



DPP

Commonwealth Director
Of Public Prosecutions

Annual Report 2001 - 2002

Commonwealth of Australia 2002

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DPP

Commonwealth Director of Public Prosecutions

20 September 2002

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 2002, in accordance with section 33(1) of the Director of Public Prosecutions Act 1983.

Yours faithfully

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

DAMIAN BUGG, 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 and the email address is 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 third Annual Report as Commonwealth Director of Public Prosecutions.

Last year was a challenging time in many ways. It was a year when events on the international stage demonstrated in dramatic terms that Australia is only isolated in a geographic sense. We are part of the world community and we are all affected by the threat posed by international crime.

The year saw the tragic events of 11 September 2001, and the emergence of international terrorism as the number one priority for governments around the world. In Australia we have already seen a range of new legislation designed to respond to terrorism and there may be more. The legislation creates new offences which will fall to be investigated by Commonwealth investigators and prosecuted by the DPP. Similar legislation is being enacted in other countries. The need for international cooperation to investigate and prosecute terrorist cases means that there are likely to be challenges for the DPP even if Australia is not a direct target of terrorist attacks.

In the course of the year it also became apparent that international people smuggling has developed as an organised business. The prosecution of the people who captain and crew the boats has become a significant part of the DPP's practice, especially in Perth and Darwin. However, the challenge remains to identify and prosecute the organisers. At the time of writing, extradition proceedings are underway against two alleged organisers, both in Thailand. A third alleged organiser is before the courts in Australia.

There is currently a Bill before Parliament relating to the International Criminal Court which, if enacted, will introduce a range of new war crimes offences and a new regime for international cooperation to investigate and prosecute alleged war crimes.

The result of these developments, together with the continued growth of electronic commerce and its parasitic crime, is that the DPP must see its role in an international context and not just as an Australian prosecuting agency.

On the domestic front, the year saw the application of the general principles of criminal responsibility set out in Chapter 2 of the Criminal Code to all offences against Commonwealth law. That happened on 15 December 2001. In the last Annual Report we foreshadowed that this development would pose a significant challenge for the DPP as well as for the agencies that investigate Commonwealth crime and the courts which handle the resulting prosecutions. The general principles, which are also being adopted in the ACT, differ from the

rules of criminal responsibility which have applied to Commonwealth offences up until now, and they differ from the rules of criminal responsibility which the courts still have to apply when dealing with offences against State law.

In the course of the year the Attorney-General's Department, in association with the Australian Institute of Judicial Administration, published a book entitled "The Commonwealth Criminal Code: A guide for practitioners". That document is likely to prove invaluable for prosecutors, the courts and defence lawyers in working through the complexities in this area.

The other major legislative development for the year was the progress of the Proceeds of Crime Bill from an exposure draft to a settled Bill. The Bill is currently before Parliament. If it is enacted, the Bill will introduce a civil based confiscation regime into Commonwealth law to stand alongside a modified version of the existing conviction based regime. The recovery function under both regimes will be given to the DPP.

The recovery of criminal assets has always been an important part of the DPP's work, but the proposed new legislation will expand the range of recovery options and should significantly improve the effectiveness of the Commonwealth legislation. It will also impose new resource demands on the DPP.

In the course of the year the DPP began the first stage of implementing a national Advocacy Training Program. The object is to develop the DPP's advocacy capacity using the services of in-house counsel augmented by external trainers where necessary. The program is at an early stage, but the initial feedback from participants has been very promising. The program should improve the general standard of DPP advocacy while providing DPP lawyers with new opportunities for professional development and career advancement.

On that note, I am very pleased to report that on 7 January 2002 Richard Maidment SC joined the DPP as senior in-house counsel in our Melbourne office. This is the first time the DPP has had a barrister of Richard's status work as in-house counsel. The DPP now employs seven barristers as in-house counsel in Sydney and Melbourne.

The DPP also commenced two major reviews of operating policies and procedures during the year.

The first is a review of joint prosecution arrangements with the State and Territory authorities. That review is necessary because the High Court in *R v Hughes* found that there are limits on the power of a Commonwealth agency to

prosecute offences against State law. The new arrangements will need to properly reflect those limits.

The second is a review of the Prosecution Policy of the Commonwealth, which was last reviewed in 1992. The Prosecution Policy sets out guidelines for all major decisions in the prosecution process. There have been changes in community attitudes and prosecution practices since 1992 and those changes should be reflected in the Prosecution Policy.

I have also written to the other Australian DPP's suggesting that we take this opportunity to see whether we can bring our prosecution policies into closer alignment to achieve a greater level of consistency across Australia. We discussed this issue at a recent meeting and I am pleased to report that all the State DPP's and one Territory DPP have agreed to review and, where necessary, align their prosecution policies in relation to the decision to prosecute.

For some time now the DPP has had regional sub-offices in Townsville and Cairns to handle case work in north Queensland. The offices have proved their worth, handling a significant workload with a high level of expertise. In the course of the year the Townsville office moved into new premises and the Cairns office was refurbished and expanded. Both offices now have modern facilities suited to the needs of the workforce.

I have noted in past years that the DPP can only perform as well as we are enabled to by the agencies which investigate cases and refer briefs to us for prosecution and recovery action. I am pleased to report that the DPP has maintained good operating relations with all Commonwealth 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, the Australian Taxation Office, the Australian Customs Service, the Health Insurance Commission, the Australian Consumer and Competition Commission, and Insolvency and Trustee Service Australia.

I think it is one of the real strengths of the DPP that the Office has been able to forge and maintain strong ties with other agencies in the law enforcement community. There is a potential for tension between our role in providing advice and support to the investigating agencies and our role as an independent prosecutor. I think it is a great credit to the staff of the DPP, at all levels, that the DPP has been able to balance the two roles so well and for so long.

Many of the agencies we deal with are represented on the Heads of Commonwealth Operational Law Enforcement Agencies (otherwise known as HOCOLEA). I would like to thank the other members of HOCOLEA for their continued cooperation.

In the coming year the DPP will conduct its second Client Survey, which will seek feedback on performance from all the agencies we receives briefs from or otherwise deal with on a regular basis. The first DPP Client Survey was conducted in 1998. It produced some interesting results which were taken into account in DPP planning. The questionnaires for the new survey will be sent out shortly.

I would like to thank the Attorney-General, the Honourable Daryl Williams AM QC MP, and the Minister for Justice and Customs, Senator the Honourable Christopher Ellison, for the support they have shown for the DPP over the past year. I know that both Ministers are committed to maintaining the DPP as an effective and independent prosecuting agency and I value their contribution to the performance of my role as Director.

I would also like to thank the members of the Senate Legal and Constitutional Legislation Committee for their work over the years, and particularly to thank Senators Cooney and McKiernan who both retired this year.

As in any year, there were matters involving individual staff members which impacted upon the Office as a whole. I will mention two.

The first was the untimely death of John Kingston, in November 2001, following major surgery. John, a lawyer and popular member of our Melbourne office, was highly respected and widely admired. John is survived by his wife Christina, who is also a lawyer in our Melbourne Office, and their young son Paddy. John's death is felt particularly by his Melbourne colleagues and he will be missed by all who knew him.

The second was the retirement of Peter Walshe in August 2002 after a long and distinguished career in the Australian Public Service. Peter worked for the DPP since 1985 and occupied the position of First Deputy Director for most of that time. He acted as Director on occasions when the position was vacant or the occupant was out of the country. Peter is a skilled lawyer and a very competent administrator. He always performed his work effectively and with a high level of personal integrity. He was respected throughout the law enforcement community. I wish him well in retirement.

As in previous years, I would like to end by thanking all employees of the DPP for their efforts over the past year. The Office has a skilled and dedicated workforce and I greatly appreciate the work they perform in my name.

Damian Bugg QC
Commonwealth Director of Public Prosecutions

CHAPTER 1

Office of the DPP

Establishment

The DPP was set up under the Director of Public Prosecutions Act 1983. That Act was part of a legislative package directed against the growing problem of organised crime in Australia, as disclosed by a series of Royal Commissions and inquiries in the 1970's and 1980's. In particular, Royal Commissioner Frank Costigan QC in his Fourth Interim Report on the activities of the Ship Painters and Dockers Union referred to a "lamentable history of non-prosecution" of organised crime.

The Office was established by section 5 of the DPP Act, under the control of the Director of Public Prosecutions, who is appointed for up to seven years. Unlike previous arrangements, under which Commonwealth prosecutions were conducted by officers under direct Ministerial control, the DPP has statutory independence and operates independently of the political process.

The Attorney-General has power under section 8 of the DPP Act to issue directions and guidelines to the DPP. However any guidelines must be issued in writing, they must be tabled in Parliament and there must be prior consultation between the Attorney-General and the Director. The power under section 8 is exercised infrequently. There were no directions or guidelines issued under section 8 in 2001-2002.

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

Role

The primary role of the DPP is to prosecute offences against Commonwealth law 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 DPPs.

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 investigating agency. It can only prosecute when there has been an investigation by the Australian Federal Police or another agency. However, the DPP regularly provides advice and other assistance during the investigating stage, particularly in large and complex matters.

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

Corporate plan

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.

The DPP took two steps in relation to prosecution policy during 2001-2002. The first was to invite all Australian DPPs to review their policies on the decision to prosecute, with a view to ensuring as much uniformity as possible on that issue. The second was to begin an internal review of the entire range of guidelines in the Prosecution Policy of the Commonwealth. The last such review was undertaken in 1992. It is likely that there have been changes since then in the law enforcement environment, and in community attitudes, which may be relevant to the way in which prosecution discretions should be exercised.

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 proceedings under Part XIV of the Customs Act 1901, which are called prosecutions but which are enforced by a civil process. The responsibility for prosecuting those, quasi-criminal, matters rests with the Australian Government Solicitor. However, the DPP does prosecute all true criminal matters arising under the Customs Act, including offences of importing and exporting narcotic goods and offences of importing and exporting “tier 1” and “tier 2” goods.

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 the prosecution of 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 2001-2002 appears at the end of this Chapter.

Best practice

The DPP has a rolling program to review 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 Head Office and the Sydney, Brisbane, Adelaide, Perth, and Melbourne offices.

The purpose of the reviews is to identify best practices within the DPP and allow all offices to benefit from experiences gained in other jurisdictions.

In the course of the year there was a best practice review of the DPP library service. A report is expected shortly.

In the coming year the DPP will conduct its second Client Survey. That project is designed to obtain feedback on performance from the courts, investigators and agencies the DPP deals with on a regular basis.

Senior Management Chart

(as @ 30 June 2002)

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

Outcome and output chart 2001-2002

DIRECTOR OF PUBLIC PROSECUTIONS Director: Damien Bugg QC

Total price of outputs	\$62 010 000
Departmental outcome appropriation	\$59 904 000

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	\$62 010 000
Departmental output appropriation	\$59 904 000

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	\$62 010 000
Appropriation	\$59 904 000

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, Tax 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 investigating agencies. In the past year, DPP lawyers attended over 400 liaison meetings with investigating 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 100 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 mainly 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 briefs local solicitors or police prosecutors to represent it on mentions and pleas of guilty in country areas.

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 mainland 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 2001-2002 was the prosecution of drug crime, money laundering and fraud. There was also continued work in relation to organised people smuggling and the evasion of excise on various products, particularly “chop-chop” tobacco.

The past year also saw the first conviction for fraud against the GST system. The case, *Dulhunty*, is summarised in Chapter 6. There was also an increasing number of GST related offences referred to the DPP, and it is likely that this trend will continue due to the increased number of ATO investigators in the GST area.

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 contain offence provisions and the range of the general prosecutions practice is as wide as the reach of Commonwealth law. Table 11 at the end of this chapter lists the agencies that referred the matters dealt with by the DPP in 2001-2002. It shows that the DPP dealt with matters referred by over 30 different agencies. Table 8 at the end of this chapter lists the legislation under which defendants were dealt with by the DPP in 2001-2002. It shows that the DPP dealt with matters under about 60 separate pieces of legislation.

The Criminal Code

The general principles of criminal responsibility in Chapter 2 of the Criminal Code were enacted in 1995. The general principles have now been applied to every offence against Commonwealth law. The past year saw a major harmonisation exercise by the Attorney-General's Department and other affected Departments and agencies with a view to ensuring that all Commonwealth offences that appear outside the Criminal Code were Code compliant by 15 December 2001. The DPP has provided extensive training to prosecutors and investigators in relation to the new provisions and will continue to do so.

Chop chop excise cases

The last Annual Report noted that all the indications are that the growing and distribution of backyard tobacco, known as "chop chop", is a burgeoning industry which promises greater profits than growing cannabis and is seen to involve less risk. The cases are of concern to the DPP primarily because of the evasion of excise by those involved in the industry. The cases that have been referred to the DPP regularly involve the evasion of more than a hundred thousand dollars worth of excise, and a few have involved more than a million dollars. Again Queensland and Victoria have received the bulk of cases but there have been an increasing number of excise frauds referred to the Sydney office.

E-crime

The last Annual Report discussed at some length the challenges faced in investigating and prosecuting crime arising out of electronic commerce, or as it is now being called, e-crime. The case of Collins, which is summarised in chapter 6, is a good example of an e-crime prosecution. We are seeing a growing number of 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 more businesses and government agencies provide services on-line.

In cases that involve e-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 can be a difficult task to prosecute e-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 regularly provides advice to Commonwealth agencies on e-crime and prosecution issues. The DPP is also a member of 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.

Forensic procedures

Part 1D of the Crimes Act sets up the procedures for a national DNA database system and provides for the carrying out of forensic procedures on suspects, offenders and volunteers. In certain situations an application can be made to a judge or magistrate for an order directing that a forensic procedure be carried out. The DPP has assisted the AFP to prepare draft documents for applications and orders under the legislation and, as the database system is implemented, expects to be involved in assisting the AFP when orders are sought from judges and magistrates. This is a new area of work for the DPP and is an important function given the significance of the new initiative and the potential value of the national database for law enforcement.

Commercial Prosecutions

Practice

The DPP Commercial Prosecutions Branches conduct prosecutions for offences arising under the Corporations Act 2001 and the Australian Securities and Investments Commission Act 2001. By force of transitional provisions contained in those Acts, offences committed against the Corporations Law and ASIC Laws of the States prior to 15 July 2001 are now offences against those Acts. The Branches 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 ASIC Act and the Corporations Act rests with the Australian Securities and Investments Commission. By arrangement with the DPP, ASIC conducts minor regulatory prosecutions. However, when an investigation discloses the commission of a serious criminal offence, ASIC refers the matter to the DPP for prosecution.

ASIC and DPP have settled guidelines for investigating and prosecuting corporate crime. The DPP provides early advice to 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 assist ASIC in identifying those areas that are most likely to result in a prosecution. There is regular liaison between 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 meets regularly with the ACCC to discuss specific case and general liaison issues.

Issues

- **Corporations Act**

The new Corporations Act 2001 came into operation on 15 July 2001. There are transitional provisions in the Act which translate offences against the old State Corporations Laws into offences against the new Act. The validity of these provisions has been challenged in a matter currently before the Queensland Court of Appeal. The Court has heard argument and the parties are waiting for a decision.

- **Challenges to DPP power**

There have also been a number of challenges to the DPP's power to prosecute offences against State law. It is sometimes necessary for the DPP to lay charges under the fraud or theft provisions in State law when a case that has been investigated by ASIC involves a fraud on a company, or a fraud by using a company structure. In some cases there are no appropriate charges available under Commonwealth law.

In the matter of Fukusato the Queensland Court of Appeal held that the DPP can prosecute State offences where it is also prosecuting Commonwealth offences. The matter of Dexter raises the issue of whether the DPP can prosecute a matter that involves only State offences if there has been an ASIC investigation. The Queensland Court of Appeal has heard argument on the issues and has reserved its judgment.

In the matter of Corbett there was a challenge to the validity of transitional provisions of the Corporations Act 2001 which create Commonwealth offences in respect of prior contraventions of the State Corporations Law and to Queensland legislation which is designed to validate action taken by Commonwealth officers that would otherwise be invalid on the basis set out in the High Court decision in Hughes. On 6 Sep 2002 the Queensland Court of Appeal dismissed the challenge to the indictments, finding that the legislation was valid (DPP v Corbett [2002] QCA 340).

- **Penalties under the Corporations Act**

The high number of recent corporate collapses, both in Australia and overseas, has led to some public debate about the level of penalties for offences against the Corporations Act. The DPP considers that it would be appropriate to review the current penalties for corporate wrongdoing. Many of the penalties have remained unchanged since the Companies Codes were introduced in 1981 and it is often the case that offences against State law carry a higher maximum penalty than the offences for similar conduct that are contained within the Corporations Act.

- **Section 184 of the Corporations Act**

Section 184 of the Corporations Act relates to conduct which involves a breach by a director or officer of a corporation of the duties they owe to that corporation. Section 184(1)(a) makes it an offence if a director is reckless and fails to exercise his or her powers in good faith in the best interests of the corporation or for a proper purpose.

The general principles of criminal responsibility in Chapter 2 of the Criminal Code now apply to offences against the Corporations Act, including offences against section 184. However, the effect of applying the general principles to section 184 is that there is now so much uncertainty about how the offences under that provision operate that it is unlikely that charges can be brought under it. The DPP has raised this issue with the Department of the Treasury with a view to resolving the difficulty.

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 29 no bill applications received from defendants or their representatives. Of these, eight were granted and 21 refused. A further 14 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 22.

Of the matters discontinued, the sufficiency of evidence was the main factor in 13 cases. Public interest was the main factor in three of the remaining cases.

Five no bills were granted in fraud cases, ten in drugs cases, and seven in other matters.

Indemnities

Section 9(6) of the DPP Act authorises 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 he or she 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 42 people in a total of 21 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.

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 or organisation and either carry it on or bring it to an end. This power was exercised once during 2001-2002.

Ex-officio indictments

The Director has power under section 6(2D) of the DPP Act to file an indictment against a person who has not been committed for trial. In 2001-2002 the Director exercised the power in relation to three defendants in one matter. In each case there was a contested committal but the magistrate declined to commit for legal or evidential reasons that the Director considered were wrong.

In a number of cases defendants stood trial on different charges from those on which they were committed or defendants were 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 2001-2002 the Director gave consent to the commencement of conspiracy proceedings against 24 defendants in relation to eight alleged conspiracies.

Performance indicators

The following table lists the DPP's performance indicators for the conduct of all prosecutions for 2001-2002 and compares them with the figures for the previous year.

Prosecution performance indicators for 2001-2002

Description	Target	Result	Details (by no. of defendants)
Prosecutions resulting in conviction	90%	98%	4 386 (out of 4 471)
Figures for 2000-01	90%	98%	4 756 (out of 4 865)
Defended summary hearings resulting in conviction	60%	70%	148 (out of 211)
Figures for 2000-01	60%	71%	169 (out of 239)
Defended committals resulting in committal order	80%	99%	327 (out of 330)
Figures for 2000-01	80%	95%	376 (out of 397)
Defended trials resulting in conviction	60%	77%	75 (out of 97)
Figures for 2000-01	60%	70%	93 (out of 132)
DPP sentence appeals upheld: summary cases	60%	78%	7 (out of 9)
Figures for 2000-01	60%	84%	16 (out of 19)
DPP sentence appeals upheld: cases on indictment	60%	80%	12 (out of 15)
Figures for 2000-01	60%	55%	12 (out of 22)

The indicators show that the DPP is well above target in all six areas.

Prosecution statistics

In the course of the year the DPP completed criminal proceedings against 4 471 people involving a total of 8 293 charges. The DPP received cases from more than 30 different agencies.

The tables which follow set out details of the prosecutions conducted in 2001-2002.

Table 1: Outcomes of successful prosecution action by DPP 2001-2002

No of defendants convicted of summary offences	3 900
No of defendants convicted of indictable offences	486
No of defendants committed for trial or sentence	533

Table 2: Summary prosecutions in 2001-2002

Defendants convicted after a plea of guilty	3 752
Defendants convicted after a plea of not guilty	148
Total defendants convicted	3 900
Defendants acquitted after a plea of not guilty	63
Total	3 963

Table 3: Committals in 2001-2002

Defendants committed after a plea of guilty	206
Defendants committed after a plea of not guilty	327
Total defendants committed	533
Defendants discharged after a plea of not guilty	3
Total	536

Table 4: Prosecutions on indictment in 2001-2002

Defendants convicted after a plea of guilty	411
Defendants convicted after a plea of not guilty	75
Total defendants convicted	486
Defendants acquitted after a plea of not guilty	22
Total	508

Table 5: Prosecutions on indictment – duration of trials in 2001-2002

1 – 5 days	27
6 – 10 days	28
11 – 15 days	16
16 – 20 days	10
21 – 25 days	6
26 – 30 days	26
Over 30 days	10
Total trials	99

Table 6: Prosecution appeals against sentence in 2001-2002

	Summary	Indictable
Number of appeals upheld	7	12
Number of appeals dismissed	2	3
Total number of appeals	9	15
% of appeals upheld	7.8%	80.0%

Table 7: Defence appeals in 2001-2002

	Summary	Indictable
Number of appeals against sentence upheld	70	21
Number of appeals against sentence dismissed	14	32
Number of appeals against conviction upheld	9	3
Number of appeals against conviction dismissed	3	13
Number of appeals against conviction & sentence upheld	10	15
Number of appeals against conviction & sentence dismissed	2	16
Total number of appeals	108	100

Table 8: Legislation: charges dealt with in 2001-2002

	Summary	Indictable
Agriculture & Veterinary Chemicals Act	4	
Air Navigation Act	2	
ANTS (Australian Business Number) Act	5	
ANTS (Family Assistance) (Administration) Act	6	
Antarctic Treaty (Environment Protection) Act	1	
Australian Citizenship Act	12	
Australian Federal Police Act	3	
Australian Securities and Investments Commission Act	2	
Bankruptcy Act	56	24
Census and Statistics Act	7	
Child Support (Registration and Collection) Act	4	
Civil Aviation Act and Regulations	83	
Commonwealth Electoral Act	4	
Companies Code	1	5
Complaints (AFP) Act	1	
Copyright Act	10	
Corporations Law	28	36
Crimes (Aviation) Act	17	
Crimes (Confiscation) Act	1	
Crimes (Currency) Act	40	12
Crimes Act	471	214
Criminal Code	69	5
Customs Act	103	207
Defence Act and Regulations	4	
Environment Protection & Biodiversity Conservation Act	3	1
Excise Act	27	24
Export Control Act and Orders	3	
Financial Management and Accountability Act	2	
Financial Transaction Reports Act	117	53
Fisheries Management Act	283	10
Fuel (Penalty and Surcharges) Administration Act	3	
Great Barrier Reef Marine Park Act and Regulations	62	

Health Insurance Act	25	2
Insurance (Agents and Brokers) Act	7	2
Marriage Act	3	
Migration Act	102	180
National Crime Authority Act	1	
National Health Act	13	1
Navigation Act	6	
Non-Commonwealth legislation: Drugs	34	44
Non-Commonwealth legislation: Other	134	64
Passports Act	34	7
Primary Industries Levy Collection	6	
Proceeds of Crime Act	3	7
Public Order (Protection of Persons and Property) Act	12	
Quarantine Act	5	4
Radiocommunications Act	10	
Referendum (Machinery Provisions) Act	2	
Social Security Act	5 218	
Statutory Declarations Act	10	
Student Assistance Act	59	
Sydney Airport Curfew Act	1	
Taxation legislation	202	
Therapeutic Goods Act	12	
Torres Strait Fisheries Act	10	
Trade Marks Act	14	
Trade Practices Act	4	
Veterans Entitlements Act	10	
Wildlife Protection (Regulation of Exports & Imports) Act	19	1
Total	7 390	903

Table 9: Crimes Act: charges dealt with in 2001-2002

	Summary	Indictable
Aiding and abetting (s.5)	2	
Accessory after the fact (s.6)	1	
Attempt to commit offence (s.7)	4	
Breach of recognisance (ss.20A, 20AC)	5	
Damage property (s.29)	13	
False pretences (s.29A)	11	
Imposition (s.29B)	93	31
Fraud (s.29D)	107	133
Seizing Commonwealth goods (s.30)	10	
Administration of justice (ss.32-50)	7	6
Child Sex Tourism (ss50AA – 50GA)		3
Forgery (ss.65-69)	34	8
Disclosure of information (s.70)	4	
Stealing or receiving (s.71)	31	8
Falsification of books (s.72)	19	3
Bribery (ss.73 & 73A)	1	1
Resisting public officers (s.76)	33	1
Computer offences (ss.76A - 76E)	19	
Espionage and official secrets (ss.77 - 85D)		5
Postal offences (ss.85E - 85ZA)	36	3
Telecommunications offences (ss.85ZB - 85ZKB)	33	1
Conspiracy (s.86)		6
Conspiracy to defraud (s86A)		5
Trespass on Commonwealth land (s.89)	8	
Total	471	214

Table 10: Commonwealth Criminal Code: charges dealt with in 2001-2002

	Summary	Indictable
Attempt to commit an offence (s.11.1)	2	
Theft (s.131.1)	4	
Obtaining property by deception (s.134.1)		1
Obtaining a financial advantage by deception (s.134.2)	10	3
General dishonesty (s.135.1)	6	
Obtaining financial advantage (s.135.2)	19	
False or misleading statement (s.136.1)	1	
False or misleading information (s.137.1)	1	
Using forged document (s.145.1)	2	1
Possession or make forgery devices (s.145.3)	1	
Falsification of documents (s.145.4)	1	
Causing harm to Commonwealth public official (s.147.1)	5	
Threatening to cause harm to C'wealth official (s.147.2)	2	
Obstruction of Commonwealth public officials (s.149.1)	6	
Theft of mail receptacles, articles or messages (s.471.1)	6	
Taking or concealing mail receptacles etc (s. 471.3)	2	
Damaging or destroying mail receptacles etc (s.471.6)	1	
Total	69	5

Table 11: Defendants dealt with in 2001-2002: referring agencies

	Summary	Indictable
Australian Bureau of Statistics	7	
Australian Communications Authority	3	
Australian Competition and Consumer Commission	4	
Australian Customs Service	37	14
Australian Electoral Commission	4	
Australian Federal Police	484	403
Australian Fisheries Management Authority	142	

Australian Postal Corporation	57	4
Australian Quarantine and Inspection Service	4	1
Australian Securities & Investments Commission	23	37
Australian Taxation Office	177	29
Centrelink	3 144	34
Civil Aviation Authority	29	
Comcare	2	
Dept of Agriculture Fisheries and Forestry	6	
Dept of Defence	5	1
Dept of Education Science and Training	2	
Dept of Employment Workplace Relations & Small Business	2	2
Dept of Environment	1	
Dept of Immigration Multicultural Affairs and Indigenous Affairs	40	4
Dept of Transport & Regional Services	1	
Dept of Veterans Affairs	18	1
Health Insurance Commission	33	4
Insolvency & Trustee Service Australia	15	3
National Crime Authority	4	32
National Registration Authority	1	
Non-Commonwealth agencies		
- State police	121	8
- Other	102	5
Therapeutic Goods Administration	2	
Total	4 470	582

CHAPTER 3

Criminal assets and international

Criminal assets

Overview

Recovering the proceeds of crime is an important part of the DPP's work. A significant proportion of the crimes that are committed against Commonwealth law are financially motivated and those who commit them are often able to build up substantial assets. It is important that people who derive a profit from crime are not left free to enjoy the benefits.

The DPP has been involved in recovering the proceeds of crime since the Office began operations in 1984. Initially the work was limited to taking action under the civil remedies function and under Division 3 of Part XIII of the Customs Act. The civil remedies function gives the DPP power to enforce existing civil remedies on behalf of Commonwealth agencies in cases where there is an actual or proposed prosecution. Division 3 of Part XIII of the Customs Act gives the Federal Court power to make a pecuniary penalty order where a person has derived a quantifiable profit from a "prescribed narcotic dealing".

In 1987 the DPP's armoury was extended when the Proceeds of Crime Act 1987 was enacted. That Act set up a scheme for the freezing and confiscation of criminal assets in cases where there is a criminal prosecution. If a person is convicted of an indictable offence against Commonwealth law, a court can make a forfeiture order in respect of tainted property or a pecuniary penalty order in respect of profits derived from the crime. The Act also introduced provision for automatic forfeiture in relation to some serious offences. If a person is convicted of one of those offences, and property has been frozen, there is, in effect, a rebuttable presumption that the property which is under restraint is the proceeds of crime. The defendant bears the onus of showing that the property was derived from a lawful source.

The DPP's armoury will be further extended if the Proceeds of Crime Bill 2002 is enacted. At the time of reporting that Bill is still before Parliament. If the Bill becomes law it will introduce a civil based confiscation regime into Commonwealth law. The courts will have power to make forfeiture orders and pecuniary penalty orders on a civil basis, independent of the prosecution process. The Bill will also retain the current conviction based provisions but will expand the range of offences to which automatic forfeiture can apply following

conviction. The DPP will be given the function of taking recovery action under both the conviction based regime and the civil based regime.

The proposed new legislation will significantly expand the range of options available to the DPP in cases where a person has derived benefits from committing offences against Commonwealth law. It will remain open to the DPP to pursue conviction based confiscation if criminal charges have been laid, but the DPP will also have power to take civil based action if charges have not been laid or if it is likely to be more effective to pursue civil based action in the circumstances of the particular case.

The Proceeds of Crime Bill also includes provisions which will allow the DPP to apply for a literary proceeds order against a person who has committed a crime against Commonwealth or foreign law and derived a financial benefit from selling their story. If a court makes a literary proceeds order, it will require the person to pay an amount equal to the benefit they derived from exploiting their notoriety. The provisions will give the courts power to ensure that a person cannot benefit from crime by selling their story.

If it is enacted, the new Bill will improve the effectiveness of the proceeds of crime legislation at Commonwealth level. It will also present a challenge to the DPP, to ensure that a proper balance is maintained between prosecuting serious crime and recovering the proceeds of crime. The new legislation will also impose additional resource demands on the DPP. If the DPP is to perform fully the functions given under the new Bill it will need additional staff and other resources.

Structure

The work in the criminal assets area is performed by Criminal Assets Branches in the regional offices. The larger branches include, or have access to, the services of in-house financial analysts. There is also a Criminal Assets Branch in DPP Head Office which coordinates the work on a national basis and conducts case work in the ACT.

The DPP works closely in this area with the Australian Federal Police, the National Crime Authority and the Commonwealth's other investigating agencies. The DPP relies on the investigating agencies to locate and collect the evidence and other material required to pursue the proceeds of crime. The DPP regularly provides advice and other support at the investigation stage. Indeed, in many criminal assets cases there is no clear break between the investigation stage and the recovery process. Cases often require ongoing support from the investigators to identify assets, and determine how they were acquired, up to and after final confiscation orders have been made.

The DPP also works closely with the Insolvency and Trustee Service Australia. ITSA is responsible for securing, managing and realising restrained property. ITSA exercises an independent function and operates separately from the DPP. However, that does not prevent the two agencies from coordinating their activities where possible.

Developments

The total amount recovered under the criminal assets initiative for 2001-2002 was just under \$6.9 million. Not all of this money related to orders made during the financial year. Some related to orders made in previous years. The amount recovered in 2000-2001 was approximately \$6.25 million. As at 30 June 2002, the total value of property that was subject to restraining orders or injunctions was approximately \$20.5 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.

The most significant development in the past year was undoubtedly the progress of the Proceeds of Crime Bill 2002 from an exposure draft to a settled Bill. The DPP, along with other affected agencies, was consulted during the drafting process. A lot of work has already been done to ensure that the provisions of the new legislation will be both effective and fair. A lot more work lies ahead to set up the systems that will be required to put the new legislation into operation if it is enacted.

The Proceeds of Crime Bill is a lengthy document. It will require a significant effort to train investigators and DPP officers on the requirements of the legislation. There is also likely to be litigation until the courts rule on how some of the newer provisions should operate.

Legislation: the current position

The DPP currently has three avenues open to pursue the proceeds of Commonwealth crime.

- **Proceeds of Crime Act 1987**

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.

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

There is also provision for automatic forfeiture in relation to some types of serious crime. 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.

- **Customs Act**

Division 3 of Part XIII of the Customs Act sets up a confiscation scheme that 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 is a pecuniary penalty order.

There is no provision for automatic forfeiture in the Customs Act provisions and that is a major limitation. In many Commonwealth drug cases the offenders are detected while the drugs are being imported and before the offenders have derived a benefit from the conduct which can be proven against them. There is no basis in such cases for the DPP to apply for a pecuniary penalty order under the Customs Act, because there is no benefit in respect of which a pecuniary penalty order can be made.

The DPP also conducts court proceedings under the Customs Act in cases where drug related property has been seized as forfeited property under the provisions of that 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 enable the DPP to enforce, or coordinate or supervise the enforcement of, existing civil remedies available to Commonwealth agencies 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 other matter or class of matter 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.

Legislation: the Proceeds of Crime Bill

If the Proceeds of Crime Bill 2002 is enacted, the DPP will be given significant additional powers of recovery. The Bill, as currently drafted, provides seven avenues for recovery action:

- a conviction based forfeiture order;
- a conviction based pecuniary penalty order;
- automatic forfeiture following conviction;
- a person directed civil based forfeiture order;
- an asset directed civil based forfeiture order;
- a civil based pecuniary penalty order; or
- a literary proceeds order.

A criminal conviction will be a precondition for recovery action under the first three options. However, the next four options will allow the proceeds of crime to be recovered on the basis of a civil action which can be run irrespective of whether or not there is a prosecution. The DPP will still have to prove that a person engaged in conduct which amounts to the commission of a criminal offence, but the DPP will only be required to prove a case to the civil standard, not to the criminal standard of proof beyond reasonable doubt.

Superannuation orders

The Criminal Assets Branches are responsible for the conduct of 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 lose the government funded component of their superannuation benefits if they are convicted of a corruption offence or found guilty of some types of disciplinary misconduct.

The mechanism involves the Attorney-General or the Minister for Justice and Customs signing 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 have been satisfied. 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 2001-2002 the DPP obtained seven superannuation orders under the CSB Act. For the fourth year running there were no orders under Part VA of the AFP Act. Details of the orders obtained under the CSB Act are set out below.

Superannuation orders 2001-2002

Name	State	Date
Aristobil-Adele	NSW	4 March 2002
Coxsedge	NSW	8 April 2002
Mafoe	NSW	4 March 2002
Marmont	NSW	6 May 2002
Melville	NSW	4 March 2002
Shannon	WA	17 July 2001
Wilson	NSW	6 May 2002

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 allow for greater inter-agency coordination. The agencies which participate are the DPP, the AFP, the NCA, ITSA and the Attorney-General's Department.

In 2001-2002 CALG met on three occasions. One of the meetings was in Adelaide, one in Canberra and one in Melbourne.

Performance indicators

The DPP's performance indicators for criminal assets cases are set out below.

Description	No.	%	Target
Applications for restraining order that succeeded	25	100%	90%
Figures for 2000 – 2001	21	100%	90%
Application for pecuniary penalty order that succeeded	8	100%	90%
Figures for 2000 – 2001	12	100%	90%

Applications for forfeiture order that succeeded	59	100%	90%
Figures for 2000 – 2001	94	99%	90%
Damages awarded against DPP under undertakings	Nil	--	--
Figures for 2000 – 2001	Nil	--	--
No of cases legal costs awarded against DPP (i)	1	--	--
Figures for 2000 – 2001	2	--	--
Amounts paid for costs awarded against DPP	Nil	--	--
Figures for 2000 – 2001	\$4 809	--	--

(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 2001-2002. The number of applications for forfeiture orders was down this year, but that reflects the fact that the number of orders sought in the previous year was unusually high.

International

Practice

The international work of the DPP falls into two categories: extradition and mutual assistance. Both involve cooperation with foreign governments and the agencies of those governments. Both also involve close cooperation with Australian agencies involved in the law enforcement process.

This is a growing area of work for the DPP. Crime is increasingly becoming a matter of global concern. Organised crime does not respect international boundaries and no country can look at crime in purely national terms.

The case work in this area is carried out in the DPP regional offices. The work is coordinated by the Criminal Assets and International Branch in Head Office. The Criminal Assets and International Branch liaises with the International Crime Branch of the Attorney-General's Department and with other agencies involved in this area. It also provides information and support to the DPP regional offices in what is a technical, and sometimes complex, area of the DPP's practice.

Extradition

The DPP has a role in relation to both incoming extradition requests received by Australia and outgoing extradition requests. In the case of incoming requests, the DPP appears in the court proceedings in Australia and in any appeals arising from those proceedings. The DPP appears for the foreign country in the proceedings, but acts on the basis of instructions provided by the Attorney-General's Department.

In the case of outgoing extradition requests, the DPP prepares the request for extradition in all cases where a person is wanted for prosecution for an offence against Commonwealth law. The DPP has no role in cases where a person is wanted for prosecution for an offence against State or Territory law.

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

In the past year the DPP opened files in relation to 14 new incoming extradition requests. Not all of those matters have yet resulted in court proceedings in Australia. In the same period, Australia made five requests for extradition in relation to prosecutions being conducted by the DPP. A breakdown of these numbers is given in the tables at the end of this section.

The DPP also provided assistance to the Attorney-General's Department in a number of other cases where a foreign country sought advice before making an extradition request. This is a highly technical area and it often takes considerable work to get the documents into a form that can be presented to an Australian magistrate.

The challenge in this area remains to find ways to speed up the extradition process in cases where a person contests extradition and fully exercises rights of appeal and review. If a person decides to challenge every step of the process, and has sufficient resources to do so, extradition proceedings can take five years or more to work through the courts. A delay of that kind can be detrimental to the criminal process. There have been cases where an extradition request has been withdrawn because the delay has been so long that criminal charges can no longer proceed.

This problem is not limited to Australia and Australia is not the only country looking for ways to streamline the extradition process. It is important to find a way for dealing with these cases that gives proper protection to the rights of the individual but still allows contested extraditions to be dealt with in a reasonable time frame.

Extradition requests involving the DPP: source country

Country	Incoming requests	Outgoing requests*
USA	4	1
Singapore	2	
Netherlands	2	1
United Kingdom	1	
Germany	1	
Poland	1	
South Korea	1	
Spain	1	
Finland	1	
Thailand		2
Philippines		1
Total requests	14	5

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

Extradition requests involving the DPP: type of matter

Type of matter	Incoming requests	Outgoing requests
Murder	4	
Fraud	4	2
Drugs	3	1
People smuggling		2
Other	3	

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. This formal process runs in parallel to a less formal system of international cooperation between investigating agencies.

As with extradition, the Attorney-General's Department is the Central Authority for mutual assistance for Australia. The Central Authority processes all incoming and outgoing mutual assistance requests. The DPP has a close working relationship with the International Crime Branch of the Attorney-General's Department and with the AFP and the other Australian agencies that work in this area.

In incoming matters, the DPP provides assistance when search warrants are applied for in Australia, conducts any court proceedings needed in Australia, and carries out any work required to restrain or recover the proceeds of crime. In the past year, the DPP was involved in 26 cases where incoming requests for assistance were processed under the Mutual Assistance in Criminal Matters Act 1987. There was also one case under the International War Crimes Tribunal Act 1995. There was a total of 14 cases in the previous year. Seventeen of the incoming requests involved applications for search warrants and ten involved proceedings to take evidence in Australia. There were no incoming requests in the past year which involved action to restrain or recover the proceeds of crime.

The 27 cases do not include matters where a request for assistance could be dealt with without exercising coercive powers in Australia. If a request does not require the exercise of coercive powers, it does not normally require work from the DPP. However, there are exceptions. One matter in the past year involved a request by a foreign country for the temporary release of a person who was facing prosecution in Australia so that the person could give evidence in criminal proceedings in the foreign country. It required considerable work on the part of the DPP before that could be arranged.

In outgoing cases, the DPP prepares the paperwork for mutual assistance requests in all Commonwealth matters where charges have been laid and in the bulk of Commonwealth matters which are still at the investigation stage but which may result in prosecution. The DPP does not have a role in relation to mutual assistance requests initiated by State and Territory agencies.

In the past year, Australia made 57 mutual assistance requests in matters involving the DPP. There were 27 such requests in the previous year. The 57 cases involved 24 different countries.

The figures show that there has been an effective doubling of casework in the past twelve months. This is an indication of the growing importance of mutual assistance in criminal matters. The figures also show that there were more than twice as many outgoing mutual assistance requests as incoming requests in the past year, even without counting requests initiated by State and Territory agencies. This is an indication of the extent to which major criminal investigations and prosecutions in Australia are coming to rely on evidence from overseas.

The number of incoming and outgoing mutual assistance requests is likely to continue to grow given the increased globalisation of crime and the widening recognition that there is a need to respond to major crime on an international basis. The DPP's experience has shown that there is a high level of goodwill and cooperation between the countries that participate in the mutual assistance

regime and the agencies that are involved in this work. However there are limitations in the process. The mutual assistance regime can take time to produce a result, there are restrictions on the type of assistance which some countries are able to provide, and there are some countries from which Australia cannot request assistance. In other words, there is still room for improvement in the mutual assistance regime.

Mutual Assistance Act: requests involving the DPP: source country

Country	Incoming requests	Outgoing requests*
Argentina		1
Belgium		3
Belize		1
Canada		2
Czech Republic	1	
Fiji	1	
France		1
Germany	1	4
Greece		1
Guernsey		1
Hong Kong SAR	1	11
Indonesia		1
Israel	1	1
Italy		3
Japan		4
Lebanon		2
Malaysia		2
New Zealand	5	6
Norway	1	1
Poland	1	1
Singapore		1
South Africa		1
Spain		1
The Netherlands	2	5
Turkey		2
Ukraine	1	
United Kingdom	2	

USA	8	
Vanuatu	1	1
Total requests	26	57

*This does not include mutual assistance requests initiated by State and Territory agencies

Mutual Assistance Act: requests involving the DPP: type of matter

Type of matter	Incoming requests	Outgoing requests
Drugs	5	25
Fraud	17	25
Proceeds of Crime		4
Other	4	3

Criminal assets recovery tables

Table 1: PoC Act: orders made and forfeitures secured in 2001-2002

No. of restraining orders obtained	25
Estimated net value of property restrained	\$9 729 214
No. of pecuniary penalty orders obtained	8
Value of pecuniary penalty orders	\$1 862 200
No. of section 19 forfeitures obtained	59
Estimated value of property forfeited under section 19	\$765 554
No. of section 30 forfeitures	13
Estimated value of property forfeited under section 30	\$1 820 078

Table 2: PoC Act: restraining orders in force as at 30 June 2002

No. of restraining orders in force	64
Estimated net value of property restrained	\$20 577 638

Table 3: PoC Act: money recovered in 2001-2002

No. of pecuniary penalty orders paid	12
Amounts paid under pecuniary penalty orders	\$814 618
No. of section 19 forfeitures realised	62
Amounts recovered from section 19 forfeitures	\$501 462

No. of section 30 forfeitures realised	10
Amounts recovered from section 30 forfeitures	\$4 393 633
No. of cases where amounts recovered from settlement etc.	1
Amounts recovered from settlements etc.	\$104 936
Total recovered	\$5 814 649

Table 4: Customs Act: orders, seizures and condemnations in 2001-2002

No. of restraining orders obtained	-
Estimated value of property restrained	-
No. of pecuniary penalty orders obtained	1
Value of pecuniary penalty orders	\$2 000
No. of cases where property seized *	-
Estimated value of seized property *	-
No. of condemnations *	1
Estimated value of condemned property *	\$40 000

* These figures only include cases where a person contests forfeiture and the proceedings are conducted by the DPP.

Table 5: Customs Act: restraining orders in force as at 30 June 2002

No. of restraining orders in force	-
Estimated net value of property restrained	-

Table 6: Customs Act: money recovered in 2001-2002

No. of pecuniary penalty orders paid	3
Amounts paid under pecuniary penalty orders	\$25 685
No. of cases where condemned property realised	1
Amounts recovered from realising condemned property	\$6 032
No. of cases where amounts recovered from settlement etc.	-
Amounts recovered from settlement etc.	-
Total recovered	\$31 717

Table 7: Civil remedies: orders obtained by DPP in 2001-2002

No. of cases where property secured by injunction or other	5
Estimated value of property secured by injunction or other	\$865 713
No. of judgments and reparation orders obtained	2
Amount of judgments and reparation orders	\$137 421

Table 8: Civil remedies: money recovered in 2001-2002

No. of judgments and reparation orders paid	-
Amounts paid under judgments and reparation orders	-
No. of cases where amounts recovered from settlement etc.	6
Amounts recovered from settlement etc.	\$1 042 045
Total recovered	\$1 042 045

Table 9: Criminal Assets: summary of recoveries for 2001-2002

Proceeds of Crime Act pecuniary penalty orders	\$814 618
Proceeds of Crime Act section 19 forfeitures	\$501 462
Proceeds of Crime Act section 30 forfeitures	\$4 393 633
Proceeds of Crime Act settlement and other payments	\$104 936
Proceeds of Crime Act total	\$5 814 649
Customs Act pecuniary penalty orders	\$25 685
Customs Act condemnation	\$6 032
Customs Act total	\$31 717
Civil remedies judgments and reparations	-
Civil remedies settlements and other payments	\$1 042 045
Civil remedies total	\$1 042 045
Grand total	\$6 888 411

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 Justice Division of the Attorney-General's Department and with other relevant areas of that Department.

This Chapter outlines some of the main issues considered in 2001-2002.

Application of Criminal Code to the Migration Act

The Migration Legislation Amendment (Application of Criminal Code) Act 2001 applied the general principles of criminal responsibility in Chapter 2 of the Criminal Code to offences under, amongst other things, the Migration Act 1958 as from 19 September 2001. The purpose of that Act was to make any necessary adjustments to offences flowing from the application of Chapter 2 but otherwise to preserve the status quo.

The application of Chapter 2 to the offences under the Migration Act created a number of problems which the DPP drew to the attention of the Department of Immigration and Multicultural Affairs in September 2001. Most of those problems have been addressed in the Migration Legislation Amendment Bill (No 1) 2002.

Sections 16G and 19AA of the Crimes Act

Under subsection 19AA(1) of the Crimes Act, where a law of a State or Territory provides for the remission or reduction of State or Territory sentences, that law will apply in the same way to the remission or reduction of a federal sentence served in a prison of that State or Territory. The provision reflects the long-standing policy that federal offenders serving terms of imprisonment in a State or Territory prison should be treated in the same way as their State or Territory counterparts.

Section 16G of the Crimes Act provides that if a term of imprisonment imposed for a federal offence is to be served in a State or Territory prison where State or Territory sentences are not subject to remissions or reductions, then a court sentencing the federal offender must take that fact into account in determining the length of the sentence and must adjust the sentence accordingly.

Section 16G was added to the Crimes Act in 1990 after NSW abolished the remission of sentences for State offenders. Section 16G was intended to ensure that the effective sentences imposed on federal offenders in NSW would not be longer than federal sentences imposed in other jurisdictions where federal sentences would continue to be reduced by remissions. However, within a relatively short period after section 16G had been added to the Crimes Act the remission of head sentences was abolished in most other Australian jurisdictions. In the two remaining jurisdictions, WA has passed legislation to abolish remissions (not yet commenced) and Tasmania has foreshadowed the introduction of similar legislation.

Instead of preventing federal offenders serving longer sentences, the section now results in federal offenders serving shorter sentences than their State or Territory counterparts. It has the practical effect of reducing the maximum penalty applicable in such cases by approximately one-third.

The unintended effect that the section now has is illustrated by the recent case of R v O'Connor [2002] NSW CCA 156 where the NSW Court of Criminal Appeal rejected an appeal instituted by the DPP against sentence because of the application of the section. The DPP has recommended to the Attorney-General's Department that section 16G be repealed.

Sections 135.2, 136.1 and 137.1 of the Criminal Code

The DPP has recommended to the Attorney-General's Department that sections 136.1 and 137.1 of the Criminal Code (making false or misleading statements in an application or including false or misleading information in an application) be amended to apply absolute liability to the matters in paragraphs 136.1(1)(d), 136.1(4)(d) and 137.1(1)(c). Those paragraphs confine the offences within constitutional limits (for example, a false or misleading statement has to be made to a "Commonwealth entity"). They are not otherwise elements of the conduct and absolute liability would appear to be appropriate. The DPP has also recommended that section 135.2 of the Code (obtaining financial advantage) be amended to apply absolute liability to the requirement that the financial advantage is obtained "from a Commonwealth entity".

Section 20AB of the Crimes Act

The DPP has recommended to the Attorney-General's Department that a home detention order provided in ACT legislation be prescribed for the purposes of section 20AB of the Crimes Act. That would enable Commonwealth offenders sentenced in the ACT to serve a sentence of imprisonment by way of home detention.

Part 1AB of the Crimes Act

Part 1AB of the Crimes Act deals with controlled operations. One of the deficiencies of the provisions as originally enacted was that they only provided protection for a person who was a law enforcement officer. If, for example, a drug courier was detected at the customs barrier and was prepared to cooperate with the AFP by participating in a controlled delivery of the drugs, Part 1AB would not provide any protection for the courier in respect of any offence that he or she might commit in the course of the controlled delivery. Those offences might include offences of possession or supply under State law.

This issue was addressed in the Measures to Combat Serious and Organised Crime Bill 2001 as that Bill was originally drafted. However, the relevant provisions were significantly amended before the Bill was enacted into legislation. The DPP has reservations about whether the resulting legislation can work in practice and has recommended to the Attorney-General's Department that the provisions be re-examined.

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:

- Cybercrime Bill 2001;
- Measures to Combat Serious and Organised Crime Bill 2001;
- Criminal Code Amendment (Anti-Hoax and Other Measures) Bill 2002;
- Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002;
- Security Legislation Amendment (Terrorism) Bill 2002;
- Suppression of the Financing of Terrorism Bill 2002;
- Criminal Code Amendment (Espionage and Related Offences) Bill 2002;
- Proceeds of Crime Bill 2002;
- Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002; and
- International Criminal Court Bill 2002.

CHAPTER 5

Resource management

Overview

Management

The DPP has a Corporate Management Branch in Head Office, which is responsible, on a national basis, for Financial and Human Resource Management, Library Services and Information Technology. This Branch is under the overall direction of the Deputy Director, Corporate Management, who also provides advice and guidance to the Resource Management Branches in each state.

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

The Head Office Branch includes a Human Resource Management Section 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**

On 20 August 2001 the Australian Industrial Relations Commission approved a variation to extend the DPP Certified Agreement until 30 June 2003. As part of the variation, all staff received a 6% salary increase from 20 August 2001 with a further 2% payable from 20 June 2002. Work has now commenced on developing the next Agreement. As at 30 June 2002, there were 424 non-SES staff covered by the Certified Agreement. The salary scales are included in Table 5 at the end of this chapter.

A feature of the current Agreement, and the agreements which preceded it, is the number of initiatives designed to assist people to balance work, family and caring responsibilities. These 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.

- **Australian Workplace Agreements**

The DPP is required to have an AWA in place for every substantive SES employee and all those who are acting in the SES for a period of more than six months where that results from a merit selection process. Under the current round of AWAs it was decided that SES vehicles would be phased out at the termination of each lease. SES employees will receive additional salary in lieu of a car.

- **Intranet and internet**

The DPP Intranet is used to provide an on-line information service to staff on resource management issues. The material available includes the Director's Personnel Instructions and explanatory notes, the Certified Agreement and policies and procedures including the Performance Management Scheme and the Workplace Diversity Plan.

The DPP has now set up an on-line recruitment site on the DPP's home page on the internet. Potential applicants now have electronic access to information relating to current vacancies and DPP policies and procedures.

- **Human resource policies**

During the year there were a number of new Personnel Instructions issued by the Director on conditions of service in the DPP. These Instructions provide a formal framework for determining policy and procedures to assist staff and management. There is also a series of explanatory notes which provide staff

with information about their obligations and entitlements in an easily readable format.

The new Instructions dealt with a range of topics including Fitness for Duty, Outside Employment and Conditions of Engagement. There were also significant changes to the Instruction dealing with Probation and an explanatory advice has been issued to explain the new procedures to staff.

The Instructions dealing with Probation and Conditions of Engagement reflect the need to draw a clear distinction between probation and other conditions of engagement prescribed by the Public Service Act, such as citizenship, academic qualifications, security and character clearances, and health clearances. The Instructions also aim to clarify the various conditions of engagement and set a reasonable timeframe for fulfilment of conditions.

In the course of the year the DPP Guidelines on Official Conduct were also revised. The changes that were made include:

- a number of sections have been combined, and other areas repositioned, to simplify the document and promote ease of reading;
- new information has been added on security checks and character checks, conditions of engagement and employee conduct; and
- the Guidelines have been cross-referenced to other documents to illustrate the connection between the Guidelines and the legislation under which the DPP operates.

Finally, a new security kit has been prepared for use on a national basis. The kit is designed to provide a clear and thorough assessment on whether a job applicant is a fit and proper person to be employed by the DPP.

- **Access to personnel records**

In the course of the year the DPP set up a system to allow employees to access their personnel records via a self service system (known as the Employee Self Service system or ESS for short). The first phase of ESS gives staff view only access to their personnel records. The next phase will allow staff members to manage and update their own records. Staff will be able to apply for leave online, update addresses and change or commence bank deductions. There will also be an online reporting function which will give managers access to a range of reports through ESS.

- **Performance management**

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 2002. 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 their work and the corporate goals of the DPP.

Human resources

Staffing

As at 30 June 2002 the total number of staff was 466 (415 at 30 June 2001). A breakdown of this figure appears in Tables 1 to 4 at the end of this chapter. The average staffing for the year was 441.15 (402.68 for 2000-2001).

Staff are employed under the Public Service Act 1999 or section 27 of the DPP Act.

Training and development

As part of the Performance Management Scheme, each non-SES employee is required to have a personal development plan, which is reviewed each year following a performance assessment. If a training need is identified by either the supervisor or the employee, the DPP will endeavour to ensure that relevant training is provided as part of the performance management cycle.

Every personal development plan is tailored to meet the needs of the individual employee to ensure that the employee has the skills required for their current position and also the skills required for career development. The personal development plans are also used to develop training programs and to ensure that every staff member receives a 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. As noted elsewhere in this Report, work has also begun on developing an advocacy training course for DPP lawyers.

Direct expenditure on external training for the year was \$156 038 (\$182 335 in 2000-2001). There was also considerable in-house and on the job training which is not costed.

Occupational health and safety

The DPP recognises the need 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. 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

It is a requirement of the Public Service Act that every Australian public service workplace be free from discrimination and recognise and use the diversity of the Australian community it serves. Section 18 of the Act provides that an agency head must establish a workplace diversity program. The DPP settled a Workplace Diversity Plan in February 1999.

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

The current Workplace Diversity Plan is being reviewed and a new plan will be in place by the end of 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. 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 245 to 291. A total of 21 staff have identified a disability (17 in 2000-2001) and 69 staff have identified themselves as having a non-English speaking background (67 in 2000-2001).

As at 30 June 2002, the office employed two Indigenous Legal Cadets in Brisbane.

Workplace participation

The DPP Certified Agreement includes provision for employees, and their representatives, to be involved in the development and implementation of major change. Consultation occurs mainly through the forum of all-staff meetings, which are now held on a regular basis in all DPP offices, or special purpose meetings called to discuss specific issues.

Commonwealth disability strategy

The DPP has reviewed its employment practices to ensure that they comply with the requirements of the Disability Discrimination Act 1992. The relevant 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 2 of the Financial Management and Accountability 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 2001-2002 was \$58.809 million, against net accrual revenue of \$62.010 million (in 2000-2001 net accrual expenditure was \$55.444 million and net accrual revenue was \$60.320 million).

Purchasing

An internal audit of purchasing was conducted during the year. It found that the DPP is complying with core purchasing policies and principles.

Consultancy services

The DPP engages consultants in areas where it does not have in-house expertise. The main areas where consultants were used in 2001-2002 related to the renting and fitting out of office space. As a general rule, all consultancies with a value over \$30 000 are publicly advertised. Consultancies with a value less than \$30 000 are either publicly advertised or sought by quotation.

Table 6 at the end of this chapter sets out details of consultancies for 2001-2002 which had a contract value greater than \$10 000. During 2001-2002 the DPP engaged 27 consultants in that category, at a total cost of \$497 634.

Accounts processing

During 2001-2002 there was an increase in the proportion of payments made by electronic funds transfer. The DPP is continually reviewing its accounts processing practices to identify potential areas for improved efficiency, especially for low value payments.

Asset management

The DPP leases all personal computers, servers, printers and notebooks. This has resulted in cost savings to the DPP and a reduction in the administrative work involved in acquiring and maintaining IT equipment.

Capital works management

The DPP had no major capital works projects that cost \$6 million or more in 2001-2002.

During 2001-2002 the DPP completed a fitout of the new Townsville office. Planning has commenced for refurbishments of the offices in Darwin, Hobart and Canberra, which should be completed in 2002-2003.

Agency evaluations

As noted elsewhere in this Report, the DPP has an ongoing program to review the operation of each office through the Best Practice Review Committee. In 2001-2002 the Committee completed a review of DPP Head Office.

In the course of the year there was also a best practice review of the DPP Libraries. A report is expected shortly.

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 2000 and Office 2000 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 a 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 2000 and Oracle on file servers.

DPP officers do not have desktop access to the Internet or to external Email systems. Access to the Internet and external E Mail is provided through stand alone computers.

In the course of the year the DPP upgraded its IT infrastructure to meet increased processing and data storage needs. The upgrade was completed in November 2001. As already noted, the DPP now leases all new IT assets rather than buying them.

The DPP has adapted a litigation support system known as LSS to be the standard support system for DPP litigation. The system was initially developed by the Australian Securities and Investments Commission. It was used on a regular basis during 2001-2002.

Libraries

The DPP has a library in each office. The librarians provide research, reference and information services to DPP officers and maintain an extensive legal collection of electronic and hard copy materials. Each library provides support to the office it is based in and also works as part of a 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 librarians use the DPP Intranet to provide access to legal information through legal resource pages, in-house databases and legal publishers' electronic services. Staff members also have desktop access to the library catalogue.

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. There are regular librarians' meetings which provide an opportunity for all librarians to participate in the development of library network policies and procedures.

As already noted, in the course of the year there was a best practice review of the DPP library service. A report is expected shortly.

Fraud control and internal audit

During 2001-2002 the DPP prepared an integrated risk management framework. The aim is to standardise all risk assessment methods and documentation. Using this framework, the DPP prepared a fraud risk assessment and a fraud control plan in accordance with the Australian Standard and the revised Commonwealth Fraud Control Guidelines.

In the course of the year, an audit was conducted into all administrative processes in all offices. The processes were found to be accurate and complete.

There were no cases of internal fraud reported during the year and there were no relevant disciplinary proceedings under the Public Service Act.

External scrutiny

The DPP was not referred to in any report by the Auditor-General in 2001-2002 except the report on financial statements.

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) 6206 5606 during office hours. The DPP will provide

accurate information on any matter that is on the public record but will not disclose information on cases that are yet to come before the courts.

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

The DPP did not undertake any advertising campaigns or market research in 2001-2002.

During 2001-2002 The DPP spent \$63 745 on advertising vacant positions and public tenders.

Ecologically sustainable development and environmental performance

The DPP endeavours to use energy saving methods in its operations and to make the best use of resources. The DPP uses technology to minimise energy use, including automatic switch-off devices on electrical equipment. All computer equipment used by the DPP is Energy Star enabled. Waste paper is recycled and preference is given to environmentally sound products when purchasing office supplies. There is a current project being undertaken to install a lighting control system in Head Office which, among other things, will reduce electricity consumption.

The DPP has developed a comprehensive intranet site which includes research material, manuals, procedures, directions and other Corporate information which used to be distributed in paper form. As already noted, the DPP is also in the process of implementing an Employee Self Service scheme for access to personnel records. That should further reduce the demand for paper.

Business regulation

The DPP has no role in business regulation other than to prosecute criminal offences in appropriate cases. The DPP's activities in Commercial Prosecutions are reported earlier in this Report.

Status of women

Equal Employment Opportunity is an important issue for the DPP. The responsibility for ensuring that proper attention is paid to the status of members of disadvantaged groups rests with the Director and the Deputy Directors as part of the normal management of the Office.

As at 30 June 2002, 62% of all DPP employees were women, and 54% of the lawyers were women. About 32% of SES positions are currently filled by women and three of the eight main DPP offices are headed by women.

On a larger scale, the DPP also 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.

Public comment

Any person is free to write to the DPP, at 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 2002

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	6	6	1	5			33
PLO	6	19	18	11	6	5	2	2	69
SLO	2	23	21	9	5	4	1	1	66
LO 2	3	13	8	5	1	8	2	2	42
LO 1		4		5	4	1	1		15
Exec 2	8	2	3	1	1				15
Exec 1	5	4	3	1	1	1			15
APS 6	4	4	2	3		2		1	16
APS 5	5	1	7	3	1				17
APS 4	7	21	11	13	3	6	1	2	64
APS 3	1	18	16	13	10	10	3	2	73
APS 2	1	13	11						25
APS 1		1	1				1		3
Cadet				2					2
Articled clerk			2						2
Totals	53	134	110	73	33	42	11	10	466

Legend:

SES	Senior Executive Service
PLO	Principal Legal Officer
SLO	Senior Legal Officer
LO	Legal Officer
Exec	Executive Officer
APS	Australian Public Service Officer
Cadet	Indigenous Australian Cadet – Legal

Table 1(b): Staffing summary 2001-2002

Statutory Office Holders	1
Total staff employed under the PS Act	436
Total staff employed under the DPP Act	29
Total	466

The total number of non-ongoing employees included in this table is 47

Table 2: Staff as at 30 June 2002 by gender and category

Category	Full Time		Part Time	
	Male	Female	Male	Female
Director	1			
Senior Executives -				
Band 3	2			
Band 2	5	1		
Band 1	21	9		3
Legal Officers	78	94		20
Executive Officers	17	11		2
APS 1 – 6	49	126	1	22
Indigenous Cadets	1	1		
Article Clerks		2		
Total:	174	244	1	47

Table 3: Staff usage by Office

Office	Actual Average Staffing 2001-2002	Office	Actual Average Staffing 2001-2002
ACT	49.84	SA	29.34
NSW	130.81	WA	38.59
VIC	105.8	TAS	10.36
QLD	67.16	NT	9.25
Total:			441.15

Table 4: EEO Profile as at 30 June 2002

Classification	Male	Female	ATSI	PWD	First language English plus another	First language other than English
Director	1					
SES Band 3	2					
SES Band 2	5	1				1
SES Band 1	21	12		1	1	2
Legal Officers	78	114	1	5	17	7
Executive Officers	17	13			2	3
APS Employees	50	148	1	15	19	15
Indigenous Cadets	1	1	2		1	1
Article Clerks		2				
Total 466	175	291	4	21	40	29

Table 5: Salary Scales applying in the DPP from 1 July 2001 to 30 June 2002

Classification	20 August 2001	20 June 2002
SES Band 3	\$137 802 - \$148 771	\$161 978 - \$173 166
SES Band 2	\$106 452 - \$124 069	\$130 001 - \$147 970
SES Band 1	\$94 930 - \$101 516	\$118 249 - \$124 966
Principal Legal Officer	\$83 311 - \$86 920	\$84 977 - \$88 658
Executive Level 2	\$72 338 - \$84 754	\$73 785 - \$86 449
Senior Legal Officer	\$62 718 - \$76 314	\$63 972 - \$77 840
Executive Level 1	\$62 718 - \$67 726	\$63 972 - \$69 081
Legal Officer 2	\$45 595 - \$54 675	\$46 507 - \$55 769
APS 6	\$48 923 - \$56 200	\$49 901 - \$57 324
APS 5	\$45 298 - \$48 033	\$46 204 - \$48 994
Legal Officer 1	\$37 545 - \$44 096	\$38 296 - \$44 978
APS 4	\$40 613 - \$44 096	\$41 425 - \$44 978
APS 3	\$36 439 - \$39 328	\$37 168 - \$40 115
APS 2	\$32 872 - \$35 477	\$33 529 - \$36 187
APS 1	\$28 269 - \$31 242	\$28 834 - \$31 867

Table 6: Consultancies for 2001-2002 (value over \$10 000)

Consultant	Purpose	Cost	Reason used
Head Office			
Intersect Alliance	Develop IT Security Plan	\$40 168	Special expertise not available in office
Walter and Turnbull	Conduct fraud risk assessment and prepare Fraud Control Plan	\$11 088	Special expertise not available in office
Blake Dawson Waldron	Advice on commercial property lease	\$10 670	Special expertise not available in office
Hassell Pty Ltd	Architectural services for office refurbishment	\$30 750	Special expertise not available in office
D Rudd and Partners	Mechanical services engineering works for office refurbishment	\$10 010	Special expertise not available in office
Bassett Consulting	Conduct air conditioning audit	\$13 310	Special expertise not available in office
Sydney			
LPC Australia	Lease negotiations	\$194 000	Special expertise not available in office
Townsville			
Hassell Pty Ltd*	Architectural services for office fitout	\$34 408	Special expertise not available in office
Melbourne			
Urbis	Independent property advice	\$26 098	Special expertise not available in office
Darwin			
Hassell Pty Ltd *	Architectural services for office refurbishment	\$38 225	Special expertise not available in office
Hobart			
Philip Lighton Architects *	Architectural services for office refurbishment	\$16 491	Special expertise not available in office

Consultancies marked * were not publicly advertised.

Table 7: Resources for outcome

	Budget for 2001-2002 (1)	Actual 2001-2002	Budget 2002-2003
Administered appropriations	-	-	-
Total administered expenses	\$1 087 000	\$15 872 370	\$14 668 000
Price of departmental appropriations Output 1.1	\$60 004 000	\$59 904 000	\$61 652 000
Total revenue from government appropriations	\$60 004 000	\$59 904 000	\$61 652 000
Contributing to price of departmental outputs	\$60 004 000	\$59 904 000	\$61 652 000
Revenue from other sources Output 1.1	\$2 145 000	\$2 106 201	\$2 380 000
Total revenue from other sources	\$2 145 000	\$2 106 201	\$2 380 000
Total Price of departmental outputs	\$62 149 000	\$62 010 201	\$64 032 000
Total estimated resourcing for outcome 1	\$62 149 000	\$62 010 201	\$64 032 000

(1) The figures are as per the original budget for the year.

Table 8: Average staffing level

	2001-2002	2002-2003 (estimate)
Average staffing level (number)	441	450

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.

Performance Indicator	Performance for 2001-2002	Goals for 2002-2003	Actions for 2002-2003
1. Employment policies, procedures and practices comply with the requirements of the Disability Discrimination Act.	<p>The DPP has a number of employment policies which meet the requirements of the Disability Discrimination Act.</p> <p>The Workplace Diversity program (WDP) operated effectively during the year.</p> <p>Emergency evacuation procedures were tested to ensure compliance.</p>	<p>Ongoing assessment to ensure that employment policies are relevant for all employees of the DPP.</p> <p>Planning and implementation of a Disability Plan for the DPP.</p> <p>Ensure that DPP WDP addresses the needs of employees with disabilities.</p>	<p>Completion of DPP Disability Plan.</p> <p>New WDP to be completed by December 2003.</p>
2. Recruitment information for potential job applicants is available in accessible formats on request.	<p>All information available via fax, electronic e-mail and mail.</p> <p>E-mail requests answered within 48 hours.</p> <p>Phone requests dispatched within 48 hours of request.</p> <p>DPP website designed to provide recruitment information.</p>	<p>100% of potential applicants' requests processed via desired medium within 48 hours of receipt.</p> <p>Extensions of closing periods granted consistent with any delays in providing information.</p>	<p>Ongoing update of DPP Website to provide all recruitment action online.</p>
3. Agency recruitment officers and managers apply the principle of reasonable adjustment.	<p>No specific action taken. 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.</p>	<p>All staff aware of reasonable adjustment principle by the end of 2002.</p>	<p>New DPP WDP to specifically incorporate the principle of reasonable adjustment.</p> <p>DPP selection guidelines revised to include reasonable adjustment requirements by the end of 2002.</p>

Table 9: Continued

Performance Indicator	Performance for 2001-2002	Goals for 2002-2003	Actions for 2002-2003
4. Review of actions / complaints mechanisms, including access to external mechanisms, to address issues and concerns by staff.	<p>DPP has a well established process for review of actions and complaints. This includes access to external mechanisms, an Employees Assistance Program and the Merit Protection Commissioner.</p> <p>No actions or complaints involved disability issues during 2001-2002.</p> <p>Review of actions mechanism forms part of the DPP Certified Agreement</p>	All employees continue to be provided with access to Employees Assistance Program and review of actions / complaints mechanisms.	<p>Information on Employee Assistance Program services reviewed and updated as appropriate.</p> <p>Review of actions mechanisms will form part of any new DPP Certified Agreement</p>

CHAPTER 6

Significant cases

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

General prosecutions

Chen

In this matter the defendant used the sales tax accreditation numbers of genuine retailers to evade sales tax on more than \$4.7 million of computers that he purchased from three computer wholesalers. Chen used false names and false name bank accounts to hide the fact that he had purchased the computers. He also dealt in cash, regularly depositing amounts between \$50 000 and \$150 000 in cash at his local branch. Chen evaded more than \$1 million in sales tax that should have been paid on the computers.

When he was interviewed Chen admitted purchasing computers from one wholesaler but denied purchasing computers from the other two. He claimed that he committed the offences he was prepared to admit to because he acted under duress from a person to whom he owed \$100 000 for gambling debts. However, the evidence showed that the fraud continued for nine months after the person in question left Australia.

Chen was charged with seven counts of defrauding the Commonwealth under section 29D of the Crimes Act, three counts of opening a bank account in a false name under section 24(1) of the Financial Transaction Reports Act, and three counts of operating a bank account in a false name under section 24(2) of the Financial Transaction Reports Act. He was convicted on all counts and sentenced to an effective term of five years imprisonment with a minimum term of 15 months. The sentence continues the trend in Queensland for sentencing courts to treat tax offences similarly to welfare offences.

The court also made a pecuniary penalty order against Chen under the Proceeds of Crime Act in the sum of \$1 051 490. No property could be found in Chen's name or in any of the false names he was known to use. However some real estate and cars were found that were registered in the names of other people but which appeared to be under Chen's effective control. On 23 October 2001 the District Court made a declaration under section 28(3) of the Proceeds of Crime Act that two cars and two units were under Chen's effective control and were

available to satisfy the pecuniary penalty order. The Insolvency Trustee Service of Australia sold the property and \$209 276 was applied to the pecuniary penalty order.

Cinci

This case involved the taking of evidence in Brisbane by video link for use in criminal proceedings in Scotland. The case broke ground because the evidence was taken in the presence of the judge and jury in Scotland. This is the first time the provisions of the Mutual Assistance in Criminal Matters Act have been used to achieve that result. It is also the first time a criminal court in the United Kingdom has used a video link to take live evidence from a foreign country.

The case in Scotland involved the prosecution of an alleged rapist. One of the witnesses had moved to Australia by the time the case came on for trial. The Scottish authorities made a mutual assistance request to have the witness give evidence in Australia. The Scottish authorities asked for the witness to give evidence by video link live to the Scottish court.

It was not possible for Australia to comply precisely with the Scottish request. There is no provision in Australian law under which a witness can be summonsed to give evidence before a foreign court. However, under section 13 of the Mutual Assistance in Criminal Matters Act, a witness can be summonsed to give evidence before a magistrate in Australia and questions can be put to the witness from the foreign country by video link.

Normally the evidence taken by the magistrate is transmitted to the foreign country to be tendered before the court in that country. However, nothing in section 13 of the Mutual Assistance in Criminal Matters Act limits the range of people who can be present in the foreign country when questions are put by video link. In particular nothing prevents the trial judge and jury from being present in the foreign country while the evidence is taken.

In the present matter, arrangements were made for the witness to give evidence before a magistrate in Australia and for prosecution and defence lawyers in Scotland to put questions by video link. The Australian magistrate agreed to allow the Scottish trial judge and jury to be present at the Scottish end, as observers, while the evidence was taken.

The arrangement enabled the jury to observe the witness while he gave evidence. The Australian magistrate, and officers of the Brisbane Magistrates Court, sat outside normal hours so that the evidence could be taken at a time which was reasonable for the jury in Scotland. The evidence was taken without difficulty and was admitted at the trial in Scotland.

Collins

This was the first Medifraud case in Queensland where a large fraud was committed by the use of electronically submitted claims. The total amount defrauded was over \$924 000.

Collins was the director of Complete Care Centres Pty Ltd, which traded as the Oakwood Medical Centre in Brisbane. He was the owner of the practice and employed locum doctors to work at the medical centre. In a 17 month period Collins submitted 1 282 false claims to the Health Insurance Commission claiming benefits for about 25 000 medical consultations or procedures that did not occur. He used the names and provider numbers of 13 of the medical centre's locum doctors to make the claims and used a computer scanner to create images of the doctors' signatures which he then applied to the claim forms which he submitted electronically. Collins also falsely applied the signatures to documents that he submitted to the Health Insurance Commission to ensure that Medicare rebates were paid into accounts that he controlled.

Collins pleaded guilty to 13 counts of defrauding the Commonwealth under section 29D of the Crimes Act. He was sentenced to nine years imprisonment with a non-parole period of three years. He was also sentenced to terms of imprisonment on unrelated charges brought by the Queensland DPP. Criminal assets action is still on foot in respect of property acquired at the time of the nursing home fraud but which is registered in the names of third parties.

Dulhunty

This was the first prosecution for a large scale fraud against the GST system. Dulhunty used the Tax File Numbers of legitimate taxpayers to obtain Australian Business Numbers in fictitious business names. He then registered those businesses for the purpose of the GST. In due course Dulhunty lodged Business Activity Statements on behalf of the businesses in which he claimed refunds which were not due. He arranged for the refunds to be electronically paid into bank accounts that he had set up in false names and he withdrew funds from the accounts using automatic teller machines. He gave addresses for the businesses that were scattered throughout the ACT and NSW.

This was an organised fraud deliberately set up to avoid leaving any paper records that led to Dulhunty. Dulhunty obtained over \$500 000 by means of the fraud. He claimed a further \$100 000 but that money was withheld by the ATO when the fraud came to light. There was evidence to suggest that Dulhunty planned to register more fictitious business names and claim refunds in their name.

The fraud first came to light in October 2000 when an ATO officer made inquiries in relation to some unclaimed mail that had been returned to the ATO. The enquiries revealed that two people who were by registered by the ATO as being partners in a particular business had no involvement with the business or the address associated with it. Further inquiries disclosed that the business was fictitious. A cross checking of bank account details, post office box addresses and similar information identified another five fictitious businesses. At that stage it was not clear who was responsible for the frauds.

The Australian Federal Police commenced a surveillance operation. In March 2001 they observed Dulhunty, sometimes in disguise, attend a number of Post Offices and collect letters that the ATO had sent to the fictitious businesses. They also saw him withdraw money from a number of automatic teller machines in NSW and the ACT. In April 2001, Dulhunty commenced another trip to collect documents and withdraw money. On 3 April 2001 he was stopped on the Monaro Highway in NSW. The AFP found of range of material that connected him with the fictitious businesses.

Dulhunty pleaded guilty to charges of defrauding the Commonwealth under section 29D of the Crimes Act. On 18 June 2002 he was sentenced to three years imprisonment with a non-parole period of 22 months. The money he improperly obtained was recovered following action under the Proceeds of Crime Act.

Institoris

The defendant in this matter was the principal participant in two counterfeiting schemes. The first involved making and selling counterfeit \$100 notes. The second involved making and selling counterfeit \$50 notes. The same computer was used both times. However the enterprises occurred 18 months apart and involved different accomplices. The defendant was sentenced on 12 charges that covered both enterprises. However, the sentences were ordered to be served concurrently with the result being that the effective sentence was the same as it would have been if there had been only one scheme. The effective sentence was six years imprisonment with a non-parole period of four years and six months. The DPP appealed against the sentence.

The NSW Court of Criminal Appeal upheld the appeal, by majority, finding that the use of concurrent sentences did not reflect the total criminality of the offences. The Court noted that the sentencing judge imposed a longer sentence for the second enterprise than the first, and that may have been designed to ensure that the total effective sentence would encompass both sets of offences. However, the Court found that, even on that basis, the effective sentence was too low.

The defendant had few mitigating factors. He had a long criminal history and his guilty plea was made in the context of a strong prosecution case. He suffered from an illness, but that would not make imprisonment more onerous than it would otherwise be. The Court imposed penalties which were partly consecutive, resulting in an effective sentence of nine years with a non-parole period of five years and five months.

Koznarova

The defendant in this case checked in at Sydney Airport for a flight to Vienna in March 1992. Her hand luggage caught the attention of a security officer and was searched. The officer found a number of cardboard cylinders with holes punched in them. The cylinders contained a total of 95 reptiles including a variety of geckos, some snakes and a nobbi dragon. Koznarova was carrying a piece of paper with the name “Trade sro Reptex” written on it. That was a company dealing with reptiles in the Czech Republic.

The defendant was charged with attempting to export 95 native Australian reptiles contrary to section 303DD of the Environment Protection and Biodiversity Conservation Act. She pleaded guilty and was fined \$5 000. The sentencing judge found that she was acting as a courier with some knowledge of the enterprise and that she expected some reward for her efforts. He also noted that none of the reptiles were endangered or protected. The judge declined to impose a custodial sentence, even though the maximum penalty for the offences is ten years imprisonment. The reptiles were forfeited to the Commonwealth.

Lauda Air

This case involved an offence against section 7(2) of the Sydney Airport Curfew Act. It was only the second prosecution that has been brought under that Act. It was alleged that, in June 2000, Lauda Air knowingly allowed an aircraft to take-off from Sydney Airport during a curfew period. On 20 June 2002 Lauda Air was convicted of the offence and fined \$10,000.

The curfew period at Sydney Airport starts at 11.00 pm and ends at 6.00 am on the following day. Lauda Air sought a dispensation from the curfew to allow an aircraft to leave after 11.00 pm on the basis that the flight had been delayed to fix a faulty generator in the aircraft. Dispensation was refused on the grounds that the reason given by Lauda Air did not meet the grounds for dispensation specified in the relevant guidelines.

At 11.00 pm air traffic control officers advised Lauda Air that the curfew was in operation and that penalties could apply if the plane departed. The pilot advised the Sydney Air Traffic Control Tower that he would like to take off and that Lauda Air would pay any fine that may be imposed. At approximately 11.03 pm

the Lauda pilot requested taxi clearance, which was granted. The flight was cleared for take off at approximately 11.29 pm.

Loe

This case is an example of the sentences that tended to be imposed for people smuggling offences prior to the introduction of mandatory sentencing in the Border Protection (Validation and Enforcement Powers) Act in 2001. Section 233C of the Migration Act now provides a mandatory sentence of five years with a three year non-parole period for a first offender, rising to eight years imprisonment with a five year non-parole period for a repeat offender. The mandatory penalties apply if a person is convicted of an offence against section 232A or 233A of the Migration Act, unless the person was under 18 when the offence was committed.

Loe committed people smuggling offences on three separate occasions. In August 1999 the NT Supreme Court imposed a good behaviour bond for bringing six non-citizens to Ashmore Reef in July 1999. Loe returned to Australia in March 2000 as the captain of a vessel that brought 19 Afghani passengers to Ashmore Reef. Loe abandoned the passengers and crew in the night and avoided capture by catching a passing fishing boat back to Indonesia.

Loe returned to Australia for the third time in May 2000, again as the captain of a vessel that brought non-citizens to Ashmore Reef. This time there were 65 passengers. Whilst Loe was in custody for that matter, his crew from the voyage of March 2000 identified him to authorities.

Loe was convicted of two offences against section 232A of the Migration Act. He was sentenced to six years imprisonment with a non-parole period of three years. The DPP appealed against the sentence on the basis that it was manifestly inadequate. The NT Court of Criminal Appeal dismissed the appeal. The Court found that, while the sentences were at the lower end of the scale, they were within the range of a proper sentencing discretion.

Operation Linnet

This case involved an AFP operation which resulted in the largest seizure of heroin in Australia to date. A total of 18 defendants were arrested and charged with offences under the Customs Act. Ten of the defendants were convicted and eight were acquitted. At the time of reporting six of the convicted defendants have been sentenced and the remaining four are awaiting sentence.

The case began on 14 October 1998 when a speedboat landed 339 kilograms of heroin at Grants Beach near Port Macquarie NSW. The heroin was in the form of 1 132 blocks of compressed white powder and had a street value of \$620 million. It was brought to Australia on a vessel called the MV Uniana, a former

fishing trawler that had been specially modified to set it up as a smuggling vessel. The boat had a special chamber which could be flooded with sea water if the vessel was searched. The speedboat that was used to land the heroin was housed in a specially adapted cradle and there was a derrick that had been installed solely for the purpose of lifting and launching the speedboat. The Uniana travelled to Australia from Hong Kong via Singapore, collecting the heroin in international waters off the Thai/Burma border.

The crew of the speedboat was arrested by officers of the AFP. The Uniana was boarded at sea by Customs officers, with support from an Australian warship, HMAS Bendigo. All those on board the Uniana were arrested and charged. All defendants were charged under section 233B(1)(d) of the Customs Act with being knowingly concerned in the importation of a commercial quantity of heroin.

The speedboat driver, Chan, pleaded guilty and gave evidence for the prosecution. He was sentenced to 13 years imprisonment with a non-parole period of ten years after receiving a 50% discount for his guilty plea and cooperation.

The other five defendants who have been sentenced are Mandagi, Chen, Lau, Siregar and Ismunanar. Mandagi was captain of the Uniana, Chen and Lau were organisers of the importation, Siregar was chief engineer of the Uniana, and Ismunanar was chief officer of the Uniana. All five pleaded not guilty but were convicted after trial. All appealed against conviction but the appeals were dismissed. All five were initially sentenced to life imprisonment. The sentence imposed on Mandagi was reduced on appeal to 27 years with a non-parole period of 19 years. The appeals against sentence by Chen and Lau were dismissed. Appeals against sentence by Siregar and Ismunanar have still to be dealt with.

Operation Tubu

This case involved a scheme to avoid the payment of income tax by workers in the building industry in NSW. The workers who participated in the scheme avoided paying tax on approximately \$35 million of income.

Under the taxation system as it applied at the relevant time (the Prescribed Payments System) a company which employed workers in the building industry was supposed to withhold at least 20% of the payments made to its workers and send the money to the ATO. If a worker did not have a Tax File Number the employer was supposed to withhold 48.5%. The scheme set up by the defendants involved the use of companies which supposedly hired people to work in the building industry. Under the scheme, building companies paid wages to the hiring companies rather than directly to the workers, and they did

not withhold any money before doing so. The defendants gave documents to the building companies which, on their face, entitled the building companies to pay 100 cents in the dollar to the hiring companies.

The obligation to withhold money, and pay it to the ATO, supposedly passed to the hiring companies. In fact, the hiring companies did not withhold any payments and sent nothing to the ATO. The defendants kept a commission, of between 7% and 12%, and passed the rest of the money directly to the workers. The hiring companies allowed the workers to use false names and kept no records in relation to them.

The defendants advertised that they were able to provide what they described as a cheque cashing service. It was also known as the “bodgie”, “craic” or “karaoke”. The defendants received cheques from the building companies and, after deducting a commission, paid cash to the workers. When the ATO investigated the matter it found that the hiring companies had no assets and no records which could be used to identify the workers. By that stage \$35 million had been passed through the scheme. The majority of the workers who participated in the scheme were Irish nationals working in Australia.

The five defendants were charged with defrauding the Commonwealth under section 29D of the Crimes Act. One of the defendants was also charged with structuring offences under section 31(1) of the Financial Transaction Reports Act. Four of the defendants have been convicted. Patrick O’Connor was sentenced to three years imprisonment with a non-parole period of 18 months, James Curtin was sentenced to three years and four months imprisonment with a non-parole period of two years and three months, William O’Driscoll was sentenced to imprisonment for seven and a half years with a non-parole period of five years, and John Morris was sentenced to 18 months periodic detention. The trial of the fifth defendant has not been completed.

South Tomi and Lena

The South Tomi and the Lena are two foreign fishing boats that were detected fishing unlawfully in the Australian fishing zone around Heard and McDonald Islands. The waters around Heard and McDonald Islands are rich in Patagonian toothfish. They are also 4 000 kilometres from Australia, which makes it difficult to control unlawful fishing.

The Patagonian toothfish is a valuable resource which retails for about \$18 per kilogram in processed form. However, the fishery is fragile and cannot support unlimited fishing. There is a strict management plan administered by the Australian Fisheries Management Authority. Only two trawlers are licensed to fish in the zone and they can only do so on conditions which limit the catch and which prohibit longline fishing, which presents a danger to albatross and other

sea birds. Logline fishing using lines which are up to 20 kilometres long and can carry 15 000 hooks. When fish are caught they float on the surface, where they attract sea birds. The licensed boats can only trawl for fish and they must have two government appointed observers on board at each time, paid for by the boat owner. They must also control waste disposal at sea. Uncontrolled fishing has the potential to destroy the fishery. Scientific reports suggest that the zone may be fished out within a few years unless unlicensed boats are kept out of the area.

The South Tomi was spotted in the fishing zone on 29 March 2001 by a civilian vessel chartered by AFMA. The South Tomi was about 100 nautical miles inside the fishing zone and was fishing for Patagonian toothfish using the longline method. AFMA directed the boat to sail to Fremantle for further investigation. After briefly complying with that direction, the South Tomi altered course and fled westwards toward South Africa. The Australian boat took up the chase. The South Tomi was eventually apprehended fourteen days later with assistance from the South African navy. The boat was boarded 250 nautical miles south of Cape Town and was brought back to Fremantle under naval escort.

The Lena was spotted 90 nautical miles inside the fishing zone on 20 December 2001 by the MV Southern Supporter. The Lena was one of a fleet of about seven boats that were illegally fishing for Patagonian toothfish. AFMA directed the vessel to sail to Fremantle under escort from the Southern Supporter. Part way through the trip the Lena changed course and fled back toward Heard Island. The Southern Supporter commenced a hot pursuit but had to abandon it due to a shortage of fuel. The Lena was re-fuelled at sea by a sister ship. AFMA sought assistance from the Royal Australian Navy. On 6 February 2002 HMAS Canberra found the Lena back in the fishing zone, and still fishing for toothfish. The crew had attempted to hide the identity of the Lena by painting its decks a different colour and changing its name to Ana. RAN officers boarded the vessel and sailed it to Fremantle.

The master of the South Tomi (Leonardo Segade-Aviles) was charged with two offences under the Fisheries Management Act, one of being in charge of a vessel in the fishing zone in breach of the Act and one of fishing in breach of the Act. He was convicted and fined \$136 000. Imprisonment is not an available penalty for an offence against the Fisheries Management Act which involves a foreign fishing vessel.

The South Tomi and its catch and equipment were forfeited to the Commonwealth under the provisions of the Fisheries Management Act. The boat was estimated to be worth \$1 million. There were 117 tonnes of toothfish on board the boat, which were sold for \$1.4 million.

The master of the *Lena* (Jose Rivas) was charged with four offences under the Fisheries Management Act, two for each time the vessel was found fishing in the zone. He was also charged with failing to comply with the order to take the *Lena* to Fremantle. Two crew members of the *Lena* (Sanchez and Marina) were also charged with offences against the Fisheries Management Act. The master was convicted and fined \$50 000. The crew members were each convicted and fined \$35 000.

The *Tomi* and its catch and equipment were forfeited under the provisions of the Fisheries Management Act. The boat was estimated to be worth \$4 million. There were 80 tonnes of toothfish on board which were sold for \$1.1 million.

Suarez-Mejia

This case involved the largest known importation of cocaine into Australia. Suarez-Mejia was one of a group of people who imported approximately one tonne of cocaine on a sailing boat known as the *White Dove*. The boat was purchased in Louisiana USA and was sailed to Australia via Cape Verde. The drugs were taken on board at a point in the ocean between Cape Verde and Australia. Suarez-Mejia joined the vessel at that time. He was alleged to be a major figure in organising the importation. His role was to make sure that the drugs reached their destination.

The *White Dove* sailed to Dulverton Bay in the north of Western Australia where the cocaine was taken ashore by dinghy. The crew, which by then numbered three, scuttled the *White Dove* by reversing its pumps. The three men were seen stacking bags containing the cocaine and hiding them on the beach. They were arrested by officers of the AFP. Two other people were arrested in Australia en route to Dulverton Bay.

Suarez-Mejia was charged with importing a commercial quantity of cocaine, contrary to section 233B(1) of the Customs Act. He pleaded guilty to the charge. He was sentenced to life imprisonment with a non-parole period of 20 years. The court also ordered the forfeiture of US\$8 000 found in his possession when he was arrested. The DPP appealed against the sentence but the appeal was dismissed.

Thompson

This case involved the first trial of a person for an offence involving an Electronic Benefit Transfer fraud. The trial ran for 20 days. Although the prosecution case was simple in concept, it was difficult to present because of the number of exhibits, including approximately 400 pages of screen dumps and computer generated reports, and the number of witnesses. The witnesses

included Centrelink computer systems experts and the staff of the office where Thompson formerly worked.

Thompson was a former employee of Centrelink. On at least 36 occasions between January 1999 and June 1999 he issued EBT payment cards in the names of different customers of Centrelink. The amounts shown on the cards were between \$300 and \$930. None of the customers requested the cards and none of them ever received them. It was alleged that Thompson cashed the cards and kept the money, which totalled \$21 000.

Thompson was charged with 40 counts of imposition on the Commonwealth under section 29B of the Crimes Act. He was convicted on 36 counts. Thompson was sentenced to imprisonment for three years and nine months with a non-parole period of two years and six months. He was also ordered to pay reparation to the Commonwealth.

Thompson appealed against conviction and sentence. The appeal against conviction was dismissed. The appeal against sentence was upheld in order to correct a technical error which did not affect the overall sentence.

Togias

On 7 October 2000 Togias imported 8 000 tablets of ecstasy into Australia. She subsequently pleaded guilty to an offence against section 233B(1) of the Customs Act. She was sentenced by a judge of the District Court of NSW to three years imprisonment but was ordered to be released forthwith on a good behaviour bond. At the time of sentencing, Togias was the mother of a two month old baby girl whom she was breast feeding. The sentencing judge found that the child was likely to suffer special and exceptional harm if Togias was sent to jail.

The DPP appealed against the sentence. The appeal was upheld by the NSW Court of Criminal Appeal. The Court remitted the matter to the District Court for Togias to be sentenced by a different judge. The second judge sentenced Togias to five years imprisonment, but again ordered that she be released forthwith. The second judge found that there was a risk of psychological damage to Togias' daughter, despite hearing evidence about the Mothers' and Children's Program at the Mulawa Detention Centre which is designed to allow children to live with a mother who is serving a sentence of imprisonment. The evidence was that the defendant could not be given a place in the program until she was assessed, which could not be done until after sentence, and that no assurance could be given that she would be given a place in the program. There was also evidence that the child could suffer psychological damage if separated from the mother for as little as a week.

The DPP appealed against sentence a second time, on the basis that the judge should, at least, have imposed a sentence of periodic detention.. The appeal was dismissed by a majority.

Wong and Leung

In 1998 Wong and Leung were convicted of being knowingly concerned in the importation of a commercial quantity of heroin. They were each sentenced to 12 years imprisonment with a non-parole period of seven years. The DPP appealed against the sentences. The NSW Court of Criminal Appeal upheld the appeal and increased both sentences to 14 years imprisonment with a non-parole period of nine years. The Court went on to set down guidelines for sentencing drug offenders in Commonwealth matters.

Wong and Leung appealed to the High Court against the decision by the Court of Criminal Appeal. The High Court held, by a majority, that it was not appropriate for an appeal court to set guidelines for sentencing Commonwealth offenders on the basis that it unduly fettered the exercise of the sentencing discretion by individual judges. The High Court upheld the defendants' appeal and sent the matter back to the Court of Criminal Appeal for re-sentencing.

This time the Court decided to impose sentences of 14 years imprisonment with a non-parole period of eight years. The Court was still satisfied that the original sentences imposed on the defendants were inadequate, and should have been at least 16 years imprisonment with a non-parole period of 11 years. However, the Court found that the defendants should be given credit for the uncertainty caused by the time taken to resolve their cases and for the fact that they had been good prisoners and were making reasonable progress in jail.

Commercial prosecutions

Baker and Moon

The defendants in this matter placed advertisements in the national press offering distributorships to market educational aids. They made false statements in relation to the income that could be earned and the success achieved by other distributors. People who purchased distributorships paid \$60 000 and most earned minimal income. At sentencing the judge commented that the conduct was a cynical and deliberate plan to defraud gullible members of the public.

Baker, Moon and two companies were charged with a total of 38 offences against sections 79(1)(a) and 59(2) of the Trade Practices Act. The defendants did not cooperate with ACCC, or take any steps to correct the effect of their misrepresentations. However, they did plead guilty to the charges against them.

On 19 March 2002 the Federal Court recorded convictions against all four defendants. The companies (Back to Basics Worldwide Education Aids Pty Ltd and Hartwich Pty Ltd) were fined \$180 000 and \$40 000 respectively and ordered to pay compensation totalling \$668 000. The individuals were fined \$10 000 each and ordered to pay compensation of \$86 078.

The relatively low fines imposed on the individuals reflected the fact that the defendants were bankrupt by the time the matter came on for sentence. Offences against sections 79(1)(a) and 59(2) of the Trade Practices Act are not punishable by imprisonment. The court was reluctant to set fines that the defendants could not pay, and that may result in them serving time in default.

Bell

This case involved the first prosecution for “cold calling” in Australia. Research undertaken by the ASIC suggests that cold calling has cost Australian investors more than \$400 million in the past three years.

Bell worked as a share trader in "boiler rooms" in the Philippines and Bangkok using the name Dr Richard King, and the title Director of Research. He made unsolicited telephone calls to people in Australia offering to sell them shares in US companies. He made false statements to prospective investors on matters that were likely to induce them to purchase the shares, including a representation that the shares were shortly going to be listed on the US stock exchange. Given the nature of the offers, Bell should have lodged a prospectus with the ASIC before offering the shares for sale in Australia. No prospectus was lodged. In 1991 Bell was prosecuted for similar conduct in the USA. He was fined and his commodity dealers' licence was permanently revoked.

Charges were laid against Bell under sections 727 and 736 of the Corporations Act. The charges related to 11 investors, most of whom were inexperienced investors who ended up with shares that could not be traded.

On 9 November 2001 Bell was convicted of four offences against section 736 of the Corporations Act (securities hawking), ten offences against section 727 of the Corporations Act (offering securities without a current disclosure document) and seven offences under section 999 of the Corporations Act (making false or misleading statements in respect of securities). He was sentenced to a suspended term of imprisonment and fined a total of \$12 000.

Farmer, Farmer and Morgan

The defendants in this case were directors of a family company called Farmer Furniture Pty Ltd that carried on the business of manufacturing and retailing furniture in WA. The company ceased trading on 23 July 1997 and went into

liquidation on 20 August 1997 with a net deficiency of \$2.5 million. The company was insolvent for some time before it stopped trading.

It was alleged that the defendants had reasonable grounds to suspect that the company was insolvent but allowed it to go on incurring debts which could not be repaid. The company ran up hundreds of individual debts during the relevant period, mostly for small sums of money. Charges were laid in relation to 43 sample debts owed to 14 creditors, and totalling about \$104 000. The defendants were each charged with 14 offences under sections 588G(2)(a) and 1317FA(1) of the Corporations Act of defrauding creditors of the company.

Charles Farmer was also charged with 18 offences under sections 232(6) and 1317FA(1) of the Corporations Act of making improper use of his position as a director. Those charges related to an allegation that, on 18 occasions, the defendant provided furniture to an associate at a discount price in return for under the counter payments. Those offences were committed between 1996 and 1997.

The defendants pleaded guilty to the charges against them. There were all convicted and released on good behaviour bonds. The sentencing judge noted that the defendants had mitigating factors in their favour, the main one being that they had tried to save the company and had lost family money in the effort.

Fukusato

In this matter the Supreme Court of Queensland found that the Commonwealth DPP has authority, under section 17 of the DPP Act, to prosecute offences against State law in appropriate cases, applying the principles laid down by the High Court in *R v Hughes* (2000) 74 ALJR 802. On 26 June 2002 the High Court refused special leave to appeal against that ruling.

In August 2000 an indictment was presented against Fukusato and another person in the Supreme Court of Queensland charging them with fraud offences against State law and related offences against Commonwealth law. The Supreme Court remitted the matter to the District Court for hearing. In December 2000 counsel for Fukusato applied for an order quashing the indictment on the basis that the Commonwealth DPP had no power to prosecute the State charges contained in the indictment. The trial judge adjourned the application on the basis that the defence was about to apply to have the matter removed to the High Court to argue this issue.

On 27 June 2001 the High Court refused leave to remove the matter but indicated that it may entertain a special leave application, if that was still necessary, after the issue had been considered by the Supreme Court. In October 2001 the Supreme Court heard argument on the issue. The Court also heard

argument on an unrelated issue concerning the validity of the Corporations (Commonwealth Powers) Act 2001 of Queensland. The Court handed down its judgement on 8 February 2002, ruling against Fukusato on both issues. As noted, the High Court refused special leave to appeal against that decision.

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 (conducting transactions so as to avoid reporting requirements) but the convictions had been set aside and a re-trial ordered.

A new trial commenced, in the Supreme Court of NSW, on 6 May 2002. On 11 September 2002 Hannes was convicted of the offences for a second time. At the time of writing, it is not known whether he will appeal a second time.

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 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.

Hodgson

This case related to the actions of a senior company official who falsified the accounts of a major retailing chain over a prolonged period of time. From 1994 until 2001 Hodgson was in charge of the finance and accounting staff of Harris Scarfe Limited and oversaw the production of all of the financial and accounting records of the Harris Scarfe group of companies, including the group's consolidated accounts. It was alleged that Hodgson directed staff under his control to make false entries in the books of account that had the effect of showing an inflated level of profits. The adjustments had the effect of showing misleading profit figures in reports that went to the board of the Harris Scarfe group of companies and the Australian Stock Exchange. It was not clear when the practice began but it continued until Hodgson left Harris Scarfe Limited in March 2001. It required an extensive financial analysis by the ASIC to unravel the financial accounts.

Hodgson was charged with a total of 32 offences against sections 1317FA and 232(6) of the Corporations Law, section 184(2) of the Corporations Act and

section 999 of the Corporations Act. He pleaded guilty to all charges and was sentenced to an effective term of six years imprisonment with a non-parole period of three years. Hodgson claimed that he acted on the basis of instructions from a superior officer in the company. The sentencing judge did not accept that this excused his conduct or provided a basis for imposing a non-custodial sentence.

Smith and Strano

Smith and Strano were both prosecuted for their role in the activities of a person called George Balos, who was convicted and sentenced to a term of imprisonment in 2000. Between 1995 and 1997 Balos raised about \$10 million from over 200 investors by offering extremely attractive rates of interest to people who were prepared to invest in his businesses, which operated under the names Commodities International and British Marine Bank. In fact there were no such businesses. The money was used by Balos for his own purposes, mainly gambling.

Smith and Strano were accountants working in Australia. It was alleged that they acted as middlemen for Balos, finding clients to invest in his scheme and receiving a commission for doing so. It was alleged that they knew the Balos scheme was a sham.

Smith raised over \$871 000 from investors in Queensland. He left Australia but was located in Hong Kong and extradited back to Australia. He was charged with 22 counts under section 427 of the Queensland Criminal Code, being ten counts of making a false pretence, eleven counts of making a false promise and a false pretence, and one count of making a false promise. Smith pleaded not guilty but was convicted after a trial. He was sentenced to six years imprisonment with no minimum term. He was also sentenced to a further year on an unrelated matter to which he pleaded guilty. He has appealed against conviction and sentence for the British Marine Bank matter.

Strano raised at least \$990 000 from investors in NSW. He was charged with 20 counts under section 178BB of NSW Crimes Act 1900 of obtaining money by false pretences. He also pleaded not guilty, but was convicted on 17 counts. He was sentenced to eight years imprisonment with a non-parole period of five years.

Appendix

Statement under the Freedom of Information Act 1982

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

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

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

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

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

- (c) Categories of documents that are maintained in the possession of the agency, 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.

Glossary

ACCC	Australian Competition and Consumer Commission
AFMA	Australian Fisheries Management Authority
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
ESS	Employee Self Service Scheme
HOCOLEA	Heads of Commonwealth Law Enforcement Agencies
IT	Information Technology
ITSA	Insolvency and Trustee Service Australia
LSS	Litigation Support System
NCA	National Crime Authority
PoC Act	Proceeds of Crime Act 1987
SES	Senior Executive Service
WDP	Workplace Diversity Plan

**Office of the Commonwealth
Director of Public Prosecutions
Independent Audit Report**



INDEPENDENT AUDIT REPORT

To the Attorney-General

Scope

I have audited the financial statements of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2002. The financial statements comprise:

- Statement by the Chief Executive Officer;
- Statements of Financial Performance, Financial Position and Cash Flows;
- Schedules of Contingencies and Commitments; and
- Notes to and forming part of the Financial Statements.

The Department's Chief Executive Officer is responsible for the preparation and presentation of the financial statements and the information they contain. I have conducted an independent audit of the financial statements in order to express an opinion on them to you.

The audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards, to provide reasonable assurance as to whether the financial statements are free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with Accounting Standards and other mandatory professional reporting requirements in Australia and statutory requirements so as to present a view which is consistent with my understanding of the Department's financial position, its financial performance and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

Audit Opinion

In my opinion the financial statements:

- (i) have been prepared in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, and
- (ii) give a true and fair view, in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia and the Finance Minister's Orders, of the financial position of the Commonwealth Director of Public Prosecutions as at 30 June 2002, and its financial performance and cash flows for the year then ended.

Australian National Audit Office



David Crossley
Executive Director

Delegate of the Auditor-General

Canberra
19 September 2002

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

FINANCIAL STATEMENTS 2001-2002

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Notes to and forming part of the Financial Statements

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

FINANCIAL STATEMENTS 2001-2002

**STATEMENT BY THE
CHIEF EXECUTIVE OFFICER**

In my opinion, the attached Financial Statements give a true and fair view of the matters required by the Finance Minister's Orders made the *Financial Management Act 1997*.



Damian Bugg QC
Director

19 September 2002

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
STATEMENT OF FINANCIAL PERFORMANCE
 For the period ended 30 June 2002

	Note	2001-2002 \$'000	2000-2001 \$'000
Revenues from ordinary activities			
Revenues from government	4	59,964	58,274
Sales of goods and services	5	917	1,101
Interest		565	470
Other	6	564	475
Total revenues from ordinary activities		<u>62,010</u>	<u>60,320</u>
Expenses from ordinary activities			
Employees	7	32,855	30,811
Suppliers	8	21,605	20,425
Depreciation and amortisation	9	3,542	4,041
Write-down of assets	10	282	11
Net losses from sale of assets	11	27	74
Other	12	498	82
Total expenses from ordinary activities		<u>58,809</u>	<u>55,444</u>
Net operating surplus (deficit) from ordinary activities		3,201	4,876
Net surplus (deficit)		<u>3,201</u>	<u>4,876</u>
Net surplus (deficit) attributable to the Commonwealth		<u>3,201</u>	<u>4,876</u>
Net credit (debit) to asset revaluation reserve	24	(199)	196
Total revenues, expenses and valuation adjustments attributable to the Commonwealth and recognised directly in equity		<u>(199)</u>	<u>196</u>
Total changes in equity other than those resulting from transactions with owners as owners		3,002	5,072

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**STATEMENT OF FINANCIAL POSITION**

For the period ended 30 June 2002

	Note	2001-2002 \$'000	2000-2001 \$'000
ASSETS			
Financial assets			
Cash	13	14,461	11,082
Receivables	14	565	1,023
Total financial assets		<u>15,026</u>	<u>12,105</u>
Non-financial assets			
Land and buildings	15,18	5,409	7,427
Infrastructure, plant and equipment	16,18	6,067	6,060
Intangibles	17,18	1,203	1,308
Other	19	1,005	844
Total non-financial assets		<u>13,684</u>	<u>15,639</u>
Total assets		<u><u>28,710</u></u>	<u><u>27,744</u></u>
LIABILITIES			
Debt			
Other	20	3,218	4,467
Total debt		<u>3,218</u>	<u>4,467</u>
Provisions			
Employees	21	10,495	9,740
Capital use charge		82	-
Total provisions		<u>10,577</u>	<u>9,740</u>
Payables			
Suppliers	22	4,700	5,133
Other	23	11	-
Total payables		<u>4,711</u>	<u>5,133</u>
Total liabilities		<u><u>18,506</u></u>	<u><u>19,340</u></u>
EQUITY			
Parent entity interest			
Contributed equity	24	2,027	2,027
Reserves	24	3,620	3,819
Retained surpluses	24	4,557	2,558
Total Parent entity interest		<u>10,204</u>	<u>8,404</u>
Total equity		<u><u>10,204</u></u>	<u><u>8,404</u></u>
Current liabilities		8,762	9,381
Non-current liabilities		9,744	9,959
Current assets		16,031	12,949
Non-current assets		12,679	14,795

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 2002

	Note	2001-2002 \$'000	2000-2001 \$'000
OPERATING ACTIVITIES			
Cash received			
Appropriations		59,904	58,105
Sales of goods and services:			
Government		833	1,026
Non-government		227	58
Interest		429	470
GST refunds (net)		1,847	1,102
Other		265	305
Total cash received		<u>63,505</u>	<u>61,066</u>
Cash used			
Employees		31,953	29,516
Suppliers		24,356	23,081
Other		359	170
Total cash used		<u>56,668</u>	<u>52,767</u>
Net cash from operating activities	25	<u><u>6,837</u></u>	<u><u>8,299</u></u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of infrastructure, plant and equipment		113	31
Total cash received		<u>113</u>	<u>31</u>
Cash used			
Purchase of land and buildings		1,104	555
Purchase of infrastructure, plant and equipment		931	712
Purchase of intangibles		568	363
Total cash used		<u>2,603</u>	<u>1,630</u>
Net cash from (used by) investing activities		<u><u>(2,490)</u></u>	<u><u>(1,599)</u></u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**STATEMENT OF CASH FLOWS**

For the period ended 30 June 2002

	Note	2001-2002	2000-2001
		\$'000	\$'000
FINANCING ACTIVITIES			
Cash received			
Other		125	-
Total cash received		<u>125</u>	<u>-</u>
Cash used			
Capital use charge paid		1,093	1,234
Total cash used		<u>1,093</u>	<u>1,234</u>
Net cash from (used by) financing activities		<u>(968)</u>	<u>(1,234)</u>
Net increase (decrease) in cash held		<u>3,379</u>	<u>5,466</u>
Cash at beginning of the reporting period		11,082	5,616
Cash at end of the reporting period		<u>14,461</u>	<u>11,082</u>

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

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

For the period ended 30 June 2002

	Note	2001-2002 \$'000	2000-2001 \$'000
BY TYPE			
Capital Commitments Payable			
Land and buildings		36	257
Infrastructure, plant and equipment		107	-
Intangibles		32	270
Total capital commitments payable		<u>175</u>	<u>527</u>
Other Commitments Payable			
Operating leases	2.5	30,731	34,706
Legal services		3,504	4,925
Goods and services (excluding legal services)		994	205
GST payable on commitments receivable		19	100
Total other commitments payable		<u>35,248</u>	<u>39,936</u>
Commitments Receivable			
Sub-lease rental	2.5	(594)	(491)
Legal services		-	(1,100)
GST receivable on commitments payable		(2,359)	(2,434)
Total commitments receivable		<u>(2,953)</u>	<u>(4,025)</u>
Net commitments		<u><u>32,470</u></u>	<u><u>36,438</u></u>
BY MATURITY			
All Net Commitments			
One year or less		11,157	10,582
From one to five years		16,628	20,592
Over five years		4,685	5,264
Total net commitments		<u>32,470</u>	<u>36,438</u>
Operating Lease Commitments Payable			
One year or less		8,311	7,680
From one to five years		17,267	21,235
Over five years		5,153	5,791
Total operating lease commitments payable		<u>30,731</u>	<u>34,706</u>
Operating Lease Commitments Receivable			
One year or less		(177)	(112)
From one to five years		(417)	(379)
Total operating lease commitments receivable		<u>(594)</u>	<u>(491)</u>

NB: 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

For the period ended 30 June 2002

	Note	2001-2002 \$'000	2000-2001 \$'000
CONTINGENCIES		NA*	NA*

SCHEDULE OF UNQUANTIFIABLE CONTINGENCIES

* If a matter being prosecuted by the CDPP is defended successfully, the court may order that the CDPP meet certain costs incurred by the defence. If a matter is being prosecuted by the CDPP and assets are frozen under the Proceeds of Crime Act 1987, the CDPP gives an undertaking against potential losses in respect of assets administered by the Commonwealth. If the related prosecution is unsuccessful, damages can be awarded against the CDPP. Costs and damages so awarded are met from the CDPP or client organisations annual appropriations.

Although costs and damages have been awarded against the CDPP and will continue to be awarded from time to time, the CDPP is unable to declare an estimate of liabilities not recognised nor undertakings due to the uncertainty of the outcome of matters, but more particularly 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 2002

Note	Description
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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 2002

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.

The Office has one output:

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

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:

- Finance Minister's Orders (being the *Financial Management and Accountability (Financial Statements 2001-2002) Orders*);
- 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 Finance Briefs 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.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

Note 2 - Summary of significant accounting policies (cont)

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.

The Notes of Administered revenues, expenses, assets, 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 2.20.

2.2 Changes to Accounting Policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 2000-2001 except:

- recognition of output appropriation (see note 2.3); and
- the presentation and disclosure of administered items.

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

The full amount of the appropriation for departmental outputs for the year (less any savings offered up at Additional Estimates and not subsequently released) is recognised as revenue. This is a change in accounting policy caused by the introduction of a new requirement to this effect in the Finance Minister's Orders. (In 2000-2001 output appropriations were recognised as revenue to the extent the appropriations had been drawn down from the Official Public Account).

The change in policy had no financial effect in 2001-2002 as the full amount of the output appropriation had been drawn down in that year.

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.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**For the period ended 30 June 2002

Note 2 - Summary of significant accounting policies (cont)

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.

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 2002 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 2002.

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.

The Office includes 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.

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 \$3,119,284 (2000-2001 - \$2,841,215) in relation to these schemes has been expensed in these Financial Statements.

Employer Superannuation Productivity Benefit contributions amounted to \$578,118 (2000-2001 - \$515,734).

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the period ended 30 June 2002

Note 2 - Summary of significant accounting policies (cont)

Non-ongoing staff do not contribute to the above schemes. Employer contributions amounting to \$70,209 (2000-2001 - \$57,165) 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.

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	Lease payments are subject to increases in accordance with the terms and conditions of each lease. The initial term of the leases vary, as do the options to renew.
Leases for motor vehicles (for general office use and for senior executives' remuneration packages)	No contingent rentals exist. There are no renewal or purchase options available to the Office.
Lease for computer equipment	The master planned rental agreement commenced w.e.f. 01.07.2001. Lease payments are determined at the start of the lease made under the master planned rental agreement, are based on the prevailing interest rates at that time and are fixed for the lease period The term of the lease can be extended.
Sub-lease for vacant office accommodation	Lease payments are subject to set bi-annual increases. There is no option to renew.

The Office has no finance leases.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**For the period ended 30 June 2002

Note 2 - Summary of significant accounting policies (cont)**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 twelve months are classified as cash.

2.7 Financial Instruments

Accounting policies for financial instruments are stated at Notes 30 and 38.

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 and Intangibles**A. *Asset Recognition Threshold***

Purchases of Property, Plant and Equipment are recognised initially at cost in the Statement of Financial Position, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total). The \$2,000 threshold is not applied to Library Holdings, Original Artworks and limited edition prints.

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 2001-2002 Financial Year, the Office revalued all Assets, except Software, using the deprival method:

- all property, plant and equipment assets acquired before 31 May 2002, except Library Assets, were subject to an Independent Revaluation, with an effective valuation date of 30 June 2002. The revaluation was conducted by International Valuation Consultants, using the Deprival Method of valuation, having regard to the estimated Current Replacement Costs. The individual valuer was Jarrod Booker MAVA. 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; and
- a Directors' Valuation of the Library Assets was undertaken, with an effective valuation date of 30 June 2002.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

Note 2 - Summary of significant accounting policies (cont)

(2000-2001 - The revaluation was carried out during the 1998-1999 Financial Year, 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.;
- 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.)

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.

In applying the deprival method, the Office values assets at their depreciated replacement cost. Any assets that would not be replaced or were surplus to requirements are valued at net realisable value. As at 30 June 2002 the Office had 132 assets with a market value of \$52,830.

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 31 May 2002 are held at cost.

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.

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

For the period ended 30 June 2002

Note 2 - Summary of significant accounting policies (cont)

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

<u>Class</u>	<u>2001-2002</u>	<u>2000-2001</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 9.

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.

2.12 Capital Use Charge

A capital use charge of 11% (12% in 2000-2001) 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 financial 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 note disclosures:

- 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 2002

Note 2 - Summary of significant accounting policies (cont)**2.17 Administered Items**

Administered revenues, expenses, assets, liabilities and cash flows are presented in the Notes to these financial statements. In 2000-2001 summary information was presented in Schedules following the primary Agency statements.

These financial statements do not report the receipt of administered appropriations from the Official Public Account (OPA) as administered revenues, not are transfers of administered receipts to the OPA reported as administered expenses. This change in 2001-2002 acknowledges that the administered activities of agencies are performed on behalf of the Commonwealth Government and it is not appropriate to identify resources transferred between administered activities of different agencies as revenues and expenses of the Administered entity. Generally, therefore the notes to these financial statements do not report any transactions or balances that are internal to the Administered entity. One exception is the disclosure of administered cash flows, since cash transferred between the OPA and the administered bank account is necessary for the completeness of the cash flow disclosures.

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.

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

For the period ended 30 June 2002

Note 2 - Summary of significant accounting policies (cont)

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

Note 3 - Events Occurring After Balance Date

There were no events occurring after balance date that had any material effect on the 2001-2002 Financial Statements.

In 2002-2003 the Department of Finance and Administration is to receive a return of capital of \$458,000 under the reviewed Agency Banking Incentives Scheme. This amount will come from retained surpluses.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

	2001-2002	2000-2001
	\$'000	\$'000
<u>Note 4 – Revenues from Government</u>		
Appropriations for outputs	59,904	58,105
Resources received free of charge	60	169
Total	<u>59,964</u>	<u>58,274</u>
<u>Note 5 – Sales of goods and services</u>		
Provision of goods	24	10
Operating lease rental revenue	117	106
Rendering of services revenue	758	967
Other	18	18
Total	<u>917</u>	<u>1,101</u>
Goods and services were sold as follows:		
Government	758	966
Non-Government	159	135
Total	<u>917</u>	<u>1,101</u>
<u>Note 6 – Other operating revenues</u>		
Employment Subsidies	36	-
Civil costs awarded	5	58
Resources received free of charge-Other entities	382	283
Other	141	134
Total	<u>564</u>	<u>475</u>
<u>Note 7 – Employee expenses</u>		
Remuneration (for services provided)	A 31,997	29,837
Separation and redundancy payments	257	172
Total remuneration	<u>32,254</u>	<u>30,009</u>
Other employee expenses	601	802
Total	<u>32,855</u>	<u>30,811</u>

A Remuneration includes \$283K (2000-2001 \$385K) 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 2002

	2001-2002	2000-2001
	\$'000	\$'000
Note 8 – Supplier expenses		
Supply of goods and services	14,541	14,901
Operating leases	7,064	5,524
Total	<u>21,605</u>	<u>20,425</u>
Operating lease payments comprise:		
Minimum lease payments	6,932	5,412
Rental expenses from sub-leases	132	112
Total	<u>7,064</u>	<u>5,524</u>
Note 9 – Depreciation and amortisation		
The aggregate amounts of depreciation or amortization expensed during the reporting period for each class of depreciable asset are as follows:		
Leasehold improvements	1,651	1,760
Plant and equipment	1,309	1,753
Intangibles	582	528
Total	<u>3,542</u>	<u>4,041</u>
Note 10 – Write-down of assets		
Financial assets		
Receivables	-	3
Non-financial assets – write-off		
Leasehold improvements	44	-
Plant and equipment	236	5
Intangibles	2	3
Total	<u>282</u>	<u>11</u>
Note 11 – Net losses from sale of assets		
Non-financial assets		
Infrastructure, plant and equipment		
Proceeds from sale	(38)	(127)
Net book value at sale	76	201
Intangibles		
Proceeds from sale	(15)	-
Net book value at sale	4	-
Net loss from sales	<u>27</u>	<u>74</u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

	2001-2002 \$'000	2000-2001 \$'000
Note 12 – Other operating expenses		
Costs awarded against the Commonwealth	498	167
less Comcover recoveries	-	(85)
Total	<u>498</u>	<u>82</u>
Note 13 - Cash		
Cash at bank	1,297	152
Cash on hand	49	52
Term deposit	13,115	10,878
Total	<u>14,461</u>	<u>11,082</u>
Note 14 - Receivables		
Goods and services	60	178
GST receivable	175	339
Interest	142	6
Lease incentives receivable	188	348
CUC receivable	-	152
Total	<u>565</u>	<u>1,023</u>
Receivables are aged as follows:		
Not overdue	543	1,022
Overdue less than 30 days	2	-
Overdue 30 to 60 days	-	-
Overdue 60 to 90 days	1	-
Overdue more than 90 days	19	-
Total	<u>565</u>	<u>1,022</u>
Note 15 – Land and buildings		
Leasehold improvements at cost	-	3,822
Accumulated amortisation	-	(632)
	<u>-</u>	<u>3,190</u>
Leasehold improvements at valuation - 2002	2.9B 13,808	-
Accumulated amortisation	(8,399)	-
	<u>5,409</u>	<u>-</u>
Leasehold improvements at valuation - 1999	2.9B -	11,707
Accumulated amortisation	-	(7,481)
	<u>-</u>	<u>4,226</u>
Leasehold improvements under construction	-	11
Total	<u>5,409</u>	<u>7,427</u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

		2001-2002 \$'000	2000-2001 \$'000
Note 16– Infrastructure, plant and equipment			
Computers at cost		-	1,005
Accumulated depreciation		-	(438)
		<u>-</u>	<u>567</u>
Computers at valuation - 2002	2.9B	1,648	-
Accumulated depreciation		(1,178)	-
		<u>470</u>	<u>-</u>
Computers at valuation - 1999	2.9B	-	1,940
Accumulated depreciation		-	(1,624)
		<u>-</u>	<u>316</u>
Furniture at cost		-	954
Accumulated depreciation		-	(246)
		<u>-</u>	<u>708</u>
Furniture at valuation - 2002	2.9B	4,438	-
Accumulated depreciation		(2,725)	-
		<u>1,713</u>	<u>-</u>
Furniture at valuation - 1999	2.9B	-	1,755
Accumulated depreciation		-	(1,020)
		<u>-</u>	<u>735</u>
Other plant and equipment at cost		99	595
Accumulated depreciation		(1)	(98)
		<u>98</u>	<u>497</u>
Other plant and equipment at valuation - 2002	2.9B	2,310	-
Accumulated depreciation		(1,117)	-
		<u>1,193</u>	<u>-</u>
Other plant and equipment at valuation - 1999	2.9B	-	2,119
Accumulated depreciation		-	(1,601)
		<u>-</u>	<u>518</u>
Artwork at valuation - 2002	2.9B	153	-
Accumulated depreciation		(44)	-
		<u>109</u>	<u>-</u>
Artwork at valuation - 1999	2.9B	-	160
Accumulated depreciation		-	(30)
		<u>-</u>	<u>130</u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

		2001-2002 \$'000	2000-2001 \$'000
<u>Note 16– Infrastructure, plant and equipment (cont)</u>			
Library holdings at valuation - 2002	2.9B	3,275	-
Accumulated depreciation		<u>(791)</u>	<u>-</u>
		<u>2,484</u>	<u>-</u>
Library holdings at valuation - 1999	2.9B	-	2,909
Accumulated depreciation		<u>-</u>	<u>(320)</u>
		<u>-</u>	<u>2,589</u>
Total		<u><u>6,067</u></u>	<u><u>6,060</u></u>
<u>Note 17 - Intangibles</u>			
Purchased software at cost		2,806	2,453
Accumulated amortisation		<u>(1,934)</u>	<u>(1,649)</u>
		<u>872</u>	<u>804</u>
Internally developed software - deemed at cost	2.9B	1,279	-
Accumulated amortisation		<u>(948)</u>	<u>-</u>
		<u>331</u>	<u>-</u>
Internally developed software at valuation - 1999	2.9B	-	1,279
Accumulated amortisation		<u>-</u>	<u>(775)</u>
		<u>-</u>	<u>504</u>
Total		<u><u>1,203</u></u>	<u><u>1,308</u></u>

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

For the period ended 30 June 2002

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
Gross value at beginning of reporting period	15,540	11,437	3,732	30,709
Additions: purchase of assets	636	898	485	2,019
Disposals	-	(665)	(17)	(682)
Write-offs	(213)	(1,566)	(113)	(1,892)
Revaluations: write-ups / (write-downs)	(940)	620	-	(320)
Assets transferred in / (out)	(1,215)	1,199	(2)	(18)
Other movements	-	-	-	-
Gross value at end of reporting period	13,808	11,923	4,085	29,816
Accumulated depreciation / amortisation at beginning of reporting period	8,113	5,377	2,424	15,914
Depreciation / amortisation charge for the reporting period	1,651	1,309	582	3,542
Disposals	-	(589)	(12)	(601)
Write-offs	(169)	(1,330)	(111)	(1,610)
Revaluations: write-ups / (write-downs)	(438)	317	-	(121)
Assets transferred in / (out)	(758)	765	(1)	6
Other movements	-	7	-	7
Accumulated depreciation / amortisation at end of reporting period	8,399	5,856	2,882	17,137
Net book value at end of reporting period	5,409	6,067	1,203	12,679
Net book value at beginning of reporting period	7,427	6,060	1,308	14,795

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

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	Total \$'000
As at end of reporting period				
Gross value	13,808	11,824	-	25,632
Accumulated depreciation / amortisation	8,399	5,855	-	14,254
Net book value at end of reporting period	<u>5,409</u>	<u>5,969</u>	<u>-</u>	<u>11,378</u>
As at beginning of reporting period				
Gross value	11,707	8,883	1,279	21,869
Accumulated depreciation / amortisation	7,481	4,595	775	12,851
Net book value at beginning of reporting period	<u>4,226</u>	<u>4,288</u>	<u>504</u>	<u>9,018</u>

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

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
As at end of reporting period				
Gross value	-	-	-	-
Accumulated depreciation / amortisation	-	-	-	-
Net book value at end of reporting period	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
As at beginning of reporting period				
Gross value	11	-	-	11
Accumulated depreciation / amortisation	-	-	-	-
Net book value at beginning of reporting period	<u>11</u>	<u>-</u>	<u>-</u>	<u>11</u>

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

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

For the period ended 30 June 2002

	2001-2002 \$'000	2000-2001 \$'000
<u>Note 19 - Other non-financial assets</u>		
Prepayments	1,005	844
Total	<u>1,005</u>	<u>844</u>
<u>Note 20 - Other debt</u>		
Lease incentives	3,218	4,467
Total	<u>3,218</u>	<u>4,467</u>
Current	1,249	1,249
Non-current	1,969	3,218
<u>Note 21 - Employee provisions and payables</u>		
Salaries and wages	742	765
Leave	2.4A 9,479	8,876
Separations and redundancies	164	-
Other	110	99
Total	<u>10,495</u>	<u>9,740</u>
Current	3,621	3,932
Non-current	6,874	5,808
<u>Note 22 - Suppliers provisions and payables</u>		
Trade Creditors	3,746	4,108
Provision for fitout restoration	883	889
Provision for rent on surplus space	71	136
Total	<u>4,700</u>	<u>5,133</u>
Current	3,799	4,200
Non-current	901	933
<u>Note 23 - Other provisions and payables</u>		
Prepayments received	11	-
Total	<u>11</u>	<u>-</u>
Current	11	-
Non-current	-	-

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

For the period ended 30 June 2002

Note 24 – Equity

	Accumulated Results		Asset Revaluation Reserve		Contributed Equity		Total Equity	
	2001-2002 \$'000	2000-2001 \$'000	2001-2002 \$'000	2000-2001 \$'000	2001-2002 \$'000	2000-2001 \$'000	2001-2002 \$'000	2000-2001 \$'000
Opening balance as at beginning of reporting period	2,558	(1,287)	3,819	3,623	2,027	2,027	8,404	4,363
Operating results	3,201	4,876	-	-	-	-	3,201	4,876
Capital use charge (CUC) payments	(1,202)	(1,031)	-	-	-	-	(1,202)	(1,031)
Net revaluation increment / (decrement)	-	-	(199)	196	-	-	(199)	196
Closing balance as at end of reporting period	4,557	2,558	3,620	3,819	2,027	2,027	10,204	8,404
Less: Outside equity interests	-	-	-	-	-	-	-	-
Total equity attributable to the Cth	4,557	2,558	3,620	3,819	2,027	2,027	10,204	8,404

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

For the period ended 30 June 2002

	2001-2002	2000-2001
	\$'000	\$'000
<u>Note 25 – Cash flow reconciliation</u>		
Reconciliation of Cash per Statement of Financial Position to Statement of Cash Flows:		
Cash at year end per Statement of Cash Flows	14,461	11,082
Cash as per Statement of Financial Position	14,461	11,082
Reconciliation of operating surplus to the net cash provided by operating activities:		
Net Surplus (deficit)	3,201	4,876
Depreciation and amortisation	3,541	4,041
Loss on sale of non-current assets	28	75
Write-off of non-current assets	282	7
Assets not previously recognised	(3)	(5)
Decrease (increase) in net receivables	202	(363)
Decrease (increase) in prepayments	(161)	113
Increase (decrease) in debt	(1,249)	(1,315)
Increase (decrease) in employee provisions	755	1,102
Increase (decrease) in supplier payables	230	(202)
Increase (decrease) in other liabilities	11	(30)
Net cash from operating activities	<u>6,837</u>	<u>8,299</u>

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

For the period ended 30 June 2002

	2001-2002 \$'000	2000-2001 \$'000
Note 26 – Executive remuneration		
The number of Executives who received or were due to receive total remuneration of \$100,000 or more:		
\$100,000 to \$110,000	2	4
\$110,000 to \$120,000	1	6
\$120,000 to \$130,000	4	8
\$130,000 to \$140,000	5	7
\$140,000 to \$150,000	7	5
\$150,000 to \$160,000	5	4
\$160,000 to \$170,000	6	3
\$170,000 to \$180,000	3	-
\$180,000 to \$190,000	1	-
\$190,000 to \$200,000	-	1
\$200,000 to \$210,000	1	-
\$210,000 to \$220,000	-	1
\$240,000 to \$250,000	1	-
\$300,000 to \$310,000	1	1
Total	<u>37</u>	<u>40</u>
The aggregate amount of total remuneration of the executives included above	\$5,530,662	\$5,609,068
The aggregate amount of separation and redundancy payments of the executives included above	\$ -	\$ -
Note 27 – Remuneration of Auditors		
Financial statement audit services are provided free of charge to the Agency. The fair value of audit services provided was:		
	<u>\$60,000</u>	<u>\$60,000</u>
No other services were provided by the Auditors.		
Note 28 – 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 29 – Average staffing level		
The average full time equivalent staffing levels for the Agency during the year were	442	403

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

For the period ended 30 June 2002

Note 30 – Financial Instruments

a) Terms, conditions and accounting policies

Financial Instrument	Note	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of Underlying Instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
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	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 its 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% (2000-2001 = 2.00%). 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 4.42% (2000-2001 = 5.53%). 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 2002

Note 30 – Financial Instruments (cont)

a) Terms, conditions and accounting policies (cont)

Financial Instrument	Note	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of Underlying Instrument (including significant terms & conditions affecting the amount, timing and certainty of cash flows)
Financial Liabilities		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.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
 NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the period ended 30 June 2002

Note 30 - Financial Instruments (contd)

(b) Interest Rate Risk: Agency

Financial Instrument	Notes	Floating Interest Rate			Fixed Interest Rate						Non-Interest Bearing		Total		Weighted Average Effective Interest Rate		
		2001-2002 \$'000	2000-2001 \$'000	2001-2002 \$'000	1 to 2 years 2001-2002 \$'000	2 to 5 years 2001-2002 \$'000	> 5 years 2001-2002 \$'000	2001-2002 \$'000	2000-2001 \$'000	2001-2002 \$'000	2000-2001 \$'000	2001-2002 \$'000	2000-2001 \$'000	2001-2002 %	2000-2001 %		
Financial Assets																	
Cash - at bank	13	1,297	152	-	-	-	-	-	-	-	-	-	1,297	152	2.90%	2.00%	
Cash - term deposit	13	-	-	13,115	-	-	-	-	-	-	-	-	13,115	10,878	4.42%	5.53%	
Receivables - goods and services	14	-	-	-	-	-	-	-	-	-	-	60	60	178	n/a	n/a	
Total Financial Assets (Recognised)		1,297	152	13,115	10,878							60	14,472	11,208			
Total Agency Assets													28,710	27,744			
Financial Liabilities																	
Trade creditors	22	-	-	-	-	-	-	-	-	-	-	3,746	3,746	4,108	n/a	n/a	
Total Financial Liabilities (Recognised)		-	-	-	-	-	-	-	-	-	-	3,746	3,746	4,108			
Total Agency Liabilities													18,508	19,340			

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

For the period ended 30 June 2002

Note 30 – Financial Instruments (cont)

c) Net Fair Values of Agency Financial Assets and Liabilities

	Note	2001-2002		2000-2001	
		Total carrying amount \$'000	Aggregate net fair value \$'000	Total carrying amount \$'000	Aggregate net fair value \$'000
Financial Assets					
Cash - at bank	13	1,297	1,297	152	152
Cash - term deposit	13	13,115	13,115	10,878	10,878
Receivables - goods and services	14	60	60	178	178
Total Financial Assets		14,472	14,472	11,208	11,208
Financial Liabilities (Recognised)					
Trade creditors	22	3,746	3,746	4,108	4,108
Total Financial Liabilities (Recognised)		3,746	3,746	4,108	4,108

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

For the period ended 30 June 2002

Note 30 - 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.

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

For the period ended 30 June 2002

		2001-2002	2000-2001
		\$'000	\$'000
Note 31 - Revenues Administered on Behalf of Government			
Reversal of previous asset write-downs			
Decrease in provision for doubtful debts	2.19A	502	-
Reinstate receivable previously written-off		<u>13</u>	<u>26</u>
Total		<u>515</u>	<u>26</u>
Fees and fines			
Fines and costs	2.17	<u>18,260</u>	<u>18,431</u>
Total		<u>18,260</u>	<u>18,431</u>
Other operating revenue			
Other		<u>105</u>	<u>14</u>
Total		<u>105</u>	<u>14</u>
Total Revenues Administered on Behalf of Government		<u>18,880</u>	<u>18,471</u>

Note 32 - Expenses Administered on Behalf of Government

Write-down of assets

Financial Assets

Write-off		870	156
Prison sentence		398	523
Community service orders		127	135
Increase in provision for doubtful debts	2.19A	<u>-</u>	<u>2,190</u>
Total		<u>1,395</u>	<u>3,004</u>

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.

Other expenses

Transfers to other Agencies		174	358
Receivables assumed by other Agencies	2.17	<u>14,304</u>	<u>14,306</u>
Total		<u>14,478</u>	<u>14,664</u>

Total Expenses Administered on Behalf of Government

<u>15,873</u>	<u>17,668</u>
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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 2002

	2001-2002 \$'000	2000-2001 \$'000
<u>Note 33 - Assets Administered on Behalf of Government</u>		
Cash		
Cash at bank	14	17
Total	<u>14</u>	<u>17</u>
Receivables		
Fines and costs	8,230	7,396
Less : Provision for doubtful debts	<u>(2,788)</u>	<u>(3,290)</u>
Total	<u>5,442</u>	<u>4,106</u>
Fines and costs receivables are aged as follows:		
Not overdue	694	1,420
Overdue less than 30 days	1,827	271
Overdue 30 to 60 days	318	169
Overdue 60 to 90 days	132	186
Overdue more than 90 days	<u>5,259</u>	<u>5,350</u>
Total	<u>8,230</u>	<u>7,396</u>
Total Assets Administered on Behalf of Government	<u>5,456</u>	<u>4,123</u>

Note 34 – Liabilities Administered on Behalf of Government

There are no administered liabilities

Note 35 – Administered Cash Flows

OPERATING ACTIVITIES

Cash received		
Fines and costs	1,740	2,350
Other	105	14
Total cash received	<u>1,845</u>	<u>2,364</u>
Cash used		
Cash to Official Public Account	1,674	1,915
Other	174	472
Total cash used	<u>1,848</u>	<u>2,387</u>
Net cash from operating activities	<u>(3)</u>	<u>(23)</u>
Net increase (decrease) in cash held	(3)	(23)
Cash at beginning of the reporting period	17	40
Cash at end of reporting period	<u>14</u>	<u>17</u>

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

For the period ended 30 June 2002

	2001-2002	2000-2001
	\$'000	\$'000
<u>Note 36 – Administered Commitments</u>	Nil	Nil
<u>Note 37 – Administered Contingencies</u>	Nil	Nil

SCHEDULE OF UNQUANTIFIABLE CONTINGENCIES

Fines and costs receivables are recorded at the amount set down in a decision by a Court. These decisions are subject to appeal, either by the Prosecution or by the Defence. If an appeal is successful, the amount of fines and costs receivable may increase or decrease.

The CDPP is unable to declare an estimate of contingent gains or losses not recognised due to the uncertainty of the outcome of matters, but more particularly to the sensitivity of the information related to matters still before the courts.

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

For the period ended 30 June 2002

Note 38 – Administered Financial Instruments

a) Terms, conditions and accounting policies

Financial Instrument	Note	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of Underlying Instrument (including significant terms and conditions affecting the amount, timing and certainty of cash flows)
Financial Assets		Financial Assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured.	
Cash - at Bank	33	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	33	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 sheet date. Provisions are made when 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.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
 NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
 For the period ended 30 June 2002

Note 39 - Administered Financial Instruments (contd)

(b) Interest Rate Risk: Administered

Financial Instrument	Notes	Floating Interest Rate 2001-2002 2000-2001 \$'000 \$'000	Fixed Interest Rate			Non-Interest Bearing 2001-2002 2000-2001 \$'000 \$'000	Total 2001-2002 2000-2001 \$'000 \$'000	Weighted Average Effective Interest Rate 2001-2002 2000-2001 %
			1 year or less 2001-2002 2000-2001 \$'000 \$'000	1 to 2 years 2001-2002 2000-2001 \$'000 \$'000	2 to 5 years 2001-2002 2000-2001 \$'000 \$'000			
Financial Assets								
Cash at bank	33	-	-	-	14	14	n/a	
Receivables - Fees and Fines	34	-	-	-	5,442	5,442	n/a	
Total Financial Assets		-	-	-	5,456	5,456	n/a	
Total Administered Assets		-	-	-	5,456	5,456	n/a	
There are no Administered Liabilities								

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

Note 38 – Administered Financial Instruments (cont)

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

	Note	2001-2002		2000-2001	
		Total carrying amount \$'000	Aggregate net fair value \$'000	Total carrying amount \$'000	Aggregate net fair value \$'000
Financial Assets					
Cash at bank	33	14	14	17	17
Receivables - Fees and Fines	34	5,442	5,442	4,106	4,106
Total Financial Assets		5,456	5,456	4,123	4,123

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.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

	2001-2002	2000-2001
	\$.	\$.
Note 39 - Appropriations		
Appropriations Acts (No. 1/3)		
Balance available at beginning of period	11,082,231	5,457,094
Appropriations for reporting period (Act 1)	60,004,000	58,105,000
Appropriations for reporting period (Act 3)	-	-
Adjustments determined by the Finance Minister	(100,000)	-
Amounts from Advance to the Minister for Finance	-	-
Amounts for Comcover receipts	-	93,172
Refunds credited (FMA s.30)	-	-
GST credits (FMA s.30A)	1,847,493	1,101,666
Annotated to net appropriations (FMA s.31)	1,865,600	1,956,259
Total appropriated in the period	<u>63,617,093</u>	<u>61,256,097</u>
Total appropriations available for payments	<u>74,699,324</u>	<u>66,713,191</u>
Payments during the period	60,238,682	55,630,960
Balance of appropriations for outputs at end of period	<u>14,460,642</u>	<u>11,082,231</u>

Appropriations Acts (No. 2/4)

There were no equity injections, loans or carryovers in the reporting period.

Special Appropriations

There were no special appropriations in the reporting period.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

2001-2002 2000-2001
\$. \$.

Note 40 - 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	17,114	39,750
Add: Receipts from appropriations	-	-
Receipts from other sources	1,813,968	2,395,115
	<u>1,831,082</u>	<u>2,434,865</u>
Less: Payments in reporting period	(1,816,765)	(2,417,751)
Balance at end of reporting period	<u>14,317</u>	<u>17,114</u>

Bonds Component

Balance at beginning of the reporting period	-	16,258
Add: Receipts from appropriations	-	-
Receipts from other sources	-	-
	<u>-</u>	<u>16,258</u>
Less: Payments in reporting period	-	(16,258)
Balance at end of reporting period	<u>-</u>	<u>-</u>

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	19,267	33,142
	<u>19,267</u>	<u>33,142</u>
Less: Payments in reporting period	(19,267)	(33,142)
Balance at end of reporting period	<u>-</u>	<u>-</u>

C. Law Enforcement Projects Account

Legal authority - *Financial Management and Accountability Act 1997*; s20

Purpose - for expenditure of moneys on law enforcement projects selected for the purpose of Section 34D of the *Proceeds of Crime Act 1987*.

There were no transactions on the Office of the Director of Public Prosecutions' Law Enforcement Projects Account

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the period ended 30 June 2002

	Actual \$'000	Budget \$'000
Note 41 - Reporting by Outcomes		
Reporting by outcome	Outcome 1	
Net taxation, fees and fines revenues	-	-
Other administered revenues	(18,880)	(3,213)
Net subsidies, benefits and grant expenses	-	-
Other administered expenses	15,872	1,087
Add net cost of entity outputs	56,703	57,419
Extraordinary items	-	-
Net cost to Budget outcome	<u>53,695</u>	<u>55,293</u>
Total assets deployed at end of reporting period	34,166	31,202
Major Agency Revenues & Expenses by outcome		
Operating revenues		
Revenues from Government	59,964	60,004
Sales of goods and services	917	1,300
Other	1,129	845
Total operating revenues	<u>62,010</u>	<u>62,149</u>
Operating expenses		
Employees	32,855	29,851
Suppliers	21,605	24,994
Other	4,349	4,719
Total operating expenses	<u>58,809</u>	<u>59,564</u>
Major Administered Revenues & Expenses by outcome		
Operating revenues		
Fees and Fines	2.17 18,260	3,213
Other	620	-
Total operating revenues	<u>18,880</u>	<u>3,213</u>
Operating expenses		
Write-down of assets	1,395	1,087
Other	2.17 14,478	-
Total operating expenses	<u>15,873</u>	<u>1,087</u>