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Commonwealth Director
of Public Prosecutions

Annual Report 2003 – 2004

Commonwealth of Australia 2004

ISSN 1034-3318

ISBN 0-9751368-1-X

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Commonwealth Director of Public Prosecutions

20 September 2004

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 2004, in accordance with section 33(1) of the Director of Public Prosecutions Act 1983.

Yours faithfully

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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) 6206 5606.

Director's overview

On 8 March 2004 the DPP turned 20. This was a major landmark for the Office. The DPP has grown considerably over the last 20 years and we also perform a much wider range of work. In 1984, for example, the DPP did not prosecute corporate crime and we had a limited criminal assets function. Those are now both major and growing areas of our work.

Over the life of the Office, the DPP has earned a reputation for hard work and integrity. We provide an efficient and effective prosecution process and, together with the other agencies that work in the law enforcement area, we provide a valuable resource for the Australian community.

I have now been Director for five years, but much of the credit for what has been achieved must be given to previous Directors Ian Temby QC, Mark Weinberg QC, Michael Rozenes QC and Brian Martin QC. I am conscious that I follow in their footsteps and am proud to uphold the traditions they established.

A lot of the credit must also be given to current and former employees of the DPP. The staff of the DPP consistently performs at a high level of efficiency which I have come to rely on but which I never take for granted. I would like to thank all staff for their continued hard work over the past year.

The past year has seen the DPP take on an increasing number of complex prosecutions in the areas of fraud, drug crime, money laundering and people smuggling. We have also seen a growth in terrorism cases and sexual servitude prosecutions. These are not easy cases to prosecute and the work is unlikely to get easier in the time ahead. We are likely to see further increases in work especially in the areas of terrorism, money laundering and fraud.

We are also now 18 months into the life of the *Proceeds of Crime Act 2002*. We are half way through the review period specified in the Act. The early indicators under that Act are promising. There is a level of enthusiasm among investigators and DPP lawyers, and cases are starting to flow through the system. However, there is still a lot of work to be done before we can be satisfied that we have fully tested the scope of the new Act.

The main challenges that face the DPP in the coming year are to continue to prosecute difficult cases to a high standard of efficiency and to explore ways of fully using the provisions of the PoC Act. We also intend to work to improve timeliness in prosecution cases and to review some basic policy documents including the Guidelines on Prosecution Disclosure.

In the course of the year the DPP issued a new Corporate Plan. The current plan will only run for 12 months before being reviewed. This is part of a

policy of ensuring that all planning and policy documents remain relevant and encapsulate current DPP priorities. We are also continuing a review of the Prosecution Policy of the Commonwealth which is taking longer than was initially expected.

In the course of the year the Sydney office moved to new premises. Any move causes a major disruption to the work of an office and I would like to thank all those who worked to make the move as smooth as it was and to thank staff affected by the move for their patience. Melbourne office will move premises shortly in the new year. We are also in the process of upgrading IT facilities for all offices.

As for every year, there are some personal milestones that should be noted. In the course of 2003 – 2004 Grahame Delaney proceeded on long leave prior to retirement as First Deputy Director. Grahame was with the DPP from the early days and his services will be missed. I wish him well in retirement. I have appointed John Thornton to the position of First Deputy Director and Ian Bermingham as Deputy Director, Legal and Practice Management.

In the course of the year Grant Lalor of Head Office was appointed as a Magistrate in the ACT. Grant was among the first public servants to join the DPP. I am sure he will do well in his new role.

Finally I would like to thank all the agencies with which we work for their support throughout the year. The DPP does not work in a vacuum and can achieve nothing alone. I would also like to thank the current and former Attorneys-General, the Honourable Philip Ruddock MP and the Honourable Daryl Williams AM QC MP, and the Minister for Justice and Customs, Senator the Honourable Christopher Ellison, for their continued support for the DPP.

On 24 June 2004 the Attorney-General, the Honourable Philip Ruddock MP, announced my re-appointment as Director for a period of three years, taking effect on 2 August 2004. I feel privileged to be given the opportunity to continue to serve the Office and work with the dedicated and very talented staff of the DPP. I also look forward to a continuation of the very positive relationships I have enjoyed with the Secretaries and CEOs of the departments and agencies with which the office works.

Damian Bugg QC

Commonwealth Director of Public Prosecutions

CHAPTER 1

Office of the DPP

Establishment

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

The current Director of Public Prosecutions is Damian Bugg QC who was initially appointed for a term of five years commencing on 2 August 1999. On 2 August 2004 his term of appointment was extended for a further three years.

The DPP is an independent prosecuting agency. The Commonwealth Attorney-General has power under section 8 of the DPP Act to issue directions and guidelines to the Director. However any guidelines must be issued in writing and must be tabled in Parliament, and there must be prior consultation between the Attorney-General and the Director. There were no directions or guidelines issued under section 8 in 2003 – 2004.

Role

The role of the DPP is to prosecute offences against Commonwealth law and to confiscate the proceeds of Commonwealth crime. The DPP also conducts 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 crime. 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 State and Territory DPPs.

The main cases prosecuted by the DPP involve drug importation and money laundering, offences against the Corporations Act, fraud on the Commonwealth (including tax fraud, medifraud and social security fraud), people smuggling and terrorism. The remaining area of the DPP's practice covers a wide range of matters which cannot be easily categorised. The DPP's prosecution practice is as wide as the reach of Commonwealth law.

Most Commonwealth prosecutions are conducted by the DPP. However, there are a few areas where Commonwealth agencies conduct summary prosecutions for straightforward regulatory offences by arrangement with the DPP, the main areas being tax offences, electoral offences and minor corporations offences. There are also some cases where a State agency conducts a Commonwealth prosecution, usually for reasons of convenience.

The DPP is not an investigating agency. It can only prosecute, and take confiscation action, when there has been an investigation by the Australian Federal Police, the Australian Crime Commission or some other investigative agency. However, the DPP regularly provides advice and assistance to investigators at the investigating stage and works closely with the investigators, particularly in confiscation cases.

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. In 2003 – 2004 the DPP received briefs of evidence from about 40 different agencies.

Corporate plan

The DPP Corporate Plan was reviewed and re-issued during the course of the year. The current Plan will remain in force for a period of 12 months. A copy of the new Plan appears at Appendix 2 to this Report.

The DPP's vision is a fair and just society where laws are respected and obeyed and there is public confidence in the justice system. The DPP's mission is to operate a high quality Commonwealth prosecution service for the benefit of the Australian people.

Social justice and equity

The DPP advances the interests of social justice and equity by working with other agencies to enforce the criminal law for the benefit of the community, and also works to ensure that alleged offenders and other people affected by the criminal justice process 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 of the DPP offices 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 crime. The role of the prosecutor 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.

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

Functions and powers

The 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 including the *Proceeds of Crime Act 2002*.

As noted above, the main functions of the Director are to prosecute offences against Commonwealth law and to confiscate the proceeds of Commonwealth crime. The Director also has a number of miscellaneous functions including:

- to prosecute indictable offences against State law where the Director holds an authority to do so under the laws of that State;
- to conduct committal proceedings and summary prosecutions for offences against State law where a Commonwealth officer is the informant;
- to provide legal advice to Commonwealth investigators;
- to appear in proceedings under the *Extradition Act 1988* and the *Mutual Assistance in Criminal Matters Act 1987*; and
- to apply for superannuation forfeiture orders under Commonwealth law.

The Director also has a function under section 6(1)(g) of the DPP Act to recover pecuniary penalties in matters specified in an instrument signed

by the Attorney-General. On 3 July 1985 an instrument was signed which gives the DPP a general power to recover pecuniary penalties under Commonwealth law.

The DPP does not conduct proceedings under Part XIV of the *Customs Act 1901*, which are called prosecutions but which are enforced by a quasi-criminal process. The responsibility for prosecuting those matters rests with the Australian Government Solicitor. However, the DPP prosecutes all criminal matters arising under the Customs Act, including offences of importing and exporting narcotic goods and offences of importing and exporting “tier 1” and “tier 2” goods.

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 which perform prosecution and asset confiscation work in central and north Queensland.

Head Office provides advice to the Director and coordinates the work of the Office across Australia. Head Office is also responsible for case work in the ACT and southern NSW. The DPP regional offices are responsible for conducting prosecutions and confiscation 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 a less formal structure within the other offices, which reflects the size of those offices. There is a twice annual meeting of the Director and the Deputy Directors to discuss policy and management issues. There are also regular meetings of an executive management group comprising senior officers from Head Office and a number of the regional offices.

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

Outcomes and outputs

An outcome and output chart for 2003 – 2004 appears at the end of this Chapter.

Senior Management Chart

(as at 30 June 2004)

<div>Director Damian Bugg QC</div> <div>First Deputy Director B3 (J Thornton)</div>	Head Office	Dep Dir B2 Legal and Practice Management (I Bermingham)	SES B1 Crim Assets (G Gray)
		Dep Dir B2 Corporate Management (S Walker)	SES B1 Commercial and International (G Davidson)
			SES B1 Policy (J Carter)
			SES B1 Tax Branch (A Oakey)
			Assistant Director ACT Prosecutions (J White)
	Sydney Office	Deputy Director B2 (J Joliffe)	SES B1 Prosecutions (G Drennan)
			SES B1 Prosecutions (D Stevens)
			SES B1 Prosecutions (M Allnutt)
			SES B1 Prosecutions and Tax (J Shouldice)
			SES B1 Criminal Assets (C Murphy)
			SES B1 Commercial Pros (P Shaw)
	Melbourne Office	Deputy Director B2 (M Pedley)	SES B1 Prosecutions (S Bruckard)
			SES B1 Prosecutions (D Caporale)
			SES B1 Tax Branch (B Tchakerian)
			SES B1 Crim Assets (C Davy)
			SES B1 Commercial Pros (S Kirne)
	Brisbane Office	Deputy Director B2 (P Evans)	SES B1 Prosecutions (C Porritt)
			SES B1 Crim Assets (S Grono)
			SES B1 Commercial Pros (C Barker)
			SES B1 Tax Branch (S Hunter)
			SES B1 Townsville (G Davey)
			Principal Legal Officer Cairns (M Ho)
	Perth Office	Deputy Director B1 (D Adsett)	SES B1 Pros and Criminal Assets (M Plummer)
			SES B1 Commercial Pros (M Fletcher)
	Adelaide Office	Deputy Director B1 (F Propsting)	
	Hobart Office	Assistant Director (I Arendt)	
	Darwin Office	Assistant Director (P Usher)	

Outcome and output chart 2003 – 2004

DIRECTOR OF PUBLIC PROSECUTIONS Director: Damian Bugg QC

Total price of outputs	\$71 568 000
Departmental outcome appropriation	\$69 108 000

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	\$71 568 000
Departmental output appropriation	\$69 108 000

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	\$71 568 000
Appropriation	\$69 108 000

CHAPTER 2

General prosecutions and practice management

Overview

Prosecuting is one of the key functions 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 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 or which result in guilty pleas without a trial.

Prosecution work requires a high level of liaison with investigators and the investigating agencies. The investigators and the prosecutors each have their own roles to perform, and it is important to ensure that there is a proper separation of the functions. However it has long been recognised that, at least in complex cases, investigators require advice and support at the investigation stage and that the support is best provided by the lawyers who are going to run any prosecution that results from the investigation.

DPP lawyers regularly participate in training courses for investigators. It is important for the DPP to assist in ensuring that investigators are properly equipped to perform their duties. However, the work places significant resource demands on the Office.

The Commonwealth does not have its own criminal courts. The DPP prosecutes in State and Territory courts, which have been given Commonwealth jurisdiction under 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 will brief counsel from the private Bar if the case requires expertise or resources that are not available in-house.

The DPP also conducts litigation on behalf of some investigative agencies where a person has brought civil proceedings to challenge a decision made

or action taken in the course of a criminal investigation. The DPP has power to appear in cases of this kind by virtue of section 9(11) of the DPP Act and will often do so if the purpose of the proceedings, viewed objectively, is to prevent an investigation from proceeding. This is a growing area of work for the DPP.

Performance indicators and prosecution statistics appear in Chapter 4.

Summary prosecutions, committals and trials

In this Report, a reference to a summary prosecution should be read as 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 magistrate's 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 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

- **Tax prosecutions**

In the last Annual Report it was noted that there was an increasing number of GST cases being referred to the DPP for prosecution. That trend has continued, with a seven per cent increase in the number of GST matters referred to the DPP in 2003 – 2004. The number of GST cases completed in 2003 – 2004 also showed increase, with about 80% more cases being completed for the year.

There is also a significant caseload arising from the prosecution of the promoters of fraudulent tax minimisation schemes. During this year there were two significant trials of promoters of such schemes, Operation Spada in Western Australia and the matter of Hart in Queensland. Both resulted in convictions.

The prosecution of excise fraud, especially in relation to “chop-chop” tobacco, remains a major part of the practice of the Tax Branches in Melbourne, Brisbane and Sydney. The Australian Taxation Office recently suspended all tobacco grower licences in North Queensland and the number of new cases has declined in that part of the country. Nevertheless, at present, excise

matters still represent about 36% of the DPP's tax prosecution practice in Queensland.

- **Vaughan and Buckett**

The last Annual Report included a note of the decision of the NSW Supreme Court in the matter of *Knaggs v DPP* [2003] 52 ATR 16. That case involved the prosecution of alleged offences against section 8C(1)(a) of the *Taxation Administration Act 1953* involving a failure to furnish income tax returns following receipt of a Notice under section 162 of the *Income Tax Assessment Act 1936*. Up until 2000, section 8C(1)(a) of the TA Act made it an offence for a person to refuse to furnish an income tax return when and as required. The section was amended in 2000 so that it became an offence to refuse to furnish an "approved form" when required. That change only applied to 2000 – 2001 and later years.

Knaggs was prosecuted, and convicted, of failing to furnish income tax returns for the years 1982 – 1983 to 2000 – 2001. He appealed to the NSW Supreme Court. The Supreme Court quashed the convictions on the basis that the charges should have alleged that Knaggs failed to furnish approved forms for the relevant years. In fact the amendments which changed the nature of the offence only applied to 2000 – 2001 and later years.

The same issue arose in Queensland in the matters of *Vaughan and Buckett*. The defendants were both acquitted of the charges against them on the basis of the decision in the *Knaggs* case. The District Court upheld that decision. The DPP appealed to the Queensland Court of Appeal, which accepted the DPP's argument that the *Knaggs* case was wrongly decided and the relevant offences against *Vaughan and Buckett* had been properly charged. However, the Court of Appeal ultimately found in favour of *Vaughan and Buckett* on the separate ground that the relevant notices did not create a valid requirement to furnish tax returns for the years 1999 – 2000 and earlier because the notices had required the taxpayers to furnish "approved forms" and not "returns".

- **People smuggling**

In the last Annual Report it was noted that the focus of the prosecutions under sections 232A and 233 of the *Migration Act 1958* had shifted from the crews of the vessels used to bring illegal non-citizens to Australia to the people who are alleged to have organised people smuggling operations. In the past year prosecutions commenced against alleged organisers in Perth, Darwin and Brisbane. The matters in Perth and Brisbane have been set down for trial, and the trial of an alleged organiser is underway in Darwin. These prosecutions have proved to be as difficult as was predicted in the last Annual Report.

- **Sexual servitude**

Division 270 of the Criminal Code, which came into force on 21 September 1999, created the offences of slavery, sexual servitude and deceptive recruiting. At this stage there is one prosecution in progress in Melbourne for slavery, under section 270.3 of the Criminal Code, and two prosecutions in Sydney, one for slavery under the Criminal Code and one for conspiracy to cause another person to enter into sexual servitude. In the Melbourne matter the defendants have been committed for trial. The Sydney matters are listed for committal hearing in the second half of 2004. All three prosecutions involve more than one defendant.

These matters have proved to be difficult cases to prosecute because of the nature of the evidence. The primary witnesses against the alleged offenders are the victims of the crimes. In the three current matters, the victims are all foreign females who have limited command of English and who are from a range of different cultural backgrounds. Most of them are unlawful non-citizens and few have any means of support in Australia. The Australian Government recently set up a scheme to support the victims while giving evidence. However, prior to that the cost of maintaining the victims fell to the DPP. The DPP is not funded to meet expenses of this kind on a long-term basis.

- **Terrorism prosecutions**

The DPP is currently prosecuting four people for terrorism offences against provisions of the Criminal Code. The offences include doing an act in preparation or planning for a terrorist act, making or collecting documents likely to facilitate a terrorist act, and receiving training from a terrorist organisation. All four cases are still before the courts. This is a new area of work for the DPP. It is also a new area of work for Australian investigators and the DPP has provided legal advice and other assistance to the investigating agencies. A report on the completed prosecution of Jack Roche appears in Chapter 9 of this Report.

- **Private prosecutions**

Traditionally it has been open to any person to bring a private prosecution for a criminal offence. That right is protected in Commonwealth matters by section 13 of the *Crimes Act 1914* and is expressly preserved under section 10(2) of the DPP Act, although the Director has power under section 9(5) of the DPP Act to take over and discontinue a private prosecution which clearly lacks merit or is oppressive or vexatious. Last year saw a significant increase in the number of private prosecutions referred to the Director with a request that they be taken over and discontinued. A number of the private prosecutions were brought by people who were involved in civil litigation before State courts, were not satisfied with the outcome, and decided to

prosecute judges or others involved in the litigation for alleged offences against sections 34, 42 and 43 of the *Crimes Act 1914*.

These prosecutions were fatally flawed because an offence against section 34, 42 or 43 of the Crimes Act requires some nexus with Commonwealth law and there was no such nexus in the cases in question. The Director had no option but to take over and discontinue the prosecutions. However, it took a significant amount of work and resources to process the cases. A number of the people whose prosecutions were taken over and discontinued have since commenced private prosecutions against the Director alleging that he somehow became a party to an attempt to pervert the course of justice. These prosecutions had to be considered by someone other than the Director before they could be taken over and discontinued. Matters have reached a point where the DPP is considering whether to have some of the private prosecutors declared vexatious litigants. The right to bring a private prosecution has been seen as an important safeguard for civil liberties and a check on the power of the State. It seems unlikely that the provisions were meant to be used in this way.

- **Fines, costs and reparation orders**

A fine is a monetary penalty imposed on a person who has been found guilty of committing a criminal offence. In some cases a court will also order court costs against the defendant.

In 2003 – 2004 the total value of fines and costs ordered to be paid in Commonwealth matters was \$4 085 826.

Under section 21B of the *Crimes Act 1914* a court which convicts a person for a federal offence can also order that the person pay reparation to the Commonwealth in respect of any loss suffered, or any expense incurred, by the Commonwealth by reason of the offence. The court can also order the person to pay reparation to any individual who has suffered loss as a direct result of the offence.

Section 21B provides a short cut to civil recovery. An order made under section 21B can be enforced as a civil judgement. If the DPP obtains a reparation order under section 21B the normal practice is to refer the matter to the affected agency for recovery action. The DPP does not take responsibility for enforcing reparation orders unless the DPP is exercising civil remedies power in the matter.

In 2003 – 2004 the DPP obtained reparation orders with a total face value of \$34 905 838. This was an increase from 2002 – 2003, when the total value of reparation orders was \$18 799 396. As noted, it is usually the responsibility of the affected agency to enforce a reparation order. The DPP does not keep a record of how much is recovered under reparation orders.

Practice management

- **DPP Corporate Plan**

In April 2004 the DPP adopted a new Corporate Plan for the period 1 April 2004 to 31 March 2005. A copy of the Plan is at Appendix 2. The current Plan builds on previous DPP Corporate Plans. It maintains focus on acting in accordance with law and the Prosecution Policy of the Commonwealth, adhering to best practice, recruiting and developing high quality staff, and on working in partnership with investigating agencies and investigators. The Plan requires that the DPP will have regard to, identify and co-operate with referring agencies' enforcement strategies and assist with training of investigators.

- **Centrelink Investigation and Prosecution Manual**

In 1998 the DPP produced a Centrelink Investigators Manual to assist Centrelink staff in preparing briefs of evidence for the DPP. In late 2002 the DPP decided to update the Manual to take into account changes brought about by the commencement of the Criminal Code. The DPP also agreed with Centrelink that the two agencies should work to amalgamate the Manual with Centrelink's own Prosecution Manual. A team of people from Centrelink and the DPP worked together to rewrite and amalgamate the two Manuals during 2003. The result was the Centrelink Investigation and Prosecution Manual which was completed in late 2003 and which provides practical guidance for Centrelink staff involved in investigating social welfare fraud. The Manual is a good example of how the DPP can work in partnership with an investigating agency and of the excellent results which can be achieved.

- **Advocacy Training Course**

For several years the DPP has run an in-house advocacy training program for DPP prosecutors. One of the courses in the program is designed to meet the needs of new and developing advocates and gives training on the conduct of a defended prosecution case. In 2003 – 2004 the DPP conducted four in-house advocacy courses around Australia. The courses were run in Sydney, Melbourne, Perth and Adelaide and, in total, about 70 lawyers participated. In August 2004 a course was run in Brisbane and further courses are planned. In 2003 – 2004 the course used a Centrelink prosecution as a demonstration model. These cases form a significant part of the DPP's workload and it is important that prosecutors know how to conduct them to a high standard. The courses are run with assistance from Centrelink, which means that Centrelink investigators also get an opportunity to experience giving evidence in court.

- **Checklist for AFP briefs of evidence**

The Annual Report for 2002 – 2003 noted that the Director had approved a set of guidelines to assist Commonwealth investigators when preparing briefs of evidence for the DPP. The guidelines appear to be working well, but they do not apply to the Australian Federal Police. In 2003 – 2004 the DPP worked in consultation with the AFP to develop a national uniform checklist for AFP briefs of evidence. The checklist will assist AFP officers to understand the DPP's requirements for briefs of evidence and should lead to improved efficiencies for both the AFP and DPP. This is another example of how the DPP works in partnership with the investigating agencies.

- **Training for Centrelink investigators**

In the course of the year the DPP provided lawyers to help train Centrelink investigators as part of a national training course run by Centrelink. The courses were delivered around Australia and DPP lawyers from a number of regional offices participated to provide training. The training modules and materials were developed by the DPP's Legal and Practice Management Branch in Head Office.

- **Search Warrants Manual**

In the course of the year the DPP released up-dated versions of the DPP Search Warrants Manual and the DPP Electronic Monitoring Warrants Manual, which deals with telephone intercept warrants and listening device warrants under Commonwealth law. The two Manuals are updated on a regular basis and are available electronically to DPP officers and Commonwealth investigators. The Manuals provide practical guidance on obtaining, executing and defending warrants under Commonwealth law.

CHAPTER 3

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*. As a result of transitional provisions contained in those Acts, offences committed against the Corporations Law and the ASIC Laws of the States prior to 15 July 2001 are now treated as offences against those Acts.

The Commercial Prosecutions Branches also prosecute any 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 for offences against those Acts. 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. Under those guidelines 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 successful 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.

The statistics that appear in Chapter 4 include statistics for prosecutions conducted by the Commercial Prosecutions Branches.

Issues

- **Challenges to DPP functions**

In the last Annual Report it was noted that the matter of Dexter raised the issue of whether the DPP can prosecute State offences if the matter involves

only State offences and there are no related charges under Commonwealth law. The Queensland Court of Appeal dismissed an appeal against conviction and sentence by Dexter. In doing so, the Court found that the indictment was validly signed and presented. The High Court rejected an application by Dexter for special leave to appeal. The result is to confirm that, in appropriate cases, the DPP can prosecute State offences even if there are no related charges under Commonwealth law.

- **HIH**

On 3 July 2003 the Government announced that the DPP would have the carriage of any criminal prosecutions that arise from the financial collapse of HIH Insurance Limited and related companies.

HIH was Australia's second largest insurance company and its collapse is one of the largest corporate failures in Australia's history. The collapse caused considerable public concern as many individuals, organisations and businesses were left without insurance. In response, ASIC commenced an investigation and a Royal Commission was established. On 4 April 2003 the Royal Commissioner, Justice Owen, handed down a report in which he recommended, among other things, that 53 matters be referred to ASIC for investigation and possible criminal prosecution. ASIC has advised the DPP that it will not limit its investigation to the matters referred to in the recommendations and that it may refer other cases which arise out of the collapse of HIH to the DPP for prosecution.

At the time of writing five matters have come before the courts. Reports on those matters are included in the case reports that appear below.

Case reports

HIH cases

To date five prosecutions have commenced and one has been completed.

- **Abbott**

Abbott was a non-executive director of HIH. He has been charged with one offence against section 184 of the Corporations Act of dishonestly using his position as a director of HIH to gain an advantage. It is alleged that on the day prior to HIH being put into provisional liquidation Abbott used his position to secure the payment of invoices totalling \$181 445 that were owing to his private company, Ashkirk Pty Limited. No date has yet been set for a committal hearing.

- **Adler**

Adler has been charged with five offences against the Corporations Act. There are two charges under section 997(1) of that Act, one under section

997(7) and two under section 999. The charges under sections 997(1) and 997(7) allege that, on three dates in June 2000, Adler engaged in stock market manipulation designed to support the value of shares in HIH. The charges under section 999 allege that, on two dates in June 2000, Adler disseminated false information in relation to share purchases, through a journalist employed by the Australian Financial Review, knowing that the information was false and that it was likely to induce other people to buy shares in HIH. On 11 July 2003 Adler was committed for trial to the Supreme Court of NSW. The trial is set down to commence on 7 February 2005 and is listed for eight weeks.

- **Cooper**

Cooper has been charged with six offences against section 249B of the *NSW Crimes Act 1900* of corruptly offering a benefit to another person to influence him to show favour to Cooper, and with seven offences against section 178BB of the *NSW Crimes Act 1900* of publishing a false or misleading statement with intent to obtain a financial advantage. During the period of the alleged offences HIH paid approximately \$10 300 million to Cooper or his companies and a further \$1.79 million in debt was forgiven. Committal proceedings against Cooper have been set down for 10 days commencing in October 2004.

- **Howard**

In December 2003 Howard pleaded guilty to two counts of dishonestly using his position as an employee of HIH contrary to section 184(2) of the Corporations Act. On 23 December 2003 he was sentenced to an effective term of three years imprisonment with a minimum term of two years. However, the sentence was suspended as a result of an undertaking by Howard to co-operate with authorities in the prosecution of other alleged offenders.

The first charge related to secret commissions amounting to approximately \$124 000 that Howard received from another alleged offender. The second charge related to Howard's efforts to ensure that \$737 500 was paid to an alleged offender when Howard knew that the payment obligation had already been discharged.

- **Wilkie, Mainprize and Burroughs**

Wilkie, Mainprize and Burroughs are all former officers of the FAI group. They have been charged in relation to reinsurance contracts that were taken out by FAI shortly before it was taken over by HIH. It is alleged that the contracts were not taken out to manage risk but to artificially inflate the profits of FAI and give a misleading picture of the financial position of that company. Wilkie and Mainprize have each been charged with one offence against section 1309(2) of the Corporations Act, of omitting to provide

information to an auditor so that the information which was provided was misleading. Burroughs has been charged with an offence against sections 232(2) and 1317FA of the Corporations Law of failing to act honestly as an officer of a company. On 19 July 2004 all three defendants were committed for trial. No date has yet been set for a trial.

Hodgson

The defendant was the Chief Financial Officer of the Harris Scarfe group of companies. He was charged with 18 offences under sections 232(2) and 1317FA of the *Corporations Act 2001* of making false entries in the books of account of Harris Scarfe Ltd, six offences under sections 184(2) and 1400 of making false entries in the books of account of Harris Scarfe Holdings Ltd, and eight offences under sections 999 and 1400 of providing false information to the Australian Stock Exchange about the sales and profits of Harris Scarfe Holdings Ltd.

The defendant pleaded guilty to the charges at the first opportunity. He also assisted law enforcement agencies to investigate the matter and agreed to give evidence against other offenders in future proceedings. The sentencing judge imposed a separate sentence for each group of offences. The effective head sentence was six years imprisonment, which was reduced from a starting point of eight years because of the defendant's plea and co-operation. The appellant appealed against the sentence.

The South Australia Court of Criminal Appeal substituted a head sentence of five years and six months imprisonment with a non-parole period of two years and nine months. The Court found that the starting point of eight years was appropriate but that the trial judge had not made a separate reduction to reflect the value of the defendant's undertaking to give evidence against other offenders as was required to comply with section 21E of the *Crimes Act 1914*.

Hunter and Milner

This case involved the marketing of an investment scheme which involved inviting people to invest in a 'Bank Debenture Trading Program'. This was advertised as a high yield investment which was to be organised and administered by a company called Acts Net Ltd. The money raised under the scheme was to be sent offshore to be invested, on the company's behalf, by a third party investment company. The investors were given a guarantee that their money would be kept in a specific cash management account and would not be used for any purpose other than the investment.

There were ultimately two investment schemes. The first operated from September 1997 to February 1999 and the second from April 1998 to November 1998. Hunter's role was mainly to promote and sell the schemes and Milner's was to handle the financial administration of the schemes. Investors were recruited initially from New Zealand and then Victoria and Western Australia. Ultimately 80 people invested in the schemes, 30 in the first scheme and 50 in the second. They invested a total of US\$2.88 million. Both schemes failed resulting in the loss of US\$2.45 million of investors' funds.

The schemes were marketed in breach of the Corporations Act, since there was no approved deed as required under that Act. The defendants also used some of the funds to pay running expenses of a school and personal expenses contrary to the terms of the guarantee that had been given to investors.

On 20 June 2003 Milner and Hunter pleaded guilty to charges of dishonestly using their positions as company directors to gain an advantage for themselves, contrary to subsection 232(6) of the Corporations Act and to charges of offering a prescribed interest without an approved deed, contrary to sections 1311(1) and 1065(1) of the Corporations Act. They were each sentenced to a total of two years imprisonment with a minimum term of six months.

The DPP appealed against the inadequacy of the sentences. The Victorian Court of Appeal allowed the appeals and increased both the effective head sentences and the time to be served. The Court imposed new effective sentences of two years and nine months imprisonment with a minimum term of 12 months.

Following the appeal, counsel for Hunter applied for an indemnity certificate in respect of his client's costs under section 15(1) of the *Appeal Costs Act 1998* (Vic). After considering the case law, including the decision of the High Court in *Solomons v District Court of NSW* (2002) 211 CLR 119, the Court refused the application. The Court found that section 15(1) is not picked up by the *Judiciary Act 1903* and has no application in Commonwealth prosecutions.

James and Shields

James and Shields were directors of Epas Ltd, the corporate trustee of a public offer superannuation fund. The fund received contributions mainly from employer organisations in the hospitality industry on the Gold Coast. At the relevant time the fund had about \$12 million in trust. The trust deed for the fund prohibited the directors of Epas Ltd from dealing with the fund monies except on an arms length basis.

It was alleged that James and Shields used superannuation funds to finance the development of three child care centres by a company with which they had a profit-sharing arrangement. The arrangement was not disclosed to the auditor of the fund or the fund members. It was also alleged that James approved loans totalling \$3.27 million to a company in which he and Shields held a controlling interest to be used to develop a hotel/motel complex in Tasmania. Finally it was alleged that James and Shields caused the fund to lend \$1.4 million to a company that was developing a tourist resort in Queensland without disclosing that they had been promised a fee for their services. The Tasmanian and Queensland projects both failed, causing a loss to the superannuation fund of over \$4 million.

James and Shield were charged with offences of improperly using their position as officers of a company to gain an advantage contrary to sections 232(6), 1317FA and 1401 of the Corporations Law of Queensland and the *Corporations Act 2001*.

Shields pleaded guilty to the charges against him on 11 December 2003 and was sentenced to three years imprisonment with a minimum term of 12 months. James was convicted after a trial and was sentenced to three years imprisonment with a minimum term of 18 months. The sentencing judge noted that the case involved a significant breach of trust which put superannuation funds at risk, and lost over \$4 million of those funds.

McLachlan

The defendant was employed by a stockbroking firm in South Australia. It was alleged that he conducted unauthorised options trading using the accounts of approximately 70 investors. In particular, on 91 occasions he transferred losing share option positions from a trading account held by himself or an associate to a client's account without the client's knowledge or approval. As a consequence, the clients incurred losses totaling over \$800 000. In effect, losses that the defendant should have suffered on his trading activities were transferred to innocent third parties.

The defendant was charged with 58 counts of improper use of position contrary to sections 232(6) and 1317FA of the *Corporations Act 2001*. The prosecution called expert evidence concerning the workings of options trading and evidence from an indemnified witness. After a two month trial in the District Court of South Australia, the defendant was convicted on 55 counts. The defendant was sentenced to nine years imprisonment with a non-parole period of five years. He has appealed against sentence.

Rivkin

The defendant in this matter was charged with one offence of insider trading contrary to section 1002G(2)(b) of the *Corporations Act 2001*. It was alleged

that he purchased 50 000 Qantas shares at a time when he had information which was not generally available and which a reasonable person would expect to have a material effect on the value of the shares.

It was alleged that the defendant purchased the shares, through his private company, on 24 April 2001 shortly after he had a conversation with the CEO of Impulse Airlines. The conversation related to the proposed purchase of a property but in the course of discussion the defendant learned that there was a proposal to merge the business of Impulse Airlines with that of Qantas and that the airlines were waiting for approval from the Australia Competition and Consumer Commission before proceeding with the merger. The defendant also learned that the parties expected that approval would be forthcoming.

That afternoon the defendant rang his stockbroker and placed an order for 50 000 Qantas shares. The total purchase price was a little over \$139 500. A few days later the stockbroker noticed that the value of the shares had risen and notified the defendant. On 1 May 2001 the defendant placed an order to sell the shares. The shares were sold for a profit of \$2 664. At 12.20 pm on that day trading in Qantas shares was suspended and it was later announced that Qantas and Impulse Airlines had entered an agreement under which the business of Impulse Airlines would be merged with the business of Qantas.

The defendant pleaded not guilty but he was convicted after a trial which lasted for five weeks in the Supreme Court of NSW. He was sentenced to imprisonment for nine months, to be served by way of periodic detention, and fined \$30 000.

The defendant appealed against both conviction and sentence and the appeal was heard in October 2003. The appeal raised issues about the proper interpretation of insider trading provisions and about the defendant's state of health at the time of the offence and whether he was fit to stand trial. On 5 February 2004 the NSW Court of Criminal Appeal dismissed the appeal. The defendant has applied for special leave to appeal to the High Court.

Williams

Williams was a director of Cotech Pty Ltd, a company which manufactured baby furniture. The company continued to trade after it was insolvent and had no avenues for raising further funds. In the period from December 1999 to September 2000 the company incurred debts totalling \$329 979. The company went into liquidation owing \$1.7 million to unsecured creditors.

Williams pleaded guilty to 38 counts of insolvent trading contrary to the provisions of the Corporations Act. He was sentenced to 15 months

imprisonment with a minimum term of six months. This was the first occasion on which a person charged with insolvent trading has been sentenced to jail.

CHAPTER 4

Prosecution statistics

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 21 no bill applications received from defendants or their representatives. Of these, 11 were granted and ten were refused. A further ten 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 21.

Of the matters discontinued, the sufficiency of evidence was the main factor in 18 cases. Public interest was the main factor in two of the remaining cases. Of the 21 cases, ten involved fraud, four drugs and seven involved 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. Section 9(6B) empowers the Director to give an undertaking to a person that any evidence he or she may give in proceedings under State or Territory law will not be used in evidence against them in a Commonwealth matter.

In the past year the DPP gave undertakings under sections 9(6) and 9(6D) to 14 people and one undertaking under section 9(6B). The undertakings were given in a total of nine matters. In some cases, indemnities were given to more than one witness in a single matter.

Taking matters over

Under section 9(5) of the DPP Act the Director has power to take over a prosecution for a Commonwealth offence that has been instituted by another person and either carry it on or bring it to an end. This power was

exercised 14 times in 2003 – 2004. In some cases the person who had laid charges had brought proceedings against more than one defendant.

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 2003 – 2004 the Director exercised the power in relation to six defendants. One defendant was charged with drugs offences, three were charged with fraud offences, and two were charged with corporations offences. In each of these cases 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 other cases a defendant stood trial on different charges from those on which he or she was 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 these statistics.

Consent to conspiracy proceedings

Conspiracy proceedings under Commonwealth law can only be commenced with the consent of the Director. In 2003 – 2004 the Director gave consent to the commencement of conspiracy proceedings against 36 defendants in relation to nine alleged conspiracies. Six of the alleged conspiracies related to drugs offences and three related to fraud and other types of offences.

Performance indicators

The following table lists the DPP's performance indicators for the conduct of all prosecutions for 2003 – 2004 and compares them with the figures for the previous year.

Prosecution performance indicators for 2003 – 2004

Description	Target	Outcome	Details (by no. of defs)
Prosecutions resulting in a conviction	90%	98%	4 728 (out of 4 843)
Figures for 2002 – 03	90%	98%	4 608 (out of 4 726)
Defended summary hearings resulting in conviction	60%	60%	142 (out of 235)
Figures for 2002 – 03	60%	67%	174 (out of 259)
Defended committals resulting in a committal order	80%	89%	281 (out of 316)
Figures for 2002 – 03	80%	94%	257 (out of 272)
Defended trials resulting in a conviction	60%	74%	64 (out of 86)
Figures for 2002 – 03	60%	72%	85 (out of 118)
Prosecution sentence appeals upheld in summary matters	60%	80%	4 (out of 5)
Figures for 2002 – 03	60%	69%	11 (out of 16)
Prosecution sentence appeals upheld in indictable matters	60%	50%	10 (out of 20)
Figures for 2002 – 03	60%	50%	7 (out of 14)

The indicators show that the DPP is above target in four of the six areas and on target in one.

The DPP is below target in the sixth area, which is prosecution sentence appeals upheld in indictable matters. The DPP was also below target in 2002 – 2003. However, the statistics do not tell the full story. In some of the matters where an appeal was dismissed the appeal court made comments which are relevant to future cases.

In the matters of Kopa and Istogu, Williams JA noted that a number of judges had asked for guidance from an appellate court on when a term of imprisonment should be imposed in a chop chop case. He stated as follows:

These reasons have gone beyond the facts of the two cases in issue in order to indicate, in broad terms, what the approach in the future should be.

The appellant has not satisfied the court that in all the circumstances it would be appropriate to increase the sentences imposed on each respondent by providing that each should serve a short period in actual custody. However, these reasons should be given some publicity so that persons contemplating committing offences of the type in question would be aware that any sentence imposed in the future would ordinarily provide that some actual time in custody be served where a significant amount of duty was avoided.

Deliberately defrauding the revenue is a serious offence and, particularly where the amount involved is large, a significant custodial sentence is called for. As the type of offence in question is prevalent a deterrent sentence is called for. Against that background any sentence which did not require the offender to serve at least six months in actual custody where the excise avoided was more than \$500 000 would, in my view, be inappropriate. Where the amount of duty avoided was between \$250 000 and \$500 000 an appropriate sentence recognising the seriousness of the offences and the need for deterrence would ordinarily involve the offender serving at least three months in actual custody. Of course, as noted above, factors personal to the offender could justify the imposition of some other (higher or lower) sentence.

In the matter of Hussein, the court dismissed the appeal but noted that the defendant was lucky to escape so lightly and stated that the sentence should not be regarded as setting a precedent for other cases.

Prosecution statistics

In the course of the year the DPP secured convictions, or had a case found proven, against 4 728 defendants involving a total of 9 368 charges. The DPP received cases from about 40 different agencies.

The tables which follow set out details of the prosecutions completed in 2003 – 2004.

Table 1: Outcomes of successful prosecution action by DPP 2003 – 2004

No of defendants convicted of summary offences	4 279
No of defendants convicted of indictable offences	449
No of defendants committed for trial or sentence	516

Table 2: Summary prosecutions in 2003 – 2004

Defendants convicted after a plea of guilty	4 137
Defendants convicted after a plea of not guilty	142
Total defendants convicted	4 279
Defendants acquitted after a plea of not guilty	93
Total	4 372

Table 3: Committals in 2003 – 2004

Defendants committed after a plea of guilty	235
Defendants committed after a plea of not guilty	281
Total defendants committed	516
Defendants discharged after a plea of not guilty	35
Total	551

Table 4: Prosecutions on indictment in 2003 – 2004

Defendants convicted after a plea of guilty	385
Defendants convicted after a plea of not guilty	64
Total defendants convicted	449
Defendants acquitted after a plea of not guilty	22
Total	471

Table 5: Prosecutions on indictment – duration of trials in 2003 – 2004

1 – 5 days	34
6 – 10 days	27
11 – 15 days	15
16 – 20 days	6
21 – 25 days	3
26 – 30 days	2
Over 30 days	15
Total trials	102

Table 6: Prosecution appeals against sentence in 2003 – 2004

	Summary	Indictable
Number of appeals upheld	4	10
Number of appeals dismissed	1	10
Total number of appeals	5	20
Percentage of appeals upheld	80%	50%

Table 7: Defence appeals in 2003 – 2004

	Summary	Indictable
Number of appeals against sentence upheld	84	17
Number of appeals against sentence dismissed	44	18
Number of appeals against conviction upheld	10	3
Number of appeals against conviction dismissed	7	9
Number of appeals against conviction & sentence upheld	4	5
Number of appeals against conviction & sentence dismissed	5	26
Total number of appeals	154	78

Table 8: Legislation: charges dealt with in 2003 – 2004

	Summary	Indictable
Aged Care Act	1	
Agriculture & Veterinary Chemicals Code Act	3	
Air Navigation Act and Regulations	11	
ANTS (Australian Business Number) Act	2	1
ANTS (Family Assistance) (Administration) Act	16	
Australian Citizenship Act	1	
Australian Crime Commission Act	27	1
Australian Military Regulations	1	
Australian Postal Corporation Act	1	
Australian Securities Commission Act		1
Banking Act	1	
Bankruptcy Act	94	35
Census and Statistics Act	9	
Civil Aviation Act and Regulations	69	3
Commonwealth Electoral Act	3	

Table 8: Legislation: charges dealt with in 2003 – 2004 cont.

	Summary	Indictable
Copyright Act	23	
Corporations Law	64	65
Crimes (Aircraft) Act	1	
Crimes (Aviation) Act	31	2
Crimes (Confiscation) Act	2	
Crimes (Currency) Act	44	9
Crimes Act	350	184
Criminal Code	2 431	145
Customs Act	78	241
Defence Act and Regulations	6	
Distillation Act	3	
Environment Protection & Biodiversity Conservation ACT	25	6
Excise Act	56	48
Export Control Act		2
Financial Management and Accountability Act	3	1
Financial Sector (Collection of Data) Act	1	
Financial Transaction Reports Act	161	33
Fisheries Management Act	395	6
Foreign Acquisitions & Takeovers Act	3	
Fuel (Penalty and Surcharges) Administration Act	1	
Great Barrier Reef Marine Park Act and Regulations	75	
Health Insurance Act	38	
Historic Shipwrecks Act	1	
Insurance (Agents and Brokers) Act	4	2
Marriage Act and Regulations	3	1
Migration Act	81	23
National Crime Authority Act	1	
National Health Act	8	
Navigation Act		1
Non-Commonwealth legislation: Drugs	24	15
Non-Commonwealth legislation: Other	157	43
Passports Act	37	8
Primary Industries Levy Collection	9	

Table 8: Legislation: charges dealt with in 2003 – 2004 cont.

	Summary	Indictable
Proceeds of Crime Act	6	3
Protection Movable Cultural Heritage Act	1	
Protection of Sea (Prevention Pollution from Ships) Act		2
Protection Orders Act	1	
Public Order (Protection of Persons and Property) Act	17	
Quarantine Act	15	
Radiocommunications Act	4	3
Royal Commissions Act		1
Service & Execution of Process Act	2	
Social Security Act	3 776	2
Student Assistance Act	16	
Superannuation Industry (Supervision) Act	18	1
Taxation legislation	196	1
Therapeutic Goods Act	2	
Tobacco Advertising Prohibition Act	1	
Torres Strait Fisheries Act	29	2
Trade Marks Act	27	
Vagrants Gaming & Other Offences Act	1	
Veterans Entitlements Act	9	
Workplace Relations Act	1	
Total	8 477	891

Table 9: Crimes Act 1914: charges dealt with in 2003 – 2004

	Summary	Indictable
Fail to furnish name (s.3)	2	
Accessory after the fact (s.6)	6	5
Offence against Commonwealth (s.7)	1	3
Breach of recognisance (ss.20A, 20AC)	2	
Damage property (s.29)	15	2
False pretences (s.29A)	5	
Imposition (s.29B)	127	16
Fraud (s.29D)	91	137
Administration of justice (ss.32-50)	12	6
Forgery (ss.65-69)	6	1
Stealing or receiving (s.71)	7	7
Falsification of books (s.72)	1	
Bribery (ss.73 & 73A)	5	3
Resisting public officers (s.76)	1	
Computer offences (ss.76A – 76F)	7	3
Postal offences (ss.85E – 85ZA)	12	
Telecommunications offences (ss.85ZB – 85ZKB)	38	
Conspiracy (s.86)		1
Trespass on Commonwealth land (s.89)	12	
Total	350	184

Table 10: Commonwealth Criminal Code 1995: charges dealt with in 2003 – 2004

	Summary	Indictable
Attempt to commit an offence (s.11.1)	4	4
Complicity in Committing an Offence (s.11.2)	3	2
Conspiracy in Committing an Offence (s.11.5)	2	
Theft (s.131.1)	20	10
Robbery (s.132.2)	1	
Burglary (s.132.4)	10	
Aggravated Burglary (s.132.5)	5	
Equipped for Theft (s.132.7)	1	
Dishonest taking or retention of property (s.132.8)	1	1
Obtaining property by deception (s.134.1)	9	7
Obtaining a financial advantage by deception (s.134.2)	26	57
General dishonesty (s.135.1)	54	38
Obtaining financial advantage (s.135.2)	2 155	1
False or misleading statement in applications (s.136.1)	19	3
False or misleading information (s.137.1)	7	1
False or misleading documents (s.137.2)	3	1
Bribery of Commonwealth Official (s.141.1)	2	5
Corrupting benefits to C'wealth official (s.142.1)	6	
Abuse of Public Office (s.142.2)	4	
Making forged document (s.144.1)	5	3
Using forged document (s.145.1)	10	2
Falsification of documents (s.145.4)	4	
Causing harm to Commonwealth public official (s.147.1)	5	1
Threatening to cause harm to C'wealth official (s.147.2)	6	
Impersonate C'wealth official (s.148.1)	3	
Impersonation of Official by Official (s.148.2)	2	
Obstruction of Commonwealth public officials (s.149.1)	21	1
Dealing in Proceeds of Crime > \$1 000 (s.400.7)	2	
Possession of Property Suspected as POC (s.400.9)	2	2
Theft of mail receptacles, articles or messages (s.471.1)	14	4
Receiving Stolen Mail Receptacles (s.471.2)	6	1

Table 10: Commonwealth Criminal Code 1995: charges dealt with in 2003 – 2004 cont.

	Summary	Indictable
Taking or concealing mail receptacles etc (s.471.3)	7	
Damaging or destroying mail receptacles etc (s.471.6)	3	
Using Postal Service to Make Threat (s.471.11)		1
Use postal service to menace etc (s.471.12)	3	
Unauthorised Modification of Computer Data (s.477.2)	1	
Unauthorised access to, or modification of, restricted data (s.478.1)	5	
Total	2 431	145

Table 11: Defendants dealt with in 2003 – 2004: referring agencies

	Summary	Indictable
Aboriginal & Torres Strait Islander Commission	4	
Agriculture Fisheries & Forests Australia	9	
Air Services Australia		1
Attorney-General's Department	2	
Australian Bureau of Statistics	9	
Australian Communications Authority	1	
Australian Crime Commission	33	50
Australian Customs Service	31	15
Australian Electoral Commission	2	
Australian Federal Police	488	276
Australian Fisheries Management Authority	231	1
Australian Government Solicitor	1	
Australian National Parks and Wildlife Service	15	
Australian Pesticides & Veterinary Medicines Authority (also NRA)	2	
Australian Postal Corporation	44	6
Australian Prudential Regulation Authority	17	
Australian Quarantine and Inspection Service	6	1
Australian Securities & Investments Commission	40	67
Australian Taxation Office	216	66
Building Industry Royal Commission	1	
Centrelink	3 499	33
Child Support Agency		1
Civil Aviation Safety Authority	18	3
Comcare	1	
Dept of Defence	3	
Dept of Education Science and Training	4	1
Dept of Employment Workplace Relations	7	
Dept of Environment and Heritage	38	
Dept of Foreign Affairs & Trade	4	
Dept of Health and Aged Care	1	
Dept of Immigration Multicultural and Indigenous Affairs	19	1
Dept of Veterans Affairs	19	2

Table 11: Defendants dealt with in 2003 – 2004: referring agencies cont.

	Summary	Indictable
Food Standards Australia & New Zealand	1	
Health Insurance Commission	52	1
Insolvency and Trustee Service Australia	57	4
Non-Commonwealth agencies		
– State police	175	29
– Other	13	5
Royal Australian Navy Police	1	
Therapeutic Goods Administration	1	
Total	5 065	563

Table 12: Reparation orders and fines and costs

	Value: 2002 – 2003	Value: 2003 – 2004
Reparation orders made in Commonwealth cases	\$18 799 396	\$34 905 838
Fines and costs orders made in Commonwealth cases	\$5 769 217	\$4 085 826

CHAPTER 5

Criminal confiscation

Overview

Recovering the proceeds of crime is an important part of the DPP's work. In 2002 Parliament enacted the *Proceeds of Crime Act 2002*. The Act introduced a civil based confiscation regime into Commonwealth law. The courts now have power to make forfeiture orders and pecuniary penalty orders on the basis of civil proceedings, independent of the prosecution process. The Act also contains conviction based provisions which are modelled on the *Proceeds of Crime Act 1987*, but which go beyond that Act in a number of ways. The DPP has been given the function of taking confiscation action under both the conviction based regime and the civil based regime.

The 2002 Act came into force on 1 January 2003. The 1987 Act is still in force, but only applies to proceedings which were commenced before 1 January 2003.

The PoC Act 2002

The PoC Act 2002 came into operation on 1 January 2003. It provides a scheme to trace, restrain and confiscate the proceeds of crime against Commonwealth law. It can also be used to confiscate the proceeds of crime against foreign law and, in some cases, the proceeds of a crime against State law.

The Act provides for two streams of confiscation action: a conviction based stream and a civil based stream under which confiscation action can be taken independently of the prosecution process. In all there are seven types of confiscation action available under the Act:

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

The first three confiscation options make up the conviction based stream. The next four make up the civil based stream.

The responsibility for investigating cases and collecting evidence rests with the AFP and other Commonwealth investigative agencies. The Official Trustee is responsible for managing restrained property in all cases where a court directs that property be taken into custody and control.

A person whose property has been restrained can not get access to the property to pay legal costs. However, the person can apply for legal aid. If legal aid is granted, the Legal Aid Commission can recover costs against restrained assets. The result is that restrained assets can still be used, indirectly, to pay legal costs. However, the Legal Aid agencies now regulate the use of restrained money for that purpose.

The Act contains a range of provisions to protect the interest of innocent third parties. These include excluding orders, exclusion orders, compensation orders and hardship orders. In addition a court can require the DPP to give an undertaking as to costs and damages as a condition for making a restraining order.

Other recovery options

As noted above, the PoC Act 1987 is still in force. It only applies to cases that were commenced before 1 January 2003. Even so the DPP is going to be performing work under that Act, and recovering money, for some time yet.

The DPP also has power to bring proceedings under Division 3 of Part XIII of the *Customs Act 1901*, to recover profits earned from “prescribed narcotic dealings”, and under the Director’s civil remedies power, which gives the DPP power to enforce traditional civil remedies on behalf of the Commonwealth in cases where there is a connection with a prosecution. Those powers were used regularly before the enactment of the PoC Act 1987 but are now used infrequently.

Operating structure

The work in this area is performed by Criminal Assets Branches in the regional offices. The larger branches include, or have access to, the services of financial analysts. There is also a National Coordinator in DPP Head Office who coordinates the work on a national basis. The Criminal Assets Branch of Head Office also conducts case work in the ACT and southern NSW.

The DPP works closely in this area with the Australian Federal Police, the Australian Crime Commission and other investigating agencies. The DPP relies on investigating agencies to locate and collect the evidence and other material required to pursue the proceeds of crime. The DPP provides advice

and other support at the investigation stage. Indeed, in most criminal assets cases there is no clear break between the investigation stage and the confiscation 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.

The Criminal Assets Branches also conduct litigation in cases where the AFP have seized drug related goods under the provisions of the Customs Act or the ATO have seized goods under the provisions of the *Excise Act 1901* and the owner of the goods contests forfeiture.

The Criminal Assets Branches also conduct the majority of prosecutions for offences against the *Financial Transactions Reports Act 1988*. That reflects the fact that in the majority of prosecutions under that Act defendants plead guilty and the real dispute is about whether the money involved in the offence should be forfeited.

Policy

The introduction of the civil forfeiture provisions in the PoC Act 2002 marked a significant and substantial change to the DPP's practice and to the general approach to law enforcement at Commonwealth level.

The PoC Act 2002 is a law enforcement measure and should be seen in that light. The criminal assets initiative has always returned more to the Commonwealth than it has cost and the recoveries for 2003 – 2004, which was the first full year under the new Act, are very encouraging. However the amount recovered can not be the sole measure of the effectiveness of the legislation. The true test is whether the Act is operating to punish and deter crime and to disrupt criminal enterprises. Unfortunately those are not as easy to measure.

The DPP approach is to treat civil confiscation as a new tool in the armoury of law enforcement. It is not a substitute for prosecution, but an additional method for enforcing Commonwealth criminal law. The DPP sees prosecution and confiscation as two equal parts of a balanced approach to law enforcement. The DPP's preference, wherever possible, is to both prosecute offenders and recover the proceeds of their crime. However, there will be cases where it is not possible, or not appropriate, to prosecute but there will be a basis for taking action to confiscate the proceeds of crime. In

such cases the DPP is fully prepared to bring proceedings under the PoC Act 2002 notwithstanding that there may be no prosecution.

The DPP will look at two main matters when deciding whether to commence proceedings under the PoC Act 2002. The first is whether there are reasonable prospects of success in the matter and the second is whether the public interest would be served by taking confiscation action. The DPP will also look at the value of any property which is potentially liable for confiscation, since there is little point in trying to confiscate property which does not exist, and whether there are methods of recovery available to the victims of crime that might prove more effective than action under the PoC Act.

The DPP will assess the merits of a case before deciding whether to apply for a restraining order. However, the DPP does not always have the luxury of time in these matters. It is often necessary to move quickly to restrain suspicious property which is at risk of dissipation. In such cases the DPP may have to make a decision based on the information available at the time and to review the case as more information becomes available.

The DPP also works in close partnership with the Commonwealth investigating agencies in this area. Each agency has its own role and responsibilities but nothing can happen unless agencies work together. The DPP is responsible for making decisions under the PoC Act about when action will be taken and what that action will be. However, the operating guidelines provide that those decisions will only be made after consultation with the investigating agency and after the views and priorities of that agency have been taken into account.

The DPP's operating policies will be refined and developed in the light of operating experience but it is unlikely that the general approach to these matters will change.

Examinations

Part 3.1 of the PoC Act 2002 deals with compulsory examinations. An examination order must be made by a court, but the actual examination takes place before an approved examiner. A person cannot refuse to answer a question or produce a document on grounds of legal professional privilege or self-incrimination. The Act provides direct protection for people being examined, but there is no derivative use protection.

The DPP has made extensive use of the examination power. The DPP's policy is to conduct examinations as a matter of course unless there is reason not to do so. In the past year the DPP obtained 64 examination orders and conducted 46 examinations. The bulk of the examinations were conducted before members of the Administrative Appeals Tribunal who have been appointed as approved examiners. The Tribunal has been helpful in making

members available to conduct examinations and in helping to make the examination process work smoothly.

NSWCC v Murchie [2000] NSWSC 591 is authority for the proposition that examination provisions of the kind found in the PoC Act 2002 permit questions that go beyond getting details of a person's income and assets. The provisions can be used to ask a person whether they committed the alleged offences which form the basis of the confiscation action which has been brought against them.

Developments

The PoC Act 2002 has now been in force for 18 months. It has taken time for the DPP to recruit and train new staff, update information systems and develop a range of precedents, guidelines and policy documents. It has also taken time for the AFP and other agencies to recruit and train additional investigators and financial analysts to work in this area.

The initial results under the new Act are encouraging. Cases are starting to work through the system and the Act has shown itself to be an effective and robust piece of legislation. However, there is still a lot of work to be done to fully test what can be done under the Act. In particular the DPP is really only starting to explore the scope for taking civil based action in cases involving organised tax fraud and customs fraud. The Act includes provision for an independent review after three years operation. It is going to take at least that long to get a proper picture of the strengths and weaknesses of the legislation.

The total amount recovered under the criminal assets initiative for 2003 – 2004 was \$10.34 million. That includes money recovered under the 1987 Act as well as the *Proceeds of Crime Act 2002*. As at 30 June 2004, the total value of property that was under restraint under both Acts was approximately \$99.75 million, although it is unlikely that all that property will eventually be confiscated.

There have been no applications yet for a literary proceeds order.

A breakdown of these numbers is given in the tables at the end of this Chapter.

Performance indicators

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

Description	No.	Target	
Applications for restraining order that succeeded	107	100%	90%
Figures for 2002 – 2003	45	100%	90%
Applications for pecuniary penalty order that succeeded	8	100%	90%
Figures for 2002 – 2003	13	100%	90%
Applications for forfeiture order that succeeded	50	98%	90%
Figures for 2002 – 2003	31	100%	90%
Damages awarded against DPP	1	\$5 456	–
Figures for 2002 – 2003	Nil	–	–
No of cases costs awarded against DPP	2	\$91 000	–
Figures for 2002 – 2003	Nil	–	–

The performance indicators show that the DPP exceeded targets in all applicable areas in 2003 – 2004.

Damages were awarded against the DPP in one case arising under the PoC Act 1987. The defendant in the matter was convicted of a serious drug crime and a restraining order had been made over property that he owned. The defendant applied for an exclusion order to avoid the operation of automatic forfeiture. After hearing evidence from the defendant, the judge found that the restrained property had been derived from a lawful source, and was not the proceeds of crime, and made the exclusion order. The judge also ordered that the DPP pay damages in relation to some shares that had declined in value while they were under restraint.

The DPP was not given an opportunity to address the court before the order was made. If the DPP had been given the opportunity it would have argued that damages should not be awarded both because the defendant had not shown that any loss he had suffered was caused by the restraining order and also because the court should have exercised its discretion against awarding damages.

Legal costs were awarded against the DPP in that matter and in another case where a defendant appealed successfully against a ruling that was made in

favour of the DPP at first instance. The DPP also holds some costs orders in its favour in that matter.

Superannuation orders

The Criminal Assets Branches conduct 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, and been sentenced to more than 12 months imprisonment, or are found guilty of some types of disciplinary misconduct.

The Attorney-General or the Minister for Justice and Customs must sign an authorisation before the DPP can 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 2003 – 2004 the DPP obtained three superannuation orders under the CSB Act. There were no orders under Part VA of the AFP Act. Details of the orders obtained under the CSB Act are set out below.

Superannuation orders 2003 – 2004

Name	State	Date
Di Filippo	Qld	20 October 2003
Harney	NSW	18 December 2003
Standing	WA	7 January 2004

In the matter of Harney the defendant contested the case on the basis that the offences against him were not corruption offences within the meaning of the CSB Act. The defendant, who was a postal officer at the relevant time, was convicted of stealing postal items. He argued that a corruption offence requires something more than the misuse of a position.

At first instance, the court accepted the argument and declined to make a superannuation order. The DPP appealed against that decision. The NSW

Supreme Court upheld the appeal and found that the defendant's conduct fell within the definition of corruption offence. The case is reported at DPP v Harney (2004) 59 NSWLR 9.

Criminal assets confiscation tables

The tables which follow set out details of the criminal assets work conducted by the DPP in 2003 – 2004.

Table 1: PoC Act 1987: orders and forfeitures in 2003 – 2004

	Number	Value
Restraining orders	0	0
Pecuniary penalty orders	2	\$1 909 708 (*)
Forfeiture orders	1	\$1 526 044
Automatic forfeiture	2	\$304 473

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

Table 2: PoC Act 1987: restraining orders in force as at 30 June 2004

	Number	Value
No. of restraining orders in force	33	\$11 099 895

Table 3: PoC Act 1987: money recovered in 2003 – 2004

	Number	Amount recovered
Pecuniary penalty orders	8	\$2 215 813
Forfeiture orders	16	\$1 551 457
Automatic forfeiture	11	\$2 224 919
Settlements	2	\$430 000
Total recovered		\$6 422 189

Table 4: PoC Act 2002: orders and forfeitures in 2003 – 2004

	Number	Value
Restraining orders	107	\$87 864 709
Pecuniary penalty orders	6	\$528 636 (*)
Forfeiture orders	49	\$4 470 404
Automatic forfeiture under section 92	10	\$1 424 669
Literary proceeds orders	0	0

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

Table 5: PoC Act 2002: restraining orders in force as at 30 June 2004

	Number	Value
No. of restraining orders in force	104	\$88 749 193

Table 6: PoC Act 2002: money recovered in 2003 – 2004

	Number	Amount Recovered
Pecuniary penalty orders	1	\$185 488
Forfeiture orders	29	\$2 467 574
Automatic forfeiture under section 92	5	\$562 533
Literary proceeds orders	0	0
Settlements	5	\$220 845
Total recovered		\$3 436 440

Table 7: Customs Act: orders, seizures and condemnations in 2003 – 2004

	Number	Value
Restraining orders	0	0
Pecuniary penalty orders	0	0
Condemnations (*)	2	\$17 000

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

Table 8: Customs Act: money recovered in 2003 – 2004

	Number	Amount recovered
Pecuniary penalty orders		
Condemned property realised	2	\$491 412
Settlement etc.	0	0
Total recovered		\$491 412

Table 9: Criminal Assets: summary of recoveries for 2003 – 2004

PoC Act 1987 pecuniary penalty orders	\$2 215 813
PoC Act 1987 forfeiture orders	\$1 551 457
PoC Act 1987 automatic forfeiture	\$2 224 919
PoC Act 1987 settlements	\$430 000
PoC Act 1987 total	\$6 422 189
PoC Act 2002 pecuniary penalty orders	\$185 488
PoC Act 2002 forfeiture orders	\$2 467 574
PoC Act 2002 automatic forfeiture	\$562 533
PoC Act 2002 settlements	\$220 845
PoC Act 2002 total	\$3 436 440
Customs Act condemnation	\$491 412
Customs Act total	\$491 412
Grand total	\$10 350 041

CHAPTER 6

International

Practice

The international work of the DPP falls into two main 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, particularly the Commonwealth Attorney-General's Department.

This is an important area of work for the DPP. Crime is a matter of global concern and does not respect international boundaries. No country can afford to look at crime in purely national terms. The case work in this area is carried out mainly in the DPP regional offices and is coordinated by the Commercial and International Branch in Head Office. The Head Office Branch also provides information and support to the DPP regional offices in this area of work. The Commercial and International Branch is the main point of liaison with the International Crime Branch of the Attorney-General's Department and works closely with that Branch.

There is also potentially work for the DPP under the *International War Crimes Tribunals Act 1995* and the *International Criminal Court Act 2002*. However, there was no case work under either of those Acts in 2003 – 2004.

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 conducts 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 requests for extradition in any case 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. In such cases the authorities of the relevant State or Territory deal directly with the Commonwealth Attorney-General's Department.

The 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 received instructions from the Attorney-General's Department to act, or provide advice or other assistance, in relation to 16 new requests from foreign countries. Ten of those matters have resulted in court proceedings in Australia. In the same period, the DPP requested the Attorney-General's Department to make five extradition requests to foreign countries 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 cases where a foreign country sought advice from Australia before making an extradition request.

The main challenge in this area remains to find ways to speed up the extradition process. If a person decides to challenge every step of the process, and has sufficient resources, extradition proceedings can take years to work through the courts. A delay of that kind can frustrate the criminal process. There have been cases where an extradition request has been withdrawn because of the delay and cases where a person has died of natural causes while contesting extradition.

Extradition requests involving the DPP*: source country

Country	Incoming Requests	Outgoing Requests#
USA	4	
United Kingdom	2	2
Belgium	1	
Germany	1	
Hong Kong	3	
Argentina	1	
Israel	1	
Turkey	1	
Brazil	1	
Ireland	1	
Greece		1
Thailand		1
Malaysia		1
Total requests	16	5
	(no. for previous year 30)	(no. for previous year 12)

* Includes work done both on provisional arrest requests and formal extradition requests.

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
Fraud	11	1
Murder/Assault	3	
Sex offences	1	
Drugs	1	3
People Smuggling		1
Total requests	16	5

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.

The Attorney-General's Department is the Central Authority for mutual assistance for Australia. The Central Authority handles all incoming and outgoing mutual assistance requests. The DPP regularly consults with the Attorney-General's Department about issues arising under the *Mutual Assistance in Criminal Matters Act 1987* and provides advice on issues such as the admissibility of evidence. The DPP also provides a high level of technical support to Commonwealth investigators and regularly participates in training on MA issues, often in conjunction with the Attorney-General's Department. The DPP has a close and productive working relationship with the International Crime Branch of the Attorney-General's Department.

Incoming requests for assistance sometimes require that search warrants be executed or that evidence be formally taken in court in Australia. The DPP provides assistance when search warrants are required and conducts any court proceedings in Australia. During the past year, there has been a noticeable increase in the number of requests for evidence to be taken in Australia for courts in other jurisdictions by way of video-link. These matters sometimes pose practical difficulties because of differences in time, language and legal systems. As technology becomes more widely available, and more sophisticated systems are developed to allow this type of evidence to be taken, it is likely that these types of requests will increase, and will form a valuable contribution to global law enforcement.

The DPP also has conduct of court proceedings in Australia in any case where a foreign country asks that action be taken in Australia to enforce proceeds of crime orders made in a foreign country.

In the past year, the DPP was involved in 41 incoming requests for assistance, compared with 31 requests in 2002 – 2003. The 41 cases do not include matters where a request for assistance by a foreign country did not require the exercise of coercive power in Australia. Such matters do not normally require action by the DPP.

The DPP also prepares the paperwork for outgoing mutual assistance requests in Commonwealth matters. The DPP does not generally get involved in mutual assistance requests initiated by State and Territory agencies. However, the DPP does deal with requests arising out of joint taskforces comprising law enforcement officers from both Commonwealth and State or Territory agencies. In the past year, Australia made 135 requests in matters involving the DPP, compared to 85 requests in 2002 – 2003. In all, the cases involved dealings with 40 countries.

The figures show there has been a 58% increase in the number of outgoing requests made in matters involving the DPP. This increase is consistent with the increase in outgoing requests for assistance over the last four years. This

is an indication of the growing importance of mutual assistance in criminal matters. 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 address major crime on an international basis.

The DPP's experience has shown that there is a high level of goodwill and cooperation between countries that participate in the mutual assistance regime and the agencies that are involved in this work. Evidence and other material obtained under the mutual assistance regime is regularly used to prosecute and recover the proceeds of crime both in Australia and overseas. However the process can take time to achieve a result. There are also still restrictions on the type of assistance which some countries are able to provide and there are some countries which do not participate in the regime.

Mutual assistance requests involving the DPP: source country

Country	Incoming requests	Outgoing requests*
Argentina	1	1
Austria		2
Belgium	1	4
Bermuda		2
Brazil		1
British Virgin Islands		4
Canada		2
Egypt		1
Fiji	1	2
France	1	4
Germany	2	8
Greece		1
Hong Kong SAR	1	17
Italy		3
Japan		2
Jersey		2
Lebanon		2
Macau SAR		1
Malaysia		1

Country	Incoming requests	Outgoing requests*
Monaco		1
New Zealand	4	6
Norway	1	
Peru		1
Poland	1	
Russia	1	
Singapore		3
South Africa	1	2
Spain	2	1
Sweden		1
Switzerland	2	5
Taiwan		1
Thailand		5
The Netherlands	6	20
The Netherlands Antilles		1
Turkey		2
United Arab Emirates		1
United Kingdom	6	11
USA	8	12
Vanuatu	1	2
Zambia	1	
Total requests	41	135
	(no. for previous year 31)	(no. for previous year 85)

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

Mutual assistance matters involving the DPP: type of matter

Type of Matter	Incoming	Outgoing
Drugs	13	54
Fraud	12	51
Terrorism	2	8
Laundering	3	3
Proceeds of Crime	4	4
Other	7	15
Total:	41	135

CHAPTER 7

Law reform

The DPP's vision is for a fair and just society where laws are respected and obeyed and there is public confidence in the justice system. One of the ways in which the DPP seeks to realise this vision is by contributing to law reform to ensure that criminal laws are effective. The DPP aims to provide sound, constructive and timely input in relation to the operation of the criminal laws of the Commonwealth and the criminal justice system.

The Policy Branch in Head Office co-ordinates the DPP's work in this area in conjunction with the Legal and Practice Management Branch and also with the Commercial and International Branch and the Criminal Assets Branch, both of which have special expertise in their areas of activity.

The DPP's main role in the law reform process is to identify practical deficiencies in the criminal law and bring them to the attention of the Attorney-General's Department. The DPP does not develop criminal law policy, but regularly provides comments on practical issues and legal issues that arise in the course of policy development and on practical aspects of proposed legislation. As the agency responsible for conducting prosecutions and confiscation action under Commonwealth law in all Australian jurisdictions, the DPP is in a unique position to provide insight into the practical operation of existing and proposed laws. The DPP also has some insight into legal issues that arise in the investigation process since it is part of the DPP's role to provide advice to Commonwealth investigators. The DPP has a close working relationship with the Criminal Justice Division of the Attorney-General's Department and with other relevant areas of that Department.

The DPP performs its role in this area through case based discussions, general liaison meetings, and through participating in inquiries, meetings and conferences that discuss law reform issues. It is in the interests of both the Office and the Australian community to ensure that the law makers are properly informed about practical issues and that, when changes are made to the criminal law, they are both workable and effective.

In the past year the DPP provided comments on a wide range of legal issues and legislative proposals. They included issues relating to the investigation and prosecution of terrorism offences, including questions relating to the investigation period, the granting of bail, and the setting of non-parole periods. The DPP also commented on proposed new offences of associating

with a terrorist organisation and on issues relating to the transfer of remand prisoners in the interests of security. The DPP also provided comments on proposed amendments to the *Crimes (Foreign Incursions and Recruitment) Act 1978* designed to cover cases where a person has engaged in hostile activities while in or with a terrorist organisation.

The DPP also provided comments on issues relating to the operation of the Criminal Code and on proposals for a range of new offences, including those relating to the misuse of the telecommunications service and the contamination of goods. The DPP also commented on draft legislation dealing with the protection of national security information and the use of surveillance devices in Commonwealth investigations. There was also a significant amount of work carried out in relation to legal and practical issues that have arisen under the *Proceeds of Crime Act 2002*. The DPP is maintaining a running list of issues that may need to be addressed by legislation.

Issues for the coming year include a review of the DPP Policy on Prosecution Disclosure, further work on possible amendments to the *Proceeds of Crime Act 2002*, and continued work to assist in the development and possible implementation of proposals currently being considered by the Attorney-General's Department and other policy development agencies.

CHAPTER 8

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. The Branch is under the overall direction of the Deputy Director, Corporate Management, who also coordinates the resource management work 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 is responsible for negotiating and implementing Certified Agreements and Australian Workplace Agreements. The Section is also responsible for ensuring that the DPP meets its reporting requirements in relation to human resource issues. The Financial Management Section is responsible for the national management of the DPP's finances.

Significant developments

- **Certified Agreement**

The DPP Agreement for 2003 – 2006 was certified by the Industrial Relations Commission on 26 November 2003. As at 30 June 2004 there were 412 staff covered by the Certified Agreement. The salary scales are included in the tables at the end of this Chapter.

- **Australian Workplace Agreements**

The DPP has an AWA in place for each substantive SES employee and all those who are acting in the SES for a period of more than six months as the result of a merit selection process.

- **Intranet and internet**

The Personnel site on the DPP Intranet is proving to be popular with staff. It is continually updated to provide all resource management information online to DPP officers. The information includes the Director's Personnel Instructions, Explanatory Notes, the Certified Agreement, and other policies and procedures including the Performance Management Scheme and the Workplace Diversity Program.

The DPP has an on-line recruitment site on the DPP Internet home page. That ensures that potential applicants have electronic access to information relating to current vacancies and to DPP policies and procedures. The site has been very successful and experience has shown that it has been utilised effectively by potential applicants.

- **Human resource policies**

The following Director's Personnel Instructions and policies were approved and published in 2003 – 2004:

- Public Transport;
- Resignations;
- Salary Packaging (in-house);
- SES Staffing Policy;
- Workplace Diversity Program 2004;
- Probation (revised); and
- Conditions of Engagement (revised).

In addition, many Director's Personnel Instructions and Explanatory Notes were updated to reflect changes resulting from the implementation of the new Certified Agreement.

Guidelines have also been finalised on recruitment and selection to assist all Executive Officers and Personnel/Recruitment Officers and managers.

- **Access to personnel records**

All DPP staff now apply for leave, overtime and temporary assignment of duties online using the Employee Self Service System (ESS), which operates via the SAP system. Staff can also update addresses and commence or alter their banking arrangements online. There is also an online reporting function which allows managers and support staff to access a range of reports through ESS. Managers and supervisors now approve leave online using the Email system. A number of enhancements have been made to ESS and it is currently operating very effectively.

- **Performance management**

The DPP has a Performance Management Scheme for non-SES staff. There was a full cycle of the scheme during 2003 – 2004 and eligible staff will advance in salary with effect from 1 July 2004. 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 corporate goals of the DPP.

In the course of the year training was provided to all staff in relation to the performance management scheme. The training was designed to provide practical assistance to employees involved in preparing and monitoring performance agreements and giving performance feedback. Sample performance agreements were developed to assist staff in the process.

Staff

Overview

The staff of the DPP is the most valuable resource of the Office. About half the staff are lawyers or in-house counsel. The remainder provide a range of services including litigation support, financial analysis, accountancy, IT, library services, HR, finance and administrative support.

As at 30 June 2004 the total number of staff was 492 (471 at 30 June 2003). A breakdown of this figure appears in the tables at the end of this Chapter. The average staffing level for the year was 468 (455.8 for 2002-2003). The average full time equivalent for the year was 454 (435 for 2002-2003). All 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 endeavours to ensure that relevant training is provided as part of the performance management cycle. The personal development plans are tailored to meet the needs of the individual to ensure that the employee has the skills required for their current position and for career development. Personal development plans are also used to develop training programs and to ensure that every staff member receives a fair allocation of training resources.

The DPP conducts in-house legal training to ensure that DPP lawyers comply with continuing legal education requirements which apply to them. The DPP also runs an in-house advocacy training course for DPP lawyers. In the course of the year, as part of a program to raise awareness of ethics, and promote the highest standards of ethical behaviour, the DPP arranged for the Australian Public Service Commission to deliver education sessions on the APS Values and Code of Conduct. All DPP staff were required to attend.

In addition, as mentioned previously, all staff were given the opportunity for training in performance management in the course of the year.

Direct expenditure on external training for the year was \$143 675 (\$134 334 in 2002 – 2003). There was also considerable in-house training and on the job training which was 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. New representatives are 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 attempts 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 uses the diversity of the Australian community it serves. Section 18 of that Act provides that an agency head must establish a workplace diversity program. A new Workplace Diversity Plan for the DPP was approved in April 2004. The aim of the Plan is to support diversity by creating an environment that enables our people to realise their full potential and helps them contribute to the DPP's vision and mission. Essentially the Plan aims to capitalise on the contributions that people with different backgrounds, perspectives and experiences can make to the DPP workplace.

The DPP aims to integrate the principles of workplace diversity into all aspects of personnel management. This involves raising awareness of, and promoting, core values and standards of behaviour among all staff and embedding the principles into all human resource management policies and practices, including the performance management scheme and the selection and induction processes.

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

Some of the employment levels of EEO target groups have varied since last year. The number of women employees has increased from 292 to 319. The number of staff who have identified a disability has decreased from 21 to 19. The number of people who have identified themselves as having a non-English speaking background has remained at 79.

As at 30 June 2004, the office employed two Indigenous Legal Cadets, one in Brisbane and one in Melbourne.

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 regular staff meetings or special purpose meetings called to discuss specific issues.

Commonwealth disability strategy

The DPP keeps its employment practices under review to ensure that they comply with the requirements of the *Disability Discrimination Act 1992*. The key practices are those that relate to selection and recruitment, training and development, health and safety, and workplace diversity. The tables at the end of this Chapter include a report on the implementation of the Commonwealth Disability Strategy.

Financial management

General

The DPP uses the SAP R/3 Financial Management Information System to meet the requirements of the *Financial Management and Accountability Act 1999* 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 meet the requirements of the FMA 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 departmental accrual expenditure for 2003 – 2004 was \$69.998 million, against net accrual revenue of \$71.568 million (in 2002 – 2003 net accrual expenditure was \$61.281 million and net accrual revenue was \$64.471 million).

Purchasing

The DPP complies with core purchasing policies and principles.

Consultancy services

The DPP engages consultants in areas where it does not have in-house expertise. The main area where consultants were used in 2003 – 2004 related to 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.

The tables at the end of this chapter include details of consultancies for the past year which had a contract value greater than \$10 000. During 2003 – 2004 the DPP engaged 14 consultants in that category, at a total cost of \$824 770.

Accounts processing

When possible the DPP pays accounts 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 2003 – 2004. During 2003 – 2004 the DPP notified the Public Works Committee of two projects between \$2 million and \$6 million.

The larger of these projects involved a new office fitout in Sydney. The Office moved into the new premises in May 2004. The second project relates to a new office fitout in Melbourne. The relocation is planned for August 2004.

Internal Audit and Fraud Control

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

The DPP has an integrated risk management framework which standardises all risk assessment methods and documentation. Using this framework, the DPP has prepared a fraud risk assessment and a fraud control plan.

The latest approved Fraud Risk Assessment and Fraud Control Plan was settled in June 2002. As at 30 June 2004 the DPP was in the process of updating both the Fraud Risk Assessment and Fraud Control Plan in accordance with the Australian Standard and the revised Commonwealth Fraud Control Guidelines.

During 2003 – 2004 one matter was investigated as a possible fraud. The investigation concluded that the case did not involve fraud. There were no relevant breaches of the APS Code of Conduct.

Other areas

Information technology

The DPP has a computer installation which is made up of IBM-compatible personal computers with local and wide area networks and in-house applications running in a client-server environment. The basic office tools are Windows 2000 and Office 2000. At the time of writing, the DPP is upgrading its software to Windows XP and Office2003. All IT assets are leased.

All DPP staff now have access to secure email via the Internet using a system called Fedlink. The DPP provides access to the Internet through stand alone computers. Only library staff have desktop access to the Internet.

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 action by the Criminal Assets Branches;
- File Registry System (FILE), which keeps a record of administration files.

The DPP runs an SAP R/3 Resource Management Information System to support finance, payroll and human resource management. The system operates on Windows 2000 servers using MS SqlServer database. The Office also operates the FIRST library system that also runs MS SqlServer database on the Windows 2000 server.

The DPP has adopted a litigation support system known as LSS as 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 2003 – 2004.

Libraries

The DPP has a library in each office staffed by qualified librarians. 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 in which it is based and contributes to the dissemination of legal and other information throughout the DPP. Every DPP officer has access, through the library network, to the combined resources of all the DPP's libraries. This includes a high quality current awareness service.

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 through the Intranet. Library staff conduct regular training sessions on the use of these electronic resources.

The Head Office library has a national coordinating and management role. National services include maintaining DPP in-house databases, distributing manuals, disseminating information, 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.

During 2003 – 2004 the DPP began work to re-design OPAC (the catalogue access system) which will improve and simplify access to library material for legal staff. The librarians are also currently testing a request management module. The module is designed to maintain a record of material obtained when an issue is researched, and integrate it with data already held on the library system, so as to streamline and simplify the research process if the same issue arises again. This is part of the continuing process of enhancing the library management system.

External scrutiny

In 2003 – 2004 the Auditor-General reported that he had issued an unqualified audit report for the DPP's 2002 – 2003 financial statements.

The DPP was one of several Agencies included in a cross agency performance audit tabled in Parliament during 2003 – 2004. Information was also provided to the Auditor-General for several other cross agency performance audits.

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 2003 – 2004.

During 2003 – 2004 the DPP spent \$71 818 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. A portion of electricity costs for Sydney, Canberra and Melbourne is sourced from green energy options.

The DPP has developed a comprehensive Intranet site for use by staff which includes research material, manuals, guidelines, directions and other documents which used to be distributed in paper form. The DPP has also developed an Employee Self Service scheme which gives employees electronic access to personnel records and which has further reduced the demand for paper.

Business regulation

The DPP has no direct 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

The responsibility for ensuring that attention is paid to the status of women rests with the Director and the Deputy Directors as part of the management of the Office.

As at 30 June 2004, 65% of all DPP employees were women and 64% of the lawyers were women. The number of female lawyers has increased from 61% in 2002 – 2003. Approximately 32% of SES positions were filled by women. That number has not changed since last year.

The DPP is represented on the Steering Committee of Women in Law Enforcement Strategy (WILES) which develops and implements strategies to encourage women to pursue careers in law enforcement.

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 2004

	ACT	NSW	VIC	QLD	SA	WA	TAS	NT	TOTAL
Director	1								1
SES Band 3	2								2
SES Band 2	2	1	1	1					5
SES Band 1	5	14	7	7	1	5			39
PLO	8	17	14	14	6	6	2	1	68
SLO	2	29	23	10	6	8		1	79
LO 2	3	8	8	10	1	2	2	2	36
LO 1	2	14	3	3	4	2	2		30
Exec 2	7	2	3	1					13
Exec 1	7	5	3	3	1	1			20
APS 6	7	4	3			2	1	1	18
APS 5	8	2	5	5	1				21
APS 4	6	17	9	13	2	8	2	1	58
APS 3	2	21	11	15	7	10	2	2	70
APS 2		10	12	1		2			25
APS 1		1	1				1		3
Cadet			1	1					2
Article Clerk			2						2
Totals	62	145	106	84	29	46	12	8	492

Legend:

SES	Senior Executive Service
PLO	Principal Legal Officer
SLO	Senior Legal Officer
LO	Legal Officer
Exec	Executive Officer
Cadet	Indigenous Australian Cadet – Legal
Article Clerk	Article Clerk – Legal

Table 1(b): Staffing summary 2003 – 2004

Category	Number
Statutory Office Holders	1
Total staff employed under the PS Act	458
Total staff employed under the DPP Act	33
Total	492

The total number of non-ongoing employees included in this table is 50.
All staffing tables include inoperative staff.

Table 2: Staff as at 30 June 2004 by gender and category

Category	Full Time		Part Time	
	Male	Female	Male	Female
Director	1			
Senior Executives –				
Band 3	2			
Band 2	4	1		
Band 1	25	10		4
Legal Officers	76	114		23
Executive Officers	16	11		1
APS 1 – 6	46	124	2	28
Cadet		2		
Article Clerk	1	1		
Total: 492	171	263	2	56

Table 3: Staff usage by Office

Office	Actual Average Staffing 2003 – 2004
ACT	57.56
NSW	136.32
VIC	106.90
QLD	77.99
SA	30.66
WA	42.17
TAS	8.03
NT	8.53
Total	468.16

Table 4: EEO Profile as at 30 June 2004

Classification	Male	Female	ATSI	PWD	First language English plus another	First language other than English
Director	1					
SES Band 3	2					
SES Band 2	4	1				1
SES Band 1	25	14		1	1	2
Legal	76	137	2	5	21	6
Executive	16	12			2	4
APS	48	152	2	13	25	16
Cadet		2	2			1
Article Clerk	1	1				
Total 492	173	319	6	19	49	30

Legend:

ATSI Aboriginal and Torres Strait Islander

PWD Person with disability

Table 5: Salary Scales as at 30 June 2004

Classification	Salary
SES Band 3	\$175 736 – \$187 838
SES Band 2	\$141 150 – \$160 585
SES Band 1	\$128 439 – \$135 704
Principal Legal Officer	\$92 452 – \$96 433
Executive Level 2	\$80 346 – \$94 044
Senior Legal Officer	\$69 733 – \$84 733
Executive Level 1	\$69 733 – \$75 259
Legal Officer 2	\$50 842 – \$60 861
APS 6	\$54 514 – \$62 542
APS 5	\$50 515 – \$53 533
Legal Officer 1	\$41 962 – \$49 189
APS 4	\$45 346 – \$49 189
APS 3	\$40 742 – \$43 930
APS 2	\$36 806 – \$39 680
APS 1	\$19 036 – \$35 008

Table 6: Consultancies for 2003 – 2004 with a value over \$10,000

Consultant	Purpose	Cost	Reason used
Intersect Alliance*	Provide IT Security advice	\$20 500	Special expertise not available in office
Unique World*	Develop proof of concept for portal project	\$28 052	Special expertise not available in office
Forward Media	SAP support and development	\$103 749	Special expertise not available in office
Presence of IT*	SAP support and development	\$232 664	Special expertise not available in office
Hassell Pty Ltd	Architectural services for office refurbishments	\$212 378	Special expertise not available in office
Peddle Thorp	Architectural services for office refurbishments	\$43 175	Special expertise not available in office
DJ Jones*	Quantity Surveyor	\$12 012	Special expertise not available in office
Heyday Group*	Electrical engineering	\$14 960	Special expertise not available in office
Wood & Grieve*	Electrical & mechanical engineering	\$32 549	Special expertise not available in office
Bassets*	Electrical & mechanical engineering	\$10 560	Special expertise not available in office
Interior Engineering*	Electrical & mechanical engineering	\$13 829	Special expertise not available in office
CCD Consulting	Security advice for new fitout	\$13 794	Special expertise not available in office
Urbis	Independent property advice	\$48 563	Special expertise not available in office
Synergy Business Solutions	Internal Audit	\$37 985	To provide an Independent assessment

Consultancies marked * were not publicly advertised.

Table 7: Resources for outcome

	Budget for 2003 – 2004 (1)	Actual 2003 – 2004	Budget 2004 – 2005
Administered appropriations	–	–	–
Total administered expenses	\$16 508 000	\$2 203 181	\$22 850 000 (2)
Price of departmental appropriations Output 1.1	\$66 177 000	\$69 108 000	\$75 212 000
Total revenue from government appropriations	\$66 177 000	\$69 108 000	\$75 212 000
Contributing to price of departmental outputs	\$66 177 000	\$69 108 000	\$75 212 000
Revenue from other sources Output 1.1	\$1 716 000	\$2 423 924	\$1 823 000
Total revenue from other sources	\$1 716 000	\$2 423 924	\$1 823 000
Total price of departmental outputs	\$67 893 000	\$71 531 924	\$77 035 000
Total estimated resourcing for outcome	\$67 893 000	\$71 531 924	\$77 035 000

- (1) The figures are as per the original budget for the year.
These figures were updated at additional estimates.
- (2) Reason for variation is the removal of reparation orders from CDPP revenue, see note 2.20 of the Financial Statements.

Table 8: Average staffing level (full time equivalents)

	2003 – 2004	2004 – 2005 (estimate)
Average staffing level (number)	454	480

Table 9: Commonwealth Disability Strategy Report

The following report addresses the performance criteria of the DPP as employer under the Commonwealth Disability Strategy.

Performance Indicator	Performance Measure	Current level of performance	Goals for 2004 – 2005	Actions for 2004 – 2005
1. Employment policies, procedures and practices comply with requirements of the <i>Disability Discrimination Act 1992</i> .	Number of employment policies, procedures and practices that meet the requirements of the <i>Disability Discrimination Act 1992</i> .	The DPP has several employment policies which meet the requirements of the <i>Disability Discrimination Act 1992</i> . Reasonable adjustment principles have been applied in relation to ongoing staff with disabilities.	Ongoing assessment to ensure that employment policies are relevant for all employees of the DPP. DPP WDP addresses the needs of members of staff with disabilities.	Amend or update policies, procedures and practices if necessary and in line with legislative regulatory and case law developments. Continue to meet the requirements of the <i>Disability Discrimination Act 1992</i> .
2. Recruitment information for potential job applicants is available in accessible formats on request.	Percentage of recruitment information requested and provided in: <ul style="list-style-type: none"> • accessible electronic format; and • accessible formats other than electronic. Average time taken to provide accessible information in: <ul style="list-style-type: none"> • electronic format; and • formats other than electronic. 	100% available via fax, electronic e-mail and mail. E-mail requests provided within 48 hours. Phone requests dispatched within 48 hours of request.	100% of customer requests processed via desired medium within 48 hours of receipt. Extensions of closing periods granted consistent with any delays in providing information.	DPP will continue to provide information to potential job applicants in accessible formats on request. Respond to requests as necessary.
3. Agency recruiters and managers apply the principle of reasonable adjustment.	Percentage of recruiters and managers provided with information on reasonable adjustment.	No specific actions, however, in practice the principle has been in place at the DPP for the greater part of the past decade. Workplaces are modified as necessary to accommodate staff with disabilities.	Maintain staff awareness of principles and practices.	Formal training for selection committee members during 2004 – 2005 covering the application of the principles of reasonable adjustment.

4. Complaint/ grievance mechanism, including access to external mechanisms, in place to address issues and concerns by staff.	Established complaints/ grievance mechanisms, including access to external mechanisms in operation.	The DPP has a well established process for complaints and grievance handling. This includes access to external mechanisms to an Employees Assistance Program, the Merit Protection Commission and the Australian Industrial Relations Committee.	All employees continue to be provided with access to Employees Assistance Program services and complaints/ grievance mechanisms.	Information on complaints/ grievance mechanisms are reviewed and updated as necessary.
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CHAPTER 9

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.

Reports on some of the cases prosecuted by the Commercial prosecutions Branches appear in Chapter 3.

General prosecution cases

Aller

This defendant was charged with one count of defrauding the Commonwealth contrary to section 29D of the *Crimes Act 1914* and one count of obtaining a financial advantage by deception contrary to section 134.2(1) of the Criminal Code. The two charges reflect the fact that the alleged conduct was committed both before and after the Criminal Code was enacted.

It was alleged that the defendant obtained sickness benefits, special benefits and the aged pension under the false name of Nola Benson between July 1985 and March 2003. In order to facilitate the fraud Aller had opened a bank account under the name of Benson into which the social security payments were made. Aller also received benefits in her own name during the period of crime. Aller dishonestly obtained a total of \$146 906. The defendant pleaded guilty to the charges against her.

The defendant is a widow aged 77 and has two previous convictions for stealing. She is also in poor health and cares for an adult son who is in poor health. At first instance the court imposed a fully suspended sentence on the defendant. The DPP has appealed against penalty on the basis that the offences are so serious, given the amount involved and the length of time over which the fraud was committed, that the sentence is manifestly inadequate despite the defendant's personal circumstances.

Assmaoui

This matter involved a request for mutual assistance from Spain that evidence be taken pursuant to section 13(1) of the *Mutual Assistance in Criminal Matters Act 1987* from an Australian citizen. The Australian witness had been on holidays in Barcelona when she was allegedly raped. Spanish

authorities requested that evidence be taken from her by way of video link to Spain. This was done on the late afternoon of Wednesday, 21 April 2004. A magistrate presided over the proceedings in NSW.

The defendant was ultimately convicted in Spain and sentenced to ten years imprisonment by the Provincial Court of Barcelona. The case demonstrates a high level of international co-operation which led to the successful outcome of a prosecution of serious sexual offences in Spain.

Austawitworraikan

The defendant was a Thai fisherman who was charged with offences against sections 100(2) and 101(2) of the Fisheries Management Act and also with an offence against section 149.1(1) of the Criminal Code of obstructing a Commonwealth official.

Austawitworraikan was the master of a foreign fishing vessel detected by the navy approximately two nautical miles inside the Australian Fishing Zone. The vessel was one of a group of four boats. Austawitworraikan's boat failed to respond to a navy request to heave to and be boarded and attempted to flee across the boundary of the Australian Fishing Zone, thereby forcing the navy to commence a hot pursuit. Austawitworraikan failed to respond to rifle shots fired across his vessel. The boat was eventually boarded while underway by a navy party.

The vessel was found to be a large ice boat. There were between 1 500 and 2 500 kilograms of fresh fish on the deck together with processing baskets containing fish. The vessel's freezers were about 70% full with some containing reef fish including shark. It was later ascertained that there was a further 16 000kg of fish in the freezers, thereby bringing the total amount of fish to 18 430kg. The vessel had sophisticated navigational equipment.

Austawitworraikan pleaded guilty to all charges against him. On 18 May 2004 he was sentenced to four months imprisonment in relation to the offence against the Criminal Code and was fined a total of \$100 000 in relation to the offences against the Fisheries Management Act.

Batori

On 5 June 2003 Batori made threatening comments to a fellow passenger on board a Virgin Blue airline plane which was preparing to take-off for a flight from Melbourne to Brisbane. Batori was removed from the aircraft and detained by AFP officers before being transferred to a mental health facility for psychiatric assessment. On 1 July 2003 Batori was formally arrested and charged with threatening to endanger the safety of an aircraft contrary to section 24(1) of the *Crimes (Aviation) Act 1991*. Batori was remanded in custody and did not apply for bail.

When the committal proceedings began, the defence submitted that Batori was unfit to stand trial due to mental instability. In accordance with the procedure laid down in the *Crimes Act 1914*, the magistrate referred the matter to the Victorian County Court to determine whether Batori was fit to stand trial. A judge of the County Court empanelled a jury to determine whether Batori was fit to stand trial. The jury found that he was not. The judge then made formal findings that there was a prima facie case against Batori and that Batori was unlikely to become fit to be tried within the next 12 months. The judge made an order directing that Batori be detained in a prison for 14 days pursuant to section 20BC(2)(b) of the *Crimes Act*. By that time Batori had already spent 373 days in custody at a psychiatric hospital.

The practical effect of the order was that Batori remained at the hospital, initially under the terms of the order and then under the provisions of the *Victorian Mental Health Act 1986*.

Cerullo

The defendant in this case was charged with possessing a prohibited import, namely cocaine, contrary to section 233B(1)(c) of the *Customs Act 1901*. The drugs were found by police in August 2000 in the garage of a unit occupied by Cerullo. The cocaine was in the form of 476 compressed discs hidden inside barrels. The discs weighed a total of 316 kg. The wholesale value of the cocaine was estimated to be \$31 million. This was the largest seizure of cocaine in South Australian history.

Cerullo was a resident of Norway but he lived in Australia from 1970 to 1994. He travelled to Australia shortly before the drugs were imported, ostensibly to establish a stone cutting and mausoleum business. The DPP alleged that the business was a cover for illegal activity.

The evidence showed that Cerullo had gone to considerable lengths to establish a second identity, which he used when dealing with the cocaine. The unit where the drugs were found had been leased in the false name. Cerullo had also purchased real estate and other property using the false name.

The trial lasted for two months and involved approximately forty witnesses. The defendant was convicted in December 2003 and was subsequently sentenced to 20 years imprisonment with a non-parole period of 14 years. He has lodged an application for leave to appeal.

The DPP took action against the defendant under the *Proceeds of Crime Act 1987* and obtained a restraining order from the Supreme Court of South Australia over property in Australia and Italy. However, the court also made an order which gave the defendant access to restrained property in order to

pay his legal expenses. The DPP discontinued the confiscation action when it became clear that the defendant's legal costs were going to exceed the value of the restrained property.

Featherstone

This matter came to notice as the result of a US investigation into paedophilia. The defendant attempted to purchase a number of videos through an Internet website that, unknown to him, was being operated covertly by US police. There was a lengthy exchange of emails between the defendant and the website in which the defendant devised a scheme for importing the videos that would avoid detection by the Australian Customs Service. Ultimately the defendant attended at a post office in Australia and collected the videos. He was arrested shortly after taking the videos home. At that point one of the videos was running on his VCR.

When police searched the defendant's home they found an extensive collection of child pornography. In all there were about 50 000 images of child pornography contained on computer discs, videos, photographs and a computer hard drive. The defendant was charged with one offence under the *Customs Act 1901* of importing child pornography and one offence under the *NSW Crimes Act 1900* of possessing child pornography. The defendant was convicted on both charges.

At first instance a magistrate sentenced the defendant to two years imprisonment on both charges but fully suspended the sentence. The DPP appealed against the penalty. The appeal court upheld the appeal and sentenced the defendant to an effective sentence of two years imprisonment with a minimum term of one year.

Griffiths

In June 2003 the Attorney-General received a request from the USA for the extradition of the defendant in respect of offences of conspiring to violate US copyright laws, criminal infringement of copyright and aiding and abetting criminal infringement of copyright. The defendant was alleged to be a member and co-leader of an internet piracy group known as "Drink or Die", based in Virginia USA, which was engaged in obtaining copyright articles, stripping security protection from them and distributing the articles to other members of the group. The articles included software, games, film and music. The defendant carried out his activities by means of the Internet from a computer located at Bateau Bay, NSW. At no stage did he travel to the USA.

The defendant was arrested pursuant to a provisional warrant issued under the Extradition Act and proceedings were conducted in the Local Court of NSW to determine his eligibility for extradition. On 25 March 2004 a

magistrate determined that the defendant was not eligible for extradition on the basis that the Act did not apply to the circumstances of this case. On 7 July 2004, on appeal to the Federal Court, the order of the magistrate was quashed. The defendant was taken into custody pending extradition. The defendant has lodged an appeal to the Full Federal Court.

The case raises the question of how the principles of dual criminality operate in a case where a person is alleged to have committed an offence against the copyright law of another country by means of the Internet without leaving Australia.

Hart

Hart, a registered tax agent, was charged with four counts of defrauding the Commonwealth contrary to section 29D of the *Crimes Act 1914*. The charges relate to a scheme marketed by Hart to selected clients for the purpose of reducing their taxable income.

Shortly before the end of the financial year, Hart would suggest to a client that they set up a management company to manage the affairs of their operating entity. Fees were then pre-paid to the management company, usually for an amount that eliminated or substantially eliminated the taxable income of the operating entity. The management company set up for the purpose of the scheme was controlled by a Hart company. To eliminate the taxable income of the management company, Hart arranged to transfer losses from another of his companies.

The prosecution contended that the management companies were a sham and that the transfer of the losses to the management company was not authorised by the provisions of the *Income Tax Assessment Act 1936*. The net effect of the transactions was to eliminate the tax liability of both the operating and management companies.

On 24 June 2004 Hart was convicted on two counts and the jury was unable to reach a verdict on the remaining two counts. He was sentenced on 25 June 2004 to four years imprisonment with a non-parole period of 18 months. Hart has appealed both the conviction and sentence. Action under the *Proceeds of Crime Act 2002* is still in progress against Hart.

Hussein

The defendant in this matter was engaged in a business of manufacturing tobacco for distribution. He did not pay excise on the tobacco. He was charged with two counts of defrauding the Commonwealth contrary to section 29D of the *Crimes Act 1914*.

Police executed search warrants on three sets of premises connected with the defendant. At the first premises they found 169kg of cut tobacco packed

in plastic bags ready for sale. They found a further 168kg of leaf tobacco at the defendant's home and 21 bales of leaf tobacco at a factory. The total amount of excise which should have been paid if all the tobacco had been manufactured and sold was of the order of \$523 500.

At trial, the defendant pleaded guilty to a charge relating to the 169kg of cut tobacco but not guilty in relation to a second charge which alleged that he had engaged in an ongoing business of manufacturing tobacco without paying excise. The defence made a no case submission arguing, among other things, that there was no fraud in relation to the operation of the business. The trial judge ruled in favour of the prosecution on the no case submission. The judge found that the defendant's actions, in manufacturing and selling tobacco in secret, placed the revenue under threat and that that can amount to fraud. The judge also found that the charge was not duplicitous. The defendant was subsequently found guilty by the jury.

On 19 December 2002, Hussein was fined \$3 500 in relation to the first charge and released on a bond in relation to the second. He was also ordered to pay reparation to the Commonwealth in the sum of \$39 838 and the court ordered that a number of items be forfeited under section 19 of the *Proceeds of Crime Act 1987*.

The DPP appealed against the sentence and Hussein appealed against conviction. Both appeals were dismissed. The Victorian Court of Appeal effectively upheld the rulings of the trial judge in relation to the issues of law, but was not satisfied that the penalty imposed on Hussein was manifestly inadequate.

Masefield

This was an extradition case in which the US authorities sought the extradition of the defendant for one offence of conspiring to defraud the Internal Revenue Service and four offences of making false statements in US tax returns. The alleged offences involved approximately US\$400 000 of undeclared income over a seven-year period with tax evaded of approximately US\$200 000. On 19 April 2004 Masefield consented to his extradition pursuant to section 18 of the *Extradition Act 1988*. He was returned to the USA on 28 May 2004.

In the course of the proceedings Masefield applied to the Magistrate's Court to vary the bail conditions that had been imposed upon him because he claimed that he wanted to voluntarily return to the US and surrender to the USA Attorney's Office in New York. Masefield produced an airline ticket in his name for travel to the US via Singapore and London on a flight leaving at 5.10pm that day. The DPP opposed the application on the basis that the magistrate had no power to grant bail except for the purpose of facilitating proceedings under the Extradition Act and that there was no way of ensuring

that Masefield would actually travel to the US once he left Australia. The magistrate ruled against the DPP and proceeded to vary the bail conditions so that Masefield could leave Australia.

After consultation with the Attorney-General's Department, and acting on instructions from that Department, the DPP made an urgent application to the Federal Court seeking a declaration that the decision of the magistrate was invalid and an injunction to restrain Masefield from leaving Australia. At 4.45pm a judge of the Federal court issued an injunction to prevent Masefield leaving Australia.

In the event Masefield decided to consent to his extradition in accordance with normal procedures and there was no final ruling on the issues raised before the Federal Court. The Federal Court proceedings were dismissed by consent with no order as to costs.

Mohr

On 31 August 2003 Mohr was detected at Sydney airport after arriving from Bangkok on board a Thai Airways flight. Following a routine baggage examination, he was found to have 500 grams of heroin concealed in the lining of his suitcase. When he was questioned by Customs officers Mohr admitted carrying the drugs. He said that he agreed to import the heroin in order to clear a debt he owed to a man in Thailand. He said that he was to receive between US\$3 000 and \$5 000 upon delivering the heroin, which was to take place at a Sydney hotel. The heroin had a street value between \$1.25 million and \$1.75 million. Mohr is aged 25 and is a German citizen who lived in Thailand prior to his arrest.

Mohr was charged with importing a prohibited import contrary to section 233B(1)(b) of the *Customs Act 1901*. He pleaded guilty and was sentenced to nine years imprisonment with a non-parole period of four years and six months.

Ng, Tran and Le

This case related to the operation of a website called "MP3/WMA Land" which allowed members of the public to listen to, and download, unauthorised copies of music recordings and music video clips free of charge. The Website was linked to some mirror websites and provided access to a large number of CDs and individual songs. Some of the CDs were available through the website before they had been officially released in Australia. During the time it operated the Website received over seven million hits.

Ng, Tran and Le were all university students. Ng established and maintained the Website, Tran later helped to maintain and update it. Le's role was to remix songs onto compilation CDs which were uploaded and posted on the

Website. The operation of sites of this kind has a significant impact on the Australian music industry because artists and producers derive no income when their works are made available to the public free of charge. The matter first came to notice as a result of complaints made by an organisation known as Music Industry Piracy Investigations.

This was the first criminal prosecution in Australia for offences of this kind. Ng was charged with 22 offences against the *Copyright Act 1968*, Tran was charged with 17 offences, and Le was charged with 29 offences. All three were convicted. Ng was given a suspended sentence and ordered to perform 200 hours of community service. Tran was given a suspended sentence and fined. Le was ordered to perform 200 hours of community service.

Operation Spada

In this matter five defendants, Aistrope, Wahby, Tieleman, Pearce and Wharton, were charged with conspiring to defraud the Commonwealth contrary to sections 86(1) and 29D of the *Crimes Act 1914*. The conspiracy involved the setting up and selling of a mass marketed tax reduction scheme that involved franchises in an internet service provider called Servcom Australia Pty Ltd. The main promoters of the scheme were Aistrope and Wahby. They approached Perth accountants Tieleman and Pearce for advice. Tieleman and Pearce brought in a Melbourne accountant, Wharton, to assist. The five conspirators then designed the franchise investment, which they marketed predominantly in the goldfields of Western Australia to taxpayers earning above \$40 000 per annum.

For a fee of \$150, a taxpayer was able to purchase a Servcom franchise with a face value of \$39 500. The investment was supposedly funded by way of two loans from a group of companies controlled by Wharton. The first loan was to be for \$29 500 to be repaid over 20 years from the profits of the business. The second, a short-term loan of \$10 000, was to be repaid when the taxpayer received a tax refund, which would happen when they claimed a tax deduction for the \$39 500 that they supposedly invested in the scheme. Investors were able to claim a total refund of up to \$18,000. There was also a loan indemnity agreement which ensured that the investor would not have to repay the \$29 500 loan if Servcom never made a profit. This was a bald, blatant and quite fraudulent scheme. With up to 1 430 franchises available, the potential loss to the ATO was about \$27 million.

The matter was investigated by the ATO and the National Crime Authority, as it then was. In December 2002 charges were laid against all five defendants. At that time Aistrope and Wahby were outside Australia. Aistrope was subsequently arrested while travelling in Turkey and extradited to Australia. Wahby voluntarily returned from Egypt. Both subsequently pleaded guilty and gave evidence at the trial of Tieleman, Pearce and Wharton. Aistrope was

sentenced to three years imprisonment with a minimum term of 10 months. Wahby was also sentenced to three years imprisonment with a minimum term of 14 months. At the conclusion of the trial Tieleman, Pearce and Wharton were all convicted and were sentenced to five years imprisonment with a minimum term of 18 months.

Tieleman, Pearce and Wharton have appealed against their convictions. The appeals are likely to be heard in about December 2004. All five defendants have applied for leave to appeal against sentence.

Pham

This case is typical of many of the tax cases prosecuted by the DPP. The defendant operated a business known as the Indochine Noodle Bar and Restaurant. The business was owned by a company which acted as trustee for a family trust. It was alleged that the defendant maintained a false set of business records which were used to misrepresent the income earned by the business. The defendant provided the false records to a tax agent who prepared an income tax return for the trust which showed a false level of income.

The tax return disclosed that in the financial year ended 30 June 1998 the trust earned total business income of \$586 392 when in fact the trust earned about \$786 392. The total tax evaded was between \$94 000 and \$97 000. On 17 June 2004 the defendant pleaded guilty to one count of defrauding the Commonwealth contrary to section 29D of the *Crimes Act 1914*. He was sentenced to two years and nine months imprisonment with a minimum term of nine months.

Putland

The defendant in this case was charged with offences against the *Crimes Act 1914* and the *Bankruptcy Act 1966* arising from the management of a transport business in the Northern Territory. The defendant persistently failed to remit group tax in respect of the business and, after being declared bankrupt in February 1992, continued to operate using other people's names in an attempt to trade his way back to solvency. He also provided false statements to the Official Trustee in Bankruptcy and sought to frustrate the recovery of assets by creditors of the failed business.

In August 2001 the defendant pleaded guilty in the Supreme Court of the Northern Territory to eight offences. He was sentenced to an aggregate term of four years imprisonment with a minimum term of 12 months. The defendant appealed against penalty but the Court of Criminal Appeal dismissed the appeal. The defendant then sought leave to appeal to the High Court. The issue raised on the appeal was whether section 52 of the

Sentencing Act (NT), which allows a court to impose an aggregate term of imprisonment, applies in Commonwealth cases.

The High Court granted leave to appeal but dismissed the appeal, delivering its judgment on 12 February 2004. The majority of the High Court found that section 52 was a procedure picked up in Commonwealth matters by section 68 of the *Judiciary Act 1901*. The Court noted that the effect was that offenders may be sentenced under different rules in different places but the majority found that this did not make the provisions invalid on Constitutional grounds. The decision is reported at *Putland v The Queen* [2004] HCA 8.

Roberts and Urbanec

The defendants in this case were charged with drug offences. It was alleged that Roberts travelled to the African country of Benin and returned with over three and a half kilograms of cocaine. It was alleged that Urbanec was an accomplice who remained in Melbourne and provided advice and assistance to Roberts in connection with the importation. Roberts was charged with importing a commercial quantity of cocaine contrary to section 233B(1)(b) of the *Customs Act 1901*. Urbanec was charged with being knowingly concerned in the importation of a commercial quantity of cocaine contrary to section 233B(1)(d) of the Customs Act.

The case became complicated because Roberts' defence was that he had not imported the cocaine. He claimed that he travelled to Benin on the instructions of a member of the Victoria Police Drug Squad. He claimed that when he returned to Australia another member of the Drug Squad gave him the cocaine with instructions to deliver it to a person who the Drug Squad wanted to set up for prosecution. Roberts claimed he did as he was told by the police officers because they threatened that he would be charged with drug offences if he did not cooperate. The two Drug Squad members named by Roberts had been charged with drug offences by the Victoria Police Ethical Standards Department but those charges had not been dealt with.

The DPP called the two officers at the trial to refute Roberts' claim that they had given the cocaine to him. The witnesses stated in a voir dire hearing that they were prepared to answer questions in relation to the Roberts/Urbanec investigation but not in relation to the charges against them. They said they would claim privilege against self incrimination if they were asked questions in relation to those matters. The trial judge allowed the officers to give evidence on that basis.

The defendants were convicted of the charges against them. Roberts was sentenced to 13 years imprisonment with a non-parole period of 10 years. Urbanec was sentenced to nine years imprisonment with a non-parole period of six years.

The defendants appealed against conviction. By the time the appeal came on for hearing the two Victoria Police officers had pleaded guilty to drug charges and had been sentenced to terms of imprisonment. The Victorian Court of Criminal Appeal reviewed the conduct of the proceedings against Roberts and Urbanec and the procedures followed by the trial judge. The Court refused leave to appeal.

Robinson

On 29 May 2003 Robinson checked in at the Qantas domestic counter at Melbourne for a flight to Launceston. He did not check in any luggage. Shortly after the flight left Melbourne Robinson, who was carrying two wooden pickets, two aerosol cans and two cigarette lighters, got up from his seat and went to the galley area of the plane. When he arrived at the galley, he hit a flight attendant in the face with one of the pickets. He then started stabbing a second attendant in the head with the pickets. Passengers eventually overpowered Robinson and restrained him. The pilot returned to Melbourne.

The first flight attendant suffered a deep 4cm long laceration which required surgical repair. The second attendant suffered lacerations to his head which required sixteen stitches, as well as bruising and soft tissue injury to his back.

When he was questioned by police Robinson said that he had intended to take control of the plane and crash it into the walls of the Jerusalem National Park to kill everybody on board. He said that crashing the plane would release the devil and the devil and God could do battle.

Robinson was charged with one count of attempting to hijack an aircraft and five counts of committing an act of violence on an aircraft, including attempted murder of a flight attendant. On 15 July 2004 Robinson was found not guilty by reason of mental impairment. He was ordered to be detained pursuant to section 20BJ(1) of the *Crimes Act 1914*.

Roche

In March 2000 Roche travelled to an al-Qaeda training camp in Afghanistan where he received training in explosives and surveillance techniques. Following discussions with senior members of al-Qaeda, Roche entered a conspiracy to target the Israeli Embassy in Australia. He was also given the task of setting up an al-Qaeda cell in Australia. After he returned to Australia, Roche took a number of steps to advance the conspiracy, including attempting to recruit people to assist him and conducting video surveillance of the Israeli Embassy in Canberra and the Israeli Consulate in Sydney. In mid-August 2000 Roche was ordered by al-Qaeda to stop what he was doing.

Roche was arrested by the Australian Federal Police on 18 November 2002 and was charged with conspiring to blow up the Israeli Embassy, an offence against the *Crimes (Internationally Protected Persons) Act 1976*.

Roche initially pleaded not guilty and the case proceeded to trial. Roche elected to give evidence at his trial. In the course of his cross-examination by counsel for the DPP Roche changed his plea to guilty. Roche also agreed to provide information to the AFP. Roche was convicted on the charge against him and was sentenced to nine years imprisonment with a non-parole period of four years and six months. The judge noted that he took 12 years as the starting point for the sentence but reduced the term to give credit for co-operation and the plea of guilty.

The DPP and Roche have both appealed against sentence.

Villawood prosecutions

This case involved criminal proceedings against 17 people who were alleged to have committed offences at the Villawood Immigration Detention Centre in NSW.

On 31 December 2002 there was a riot at the centre which caused extensive damage to the facility. In addition, a number of detainees attempted to escape and some detainees obstructed or intimidated staff at the centre. Eleven people were charged with offences arising from the riot, although charges against six of them were dropped after they were removed from Australia by the Department of Immigration, Multicultural and Indigenous Affairs.

On 8 December 2002 a detainee escaped from the centre. He was recaptured the following year and charged with offences. On 14 February 2003 a group of detainees escaped from the centre. Three of them were recaptured and charged with criminal offences.

The defendants were charged with various offences including escaping from immigration detention contrary to section 197A of the *Migration Act 1958*, attempting to escape from immigration detention, damaging Commonwealth property contrary to section 29 of the *Crimes Act 1914*, obstructing a Commonwealth official in the performance of their functions contrary to section 149.1(1) of the *Criminal Code 1995*, and taking and driving a conveyance without consent contrary to section 154A(1)(a) of the NSW Crimes Act.

All but three of the defendants pleaded guilty to the charges against them. They were sentenced to terms of imprisonment ranging from three to six months. Two of those who pleaded not guilty were convicted and sentenced to terms of imprisonment. The final defendant was acquitted by a magistrate.

Vo

This defendant arrived at Sydney airport on board a Cathay Pacific Airlines flight from Hong Kong on 4 February 2003. Following questions by a Customs officer, her baggage was searched. An x-ray was also performed on her shoes, which revealed a substance concealed in their soles. Further testing by Customs officers confirmed that the substance was heroin. During a record of interview Vo denied any knowledge of the heroin in her shoes, claiming she had purchased them in Vietnam during a recent visit to that country. The heroin was found to be 317 grams, with an estimated street value of \$754 400. Vo is a single female aged 43 years. She is an Australian citizen of Vietnamese origin.

The defendant was charged with importing a prohibited import contrary to section 233B(1)(b) of the *Customs Act 1901*. She pleaded guilty and was sentenced to seven years imprisonment with a non-parole period of four years and six months.

Voronov and Feldman

This case arose from a joint investigation by the Australian Federal Police, the Australian Taxation Office and Centrelink into the activities of people involved in the manufacture and distribution of large quantities of counterfeit clothing through party plan selling in NSW. The clothing was falsely marked with logos and labels that made it appear that it had been manufactured by reputable and well known companies which, in fact, had no connection with the clothing.

In March 2003 the AFP, with assistance from ATO and Centrelink, executed search warrants on several premises including a factory at Arncliffe, storage facilities leased by Voronov and the homes of both defendants. The investigators found a substantial number of fake brand t-shirts and other clothing items, some of which were being altered when the warrants were executed. They also found screen printing equipment, false labels and documents relating to the organisation of the party plan scheme.

Voronov and Feldman were both charged with 15 offences against section 148(c) and (g) of the *Trade Marks Act 1995* and 15 offences against section 148(1)(a) of that Act. Both defendants were convicted of the charges against them and both were sentenced to 12 months imprisonment. One of the defendants, Feldman, had a prior conviction for similar offences against the Trade Mark Act. The magistrate found that the defendants were principals behind a large, professionally conducted business which was misleading consumers and undermining the reputation of established manufacturers. The defendants have appealed against conviction.

Wagstaff, Michael and others: Operation Scylla

This matter involved an organised scheme to lodge false income tax returns claiming refunds which were not payable. The offenders claimed total refunds of \$1.6 million. Over \$1.127 million was paid before the scheme was detected. The matter was investigated by the Australian Crime Commission with assistance from the Australian Taxation Office.

Wagstaff was the main architect of the scheme. He was also a senior officer of the Australian Taxation Office. Between 1995 and 2001 he used his position to obtain details of personal tax records and set up false identities. With the assistance of Michael, he used the records, together with forged supporting documents, to prepare and lodge false tax returns.

Wagstaff and Michael recruited others to perform the work required to support the scheme. That included obtaining blank group certificates, creating false name bank accounts and processing the refunds that were paid into those accounts. The proceeds were shared between the principals and those whom they recruited.

Wagstaff and Michael were both charged with defrauding the Commonwealth contrary to section 29D of the *Crimes Act 1914* and equivalent offences against the Criminal Code. Both pleaded guilty to the charges against them. Michael was sentenced to five years imprisonment with a non-parole period of three years. Wagstaff gave significant assistance to the authorities. As a result his sentence was reduced from five years with a non-parole period of three years to four years with a non-parole period of two years and six months. Wagstaff was also ordered to pay a pecuniary penalty under the *Proceeds of Crime Act 2002* in the sum of \$430 000.

To date 10 other people have been charged with offences arising out of the scheme. Six of those people have been convicted and the proceedings against them are completed. The other four defendants are still before the courts.

Criminal confiscation cases

Aminaka

On 14 May 2003 Aminaka pleaded guilty to an offence against section 15(1) of the *Financial Transactions Reports Act 1988* of failing to make a report in relation to the transfer of currency into Australia. The offence was a serious offence for the purpose of the *Proceeds of Crime Act 2002* since it involved more than \$50 000. The currency involved Japanese Yen and Australian dollars with a total value of about \$71 500. The money was hidden in Aminaka's luggage. The DPP obtained a restraining order under section

17 of the PoC Act 2002. The DPP also obtained an examination order and Aminaka was examined before the Administrative Appeals Tribunal.

Aminaka admitted that he knew it was wrong not to report the money. He claimed he acted to avoid delays in transferring money through banks in Japan. The money was automatically forfeited to the Commonwealth by operation of section 92 of the PoC Act on 14 November 2003. However Aminaka applied, out of time, for an order that the money be excluded from forfeiture. The DPP resisted the application on the basis that the money had already been forfeited and that the application was out of time. The DPP also argued that the application could not succeed on the merits because the money was an instrument of the FTR Act offence, and because Aminaka could not satisfy a court, on the balance of probabilities, that the money was lawfully acquired. The matter did not proceed to hearing as the case was resolved by a consent order declaring that the money had been forfeited.

De Gaunt

This case was investigated by the Australian Crime Commission. It is alleged that De Gaunt was involved in distributing cannabis, ecstasy and amphetamines in the Cairns region of north Queensland. Criminal charges have been laid against him and have not yet been resolved. The confiscation action related to a property which De Gaunt purchased, without a mortgage, for \$400 000 at a time when he had been unemployed for a long period and had no money in the bank. The investigators traced the purchase money back to six people who had advanced money to De Gaunt but who, themselves, did not have the apparent resources required to fund the purchase.

The DPP obtained a restraining order under section 19 of the PoC Act against the property on the basis that there were reasonable grounds to suspect that it had been purchased using the proceeds of crime. The restraining order was made before De Gaunt was arrested for the criminal offences. On 4 February 2004 the DPP applied for a forfeiture order in respect of the property. There was no appearance by De Gaunt and a judge of the Queensland District Court made the forfeiture order.

Subsequently the lawyer for De Gaunt contacted the DPP and advised that he had made a mistake in the matter. He had been operating under the impression that the court could not make a forfeiture order until after completion of the criminal proceedings. He filed an application on behalf of De Gaunt to set aside the forfeiture order.

The case was resolved when De Gaunt's lawyer provided material to the DPP which showed that \$67 000 of the money used to purchase the property had come from lawful sources. The DPP agreed to a consent order which allowed De Gaunt to recover that amount from the proceeds of selling the property.

On 26th June 2004 the Official Trustee sold the property at auction for \$433 000

Gaborit

In 2000 Gaborit was convicted in the USA of importing compressed cannabis resin into the USA from the Caribbean. Upon his release from jail he returned to Australia. Following the introduction of PoC Act 2002, the DPP decided to take civil based action against a house that was bought by Gaborit for \$425 000 shortly before his arrest in the USA and that he transferred into his partner's name following his arrest. The house was valued at \$850 000. On 10 March 2003 the DPP obtained a restraining order over the house under section 19 of the PoC Act 2002. In a compulsory examination Gaborit admitted that the property was purchased using the proceeds of his drug importations into the US.

The complicating feature was that Gaborit's partner had entered into a contract to sell the house for \$410 000 to a third party claiming that she had power of attorney from Gaborit that authorised her to do so. She then decided not to complete the contract and the third party commenced action in the Supreme Court of Queensland seeking an order for specific performance against Gaborit.

The confiscation action was settled when Gaborit and his partner consented to a forfeiture order being made in relation to the property and the DPP and the third party agreed to orders which allowed the property to be transferred to the third party on payment of \$630 000.

Iredell

The defendant in this case was detected attempting to leave Australia for Thailand with \$102 000 in cash that he had not declared. He was charged with an offence against section 15 of the Financial Transactions Reports Act and the DPP obtained a restraining order under section 17 of the PoC Act 2002 in respect of the \$102 000. The defendant pleaded guilty to the offence against the FTR Act and was fined.

A breach of section 15 is a serious offence for the purpose of the PoC Act 2002. It followed that Iredell faced the prospect of automatic forfeiture of the \$102 000 unless he could obtain an exclusion order in relation to it. The DPP obtained an examination order and examined Iredell. As a result of the examination, the DPP was satisfied that the \$102 000 was obtained from a lawful source and was being taken to Thailand for a lawful purpose, namely to purchase used car parts. The DPP discontinued the confiscation action against Iredell and the money was returned to him.

Lambert

The case arose from a request for Mutual Assistance made to Australia by the UK which alleged that a UK citizen called Lambert had deposited the proceeds of crime into two bank accounts in Australia. It was alleged, in effect, that Lambert stole money from the UK Department of Defence.

Inquiries conducted by the AFP established that there was a significant amount of money in the bank accounts. The Australian authorities contacted the UK authorities, who advised that they had no objection to Australia taking action to confiscate the money in the bank accounts. On 30 July 2003 the DPP obtained a restraining order under section 19 of the PoC Act 2002 on the basis that the money in the Australian accounts was reasonably suspected of being the proceeds of a foreign crime. The DPP applied for forfeiture orders under section 49 of the Act.

Lambert did not apply for an exclusion order under the PoC Act 2002 in relation to either of the Australian bank accounts. However, there was an application for an exclusion order in relation to one account by a company called Corporate Solutions Pty Ltd. The account was held in the name of that company and the company claimed that it owned \$26 000 of the \$86 000 that was held in the account.

On 13 May 2004 a judge of the Queensland District Court made a forfeiture order in relation to \$175 157 held in the first bank account. The application in relation to the second account was stood over so that Corporate Solutions Pty Ltd could provide material to support its claim in relation to the \$26 000. After checking the material the DPP was satisfied that the company had a legitimate claim to \$26 000. The matter came back before the District Court on 10 June 2004. Shortly before that date UK lawyers acting for Lambert wrote to the DPP asking that the remaining money in Australia be remitted to the UK to be dealt with by the courts in the UK or, in the alternative, that the Australian proceedings be adjourned to give Lambert time to apply for a release of money in the UK to enable him to contest the proceedings in Australia. The DPP declined to consent to either order.

On 10 June 2004, lawyers acting for Lambert appeared before the District Court in Brisbane and made a further application for an adjournment. The application was refused and the Court made a forfeiture order in the sum of \$86 000 with a direction under section 73(2)(c) of the PoC Act 2002 that the sum of \$26 000 be paid to Corporate Solutions Management Pty Ltd.

Marshall and Clayton

These defendants came to the notice of Queensland police when they began converting Australian dollars into Euros in amounts of less than \$10 000 at cash dealers in Brisbane. Queensland police arrested the defendants

and also seized \$109 224 and Euro 47 375. The total value of the cash was \$189 245. The Queensland police contacted the AFP when the nature of the case became apparent.

Some of the money was found in steel cylinders where a field test revealed traces of ecstasy. It was suspected that the money came from drug offences committed in Australia and that Marshall and Clayton were changing the money into Euros so it could be taken back to Europe. However, that could not be proved. The defendants were charged with structuring offences against section 31 of the *Financial Transaction Reports Act 1988*, and the DPP obtained a restraining order under section 19 of the PoC Act 2002 against the money.

The DPP subsequently obtained a further restraining order under section 19 over a house which Marshall's de facto wife had bought with assistance from Marshall. The evidence showed that Marshall provided \$100 000 cash to assist in the purchase of the house. Clayton and Marshall were examined before the Administrative Appeals Tribunal and gave an implausible account as to the source of the cash that had been seized and the money used to help buy the house.

The DPP applied for forfeiture orders under section 49 of the PoC Act 2002 on the basis that the cash and the house were either the proceeds of an indictable offence against Commonwealth law or the proceeds of an indictable offence of Commonwealth concern (a State drug crime with the proceeds being processed through the banking system in a way that involved a breach of Commonwealth law).

The PoC action was resolved by consent orders. On 29 August 2003 the District Court at Brisbane ordered that Marshall's de facto pay a pecuniary penalty order of \$100 000, representing the amount she received from Marshall. On 30 September 2003 the District Court ordered that the restrained sum of \$189 245 be forfeited.

On 27 May 2004 both defendants pleaded guilty to the charges under the FTR Act. Clayton was sentenced to six months imprisonment to be released forthwith on a good behaviour bond. Marshall, who was the more serious offender, was sentenced to 12 months imprisonment with a minimum term of four months.

The Minister for Justice and Customs subsequently approved a payment of \$94 000 to the Queensland authorities under the equitable sharing program to reflect the significant contribution made by the Queensland police to the successful outcome of this matter.

Mirabella, Voustinellos and others

The defendants in this matter were alleged to have set up a scheme to defraud the ATO by claiming refunds of sales tax which were not payable. Five of the defendants were charged with offences of being knowingly concerned in defrauding the Commonwealth. The defendants obtained \$364 335 from the ATO. One of the participants was an ATO officer whose role was to process false sales tax returns.

The proceeds derived from the scheme were shared among the defendants, with the largest share going to Mirabella. The DPP obtained restraining orders over property held by Mirabella and Voustinellos. None of the other suspects had any identifiable property that was worth restraining.

The PoC action against Mirabella was resolved when he agreed to a civil based pecuniary penalty order in the sum of \$185 488. In return for that agreement, the DPP agreed not to seek a PPO for any higher amount to reflect other crimes that Mirabella may have committed. The PoC action against Voustinellos was resolved when he agreed to a civil based forfeiture order in respect of \$91 276 that was held by the Official Trustee under the restraining order. This was higher than the amount that Voustinellos derived from the present scheme, but there were other matters alleged against Voustinellos that could have been covered by a PPO if the case had proceeded as contested litigation.

In September 2003 the criminal proceedings against Voustinellos and Mirabella came to an end when a magistrate declined to commit them for trial. Hennessey and Wesolowski both pleaded guilty to the criminal charges. At the sentencing proceedings, they were ordered to pay PPOs of \$27 484 and \$58 000. Khan died before the criminal proceedings against him were completed.

Point of View Restaurant

This case involved an amount of approximately \$250 000 that had been paid into a bank account in structured amounts. The DPP obtained a restraining order under section 19 of the PoC Act 2002 which secured the money while the AFP made inquiries to determine the source of the funds. The inquiries established that the money was the property of a company and that it had been misapplied by a director of the company. As a result of the inquiries, the DPP was able to show that the money was the proceeds of crimes against the *Financial Transaction Reports Act 1988*, the *Corporations Act 2001* and the Criminal Code of Queensland.

The company was in liquidation. When the liquidator found that the money had been restrained he applied to become a party to the PoC action. The DPP accepted that the liquidator had an interest in the money. On 25 May

2004 the case was resolved by consent orders under which the money was forfeited to the Commonwealth, but an order was made under section 55(2)(a) of the PoC Act directing the Commonwealth to pay the forfeited amount to the liquidator, after deduction of costs incurred by the Official Trustee.

Rahardja

This case related to the activities of an Indonesian citizen who was alleged to have committed bank fraud in Indonesia. It was alleged that Rahardja, as President of PT Bank Harapan Sentosa, was involved in the establishment of fraudulent loan arrangements which resulted in a loss to the bank of approximately \$400 million. Rahardja left Indonesia when the offences came to light. In 1999 he was located in Australia. Indonesia made an extradition request in relation to Rahardja, but he died in Sydney in January 2003 while still contesting extradition.

Inquiries conducted by the AFP, with assistance from Indonesia, established that Rahardja and related entities sent approximately \$30 million to Australia in the period prior to his death. Much of the money was used to buy and develop real estate. By the time Rahardja died, most of the real estate had been sold and the funds moved off shore. However, some of the funds were still in Australia. When the PoC Act 2002 came into operation on 1 January 2003, it provided a basis for the DPP to take civil based action against property still in Australia. The DPP applied for restraining orders under section 19 of the PoC Act 2002 on the basis that the money still in Australia was reasonably suspected of being the proceeds of moneylaundering offences against Australian law. The DPP alleged that the money was property derived from transactions that involved the use of money that could be traced back to offences in Indonesia.

In July 2003 the DPP obtained restraining orders under section 19 of the PoC Act in relation to money held in bank accounts in NSW and WA. There was no appearance in the proceedings by any of the Rahardja entities and none of them applied for an exclusion order. In March 2004 the DPP obtained forfeiture orders under section 49 of the Act in relation to \$334 000 held in bank accounts in NSW and \$302 000 held in bank accounts in WA. In April 2004 the Minister for Justice and Customs decided that the money recovered in the matter should be paid to Indonesia in recognition of the significant contribution made by the Indonesian authorities to the successful outcome of the proceedings.

There is a further set of proceedings in relation to approximately \$1.2 million that was located in a bank account in Hong Kong. In December 2003 the Hong Kong authorities obtained a restraining order over the account at the request of Australia. The proceedings in relation to that money have not been completed.

Thompson

Over a twelve year period Thompson defrauded Centrelink by claiming an age pension in a false name. For part of the time she worked full-time using her true name. In later years she claimed an age pension in both names at the same time. The total amount she obtained from the fraud was over \$108 000. Thompson was charged with two counts under section 29D of the *Crimes Act 1914* and one count under section 134.2 of the Criminal Code of defrauding the Commonwealth. She ultimately pleaded guilty to those charges and was convicted. By the date of her sentencing, Thompson had repaid only \$2 000 to Centrelink.

In the period leading up to Thompson's sentencing, Centrelink investigators discovered that Thompson was the registered owner of a unit which she had placed on the market for sale. In April 2003 the DPP obtained a restraining order under section 17 of the PoC Act 2002 over Thompson's interest in the property. The order was drafted in terms that allowed Thompson to sell the property provided that the net proceeds of sale, after discharge of a mortgage, were paid to the Official Trustee to be held under the restraining order.

In due course Thompson sold her unit under the supervision of the Official Trustee and an amount of just over \$37 000 was paid to the Official Trustee. On 15 October 2003, six months after the date of Thompson's conviction, the amount of \$37 000 was forfeited to the Commonwealth under section 92 of the PoC Act. Thompson did not contest the forfeiture. Centrelink agreed to reduce the amount of the debt owed by Thompson by \$37 000.

Walsh

In 2000 Walsh obtained an Australian Business Number from the ATO for a business called Mustang Mustering and Droving. As Walsh was in a remote location, the ATO allowed him to claim GST refunds by telephone. Walsh proceeded to claim refunds totalling more than \$510 000. In fact, there was no business and no expenditure by Walsh on any items which entitled him to claim a refund of GST. This was simple and blatant fraud.

Walsh was charged with one count of defrauding the Commonwealth under section 29D of the *Crimes Act 1914* and one count of obtaining a financial advantage by deception under section 134.2(1) of the Criminal Code. He pleaded guilty to those charges. In January 2004 Walsh was sentenced to five years imprisonment with a non-parole period of two years, six months.

In August 2003 the DPP obtained restraining orders under section 18 of the PoC Act against two bank accounts, one in Walsh's name and one held in an alias. In October 2003 the DPP obtained further restraining orders, this time

under section 17 of the PoC Act, over cash, a caravan, a vehicle, jewellery and other items. The total value of this property was \$216 000.

The DPP obtained an examination order in relation to Walsh, but decided not to conduct an examination because he made extensive disclosures in a police record of interview and it was unlikely that he had anything left to say. Walsh told police that most of the money had been spent on alcohol and gambling. On 14 May 2004, by consent, the court made an order for forfeiture of all the restrained property under section 48 of the PoC Act. The court also made a reparation order against Walsh when he was sentenced for the criminal offences.

Zuvelek

The defendants in this matter were tobacco farmers in far north Queensland. It is alleged that they were engaged in growing and selling chop chop tobacco. One of the defendants has been charged with an offence of defrauding the Commonwealth contrary to section 29D of the *Crimes Act 1914*. In the course of the AFP operation, on 19 February 2001 AFP officers located a total of \$116 000 in cash in the bottom drawer of a chest of drawers in the main bedroom of the defendant's home.

The DPP obtained a restraining order under section 19 of the PoC Act 2002 on the basis that the money was reasonably suspected of being the proceeds of crime against Commonwealth law. On 19 April 2004 the defendants consented to a forfeiture order under section 49 of the PoC Act. The DPP obtained examination orders against the defendants and their son, but the examinations did not proceed because the defendants agreed to consent orders in relation to the cash.

A p p e n d i x 1

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.

A p p e n d i x 2

Commonwealth DPP Corporate Plan

April 2004 – March 2005

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

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

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

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

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

STRATEGIES

Strategy 1 Conduct cases to a high standard, in a fair and just manner	Strategy 2 Participate effectively in law enforcement	Strategy 3 Recruit & develop high quality staff	Strategy 4 Provide professional assistance to referring agencies	Strategy 5 Monitor and enhance DPP performance
<p>1.1 Adopt best practice in legal work and case management</p> <p>1.2 All case decisions made in accordance with the law, the <i>Prosecution Policy of the Commonwealth</i> and internal DPP policy</p> <p>1.3 Decisions to be timely</p> <p>1.4 Key decisions made at an appropriate level</p> <p>1.5 Support legal staff with high level library, IT and administrative people and systems</p>	<p>2.1 Liaise effectively at all levels with agencies with law enforcement roles</p> <p>2.2 Provide useful, timely and accurate reports on DPP work and performance</p> <p>2.3 Assist in Commonwealth criminal law reform</p>	<p>3.1 Recruit and develop high quality staff</p> <p>3.2 Foster and acknowledge optimum performance</p> <p>3.3 Manage them effectively and professionally</p> <p>3.4 Provide a safe, secure and healthy workplace</p>	<p>4.1 Provide professional and timely advice to investigators</p> <p>4.2. Have regard to, identify and co-operate with referring agencies' enforcement strategies</p> <p>4.3 Assist with training of investigators</p> <p>4.4 Liaise effectively with referring agencies at regional and national level</p>	<p>5.1 Monitor DPP performance, against appropriate standards and goals.</p> <p>5.2 Apply best practice in managing the resources of the office and personnel management</p> <p>5.3 Adhere to Australian Public Service values and code of conduct and diversity principles</p>

ACTION PLAN

What the DPP will do	When the DPP will do it	Re strategy
1 Use performance indicator information	Monthly	Re all
2 Best practice reviews	Ongoing	Re all
3 Obtain feedback from courts	Ongoing	Re 1
4 Undertake case reviews	Ongoing	Re 1
5 Provide staff training and utilize performance management scheme	Ongoing	Re 3
6 Review performance through feedback from external agencies	Ongoing	Re 2 and 4

G l o s s a r y

ACC	Australian Crime Commission
ACCC	Australian Competition and Consumer Commission
AFP	Australian Federal Police
APS	Australian Public Service
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AWA	Australian Workplace Agreement
CALG	Criminal Assets Liaison Group
CARS	Criminal Assets Recording System
CRIMS	Case Reporting and Information Management System
Crimes Act	<i>Crimes Act 1914</i>
CSB Act	<i>Crimes (Superannuation Benefits) Act 1989</i>
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
PoC Act 1987	<i>Proceeds of Crime Act 1987</i>
PoC Act 2002	<i>Proceeds of Crime Act 2002</i>
PPO	Pecuniary Penalty Order
SES	Senior Executive Service
WDP	Workplace Diversity Plan
WILES	Women in Law Enforcement Strategy

**Office of the Commonwealth
Director of Public Prosecutions**

Independent Audit Report 2003 – 2004



INDEPENDENT AUDIT REPORT

To the Attorney-General



Matters relating to the Electronic Presentation of the Audited Financial Statements

This audit report relates to the financial statements published in both the annual report and on the website of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2004. The Office of the Commonwealth Director of Public Prosecutions's Chief Executive is responsible for the integrity of both the annual report and its web site.

The audit report refers only to the financial statements, schedules and notes named below. It does not provide an opinion on any other information which may have been hyperlinked to/from the audited financial statements.

If users of this report are concerned with the inherent risks arising from electronic data communications they are advised to refer to the hard copy of the audited financial statements in the Office of the Commonwealth Director of Public Prosecutions's annual report.

Scope

The financial statements and Chief Executive's responsibility

The financial statements comprise:

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

of the Office of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2004.

The Office of the Commonwealth Director of Public Prosecutions's Chief Executive is responsible for the preparation and true and fair presentation of the financial statements in accordance with the Finance Minister's Orders. This includes responsibility for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial statements.

Audit approach

I have conducted an independent audit of the financial statements in order to express an opinion on them to you. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing and Assurance Standards, in order to provide reasonable assurance as to whether the financial statements are free of material misstatement. The nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent limitations of internal control, and the availability of

persuasive, rather than conclusive, evidence. Therefore, an audit cannot guarantee that all material misstatements have been detected.

While the effectiveness of management's internal controls over financial reporting was considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal controls.

I have performed procedures to assess whether, in all material respects, the financial statements present fairly, in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, Accounting Standards and other mandatory financial reporting requirements in Australia, a view which is consistent with my understanding of the Office of the Commonwealth Director of Public Prosecution's financial position and of its performance as represented by the statements of financial performance and cash flows.

The audit opinion is formed on the basis of these procedures, which included:

- examining, on a test basis, information to provide evidence supporting the amounts and disclosures in the financial statements; and
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made by the Chief Executive.

Independence

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate Australian professional ethical pronouncements.

Audit Opinion

In my opinion, the financial statements:

- (i) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997* and applicable Accounting Standards; and
- (ii) give a true and fair view, of the matters required by applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and the Finance Minister's Orders, of the financial position of the Office of the Commonwealth Director of Public Prosecution as at 30 June 2004 and of its performance and cash flows for the year then ended.

Australian National Audit Office



Richard Rundle
Executive Officer

Delegate of the Auditor-General

Canberra
9 September 2004

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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2003-2004

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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**FINANCIAL STATEMENTS 2003-2004**


**STATEMENT BY THE
CHIEF EXECUTIVE OFFICER
AND
CHIEF FINANCE OFFICER**

In our opinion, the attached Financial Statements for the year ended 30 June 2004 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made the *Financial Management and Accountability Act 1997*.



Damian Bugg QC
Director

9th September 2004



Stela Walker
Deputy Director Corporate Management

9th September 2004

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
STATEMENT OF FINANCIAL PERFORMANCE

For the period ended 30 June 2004

	Note	2003-2004 \$'000	2002-2003 \$'000
Revenues from ordinary activities			
Revenues from government	5	69,168	62,576
Sales of goods and services	6	1,345	1,210
Interest		-	48
Revenue from sale of assets	7	72	72
Other	8	983	565
Total revenues from ordinary activities		<u>71,568</u>	<u>64,471</u>
Expenses from ordinary activities <i>(excluding borrowing costs expense)</i>			
Employees	9	40,463	36,427
Suppliers	10	25,922	20,412
Depreciation and amortisation	11	3,328	3,181
Write-down of assets	12	83	90
Expenses for sale of assets	7	149	228
Other	13	53	943
Total expenses from ordinary activities <i>(excluding borrowing cost expense)</i>		<u>69,998</u>	<u>61,281</u>
Net surplus (deficit)		<u>1,570</u>	<u>3,190</u>
 Net credit (debit) to asset revaluation reserve	25	 124	 768
Total revenues, expenses and valuation adjustments recognised directly in equity		<u>124</u>	<u>768</u>
Total changes in equity other than those resulting from transactions with the Australian Government as owners		<u>1,694</u>	<u>3,958</u>

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

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

As at 30 June 2004

	Note	2003-2004 \$'000	2002-2003 \$'000
ASSETS			
Financial assets			
Cash	14	238	241
Receivables	15	18,604	16,406
Total financial assets		18,842	16,647
Non-financial assets			
Land and buildings	16,19	11,133	5,704
Infrastructure, plant and equipment	17,19	6,776	5,891
Intangibles	18,19	371	786
Other	20	1,286	1,371
Total non-financial assets		19,566	13,752
Total assets		38,408	30,399
LIABILITIES			
Non-interest bearing liabilities			
Other	21	2,115	2,163
Total non-interest bearing liabilities		2,115	2,163
Provisions			
Employees	22	14,073	12,401
Other	23	1,501	957
Total provisions		15,574	13,358
Payables			
Suppliers	24	6,505	2,358
Total payables		6,505	2,358
Total liabilities		24,194	17,879
EQUITY			
Parent entity interest			
Contributed equity	25	1,507	1,507
Reserves	25	4,513	4,389
Retained surpluses	25	8,194	6,624
Total equity		14,214	12,520
Total liabilities and equity		38,408	30,399
Current assets		20,128	18,018
Non-current assets		18,280	12,381
Current liabilities		13,943	7,958
Non-current liabilities		10,251	9,921

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 2004

	Note	2003-2004 \$'000	2002-2003 \$'000
OPERATING ACTIVITIES			
Cash received			
Appropriations		67,303	62,516
Sales of goods and services:			
Government		1,046	850
Non-government		239	197
Interest		-	190
GST refunds received		2,359	1,722
Other (a)		397	700
Total cash received		<u>71,344</u>	<u>66,175</u>
Cash used			
Employees		38,755	34,724
Suppliers		25,638	25,575
Other (b)		718	452
Appropriation cash returned to the OPA		-	15,757
Total cash used		<u>65,111</u>	<u>76,508</u>
Net cash from / (used by) operating activities	26	<u><u>6,233</u></u>	<u><u>(10,333)</u></u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of infrastructure, plant and equipment		21	46
Other (c)		83	100
Total cash received		<u>104</u>	<u>146</u>
Cash used			
Purchase of land and buildings		4,561	983
Purchase of infrastructure, plant and equipment		1,618	1,019
Purchase of intangibles		156	307
Other		5	-
Total cash used		<u>6,340</u>	<u>2,309</u>
Net cash from / (used by) investing activities		<u><u>(6,236)</u></u>	<u><u>(2,163)</u></u>

This statement continues on the next page

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

For the period ended 30 June 2004

	Note	2003-2004 \$'000	2002-2003 \$'000
FINANCING ACTIVITIES			
Cash used			
Capital use charge paid		-	1,204
Return of contributed equity		-	520
Total cash used		-	1,724
Net cash from / (used by) financing activities		-	(1,724)
Net increase / (decrease) in cash held		(3)	(14,220)
Cash at the beginning of the reporting period		241	14,461
Cash at the end of the reporting period		238	241

- (a) Employee and supplier expense recoveries
- (b) Costs awarded payments
- (c) Lease incentives received as cash

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
SCHEDULE OF COMMITMENTS

As at 30 June 2004

	Note	2003-2004 \$'000	2002-2003 \$'000
BY TYPE			
Capital Commitments Payable			
Land and buildings		2,384	404
Infrastructure, plant and equipment		2,361	-
Total capital commitments payable		4,745	404
Other Commitments Payable			
Operating leases	2.6	67,163	55,405
Legal services		4,582	4,174
Goods and services (excluding legal services)		2,508	585
GST payable on commitments receivable		23	18
Total other commitments payable		74,276	60,182
Commitments Receivable			
Sub-lease rental	2.6	(296)	(458)
GST receivable on commitments payable		(7,180)	(5,488)
Total commitments receivable		(7,563)	(5,946)
Net commitments		71,458	54,640
BY MATURITY			
Capital Commitments			
One year or less		4,745	404
Operating Lease Commitments Payable			
One year or less		8,588	8,190
From one to five years		29,445	22,648
Over five years		29,130	24,567
Total operating lease commitments payable		67,163	55,405
Operating Lease Commitments Receivable			
One year or less		(221)	(198)
From one to five years		(75)	(260)
Over five years		-	-
Total operating lease commitments receivable		(296)	(458)
All Net Commitments			
One year or less		17,076	11,041
From one to five years		27,817	21,265
Over five years		26,565	22,334
Total net commitments		71,458	54,640

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

As at 30 June 2004

	Note	2003-2004 \$'000	2002-2003 \$'000
Contingent liabilities			
Claims for damages/costs		-	-
Contingent assets			
Claims for recovery of overpayments		89	-

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 27: Contingent liabilities and assets

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS SCHEDULE OF ADMINISTERED ITEMS			
	Note	2003-2004 \$'000	2002-2003 \$'000
Revenues Administered on Behalf of Government			
<i>For the period ended 30 June 2004</i>			
Non-taxation			
Fees and fines	33	4,086	24,569
Reversal of previous asset write-downs	34	337	108
Total non-taxation		4,423	24,677
Total Revenues Administered on Behalf of Government		4,423	24,677
Expenses Administered on Behalf of Government			
<i>For the period ended 30 June 2004</i>			
Write-down of assets	35	2,063	7,566
Other	36	140	19,194
Total Expenses Administered on Behalf of Government		2,203	26,760
The above schedule should be read in conjunction with the accompanying notes			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS SCHEDULE OF ADMINISTERED ITEMS			
	Note	2003-2004 \$'000	2002-2003 \$'000
Assets Administered on Behalf of Government			
<i>As at 30 June 2004</i>			
Financial assets			
Cash		-	-
Receivables	37	1,807	1,857
Total financial assets		<u>1,807</u>	<u>1,857</u>
Total Assets Administered on Behalf of Government		<u>1,807</u>	<u>1,857</u>
Liabilities Administered on Behalf of Government			
<i>As at 30 June 2004</i>			
Provisions and payables			
Other payables		141	14
Total provisions and payables		<u>141</u>	<u>14</u>
Total Liabilities Administered on Behalf of Government		<u>141</u>	<u>14</u>
Current assets		1,713	1,752
Non-current assets		94	105
Current liabilities		141	14
Non-current liabilities		-	-
The above Schedule should be read in conjunction with the accompanying notes			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS SCHEDULE OF ADMINISTERED ITEMS			
	Note	2003-2004 \$'000	2002-2003 \$'000
Administered Cash Flows			
<i>For the period ended 30 June 2004</i>			
OPERATING ACTIVITIES			
Cash received			
Fines and costs		2,678	1,862
Cash from Official Public Account-refunds		281	53
Other		617	-
Total cash received		<u>3,576</u>	<u>1,915</u>
Cash used			
Cash to Official Public Account		2,678	1,583
Other		898	346
Total cash used		<u>3,576</u>	<u>1,929</u>
Net cash from / (used by) operating activities		<u>-</u>	<u>(14)</u>
Net increase / (decrease) in cash held		<u>-</u>	<u>(14)</u>
Cash at the beginning of the reporting period		-	14
Cash at the end of the reporting period		<u>-</u>	<u>-</u>
The above Schedule should be read in conjunction with the accompanying notes			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS SCHEDULE OF ADMINISTERED ITEMS			
	Note	2003-2004 \$'000	2002-2003 \$'000
Administered Commitments			
<i>As at 30 June 2004</i>		Nil	Nil
Administered Contingencies			
<i>As at 30 June 2004</i>		Nil	Nil
Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 39: Administered contingent liabilities and assets			
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 2004

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 2004

Note 1 - Objectives of the Office of the Commonwealth Director of Public Prosecutions

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

The CDPP 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 CDPP 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 for reporting periods ending on or after 30 June 2004) Orders*;
- Australian Accounting Standards and Accounting Interpretations issued by Australian Accounting Standards Boards; and
- Consensus Views of the Urgent Issues Group.

The statements have been prepared having regard to Statements of Accounting Concepts.

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, which, as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

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

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

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

For the period ended 30 June 2004

Note 2 – Summary of significant accounting policies (cont)

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

2.2 Changes to Accounting Policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 2002-2003, except for reparations revenue and expense detailed in note 2.20.

In 2003-2004 the impairment test provisions of the Finance Minister's Orders have been extended to cover non-current assets carried at deprival values. There were no indications of impairment for these assets.

2.3 Revenue**A. Revenues from Government - Agency Appropriations**

Departmental outputs appropriations for the year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised as revenue, except for certain amounts which relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

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 Australian Government 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.

Revenue from rendering of services 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.

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

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

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

For the period ended 30 June 2004

Note 2 – Summary of significant accounting policies (cont)**2.4 Transactions with the Government as Owner***Capital Use Charge*

A capital use charge of 11% was imposed by the Government on the net agency assets of the CDPP in 2002-2003. The charge is accounted for as a dividend to Government.

In accordance with the recommendations of the Budget Estimates and Framework Review, the Government decided that the Charge ceased after 30 June 2003.

Other distributions to owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2002-2003, by agreement with the Department of Finance and Administration, \$520,000 was returned to the Official Public Account for excess interest earned under the former Agency Banking Incentive Scheme.

2.5 Employee Entitlements

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for wages and salaries (including non-monetary benefits) and annual leave are measured at their nominal amounts. Other employee benefits expected to be settled within 12 months of the reporting date are also measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

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 CDPP is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the Agency's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

During 1999-2000 the CDPP 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 CDPP has taken into account pay increases through promotion and inflation.

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

For the period ended 30 June 2004

Note 2 – Summary of significant accounting policies (cont)

B. Separation and redundancy

Provision is made for separation and redundancy payments in circumstances where the CDPP 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 CDPP contribute to the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme.

The liability for their superannuation benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. The CDPP makes employer contributions to the Australian Government at rates determined by an actuary to be sufficient to meet the cost to the Australian Government of the superannuation entitlements of the Agency's employees.

Non-ongoing staff who do not contribute to the above schemes are entitled to superannuation guarantee payments to nominated superannuation funds.

The liability for superannuation recognised as at 30 June represent outstanding contributions for the final fortnight of the year.

2.6 Leases

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

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

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

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

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

<u>Nature of lease</u>	<u>General description of leasing arrangement</u>
Leases for office accommodation	<ul style="list-style-type: none"> • 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.

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

For the period ended 30 June 2004

Note 2 – Summary of significant accounting policies (cont)

Leases for motor vehicles (for general office use)	<ul style="list-style-type: none"> • No contingent rentals exist. • There are no renewal or purchase options available to the CDPP.
Lease for computer equipment	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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.
Sub-lease for shared office accommodation	<ul style="list-style-type: none"> • Lease payments are subject to increases in accordance with the terms and conditions of the head-lease. • There is an option to renew in the head-lease.

The CDPP has no finance leases.

2.7 Cash

Cash includes notes and coins held, and deposits held at call with a Bank or Financial Institution. Cash is recognised at its nominal amount.

2.8 Financial Instruments

Accounting policies for financial instruments are stated at Notes 31 and 39.

2.9 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.

2.10 Property, Plant and Equipment

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.

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

For the period ended 30 June 2004

Note 2 – Summary of significant accounting policies (cont)

B. Revaluation

Land, buildings, plant and equipment are carried at valuation. Revaluations undertaken up to 30 June 2002 were done on a deprival basis; revaluations since that date are at fair value. This change in accounting policy is required by Australian Accounting Standard AASB 1041 *Revaluation of Non-Current Assets*.

Fair values for each class of asset are determined by:

Class	Fair value measured as:
Leasehold Improvements	Depreciated replacement cost
Property, Plant and Equipment	Market selling price

The CDPP deemed all assets held at deprival value at 30 June 2002 to be the same fair value as at 1 July 2002. As a result there was no financial effect of this accounting policy change. Under both deprival and fair value, assets which are surplus to requirements are measured at their net realisable value.

As at 30 June 2003 and 30 June 2004 the CDPP revalued fitout and make good assets to fair value taking into account an index which reflected building cost price movements. The index used was the Building Economist Cost Index published by the Australian Institute of Quantity Surveyors. All other asset values were assessed by the CDPP as being consistent with current fair values for their asset classes.

C. Recoverable Amount Test

From 1 July 2002, the Schedule 1 no longer requires the application of the recoverable amount test in Australian Accounting Standard AAS 10 *Recoverable Amount of Non-Current Assets* to the assets of agencies when the primary purpose of the asset is not the generation of net cash inflows.

Property, Plant and Equipments assets carried at fair value at 30 June 2003 and 30 June 2004 are not subject to impairment testing.

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 CDPP 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 2004

Note 2 – Summary of significant accounting policies (cont)

Depreciation and amortisation rates applying to each class of depreciable Asset are based on the following useful lives:

<u>Class</u>	<u>2003-2004</u>	<u>2002-2003</u>
Leasehold Improvements	Lease Term	Lease Term
Property, Plant and Equipment	2 – 30 years	2 – 30 years

The aggregate amount of Depreciation allocated for each class of asset during the reporting period is disclosed in Note 11.

2.11 Intangibles

Intangible assets comprise software licenses, internally developed applications, and configuration costs of purchased software.

All asset values are at cost

A. Asset Recognition Threshold

Purchases of Intangibles are recognised initially at cost in the Statement of Financial Position, except for purchases costing less than \$5,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total). The threshold in 2002-2003 was \$2,000.

Costs of application development for internally developed applications and configuration costs of purchased software are capitalised where there is a significant increase in functionality. Costs for the preliminary project (i.e. prior to application development) and post implementation, including training, are excluded.

B System Upgrades and Maintenance

Application costs incurred in upgrading from one version to another are capitalised. System maintenance costs are expensed as incurred.

C Amortisation

Amortisable intangible assets are written-off to their estimated residual values over their estimated useful lives to the CDPD using, in all cases, the straight-line method of amortisation.

System upgrade costs are amortised over the life of the new maintenance support period using the straight-line method.

The useful lives of the CDPD's software is 4 to 20 years (2002-2003: 4 to 13 years).

Software licenses that are in perpetuity and are covered by maintenance agreements that provide upgrades at no additional cost are not amortised.

D Impairment and Derecognition

All intangible assets were assessed for impairment as at 30 June 2003. During 2003-2004 several assets were impaired based on reduced functionality and technology changes.

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

For the period ended 30 June 2004

Note 2 – Summary of significant accounting policies (cont)

During 2003-2004 a review was conducted of two assets previously brought to account in 1998-1999 by an independent valuation that was deemed to be the cost basis as at 1 July 2002. As at 30 June 2004 both assets had a net book of zero. It was decided that these assets, with a cost base of \$476,519 and \$307,366 could no longer meet the asset recognition test in SAC4 of being able to be reliably valued. As such both assets were derecognised. There was no effect on the Statement of Financial Performance or on the Statement of Financial Position.

2.12 Taxation / Competitive Neutrality

The CDPP is exempt from all forms of taxation with the exception of fringe benefits tax and the goods and services tax (GST).

Revenues, expenses, liabilities and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

No part of CDPP operations is subject to competitive neutrality arrangements.

2.13 Foreign Currency

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

2.14 Insurance

The CDPP 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 Australia.

2.15 Comparative Figures

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

2.16 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.

2.17 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 CDPP. 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 2004

Note 2 – Summary of significant accounting policies (cont)**2.18 Executive Remuneration**

Finance Minister's Orders (FMOs) 7.B requires agencies to show the aggregate remuneration of all managers whose remuneration for the financial year is \$100,000 or more.

The FMOs provide additional guidance "managers" means Senior Executive Services (SES) or equivalent officers.

Remuneration includes salary, employer superannuation costs, change in value of leave entitlements, non cash benefits and fringe benefit tax.

2.19 Administered Items

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Schedule of Administered Items and related Notes.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for Agency items, including the application to the greatest extent possible of Accounting Standards, Accounting Interpretations and UIG Consensus Views.

Administered appropriations received or receivable from the Official Public Account (OPA) are not reported as administered revenues or assets respectively. Similarly, administered receipts transferred or transferable to the OPA are not reported as administered expenses or payables. These transactions or balances are internal to the Administered entity.

These transfers of cash are reported as administered (operating) cash flows and in the administered reconciliation table in Note 37.

Accounting policies which are relevant to administered activities only are disclosed below.

2.20 Administered Revenue

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

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.

Prior to 2003-2004 Reparation Orders (orders to repay money) made by Courts were recognised as CDPP revenues. A comprehensive review determined that these orders do not create a debt, as the debt existed before the matter was brought before the Court. Reparation Orders are an enforcement measure. Under the old arrangement a matching expense was reported when the Reparation Orders were advised to the referring Agency for collection. As revenues equalled expenses, the result of the change in accounting policy on the operating statement is nil.

Reversal of previous write-downs occurs when a receivable written-off in a previous financial period is subsequently recovered.

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

For the period ended 30 June 2004

Note 2 – Summary of significant accounting policies (cont)

2.21 Administered Expenses

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

A. Write-down of assets

Receivables are written down where fines and costs have been converted to a prison sentence or a community service order, have been received by other agencies, or are estimated to be irrecoverable.

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.

2.21 Administered Receivables

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

Note 3 – Adoption of AASB Equivalents to International Financial Reporting Standards from 2005-2006

The Australian Accounting Standards Board (AASB) has issued replacement Australian Accounting Standards to apply from 2005-2006. The new standards are the AASB equivalents to the International Financial Reporting Standards (IFRS) that are issued by the International Accounting Standards Board (IASB). The new standards cannot be adopted early. The standards being replaced are to be withdrawn with effect from 2005-2006, but continue to apply in the meantime.

It is expected that the Finance Minister will continue to require compliance with the Australian Standards issued by the AASB, including the AASB equivalents to IFRS, in the Finance Minister Orders for the Preparation of Agency financial statements for 2005-2006 and beyond.

The AASB Equivalents contain certain additional provisions that will apply to not-for-profit entities including Australian Government Agencies. Some of these provisions are in conflict with the IFRS and therefore the CDPP will only be able to assert compliance with the AASB equivalents to the IFRS. Existing AASB standards that have no IFRS equivalent will continue to apply, including in particular AAS 29 *Financial Reporting by Government Departments*.

Australian Standard AASB 1047 *Disclosing the impact of Adopting Australian Equivalents to IFRSs* requires that the financial statements for 2003-2004 disclose:

- An explanation of how the transition to the AASB Equivalents is being managed; and
- A narrative explanation of the key differences in accounting policies arising from the transition.

The purpose of this note is to make these disclosures.

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

For the period ended 30 June 2004

Note 3 – Adoption of AASB Equivalents to International Financial Reporting Standards from 2005-2006 (cont)**3.1 Management of the transition to the AASB Equivalents to IFRS**

The project is being managed by the Chief Accountant who is professionally qualified.

The primary task during 2003-2004 has been the identification of differences between the current reporting framework and AASB Equivalents to IFRS. This has been hampered by the delay in finalising the AASB Equivalents to IFRS.

The identification process has included attendance at professional seminars, reading of professional journals and publications and reading of proposed AASB Equivalents to IFRS. The known significant changes are listed below.

One area of possible change will be the accounting policy for intangibles. During 2003-2004 the CDPP engaged a consultant to provide an independent assessment. Based on this independent review discussions were held with the ANAO to advise it of how the CDPP was preparing for implementation.

During 2004-2005 an opening balance sheet applying AASB Equivalents to IFRS will be prepared and available for audit scrutiny.

System changes will not be made until after 1 July 2005. Given the current identified differences, there will be no material impact on collecting the necessary comparative information for 2005-2006.

Where there are options in AASB Equivalents to IFRS the CDPP will apply choices made by the Finance Minister.

3.2 Significant changes in accounting policy*Property, Plant and Equipment and Intangible Assets*

AASB Equivalents to IFRS do not permit assets to be measured at valuation unless there is an active market for these assets. The CDPP's internally developed software is specific to the needs of the Agency and is not traded. Upon adoption, the CDPP will need to derecognise the valuation component of the carrying amount. An assessment will need to be made about whether there is an active market for library and artwork assets. Where there is no demonstrable active market, similarly, the valuation component of these assets will need to be de recognised.

Employee Benefits

The provision for long service leave is measured at the present value of estimated future cash outflows using market yields as the reporting date on national government bonds. Under AASB Equivalents to IFRS the same discount rate will be used unless there is a deep market in high quality corporate bonds, in which case the market yield on such bonds must be used. The CDPP will rely upon on advice from the Finance Minister on which rate to use.

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

For the period ended 30 June 2004

Note 4 - Events Occurring After Balance Date

There were no events occurring after balance date that had any material effect on the 2003-2004 Financial Statements.

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

For the period ended 30 June 2004

	2003-2004 \$'000	2002-2003 \$'000
Note 5 - Revenues from Government		
Appropriations for outputs	69,108	62,516
Resources received free of charge-Related entities	60	60
Total	<u>69,168</u>	<u>62,576</u>
Note 6 - Sales of goods and services		
Provision of goods	7	4
Operating lease rental revenue	249	186
Rendering of services revenue	1,069	1,001
Other	20	19
Total	<u>1,345</u>	<u>1,210</u>
Goods were sold as follows:		
Related entities	-	-
External entities	7	4
Total	<u>7</u>	<u>4</u>
Services were sold as follows:		
Related entities	1,042	1,000
External entities	296	206
Total	<u>1,338</u>	<u>1,206</u>
Costs of sales of goods	-	-
Note 7 - Net gains / (losses) from sale of assets		
Non-financial assets		
Infrastructure, plant and equipment		
Proceeds from sale	72	72
Net book value at sale	(149)	(228)
Net gain / (loss) from sales	<u>(77)</u>	<u>(156)</u>
Total Proceeds from sale	72	72
Total Net book value at sale	(149)	(228)
Net gain / (loss) from sales	<u>(77)</u>	<u>(156)</u>

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

For the period ended 30 June 2004

	2003-2004 \$'000	2002-2003 \$'000
Note 8 - Other operating revenues		
Employment subsidies	41	24
Civil costs awarded	4	8
Resources received free of charge-External entities	513	498
Other	425	35
Total	<u>983</u>	<u>565</u>

Note 9 - Employee expenses

Wages and salary	32,427	29,160
Superannuation	6,043	4,237
Leave and other entitlements	1,007	1,898
Separation and redundancy payments	169	331
Other employee benefits	A 212	309
Total employee benefits expense	<u>39,858</u>	<u>35,935</u>
Other employee expenses	605	492
Total	<u>40,463</u>	<u>36,427</u>

A Other employee benefits included \$83K for operating leases on Executive motor vehicles in 2002-2003.

Note 10 - Supplier expenses

Supply of goods	2,826	2,179
Supply of services	14,653	12,015
Operating leases	2.6 8,443	6,218
Total	<u>25,922</u>	<u>20,412</u>

Goods were purchased as follows:

Related entities	53	52
External entities	2,773	2,127
Total	<u>2,826</u>	<u>2,179</u>

Services were purchased as follows:

Related entities	1,205	980
External entities	13,448	11,035
Total	<u>14,653</u>	<u>12,015</u>

Operating lease payments comprise:

Minimum lease payments	8,154	6,030
Rental expense for sub-leases	289	188
Total	<u>8,443</u>	<u>6,218</u>

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

For the period ended 30 June 2004

	2003-2004 \$'000	2002-2003 \$'000
Note 11 - Depreciation and amortisation		
The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:		
Leasehold improvements	1,598	1,302
Plant and equipment	1,179	1,239
Intangibles	551	640
Total	<u>3,328</u>	<u>3,181</u>
Note 12 - Write-down of assets		
Financial assets		
Receivables	-	1
Sub-total	<u>-</u>	<u>1</u>
Non-financial assets - write-off		
Plant and equipment	2	5
Intangibles	81	84
Sub-total	<u>83</u>	<u>89</u>
Total	<u>83</u>	<u>90</u>
Note 13 - Other operating expenses		
Costs awarded against the Commonwealth	53	943
Total	<u>53</u>	<u>943</u>
Note 14 - Cash		
Cash at bank	195	200
Cash on hand	43	41
Total	<u>238</u>	<u>241</u>

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

For the period ended 30 June 2004

	2003-2004 \$'000	2002-2003 \$'000
Note 15 - Receivables		
Appropriations	17,562	15,757
Goods and services	271	253
GST receivable from the Australian Taxation Office	683	212
Lease incentives receivable	66	88
Other	22	96
Total	<u>18,604</u>	<u>16,406</u>

All receivables are current assets and there are no provisions for doubtful debts

Receivables are aged as follows:

Not overdue	18,505	16,315
Overdue less than 30 days	78	-
Overdue 30 to 60 days	12	-
Overdue 60 to 90 days	-	-
Overdue more than 90 days	9	91
Total	<u>18,604</u>	<u>16,406</u>

Note 16 - Land and buildings

Leasehold improvements

Leasehold improvements at fair value	2.10B	17,331	14,981
Accumulated amortisation		(6,198)	(9,277)
		<u>11,133</u>	<u>5,704</u>
Total leasehold improvements		<u>11,133</u>	<u>5,704</u>
Total land and buildings (non-current)		<u>11,133</u>	<u>5,704</u>

Note 17 - Infrastructure, plant and equipment

Plant and equipment

Computers at fair value	2.10B	1,117	1,320
Accumulated depreciation		(579)	(1,031)
		<u>538</u>	<u>289</u>
Furniture at fair value	2.10B	4,250	4,447
Accumulated depreciation		(1,778)	(2,799)
		<u>2,472</u>	<u>1,648</u>

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

For the period ended 30 June 2004

		2003-2004	2002-2003
		\$'000	\$'000
Note 17 - Infrastructure, plant and equipment (cont)			
Other plant and equipment at fair value	2.10B	2,371	2,487
Accumulated depreciation		(846)	(950)
		1,525	1,537
Artwork at fair value	2.10B	154	153
Accumulated depreciation		(69)	(56)
		85	97
Library holdings at fair value	2.10B	3,274	3,275
Accumulated depreciation		(1,118)	(955)
		2,156	2,320
Total plant and equipment		6,776	5,891
Total Infrastructure, plant and equipment (non-current)		6,776	5,891
Note 18 - Intangibles			
Computer software			
Purchased software at cost		2,055	3,056
Accumulated amortisation		(1,684)	(2,365)
		371	691
Internally developed software - deemed at cost	2.11D	-	784
Accumulated amortisation		-	(689)
		-	95
Total computer software		371	786
Total intangible assets		371	786

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

For the period ended 30 June 2004

Note 19 - 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	Infrastructure, plant and equipment \$'000	Intangibles- computer software \$'000	Total \$'000
Gross value at beginning of reporting period				
Additions: purchase of assets	14,981	11,682	3,840	30,503
Disposals	6,895	2,215	217	9,327
Write-offs	-	(1,078)	-	(1,078)
Revaluations: write-ups / (write-downs)	(4,840)	(1,653)	(2,002)	(8,495)
	295	-	-	295
Gross value at end of reporting period	17,331	11,166	2,055	30,552
Accumulated depreciation / amortisation at beginning of reporting period				
Depreciation / amortisation charge for the reporting period	9,277	5,791	3,054	18,122
Disposals	1,598	1,179	551	3,328
Write-offs	-	(929)	-	(929)
Revaluations: write-ups / (write-downs)	(4,840)	(1,651)	(1,921)	(8,412)
	163	-	-	163
Accumulated depreciation / amortisation at end of reporting period				
	6,198	4,390	1,684	12,272
Net book value at end of reporting period	11,133	6,776	371	18,280
Net book value at beginning of reporting period	5,704	5,891	786	12,381

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

For the period ended 30 June 2004

Note 19 - 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	Infrastructure, plant and equipment \$'000	Intangibles- computer software \$'000	Total \$'000
As at end of reporting period				
Gross value	17,331	11,166	-	28,497
Accumulated depreciation / amortisation	6,198	4,390	-	10,588
Net book value at end of reporting period	11,133	6,776	-	17,909
As at beginning of reporting period				
Gross value	14,981	11,682	-	26,663
Accumulated depreciation / amortisation	9,277	5,791	-	15,068
Net book value at beginning of reporting period	5,704	5,891	-	11,595

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 2004

	2003-2004 \$'000	2002-2003 \$'000
Note 20 - Other non-financial assets		
Prepayments made	296	1,204
Other accruals	990	167
Total	<u>1,286</u>	<u>1,371</u>
Note 21 - Non-interest bearing liabilities		
Lease incentives	2,115	2,163
Total	<u>2,115</u>	<u>2,163</u>
Current	688	1,178
Non-current	1,427	985
Note 22 - Employee provisions		
Salaries and wages	1,240	872
Leave	2.5A 12,397	11,355
Superannuation	234	130
Separations and redundancies	81	-
Sub-total employee benefits liability	<u>13,952</u>	<u>12,357</u>
Other employee provisions	121	44
Total	<u>14,073</u>	<u>12,401</u>
Current	6,041	4,118
Non-current	8,032	8,283
Note 23 - Other provisions		
Provision for fitout restoration	1,006	928
Provision for rent on surplus space	495	29
Total	<u>1,501</u>	<u>957</u>
Current	709	304
Non-current	792	653
Note 24 - Suppliers payables		
Trade Creditors	6,505	2,358
Total	<u>6,505</u>	<u>2,358</u>
Current	6,505	2,358
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 2004

Note 25 - Equity

	Accumulated Results		Asset Revaluation Reserve		Contributed Equity		Total Equity	
	2003-2004 \$'000	2002-2003 \$'000	2003-2004 \$'000	2002-2003 \$'000	2003-2004 \$'000	2002-2003 \$'000	2003-2004 \$'000	2002-2003 \$'000
Opening balance as at beginning of reporting period	6,624	4,556	4,389	3,621	1,507	2,027	12,520	10,204
Operating results	1,570	3,190	-	-	-	-	1,570	3,190
Net revaluation increment / (decrement)	-	-	124	768	-	-	124	768
Transactions with owners:								
<i>Distributions to owner:</i>								
Return of equity	-	-	-	-	-	(520)	-	(520)
Capital Use Charge (CUC) payments	-	(1,122)	-	-	-	-	-	(1,122)
Closing balance as at end of reporting period	8,194	6,624	4,513	4,389	1,507	1,507	14,214	12,520
Less: Outside equity interests	-	-	-	-	-	-	-	-
Total equity attributable to the Commonwealth	8,194	6,624	4,513	4,389	1,507	1,507	14,214	12,520

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

For the period ended 30 June 2004

	2003-2004	2002-2003
	\$'000	\$'000
Note 26 - Cash flow reconciliation		
Reconciliation of Cash per Statement of Financial Position to Statement of Cash Flows:		
Cash at year end per Statement of Cash Flows	238	241
Cash as per Statement of Financial Position	238	241
Reconciliation of operating surplus to the net cash provided by operating activities:		
Net Surplus (deficit)	1,570	3,190
Depreciation and amortisation	3,328	3,181
Loss on sale of non-current assets	78	156
Write-down of non-current assets	83	88
Assets not previously recognised	1	-
Decrease (increase) in net receivables	(2,264)	(15,872)
Decrease (increase) in prepayments paid	84	(366)
Increase (decrease) in debt	(47)	(1,055)
Increase (decrease) in employee provisions	1,673	1,906
Increase (decrease) in supplier payables	1,727	(1,550)
Increase (decrease) in prepayments received	-	(11)
Net cash from / (used by) operating activities	<u>6,233</u>	<u>(10,333)</u>

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

For the period ended 30 June 2004

Note 27 – Contingent liabilities and assets**Quantifiable contingent assets**

The Schedule of Contingencies reports a contingent asset in respect of overpaid rent on two leases. The CDPP expects to succeed in claims against the building owners. The estimate is based on the amount overcharged.

Unquantifiable contingent liabilities

If a matter prosecuted by the CDPP is defended successfully, the court may order that the CDPP meet certain costs incurred by the defence.

If a matter is being prosecuted by the CDPP and assets are frozen under the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*, the CDPP gives an undertaking against potential losses in respect of assets administered by the Commonwealth. If the related prosecution is unsuccessful, damages can be awarded against the CDPP. Costs and damages so awarded are met from the CDPP or client organisations annual appropriations.

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

Unquantifiable contingent assets

The CDPP has another potential rent overpayment. Pending further legal advice, it is not possible to reliably measure the possible value of the claim.

Remote contingent liabilities

The CDPP has a number of contracts with suppliers that include indemnities for any default by the CDPP or its agents. These are standard contract conditions and the CDPP is satisfied that there is no foreseeable risk of any of the indemnities being called upon.

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

For the period ended 30 June 2004

2003-2004

2002-2003

Note 28 - Executive remuneration

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

	Number	Number
\$100,000 to \$109,999	1	-
\$110,000 to \$119,999	1	3
\$120,000 to \$129,999	1	2
\$130,000 to \$139,999	3	1
\$140,000 to \$149,999	2	8
\$150,000 to \$159,999	7	7
\$160,000 to \$169,999	9	9
\$170,000 to \$179,999	2	4
\$180,000 to \$189,999	10	2
\$190,000 to \$199,999	2	2
\$200,000 to \$209,999	1	1
\$210,000 to \$219,999	4	1
\$230,000 to \$239,999	1	-
\$240,000 to \$249,999	1	-
\$250,000 to \$259,999	-	1
\$350,000 to \$359,999	1	1
Total	46	42

The aggregate amount of total remuneration of the executives included above

\$ 8,092,673 \$ 6,970,192

The aggregate amount of separation and redundancy payments of the executives included above

\$ - \$ -

Note 29 - Remuneration of Auditors

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

\$ 60,000 \$ 60,000

No other services were provided by the Auditor-General.

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

For the period ended 30 June 2004

	2003-2004	2002-2003
Note 30 - Specific payment disclosures		
Agency		
Act of Grace payments	Nil	Nil
<i>Number of payments 2003-2004:Nil, 2002-2003:Nil</i>		
Ex-gratia payments	Nil	Nil
<i>Number of payments 2003-2004:Nil, 2002-2003:Nil</i>		
Waivers made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i>	Nil	Nil
<i>Number of payments 2003-2004:Nil, 2002-2003:Nil</i>		
Defective Administration Scheme	Nil	Nil
<i>Number of payments 2003-2004:Nil, 2002-2003:Nil</i>		
Payments made pursuant to section 73 of the <i>Public Service Act 1999</i>	Nil	Nil
<i>Number of payments 2003-2004:Nil, 2002-2003:Nil</i>		
Total	<u>\$ -</u>	<u>\$ -</u>

Administered		
Act of Grace payments	Nil	Nil
<i>Number of payments 2003-2004:Nil, 2002-2003:Nil</i>		
Ex-gratia payments	Nil	Nil
<i>Number of payments 2003-2004:Nil, 2002-2003:Nil</i>		
Waivers made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i>	Nil	Nil
<i>Number of payments 2003-2004:Nil, 2002-2003:Nil</i>		
Defective Administration Scheme	Nil	Nil
<i>Number of payments 2003-2004:Nil, 2002-2003:Nil</i>		
Total	<u>\$ -</u>	<u>\$ -</u>

Note 31 - Average staffing level

The average full time equivalent staffing levels for the Agency during the year were	454	435
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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 2004

Note 32 – 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 reliably measured.	
Cash – at Bank	14	Deposits are recognised at their nominal amounts. The account ceased to be interest bearing on 1 April 2003 when the interest cap had been attained.	The Agency maintains an account 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 was earned from the Department of Finance and Administration up to 31 March 2003. (2002-2003 = Interest rate was 2.00% whilst interest was earned).
Appropriations receivable	15	These receivables are recognised at their nominal amounts.	Amounts appropriated by the Parliament in the current or previous years which are available to be drawn down by the Office.
Receivables – Goods and services, Interest, Lease Incentives & Other.	15	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. The receivables are recoveries of expenses. Credit terms are net 30 days (2002-2003 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 2003

Note 32 – 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 - Agency	23	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 2004

Note 32 - Financial Instruments (cont)

(b) Interest Rate Risk: Agency

Financial Instrument	Notes	Floating Interest Rate		Fixed Interest Rate						Non-Interest Bearing		Total		Weighted Average Effective Interest Rate	
		2003-2004 \$'000	2002-2003 \$'000	1 year or less		1 to 2 years		2 to 5 years		> 5 years		2003-2004 \$'000	2002-2003 \$'000	2003-2004 %	2002-2003 %
				2003-2004 \$'000	2002-2003 \$'000	2003-2004 \$'000	2002-2003 \$'000	2003-2004 \$'000	2002-2003 \$'000	2003-2004 \$'000	2002-2003 \$'000				
Financial Assets															
Cash - at bank	14	-	-	-	-	-	-	-	-	-	-	195	200	Nil	2.00%
Receivables - appropriations	15	-	-	-	-	-	-	-	-	-	-	17,562	15,757	n/a	n/a
Receivables - goods and services (gross)	15	-	-	-	-	-	-	-	-	-	-	271	253	n/a	n/a
Receivables - lease incentives	15	-	-	-	-	-	-	-	-	-	-	66	88	n/a	n/a
Receivables - other	15	-	-	-	-	-	-	-	-	-	-	22	96	n/a	n/a
Total Financial Assets (Recognised)		-	-	-	-	-	-	-	-	-	-	18,116	16,394		
Total Agency Assets												38,408	30,399		
Financial Liabilities															
Trade creditors	24	-	-	-	-	-	-	-	-	-	-	6,505	2,358	n/a	n/a
Total Financial Liabilities (Recognised)		-	-	-	-	-	-	-	-	-	-	6,505	2,358		
Total Agency Liabilities												24,194	17,879		

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

For the period ended 30 June 2004

Note 32 - Financial instruments (cont)

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

	Note	2003-2004 Total carrying amount \$'000	Aggregate net fair value \$'000	2002-2003 Total carrying amount \$'000	Aggregate net fair value \$'000
Financial Assets					
Cash - at bank	14	195	195	200	200
Receivables - appropriations	15	17,562	17,562	15,757	15,757
Receivables - goods and services (net)	15	271	271	253	253
Receivables - lease incentives	15	66	66	88	88
Receivables - other	15	22	22	96	96
Total Financial Assets		18,116	18,116	16,394	16,394
Financial Liabilities (Recognised)					
Trade creditors	24	6,505	6,505	2,358	2,358
Total Financial Liabilities (Recognised)		6,505	6,505	2,358	2,358

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

For the period ended 30 June 2004

		2003-2004	2002-2003
		\$'000	\$'000
Note 33 - Administered fees and fines revenue			
Fines and Costs		4,086	5,770
Reparations	2.20	-	18,799
Total		4,086	24,569
<p>A Refer Note 2.20 - From 2003-2004 Reparation Orders obtained by the CDPP are no longer recognised as CDPP revenues.</p>			
Note 34 - Reversal of previous Administered asset write-downs			
Decrease in provision for doubtful debts	2.21A	79	-
Reinstate receivable previously written-off		258	108
Total		337	108
Note 35 - Write-down of Administered assets			
Financial Assets			
Write-off		906	747
Prison sentence		545	1,088
Community service orders		145	106
Received by other agencies		467	-
Increase in provision for doubtful debts	2.21A	-	5,625
Total		2,063	7,566
<p>Note: A significant amount of debts outstanding may not be recovered, as Fines and Costs may be converted by serving time in prison, by performing community service or similar provisions. A number of Fines and Costs are also written off as irrecoverable.</p>			
Note 36 - Other Administered expenses			
Revenue transfers to other Agencies ^A	2.21B	140	227
Reparations transferred to other Agencies ^B	2.20	-	18,800
Receivables collected by other Agencies ^C		-	167
Total		140	19,194
<p>A Fines and Costs awarded by the Courts are usually CDPP revenue, however, working arrangements with some Government agencies allow for this revenue to be paid to them.</p> <p>B Refer Note 2.20 - From 2003-2004 Reparation Orders obtained by the CDPP are no longer recognised as CDPP revenues. The transfer of the reparations receivables to referring Agencies is therefore no longer recognised as a CDPP expense.</p> <p>C From 2003-2004 this item is reported as a write-down, see note 35.</p>			

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

For the period ended 30 June 2004

	2003-2004 \$'000	2002-2003 \$'000
Note 37 - Administered receivables		
Fines and Costs	10,141	10,270
Less : Provision for doubtful debts	(8,334)	(8,413)
Total	1,807	1,857
Fines and costs receivable (gross) are aged as follows:		
Not overdue	561	660
Overdue less than 30 days	307	260
Overdue 30 to 60 days	242	241
Overdue 60 to 90 days	184	222
Overdue more than 90 days	8,847	8,887
Total	10,141	10,270
The provision for doubtful debts is aged as follows:		
Not overdue	(123)	(35)
Overdue less than 30 days	(15)	(13)
Overdue 30 to 60 days	(48)	(48)
Overdue 60 to 90 days	(92)	(153)
Overdue more than 90 days	(8,056)	(8,163)
Total	(8,334)	(8,412)
Note 38 - Administered reconciliation table		
Administered assets less administered liabilities as at 1 July	1,843	5,456
Plus Administered revenues	4,423	24,677
Less Administered expenses	(2,203)	(26,760)
Less transfers to OPA	(2,678)	(1,583)
Plus transfers from OPA	281	53
Administered assets less administered liabilities as at 30 June	1,666	1,843

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

For the period ended 30 June 2004

Note 39 – Administered contingent liabilities and assets**Unquantifiable contingent liabilities / assets**

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

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

Unquantifiable contingent assets

Matters before the courts at the reporting date may result in fines, costs and reparations being awarded to the Commonwealth.

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS For the period ended 30 June 2004			
Note 40 – 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 & 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.	
Receivables – Fines and Costs	37	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 external entities. Receivables consist of Fines and Costs awarded in criminal cases prosecuted by the Agency.
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.	
Other payables	-	Other payables are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised when money received is identified as not belonging to the Agency	Payees are entities that are part of the Commonwealth legal entity and external to the Commonwealth. Settlement is usually made net 7 days.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS For the period ended 30 June 2004												
Note 40 - Administered financial instruments (cont)												
(b) Interest Rate Risk: Administered												
Financial Instrument	Notes	Floating Interest Rate	Fixed Interest Rate			Non-Interest Bearing			Total			Weighted Average Effective Interest Rate
			1 year or less	1 to 2 years	2 to 5 years	> 5 years	2003-2004	2002-2003	2003-2004	2002-2003	2003-2004	2002-2003
			\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	%
Financial Assets												
Receivables - Fees and Fines (gross)	37								10,141	10,270	10,141	10,270
Total Financial Assets									10,141	10,270	10,141	10,270
Total Administered Assets									1,807	1,857		
Financial Liabilities												
Payables - other									141	14	141	14
Total Financial Liabilities									141	14	141	14
Total Administered Liabilities									141	14	141	14

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

For the period ended 30 June 2004

Note 40 - Administered financial instruments (cont)**(c) Net Fair Values of Agency Financial Assets and Liabilities**

		2003-2004		2002-2003	
		Total	Aggregate	Total	Aggregate
		carrying	net fair	carrying	net fair
		amount	value	amount	value
	Note	\$'000	\$'000	\$'000	\$'000
Financial Assets					
Receivables - Fees and Fines (net)	37	1,807	1,807	1,857	1,857
Total Financial Assets		1,807	1,807	1,857	1,857
Financial Liabilities					
Payables - other		141	141	14	14
Total Financial Liabilities		141	141	14	14

Financial Assets

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

Financial Liabilities

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

(d) Credit Risk Exposures

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

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 2004

	2003-2004 \$.	2002-2003 \$.
Note 41 - Appropriations		
A. Cash basis acquittal of Appropriations from Acts 1 and 3		
Balance available at beginning of period	16,187,529	14,460,641
Appropriations for reporting period (Act 1)	66,177,000	61,652,000
Appropriations for reporting period (Act 3)	2,931,000	864,000
Adjustments determined by the Finance Minister	-	-
Amounts from Advance to the Minister for Finance	-	-
Amounts for Comcover receipts	87,636	-
Refunds credited (FMA s.30)	-	-
GST credits (FMA s.30A)	2,641,058	2,128,225
Annotated to net appropriations (FMA s.31)	1,698,039	2,083,268
Total appropriated in the period	<u>73,534,733</u>	<u>66,727,493</u>
Total appropriations available for payments	<u>89,722,262</u>	<u>81,188,134</u>
Payments during the period	71,674,929	65,000,605
Balance of appropriations for outputs at end of period	<u>18,047,333</u>	<u>16,187,529</u>
Represented by:		
Cash	237,876	241,010
Appropriations receivable	17,561,947	15,756,893
GST receivable from ATO (net)	683,165	212,109
GST receivable from customers	30,014	39,739
GST payable payable to suppliers	(465,669)	(62,222)
	<u>18,047,333</u>	<u>16,187,529</u>

B. Cash basis acquittal of Appropriations from Acts 2 and 4

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

C. Cash basis acquittal of 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 2004

	2003-2004	2002-2003
	\$.	\$.

Note 42 - Special accounts

A. Other Trust Moneys Account

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 (Administered)

Balance at beginning of the reporting period	-	14,316
Add: Receipts from appropriations	-	-
Receipts from OPA for refunds	-	53,230
Receipts from Courts o.b.o. defendants	2,677,769	1,861,710
Available for payment	2,677,769	1,929,256
Less: Payments to OPA	(1,779,734)	(1,583,031)
Payments of refunds	(229,496)	(133,638)
Payments to related entities	(668,539)	(212,587)
Sub-total payments made	(2,677,769)	(1,929,256)
Balance at end of reporting period	-	-
Represented by: Cash at Bank	-	-

Note on usage - for the receipt of money temporarily held on trust and advanced to the Agency by Courts or related bodies pending either (1) allocation to administered receivables and payment to OPA or (2) refund to the Court or (3) payment to another Agency.

Bonds Component (Administered)

Balance at beginning of the reporting period	-	-
Add: Receipts from appropriations	-	-
Receipts from other sources	617,246	-
	617,246	-
Less: Payments to related entities	(617,246)	-
Balance at end of reporting period	-	-

Note on usage - for the receipt of money temporarily held on trust and advanced to the Agency by or on behalf of a defendant as a result of a decision of a Court. Depending on the outcome, the money could either be (1) refunded to the defendant, (2) paid to another Agency or (3) paid to OPA.

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

For the period ended 30 June 2004

	2003-2004	2002-2003
	\$.	\$.
Note 42 - Special accounts (cont)		
B. Service for other Governments & Non-Agency Bodies Account		
Legal authority - <i>Financial Management and Accountability Act 1997</i> ; s20		
Purpose - for expenditure in connection with services performed on behalf of other Governments and bodies that are not FMA agencies.		
Comcare Component (Departmental)		
Balance at beginning of the reporting period	-	-
Add: Receipts from appropriations	-	-
Receipts from Comcare	46,447	32,386
Available for payment	46,447	32,386
Less: Payments made to employees	(46,447)	(32,386)
Sub-total payments made	(46,447)	(32,386)
Balance at end of reporting period	-	-

Note on usage - for the receipt of money temporarily held on trust and advanced to the Agency by Comcare for the purpose of distributing compensation payments made in accordance with the *Safety Rehabilitation and Compensation Act 1998* .

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* .

- * The Office of the Director of Public Prosecutions' Law Enforcement Projects Account was abolished on 26 June 2003. There were no transactions during 2002-2003

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

For the period ended 30 June 2004

	2003-2004 \$'000	2002-2003 \$'000
Note 43 - Reporting by outcomes		
Net Cost of Outcome Delivery		Outcome 1
Administered expenses	2,203	26,760
Agency expenses	69,998	61,281
Total expenses	<u>72,201</u>	<u>88,041</u>
External revenues		
Administered revenues	4,423	24,677
Agency revenues	2,400	1,895
Total external revenues	<u>6,823</u>	<u>26,572</u>
Net cost to Budget outcome	<u>(6,823)</u>	<u>61,469</u>

Major Classes of Agency Revenues & Expenses by outcome

Operating revenues		
Revenues from Government	69,168	62,576
Sales of goods and services	1,345	1,210
Other	1,055	685
Total operating revenues	<u>71,568</u>	<u>64,471</u>
Operating expenses		
Employees	40,463	36,427
Suppliers	25,922	20,412
Other	3,613	4,442
Total operating expenses	<u>69,998</u>	<u>61,281</u>

Major Classes of Administered Revenues & Expenses by outcome

Operating revenues			
Fees and Fines	2.20	4,086	24,569
Other		337	108
Total operating revenues		<u>4,423</u>	<u>24,677</u>
Operating expenses			
Write-down of assets		2,063	7,566
Other	2.20	140	19,194
Total operating expenses		<u>2,203</u>	<u>26,760</u>

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