained	21
Estimated net value of property restrained	\$7 696 475
No. of pecuniary penalty orders obtained	12
Value of pecuniary penalty orders	\$2 872 938
No. of section 19 forfeitures obtained	94
Estimated value of property forfeited under section 19	\$476 490
No. of section 30 forfeitures	3
Estimated value of property forfeited under section 30	\$374 150

**Table 2: PoC Act: restraining orders in force as at 30 June 2001**

No. of restraining orders in force	70
Estimated net value of property restrained	\$19 695 322

**Table 3: PoC Act: money recovered in 2000-2001**

No. of pecuniary penalty orders paid	23
Amounts paid under pecuniary penalty orders	\$1 359 468
No. of section 19 forfeitures realised	70
Amounts recovered from section 19 forfeitures	\$852 372
No. of section 30 forfeitures realised	7
Amounts recovered from section 30 forfeitures	\$2 920 997
No. of cases where amounts recovered from settlement etc.	5
Amounts recovered from settlement etc.	\$173 479
<b>Total recovered</b>	<b>\$5 306 316</b>

**Table 4: Customs Act: restraining orders, pecuniary penalty orders, seizures and condemnation of property involving DPP in 2000-2001**

No. of restraining orders obtained	Nil
Estimated value of property restrained	Nil
No. of pecuniary penalty orders obtained	Nil
Value of pecuniary penalty orders	Nil
No. of cases where property seized	1
Estimated value of seized property	\$300 000
No. of condemnations	Nil
Estimated value of condemned property	Nil

**Table 5: Customs Act: restraining orders in force as at 30 June 2001**

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

**Table 6: Customs Act: money recovered in 2000-2001**

No. of pecuniary penalty orders paid	Nil
Amounts paid under pecuniary penalty orders	Nil
No. of cases where condemned property realised	Nil
Amounts recovered from realising condemned property	Nil
No. of cases where amounts recovered from settlement etc.	Nil
Amounts recovered from settlements etc.	Nil
<b>Total recovered</b>	<b>Nil</b>

**Table 7: Civil remedies: orders obtained by DPP in 2000-2001**

No. of cases where property secured by injunction or otherwise	3
Estimated value of property secured by injunction or otherwise	\$99 000
No. of judgments and reparation orders obtained	2
Amount of judgments and reparation orders	\$131 778

**Table 8: Civil remedies: money recovered in 2000-2001**

No. of judgments and reparation orders paid	3
Amounts paid under judgments and reparation orders	\$843 998
No. of cases where amounts recovered from settlement etc.	3
Amounts recovered from settlement etc.	\$99 000
<b>Total recovered</b>	<b>\$942 998</b>

**Table 9: Criminal assets: total recoveries for 2000-2001**

Proceeds of Crime Act pecuniary penalty order	\$1 359 468
Proceeds of Crime Act section 19 forfeiture	\$852 372
Proceeds of Crime Act section 30 forfeiture	\$2 920 997
Proceeds of Crime Act settlement and other payments	\$173 479
Proceeds of Crime Act total	\$5 306 316
Customs Act pecuniary penalty order	Nil
Customs Act condemnation	Nil
Customs Act total	Nil
Civil remedies judgments and reparations	\$843 998
Civil remedies settlements and other payments	\$ 99 000
Civil remedies total	\$942 998
<b>Grand total</b>	<b>\$6 249 314</b>



## CHAPTER 4

# Law reform

One of the objectives of the DPP is to provide recommendations on the laws and proposed laws of the Commonwealth relating to the criminal justice system.

The DPP is in a unique position to comment on practical problems which arise in the enforcement of Commonwealth criminal laws and on the likely practical consequences of proposed changes to those laws. The responsibility for coordinating the DPP's work in this area rests with the Policy Branch of Head Office. That branch works closely with the Criminal Law Branch of the Attorney-General's Department and with other relevant areas of that Department.

This chapter outlines some of the main issues considered in 2000-2001.

### **Causing harm to a Commonwealth public official**

The Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 inserted a new offence in the Criminal Code of causing harm to a Commonwealth public official (section 147.1). Consequent upon the enactment of that offence, the Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act repealed a number of existing offences of assault in specific legislation, including the offence under section 64(1) of the Australian Federal Police Act 1979 of assaulting or obstructing an AFP member in the execution of the member's duty.

The maximum penalty for the new Code offence, when committed in relation to an official who is a Commonwealth judicial officer or a Commonwealth law enforcement officer, is imprisonment for 13 years. Assaults on all other Commonwealth public officials are punishable by a maximum penalty of 10 years imprisonment. One result of the new provisions is that it is not possible for an offence committed in relation to an official who is a Commonwealth judicial officer or a Commonwealth law enforcement officer to be dealt with summarily under section 4J of the Crimes Act 1914.

In many instances an assault on a law enforcement officer will not be sufficiently serious to warrant the matter being dealt with by a superior court. In fact, the majority of charges laid under the old section 64(1) of the Australian Federal Police Act were dealt with summarily.

The DPP has recommended that, if section 147.1 is to retain its existing penalty structure, there should be special provisions to allow offences committed against Commonwealth judicial officers and Commonwealth law enforcement officers to be dealt with summarily in appropriate cases.

### **Section 82 of the Proceeds of Crime Act**

It is an offence under section 82 of the Proceeds of Crime Act to receive, possess or dispose of money or other property that may reasonably be suspected of being the proceeds of crime. Section 82(2) provides for a defence if the defendant satisfies the court “that he or she had no reasonable grounds for suspecting that the property referred to in the charge was derived or realised, directly or indirectly, from some form of unlawful activity”. The problem is that the application of the general principles of criminal responsibility in Chapter 2 of the Criminal Code has had the effect of requiring the prosecution to prove that the defendant was at least reckless as to the fact that the money or other property may reasonably be suspected of being the proceeds of crime. This has effectively negated the defence under section 82(2).

The DPP has accordingly recommended that section 82 be amended to provide that absolute liability applies to the physical element of circumstance that the money or other property may reasonably be suspected of being the proceeds of crime. Such an amendment would enable section 82 to have the same operation as it had prior to the application of Chapter 2.

### **Section 15 of the Financial Transaction Reports Act**

Section 15(1) of the Financial Transaction Reports Act provides for an offence of transferring currency into or out of Australia unless a report in respect of that transfer has been given in accordance with section 15. The case law established that strict liability used to apply to the element of this offence which relates to the failure to report: *R v Wai Yai Fu* (NSW District Court, 24 April 2001). However, the effect of applying Chapter 2 of the Criminal Code to this offence is that the prosecution is now required to prove that the defendant was at least reckless as to whether the required report has been given.

The DPP has recommended that section 15(1) be amended to provide that strict liability will apply to the physical element of the offence that requires proof that a report has not been given.

A similar issue arises in relation to the offence under section 15(5) of the Financial Transaction Reports Act relating to the receipt of currency. At the time of writing it is understood that both deficiencies will be addressed by way of government amendments to the Measures to Combat Organised and Serious Crime Bill 2001.



**Section 4.1 of the Criminal Code**

Section 4.1 of the Criminal Code provides that a physical element of an offence may be either (a) conduct, (b) a circumstance in which conduct occurs or (c) a result of conduct. However, in the case of some offences against Commonwealth law, it would be more appropriate to describe a “circumstance” as a circumstance accompanying a result rather than as a circumstance in which conduct occurs.

Early in 2001 the DPP drew this issue to the attention of the Attorney-General’s Department. The Department agreed that an amendment to section 4.1 was necessary, and there is provision in the Cybercrime Bill 2001 to amend section 4.1 of the Criminal Code to provide that the reference to a circumstance refers to “a circumstance in which conduct, or a result of conduct, occurs”.

**Importation of methylamphetamine**

In recent years the DPP has prosecuted a number of cases involving the importation of extremely large quantities of methylamphetamine. Some of those cases have involved quantities of over 100 kg with a street value of many millions of dollars. The unlawful importation of methylamphetamine is an offence against section 233B(1) of the Customs Act 1901 but, since the Customs Act does not specify a commercial quantity for methylamphetamine, the maximum sentence that can be imposed for an offence involving the importation of methylamphetamine is 25 years imprisonment.

This issue was the subject of an adverse comment by Wood CJ at CL in *R v Bimahendali*. The DPP has recommended that provision be made in Schedule VI of the Customs Act to specify a commercial quantity for methylamphetamine.

**Section 4J(4) of the Crimes Act**

Section 4J(4) of the Crimes Act provides for the summary disposition, if the prosecutor requests and the court thinks fit, of an indictable offence against Commonwealth law if the offence relates to property with a value that does not exceed \$500. If the offence relates to property worth more than \$500 the matter can only be dealt with summarily if the defendant consents, which means that the defendant has the option of requiring that the matter be dealt with by a superior court if they are so minded.

The monetary threshold in section 4J(4) has not been changed since section 4J was inserted in the Crimes Act in 1987. The DPP has recommended that a more realistic figure would be in the order of \$5 000 to \$10 000.

The summary court would still have an overriding discretion to decline to deal with a matter under section 4J(4) and the DPP can see no compelling reason why the threshold should not be increased to a more realistic level.

This change would be in keeping with the broad thrust of the report to the Standing Committee of Attorneys-General by the Deliberative Forum on Criminal Trial Reform by reducing the number of minor cases which go before the superior courts.

**Other matters**

During the past year the DPP provided assistance to the Attorney-General's Department in the development of a number of Bills, including:

- Law and Justice Legislation Amendment (Application of Criminal Code) Bill 2000;
- Crimes Amendment (Forensic Procedures) Bill 2000;
- National Crime Authority Amendment Bill 2000;
- Cybercrime Bill 2001;
- Measures to Combat Serious and Organised Crime Bill 2001;
- Crimes Amendment (Age Determination) Bill 2001;
- Corporations Bill 2001: and
- Proceeds of Crime Bill 2001.

## CHAPTER 5

# Resource management

### Overview

#### Management

The DPP has a Corporate Management Branch in Head Office and a Resource Management Branch in each regional office.

The Corporate Management Branch has national responsibility for financial and human resource management, library services and information technology. The branch works under the direction of the Deputy Director, Corporate Management, who also provides assistance and guidance, as required, to the Resource Management Branches in the regional offices.

The Resource Management Branches are each headed by an Executive Officer who works under the supervision of the Deputy Director or Assistance Director in charge of the relevant office.

The Head Office Branch includes a Human Resource Management Section and a Financial Management Section.

The Human Resource Management Section is responsible for providing policy direction and guidelines to the regional offices to ensure consistency of practice throughout the DPP. The Section also provides national payroll services, advice on entitlements and conditions of service and negotiates and implements Certified Agreements and Australian Workplace Agreements. The Section is also responsible for ensuring that the DPP meets its reporting requirements in relation to human resource issues.

The Financial Management Section is responsible for the national management of the DPP's finances.

### Significant developments

- **Certified Agreement**

The past year saw a substantial amount of work to implement the DPP Certified Agreement for 2000-2002. The agreement was certified by the Australian Industrial Relations Commission on 22 August 2000. It applies to all non-SES staff in the DPP, 376 people as at 30 June 2001.

There has been a 7% salary increase under the agreement. The salary scales are included in Table 5 at the end of this chapter.

The agreement also builds on existing initiatives designed to balance work, family and caring responsibilities. They include:

- recreation leave can be extended by taking leave at half pay;
- there are no restrictions on the number of days that can be taken as personal leave per year for caring or emergencies, subject to availability of credits;
- medical certificates are only required for sick leave in excess of five working days;
- all DPP offices are closed between Christmas and New Year with no deduction from salary or leave;
- employees can take up to four flex days within a four week settlement period and senior staff can work flexibly in consultation with supervisors;
- increased availability of part time work;
- access to employee assistance schemes;
- availability of discretionary leave with or without pay; and
- maternity leave can be extended, at half pay, up to 24 weeks.

During the coming year the DPP will seek to vary the Certified Agreement to increase salaries in order to reflect productivity increases which have been achieved as a result of initiatives taken over the past 12 months. These have resulted in substantial cost savings. It is also proposed to seek an extension of the life of the agreement by 12 months so that it will apply until 30 June 2003.

#### • **Australian Workplace Agreements**

In the course of the year the Employment Advocate approved new AWAs for all SES staff. The AWAs provide the same salary increase as the Certified Agreement. If the Certified Agreement is varied to allow for a further salary increase, the AWAs will be submitted to the Employment Advocate for amendment .

As at 30 June 2001 there were 38 SES employees on AWAs. This figure includes specialist staff who are paid at SES rates and some staff on temporary assignment to the SES.

#### • **Other developments**

During the year the Director issued a number of Personnel Instructions on various topics including conditions of service under the Certified Agreement and under the Public Service Act. These, and the accompanying series of explanatory notes, provide a framework for determining policy and procedures to assist both staff and management.

The Corporate Management Branch has set up a homepage on the DPP Intranet to provide improved access to information on conditions of service and employee entitlements. The site includes all current Director's Instructions and the explanatory notes, the Certified Agreement and material on DPP policies and procedures on issues like performance management and workplace diversity.

The branch has also commenced a project to establish an employee self service which will give staff on-line access to their personal information stored on the SAP Human Resource Management Information System. It is hoped that view-only access will be possible by the end of 2001 and that staff will be able to enter data, in appropriate places, by the end of March 2002.

The SAP Human Resource Management Information System has been upgraded to version 4.6B ISPS, which is the Public Sector standard. The upgrade required a great deal of work but, after some initial problems, the new system is working well.

## **Human resources**

### **Staffing**

As at 30 June 2001 the number of DPP operational staff was 415 (403 at 30 June 2000). A breakdown of this figure appears in Tables 1 to 4 at the end of this chapter. Average operational staffing for the year was 402.68 (392.3 for 1999-2000).

Staff are employed under the Public Service Act or section 27 of the DPP Act.

### **Training and development**

As part of the DPP's performance management scheme, each non-SES employee is required to have a personal development plan. The plan for each employee is reviewed annually following a performance assessment. If a training need is identified, by either the supervisor or the employee, the DPP will do its best to ensure that the employee receives relevant training as part of the performance management cycle.

Every personal development plan is tailored to meet the needs of the individual employee and is designed to ensure that the employee has not only the skills required for their current position but also the skills required for career advancement and personal development. The personal development plans are also used by the Human Resource Management Section to develop training programs and to ensure that every staff member receives their fair share of training.

All DPP offices also conduct regular in-house legal training which is designed to ensure that DPP lawyers keep their skills current and that they are able to comply with any continuing legal education requirements which apply to them.

Direct expenditure on external training for the year was \$182 335 (\$155 284 in 1999-2000). There was also considerable in-house and on the job training which is not costed.

### **Occupational health and safety**

It is important to the DPP to provide a safe and comfortable workplace for all employees. Every DPP office has an occupational health and safety representative who is responsible for monitoring health and safety issues. A new representative is selected and trained whenever a position becomes vacant. There is also an occupational health and safety committee in each office which meets on a regular basis to discuss and resolve any health and safety issues which arise.

The DPP is conscious of the need to try to foresee, and avoid, potential problems before they arise, particularly problems that may result from the introduction of new equipment. In the course of the year one office offered telephone headsets to staff to avoid potential neck problems.

If a problem arises the DPP's practice is to bring in specialists who have the skills needed to carry out inspections and develop strategies to overcome the problem.

### **Workplace diversity and equal employment opportunity**

The Public Service Act 1999 requires that every Australian public service workplace must be free from discrimination and must recognise and utilise the diversity of the Australian community it serves. Section 18 of the Act provides that an agency head must establish a workplace diversity program to assist in giving effect to the APS values. The DPP launched a Workplace Diversity Plan in February 1999.

The key objective of the Plan is to encourage staff to model appropriate behaviour for the management of workplace diversity so as to create a positive work environment which values people of different backgrounds, experiences, perspective and family responsibilities and which utilises the contributions they can all make to the work of the DPP.

The aims of the Workplace Diversity Plan are to:

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

The current plan will be reviewed early in 2002.

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

The employment levels for EEO target groups have varied since last year. The number of women employees has increased from 240 to 246. A total of 17 staff have identified a disability (23 in 1999-2000) and 67 staff have identified themselves as having a non-English speaking background (66 in 1999-2000).

As at 30 June 2001, the office employed one Aboriginal legal cadet in Melbourne and one in Brisbane.

### **Performance management**

As already noted, the DPP has a Performance Management Scheme for non-SES staff. There was a full cycle of the scheme during the year and eligible staff will advance in salary with effect from 1 July 2001. The Performance Management Scheme is designed, in part, to ensure that salary advancement is linked to performance. It also ensures that training needs are identified and that employees are aware of the relationship between the corporate goals of the DPP and the role they perform as individuals working within the Office.

### **Workplace participation**

The DPP Certified Agreement includes a requirement for the DPP to involve employees and their representatives in the development and implementation of major change. Where necessary, the DPP will negotiate aspects of change that impact on employees.

During the past year a number of staff meetings were held to discuss the proposed variation to the Certified Agreement and to negotiate the terms of the variation. There were also staff meetings in a number of offices called to discuss things like changes to accommodation and proposed new fitouts.

Some DPP offices also hold regular all-staff meetings to provide a forum for staff to raise issues with management. The DPP is moving to adopt that as a national practice.

### **Commonwealth disability strategy**

In accordance with government policy, the DPP has started work to develop a disability plan for the Office. Each regional office has been given a copy of the Commonwealth Disability Strategy and will be asked to nominate a representative to participate in drafting a disability plan.

In the meantime the DPP has reviewed all relevant employment practices to ensure that they comply with the requirements of the Disability

Discrimination Act 1992. The practices relate to selection and recruitment, training and development, health and safety and workplace diversity. Table 9 at the end of this chapter sets out performance indicators.

## **Financial management**

### **General**

The DPP uses the SAP R/3 Financial Management Information System and a fines and costs debtors system to meet the requirements of the Financial Management and Accountability Act 1997 and to comply with appropriate accounting standards.

The DPP's financial management policies are set out in a series of Director's Financial Instructions and related delegations. The instructions comply with the requirements of the Financial Management and Accountability Act and give effect to the DPP's obligations under that Act.

### **Financial statements**

The audited financial statements at the end of this Report were prepared in accordance with Schedule 1 of the Financial Management and Accountability (Financial Statements 2000-2001) Orders issued by the Minister for Finance and Administration. For detailed information on the accounting policy used to prepare the audited financial statements refer to Note 2 in the financial statements.

Under current budget arrangements the DPP has one outcome with one output. For further information on the DPP budget see the Attorney-General's Portfolio Budget Statements.

### **Financial Analysis**

Total net accrual expenditure for 2000-2001 was \$55.571 million, against accrual revenue of \$60.447 million (in 1999-2000 the net accrual expenditure was \$57.153 million, against accrual revenue of \$57.159 million).

### **Accounts processing**

Whenever it is practicable, the DPP uses Australian government credit cards and electronic funds transfer to pay for good and services. During 2000-2001 there was a significant increase in the volume and value of payments made by way of electronic funds transfer, which reflects the increased number of suppliers who are able to accept payments in that form. The DPP constantly reviews its accounts processing practices to identify potential areas for improved efficiency, especially in relation to low value, high volume transactions.



**Asset management**

The DPP decided in the course of the year that it will lease all new IT assets rather than buy them. This should result in cost savings to the DPP and a reduction in the administrative work involved in acquiring and maintaining IT equipment. The start up date for desktop personal computers is July 2001.

**Capital works management**

During 2000-2001 the DPP completed major refits in the Adelaide, Perth and Cairns offices.

The DPP had no major capital works projects that cost \$6 million or more in 2000-2001.

**Agency evaluations**

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

**Other areas****Information technology**

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

The DPP maintains the following in-house systems:

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

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

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

The DPP is in the process of upgrading its IT infrastructure to meet increased processing and data storage needs. As already noted, the DPP has decided to lease all new IT assets rather than buy them. In the course of the year the DPP entered into a public tender process purchase new equipment. The re-equipment program is due for completion by November 2001.

The DPP had adopted a litigation support system, known as LSS, to be the standard computer based support system for DPP litigation. The system was initially developed by the Australian Securities and Investments Commission. It was used on a regular basis to prosecute major cases during 2000-2001.

### **Libraries**

The DPP has a library in each office staffed by qualified librarians. The librarians provide research, reference and information services to DPP officers. The libraries maintain an up-to-date legal collection of electronic and hard copy materials.

Each library has a dual role. It provides support to officers who work in the relevant office, and it also works as part of a cooperative network to disseminate legal and other information throughout the DPP. This has the result that every DPP officer has access to the combined resources of all the DPP's libraries. The Head Office library also has a national coordinating and management role. National services include maintaining DPP in-house databases, distributing manuals, providing an information service, and cataloguing and managing the library system.

The libraries use the DPP Intranet to provide access to legal information through legal resource pages, in-house databases and electronic services provided by commercial publishers. In the course of the year an electronic copy of the library catalogue was added to the Intranet to give staff desktop access to the catalogue.

There are regular librarians meetings which provide a venue for input from all offices into the development of library network policies and procedures. In the course of the year a best practice committee was set up to review library resources. The review will be completed in the coming year.

### **Consultancy services**

Details of expenditure for 2000-2001 are shown in Table 5 at the end of this chapter. The total cost of external consultancies was \$257 313.

### **Fraud control and internal audit**

During 2000-2001 the DPP began work on preparing an Integrated Risk Management Plan. The first step involved preparing an Internal Audit Plan based on identified business risks.

When the risk management plan has been completed there will be a detailed review of the Fraud Control Risk Assessment and Action Plan to ensure that it is consistent with the new plan.

There were two cases of internal fraud reported during the year.

One case involved an employee who presented forged medical certificates to the Office. The employee was prosecuted for an offence against section 29B of the Crimes Act 1914. The employee was convicted and fined and has since left the DPP.

The other case involved an employee who was using work facilities to conduct a private business. No charges were laid, but the officer has left the DPP.

There were no relevant disciplinary proceedings under the Public Service Act 1999.

### **External scrutiny**

The DPP was referred to in only one report by the Auditor-General in 2000-2001. That was Audit Report No. 23 of 2000-2001 entitled *Audits of the Financial Statements of Commonwealth Entities for the Period Ended 30 June 2000*. That report referred to the DPP financial statements for 1999-2000 and noted that the audit report on the financial statements was unqualified.

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

### **Public relations**

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

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

The DPP did not undertake any advertising campaigns or market research in 2000-2001.

### **Status of women**

Equal Employment Opportunity is a sensible part of normal management practices. The responsibility for ensuring that proper attention is paid to the status of women employed by the DPP rests with the Director, supported by the Deputy Directors and other senior officers.

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

**Ecologically sustainable development and environmental performance**

The DPP is in the process of developing an environmental plan to identify additional measures which the Office can take to minimise impact on the environment. Currently, the DPP uses energy saving methods in its operations and endeavours to make the best use of resources.

The DPP uses technology to minimise energy use, including automatic switch-off devices on electrical equipment. All computer equipment within the DPP is Energy Star enabled. Waste paper is recycled and preference is given to environmentally sound products when purchasing office supplies.

**Business regulation**

The DPP has no role in business regulation other than to prosecute criminal offences, in appropriate cases, against the Corporations Act and the Corporations Law. The DPP's activities in Commercial Prosecutions are reported earlier in this Report.

**Public comment**

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

**Privacy**

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

## Resource management tables

**Table 1(a): Staff as at 30 June 2001**

Classification	ACT	NSW	VIC	QLD	SA	WA	TAS	NT	TOTAL
Director	1								1
SES Band 3	2								2
SES Band 2	3	1	1	1					6
SES Band 1	5	10	5	5	1	4			30
PLO	6	17	18	9	4	5	2	1	62
SLO	1	15	16	12	5	3	1	2	55
LO 2	2	15	8	2	1	2	1		31
LO 1	1	4		6	3		2		16
Exec 2	7	2	3	2	1				15
Exec 1	5	4	2	1	1	1			14
APS 6	4	3	4	2		2		1	16
APS 5	3	2	5	2	1				13
APS 4	6	19	10	13	2	5	1	2	58
APS 3	2	18	12	7	6	8	4	3	60
APS 2		10	13	4	2				29
APS 1	1		3	1				1	5
ABCAD			1	1					2
<b>Totals</b>	<b>48</b>	<b>123</b>	<b>99</b>	<b>67</b>	<b>27</b>	<b>30</b>	<b>12</b>	<b>9</b>	<b>415</b>

**Legend:**

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

**Table 1(b): Staffing summary 2000-2001**

Statutory office holders	1
Total staff employed under the Public Service Act	398
Total staff employed under the DPP Act	16
<b>Total</b>	<b>415</b>

The total number of non-ongoing employees included in this table is 22.

**Table 2: Staff as at 30 June 2001 by gender and category**

<b>Category</b>	<b>Full time</b>		<b>Part time</b>	
	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
Director	1			
Senior Executives –				
Band 3	2			
Band 2	5	1		
Band 1	20	9		1
Legal Officers	71	75		17
Executive Officers	17	11		2
APS 1 – 6	53	109	1	18
Aboriginal cadets		2		
<b>Total: 415</b>	<b>169</b>	<b>207</b>	<b>1</b>	<b>38</b>

**Table 3: Staff usage by Office**

<b>Office</b>	<b>Actual average staffing 2000–2001</b>
ACT	47.08
NSW	120.3
VIC	100
QLD	63.2
SA	24.8
WA	30.3
TAS	9.4
NT	7.6
<b>Total</b>	<b>402.68</b>

**Table 4: EEO Profile as at 30 June 2001**

<b>Classification</b>	<b>Male</b>	<b>Female</b>	<b>ATSI</b>	<b>PWD</b>	<b>First language English plus another</b>	<b>First language other than English</b>
Director	1					
SES Band 3	2					
SES Band 2	5	1				1
SES Band 1	20	10		1	1	1
Legal Officers	71	92	3	4	12	8
Executive Officers	17	13			2	4
APS employees	54	127		12	24	14
Aboriginal cadet		2				
<b>Total</b>	<b>415</b>	<b>170</b>	<b>3</b>	<b>17</b>	<b>39</b>	<b>28</b>

**Legend:****SES** Senior Executive Service**APS** Australian Public Service**ATSI** Aboriginal or Torres Strait Islander**PWD** People with disabilities

Tables 1 to 4 do not include 24 inoperative employees.

**Table 5: Salary scales applying in the DPP from 1 July 2000 to 30 June 2001**

<b>Classification</b>	<b>1 July 2000</b>	<b>21 June 2001</b>
SES Band 3	\$126 216 – \$136 262	\$130 002 – \$140 350
SES Band 2	\$97 501 – \$113 637	\$100 426 – \$117 046
SES Band 1	\$86 949 – \$92 981	\$89 557 – \$95 770
Principal Legal Officer	\$76 306 – \$79 611	\$78 595 – \$82 000
Executive Level 2	\$66 255 – \$77 628	\$68 243 – \$79 957
Senior Legal Officer	\$57 445 – \$69 897	\$59 168 – \$71 994
Executive Level 1	\$57 445 – \$62 031	\$59 168 – \$63 892
Legal Officer 2	\$41 761 – \$50 078	\$43 014 – \$51 580
APS 6	\$44 810 – \$51 475	\$46 154 – \$53 019
APS 5	\$41 489 – \$43 994	\$42 734 – \$45 314
Legal Officer 1	\$34 388 – \$40 388	\$35 420 – \$41 600
APS 4	\$37 198 – \$40 388	\$38 314 – \$41 600
APS 3	\$33 375 – \$36 021	\$34 376 – \$37 102
APS 2	\$30 108 – \$32 494	\$31 011 – \$33 469
APS 1	\$25 892 – \$28 616	\$26 669 – \$29 494

Table 6: Consultancies for 2000-2001

Consultant	Purpose	Cost	Reason used
<b>Head Office</b>			
Norman Disney and Young*	Prepare security management plan	\$9 555	Expertise not available in office
Davidson Trehaire*	Employee assistance program	\$3 360	Expertise not available in office
McCann and Associates	Independent rent review	\$3 850	Expertise not available in office
Gartner*	Information Needs Analysis	\$32 304	Expertise not available in office
Gartner*	Corporate services benchmarking study	\$57 726	Expertise not available in office
Gibson Quai	Develop data strategy	\$14 816	Expertise not available in office
Minter Ellison*	Advice on commercial property leases	\$14 084	Expertise not available in office
Woods Bagot*	Architectural services for office refurbishment	\$4 647	Expertise not available in office
Blake Dawson Waldron*	Advice on AWA	\$3 453	Expertise not available in office
Business Catalyst International	Conduct internal audits	\$2 960	Expertise not available in office
Business Catalyst International	Develop risk management plan and provide training	\$60 182	Expertise not available in office
<b>Sydney</b>			
LPC Australia	Independent rent review	\$6 325	Expertise not available in office
Davidson Trehaire*	Employee assistance program	\$6 075	Expertise not available in office
<b>Brisbane</b>			
Hassell Pty Ltd*	Architectural services for office refurbishment	\$9 310	Expertise not available in office
<b>Melbourne</b>			
Urbis	Rent review negotiations	\$4 400	Expertise not available in office
Occupational Services*	Employee assistance program	\$5 060	Expertise not available in office
<b>Perth</b>			
Gibson Quai*	Assist in PABX acquisition	\$2 750	Expertise not available in office
Interiors Australia	Architectural services for office refurbishment	\$16 456	Expertise not available in office

Consultancies marked \* were not publicly advertised.



Table 7: Resources for outcome

	Budget for 2000-2001	Actual expenses	Budget for 2001-2002
<b>Administered appropriations</b>	–	–	–
<b>Total administered expenses</b>	–	–	–
<b>Price of Departmental appropriations</b>			
<b>Output 1.1</b>	\$58 105 000	\$58 105 000	\$60 004 000
(Total revenue from government appropriations)			
<b>Contributing to price of departmental outputs</b>	\$58 105 000	58 105 000	\$60 004 000
<b>Revenue from other sources</b>			
<b>Output 1.1</b>	\$452 000	\$2 342 000	\$2 145 000
<b>Total revenue from other sources</b>	\$452 000	\$2 342 000	\$2 145 000
<b>Total Price of departmental outputs</b>			
(Total revenue from Government and other sources)	\$58 557 000	\$60 447 000	\$62 149 000
<b>Total estimated resourcing for outcome 1</b>			
(Total price of outputs and admin expenses)	\$58 557 000	\$60 447 000	\$62 149 000

Table 8: Average staffing level

	2000-2001	2001-2002 (estimate)
Average staffing level (number)	402	410

**Table 9: Commonwealth Disability Strategy: report**

The following table sets out the performance criteria of the DPP in its role as an employer under the Commonwealth Disability Strategy.

<b>Performance indicator</b>	<b>Performance measure</b>	<b>Current level of performance 2000-2001</b>	<b>Goals for 2001-2002</b>	<b>Actions for 2001-2002</b>
1. Employment policies, procedures and practices comply with the requirements of the Disability Discrimination Act.	Number of employment policies, procedures and practices that meet the requirements of the Disability Discrimination Act.	The DPP has several employment policies which meet the requirements of the Disability Discrimination Act. The Workplace Diversity Plan operated effectively throughout 2000-2001.	Ongoing assessment to ensure that employment policies are relevant for all employees of the DPP. Planning and implementation of a Disability Plan for the DPP. DPP WDP addresses the needs of members of staff with disabilities.	Completion of the DPP Disability Plan. New WDP 2001-2003 by June 2002.
2. Recruitment information for potential job applicants is available in accessible formats on request.	Percentage of recruitment information requested and provided in: <ul style="list-style-type: none"> <li>• accessible electronic formats; and</li> <li>• accessible formats other than electronic.</li> </ul> Average time taken to provide accessible information in : <ul style="list-style-type: none"> <li>• electronic formats; and</li> <li>• formats other than electronic.</li> </ul>	100% available via fax, electronic e-mail and mail. E-mail requests provided within 48 hours. Phone requests dispatched within 48 hours of request.	100% of customer's requests processed via desired medium within 48 hours of receipt. Extensions of closing periods granted consistent with any delays in providing information.	DPP website designed to provide 100% of recruitment information.
3. Agency recruiters and managers apply the principle of reasonable adjustment.	Percentage of recruiters and managers provided with information on reasonable adjustment.	No specific actions, however, in practice the principle has been in place at the DPP for the greater part of the past decade. Workplaces are modified as necessary to accommodate staff with disabilities.	All staff aware of reasonable adjustment principle via revised WDP 100% of internal recruitment staff will be made aware of the DPP's policy on reasonable adjustment by the end of 2001-2002.	New DPP WDP program specifically incorporates the principle of reasonable adjustment. DPP selection guidelines revised to include reasonable adjustment requirements by January 2002.

Table 9: Continued

Performance indicator	Performance measure	Current level of performance 2000-2001	Goals for 2001-2002	Actions for 2001-2002
4. Complaint/ grievance mechanism, including access to external mechanisms, in place to address issues and concerns by staff.	Established complaints / grievance mechanisms, including access to external mechanisms in operation.	<p>The DPP has a well established process for complaints and grievance handling. This includes access to external mechanisms to an Employees Assistance Program and the Merit Protection and Review Agency.</p> <p>No complaints or grievances involved disability issues in the workplace during 2000-2001.</p>	All employees continue to be provided with access to Employees Assistance Program services and complaints / grievance mechanisms.	Information on Employee Assistance Program services reviewed and updated as appropriate.



## CHAPTER 6

# Significant cases

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

### General prosecutions

#### **Brock**

This case related to a voyage undertaken by a cargo vessel known as the *Hiddensee* in the later part of 1996. The voyage commenced in the Netherlands in October 1996 and the vessel travelled to the waters off Pakistan. There the *Hiddensee* was met by a smaller boat and ten tonnes of cannabis resin was loaded on board.

The *Hiddensee* sailed on to the waters off Australia, where it was met by a fishing trawler called the *Southern Cross* at a point approximately 100 miles east of Port Stephens. The cannabis resin was loaded onto the *Southern Cross* which returned to Australia. The *Hiddensee* sailed on to New Caledonia.

The Australian authorities had advance notice of the importation and placed the *Hiddensee* under observation. The *Southern Cross* was intercepted as it reached the Australian shoreline and its three man crew was arrested. The crew members of the *Hiddensee* were arrested by French authorities when they arrived in New Caledonia and were extradited to stand trial in Australia.

Brock, who also uses the names Garton and Cassidy, did not travel on the *Hiddensee*. His role was to organise the shipment from the Netherlands. He was arrested in the Netherlands on the basis of an extradition request from Australia. On 9 January 1999, after he had exhausted all avenues for appeal in the Netherlands, Brock was extradited to Australia to stand trial on a charge of being knowingly concerned in the importation of a commercial quantity of cannabis resin.

In July 2000 Brock pleaded guilty to the charge against him. On 6 April 2001, Brock was sentenced to 12 years imprisonment with a non-parole period of eight years.

#### **Brownlee**

The defendant in this matter was convicted on one charge of conspiring to defraud the Commonwealth under section 86A of the Crimes Act. The charge

related to a tax evasion scheme developed by Brownlee and his co-offenders. Brownlee was sentenced to three years imprisonment with a minimum term of one year and six months.

Brownlee appealed against conviction and sentence but the appeals were dismissed by the NSW Court of Criminal Appeal. Brownlee then sought special leave to appeal to the High Court.

The issue raised on the special leave application was whether section 68 of the Judiciary Act 1903 could operate at the trial so as to pick up provisions of NSW law which allowed for a trial to proceed with less than 12 jurors and which permitted the jury members to separate at certain times after they had retired to consider their verdict.

The defence argued that neither of those provisions could operate in a case involving charges under Commonwealth law because of the requirement in section 80 of the Constitution that the trial on indictment of an offence against a law of the Commonwealth must be by jury. The defence argued that section 80 requires that a trial on a Commonwealth charge must take place before a jury as that term was understood in 1900, when the Constitution was enacted, and that in 1900 a jury could not have less than 12 members and could not separate after it had retired to consider its verdict.

On 11 February 2001 the application for special leave came before three members of the High Court. They referred the matter to a Full Bench for decision.

On 21 June 2001 a Full Bench granted special leave but unanimously dismissed the appeal. The High Court rejected the argument that in 1900 a jury could never have less than 12 members and rejected the argument that it was never possible for the members of a jury to separate after the jury has retired to consider its verdict.

### **Cabal and Pasini**

This case involved an extradition request from Mexico. It was alleged that Carlos Cabal Peniche and his brother-in-law, Marco Pasini Bertran, had committed a range of serious offences against Mexican banking law. In November 1998 Cabal and Pasini were located in Australia, living with their families under false names. Mexico made an extradition request. The litigation in the matter has been extensive and expensive.

On 11 November 1998 Cabal was arrested on a provisional warrant under the Extradition Act 1988. Pasini was taken into immigration custody that day and subsequently arrested on a provisional warrant on 27 November 1998. On 7 January 1999 the Minister for Justice and Customs signed a notice under section 16 of the Extradition Act in relation to Cabal. The Minister signed a notice in relation to Pasini on 21 January 1999 and, on 30 March 1999, signed a further notice in relation to Cabal.

On 15 February 1999 a magistrate set the matter down for hearing under section 19 of the Extradition Act to commence on 15 June 1999 with an estimated duration of three weeks.

On 19 February 1999 Cabal made an application to a magistrate for bail. There was preliminary argument on legal issues. The preliminary issues were determined against Cabal and the bail application was withdrawn.

On 2 March 1999 Pasini applied to a magistrate for bail. On 5 March 1999 the application was refused. Pasini appealed to the Federal Court against that decision and on 23 April 1999 the appeal was dismissed. Pasini then appealed to the Full Federal Court and, on 17 August 1999, the Full Court dismissed the appeal.

On 19 March 1999 Cabal and Pasini commenced proceedings in the Federal Court seeking to review the Minister's decision to sign notices under section 16 of the Extradition Act. Cabal applied for interlocutory relief (in the form of release from prison) pending the determination of the challenge. The application for interlocutory relief was dismissed on 3 December 1999.

On 11 May 1999 Cabal and Pasini sought an adjournment of the section 19 hearing on the grounds that they had challenged the section 16 notices and that they had not had sufficient time to prepare for the hearing. On 13 May 1999 the magistrate refused the application but, because it was now estimated that the section 19 hearing would take eight weeks, re-listed the matter to commence on 19 July 1999. Cabal and Pasini sought review of that decision in the Federal Court. On 6 July 1999 the Federal Court dismissed their application.

On 27 July 1999 the section 19 hearing commenced before a magistrate in Melbourne. On 17 December 1999, after a 69 day hearing, the magistrate determined that both men were eligible for surrender to Mexico and ordered that they be committed to prison to await surrender under a surrender warrant.

On 17 December 1999 Cabal and Pasini commenced proceedings in the Federal Court under section 21 of the Extradition Act seeking a review of the magistrate's order. They also applied for bail pending the hearing of the review. On 4 January 2000 the Court dismissed their applications for bail.

On 9 February 2000 Cabal and Pasini each made a second application to the Federal Court for bail pending the section 21 review. On 15 March 2000 the Court made a ruling in relation to the matters upon which Cabal and Pasini could rely in a second application for bail. On 17 March 2000 Cabal and Pasini made application for leave to appeal to the Full Federal Court against the ruling of 15 March 2000. That application was withdrawn when the single judge refused to change the status of the ruling to that of an order. On 20 April 1999 the further applications for bail by Cabal and Pasini were dismissed. Cabal and Pasini appealed to the Full Court in relation to that decision but later discontinued their appeal.

On 27 March 2000 the Federal Court dismissed the applications challenging the section 16 notices. Cabal and Pasini appealed to the Full Federal Court. That appeal was dismissed on 15 September 2000.

On 3 April 2000 the Federal Court commenced the review of the magistrate's determination that Cabal and Pasini were eligible for surrender. The hearing was conducted over 9 days.

In June 2000 Cabal and Pasini applied to the Federal Court for orders declaring that they were being held in prison unlawfully. The application was dismissed on 14 July 2000. Cabal and Pasini appealed against that order. The Full Federal Court dismissed their appeal on 30 August 2000, after which Cabal and Pasini sought special leave to appeal to the High Court. On 28 November 2000 the High Court refused to grant special leave.

On 27 July 2000 Cabal and Pasini applied to the Federal Court pursuant to section 21(6)(f)(iii) of the Extradition Act seeking orders requiring a change in their conditions of custody. On 10 August 2000 the Court adjourned the application indefinitely.

On 29 August 2000 the Federal Court confirmed the decision of the magistrate that Cabal and Pasini were eligible for surrender to Mexico. On 12 September 2000 Cabal and Pasini lodged an appeal to the Full Federal Court against that decision.

On 20 November 2000 Cabal and Pasini applied to the Full Federal Court for bail pending the hearing of their appeal. On 20 December 2000 a judge dismissed the application for bail by Cabal but granted bail to Pasini. Cabal applied for leave to appeal to the Full Federal Court against the decision in relation to him. The Full Federal Court dismissed the application on 21 February 2001.

On 18 April 2001 the Full Federal Court dismissed the appeal by Cabal and Pasini against the decision of the Federal Court of 29 August 2001 and confirmed that both men were eligible for surrender to Mexico. That same day Pasini applied to the Full Federal Court for a stay of that decision and bail. His application was refused and Pasini was taken into custody.

On 1 May 2001 Cabal and Pasini applied for special leave to appeal to the High Court against the decision of the Full Federal Court confirming that they were eligible for surrender.

On 29 May 2001 Cabal and Pasini applied to the High Court for bail pending determination of their special leave application. Bail was not granted, but the applications were stood over pending a possible grant of special leave to appeal on 22 June 2001.

On 22 June 2001 the application for special leave to appeal was heard by three justices of the High Court. They referred the application for special leave to the Full Court of the High Court and ordered that the parties be prepared to present arguments as on an appeal.



Cabal and Pasini re-listed their applications for bail in the High Court and on 28 June 2001 the applications were heard by a single justice of the High Court. On 29 June 2001 the justice dismissed the application by Cabal but granted bail to Pasini. On 17 July 2001 the DPP filed an application for leave to appeal against the grant of bail to Pasini.

Cabal filed a further application for bail in the High Court on 12 July 2001. On 19 July 2001 a single justice granted bail to Cabal, but stayed the operation of the order. On 20 July 2001 the DPP filed an application for leave to appeal against the grant of bail to Cabal and applied for a stay of the order until the application could be heard.

On 31 July 2001 a Full Court of the High Court (three justices) granted leave to the DPP to appeal against the decision to grant bail to Cabal and upheld the appeal, which had the effect of denying bail to Cabal. The Court reserved its decision in relation to the grant of bail to Pasini.

By notice dated 1 August 2001 Cabal discontinued his application for special leave to appeal to the High Court and subsequently announced that he would take no further action to resist extradition to Mexico.

Pasini pursued his application for special leave to appeal to the High Court. On 7 September 2001 the Full Court of the High Court (five justices) refused his application for special leave.

### **Caratti**

This case involved a ruling on evidence given in the course of a prosecution for alleged tax fraud. It was alleged that Caratti conspired to defraud the Commonwealth by not paying group tax due in respect of employees. Caratti was charged with conspiring to defraud the Commonwealth contrary to section 86A of the Crimes Act.

In the course of the trial a question arose about the admissibility of the books and records of a company. Section 1305 of the Corporations Law provided that documents kept by a body corporate under a requirement of the Corporations Law were admissible in evidence. At the trial the prosecution tendered records which recorded payments to employees. The documents were allowed into evidence.

When the matter came on for appeal, the defence argued that the records in question did not fall within the scope of section 1305 because they were not primary books of account of the corporation but were records maintained for internal purposes only. It was argued that section 1305 only applied to the books and records of a company which were expressly required to be kept under the Corporations Law. The DPP argued that section 1305 should not be read as narrowly as the defence contended.

The WA Court of Criminal Appeal ruled that the books were properly admitted into evidence under section 1305 because they were accounting

records within the meaning of that term in the Corporations Law, or alternatively they were working papers or other documents necessary to explain the methods and calculations by which the accounts of the company were made up.

The ruling is significant because it established that section 1305 of the Corporations Law could be used to tender a wide range of documents relating to the financial affairs of a corporation. A similar provision appears in the new Corporations Act.

The case is reported at Caratti (2000) 22 WAR 527.

### **Cita and Lamaha**

Cita, an Indonesian citizen, was the captain of a fishing vessel which was intercepted about 600 metres from the shore of Christmas Island after travelling from Java. On board were 282 passengers. Neither Cita, the other crew member, nor any of the 282 passengers had passports or visas to enter Australia. When he was interviewed by police, Cita stated that he had been approached by a person in Indonesia who offered him the equivalent of \$1 000 to bring the passengers to Australia. The person had explained that the passengers may be caught and could get a jail sentence of about six months after which they would become Australian citizens.

Cita pleaded guilty to one charge under section 232A of the Migration Act 1958 of facilitating the bringing to Australia of a group of five or more people being reckless as to whether they had a lawful right to come to Australia. He was sentenced to seven years imprisonment with a non-parole period of three and a half years.

Lamaha was the captain of another Indonesian vessel which transported 180 people from West Java to Christmas Island. The vessel was intercepted about a kilometre from Christmas Island. The passengers were mainly from the Middle East and had each paid between US\$2 000 and US\$3 000 for their passage. Lamaha received approximately \$2 000 for his role in the operation.

Lamaha also pleaded guilty to one charge under section 232A of the Migration Act. He was sentenced to five years and six months imprisonment with a non-parole period of two years and nine months.

Both Cita and Lamaha appealed against the sentences that had been imposed at first instance. The WA Court of Criminal Appeal dismissed both appeals. The Court noted that, although neither defendant was a prime organiser of the relevant voyage, the penalties should reflect the strong need for general deterrence.

It was argued that these matters involved a victimless crime which was really a humanitarian activity of helping refugees. The Court rejected this submission noting that many of the passengers had been refused refugee

status, that the defendants' activities frustrated the legislative and administrative system established to deal with refugees, and that unauthorised arrivals pose health risks and absorb substantial resources. The Court also noted that the defendants acted solely for financial gain and were not motivated by any humanitarian considerations.

The decision by the WA Court of Criminal Appeal is reported as *Cita v The Queen* [2001] WASCA 5.

### **Duong**

Duong and her husband were charged with two counts of defrauding the Commonwealth. Duong controlled and operated a clothing company which operated in Adelaide. Over two years, Duong caused the company to claim taxation deductions of approximately \$1 million to which it was not entitled. Duong thus avoided \$473 000 in income tax. About \$349 000 of that amount remains unpaid.

Duong devised an elaborate scheme which artificially inflated the trading costs of the company. The fraud was based on false invoices which were used to support deductions for payments supposedly made for work done by clothing companies in Melbourne, when in fact no such work was performed and the Melbourne companies did not exist.

Duong also used the notional Melbourne companies to launder cheques for her business. The records of her company purported to show that the company was using the cheques to pay debts owed to the Melbourne companies. In fact the cheques were being cashed with the proceeds, less commission, being returned to Adelaide in the form of cash which was not declared to the Australian Taxation Office. The scam involved the use of false invoices, false documentation and sham companies.

Duong was found guilty by a jury after a trial lasting over a month. The defendant was sentenced to three years imprisonment with a minimum term of 12 months. The DPP has applied for leave to appeal against sentence.

The case involved over 12 000 documentary exhibits and the DPP used the Litigation Support System to present the case at trial. This greatly reduced the time that would otherwise have been taken to present the case. The original estimate was that the trial would take three months.

### **Goldberg**

Between June 1984 and June 1997 Goldberg and members of his family operated a money laundering business which sent money out of Australia in return for a commission of between 2.5% and 6.5%. The money was sent out under the guise of being donations made by Australian residents to Jewish charities. In fact the money was the cash proceeds of Australian business activity which had not been disclosed to the Australian Taxation Office.

Once the money reached Israel it disappeared from sight. The Israeli authorities declined to provide assistance to trace the money in Israel. It is likely that the money ended up in bank accounts controlled by or associated with the people who gave it to Goldberg in the first place, but Goldberg has never identified who those people were.

Goldberg ran the operation through an account at the ANZ Bank in Prahran in the name of "United Charity", a fictitious body. The bank records showed that between January 1990 and May 1997 Goldberg transferred at least \$48 million from Australia to Israel. Nearly all of this money was delivered to the bank in cash by Goldberg and members of his family. There were 154 deposits of at least \$100 000 in cash and 12 deposits of over \$200 000 in cash. The largest single cash deposit was in the sum of \$245 000. The bank never thought to question the legitimacy of Goldberg's operation.

As the scheme developed it became more sophisticated and extended to cheques as well as cash. Goldberg invited local businessmen to write sizeable cheques payable to Jewish charities and then purchased them for cash. The businessmen were able to claim a tax deduction for what appeared to be a genuine donation to charity while Goldberg managed to turn cash into cheques which had the appearance of being donations to charity. The proceeds of the cheques were not paid to the charities named on them.

Goldberg was initially charged with money laundering offences and with conspiring to defraud the Commonwealth. However, he pleaded guilty to two counts of conspiring to defraud the Commonwealth and the DPP accepted the plea in settlement of all the charges. Other members of the Goldberg family also pleaded guilty to conspiring to defraud the Commonwealth.

On 21 June 2000 Goldberg was sentenced to an effective term of imprisonment for five years with a non-parole period of two years and six months. He was also ordered, jointly with the other defendants, to make reparation to the Commonwealth in the sum of \$15 million. The court also made forfeiture orders under the Proceeds of Crime Act in respect of money seized at the time Goldberg was arrested and all money standing to the account of United Charity at the ANZ Bank.

By agreement, Goldberg forfeited his equity in the family home as part payment of the reparation order.

The DPP appealed against the sentence imposed on Goldberg on grounds that it was manifestly inadequate. In July 2001 the Victorian Court of Criminal Appeal upheld the appeal. The Court increased the sentence to an effective term of seven years with a non-parole period of four years and six months.

## Harm

This case involved the actions of a pharmacist who fraudulently fabricated repeat authorisations for medication where no original prescription ever existed. The false “repeats” were then submitted to the Health Insurance Commission for a rebate under the Pharmaceutical Benefits Scheme. No drugs were ever dispensed.

The defendant used a variety of names to identify the patient on the false documents including the names of sporting, television and political identities. He also used the name “A Conn” on a number of occasions. The defendant, who ran two pharmacies, generated over 13 000 false repeats in a two year period.

The defendant was assisted in some cases by a doctor who provided false prescription forms in return for items from the defendant’s pharmacies. The doctor claimed he gave these items away to impecunious patients.

The defendant pleaded guilty to 48 charges of defrauding a public authority under the Commonwealth contrary to section 29D of the Crimes Act and was sentenced to four and a half years imprisonment with a non-parole period of 12 months.

The court ordered the defendant to pay a pecuniary penalty under the Proceeds of Crime Act in the sum of \$388 720. The defendant, who was able to liquidate assets, paid the order in full.

## Haunga

This defendant was arrested by the AFP following the controlled delivery of a parcel containing 412.9 grams of amphetamine. The parcel was addressed to the defendant but he told police that he was acting on behalf of another person called O’Neill. He agreed to help the AFP to arrange a controlled delivery of the parcel to O’Neill and agreed to give evidence at a prosecution of O’Neill.

Haunga pleaded guilty to a charge of being knowingly concerned in the importation of a trafficable quantity of amphetamine. He was sentenced to three years imprisonment, to be released after serving twenty four months, on the basis that he had agreed to cooperate in the prosecution of O’Neill.

Haunga gave evidence for the prosecution at the committal proceedings against O’Neill but he refused to be sworn as a witness at the trial.

The trial judge charged Haunga with contempt of court for refusing to take the oath and sentenced him to 12 months imprisonment for contempt. The DPP also brought an appeal under section 21E of the Crimes Act against the penalty originally imposed on Haunga. Section 21E gives an appeal court power to review a sentence if a person who received a discount due to an undertaking to cooperate with the law enforcement agencies does not provide that cooperation.

The appeal was upheld by the Victorian Court of Appeal, which increased the sentence to three years and nine months with a minimum term of two years and nine months. The Court noted that Haunga would have to serve his sentence for contempt after completing his sentence for the drug offence. The Court did not accept that fear or apprehension on the defendant's part gave him a reasonable excuse for not honouring his undertaking to cooperate with the law enforcement agencies.

Haunga has applied for special leave to appeal to the High Court.

### **Hook**

For a period of more than 19 years, this defendant obtained Social Security payments that she was not entitled to receive.

Initially she claimed a supporting parent pension while living in a de facto relationship. She did not declare the relationship or the fact that her partner was working. She also did not declare that she also started working and she used a false name to conceal her income.

When the defendant's son was no longer a child, and she could no longer claim a supporting parent pension, she applied for unemployment benefits. She again did not declare that she was living in a de facto relationship and that both her partner and herself were in paid employment.

At one stage the defendant suffered a work place accident and left her job, but she started her own business selling second hand goods and continued to earn an income. In 1996 she applied for disability support pension in her real name. She did not disclose that she was already receiving unemployment benefits in another name and did not declare either her own income or that of her de facto spouse. By this time, her de facto spouse was also receiving a disability support pension.

By the time the matter eventually came to light, the defendant had received more than \$172 000 of public money that she was not entitled to receive.

The defendant was convicted of five offences against the Crimes Act. At first instance she was sentenced to a total effective term of nine months imprisonment to be released immediately upon entering into a good behaviour bond.

This case was one of a number of recent cases in Victoria where people who have been convicted of serious offences against the Social Security system have been released without a custodial sentence.

The DPP appealed against the penalty on the grounds that it was manifestly inadequate given the serious and long standing nature of the defendant's conduct.

The Victorian Court of Appeal upheld the appeal and imposed an effective sentence of two years imprisonment with a minimum term of six months. The Court took the opportunity to note that a serious fraud of a prolonged

or sustained nature normally requires a sentence of imprisonment with some period to be actually served.

### **Muir**

Muir was charged with four counts of defrauding the Commonwealth contrary to section 29D of the Crimes Act. He was also charged with one count of organised fraud contrary to section 83 of the Proceeds of Crime Act 1987. The offences were committed during 1998 whilst Muir was employed as a contract accountant by the Department of Finance and Administration.

Muir was employed to provide technical accounting advice in connection with the business services trust account. That account was used to settle outstanding financial matters arising from the sale of various businesses operated by the former Department of Administrative Services.

Muir exploited his position within the Department to transfer money from the business services trust account to companies that were controlled by him or people known to him. In the course of doing so he made false entries in the Department's finance and accounting system.

The first two fraud counts related to payments of \$1 850 and \$8 842 that were made to a company controlled by Muir.

The third fraud count related to the transfer of \$6 million by way of electronic funds transfer to a company in which Muir held shares. That company passed the funds on to a number of other entities. A total of \$1 020 000 wound up with a unit trust company. The beneficiary under the trust was Muir.

The fourth fraud count related to the transfer of \$2 725 000 to yet another company. Muir claimed that this was a rollover investment that he arranged on behalf of the Commonwealth, although that story was not supported by the documents or the evidence. The bulk of these funds were used to purchase shares in a mining company, of which Muir subsequently became a director and chairman of the board. Muir was also paid \$200 000, supposedly as commission for arranging the investment.

The organised fraud count related to the totality of Muir's conduct.

Muir pleaded not guilty, but he was convicted on all counts after a jury trial. Muir was sentenced to an effective term of seven and a half years imprisonment with a minimum term of three and a half years. At the time of writing it is not known whether there will be an appeal.

### **Pearce**

Pearce worked as an accountant for the Fyna group of companies which supplied formwork to the construction industry. The offences involved two companies in the Fyna group, Concrete Formwork Pty Ltd and Build Form Pty Ltd.



As a result of action taken by the defendant, both companies stopped paying group tax in respect of their employees. In order to cover his actions Pearce arranged for the group certificates which were sent to employees at the end of the financial year to show a company name which was close to, but slightly different from, the true name of the employing company and which showed a PAYE registration number which had two digits transposed from the correct number. The intended effect was that the group certificates would look accurate to a casual reader but would be difficult for ATO to make sense of.

The offences were committed for one year in relation to the first company, and for two years in relation to the second. The total amount of group tax which was not paid was of the order of \$6.7 million.

The defendant was convicted of three counts of defrauding the Commonwealth contrary to section 29D of the Crimes Act. He was sentenced to five years and four months imprisonment with a non-parole period of three years and four months.

The defendant has appealed against conviction and sentence.

### **Richards and Bijkerk**

In February 1992 a person was arrested in connection with a planned importation of a large quantity of heroin from Asia. At an interview with police the person mentioned that other people had expressed interest in using his services to import drugs from the USA. He told police that he had access to a forged stamp which could be used to make it appear that goods exported from the US had been checked and cleared by the US authorities. He agreed to cooperate with police to investigate the activities of those other people. Two of the people turned out to be Richards and Bijkerk.

In September 1999 Bijkerk travelled to the USA and despatched a shipment of cocaine to Australia. The Australian Customs Service and the AFP intercepted the cocaine and carried out a controlled delivery. Richards and Bijkerk were arrested and charged with conspiring to import a commercial quantity of cocaine.

At trial, the defendants argued that most of the evidence against them should be excluded because they claimed that had been entrapped by the police operation. The trial judge ruled that the evidence was admissible, at which point Bijkerk changed his plea to guilty. Richards was found guilty by the jury.

Richards was sentenced to 12 years imprisonment with a non-parole period of eight years. Bijkerk was sentenced to six and a half years imprisonment with a non-parole period of four years. The defendants appealed against conviction and sentence.



The appeal against conviction was based on a submission that police acted illegally and had induced the defendants to commit a crime they would not otherwise have committed. It was argued that the police conduct fell within the first or second category identified in *Ridgeway* and that the trial judge should have exercised a discretion to exclude the police evidence.

The NSW Court of Criminal Appeal rejected both submissions. The Court found that *Ridgeway* had no application because the conspiracy to import drugs was complete before the importation took place. The court also found that the defendants had not been induced to commit criminal acts they would not otherwise have committed. The decision in relation to *Bijkerk* is reported at (2000) 111 ACrimR 443.

The Court of Criminal Appeal upheld Richards' appeal against sentence, reducing the sentence to nine years with a non-parole period of six, but dismissed the appeal against sentence by *Bijkerk*.

### **Starkey**

Starkey was the director of a child care centre operating in Rockhampton. Over a three year period she submitted false claims to the Commonwealth for subsidies in respect of the cost of childcare. She used various means to inflate the number of children attending her centre and the hours they spent there, including falsifying attendance sheets and lodging claims in respect of periods when the centre was closed. The defendant was paid \$300 000 in excess of her genuine entitlements.

The defendant pleaded guilty to one charge of defrauding the Commonwealth under section 29D of the Crimes Act. She was sentenced to four years imprisonment with a non-parole period of 10 months.

Most of the \$300 000 was recovered as a result of action taken under the Proceeds of Crime Act. The DPP obtained a restraining order over all the assets that could be located in the name of the defendant and in the name of a company that she controlled. Those assets were not sufficient to repay the debt. However, after negotiations between the DPP and the defence, an agreement was reached under which a block of land belonging to the Starkey Family Trust was transferred to Starkey and became available to satisfy a pecuniary penalty order against her. The land was valued at \$285 000 and the DPP agreed to write off the balance of the pecuniary penalty order.

The land in question was the property upon which the childcare centre had been built. Starkey was a beneficiary under the Starkey Family Trust, but it was a discretionary trust and she had no legal or enforceable equitable interest in the trust property.

### **Walters**

The defendant in this case was charged with 10 counts of defrauding the Commonwealth. The charges related to the use of "phoenix companies" to

avoid tax. A phoenix company is one which is used to run up debts, usually to the Commissioner of Taxation. When the debt burden gets too great, the assets and business of the company are transferred to a new company, which rises phoenix-like from the ashes of the old, and the Tax office has to try to enforce its debt against the remnants of the old company.

The use of phoenix companies is common, but it is a difficult practice to control and can be difficult to prove. The fact that a company goes into liquidation leaving an unpaid tax debt does not automatically mean that the people who controlled the company intended that the company would not pay tax.

In the present case the defendant, who worked in the bricklaying industry, set up and wound down ten companies, each of which went into liquidation leaving unpaid tax debts. In each case the company was replaced by a new entity and the defendant's business continued unaffected. The total amount of tax that went unpaid was of the order of \$7.3 million.

The defendant was convicted after a jury trial. He was sentenced to seven years and eight months in jail with a non-parole period of six years. Walters has appealed against conviction and sentence.

## **Commercial prosecutions**

### **Bell**

In November 2000 this defendant pleaded guilty to 24 counts under section 1018(l) of the Corporations Law of issuing an invitation to members of the public to invest in a scheme when a prospectus had not been lodged in accordance with the requirements of the Corporations Law. The failure to lodge a prospectus meant that the ASIC did not have an opportunity to review the scheme before it was offered to the public.

The scheme involved the trading of bank bills in the Philippines, and later in the USA. Bell raised \$2.9 million from investors in Australia. Approximately \$1.9 million came back to the investors, supposedly as profit on their investments, but the other \$1 million was lost.

Bell was sentenced to an effective term of two years 10 months imprisonment with a minimum of 17 months. Bell appealed against sentence. The WA Court of Criminal Appeal dismissed the appeal, noting that illegal fundraising is a serious offence.

Bell was ordered to pay a pecuniary penalty under the Proceeds of Crime Act in the sum of \$48 282. This represented the commission which he earned from raising money in Australia. On the evidence available to the DPP, this was the only benefit which could be proven to have flowed to Bell from the money raised in Australia.

**Clarke**

In 1998 Clarke was extradited to Australia from the USA to face 95 charges which alleged that he abused a position of trust while controlling an Australian trustee company. It was alleged that over an extended period Clarke used trust money held by the company for his own purposes, without regard to the interests of the beneficiaries. It was alleged that Clarke defrauded the beneficiaries of more than \$4 million.

In early 2000, following the end of a long and complex committal hearing at which Clarke represented himself, Clarke agreed to plead guilty to five charges under the Corporations Law. The DPP accepted the plea offer on the basis that the conduct underpinning the five charges reflected the full range of the criminality alleged against Clarke.

On 27 January 2000, Clarke entered a guilty plea in the ACT Supreme Court to one charge under section 232(5) of the Corporations Law and four charges under sections 232(5) and 1317FA(1) of the Corporations Law. The trial judge recorded convictions on all counts and adjourned the matter for sentence. At that stage Clarke was on bail and bail was continued.

On 2 March 2000, Clarke dismissed his barrister and his solicitor and sought to withdraw his plea. He claimed that he had not understood the meaning of the term “intent to defraud” at the time he entered the plea. The application was not finalised on 2 March 2000. The trial judge revoked bail and remanded Clarke in custody. The next day Clarke reinstated his solicitor and withdrew his application to withdraw his plea. The sentencing proceedings were adjourned to 10 April 2000.

On 7 March 2000 Clarke again dismissed his solicitor. On 13 March 2000 Clarke, appearing in person, made a further application for bail. The application was dismissed.

On 22 March 2000, Clarke lodged an appeal in the Federal Court against the refusal to grant bail. The appeal was referred to a Full Bench of the Federal Court. On 12 April 2000, the Full Bench dismissed the appeal on the basis that Clarke had not exhausted his remedies under the ACT Bail Act, which gave him a right to seek review before a Full Bench of the Supreme Court of the ACT. Clarke immediately made an application to the Supreme Court for review of the bail decision.

On 20 April 2000, a Full Bench of the Supreme Court overruled the bail decision made by the trial judge and released Clarke on bail to prepare for sentence on 15 May 2000.

On 15 May 2000, Clarke again appeared in person before the trial judge and sought to withdraw his plea. The judge dismissed the application and again remanded Clarke in custody. However, on 18 May 2000 a new barrister appeared for Clarke and sought time to prepare for the sentencing proceedings. The trial judge granted an adjournment, until 26 June 2000.

He ordered that Clarke be released on bail to prepare for the adjourned sentencing proceedings.

Clarke did not appear for sentence. His current location is not known.

The case illustrates the risks involved in a grant of bail after a person has been convicted of serious offences, especially if that person has no ties to this country.

### **Dexter**

This case involved a fraudulent investment scheme. The defendant raised a total of \$1 234 400 from 14 investors. He represented that he was in the business of providing bridging finance to people who needed short term funds and he invited people to invest in the scheme. Dexter, who operated under the name of the Wattle Group, generally approached potential investors through fund administrators and other financial advisors. He promised investors a return on their investment of 5% per month.

Those who invested in the scheme were sent monthly statements which supposedly showed how their money was being lent out and how much interest was being earned on each transaction. Many investors were so impressed that they topped-up their investments and made further deposits to the Wattle Group.

In fact, the funds were not lent out as short term bridging finance and the monthly statements were a sham. The money raised under the scheme was used to finance a range of other activities, none of which were particularly successful, and to cover the costs of the scheme, including paying interest due to earlier investors.

The defendant was charged with 31 counts under the Criminal Code of Queensland alleging a range of fraudulent conduct. He was convicted after a trial and was sentenced to 10 years imprisonment.

The case was document intensive, involving over 4 600 separate exhibits. The DPP used the computerised Litigation Support System to prepare the case for trial and to present the material at trial. At the completion of the trial the judge noted that the use of technology had considerably reduced the time taken to present the case, and that the trial may have lasted four times as long if computer technology had not been used.

### **Dimmeys Stores Pty Ltd**

This case involved a prosecution under the Trade Practices Act 1984 for seven offences relating to the sale of children's nightwear which did not comply with approved product safety standards. The nightwear was not correctly labelled with fire safety labels. Six of the charges related to the sale of garments from the Dimmeys store in Townsville and the seventh related to the sale of garments from the Dimmeys store in Melbourne.

The nightwear was initially on sale in the Dimmeys store in Townsville in July 2000. After intervention by the Australian Competition and Consumer Commission, the garments were removed from sale. The Managing Director of Dimmeys undertook to the ACCC that the garments would not be sold from Dimmeys outlets again. Five months later, similar garments were on sale in the Dimmeys store in Melbourne. Dimmeys had been previously prosecuted under the Trade Practices Act for supplying bicycles which did not comply with the relevant standards.

The charges were dealt with before the Federal Court in Brisbane. The company pleaded guilty to seven offences against sections 65C and 79 of the Trade Practices Act. The company was fined \$10 000 each in relation to each of the first six offences and \$100 000 in relation to the seventh. The court also issued an injunction directing the company not to sell any product to which product safety standards apply unless the product complies with those standards. The company was also ordered to enter into a compliance program approved by the ACCC.

The \$100 000 fine for the Melbourne offence is the highest criminal fine yet imposed for offences against sections 65C and 79 of the Trade Practices Act.

### **Hannes**

This matter was reported in the last Annual Report. At that stage Hannes had been convicted, and sentenced, for one offence against section 1002G of the Corporations Law (insider trading) and two offences against section 31(1) of the Financial Transaction Reports Act 1988 (conducting transactions so as to avoid reporting requirements) but there were outstanding appeals against conviction and sentence.

On 1 December 2000 the NSW Court of Criminal Appeal allowed Hannes' appeal, quashed the convictions and ordered a re-trial. As a consequence the DPP's appeal against sentence was dismissed. The re-trial is listed for six to eight weeks commencing on 2 October 2001.

The charge under the Corporations Law relates to the purchase of call options in TNT at a time when Macquarie Corporate Finance Ltd was acting for TNT in relation to a proposed takeover of TNT by a Dutch company. It was alleged that Hannes, who was an executive director of Macquarie Corporate Finance Limited, purchased a large number of TNT call options in a false name before the takeover negotiations became public knowledge. The charges under the Financial Transaction Reports Act relate to action which it is alleged that Hannes took to conceal his purchase of the call options.

### **Manasseh and Austin**

The defendants in this matter were professional share traders. It was alleged that they engaged in a series of transactions involving the shares in an exploration and mining company called Diamond Rose NL which gave the

false impression that there was active trading in the shares of the company. The conduct had the potential to attract the attention of investors and push up the value of the stock.

In all, there were 17 separate dealings between 1 May 1997 and 6 June 1997 involving total trades worth \$949 050. All of the transactions involved companies and individuals associated with Manasseh and Austin and there was no real change in the ownership of the shares.

Manasseh and Austin were charged with offences against sections 998(1) and 1311 of the Corporations Law. Section 998 (1) provides that a person must not create a false or misleading appearance of active trading in any securities on a stock market. Section 1311 makes it an offence for a person to contravene section 998(1).

Manasseh and Austin pleaded not guilty but were convicted after a jury trial. They were both released on good behaviour bonds.

Manasseh and Austin have both appealed against conviction. The DPP has appealed against penalty.

## A p p e n d i x 1

# Statement under the Freedom of Information Act

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

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

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

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

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

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

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

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

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

Facilities for the inspection of documents, and preparation of copies if required, are provided at each DPP office. Copies of all documents are not

held in each office and therefore some documents cannot be inspected immediately upon request. Requests may be sent or delivered to the FOI Coordinating Officer at any of the addresses set out at the beginning of this Report. Business hours are 8:30 a.m. to 5:00 p.m.

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

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



## A p p e n d i x 2

# DPP Corporate Plan

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

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

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

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

**Output:** An independent service to prosecute alleged offences against Commonwealth criminal law, 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.

## Strategies

1: Conduct cases to a high standard, in a fair and just manner	2: Recruit and retain high quality staff	3: Provide high quality assistance to referring agencies	4: Participate effectively in overall law enforcement	5: Monitor and improve DPP performance
1.1 Adopt best practice in legal work and case management 1.2 All case decisions made in accordance with the law, the <i>Prosecution Policy of the Commonwealth</i> and internal DPP policy 1.3 Decisions to be timely 1.4 Key decisions made at a senior level 1.5 Create knowledgeable environment for staff 1.6 Support legal staff with high level library, IT and administrative people and systems 1.7 Produce documents that enhance public and referring agencies' confidence in the DPP's processes and standards	2.1 Recruit, retain, develop and motivate high quality staff a) employ high quality staff b) train them c) recognise excellent performance d) utilise them for maximum effectiveness e) manage them with a high degree of professionalism (f) ensure all staff work in a safe, secure and healthy workplace	3.1 Identify and co-operate with Commonwealth agencies' enforcement strategies 3.2 Provide high quality timely advice to investigators, including during brief preparation 3.3 Train investigators 3.4 Provide investigators with information services on areas of DPP expertise 3.5 Liaise effectively and report regularly to referring agencies at regional and national level	4.1 Liaise effectively at national level with agencies with law enforcement roles 4.2 Provide useful, timely and accurate reports to Parliament and others on DPP work and performance 4.3 Participate effectively in development of Commonwealth criminal law reform, identifying deficiencies in law and practice and implementable solutions.	5.1 Measure and monitor DPP performance, focusing on quality, quantity, timeliness and cost 5.2 Concentrate on value for money and effort to achieve outcome 5.3 Adopt best practice in: a) financial management; b) personnel management including commitment to Aust Public Service values and code of conduct and diversity principles; and c) all other management areas

## Action plan

Re strategy	What the DPP will do	When the DPP will do it
all	Check performance indicator information	Every quarter
all	Best practice reviews	Ongoing
1	Obtain feedback from courts	Starting in 2002
1	Produce documents that enhance public and referring agencies' confidence in the DPP's processes and standards and information services on areas of DPP expertise	Ongoing
2	Consult staff via appropriate methods eg best practice reviews, focus groups, surveys, conduct exit interviews and examine staff retention rates	Ongoing
3	Survey investigators and external agencies	2002

## G l o s s a r y

ACCC	Australian Competition and Consumer Commission
AFP	Australian Federal Police
AGEC	Action Group into the Law Enforcement Implications of Electronic Commerce
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AWA	Australian Workplace Agreement
CALG	Criminal Assets Liaison Group
Crimes Act	Crimes Act 1914
CSB Act	Crimes (Superannuation Benefits) Act 1989
DPP	Director of Public Prosecutions
EEO	Equal Employment Opportunity
HOCOLEA	Heads of Commonwealth Law Enforcement Agencies
IT	Information Technology
ITSA	Insolvency and Trustee Service Australia
LSS	Litigation Support System
NCA	National Crime Authority
PoC Act	Proceeds of Crime Act 1987
PPO	Pecuniary Penalty Order
SES	Senior Executive Service
WPD	Workplace Diversity Plan

**OFFICE OF THE COMMONWEALTH  
DIRECTOR OF PUBLIC PROSECUTIONS  
INDEPENDENT AUDIT REPORT 2000-2001**

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

## **FINANCIAL STATEMENTS 2000-2001**

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

**STATEMENT OF FINANCIAL PERFORMANCE**

For the period ended 30 June 2001

	Note	2000-2001 \$'000	1999-2000 \$'000
<b>Revenues from ordinary activities</b>			
Revenues from government	4	58,274	56,236
Sales of goods and services	5	1,101	355
Interest		470	254
Proceeds for sale of assets	6	127	31
Other	7	475	283
Total revenues from ordinary activities		<b>60,447</b>	57,159
<b>Expenses from ordinary activities</b>			
Employees	8	30,811	29,063
Suppliers	9	20,425	22,580
Depreciation and amortisation	10	4,041	4,287
Write-down of assets	11	11	64
Expenses for sale of assets	6	201	92
Other	12	82	1,067
Total expenses from ordinary activities		<b>55,571</b>	57,153
<b>Net surplus (deficit)</b>		<b>4,876</b>	6
<b>Net surplus (deficit) attributable to the Commonwealth</b>		<b>4,876</b>	6
Net credit (debit) to asset revaluation reserve	24	196	-
Other direct credits (debits) to equity	24	-	1,376
<b>Total changes in equity other than contributions/ withdrawals of capital</b>		<b>5,072</b>	1,382

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

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

**STATEMENT OF FINANCIAL POSITION**

As at 30 June 2001

	Note	2000-2001 \$'000	1999-2000 \$'000
<b>ASSETS</b>			
Financial assets			
Cash	13	11,082	5,616
Receivables	14	1,023	1,037
Total financial assets		<u>12,105</u>	<u>6,653</u>
Non-financial assets			
Land and buildings	15,18	7,427	6,994
Infrastructure, plant and equipment	16,18	6,060	7,249
Intangibles	17,18	1,308	1,470
Other	19	844	957
Total non-financial assets		<u>15,639</u>	<u>16,670</u>
<b>Total assets</b>		<u><b>27,744</b></u>	<u><b>23,323</b></u>
<b>LIABILITIES</b>			
Debt			
Other	20	4,467	5,653
Total debt		<u>4,467</u>	<u>5,653</u>
Provisions			
Employees	21	9,740	8,637
Capital use		-	51
Total provisions		<u>9,740</u>	<u>8,688</u>
Payables			
Suppliers	22	5,133	4,589
Other	23	-	30
Total payables		<u>5,133</u>	<u>4,619</u>
<b>Total liabilities</b>		<u><b>19,340</b></u>	<u><b>18,960</b></u>
<b>EQUITY</b>			
Parent entity interest			
Capital	24	2,027	2,027
Accumulated results	24	2,558	(1,287)
Reserves	24	3,819	3,623
<b>Total equity</b>		<u><b>8,404</b></u>	<u><b>4,363</b></u>
<b>Current liabilities</b>		<b>9,381</b>	<b>9,026</b>
<b>Non-current liabilities</b>		<b>9,959</b>	<b>9,934</b>
<b>Current assets</b>		<b>12,949</b>	<b>7,610</b>
<b>Non-current assets</b>		<b>14,795</b>	<b>15,713</b>

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



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

**STATEMENT OF CASH FLOWS**

For the period ended 30 June 2001

	Note	2000-2001 \$'000	1999-2000 \$'000
<b>OPERATING ACTIVITIES</b>			
Cash received			
Appropriations for outputs		58,105	56,176
Sales of goods and services		1,084	371
Interest		470	254
GST refunds		1,102	-
Other		305	283
Total cash received		<u>61,066</u>	<u>57,084</u>
Cash used			
Employees		29,516	28,190
Suppliers		23,081	21,932
Other		170	1,067
Total cash used		<u>52,767</u>	<u>51,189</u>
<b>Net cash from operating activities</b>	25	<u><u>8,299</u></u>	<u><u>5,895</u></u>
<b>INVESTING ACTIVITIES</b>			
Cash received			
Proceeds from sales of non-financial assets		31	32
Total cash received		<u>31</u>	<u>32</u>
Cash used			
Purchase of non-financial assets		1,630	2,182
Total cash used		<u>1,630</u>	<u>2,182</u>
<b>Net cash from (used by) investing activities</b>		<u><u>(1,599)</u></u>	<u><u>(2,150)</u></u>
<b>FINANCING ACTIVITIES</b>			
Cash received			
Other		-	2,027
Total cash received		<u>-</u>	<u>2,027</u>
Cash used			
Capital use paid		1,234	315
Total cash used		<u>1,234</u>	<u>315</u>
<b>Net cash from (used by) financing activities</b>		<u><u>(1,234)</u></u>	<u><u>1,712</u></u>
<b>Net increase (decrease) in cash held</b>		<u><u>5,466</u></u>	<u><u>5,457</u></u>
Cash at beginning of the reporting period		5,616	159
<b>Cash at end of the reporting period</b>		<u><u>11,082</u></u>	<u><u>5,616</u></u>

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 2001

	Note	2000-2001 \$'000	1999-2000 \$'000
<b>BY TYPE</b>			
<b>Capital Commitments Payable</b>			
Land and buildings		257	598
Infrastructure, plant and equipment		-	65
Intangibles		270	-
Total capital commitments payable		<u>527</u>	<u>663</u>
<b>Other Commitments Payable</b>			
Operating leases	2.5	34,706	32,484
Legal services		4,925	7,062
Goods and services (excluding legal services)		205	183
Other		100	-
Total other commitments payable		<u>39,936</u>	<u>39,729</u>
<b>Commitments Receivable</b>			
Sub-lease rental	2.5	(491)	(617)
Legal services		(1,100)	-
Other		(2,434)	(1,544)
Total commitments receivable		<u>(4,025)</u>	<u>(2,161)</u>
<b>Net commitments</b>		<u><u>36,438</u></u>	<u><u>38,231</u></u>
<b>BY MATURITY</b>			
<b>All Net Commitments</b>			
One year or less		10,582	12,809
From one to five years		20,592	21,564
Over five years		5,264	3,858
Total net commitments		<u>36,438</u>	<u>38,231</u>
<b>Operating Lease Commitments Payable</b>			
One year or less		7,680	6,885
From one to five years		21,235	21,411
Over five years		5,791	4,188
Total operating lease commitments payable		<u>34,706</u>	<u>32,484</u>
<b>Operating Lease Commitments Receivable</b>			
One year or less		(112)	(106)
From one to five years		(379)	(511)
Total operating lease commitments receivable		<u>(491)</u>	<u>(617)</u>

Commitments are GST inclusive where applicable

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 2001

	Note	2000-2001 \$'000	1999-2000 \$'000
CONTINGENCIES		N/A*	N/A*

**SCHEDULE OF UNQUANTIFIABLE CONTINGENCIES**

\* If a matter being prosecuted by the CDPP is defended unsuccessfully, the court may order that the DPP 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*, this Office 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 DPP. 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 to the sensitivity of the information related to matters still before the courts.

The above schedule should be read in conjunction with the accompanying notes

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS****SCHEDULE OF ADMINISTERED REVENUES AND EXPENSES**

For the period ended 30 June 2001

	Note	2000-2001 \$'000	1999-2000 \$'000
<b>Revenues from ordinary activities</b>			
Non-taxation			
Reversal of previous asset write-downs	34	26	300
Fees and fines	35	18,431	3,417
Other	36	14	169
Total non-taxation		<u>18,471</u>	<u>3,886</u>
Total revenues from ordinary activities		<u>18,471</u>	<u>3,886</u>
<b>Expenses from ordinary activities</b>			
Write-down of assets	37	3,004	790
Other	38	14,664	478
Total expenses from ordinary activities		<u>17,668</u>	<u>1,268</u>
Cash transferred to Official Commonwealth Public Account		1,915	2,521
Net increase (decrease) in administered net assets		<u>(1,112)</u>	<u>97</u>

The above Schedule should be read in conjunction with the accompanying notes

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

**SCHEDULE OF ADMINISTERED CASH FLOWS**

For the period ended 30 June 2001

	Note	2000-2001 \$'000	1999-2000 \$'000
<b>OPERATING ACTIVITIES</b>			
Cash received			
Fines and costs		2,350	2,849
Other		14	170
Total cash received		<u>2,364</u>	<u>3,019</u>
Cash used			
Cash to Official Public Account		1,915	2,521
Other		472	682
Total cash used		<u>2,387</u>	<u>3,203</u>
<b>Net cash from operating activities</b>	42	<u>(23)</u>	<u>(184)</u>
<b>Net increase (decrease) in cash held</b>		(23)	(184)
Cash at beginning of the reporting period		40	224
<b>Cash at end of the reporting period</b>		<u>17</u>	<u>40</u>

The above schedule should be read in conjunction with the accompanying notes

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS****SCHEDULE OF ADMINISTERED COMMITMENTS**

As at 30 June 2001

	Note	2000-2001 \$'000	1999-2000 \$'000
<b>COMMITMENTS</b>		<b>Nil</b>	<b>Nil</b>
The above schedule should be read in conjunction with the accompanying notes			

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS****SCHEDULE OF ADMINISTERED CONTINGENCIES**

As at 30 June 2001

	Note	2000-2001 \$'000	1999-2000 \$'000
<b>CONTINGENCIES</b>		<b>Nil</b>	<b>Nil</b>
<b>SCHEDULE OF UNQUANTIFIABLE CONTINGENCIES</b>			
Fines and costs receivables in the Schedule of Administered Assets and Liabilities 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 succesful, the amount of fines and costs receivable may increase or decrease.			
The CDPP is unable to declare an estimate of contingent gains or losses not recognised due to the uncertainty of the outcome of matters, but more particularly to the sensitivity of the information related to matters still before the courts.			
The above 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 period ended 30 June 2001

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<b>Note</b>	<b>Description</b>
1	Objectives
2	Summary of Significant Accounting Policies
3	Events Occurring After Balance Date
4	Revenues from Government
5	Sales of goods and services
6	Proceeds and expenses from sale of assets
7	Other operating revenues
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## OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

### NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the period ended 30 June 2001

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#### **Note 1 - Objectives of the Office**

The objective of the Office of the Commonwealth Director of Public Prosecutions is to provide a fair, effective and efficient prosecution service to the Commonwealth and to the people of Australia.

The Office has one outcome:

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

#### **Note 2 - Summary of significant accounting policies**

##### **2.1 Basis of Accounting**

The financial statements are required by section 49 of the *Financial Management and Accountability Act 1997 (FMA)*, and are a general purpose financial report.

The statements have been prepared in accordance with:

- Schedule 1 to the *Financial Management and Accountability (Financial Statements 2000-2001) Orders* made by the Minister for Finance and Administration for the preparation of Financial Statements;
- Australian Accounting Standards and Accounting Interpretations issued by Australian Accounting Standards Boards;
- Other authoritative pronouncements of the Australian Accounting Standards Boards; and
- The Consensus Views of the Urgent Issues Group.

The statements have been prepared having regard to:

- Statements of Accounting Concepts; and
- The Explanatory Notes to Schedule 1 and Guidance Notes issued by the Department of Finance and Administration.

The Agency Statements of Financial Performance and Financial Position have been prepared on an accrual basis and are in accordance with historical cost convention, except for certain assets, that as noted are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

Assets and liabilities are recognised in the Agency Statement of Financial Position when and only when it is probable that future economic benefits will flow and the amounts of the assets and liabilities can be reliably measured. Assets and liabilities arising under agreements equally proportionately unperformed are however not recognised unless required by an Accounting Standard. Assets and liabilities which are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Revenues and expenses are recognised in the Agency Statement of Financial Performance when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

The continued existence of the Office in its present form, and with its present programs, is dependent on Government policy and on continuing appropriations by Parliament for the Office's administration and programs.



**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the period ended 30 June 2001

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**Note 2 - Summary of significant accounting policies (cont)**

The Schedules of Administered Revenues and Expenses, Assets and Liabilities and Cash Flows are prepared on the same basis and using the same policies as for Agency items, except where otherwise stated at Notes 2.17 to 2.19

Administered items are distinguished from agency items in the financial statements by shading.

**2.2 Changes to Accounting Policy**

The accounting policies used in the preparation of these financial statements are consistent with those used in 1999-2000.

**2.3 Revenue**

The revenues described in the Note are revenues relating to the core operating activities of the Agency.

*A. Revenues from Government - Agency Appropriations*

Appropriations for Agency outputs are recognised as revenue to the extent that the Minister for Finance and Administration is prepared to release appropriations for use (that is, the full amount of the appropriation passed by Parliament less any savings offered up at Additional Estimates and not subsequently released).

*B. Resources Received Free of Charge*

Services 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.

Services received free of charge from other Commonwealth agencies are recorded as revenues from Government, those received from State Government agencies are recorded as other revenues.

*C. Other Revenue*

Revenue from the sale of goods is recognised upon delivery of goods to customers.

Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets.

Revenue from the sale of non-current assets is recognised when control of the asset has passed to the buyer.

Revenue from the rendering of service is recognised by reference to the stage of completion of contracts or other agreements to provide services. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2001

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**Note 2 - Summary of significant accounting policies (cont)**

**2.4 Employee Entitlements**

**A. Leave**

The liability for employee entitlements includes provision for annual leave and long service leave. No provision has been made for sick leave, as sick leave is non-vesting, and the average sick leave taken in future years by employees of the Office is estimated to be less than the annual entitlement for sick leave.

The liability for annual leave and the current portion of long service leave reflects the value of total annual leave entitlements of all employees at 30 June 2001 and is recognised at the nominal amount.

The non-current portion of the liability for long service leave is recognised and measured at the present value of the estimated future cash flows to be made in respect of all employees at 30 June 2001.

During 1999-2000 the Office arranged for an actuarial assessment of its long service leave entitlements. This provided advice on the average length of service at which employees would take long service leave and what was the probability of employee reaching ten years service. In determining the present value of the liability, the Office has taken into account pay increases through promotion and inflation.

In 2000-2001 the Office included for the first time the value of the employer on-costs attributable to the provision for employee leave entitlements. These on-costs cover expenses that the employer will incur when an employee takes leave, such as superannuation and the accrual of further leave. The amount of the on-cost takes into account the probability that leave is taken as leave rather than paid out on resignation, based on statistical analysis of actual data over the past three years. The amount recorded as an initial expense on 1 July 2000 is \$1,214,259.

**B. Separation and redundancy**

Provision is made for separation and redundancy payments in circumstances where the Office has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.

**C. Superannuation**

Ongoing staff employed by the Office contribute to the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. Employer contributions amounting to \$2,841,215 (1999-2000 - \$2,942,144) in relation to these schemes has been expensed in these Financial Statements.

Employer Superannuation Productivity Benefit contributions amounted to \$515,734 (1999-2000 - \$457,053)

Non-ongoing staff do not contribute to the above schemes. Employer contributions amounting to \$57,165 (1999-2000 - \$n/a [included in above 1999-2000 amounts]) in relation to these employees has been expensed in these Financial Statements.

No liability for superannuation is recognised as at 30 June as the employer contributions fully extinguish the accruing liability that is assumed by the Commonwealth.

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

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2001

**Note 2 - Summary of significant accounting policies (cont)**

**2.5 Leases**

A distinction is made between finance leases, which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets, and operating leases, under which the lessor effectively retains substantially all such risks and benefits.

Operating lease payments are expensed on a basis that is representative of the pattern of benefits derived from the leased assets. The net present value of future net outlays in respect of surplus space under non-cancellable lease arrangements is expensed in the period in which the space is recognised as surplus.

Operating lease receipts are credited on a basis that is representative of the pattern of benefits derived from the leased assets.

Lease incentives taking the form of 'free' Leasehold Improvements and rent-free holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.

Operating leases included in the Schedule of Commitments are effectively non-cancellable and comprise:

<u>Nature of lease</u>	<u>General description of leasing arrangement</u>
Leases for office accommodation	<ul style="list-style-type: none"><li>• Lease payments are subject to increases in accordance with the terms and conditions of each lease.</li><li>• The initial term of the leases vary, as do the options to renew.</li></ul>
Leases for motor vehicles (for general office use and for senior executives' remuneration packages)	<ul style="list-style-type: none"><li>• No contingent rentals exist.</li><li>• There are no renewal or purchase options available to the Office.</li></ul>
Lease for computer equipment	<ul style="list-style-type: none"><li>• The master planned rental agreement commenced w.e.f. 01.07.2001.</li><li>• 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</li><li>• The term of the lease can be extended.</li></ul>
Sub-lease for vacant office accommodation	<ul style="list-style-type: none"><li>• Lease payments are subject to set bi-annual increases.</li><li>• There is no option to renew.</li></ul>

The Office has no finance leases.

**2.6 Cash**

Cash includes notes and coins held, deposits held at call with a Bank or Financial Institution. Term deposits with a maturity term of less than three months are classified as cash.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the period ended 30 June 2001

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**Note 2 - Summary of significant accounting policies (cont)**

**2.7 Financial Instruments**

Accounting policies for financial instruments are stated at Note 33.

**2.8 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.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring administrative arrangements. In the latter case, assets are initially recognised at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring.

**2.9 Property, Plant and Equipment**

*A. Asset Recognition Threshold*

Purchases of Property, Plant and Equipment are recognised initially as cost in the Statement of Financial Position, except for purchases costing less than \$300, 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 \$300 threshold is not applied to Library Holdings and Artworks.

*B. Revaluation*

Property, Plant and Equipment are revalued progressively in accordance with the 'deprival' method of valuation in successive three-year cycles, so that no asset has a value greater than three years old.

During the 1998-1999 Financial Year, the Office revalued all Assets, except purchased Software, using the deprival method:

- all property, plant and equipment assets acquired before 21 April 1999, except Library Assets, were subject to an Independent Revaluation, with an effective valuation date of 30 June 1999. The revaluation was conducted by members of the Australian Valuation Office, using the Deprival Method of valuation, having regard to the estimated Current Replacement Costs. The individual valuers were Simon O'Leary AAPI MSA and Bryan Hurrell FAPI. This valuation was undertaken to fulfil requirements as stated by the Department of Finance and Administration and forms part of an ongoing Asset Management policy in line with Australian Accounting Standards;
- a Directors' Valuation of the Library Assets was undertaken, with an effective valuation date of 30 June 1999. This valuation recognised Assets for the first time as well as revaluing Assets already recognised; and
- Internally Developed Software was subject to an Independent Revaluation, with an effective date of 30 June 1999. The revaluation was conducted by members of the Australian Valuation Office, using the Deprival Method of valuation, having regard to the estimated Current Replacement Costs. The individual valuer was Wayne Timson AAPI. This valuation was undertaken to fulfil requirements as stated by the Department of Finance and Administration, and forms part of an ongoing Asset Management policy in line with Australian Accounting Standards.

## OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

### NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the period ended 30 June 2001

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#### **Note 2 - Summary of significant accounting policies (cont)**

In applying the deprival method, the Office values assets at their depreciated replacement cost. Any assets that would not be replaced or are surplus to requirements are valued at net realisable value. As at 30 June 2001 the Office had no assets in this situation.

The effect of revaluing using the deprival method is to reflect current replacement costs and ensure that the depreciation charge reflects the current cost of the service potential consumed during each period.

Property, plant and equipment assets, except Library Assets, acquired after 21 April 1999 are held at cost.

All assets are to be revalued during 2001-2002

#### *C. Recoverable Amount Test*

Schedule 1 requires the application of the recoverable amount test to agency non-current assets in accordance with *AAS 10 Accounting for the Revaluation of Non-Current Assets*. The carrying amounts of these non-current assets have been reviewed to determine whether they are in excess of their recoverable amounts.

#### *D. Depreciation and Amortisation*

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Office using, in all cases, the straight-line method of depreciation. Leasehold improvements include office fit out and purpose built furniture, and are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation/amortisation rates (useful lives), and the methods, are reviewed at each balance date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Residuals are re-estimated for a change in prices only when the assets are revalued.

Depreciation and amortisation rates applying to each class of depreciable Asset were:

<u>Class</u>	<u>2000-2001</u>	<u>1999-2000</u>
Leasehold Improvements	Lease Term	Lease Term
Property, Plant and Equipment	2 – 30 years	2 – 30 years
Intangibles	4 – 13 years	4 – 13 years

The aggregate amount of Depreciation allocated for each class of asset during the reporting period is disclosed in Note 10.

#### **2.10 Taxation**

The Office is exempt from all forms of taxation with the exception of fringe benefits tax and the goods and services tax. The goods and services tax is accounted for in accordance with UIG 31.

#### **2.11 Foreign Currency**

Transactions denominated in a foreign currency are converted at the exchange rate at the date of the transaction.

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

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2001

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**Note 2 - Summary of significant accounting policies (cont)**

**2.12 Capital Use Charge**

A capital use charge of 12% is imposed by the Government on the net agency assets of the Office. The charge is adjusted to take account of asset gifts and revaluation increments during the year.

**2.13 Insurance**

The Office has insured for risks, other than worker's compensation, through the Government's insurable risk managed fund, Comcover. Worker's compensation is insured through Comcare.

**2.14 Comparative Figures**

Comparative figures have been adjusted to conform with changes in presentation in these Financial Statements where required.

**2.15 Rounding**

Amounts have been rounded to the nearest \$1,000 except in relation to the following:

- act of grace payments and waivers;
- remuneration of executives;
- remuneration of auditors; and
- appropriations.

**2.16 Commitments**

The amount shown as legal services commitments on the Schedule of Commitments represents estimated costs where legal counsel has been engaged to act on behalf of the Office. Although legal services cannot be contracted, these estimates are undertakings that are expected to create future liabilities.

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

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2001

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**Note 2 - Summary of significant accounting policies (cont)**

**2.17 Administered Items**

From 2000-2001, the reported Administered Fines and Costs have been expanded in scope to include the total amount awarded to the Commonwealth, including amounts that will subsequently be paid to other Agencies of the Commonwealth. In previous years, only the amount that would be receivable directly by the Office was recorded. This expanded revenue recognition criteria resulted in a one off recognition of receivables of \$1.636m in 2000-2001 (included in Fines and Costs revenue), increased Fines and Costs revenue for 2000-2001 of \$13.581m and increased expenses of Transfers to Other Agencies of \$14.065m.

**2.18 Administered Revenue**

All revenues described in this note are revenues relating to the core operating activities performed by the Office on behalf of the Commonwealth.

**A. *Other Revenue***

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.

**2.19 Administered Expenses**

All expenses described in this note are expenses relating to the core operating activities performed by the Office on behalf of the Commonwealth.

**A. *Write-down of assets***

Receivables are written down on receipt of advice from the collection agency in the jurisdiction that the fines and costs have been converted to a prison sentence or a community service order, or are irrecoverable.

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.

**B. *Transfers to other Agencies***

Fines and costs that are payable to another agency are recorded as an expense on confirmation that the receivable has been recognised by that agency. Similarly, fines and costs received by the Office that for the credit of another agency are recorded as an expense at the time the cash is paid.

**2.20 Administered Receivables**

The Office is not responsible for the collection of fees and fines, this being the responsibility of the Courts and/or State Collection Agencies.

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

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2001

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**Note 3 - Events Occurring After Balance Date**

There were no events occurring after balance date that had any material effect on the 2000-2001 Financial Statements.

In July 2001 the Office entered into an operating lease for its desktop and notebook computer requirements. This will affect subsequent reporting periods as an increase in supplier expenses, offset by a reduction in the depreciation expense.



**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the period ended 30 June 2001

	<b>2000-2001</b>	1999-2000
	<b>\$'000</b>	\$'000
<b><u>Note 4 - Revenues from Government</u></b>		
Appropriations for outputs	<b>58,105</b>	56,176
Resources received free of charge	<b>169</b>	60
Total	<b>58,274</b>	56,236

**Note 5 - Sales of goods and services**

Provision of goods	<b>10</b>	18
Operating lease rental revenue	<b>106</b>	97
Rendering of services revenue	<b>967</b>	220
Other	<b>18</b>	20
Total	<b>1,101</b>	355

**Note 6 - Proceeds and expenses from sale of assets**

Non-financial assets		
Infrastructure, plant and equipment		
Receipts (proceeds) from sale	<b>127</b>	31
Expense from sale	<b>(201)</b>	(92)
Net profit (loss) from sales	<b>(74)</b>	(61)

**Note 7 - Other operating revenues**

Employment subsidies	<b>-</b>	33
Civil costs awarded	<b>58</b>	241
Resources received free of charge-Other Entities	<b>283</b>	6
Other	<b>134</b>	3
Total	<b>475</b>	283

**Note 8 - Employee expenses**

Remuneration (for services provided)	A <b>29,837</b>	27,617
Separation and redundancy payments	<b>172</b>	646
Total remuneration	<b>30,009</b>	28,263
Other employee expenses	<b>802</b>	800
Total	<b>30,811</b>	29,063

A Remuneration includes \$385K (1999-2000 \$431K) for operating leases on motor vehicles.

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

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2001

	2000-2001 \$'000	1999-2000 \$'000
<b><u>Note 9 - Supplier expenses</u></b>		
Supply of goods and services	14,901	17,361
Operating leases	5,524	5,219
Total	<u>20,425</u>	<u>22,580</u>

**Note 10 - Depreciation and amortisation**

The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:

Leasehold improvements	1,760	1,564
Plant and equipment	1,753	2,010
Intangibles	528	713
Total	<u>4,041</u>	<u>4,287</u>

**Note 11 - Write-down of assets**

Financial assets		
Receivables	3	-
Non-financial assets - write-off		
Plant and equipment	5	63
Intangibles	3	1
Total	<u>11</u>	<u>64</u>

**Note 12 - Other operating expenses**

Costs awarded against the Commonwealth	167	1,067
less Comcover recoveries	(85)	-
Total	<u>82</u>	<u>1,067</u>

**Note 13 - Cash**

Cash at bank	152	736
Cash on hand	52	60
Term deposit	10,878	4,820
Total	<u>11,082</u>	<u>5,616</u>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the period ended 30 June 2001

	<b>2000-2001</b>	1999-2000
	<b>\$'000</b>	\$'000

**Note 14 - Receivables**

Goods and services	<b>178</b>	20
GST credits recoverable	<b>339</b>	50
Interest	<b>6</b>	6
Lease incentives receivable	<b>348</b>	961
CUC receivable	<b>152</b>	-
Total	<b>1,023</b>	1,037

Receivables are aged as follows:

Not overdue	<b>1,023</b>	1,037
Overdue less than 30 days	-	-
Overdue 30 to 60 days	-	-
Overdue 60 to 90 days	-	-
Overdue more than 90 days	-	-
Total	<b>1,023</b>	1,037

**Note 15 - Land and buildings**

Leasehold improvements at cost	<b>3,822</b>	2,601
Accumulated amortisation	<b>(632)</b>	(1,087)
	<b>3,190</b>	1,514
Leasehold improvements at valuation - 30/06/1999	2.9B <b>11,707</b>	15,762
Accumulated amortisation	<b>(7,481)</b>	(10,383)
	<b>4,226</b>	5,379
Leasehold improvements under construction	<b>11</b>	101
Total buildings	<b>7,427</b>	6,994

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2001

		<b>2000-2001</b>	1999-2000
		<b>\$'000</b>	\$'000
<b><u>Note 16 - Infrastructure, plant and equipment</u></b>			
Computers at cost		<b>1,005</b>	866
Accumulated depreciation		<b>(438)</b>	(241)
		<b>567</b>	625
Computers at valuation - 30/06/1999	2.9B	<b>1,940</b>	3,664
Accumulated depreciation		<b>(1,624)</b>	(2,480)
		<b>316</b>	1,184
Furniture at cost		<b>954</b>	769
Accumulated depreciation		<b>(246)</b>	(123)
		<b>708</b>	646
Furniture at valuation - 30/06/1999	2.9B	<b>1,755</b>	1,977
Accumulated depreciation		<b>(1,020)</b>	(1,090)
		<b>735</b>	887
Other plant and equipment at cost		<b>595</b>	297
Accumulated depreciation		<b>(98)</b>	(44)
		<b>497</b>	253
Other plant and equipment at valuation - 30/06/1999	2.9B	<b>2,119</b>	2,225
Accumulated depreciation		<b>(1,601)</b>	(1,472)
		<b>518</b>	753
Artwork at valuation - 30/06/1999	2.9B	<b>160</b>	168
Accumulated depreciation		<b>(30)</b>	(16)
		<b>130</b>	152
Library holdings at valuation - 30/06/1999	2.9B	<b>2,909</b>	2,909
Accumulated depreciation		<b>(320)</b>	(160)
		<b>2,589</b>	2,749
Total plant and equipment		<b>6,060</b>	7,249
<b><u>Note 17 - Intangibles</u></b>			
Purchased software at cost		<b>2,453</b>	2,215
Accumulated amortisation		<b>(1,649)</b>	(1,423)
		<b>804</b>	792
Internally developed software at valuation - 30/06/1999	2.9B	<b>1,279</b>	1,280
Accumulated amortisation		<b>(775)</b>	(602)
		<b>504</b>	678
Total intangible assets		<b>1,308</b>	1,470

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the period ended 30 June 2001

**Note 18 - Analysis of land, buildings, plant, equipment and intangibles**

**A. Movement summary for reporting period for all assets irrespective of valuation basis**

Item	Buildings-leasehold improvements \$'000	Plant and equipment \$'000	Intangibles-computer software \$'000	Total \$'000
<b>Gross value at beginning of reporting period</b>	17,667	12,875	3,496	<b>34,038</b>
Additions: purchase of assets	1,906	764	366	<b>3,036</b>
Disposals	-	(2,158)	-	<b>(2,158)</b>
Write-offs	(4,500)	(54)	(132)	<b>(4,686)</b>
Revaluations: write-ups	357	-	-	<b>357</b>
Assets transferred in / (out)	(5)	5	-	<b>-</b>
Other movements	115	5	2	<b>122</b>
<b>Gross value at end of reporting period</b>	<b>15,540</b>	<b>11,437</b>	<b>3,732</b>	<b>30,709</b>
<b>Accumulated depreciation / amortisation at beginning of</b>	<b>10,673</b>	<b>5,626</b>	<b>2,026</b>	<b>18,325</b>
Depreciation / amortisation charge for the reporting period	1,760	1,753	528	<b>4,041</b>
Depreciation / amortisation charge for additions	-	-	-	<b>-</b>
Disposals	-	(1,956)	-	<b>(1,956)</b>
Write-offs	(4,500)	(49)	(129)	<b>(4,678)</b>
Revaluations: write-ups	161	-	-	<b>161</b>
Assets transferred in / (out)	-	1	(1)	<b>-</b>
Other movements	19	2	-	<b>21</b>
<b>reporting period</b>	<b>8,113</b>	<b>5,377</b>	<b>2,424</b>	<b>15,914</b>
<b>Net book value at end of reporting period</b>	<b>7,427</b>	<b>6,060</b>	<b>1,308</b>	<b>14,795</b>
Net book value at beginning of reporting period	6,994	7,249	1,470	15,713

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the period ended 30 June 2001

**Note 18 - Analysis of land, buildings, plant, equipment and intangibles**

**B. Summary of balances of assets held at valuation at end of reporting period**

Item	Buildings-leasehold improvements \$'000	Plant and equipment \$'000	Intangibles- computer software \$'000
<b>As at end of reporting period</b>			
Gross value	11,707	8,883	1,279
Accumulated depreciation / amortisation	7,481	4,595	775
Net book value at end of reporting period	<u>4,226</u>	<u>4,288</u>	<u>504</u>
<b>As at beginning of reporting period</b>			
Gross value	15,762	10,943	1,280
Accumulated depreciation / amortisation	10,383	5,218	602
Net book value at beginning of reporting period	<u>5,379</u>	<u>5,725</u>	<u>678</u>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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**Note 18 - Analysis of land, buildings, plant, equipment and intangibles**

**C. Summary of assets under construction at end of reporting period**

Item	Buildings-leasehold improvements \$'000	Plant and equipment \$'000	Intangibles- computer software \$'000	Total \$'000
<b>As at end of reporting period</b>				
Gross value	11	-	-	11
Accumulated depreciation / amortisation	-	-	-	-
Net book value at end of reporting period	<u>11</u>	<u>-</u>	<u>-</u>	<u>11</u>
<b>As at beginning of reporting period</b>				
Gross value	101	-	-	101
Accumulated depreciation / amortisation	-	-	-	-
Net book value at beginning of reporting period	<u>101</u>	<u>-</u>	<u>-</u>	<u>101</u>

No assets were held under finance lease during the reporting period.

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	<b>2000-2001</b>	<b>1999-2000</b>
	<b>\$'000</b>	<b>\$'000</b>
<b><u>Note 19 - Other non-financial assets</u></b>		
Prepayments made	<b>844</b>	957
Total	<b>844</b>	957
<b><u>Note 20 - Other debt</u></b>		
Lease incentives	<b>4,467</b>	5,653
Total	<b>4,467</b>	5,653
<b><u>Note 21 - Employee provisions and payables</u></b>		
Salaries and wages	<b>765</b>	579
Leave	<b>8,876</b>	7,337
Separations and redundancies	-	290
Other	<b>99</b>	431
Total	<b>9,740</b>	8,637
Current	<b>3,932</b>	3,651
Non-current	<b>5,808</b>	4,986
<b><u>Note 22 - Suppliers provisions and payables</u></b>		
Trade Creditors	<b>4,108</b>	3,828
Provision for fitout restoration	<b>889</b>	761
Provision for rent on surplus space	<b>136</b>	-
Total	<b>5,133</b>	4,589
<b><u>Note 23 - Other provisions and payables</u></b>		
Prepayments received	-	30
Total	-	30



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**Note 24 - Equity**

	<b>Capital</b>		<b>Accumulated Results</b>		<b>Asset Revaluation Reserve</b>		<b>Total Equity</b>	
	<b>2000-2001</b>	1999-2000	<b>2000-2001</b>	1999-2000	<b>2000-2001</b>	1999-2000	<b>2000-2001</b>	1999-2000
	<b>\$'000</b>	\$'000	<b>\$'000</b>	\$'000	<b>\$'000</b>	\$'000	<b>\$'000</b>	\$'000
Opening balance as at beginning of reporting period	<b>2,027</b>	2,027	<b>(1,287)</b>	(2,303)	<b>3,623</b>	3,316	<b>4,363</b>	3,040
Capital injection	-	-	-	-	-	-	-	-
Operating results	-	-	<b>4,876</b>	6	-	-	<b>4,876</b>	6
Adjustments to Accumulated Results:								
. Recognition of assets not previously recognised	-	-	-	495	-	-	-	495
. Correction to employee provision for 1998-1999	-	-	-	881	-	-	-	881
Capital Use Charge (CUC) payments	-	-	<b>(1,031)</b>	(366)	-	-	<b>(1,031)</b>	(366)
Net revaluation increment	-	-	-	-	<b>196</b>	307	<b>196</b>	307
Closing balance as at end of reporting period	<b>2,027</b>	2,027	<b>2,558</b>	(1,287)	<b>3,819</b>	3,623	<b>8,404</b>	4,363

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For the period ended 30 June 2001

<b>2000-2001</b>	1999-2000
<b>\$'000</b>	<b>\$'000</b>

**Note 25 - Cash flow reconciliation**

Reconciliation of Cash per Statement of Financial  
Position to Statement of Cash Flows:

Cash at year end per Statement of Cash Flows	<b>11,082</b>	5,616
Cash as per Statement of Financial Postion	<b>11,082</b>	5,616

Reconciliation of operating surplus to the net cash  
provided by operating activities:

Net Surplus (deficit)	<b>4,875</b>	6
Depreciation	<b>4,041</b>	4,287
Loss on sale of non-current assets	<b>75</b>	61
Write-off of non-current assets	<b>7</b>	64
Assets not previously recognised	<b>(5)</b>	-
Decrease (increase) in receivables	<b>(362)</b>	(74)
Decrease (increase) in prepayments	<b>113</b>	360
Increase (decrease) in debt	<b>(1,315)</b>	(1,257)
Increase (decrease) in employee liabilities	<b>1,102</b>	872
Increase (decrease) in supplier liabilities	<b>(202)</b>	1,546
Increase (decrease) in other liabilities	<b>(30)</b>	30
Net cash provided by operating activities	<b>8,299</b>	5,895

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	2000-2001	1999-2000
	\$.	\$.

**Note 26 - Appropriations**

**A Agency appropriations**

**Annual Appropriations for Agency items (price of outputs)**

Appropriations Acts 1 and 3 credits:		
Section 7 - Act 1 - basic appropriations (budget)	58,105,000	56,176,000
Section 7 - Act 3 - basic appropriations	-	-
Section 10 - Adjustments	-	-
Section 11 - Advance to the Minister for Finance	-	-
Section 12 - Comcover receipts	93,172	-
Add : FMA Act appropriations:		
Section 30 appropriations	-	-
Section 30A appropriations (GST recoverables)	1,101,666	-
Section 31 appropriations	1,956,259	940,094
Total appropriated in the period	<u>61,256,097</u>	<u>57,116,094</u>
Balance available at beginning of period	5,457,094	-
Total appropriations available for payments	<u>66,713,191</u>	<u>57,116,094</u>
Payments during the period	55,630,960	51,659,000
Balance of appropriations for outputs at end of period	<u>11,082,231</u>	<u>5,457,094</u>

**Annual Appropriations for Agency non-revenue items**

**Equity injections**

Appropriations Acts 2 and 4 credits:		
Section 10 - Act 2 (budget)	-	2,500,000
Section 10 - Act 4	-	(473,000)
Add: Advance to the Minister for Finance	-	-
Add : FMA Act appropriations:		
Section 30 appropriations	-	-
Section 30A appropriations (GST recoverables)	-	-
Total appropriated in the period	<u>-</u>	<u>2,027,000</u>
Balance available at beginning of period	-	-
Total appropriations available for payments	<u>-</u>	<u>2,027,000</u>
Payments during the period	-	2,027,000
Balance of appropriations for capital at end of period	<u>-</u>	<u>-</u>

There were no loans or carryovers in the reporting period.

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<b>2000-2001</b>	<b>1999-2000</b>
<b>\$.</b>	<b>\$.</b>

**Note 27 - Special Accounts**

**A. Other Trust Moneys**

Legal authority - *Financial Management and Accountability Act 1997*; s20  
Purpose - for the receipt of money temporarily held on trust or otherwise for the benefit of a person or entity other than the Commonwealth.

**Fines & Costs Component**

Balance at beginning of the reporting period	<b>39,750</b>	224,104
Add: Receipts from appropriations	-	-
Receipts from other sources	<b>2,395,115</b>	2,860,007
	<b>2,434,865</b>	3,084,111
Less: Payments in reporting period	<b>(2,417,751)</b>	(3,044,361)
Balance at end of reporting period	<b>17,114</b>	39,750

**Bonds Component**

Balance at beginning of the reporting period	<b>16,258</b>	178,394
Add: Receipts from appropriations	-	-
Receipts from other sources	-	1,258
	<b>16,258</b>	179,652
Less: Payments in reporting period	<b>(16,258)</b>	(163,394)
Balance at end of reporting period	-	16,258

**B. Comcare Trust Account**

Legal authority - *Financial Management and Accountability Act 1997*; s20  
Purpose - for the receipt of money temporarily held on trust and advanced to the Agency by Comcare for the purpose of distributing compensation payments made in accordance with the *Safety Rehabilitation and Compensation Act 1998*

Balance at beginning of the reporting period	-	-
Add: Receipts from appropriations	-	-
Receipts from other sources	<b>33,142</b>	43,553
	<b>33,142</b>	43,553
Less: Payments in reporting period	<b>(33,142)</b>	(43,553)
Balance at end of reporting period	-	-

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	Actual \$'000	Budget \$'000
<b>Note 28 - Reporting by Outcomes</b>		
<b>Reporting by outcome</b>	<b>Outcome 1</b>	
Net subsidies, benefits and grant expenses	-	-
Other administered expenses	17,668	1,900
Total net administered expenses	17,668	1,900
Add net cost of entity outputs	(4,876)	(1,895)
Outcome before extraordinary items	12,792	5
Extraordinary items	-	-
Net cost to Budget outcome	12,792	5
Total assets deployed at end of reporting period	31,866	27,844
<b>Major Agency Revenues &amp; Expenses by outcome</b>		
Operating revenues		
Revenues from Government	58,274	58,105
Sales of goods and services	1,101	130
Other	1,072	322
Total operating revenues	60,447	58,557
Operating expenses		
Employees	30,811	29,715
Suppliers	20,425	22,434
Other	4,335	4,513
Total operating expenses	55,571	56,662
<b>Major Administered Revenues &amp; Expenses by outcome</b>		
Operating revenues		
Fees and Fines	2.17 18,431	4,300
Other	40	-
Total operating revenues	18,471	4,300
Operating expenses		
Write-down of assets	3,004	1,900
Other	2.17 14,664	-
Total operating expenses	17,668	1,900

## For the period ended 30 June 2001

1999-2000

## Note 29 - Executive remuneration

The number of Executives who received or were due to receive total remuneration of \$100,000 or more:

	Number	Number
\$100,000 to \$110,000	4	-
\$110,000 to \$120,000	6	10
\$120,000 to \$130,000	8	13
\$130,000 to \$140,000	7	5
\$140,000 to \$150,000	5	3
\$150,000 to \$160,000	4	-
\$160,000 to \$170,000	3	1
\$180,000 to \$190,000	-	1
\$190,000 to \$200,000	1	-
\$210,000 to \$220,000	1	1
\$300,000 to \$310,000	1	-
Total	<u>40</u>	<u>34</u>

The aggregate amount of total remuneration of the executives included above

\$ 5,609,068	\$ 4,467,616
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The aggregate amount of separation and redundancy payments of the executives included above

\$ - \$ -

### **Note 30 - Remuneration of Auditors**

Financial Statement audit services are provided free of charge to the Agency. The fair value of audit services provided was:

Agency	\$ 60,000	\$ 60,000
Total	<u>\$ 60,000</u>	<u>\$ 60,000</u>

No other services were provided by the Auditors.

**Note 31 - Act of Grace payments, Waivers and Defective Administration Scheme**

Act of Grace payments	Nil	Nil
Waivers made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i>	Nil	Nil
Defective Administration Scheme	Nil	Nil
Total	<u>\$ -</u>	<u>\$ -</u>

**Note 32 - Average staffing level**

Agency - number of full time equivalents	<b>403</b>	392
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**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2001

**Note 33 – Financial Instruments**

**a) Terms, conditions and accounting policies**

<b>Financial Instrument</b>	<i>Note</i>	<b>Accounting Policies and Methods (including recognition criteria and measurement basis)</b>	<b>Nature of Underlying Instrument (including significant terms &amp; conditions affecting the amount, timing and certainty of cash flows)</b>
<b>Financial Assets</b>		Financial Assets are recognised when control over future economic benefits is established and the amount of the benefit can be readily measured.	
Cash – at Bank	13	Deposits are recognised at their nominal amounts. Interest on the account is credited to revenue as it accrues.	The Agency maintains a group of accounts with the Reserve Bank of Australia for it's for daily activities. End of day balances are swept into the Official Public Account nightly and returned at the beginning of the following business day. Interest is earned from the Department of Finance and Administration. Interest rates averaged 2.00% (1999-2000 = 4.20%). Interest is paid quarterly.
Cash – Term deposit	13	Deposits are recognised at their nominal amounts. Interest on the account is credited to revenue as it accrues.	The Agency transfers funds surplus to immediate requirements into term deposits with the Reserve Bank of Australia. Interest is earned from Department of Finance and Administration. Interest rates averaged 5.53% (1999-2000 = 5.25%). Interest is paid on maturity of the term deposit.
Receivables – Goods and services, GST credits, Interest & CUC	14	Receivables are reported at the nominal amounts due less any provision for bad or doubtful debts where applicable. Collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely.	Receivables are with the Commonwealth and external entities. Receivables consist of GST input credit recoveries, other recoveries and accrued interest revenue to 30 June.

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

**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

For the period ended 30 June 2001

**Note 33 – Financial Instruments (cont)**

**a) Terms, conditions and accounting policies (cont)**

<b>Financial Instrument</b>	<i>Note</i>	<b>Accounting Policies and Methods (including recognition criteria and measurement basis)</b>	<b>Nature of Underlying Instrument (including significant terms &amp; conditions affecting the amount, timing and certainty of cash flows)</b>
<b>Financial Liabilities</b>		Financial Liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured.	
Suppliers provisions and payables – Trade creditors - Agency	22	Creditors and Accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods and services have been received (and irrespective of having been invoiced).	Creditors are entities that are part of the Commonwealth legal entity and external to the Commonwealth. Settlement is usually made net 30 days.



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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
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**Note 33 - Financial Instruments (cont)**

**(b) Interest Rate Risk: Agency**

Financial Instrument	Notes	Floating Interest Rate		Fixed Interest Rate								Non-Interest Bearing		Total	
				1 year or less		1 to 2 years		2 to 5 years		> 5 years					
		2000-2001 \$'000	1999-2000 \$'000	2000-2001 \$'000	1999-2000 \$'000	2000-2001 \$'000	1999-2000 \$'000	2000-2001 \$'000	1999-2000 \$'000	2000-2001 \$'000	1999-2000 \$'000	2000-2001 \$'000	1999-2000 \$'000		
<b>Financial Assets</b>															
Cash - at bank	13	152	736										152	736	
Cash - term deposit	13			10,878	4,820								10,878	4,820	
Receivables - goods and services	14										178	20	178	20	
Receivables - GST credits	14										339	50	339	50	
Receivables - Interest	14										6	6	6	6	
Receivables - CUC	14										152	-	152	-	
Total Financial Assets (Recognised)		152	736	10,878	4,820	-	-	-	-	-	675	76	11,705	5,632	
<b>Total Agency Assets</b>													27,744	23,323	
<b>Financial Liabilities</b>															
Accounts payable -Trade creditors	22										4,108	3,828	4,108	3,828	
Total Financial Liabilities (Recognised)		-	-	-	-	-	-	-	-	-	4,108	3,828	4,108	3,828	
<b>Total Agency Liabilities</b>													19,340	18,960	

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the period ended 30 June 2001

**Note 33 - Financial Instruments (cont)**

**(c) Net Fair Values of Agency Financial Assets and Liabilities**

		2000-2001		1999-2000	
		Total carrying amount	Aggregate net fair value	Total carrying amount	Aggregate net fair value
		\$'000	\$'000	\$'000	\$'000
<b>Departmental</b>					
<b>Financial Assets</b>					
Cash - at bank	13	152	152	736	736
Cash - term deposit	13	10,878	10,878	4,820	4,820
Receivables - goods and services	14	178	178	20	20
Receivables - GST credits	14	339	339	50	50
Receivables - Interest	14	6	6	6	6
Receivables - CUC	14	152	152	-	-
<b>Total Financial Assets</b>		<b>11,705</b>	<b>11,705</b>	<b>5,632</b>	<b>5,632</b>
<b>Financial Liabilities (Recognised)</b>					
Accounts payable - Trade creditors	22	4,108	4,108	3,828	3,828
<b>Total Financial Liabilities (Recognised)</b>		<b>4,108</b>	<b>4,108</b>	<b>3,828</b>	<b>3,828</b>

**Note 33 - Financial Instruments (cont)**

**(c) Net Fair Values of Financial Assets and Liabilities (cont.)**

***Financial Assets***

The net fair values of cash, current term deposits and non-interest-bearing monetary financial assets approximate their carrying amounts.

***Financial Liabilities***

The net fair values for trade creditors are short term in nature and approximated by their carrying amounts.

**(d) Credit Risk Exposures**

The Agency's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Agency Statement of Financial performance.

There are no significant exposures to any concentrations of credit risk in relation to the Agency receivables.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

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**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the period ended 30 June 2001

		<b>2000-2001</b>	<b>1999-2000</b>
		<b>\$'000</b>	<b>\$'000</b>
<b>Note 34 - Administered reversal of previous asset write-downs</b>			
Decrease in provision for doubtful debts		-	286
Reinstate receivable previously written-off		26	14
Total		<u>26</u>	<u>300</u>
<b>Note 35 - Administered fees and fines</b>			
Fines and costs	2.17	18,431	3,417
Total		<u>18,431</u>	<u>3,417</u>
<b>Note 36 - Administered other operating revenue</b>			
Forfeiture of bonds		-	163
Other		14	6
Total		<u>14</u>	<u>169</u>
<b>Note 37 - Administered write-down of assets</b>			
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.			
Financial Assets			
Write-off		156	162
Prison sentence		523	477
Community service orders		135	151
Increase in provision for doubtful debts	2.19A	2,190	-
Total		<u>3,004</u>	<u>790</u>
<b>Note 38 - Administered other expense</b>			
Transfers to other Agencies		358	478
Receivables assumed by other Agencies	2.17	14,306	-
Total		<u>14,664</u>	<u>478</u>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the period ended 30 June 2001

	<b>2000-2001</b>	1999-2000
	<b>\$'000</b>	\$'000
<b>Note 39 - Administered cash</b>		
Cash at bank	17	40
Total	<u>17</u>	<u>40</u>
<b>Note 40 - Administered receivables</b>		
Fines and Costs	7,396	6,294
Less : Provision for doubtful debts	(3,290)	(1,099)
Total	<u>4,106</u>	<u>5,195</u>
Fines and costs receivable are aged as follows:		
Not overdue	1,420	889
Overdue less than 30 days	271	212
Overdue 30 to 60 days	169	134
Overdue 60 to 90 days	186	77
Overdue more than 90 days	5,350	4,982
Total	<u>7,396</u>	<u>6,294</u>
<b>Note 41 - Administered Equity</b>		
<b>Accumulated Results</b>		
Balance at 1 July	5,235	5,138
Operating result	(1,112)	97
Balance at 30 June	<u>4,123</u>	<u>5,235</u>
<b>Note 42 - Administered Cash flow reconciliation</b>		
Reconciliation of Cash per Schedule of Administered Assets and Liabilities to Schedule of Administered Cash Flows:		
Cash at year end per Schedule of Administered Cash	17	40
Cash as per Schedule of Administered Assets and	17	40
Reconciliation of 'Net increase (decrease) in administered net assets' from Schedule of Administered Revenues and Expenses to net cash provided by operating activities:		
Net increase (decrease) in administered net assets	(1,112)	97
Net (increase) decrease in receivables	1,089	(281)
Net cash from operating activities	<u>(23)</u>	<u>(184)</u>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

**For the period ended 30 June 2001-12-05**

**Note 43 – Administered Financial Instruments**

**a) Terms, conditions and accounting policies**

<b>Financial Instrument</b>	<b>Note</b>	<b>Accounting Policies and Methods (including recognition criteria and measurement basis)</b>	<b>Nature of Underlying Instrument (including significant terms &amp; conditions affecting the amount, timing and certainty of cash flows)</b>
Financial Assets		Financial Assets are recognised when control over future economic benefits is established and the amount of the benefit can be readily measured.	
Cash – at Bank	39	Deposits are recognised at their nominal amounts. Interest on the accounts is paid to the Commonwealth and is not reported by the Agency.	The Agency maintains a group of Administered accounts with the Reserve Bank of Australia for its administered activities. There are eight accounts for the holding of money pending disbursement to other Commonwealth and State Agencies, and to the Commonwealth. The money disbursed to the Commonwealth is transferred to a separate account from which the end of day balances are swept into the Official Public Account and retained. No interest is earned on these accounts
Receivables – Fines and Costs	40	Receivables are reported at the nominal amounts due less any provision for bad or doubtful debts where applicable. Collectibility of debts is reviewed at balance date. Provisions are made where collection of the debt is judged to be less rather than more likely.	Receivables are with external entities. Receivables consist of Fines and Costs awarded in criminal cases prosecuted by the Agency

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the period ended 30 June 2001

**Note 43 - Administered Financial Instruments (cont)**

**(b) Interest Rate Risk: Administered**

[illegible]

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
For the period ended 30 June 2001

**Note 43 - Administered Financial Instruments (cont)**

**(c) Net Fair Values of Agency Financial Assets and Liabilities**

		2000-2001		1999-2000	
Note		Total carrying amount	Aggregate net fair value	Total carrying amount	Aggregate net fair value
		\$'000	\$'000	\$'000	\$'000
<b>Financial Assets</b>					
Cash at bank	39	17	17	40	40
Receivables - Fees and Fines	40	4,106	4,106	5,195	5,195
<b>Total Financial Assets</b>		<b>4,123</b>	<b>4,123</b>	<b>5,235</b>	<b>5,235</b>

**Financial Assets**

The net fair value of cash approximates the carrying amount.

The net fair values of fees and fines receivable is the carrying amount less the provision for doubtful debts.

**(d) Credit Risk Exposures**

The Agency's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Administered Balance Sheet.

There are no significant exposures to any concentrations of credit risk in relation to the Administered receivables.

All figures for credit risk referred to do not take into account the value of any collateral or other security.