



D P P

Commonwealth Director
of Public Prosecutions

Annual Report 2005 – 2006

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DPP

Commonwealth Director of Public Prosecutions

10 October 2006

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 2006, in accordance with section 33(1) of the *Director of Public Prosecutions Act 1983*.

Yours faithfully

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

DAMIAN BUGG AM QC
Director of Public Prosecutions

Office of the Commonwealth DPP

Head Office

Director: Damian Bugg AM QC
4 Marcus Clarke St,
CANBERRA CITY ACT 2601
Tel: 02 6206 5666, Fax: 02 6257 5709
GPO Box 3104, CANBERRA CITY ACT 2601
Email: inquiries@cdpp.gov.au

Sydney Office

Deputy Director: Jim Jolliffe
Level 7, Civic Tower, 66-68 Goulburn Street,
SYDNEY NSW 2000
Tel: 02 9321 1100, Fax: 02 9264 8241,
Locked Bag A4020, SYDNEY SOUTH NSW 1235
Email: sydney@cdpp.gov.au

Melbourne Office

Deputy Director: Mark Pedley
15th floor, 460 Lonsdale Street,
MELBOURNE VIC 3000
Tel: 03 9605 4333, Fax: 03 9670 4295
GPO Box 21A, MELBOURNE VIC 3001
Email: melbourne@cdpp.gov.au

Brisbane Office

Deputy Director: David Adsett
19th Floor, MLC Court, 15 Adelaide St,
BRISBANE QLD 4000
Tel: 07 3224 9444, Fax: 07 3229 4124
GPO Box 847, BRISBANE QLD 4001
Email: brisbane@cdpp.gov.au

Perth Office

Deputy Director: Ros Fogliani
5th Floor, 77 St Georges Terrace,
PERTH WA 6000
Tel: 08 9264 7264, Fax: 08 9264 7266
GPO Box B92, PERTH WA 6001
Email: perth@cdpp.gov.au

Adelaide Office

Deputy Director: Freda Propsting
15th Floor, Commonwealth Bank Building,
100 King William St,
ADELAIDE SA 5000
Tel: 08 8238 2600, Fax: 08 8231 8257
GPO Box 2562, ADELAIDE SA 5001
Email: adelaide@cdpp.gov.au

Hobart Office

Assistant Director: Ian Arendt
8th Floor, 188 Collins St,
HOBART TAS 7000
Tel: 03 6238 8100, Fax: 03 6238 8124
GPO Box 366, HOBART TAS 7001
Email: hobart@cdpp.gov.au

Darwin Office

Assistant Director: Paul Usher
9th Floor, National Mutual Centre, 11 Cavenagh St,
DARWIN NT 0800
Tel: 08 8980 8700, Fax: 08 8980 8777
GPO Box 3345, DARWIN NT 0801
Email: darwin@cdpp.gov.au

Townsville Office

Assistant Director: Gary Davey
Level 3, 61-73 Sturt Street
TOWNSVILLE QLD 4810
Tel: 07 4772 7177, Fax: 07 4772 1358
PO Box 1233, TOWNSVILLE QLD 4810
Email: tow@cdpp.gov.au

Cairns Office

Principal Legal Officer: Andrew Lloyd
Level 12, Cairns Corporate Tower, 15 Lake St,
CAIRNS QLD 4870
Tel: 07 4031 3105, Fax: 07 4031 3438
PO Box 5955, CAIRNS QLD 4870
Email: cairns@cdpp.gov.au

ACT prosecutions

Assistant Director: Jon White
4 Marcus Clarke St,
CANBERRA CITY ACT 2601
Tel: 02 6206 5666, Fax: 02 6206 5684
GPO Box 3104, CANBERRA CITY ACT 2601

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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:

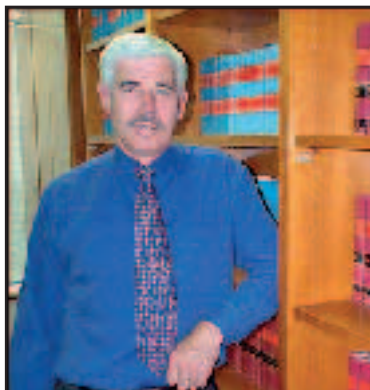
- *The Prosecution Policy of the Commonwealth*
- DPP Corporate Plan
- Portfolio Budget Statements for the Attorney-General's Portfolio.

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

The year has been a fulfilling one for the Office. We have been presented with matters which have expanded the work of the Office and created new and interesting challenges. I speak of the increasing work in the counter-terrorism area, tax fraud involving international transactions, sexual servitude offences and illegal fishing activity. These matters have been conducted in addition to the many other important and continuing areas of DPP work, including fraud and drug prosecutions, regulatory offences and specific tasks such as the ongoing prosecutions following the collapse of HIH.



The prosecution of terrorism offences under Part 5.3 of the *Criminal Code* has continued to present new and challenging issues as these cases advance through the courts. The Office has also been involved in providing input into the review of counter-terrorism laws carried out by Security Legislation Review Committee.

The work of the Office generally in relation to law reform and legislative proposals has increased substantially in recent times. This includes providing advice, input and comment in a variety of areas based on the DPP's practical experience prosecuting in courts around Australia.

The Annual Report details the work undertaken by my Office during the year and reflects not only outcomes in the matters prosecuted but also the number and type of matters referred to the Office by various Commonwealth agencies. Those numbers and types are not an indication of any policy of the Office to target particular types of offending or offenders in preference to others. Rather the Office, which has no investigative powers, assesses and prosecutes those matters which are referred to it by agencies which have a regulatory or investigative function, in accordance with the evidentiary standards and other requirements of the *Prosecution Policy of the Commonwealth*.

It has been three years since the civil forfeiture regime introduced by the *Proceeds of Crime Act 2002* came into effect. The number of proceeds cases has increased markedly over that time, with actions being conducted by this Office on behalf of an increasing range of agencies. A number of difficult and financially intricate cases were concluded during the year. A total of over \$14 million was recovered under the Act. There is a legislative requirement that an independent review of the operation of the Act be conducted after three years. This review occurred during the year, and the Office made a

detailed submission addressing the successful implementation of the Act and the DPP's experience with its operation.

During the year, the DPP was actively involved in the preparations for the Annual Conference of the International Society for the Reform of the Criminal Law held in Brisbane in early July 2006. The conference was designed to engage discussion on a broad range of issues at the heart of criminal justice worldwide. The theme was ambitious: *Justice For All: Defendants, Victims, Prisoners and the Community*. The speakers were diverse, engaging, and sometimes controversial. The event was attended by internationally respected members of the judiciary, the legal profession, academia and the community sector.

The conference brought people together to talk about justice, and to try to find solutions - theoretical, conceptual, practical and legal - to a range of problems faced by those trying to achieve justice in an imperfect world. As an integral part of the justice system in Australia, the DPP has an important role to play in the maintenance, reform and stability of the criminal justice system and, in turn, the rule of law. The conference provided an opportunity for DPP prosecutors to exchange views with a wide range of people involved in the criminal justice system both nationally and internationally.

Staff from the Brisbane Office played a large part in the organisation and running of the conference. Feedback from delegates was universally positive about the content and conduct of the conference with many compliments about the ability and professionalism of those involved. The many changes occurring regularly in the criminal justice system highlight the ongoing need for education and engagement with the broader legal community. Staff of the Office continue to freely give their time to be involved in these important activities.

I am proud of the staff of my Office, and I thank them for their hard work throughout the course of the year. I acknowledge the professionalism and commitment they bring to their important work of providing a high quality prosecution service for the Australian community.

The DPP would be unable to deliver such a service without effective and productive relationships with external agencies and departments. I am grateful for the hard work and assistance of officers of these organisations, with whom my staff work so closely. During the year, the DPP entered into updated Memoranda of Understanding with two of these important agencies - the Australian Taxation Office and the Australian Securities and Investments Commission. These agreements reflect the commitment that the DPP has to maintaining effective relationships with other agencies and departments.

Of course, the important work of the Office relies on the significant contribution of all staff. The library staff continue to provide the DPP with

an excellent service, in both paper and electronic environments. This is especially appreciated in these times of great change in the provision of legal services, particularly those services which are designed to encourage lawyers' awareness of current legal issues. The Human Resources staff have had a very busy year with many changes to legislation impacting on their area. The continued hard work all staff in the resources management area of the DPP, including in Information Technology, is outstanding, and greatly appreciated.

In terms of staffing, in July 2006, the Office was very sad to see the retirement of Ian Bermingham. Just prior to his retirement, Ian was the Deputy Director, Legal and Practice Management Branch, in Head Office. Ian had a long career as a lawyer with the DPP, having joined the Office when it was first established 21 years ago. Ian was known in the Office for his careful and considered legal advice and his generous and decent manner. Over the years, Ian served the DPP in Head Office, and in Canberra, Adelaide and Perth Regional Offices. I will personally miss his good counsel and his presence in the Office, and I know that the same is true for very many of the other staff of the DPP Australia wide.

The Office is fortunate to have Paul Evans, former Deputy Director of the Brisbane Office, move to Head Office to undertake the role of Deputy Director, Legal and Practice Management Branch. Paul brings the experience of managing a busy Regional Office to the role and I look forward to working closely with him.

I would like to thank the Attorney-General, the Honourable Philip Ruddock MP, and the Minister for Justice and Customs, Senator the Honourable Christopher Ellison, for their continued support. I would especially like to acknowledge the contribution made by the Minister at the Brisbane conference of the International Society for the Reform of the Criminal Law.

I am pleased to present the Annual Report for 2005-2006.

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

Damian Bugg AM QC

Commonwealth Director of Public Prosecutions

CHAPTER 1

Office of the DPP

Establishment

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

The current Director of Public Prosecutions is Damian Bugg AM 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 2005-2006.

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. That type of offence is 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 legislation, fraud on the Commonwealth (including tax fraud, medifraud and social security fraud), people smuggling, people trafficking (including sexual servitude and sexual slavery), terrorism, and a range of regulatory offences. 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 straight-forward regulatory offences by arrangement with the DPP. In 2005-2006, the Australian Taxation Office (ATO) conducted prosecutions in which offences were found proved against 4,769 people. The Australian Securities and Investments Commission (ASIC) took action against 502 company directors for 920 breaches. The Australian Electoral Commission prosecutes some electoral offences. There are also some cases where a State or Territory agency conducts a Commonwealth prosecution, usually for reasons of convenience.

The DPP is not an investigative agency. It can only prosecute, or take confiscation action, when there has been an investigation by an investigative agency such as the Australian Federal Police (AFP) or the Australian Crime Commission (ACC). However, the DPP regularly provides advice and assistance to investigators at the investigative stage and works closely with the investigators, particularly in cases involving the confiscation of proceeds of crime.

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 2005-2006, the DPP received referrals from 32 Commonwealth agencies as well as a number of State and Territory agencies.

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. Ultimately, much of the DPP's place in the criminal justice system is based on community trust in the way that the DPP conducts its work. The DPP recognises that it is critical that it acts consistently with principles of fairness and respect for human beings.

The DPP works to ensure that alleged offenders and other people affected by the criminal justice process are treated fairly. To support the DPP's contribution to the criminal justice system, the DPP takes action to promote and maintain an internal culture which values fairness, equity and respect. The DPP expects from its employees conduct which reflects high ethical standards. The DPP has issued Guidelines on Official Conduct for DPP employees. That document sets out the ethical standards expected of all employees and all DPP employees have signed a copy of the document.

DPP Corporate Plan

In 2006, the DPP extended the operation of the 2003-2004 Corporate Plan. The Corporate Plan appears at Appendix 2 of this Report.

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. The DPP's mission is to operate a high quality Commonwealth prosecution service for the benefit of the Australian people.

The current Plan maintains focus on acting in accordance with the 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 authorities and investigators. The Plan requires that the DPP will cooperate with the enforcement strategies of referring authorities and assist with training of investigators.

It is intended to conduct a detailed review of the Plan after a client survey is conducted.

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 or at the DPP's website at www.cdpp.gov.au.

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 evident from the facts of the case, and all the surrounding circumstances, that the 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 of the 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 1901*, including offences of importing and exporting narcotic goods and offences of importing and exporting 'tier 1' and 'tier 2' goods.

Summary Prosecutions, Committals and Trials

In general terms, there are two basic types of prosecution action conducted by the DPP: less serious offences are dealt with at a Magistrates' Court (or 'Local Court') level, and are referred to in this Report as 'summary offences'. In some of these matters, there has been an election made to have the matter dealt with in a Magistrates' Court. In other matters, there is no election, and the matter must proceed before a Magistrate according to the relevant legislation.

As a general rule, more serious offences are dealt with ‘on indictment,’ and where matters are contested, are heard before a judge and jury. All States and mainland Territories have a Supreme Court. Some jurisdictions, but not all, also have an intermediate Court, called either a District Court or a County Court.

In this Report, a reference to a committal proceeding is a reference to a preliminary hearing before a Magistrate to determine whether a case which involves a serious offence should proceed to trial before a judge and jury. A reference to a trial is a reference to a defended hearing before a judge and jury.

In this Report, a person who has been charged with an offence is referred to as a ‘defendant’. The word used to apply to such a person varies between the different States and Territories, and also depends on the Court that is hearing the matter, and the stage of the proceedings. For the sake of simplicity, this Report uses the word ‘defendant’.

Corporate Governance and 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 Australian Capital Territory and southern New South Wales. The DPP Regional Offices are responsible for conducting prosecutions and confiscation action in the relevant region.

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.

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

Outcomes and Outputs

An outcome and output chart for 2005-2006 appears at the end of this Chapter.

Senior Management Chart

(as at 30 June 2006)

Director Damian Bugg AM QC First Deputy Director B3 (John Thornton)	Head Office	Dep Dir B2 Legal and Practice Management (Ian Bermingham) Dep Dir B2 Corporate Management (Stela Walker) Dep Dir B2 CITC Branch (Graeme Davidson)	SES B1 Crim Assets (Chris Murphy) SES B1 Policy (James Carter) SES B1 Legal and Practice Management Branch (Mark de Crespigny) Assistant Director ACT Prosecutions (Jon White)
	Sydney Office	Deputy Director B2 (Jim Jolliffe)	SES B1 Prosecutions (Gabrielle Drennan) SES B1 Prosecutions (David Stevens) SES B1 Prosecutions (Michael Allnutt) SES B1 Tax and Economic Crime (Elizabeth Ryan) SES B1 Criminal Assets (Angela Alexandrou) SES B1 Commercial Pros (Paul Shaw) SES B1 CT Unit (Helen Brown)
	Melbourne Office	Deputy Director B2 (Mark Pedley)	SES B1 Prosecutions (Andrea Pavleka) SES B1 Prosecutions (Daniel Caporale) SES B1 Tax Branch (Berdj Tchakerian) SES B1 Crim Assets (Carolyn Davy) SES B1 Commercial Pros (Shane Kirne) SES B1 CT Unit (Scott Bruckard)
	Brisbane Office	Deputy Director B2 (Paul Evans)	SES B1 Prosecutions (Clive Porritt) SES B1 Crim Assets (Sylvia Grono) SES B1 Commercial Pros (Catherine Barker) SES B1 Tax Branch (Shane Hunter) SES B1 Townsville (Gary Davey) Principal Legal Officer Cairns (Andrew Lloyd)
	Perth Office	Deputy Director B2 (Ros Fogliani)	SES B1 Pros and Criminal Assets (Darren Renton) SES B1 Commercial Pros (Martyn Plummer)
	Adelaide Office	Deputy Director B1 (Freda Propsting)	
	Hobart Office	Assistant Director (Ian Arendt)	
	Darwin Office	Assistant Director (Paul Usher)	

Outcome and Output Chart 2005-2006

DIRECTOR OF PUBLIC PROSECUTIONS Director: Damian Bugg AM QC	
Total price of outputs	\$81.725 million
Departmental outcome appropriation	\$80.059 million

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	\$81.725 million
Departmental output appropriation	\$80.059 million

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	\$81.725 million
Appropriation	\$80.059 million

CHAPTER 2

General Prosecutions

Overview

The DPP is responsible for the conduct of prosecutions for offences against the laws of the Commonwealth. The reach of Commonwealth law has significantly expanded in the last decade and now includes a range of offences not previously known to Commonwealth law. With the introduction of new counter-terrorism offences, additional people trafficking offences, child sex tourism and online child pornography offences, the DPP's practice is broad and varied. Of course, these new offences exist along-side the traditional prosecutions conducted by the DPP. The DPP has a long-standing practice in the prosecution of frauds on the Commonwealth, including tax and social security frauds, and the importation of illicit substances.

Types of Matters

A number of investigating agencies and departments refer matters to the DPP. The DPP has productive working relationships with the AFP, the ACC, and a number of other Commonwealth agencies, such as Centrelink, the Australian Customs Service and the ATO. These agencies refer large numbers of matters to the DPP every year. The DPP also has valuable relationships with a number of other investigating agencies, which refer a broad range of matters to the DPP for consideration each year. These agencies include, for example, Medicare Australia, the Civil Aviation Safety Authority, the Australian Maritime Safety Authority, the Department of the Environment and Heritage, and the Department of Immigration and Multicultural Affairs.

Types of Work

Prosecuting is not limited to litigation itself. Rather, prosecuting includes a range of other work such as preparing cases for hearing, providing advice and other assistance to investigators, drafting charges and settling applications for warrants. Commonwealth offending can often involve very large and complex briefs of evidence which take significant time and expertise to consider. For many years, the DPP has delivered high quality advice on very complex matters, particularly, for example, in the area of tax fraud.

The DPP endeavours to provide investigating agencies with the assistance that the agency requires to efficiently investigate offences and gather evidence to support prosecution action. The DPP maintains close working relationships with its client agencies, and further information about these relationships is given at Chapter 8 of this Report.

Legal Framework

Commonwealth offences are generally prosecuted in the courts of the various States and Territories. Because of this, prosecution action is conducted within a legal framework which combines two jurisdictions, and this adds a layer of complexity to the prosecution of Commonwealth offences. Specifically, the substantive Commonwealth law is uniform Australia wide, but the practice and procedure which applies to the prosecution of an offence varies between the States and Territories.

This means that there can be significant differences in prosecutions between the jurisdictions, including for example, differences in the rules of evidence, differences in the practical conduct of the matter (including matters such as how a committal process might be conducted), as well as differences in the available sentencing options. Understanding these differences, and the way they affect the dynamics of prosecuting in the different Australian jurisdictions, is an important feature of prosecuting offences against Commonwealth law. The difficulties which arise in dealing with the practice of Commonwealth criminal law have been canvassed in the April 2006 report of the Australian Law Reform Commission, *Same Crime, Same Time: Sentencing of Federal Offenders*. The DPP has built up considerable expertise in dealing with these issues.

The statistics that appear in Chapter 4 of this Report include statistics for general prosecutions.

Developments in Case Work

▪ Centrelink

Centrelink refers the largest number of briefs to the DPP of any agency. In this context, it is important that Centrelink and the DPP work closely together to develop 'best practice' national standards and briefs of evidence. For example, Centrelink cases can raise complex issues about electronic evidence. Advocacy training for expert witnesses, as well as standard system statements, have been developed cooperatively.

In May 2006, the DPP held its annual prosecutors' conference on Centrelink prosecutions. Prosecutors from all DPP Regional Offices and Head Office attended the conference. A range of issues were discussed including charging practices, sentencing options, and issues raised by the introduction of new technology. Continued discussion of these issues promotes national consistency in dealing with Centrelink prosecutions across Australia.

▪ Tax Prosecutions

As part of the ongoing relationship between the DPP and the ATO, the two Offices entered into a fresh Memorandum of Understanding on 9 May 2006. The Memorandum of Understanding replaced the existing Guidelines that had been in place since June 1991. The new Memorandum of Understanding is aimed at reflecting the different roles and responsibilities of the ATO and the DPP in the investigation and prosecution process. Amongst other matters, the Memorandum of Understanding addresses the important relationship between the ATO in-house Prosecution Section and the DPP. The ATO in-house Prosecution Section, with the agreement of the DPP, prosecutes a range of regulatory tax offences. The Memorandum of Understanding sets out what matters are to be handled by the ATO's in-house Prosecution section and what matters are to be referred to the DPP.

A number of significant tax prosecutions were finalised during the last year. These included the prosecution of Ida, Nitzan and Izhar Ronen, a summary of which is given later in this Chapter. On page 9 of last year's Annual Report, it was noted that the convictions of Walter Tieleman, Sean Pearce and Stephen Wharton, who were prosecuted as a result of Operation Spada, were upheld on appeal, and that they had lodged applications for Special Leave to Appeal to the High Court of Australia. Those applications for Special Leave were refused, as was an application to the High Court by Steven Hart for Special Leave to Appeal against his conviction and sentence for a fraudulent tax minimisation scheme. A summary of the prosecution action in Hart is given at the end of this Chapter, and a summary of the criminal assets recovery action is given in Chapter 5.

A summary of the DPP's involvement in Project Wickenby follows below. In addition to its involvement in Project Wickenby, the DPP expects to continue to pursue a significant number of taxation prosecutions arising from other tax minimisation schemes, excise fraud and fraud relating to income tax and the Goods and Services Tax.

▪ **Project Wickenby**

In February 2006, the Australian government committed significant and specific funding for a project to combat international tax evasion which has an impact on the Australian tax system. Project Wickenby is a joint project designed to enhance the strategies and capabilities of Australian and international agencies to collectively detect, deter and deal with international tax avoidance and evasion. It is also designed to improve community confidence in Australian regulatory systems, particularly confidence that the Australian government addresses serious non-compliance with tax laws, and reform of administrative practice, policy and legislation.

Project Wickenby involves a number of investigating agencies including the ATO, the ACC, ASIC, and the AFP. It is also supported by AUSTRAC, the Attorney-General's Department and the Australian Government Solicitor. The DPP has a significant and important role to play in the prosecution of offences which arise out of the investigations, and action to recover the proceeds of crime. The total funding for Project Wickenby is \$305 million over six years, with the DPP receiving about \$60 million over six years.

In February 2006, the Project Wickenby Cross Agency Advisory Committee was established in order to oversee the project and advise the Commissioner of Taxation on a range of matters. The DPP participates in this Committee, and has a valuable advisory role in providing information about prosecutions and criminal asset recovery, both in a general sense and in relation to specific matters arising out of Project Wickenby.

The DPP is currently conducting a prosecution in Victoria for an alleged offence arising out of investigations conducted as part of Project Wickenby. In addition, the DPP is taking criminal asset recovery action in Queensland. In one case, the DPP has taken action to restrain assets with an estimated net value in excess of \$10 million and applications for pecuniary penalty orders have been filed. It is anticipated that significant numbers of prosecution and criminal asset recovery matters arising out of Project Wickenby will be referred to the DPP on an ongoing basis. The matters are likely to be complex and voluminous and raise difficult legal issues. The conduct of these matters will require specialist legal expertise in both a prosecution and proceeds of crime context.

▪ **People Smuggling**

The DPP's work in the area of people smuggling prosecutions was summarised at page 11 of last year's Annual Report. During the last year, a number of significant people smuggling prosecutions have been completed.

These prosecutions have included the matters of Keis Asfoor, Masood Chaudhry, Mehmet Seriban and Khaleed Daoed, and case notes about those

matters are given at the end of this Chapter. The successful prosecution of people smuggling matters represents a significant achievement both for the DPP and the investigative agencies involved, given the significant legal and evidentiary issues which are raised by these prosecutions.

▪ Online Child Sex Exploitation Offences

On 1 March 2005, offences relating to use of the Internet or other telecommunications service for child pornography or child abuse material, or to 'procure' or 'groom' children for sexual activity, were inserted into *Criminal Code*. Online child pornography and child abuse material offences have rapidly become a significant aspect of the DPP's practice. During 2005-2006, there were a number of cases before the courts. It is expected that the number of such cases referred to the DPP will continue to increase.

These matters raise new issues, not the least of which is the huge number of images and movie files that can be involved in particular cases. The number of images and level of depravity of those images are aggravating factors in these offences. As a result, investigators, the prosecution, the defence and the courts are faced with assessing large amounts of disturbing material. The DPP is faced with the challenge of presenting such material to the courts.

The DPP has a close working relationship with the AFP online child sex exploitation team (OCSET). In May 2006, the Head Office of the DPP conducted a two day workshop about online child sex exploitation offences which was attended by prosecutors from each DPP Regional Office and Head Office and members of OCSET. The workshop canvassed a broad range of issues that have arisen to date and is an excellent example of investigators and prosecutors working together in a new area of investigation and prosecution.

In relation to child pornography and child abuse material, the DPP also prosecutes offences under the *Customs Act 1901* relating to importation or exportation of such material.

▪ People Trafficking – Sexual Servitude and Slavery

Last year's Annual Report noted that the DPP has been responsible for prosecuting matters under Division 270 of the *Criminal Code*, which criminalises slavery, sexual servitude and deceptive recruiting. The summary in last year's Report noted that as at 30 June 2005, there was a total of five matters before the Courts in Australia, three in Sydney and two in Melbourne. All of the matters involved more than one defendant.

Although the numbers of prosecutions remain small – as at 30 June 2006, the DPP was prosecuting five matters – the prosecutions are important. Division 270 of the *Code* is broadly designed to capture behaviour which includes the trafficking of people into Australia to work in environments of forced labour. In the DPP's experience, most of these cases have involved the trafficking of women from South East Asia to work in the sex industry. The conditions in which those women are forced to work are alleged to be criminal, and in general terms, the women are forced to live and work in places and conditions where they are not able to leave or choose to discontinue the work.

The DPP takes the prosecution of these matters very seriously. They are not straightforward prosecutions to conduct, and they raise difficult conceptual issues in the interpretation of the law, the presentation of appropriate evidence, and the treatment of victim witnesses. All of the prosecutions have raised cultural and linguistic difficulties with the witnesses, and all of the prosecutions have been lengthy and complex.

Reports of three of those cases are at the end of this Chapter.

▪ Fisheries Prosecutions

A significant part of the practice of the DPP is the conduct of fisheries prosecutions arising from referrals from the Australian Fisheries Management Authority (AFMA).

It is anticipated that the policy to increase the number of apprehensions of foreign fishing vessels located illegally in the Australian Fishing Zone, will result in a significant increase in the number of briefs being referred to the DPP alleging offences contrary to the *Fisheries Management Act 1991*.

In addition to charging illegal fishers with offences under the *Fisheries Management Act 1991* and other similar legislation, the DPP has also, in some instances, prosecuted illegal fishers for offences of threatening to cause harm to a Commonwealth public official contrary to section 147.2 of the *Criminal Code* or of obstructing a Commonwealth official contrary to section 149.1 of the *Criminal Code*. These charges have arisen out of attempts by illegal foreign fishers to resist Australian authorities when being apprehended in the Australian Fishing Zone.

On 22 June 2006, a range of new offences in the *Fisheries Management Act 1991* received Royal Assent. These offences, which were inserted by the *Fisheries Legislation Amendment (Foreign Fishing Offences) Act 2006*, include a maximum penalty of two years' imprisonment and apply to offences committed in Australian territorial waters between three and twelve nautical miles from the Australian coastline.

▪ Counter-Terrorism Prosecutions

Australia's terrorism related offences are contained within Part 5.3 of the *Criminal Code*. The first terrorism specific offences were inserted into the *Criminal Code* in 2002 by the *Security Legislation Amendment (Terrorism) Act 2002*. Since that time there have been numerous and frequent legislative developments in this area.

One of the important developments in this area was the enactment of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (NSI Act). The NSI Act seeks to protect, in certain federal criminal proceedings (and in certain civil proceedings) in any Australian Court, information that relates to national security and information which may affect national security if disclosed. Given the nature of terrorism-related prosecutions, the NSI Act will invariably apply in these kinds of proceedings. The DPP has responsibility for the decision to invoke the Act in relation to a particular federal criminal proceeding. If the DPP does not give notice under section 6 of the NSI Act, the requirements and obligations that govern the handling of national security information under the Act, do not apply. To date, the NSI Act has been invoked in six separate criminal proceedings.

In November 2005, the DPP provided extensive support to and involvement in a week long visit by a senior group of Indonesian prosecutors responsible for prosecution of terrorism matters. The aim of the exercise was to strengthen mutual understanding between Indonesian and Australian prosecutors in the area of counter-terrorism prosecutions.

Counter-terrorism prosecutions are generally very complex. Because the legislative provisions are new, the prosecutions often raise questions of law, as well as questions of evidence and procedure. There are specialist counter-terrorism prosecutors in each of the Regional Offices. To date there have been counter-terrorism prosecutions instituted in New South Wales, Victoria and Queensland.

Primary responsibility for investigating terrorism related offences rests with the AFP. The AFP refers briefs of evidence relating to terrorism related offences to the DPP for possible prosecution.

There is often early and extensive liaison between the AFP and the DPP in relation to terrorism related investigations. This usually occurs well prior to any charges being laid. In order to ensure an effective prosecution, the DPP is always available to provide early specialist advice to the AFP in the investigation of these offences. The investigations in terrorism related matters are often long and complicated and the evidentiary material gathered is also voluminous and complex. There are frequent liaison meetings between the DPP and investigating agencies to discuss specific issues relating to a particular case as well as more general issues.

There are currently 27 people who have been charged with terrorism related offences in Australia. Of these, 25 are in custody and two have been granted bail pending trial.

Significant Cases

The cases summarised in this Chapter are some of the general prosecutions dealt with by the DPP in the past year. The cases are important either because the facts and circumstances alleged by the prosecution are significant, or because they demonstrate a point of legal relevance. The cases have also been selected to try to show the range of offences prosecuted by the DPP.

COUNTER-TERRORISM CASES

▪ Faheem Khalid Lodhi

Faheem Lodhi was charged with four offences under the *Criminal Code*. In short, those offences were: collecting documents which were connected with the preparation for a terrorist act (count one), doing an act in preparation for a terrorist act (count two), making a document in connection with a terrorist act (count three), and possessing a document which was connected with the preparation for a terrorist act (count four).

Lodhi pleaded not guilty to all four charges. On 19 June 2006, a jury in the Supreme Court of New South Wales returned verdicts of guilty in respect of counts one, two and four.

The Crown case was that Lodhi purchased maps of the Sydney electricity grid, downloaded aerial photographs of military installations, and made enquiries about the purchase of chemicals which could be used in the production of explosives. Lodhi was also in possession of handwritten notes containing instructions and chemical recipes for the manufacture of basic poisons and explosives. The case against Lodhi was essentially a circumstantial one which alleged that between May and October 2003 there was a covert association between Lodhi and a visiting French national, Willy Brigitte. Brigitte had trained with Lashkar-e-Taiba which is (and was in October 2001), a terrorist organisation focused upon the removal of Indian security forces from Indian controlled Kashmir. Lodhi's connections with Brigitte, as well as other evidence, was relied on to support the inference that Lodhi was connected with the preparation for one or more terrorist acts in Australia.

The proceedings in this matter raised complex issues. There were several weeks of pre-trial applications. Some of these applications focussed on the application of the *National Security Act Information (Civil and Criminal*

Proceedings) Act 2004 to protect the disclosure of information where that disclosure is likely to prejudice national security. Defence counsel successfully applied for the appointment of special counsel, and this was the first time that such an application and appointment had been made in Australia.

Other pre-trial issues included an unsuccessful application made by members of the media which challenged the constitutional validity of the *National Security Act Information (Civil and Criminal Proceedings) Act 2004*. In addition, there was a successful Crown application for the evidence of overseas witnesses to be given by way of audio-visual link, and numerous defence applications to exclude identification and photographic evidence.

As part of the pre-trial issues, the trial judge, Justice Whealy, dismissed a defence motion that the four counts on the indictment were bad for duplicity and that they failed to particularise the essential elements of each offence. On 13 April 2006, the Court of Criminal Appeal in New South Wales quashed the indictment for failure to identify the essential elements of the offence, and remitted the matter to Justice Whealy. A fresh indictment was presented when the trial started before the jury on 24 April 2006.

On 23 August 2006, Lodhi was sentenced to 20 years' imprisonment, with a non-parole period of 15 years.

▪ **Belal Saadallah Khazaal**

Belal Khazaal has been charged with one count of making a document (a book) connected with preparation for and assistance in a terrorist act, contrary to section 101.5(1) of the *Criminal Code*, and one count of inciting others to engage in a terrorist act contrary to sections 11.4 and 101.1 of the *Code*. The maximum penalty for an offence against section 101.5(1) is imprisonment for 15 years, or 10 years if recklessness is established as an 'alternative offence'. The maximum penalty for an offence against sections 11.4 and 101.1 of the *Code* is imprisonment for 10 years.

The Crown case is that the defendant compiled a 'book' entitled "*Provisions on the Rules of Jihad – Short Judicial Rulings for Fighters and Mujahideen Against Infidels*," using a pseudonym. This book urged Muslims to engage in a holy war against a list of various nations and contained what may loosely be termed as an 'assassination manual'.

In September 2003, the defendant requested (and made arrangements for) the book to be published on a website via email messages posted on that website. The book was subsequently published on the website and downloaded numerous times before the defendant was arrested.

The defendant was charged on 2 June 2004 and was granted bail. On 2 September 2005, the defendant was arraigned (on an indictment which has since been amended) and entered pleas of not guilty. The matter was listed for trial to commence 24 April 2006. Since then, a number of interlocutory matters have delayed the commencement of the trial.

This matter is the first prosecution where a person has been charged under section 101.1 of the *Code*, and it raises novel issues. For example, the case involves interesting legal issues concerning publication of the book on the Internet where the website is hosted overseas. As in the matter of Izhar Ul-Haque, which is reported below, the defence challenged the constitutional validity of the terrorism provisions and the prosecution was dependant on the outcome of that case.

- **Operation Pendennis**

SECTION REDACTED
DUE TO PENDING MATTERS



SECTION REDACTED
DUE TO PENDING MATTERS

▪ **Joseph Terrence Thomas**

On 4 January 2003, Joseph Thomas, an Australian national, was apprehended by Pakistani security officers attempting to leave Pakistan on a Qantas Airways ticket for Australia. At the time of his apprehension, Thomas was allegedly travelling on an Australian passport issued in his own name which had been falsified. In addition he was allegedly in possession of US\$3,500 cash. Thomas was detained by Pakistani officials between January and June 2003, after which he was returned to Australia.

Whilst in detention in Pakistan, Thomas was interviewed by officers of the AFP on 8 March 2003. In the course of that interview Thomas made a series of admissions to police. These admissions were later to form the backbone of the prosecution case against him.

Thomas was arrested by members of the AFP in November 2004. At his trial, in the Supreme Court of Victoria, Thomas was charged with receiving funds from a terrorist organisation (one count), providing resources to a terrorist organisation (two counts), and possessing a falsified Australian passport (one count). Prior to his trial commencing, lawyers acting for Thomas unsuccessfully applied to the Victorian Supreme Court to have the record of interview conducted with police in Pakistan on 8 March 2003 excluded from the evidence to be used against him at his trial.

On 26 February 2006, Thomas was convicted by a jury on the charge he had received funds from a terrorist organisation. He was also convicted of the passport offence. The jury acquitted Thomas of the two other charges. On 31 March 2006, Thomas was sentenced to an effective term of five years' imprisonment with a non-parole period of two years.

On 18 August 2006 the Victorian Court of Criminal Appeal quashed the convictions on the basis that the record of interview admitted into evidence at the trial had not been provided voluntarily by Thomas. The prosecution has now sought a retrial of Thomas based on public statements he made to the media which came to light following the conclusion of the Supreme Court trial. The Court of Appeal is yet to determine this issue.

This case was significant in that it was one of the first cases to see the *National Security (Criminal and Civil) Proceedings Act 2004* applied to the proceedings to protect information in the interests of Australia's national security.

▪ Izhar Ul-Haque

The Crown case in this matter is that Izhar Ul-Haque travelled to Pakistan in December 2002. During this time, the defendant formed an intention to fight in Kashmir. Between 12 January 2003 and 2 February 2003, the defendant attended a training camp of terrorist group, Lashkar-e-Taiba (LeT), near Lahore, Pakistan.

Ul-Haque returned to Australia on 2 March 2003 and was subjected to a search by Australian Customs Service officers. Ul-Haque was arrested and charged on 15 April 2004. He is currently on bail pending trial before the Supreme Court of New South Wales.

On 4 August 2005, a Notice of Motion was filed on behalf of Ul-Haque seeking various orders including that the indictment be quashed or in the alternative the proceedings be stayed, as the terrorist act alleged was not one in relation to which the Commonwealth Parliament had power to legislate pursuant to the external affairs power under section 51(xxix) of the *Australian Constitution*. In a judgment delivered on 8 February 2006, Justice Bell declined to grant the relief sought and dismissed the Notice of Motion.

An appeal against Justice Bell's judgment on the constitutional issue, on construction of the pleadings, and on the admissibility of the records of interview was then filed in the New South Wales Court of Criminal Appeal. Ul-Haque's representatives filed an application to remove the constitutional issue to the High Court of Australia. The application was dismissed by the High Court.

In a judgment delivered on 9 August 2006, the Court of Criminal Appeal dismissed the defendant's appeals challenging the constitutional validity of the legislation and construction of the pleadings. Ul-Haque's representatives have filed an application for special leave to appeal to the High Court against the judgment of the Court of Criminal Appeal dealing with the constitutional validity of the legislation.

TAX CASES

▪ Salvatore Peter Cassaniti

Salvatore Cassaniti was the principal of an accountancy firm and a registered tax agent. He lodged income tax returns on behalf of a number of his clients knowing the returns contained false information about the payment of tax instalments and expenses, as well as false group certificates. He knew that the ATO would make payments based on this information.

Cassaniti's clients placed trust in him. Most of them were prepared to sign large numbers of blank documents. Cassaniti received the income tax refund payments directly to his firm, and his clients knew nothing of the payments. The total amount obtained in this way was \$357,164.18. Cassaniti applied for an additional \$2,680.77, but the ATO discovered the fraud. The fraud extended over a period of four years.

Cassaniti pleaded not guilty to charges of defrauding the Commonwealth, and was committed for trial. The trial was heard in the District Court of New South Wales in Sydney from 3 August 2005 until 30 September 2005, when a jury found him guilty of 23 of the 24 charges on which he had been indicted. On 2 December 2005, Cassaniti was sentenced to four years' imprisonment, with an aggregate non-parole period of two years and nine months.

Cassaniti has indicated that he intends to appeal his conviction.

▪ Steven Irvine Hart

A summary of this case appeared at page 91 of last year's Annual Report.

Steven Hart was a tax agent and owner of a large accounting practice. The charges arose out of a joint investigation by the ATO and AFP into a tax minimisation scheme. The scheme involved each taxpayer (client) claiming a tax deduction for making a contribution to a staff benefit trust for the purchase of an insurance bond in favour of a key employee of that taxpayer. If the employee remained employed by the taxpayer for a period of ten years, the employee would receive the proceeds of the insurance bond. The payment was tax deductible as the taxpayer was providing an incentive to retain key employees by way of a gift to a staff benefit trust.

The purchase of each insurance bond, was to be funded by each taxpayer's initial contribution of 12.7%, with the remaining 87.3% being provided by way of a loan. Each taxpayer paid their initial contributions to Harts Fidelity Pty Ltd as trustee of the staff benefit trust on the understanding that it would be used for the purchase of an insurance bond. However the money,

which totalled \$335,000, was not used for this purpose but rather applied to the use of Harts Australia Ltd.

Hart generated false loans and insurance bonds through a company in Vanuatu. The false claims in the clients' tax returns amounted to \$1,470,000.

Hart was convicted and sentenced to seven years' imprisonment with a non-parole period of two years and nine months.

Hart appealed against his conviction. He also applied for leave to appeal against his sentence on the basis that it was manifestly excessive. The DPP also appealed the sentence, on the basis that it was manifestly inadequate. On 24 February 2006, the Queensland Court of Appeal dismissed Hart's appeal against conviction. His application for leave to appeal against sentence was refused. The Director's appeal against sentence was dismissed.

Hart sought special leave to appeal to the High Court of Australia. On 21 June 2006, his application for special leave was refused.

Criminal confiscation action in this matter is ongoing, and a report about that action appears in Chapter 5 of this Report.

▪ **Huy Hoang Ly (also known as Peter Ly)**

Peter Ly was a registered tax agent. The offences related to the lodgement of 51 falsified income tax returns on behalf of 17 individual taxpayer clients of Ly's business, called Wing Heng Accounting Services. The false income tax returns were lodged in respect of the 1998, 1999, 2000 and 2001 income tax years. They all used 'Pay As You Earn' or 'Prescribed Payments System' credits to support large refunds and were in the names of taxpayers who had permanently departed Australia prior to the relevant tax year. Ly also lodged company income tax returns and Business Activity Statements for his own company which contained false information. The offences were committed over a 19 month period between March 2000 and October 2001.

As a result of Ly's conduct he received 49 refund payments totalling \$328,692.27. He would have obtained an additional \$66,426.99, if not for action taken by the ATO.

Ly pleaded guilty to 55 offences of dishonesty. On 7 July 2006, Ly was sentenced in the District Court of New South Wales in Sydney to six years' imprisonment, with a non-parole period of four and a half years. An order was made for reparation of the sum of \$328,692.27.

▪ Thi Hong Hoa Ly

Thi Hong Hoa Ly operated a tax evasion scheme that provided clothing manufacturers with the means to claim false deductions (in the form of purported business expenses) on their tax returns. Ly recruited people from Sydney to travel to Melbourne for the purpose of registering business names and opening bank accounts in the names of the registered businesses. These registered businesses were 'shell entities' which never operated. Ly then arranged for invoices to be issued in the names of these businesses to participating clothing manufacturers. The invoices would be delivered to the manufacturers in exchange for a cheque in the amount of the respective invoice. Ly then arranged for the cheques to be banked into the relevant bank accounts of the shell entities and for most of the proceeds of the cheques to be returned to the manufacturers in cash. It was alleged that Ly retained an amount of approximately eight to ten percent of the cheque amounts as her 'commission'.

The ACC investigation in this matter focused on Ly's involvement with 18 clothing manufacturers. The total amount of tax alleged to have been avoided by these manufacturers was \$1,152,564.35. Ly obtained approximately \$350,000 for her part in the scheme.

Ly pleaded guilty to 18 charges of defrauding the Commonwealth. On 14 October 2005, she was convicted in the County Court of Victoria and sentenced to two years' imprisonment on each charge. The sentences were partly cumulative, with the effect that Ly was sentenced to three years' imprisonment to be released after serving 12 months of that term.

▪ Akif Malici

The *Excise Tariff Act 1921* imposes liability for excise duty on goods sold, manufactured or produced in Australia. Excise duty is payable by the manufacturer or the producer of the tobacco at the point of manufacture. The *Excise Act 1901* seeks to regulate the tobacco industry by creating a licensing regime for growers, dealers and manufacturers of tobacco, and creates penalties for those acting in the illicit trade of tobacco outside the licensing regime.

On 11 November 2003, officers of the ATO executed a warrant on premises in Victoria belonging to Akif Malici. They found and seized 61 bales of tobacco and 260 small white plastic bags containing 'cut' tobacco. Officers also located and seized two cutting machines, two presses, four sets of blades, one bench grinder and two jacks.

In total, 6,416.04 kilograms of tobacco was seized. The amount of excise due on the cut tobacco (which was contained in the small plastic bags) was \$36,042.01. The amount of excise due on the 61 bales of tobacco

(which amounted to 6,283.80 kilograms), assuming it was manufactured in Australia and entered for home consumption, was \$1,712,649.78.

Malici entered a plea of guilty. On 3 February 2006, he was sentenced in the County Court of Victoria to 15 months' imprisonment, to be released after serving five months of that term.

The Sentencing Judge further ordered (by consent) that the property at which the tobacco was located be forfeited to the Commonwealth on the basis that the property was an instrument of the offences, pursuant to the *Proceeds of Crime Act 2002*. That property was valued at approximately \$190,000. His Honour also ordered (by consent) that Malici was to pay a sum of \$40,000 by way of pecuniary penalty pursuant to the *Proceeds of Crime Act 2002*, to be enforced 60 days from the date of the order.

▪ **Helen Barbara Mannah, George Abdallah and Joseph El-Chaar**

This prosecution arose out of false claims for Goods and Services Tax (GST) refunds made by Joseph El-Chaar and George Abdallah on the ATO. During the relevant period, Helen Mannah was an employee of the ATO, and used her position to improperly process seven of the claims.

The scheme related to the lodgement of thirteen Business Activity Statements (BASs) by El-Chaar. Twelve BASs were processed, and El-Chaar received \$1,000,520 in GST refunds before his criminal activity was discovered. Abdallah lodged one BAS and received \$33,000. The total loss to the ATO was \$1,033,520.

The scheme involved fictitious development projects. Because of the nature of development projects, it is generally expected that a developer will incur substantial expenditure before a profit is realised. Such expenditure may be the subject of a claim for a GST refund. Due to the large amounts involved, there is a strong likelihood that such claims will be the subject of verification within the ATO. Mannah, as an ATO verification officer, played an essential role in the criminal enterprise.

All three defendants pleaded guilty. They were sentenced in the District Court of New South Wales.

On 18 November 2005, El-Chaar was sentenced to eight years' imprisonment, with a non-parole period of five years. A reparation order was made in amount of \$1,000,688. On 10 March 2006, Abdallah was sentenced to a term of 12 months' imprisonment, to be released after serving six months of that term. This sentence was to be served by way of periodic detention. Abdallah had repaid the money prior to his sentence being heard.

On 20 June 2006, Mannah was sentenced to four years and seven months' imprisonment, with a non-parole period of two years and ten months.

A reparation order was made in the amount of \$607,995. The Sentencing Judge found that Mannah did not receive any benefit from the fraud, and was pressured to assist in the enterprise.

▪ **Ida, Nitzan and Izhar Ronen**

A summary of this matter appeared in last year's Annual Report on page 102. At the time that the Report was published, the defendants had not been sentenced.

The matter arose out of a fraud on the ATO. Ida Ronen owned and operated a number of stores which sold clothing. The Crown case was that cash from the sale of clothing was concealed and not declared to the ATO. The cash was subsequently distributed between Ida Ronen and her two sons. The fraud continued throughout the introduction of the GST in 2000. The amount of cash concealed was about \$15 million to \$17 million.

The defendants were found guilty by a jury in January 2005.

On 7 October 2005, each of the defendants was sentenced to a total head sentence of eight years and six months' imprisonment. Nitzan and Izhar Ronen received non-parole periods of five years and six months. Ida Ronen received a non-parole period of four years and six months.

Following the sentence, the DPP lodged an appeal, arguing the inadequacy of the sentences. Each of the defendants lodged an appeal against the severity of his or her sentence. The appeal was heard in the Court of Criminal Appeal of New South Wales by Spigelman CJ, Kirby J and Howie J on 28 March 2006. All of the appeals were dismissed on 19 April 2006, and the sentences confirmed.

The appeal considered issues which are important in the area of fraud. The first was that even though these offences were committed contrary to the earlier provisions of the *Crimes Act 1914*, the maximum penalty for new, similar offences introduced in the *Criminal Code*, was lower. The Court discussed the effect of this reduction on the appropriate tariff for offences given under the *Crimes Act 1914*. The second significant issue discussed by the Court was what the effect on sentence should be if the defendant had paid penalty tax prior to sentence. The Court noted that the amount of the penalty tax paid in this case was substantial. The Court said that if a Court is to take account of the effect of such a payment on a defendant at the time of sentence, the Court would have to be in possession of evidence as to the hardship endured by the defendant as a result of having made the payment.

▪ Jean-Teddy Sylvain Ramanah

This matter was reported on page 53 of last year's Annual Report in the context of proceeds of crime action.

Jean-Teddy Ramanah was a registered tax agent. In the course of his practice he amended a number of his clients' tax returns without their knowledge in order to fraudulently claim additional rebates to which they were not entitled. He kept the rebates for himself. In total, he defrauded in excess of \$1.5 million.

Ramanah pleaded guilty to several fraud type offences. He was sentenced to a total of nine years' imprisonment, with a four and a half year non-parole period. Ramanah appealed that sentence, and the Court of Appeal unanimously dismissed his appeal.

As detailed in last year's Annual Report, the DPP also took action under the *Proceeds of Crime Act 2002* against Ramanah, and obtained a pecuniary penalty order for the sum of \$1,585,716.93. Confiscation and realisation of Ramanah's remaining assets has resulted in the recovery of about \$311,000. It appears that the balance of the funds fraudulently obtained by Ramanah may have been dissipated and will not be recoverable.

▪ John Voyka

John Voyka was the principal of ABC Constructions & Engineering, a Cairns-based labour hire firm in the business of providing workers to other companies for an hourly fee. The business practices of ABC Constructions & Engineering, and John Voyka, were the subjects of a cash economy investigation conducted jointly by the AFP, the ATO, and Centrelink.

Forty-four of the workers hired out by ABC between September 1995 and June 2000 were employees of that company. Voyka was obliged to deduct tax from their wages and to remit it to the ATO. Contrary to that obligation, Voyka dishonestly failed to deduct and remit tax from the wages paid to the employees, and thereby deprived the ATO of \$642,314.64 in wages tax between September 1995 and June 2000.

Numerous ABC employees were prosecuted for fraud offences involving the ATO, Centrelink, and the Child Support Agency, arising from a failure to declare their 'cash-in-hand' wages.

Voyka was charged with fraud offences, to which he pleaded not guilty. The trial was heard in the District Court of Queensland in Cairns, from 19 April 2006 to 9 May 2006. Voyka was found guilty and, on 29 June 2006, was sentenced to three and a half years' imprisonment to be released after serving 21 months of that term.

Voyka has filed an appeal against the convictions and an application for leave to appeal the sentence. Those appeals are pending.

PEOPLE SMUGGLING CASES

▪ Keis Adb Rahim Asfoor

On 24 March 2006, Keis Asfoor was convicted of people smuggling offences in the District Court of Western Australia.

The Crown case against Asfoor was that he was a primary organiser of ten boat loads of unlawful non-citizens from Indonesia to Ashmore Reef between August 1999 and September 2001. These boats carried a total of 1,351 passengers.

Asfoor was one of two partners involved in the people smuggling activities, and the Crown case was that he took a direct role in arranging suitable boats, crew and provisions to take the passengers to Australia. The Crown alleged that Asfoor directly assisted passengers to travel through the Indonesian archipelago to the departure points, and personally supervised the embarking of the passengers. In his defence, Asfoor asserted that he was only a minor assistant in the activity.

Asfoor was first tried from 3 November 2003 to 19 December 2003. He was convicted of 12 offences. He appealed against his convictions, and that appeal was successful, with the Court of Appeal of Western Australia ordering a re-trial. A re-trial was conducted from 6 February 2006 to 24 March 2006.

At his re-trial, Asfoor was convicted of seven charges contrary to the *Migration Act 1958*, relating to seven boats which arrived at Ashmore Reef carrying 801 passengers. Asfoor was acquitted of the remaining three charges.

Asfoor was sentenced on 31 March 2006 to an effective sentence of 10 years' imprisonment, with a non-parole period of six years and six months. On sentence, His Honour Judge Martino in the District Court of Western Australia found that Asfoor smuggled people to Australia for profit and with no real regard for their safety.

Asfoor has lodged an appeal against the severity of his sentence, and that appeal is pending.

▪ Masood Ahmed Chaudhry

Masood Ahmed Chaudhry ('Masood') was convicted of people smuggling offences after a trial conducted in the District Court of Western Australia from 9 March 2006 to 16 March 2006. Masood had been extradited to Australia from Thailand on 11 November 2004 to face two charges of bringing a non-citizen to Australia contrary to the *Migration Act 1958*.

The charges related to two men who Masood brought from Pakistan to Australia. The first man was named Abdul Ahad. In 2000, Masood met with Ahad in Pakistan. Ahad was told that it would cost US\$7,000 to smuggle him into Australia. Masood made travel arrangements for Ahad to leave Pakistan and to come to Australia via Indonesia. Ahad travelled by boat from Indonesia, arriving on Christmas Island on the vessel codenamed “Nullawarre” on 22 April 2001.

The second charge related to Mohammad Farid Afzali. Afzali’s family initially paid US\$6,000 for him to be smuggled out of Afghanistan. Masood met Afzali in Pakistan in early 2001, and arranged his travel to Australia. Afzali also travelled from Indonesia on the vessel “Nullawarre”.

The issue at trial was identity. The defendant said he was not the ‘Masood’ who Ahad and Afzali met in Pakistan. Ahad and Afzali identified a picture on a photo-board as the person who had arranged their travel to Indonesia.

Masood was sentenced on 7 April 2006 to four years’ imprisonment on each charge, with the sentences to be served cumulatively, making a total of eight years’ imprisonment. A non-parole period of four years was imposed.

Masood has appealed against his conviction, and the appeal is pending.

▪ **Khaleed Shnayf Daoed**

A summary of this matter appeared in last year’s Annual Report on page 90. Since that Report was published, the Queensland Court of Appeal has heard an application made by Daoed for leave to appeal his sentence.

The Crown case in this matter was that between July and October 2001, Khaleed Daoed assisted in the organisation of the proposed entry into Australia of over 400 non-citizens aboard a vessel which was later code-named “SIEV X”. On 19 October 2001, the vessel sank and most of the passengers on board were drowned.

As reported in last year’s Annual Report, Daoed’s Supreme Court trial lasted about three weeks, and concluded on 8 June 2005. On 14 July 2005, His Honour Justice McMurdo in the Supreme Court of Queensland sentenced Daoed to nine years’ imprisonment, with a non-parole period of four and a half years.

Daoed lodged an application for leave to appeal the sentence, and that matter was heard by the Court of Appeal on 22 November 2005.

Before the Court of Appeal, Daoed’s lawyer argued that the sentence should be reduced to eight years’ imprisonment, with a non-parole period of four years. It was argued that the Sentencing Judge had insufficient regard to Daoed’s personal circumstances and the impact that the prosecution had had on him. In particular, it was argued Daoed had been extradited to

Australia, endured a lengthy separation from his family and was left in a situation of uncertainty as to his residency status upon his release.

In response, the Crown argued Daoed's separation from his family was simply the foreseeable consequence of his wrongdoing, and was a matter of little weight. There was no reliable information placed before the Sentencing Judge regarding Daoed's fate at the end of his incarceration. It was argued that speculation about executive decisions which might be made at that time should not intrude on the sentencing process.

On 9 December 2005, Daoed's application for leave to appeal against sentence was dismissed.

▪ Mehmet Seriban

On 23 March 2003 the AFP were made aware that Indonesian authorities had detained Mehmet Seriban for immigration offences and were intending to deport him to his country of citizenship, being Australia. Seriban was deported to Australia, where he was remanded in custody on charges relating to organising the passage of a group of 14 Turkish nationals on board a vessel codenamed "Gnowangerup" from Indonesia to Australia.

Further investigations conducted by the AFP revealed that Seriban was suspected of having being involved in other people smuggling ventures. Seriban was suspected of being an organiser in a sophisticated people smuggling operation which continued over a period of five years and involved 180 passengers being transported in five different vessels. The operation included other organisers (of varying levels of participation) in three different countries.

The Crown case was that Seriban had a medium to high level of involvement in the people smuggling ventures, including recruiting passengers in Turkey and Indonesia, arranging passports and travel from Turkey to Indonesia, and transport, accommodation and food for passengers whilst in Indonesia. Seriban also arranged and paid for the vessel and crew who sailed the passengers to Australia.

Seriban was charged with eight counts of being a person concerned in bringing non-citizens to Australia contrary to section 233(1)(a) of the *Migration Act 1958* and a further charge of bringing five or more non-citizens into Australia contrary to section 232A of the *Migration Act 1958*.

Seriban pleaded guilty to all nine counts on the indictment which related to vessels codenamed "Gnowangerup", "Ord" and "Warrego". Seriban also admitted his guilt to a further eight items included on a schedule pursuant to section 16BA of the *Crimes Act 1914*. These items related to a further two vessels, "Isa" and "Tabletop."

On 27 January 2006, Seriban was convicted and sentenced to a total effective sentence of five years and six months' imprisonment with a non-parole period of two years and nine months.

PEOPLE TRAFFICKING – SEXUAL SERVITUDE AND SEXUAL SLAVERY

▪ Jenny Ong, Danny Kwok, Raymond Tan and Hoseah Yoe

The Crown case in this matter was that the defendants conspired with each other (and other people) to bring women from South East Asia to Australia to work in brothels in conditions which amounted to conditions of servitude or slavery.

The Crown case was that although there was some question about the extent of the women's awareness as to whether they would be working in the sex industry, each woman was only made aware of the true nature of the proposed conditions of her 'employment' after she arrived in Australia. When the AFP provided the initial brief of evidence it contained statements of three Indonesian women who escaped from a home unit located in Auburn, Sydney. However, as the prosecution progressed a number of other victims were detected by the AFP. Those women provided statements indicating that they had been trafficked from either Thailand or Indonesia.

The defendants were committed for trial and indicted on a joint charge of conspiring to cause persons to enter into sexual servitude under sections 11.5 and 270.6(1) of the *Criminal Code*. The trial of that charge commenced on 14 June 2005. The jury were subsequently discharged due to issues relating to disclosure. The decision was later made not to proceed with a re-trial for evidentiary reasons.

▪ Wei Tang

Wei Tang was charged with five counts of intentionally possessing a slave, and five counts of intentionally exercising a power over a slave attaching to the right of ownership, namely the power to 'use' a slave, contrary to section 270.3(1)(a) of the *Criminal Code*. The charges related to five Thai women who had worked at a brothel in metropolitan Melbourne owned by Tang. This was the first case in Australia where such charges proceeded to jury trial, and the first case in which convictions were returned.

Each of the five Thai women entered into an agreement to come to Australia from Thailand, to work in the Australian sex industry. The 'contract' required each woman to incur a debt of between \$35,000 and \$45,000, which she would pay off by servicing clients of the brothel. The debt was said

to have arisen from expenses incurred as a result of bringing the women to Australia, as well as accommodation and other incidental expenses. The women were told that at the expiration of their contracts, they could remain in Australia and earn a wage.

Upon their arrival in Australia, the women's passports were confiscated and kept at the brothel. According to the women, they were required to work at the brothel six days a week. Of the \$110 earned for each client, \$50 was notionally deducted from the debt. The remainder of the proceeds went to the brothel, and to those who claimed to have a financial interest in the women. The women were given the option of working on their 'free' day and of retaining any earnings made on that day.

When the proceedings first commenced, Tang had two co-accused.

One of those co-accused pleaded guilty to three counts of intentionally possessing a slave contrary to section 270.3(1)(a) of the *Criminal Code* and two counts of engaging in slave trading contrary to section 270.3(1)(b) of the *Code*. The co-accused was originally sentenced to nine years' imprisonment with a non-parole period of three years. Following an appeal against sentence, the co-accused was sentenced to a total effective sentence of six years' imprisonment with a non-parole period of two years and six months. The reduction in sentence was a result of the co-accused's co-operation with authorities. That co-accused gave evidence at the trial for the Crown.

Tang and her second co-accused, Paul Pick, were first tried in April 2005. The jury in that trial was unable to reach a unanimous verdict in respect of any count in relation to Tang, and two of the counts in respect of Pick. The jury acquitted Pick of eight other charges. The DPP filed a Notice of Discontinuance in respect of the two remaining counts against Pick on 9 June 2006.

Tang was re-tried in April 2006. On 9 June 2006, she was convicted and sentenced to ten years' imprisonment with a non-parole period of six years. She has appealed against conviction and sentence, and the appeal is pending.

▪ **Somsri Yotchomchin and Johan Sieders**

On 21 July 2006, Somsri Yotchomchin and Johan Sieders were each found guilty of one count of conducting a business, namely a brothel, which involved the sexual servitude of other persons contrary to section 270.6(2) of the *Criminal Code*. These were the first convictions in Australia for sexual servitude offences.

Four women were recruited in Thailand to come to Australia and work in the sex industry. The women agreed to come to Australia, and a complex process

ensued whereby the recruiter obtained a tourist visa on the woman's behalf for travel to Australia. For this service, a debt was imposed that was to be paid off upon the woman's arrival to Australia.

The women travelled to Australia accompanied by an escort. Each of the women provided sexual services at brothels owned by the defendants. The women did not receive any payment for their services, and were told that their earnings would go directly towards paying off their 'debt'. Each woman was told that she owed a debt of about \$45,000.

The Crown case was that the conditions in which the women were kept in Australia amounted to 'servitude' under section 270.6(2) of the *Criminal Code*. Yotchomchin and Sieders pleaded not guilty to the charges, and the trial commenced on 27 June 2006. The jury returned verdicts of guilty on 21 July 2006.

FISHERIES PROSECUTIONS

- **Congge (also known as Age) and Gunawan (also known as Aba)**

Congge and Gunawan were crewmembers on board the Indonesian 'ice-boat' the *Sejahtera 01*, which was intercepted by Royal Australian Navy Vessel HMAS *Geelong* on 27 September 2005. When detected, the *Sejahtera 01* was 55 nautical miles inside the Australian Fishing Zone. The *Sejahtera 01* commenced making way in a northerly direction and HMAS *Geelong* gave chase. Whilst underway, the crew of the *Sejahtera 01* began to lower steel poles horizontally on either side of the vessel and obstruction poles were rigged and two longlines were streamed from the back of the vessel. At that time, Gunawan had a hammer and Congge had a machete. A Navy boarding party attempted to board the vessel shortly after the chase began, but it was unable to do so because of the steel poles.

Five and a half hours later, the boarding party again tried to board the vessel whilst it was underway. Up until the time of boarding, the boarding party was pelted with as many as 20 projectiles such as bamboo poles, coils of fishing line and one litre plastic bottles filled with concrete and tied together with rope in heavy bundles of two. Members of the boarding party sustained minor injuries as a result of being hit with these projectiles.

One member of the party gained entry onto the stern of the *Sejahtera 01* and Gunawan came at him, trying to push him over the side of the vessel. The second member of the party was able to board the vessel, but as the third member tried to board, Congge pushed him back. This resulted in this member of the party hanging off the stern of the *Sejahtera 01* with

his legs dangling in the water. Congge then picked up between five and six of the concrete filled bottles and threw them at the sailor's head. Shortly afterwards, a Naval officer climbed onto the stern but was pinned by his legs between the two vessels. As the vessels pulled away, the Naval officer was left hanging until he was hauled onboard the *Sejahtera 01* by another member of the boarding party.

Gunawan was charged with three counts of causing harm to a public official contrary to section 147.1 of the *Criminal Code* and one count of hindering a Commonwealth public official contrary to section 149.1 of the *Code*. Congge was charged with one count contrary to section 147.1 of the *Code* and one count contrary to section 149.1 of the *Code*.

On 29 November 2005, Congge and Gunawan pleaded guilty to all offences in the Supreme Court of the Northern Territory. Congge was sentenced to a total effective sentence of 15 months' imprisonment, to be released after serving ten months of that term. Gunawan was sentenced to a total effective sentence of 14 months' imprisonment, to be released after serving ten months of that term.

▪ **"Viarsa 1" - Ricardo Mario Ribot Cabrera, Antonio Garcia Perez, Francisco Fernandez Oliveira, Jose Gonzalez Perez and Roberto Enrique Reyes Guerrero**

The vessel known as the *Viarsa 1* was apprehended on 27 August 2003 and Ribot Cabrera (the Captain), Garcia Perez (Officer), Fernandez Oliveira (Officer), Gonzalez Perez (Officer) and Reyes Guerrero (Crew) were charged with offences under the *Fisheries Management Act 1991*. All five were charged with intentionally using a boat for commercial fishing in the Australian Fishing Zone contrary to section 100A of the Act. In the alternative, the five were charged with a strict liability offence contrary to section 100 of the Act. Further, the captain, Cabrera, was charged with intentionally having a boat in his charge equipped for fishing at a place in the Australian Fishing Zone contrary to section 101A of the Act with a strict liability offence contrary to section 101 in the alternative.

Initially, Perez was also charged with intentionally having the boat in his charge and the strict liability offence in the alternative, on the basis that he was the fishing master. However, these charges were not pursued on the re-trial because there was insufficient evidence to establish that Perez was a person in charge of the vessel.

This matter first proceeded to trial in 2004, but the jury was unable to reach a verdict.

The matter proceeded to a re-trial which commenced 5 September 2005. On 4 November 2005, after more than two days of deliberation following the seven week trial, the jury acquitted the five defendants on all the counts in the indictment.

▪ **Mohammad Yusup**

Mohammad Yusup was the captain of the Indonesian 'ice-boat', the *Setia Kawan*. The vessel was intercepted among a group of eight other 'ice-boats' by Royal Australian Navy Vessel HMAS *Geelong* on 27 September 2004. When detected, the *Setia Kawan* was 15.5 nautical miles inside the Australian Fishing Zone.

When the vessel was apprehended, it had approximately 700 kilograms of fish and 40 kilograms of shark fin on board. The vessel was equipped with sophisticated navigational and radio equipment.

The defendant was charged with offences under section 100A of the *Fisheries Management Act 1991* and section 101A of the same Act. On 19 January 2005, the defendant pleaded guilty to the offences in the Supreme Court of the Northern Territory in Darwin. The defendant was sentenced to fines of a total of \$120,000.

An order was made pursuant to section 26(2) of the *Sentencing Act* (Northern Territory) that if the fines were not paid within 28 days, a warrant of commitment was to issue for Yusup's imprisonment until his liability to pay the fine was discharged. The Sentencing Judge directed that the periods to be served in custody for default of payment were to be served cumulatively in respect of the fines imposed.

Yusup appealed on the basis that the fines were manifestly excessive and that the Sentencing Judge should have taken into account the fact that elements of the two offences overlap significantly, as well as the lengthy time that he spent in fisheries and immigration detention, as well as time he spent on remand for an offence that was not ultimately prosecuted.

The Court of Criminal Appeal of the Northern Territory unanimously upheld the appeal and set aside the sentence. Yusup was re-sentenced to fines totalling \$100,000.

GENERAL PROSECUTION CASES

▪ **Maria Alimic**

Maria Alimic obtained social security payments called 'Family Allowance' (later known as 'Family Tax Benefit'), in the name of Maria Alimic for a child called Kristiaan Dominic Alimic. Alimic obtained these benefits between

April 1998 and January 2001, and then again between May 2001 and March 2002. She was not entitled to these payments, as the child had been still-born. During the same period, Alimic also claimed and received social security benefits in the names of Marija Carter and Jadranka Popovic, to which she was not entitled. The amount defrauded from the Department of Family and Community Services was \$96,303.05.

In addition, between April 1998 and December 2003 Alimic caused false income tax returns to be submitted to the ATO on 65 occasions. In most instances, she used a false name, and provided instructions to tax agents in Melbourne by use of fax and telephone from Croatia. As a result of the lodgement of those false returns, Alimic obtained \$359,815.64 in refunds from the ATO to which she was not entitled. She attempted to obtain a further \$212,551.28 in respect of false returns on which refunds were ultimately not paid.

Alimic entered pleas of guilty to 37 fraud type offences. On 21 February 2006, she was sentenced to a total effective sentence of five and a half years' imprisonment, with a non-parole period of four years. Reparation was ordered in the sum of \$456,116.49 to the Commonwealth of Australia (being \$359,813.44 to ATO and \$96,303.05 to Department of Family and Community Services).

Alimic lodged an application for leave to appeal against severity of sentence. This application was granted by the Court of Appeal of Victoria on 28 July 2006. The appeal is pending.

▪ **Julia Ann Anderson also known as Marlene Kay Wantling**

Over a period of six years, the defendant was in receipt of benefits from Centrelink. She claimed Parenting Payment in five names for herself, and created 18 fictitious children (being nine sets of twins) in order to maximise her claims to benefits. The defendant also got married, which disentitled her to the benefit she was claiming, and she failed to advise Centrelink of that marriage. She forged birth certificates, death certificates (of fictitious husbands), passports and drivers' licences. She also fraudulently acquired false Medicare cards with fictitious children's names on them, and opened several bank accounts and post office boxes. Whilst employed as a nurse, she also appropriated blank certification of birth forms supplied by Centrelink to the hospital.

On four occasions in late 2004 and early 2005, the defendant received lump sum 'baby bonus' payments of \$6,000 for four fictitious sets of twins. By the time of her arrest, the defendant was fraudulently receiving \$4,732 per fortnight. The total amount of the fraud was \$622,994.

The defendant was charged with five offences against the *Crimes Act 1914* of defrauding the Commonwealth and five offences against the *Criminal*

Code of obtaining a financial advantage by deception. She entered pleas of guilty in the District Court of Queensland, and on 16 December 2005, was sentenced to seven years' imprisonment with a non-parole period of two years and nine months.

Orders were also made under proceeds of crime legislation for the recovery of assets in the amount of \$581,044 against the defendant, and \$41,950 against the defendant's husband, Cecil Graeme Krisanski.

▪ **Justin Lee Bellas**

Justin Bellas manufactured and uttered counterfeit currency.

Bellas was addicted to amphetamines and used the counterfeit money to support his addiction. Bellas travelled from Brisbane to Darwin through Rockhampton, Emerald, Longreach, Barkley Homestead, Tennant Creek, and Katherine, and used counterfeit currency to make purchases along the way.

In the Northern Territory, Bellas was charged with 29 offences under the *Crimes (Currency) Act 1981* for making, beginning to make, and possessing counterfeit currency. His charges also included possessing items used to make counterfeit currency. Bellas made full admissions in relation to the offences. After being charged, it became known that Bellas had committed further counterfeiting offences in Queensland. Bellas was interviewed on 27 October 2004 in relation to the Queensland offending, and made full admissions in relation to those offences also. Further charges were laid in relation to the Queensland offences. In total, Bellas admitted to manufacturing approximately \$500,000 in counterfeit notes.

Bellas entered pleas of guilty to all charges in the Supreme Court of the Northern Territory, and was sentenced to seven and a half years' imprisonment with a non-parole period of four years. Bellas filed an appeal against sentence, and the appeal was heard before the Court of Criminal Appeal of the Northern Territory on 14 February 2006.

On 13 April 2006, the Court of Criminal Appeal unanimously upheld Bellas' appeal and the sentence was set aside. Bellas was re-sentenced to an effective sentence of seven years and six months' imprisonment with a non-parole period of four years backdated to 26 July 2004. The individual sentences were reduced by the Court of Appeal, and made cumulative rather than concurrent.

▪ **Eng Wah Chua, Kim Peng Law, Khok Lye Lee and Swee Chuan Ong**

On 6 September 2004, Eng Chua, Khok Lee and Swee Ong, who are Singaporean nationals, arrived in Melbourne from Singapore. They were stopped and arrested by officers of the Australian Customs Service. The

shoes of each person contained more than a trafficable quantity of heroin. The combined amount of heroin imported by the three defendants was 1,844.8 grams, which amounts to more than a commercial quantity of heroin. The Crown alleged that, in addition to each defendant importing a separate trafficable quantity of heroin into Australia, each of the defendants had also conspired to import the total commercial quantity of heroin.

On the same day, Kim Law and Hon Kuan Leong, also Singaporean nationals, arrived in Melbourne from Singapore. Both were arrested on suspicion of having heroin concealed in their shoes.

Leong's shoes contained a trafficable quantity of heroin. Law's shoes did not contain heroin. Although Law did not personally import any narcotics, the Crown alleged that Law's purpose in travelling to Australia with Leong was to supervise the importation of heroin by Leong.

It was further alleged that Law was involved in the conspiracy with Chua, Ong and Lee to import the commercial quantity of heroin carried by those three defendants into Australia.

When interviewed, Leong made full admissions and subsequently pleaded guilty to importing a trafficable quantity of heroin. Law made admissions (and eventually pleaded guilty) to aiding and abetting Leong. In his interview, Law was not asked about the other defendants, and he entered a plea of not guilty to being involved in the conspiracy to import a commercial quantity of heroin with Chua, Ong and Lee. Chua, Ong and Lee denied knowing that their shoes contained narcotics.

Chua, Ong, Lee and Law were tried between 29 July 2005 and 12 August 2005. The defendants were convicted on all charges. All lodged appeals against conviction, but all appeals were subsequently abandoned.

The defendants were sentenced on 30 September 2005. Chua, Ong, Lee and Law each received a total effective sentence of nine years' imprisonment with a non-parole period of six years. Leong was sentenced to four and a half years' imprisonment, with a non-parole period of three years.

▪ **Michael John Dale and Russell Daniel Lingwoodock**

Michael Dale was a captain in the Australian Regular Army. He and Russell Lingwoodock worked at the First Military Police Battalion Headquarters at Victoria Barracks in Paddington, Sydney. Dale was the Quarter-Master, with responsibility for the management of all finances and resources. Lingwoodock, a civilian employee, performed clerical duties including the processing of payments of allowances. For a 14 month period, payments of allowances were made to Dale totalling \$25,084.89. For a period of almost 18 months, payments totalling \$25,862.18, were made to Lingwoodock. Dale

processed payments to Lingwoodock, and Lingwoodock processed payments to himself and Dale.

Lingwoodock pleaded guilty to receiving type offences. On 17 May 2005, in the Downing Centre Local Court, he was sentenced to imprisonment of 15 months, to be released after serving six months of that sentence.

Lingwoodock appealed against the severity of his sentence. On 11 November 2005, His Honour Judge Hosking of the District Court of New South Wales dismissed Lingwoodock's appeal. His Honour confirmed the sentence, and ordered that the term of six months be served by way of home detention.

Dale pleaded not guilty to offences of receiving and obtaining property by deception. There was a ten day hearing in the Downing Centre Local Court in Sydney, and the Magistrate found the offences proved. On 5 December 2005, Dale was sentenced to a term of imprisonment of nine months, which was, in effect, fully suspended.

▪ **Stuart James Ferguson**

This case was the first Australian prosecution for an offence under section 233BAB(6) of the *Customs Act 1901*, which prohibits the exportation of child pornography from Australia.

Between 1 July 2004 and 30 September 2004, Stuart Ferguson exchanged emails with a United States Postal Investigation Service undercover operative, who was posing as a paedophile. Ferguson emailed the undercover operative image files containing child pornography. He also proposed that the undercover operative make a film, using a script written by him, of child pornography. Ferguson believed that this undercover operative would use his eight year old and twelve year old stepchildren to make the film.

Upon executing search warrants at Ferguson's home and place of employment, officers of the AFP discovered further items of child pornography stored on computer. In total, 581 image and video files constituting child pornography were discovered.

Ferguson was charged with two offences of exporting child pornography, contrary to section 233BAB(6) of the *Customs Act 1901*, and one charge of possession of child pornography contrary to section 578B(2) of the *Crimes Act 1900* (New South Wales). The *Customs Act 1901* offences were indictable, and heard in the District Court of New South Wales. The *Crimes Act 1900* offence was summary, and heard in the Local Court of New South Wales.

On 4 March 2006, His Honour Judge Williams of the District Court of New South Wales in Sydney, convicted Ferguson of the two *Customs Act 1901* charges, and sentenced him to an effective sentence of two years and

two months' imprisonment, with a non-parole period of one year and four months. He was also placed on probation for a period of four years.

On 31 March 2006, His Honour Mr Bartley, Magistrate, in the Downing Centre Local Court, convicted Ferguson of possessing child pornography. He imposed an effective sentence of one year and four months' imprisonment, with a non-parole period of twelve months. His Honour ordered that the sentence be served concurrently with the sentence imposed by His Honour Judge Williams.

▪ **William Bosia Grzeskowiak**

William Grzeskowiak had been employed in the Royal Australian Mint in Canberra since July 2004. From about April 2005, he was employed in the coining hall, operating machinery to produce \$2 coins. Shortly after starting work in this area, Grzeskowiak began smuggling coins out of the Mint in his steel capped work boots, taking about \$600 worth of coins every time he did this. He stored most of the stolen coins at his mother's garage. The matter came to light when he was arrested by officers of the Victorian Police in Bendigo attempting to change \$2 coins for notes at local businesses. AFP executed search warrants, including one at his mother's place, and located a considerable quantity of the stolen coins.

In all, Grzeskowiak stole some \$135,852 in \$2 coins.

On 20 June 2006, Grzeskowiak pleaded guilty in the Supreme Court of the Australian Capital Territory. He was sentenced to three years' imprisonment, to be released after serving 18 months of that term.

▪ **Charles Hermanowski**

Charles Hermanowski was accused of fraud in the United States of America and was extradited from Australia to face trial in the United States. The extradition proceedings were conducted over four years and included reviews by the Supreme Court of New South Wales and the Full Court of the Federal Court.

United States' authorities allege that from 1990 to 1998, Hermanowski carried on business providing cable television services to military bases in the United States. It is alleged that from 1997 to 1998, he lodged false claims with the Department of Defence for reimbursement of the cost of work done in the installation of cable television services. United States' authorities say that as a result of this fraud, Hermanowski obtained some US\$20 million. They further allege that Hermanowski submitted false viewing figures to various cable television companies, and obtained a further US\$8 million as a result.

On 30 January 2002, the AFP arrested Hermanowski in Sydney pursuant to a warrant issued under the *Extradition Act 1988*. On 7 May 2004, a Magistrate found Hermanowski eligible for extradition to the United States in relation to 65 of the 78 offences for which he was sought. Hermanowski sought a review of that finding in the Supreme Court of New South Wales. The Magistrate's orders were confirmed, and Hermanowski appealed to the Full Federal Court. The Full Federal Court allowed Hermanowski's appeal in part, but found that he was eligible for surrender in relation to 48 charges. Hermanowski has been extradited to the United States of America to face trial.

▪ John Douglas Holmes

John Holmes was one of the first people prosecuted in Australia under new provisions of the *Criminal Code* prohibiting the 'grooming' of children for sexual purposes. Holmes was also charged with offences of importing child pornography, possessing child pornography and using a carriage service to disseminate child pornography.

In September 2005, the AFP received information from the Queensland Police Service about an online paedophile network. Police intercepted an email from Holmes' email address which contained images of child pornography.

On 3 September 2005, Holmes travelled to the Philippines in the course of his employment, and returned carrying several images of child pornography in his luggage. Police executed a search warrant on Holmes' premises and found numerous images of child pornography on floppy disks and on a home computer. The computer was seized and subsequently examined. The examination identified numerous chat logs of a sexually explicit nature between Holmes and a person he believed to be an 11 year old girl living in the United Kingdom. This person was in fact an adult male. The chat logs also revealed that Holmes attempted to meet up with this person in London for the purposes of having sex. The conversations between Holmes and this person constituted the grooming offence.

Holmes pleaded guilty, and was sentenced on 19 May 2006. For possessing child pornography, he received a sentence of one year and eight months' imprisonment, to serve one year and two months of that term. For using a carriage service to transmit child pornography, he was sentenced to two years' imprisonment, with non-parole period of one year and four months. For importing the child pornography, he was sentenced to a good behaviour bond for four years. For the grooming offence, he was sentenced to two years and nine months' imprisonment, with non-parole period of one year and eight months.

Action has been taken to forfeit the computer equipment used in the offences to the Commonwealth under proceeds of crime legislation.

▪ **Manfred Michael Kothe**

On 9 December 2005, in the Brisbane District Court, Manfred Kothe pleaded guilty to two offences of knowingly making a false statement for the purpose of obtaining an Australian passport and two social security fraud offences.

Kothe was an illegal immigrant, who had escaped from custody in Germany and entered Australia. He provided false information in applications for Australian passports in false names. He used a false name passport to establish an identity with Centrelink and subsequently received over \$35,000 in social security benefits to which he was not entitled.

Kothe was convicted and sentenced to three and a half years' imprisonment with a non-parole period of 15 months.

▪ **John Marshall**

John Marshall was sought by the United Kingdom for trial for child sex offences allegedly committed when he worked in an orphanage in Scotland between 1976 and 1980. Law enforcement authorities of Scotland allege that there were multiple victims of the offences.

On 27 March 2006, Marshall was arrested by the AFP pursuant to the *Extradition Act 1988*. Marshall was remanded in custody and appeared at the Melbourne Magistrates' Court on 3 April 2006, where he consented to being surrendered to the United Kingdom in relation to the offences.

On 9 June 2006, the Minister for Justice and Customs determined that Marshall was to be surrendered to the United Kingdom in relation to the offences, and issued a warrant for his surrender. On 12 July 2006, Marshall was escorted out of Australia to face trial in the United Kingdom.

▪ **Richard Gerard Meehan**

Richard Meehan was a Melbourne man who formed a relationship with a girl who was under the age of 16 years. The girl was 14 years old at the time of the commencement of the offences. Meehan used the Internet, mobile telephone conversations and text messages to pursue the relationship with the girl. Meehan was 53 years of age at the commencement of the offences.

On 29 June 2005, the girl contacted Meehan accidentally by sending a text message to a mobile telephone while trying to contact an old school teacher. Meehan responded to this message, and the pair sent each other a number of introductory text messages. In these messages, both Meehan and the girl disclosed their ages and various personal details about themselves. On 1 July 2005, Meehan sent the girl an email and soon after he installed a 'chat' facility on his computer to communicate with her 'live' over the Internet. Within a few days of the first contact between Meehan and the girl, the girl reported that she felt as though they were best friends. Later, Meehan

told the girl that he was her boyfriend. Meehan and the girl continued to communicate and some of their communications were sexual in nature.

On 29 August 2005, Meehan visited the girl. During this visit Meehan requested that she kiss him and touched her buttocks. Between 1 July 2005 and 2 September 2005, Meehan sent the girl hundreds of messages via the Internet and mobile telephone with the intention of 'grooming' her to engage in sexual activity. Meehan was charged with one count of using a carriage service to transmit communications to a person under 16 years of age with the intention of procuring that person to engage in sexual activity, contrary to subsection 474.26(1) of the *Criminal Code*.

Meehan entered a plea of guilty and was sentenced on 21 July 2006 to a term of 24 months' imprisonment, to be released after serving three months of that term.

▪ Antonios ("Tony") Sajih Mokbel

In November 2000, two packages containing 1.933 kilograms of pure cocaine arrived in Australia, having been sent from Mexico using the United Parcel Service courier company (UPS). Both packages had false consignment addresses in Melbourne. On 12 November 2000, Ron Cassar, who was a manager at the UPS depot in Melbourne, went to the UPS depot in Melbourne and accessed both packages before those packages had been inspected by officers of the Australian Customs Service. Cassar removed some of the contents of the packages. He was arrested at the scene.

Others involved in organising and financing the shipment were arrested later. The Crown case was that Tony Mokbel was the principal organiser of the importation, using other members of the criminal syndicate to shield himself from direct involvement.

Mokbel was charged with an offence of being knowingly concerned in the importation of a traffickable quantity of cocaine. He entered a plea of 'not guilty' and was tried in the Supreme Court of Victoria at Melbourne between 7 February 2006 and 28 March 2006.

Mokbel devoted very significant resources to the defence of the charge. After numerous legal arguments, the DPP closed the Crown case. Mokbel elected not to give evidence, and the Crown closing address was in progress on Friday 17 March 2006 when the DPP made an application for the revocation of Mokbel's bail. The trial judge declined to revoke Mokbel's bail on that date, but indicated that bail would probably be revoked when the jury retired to consider its verdict.

Mokbel absconded sometime over the weekend, and has yet to be located. In light of the fact that the Crown and defence cases had concluded,

His Honour Justice Gillard determined that the case could continue in Mokbel's absence. The jury returned a verdict of guilty on 28 March 2006. A \$1 million surety in relation to Mokbel's bail was then ordered to be forfeited. That forfeiture order is the subject of appeal proceedings.

On 31 March 2006, Mokbel was convicted and sentenced (in his absence) to 12 years' imprisonment with a non-parole period of nine years.

In addition to the charge with respect to the cocaine, Mokbel is also facing Commonwealth charges for his role in inciting others to import a commercial quantity of ecstasy, which is alleged to have occurred between November 2004 and July 2005. Those charges represent one of the first instances in Australia of a person being charged with 'incitement' of another to commit an offence, contrary to section 11.4 of the *Criminal Code*. The Crown case is that Mokbel requested a police informer and a police undercover operative to import 100 kilograms of ecstasy powder. The requested importation never eventuated as the arrangement was later cancelled by Mokbel.

In November 2005, Mokbel was granted bail on the ecstasy charges after a Magistrate determined that he had 'shown cause' and was not an unacceptable risk of flight or of re-offending. In April 2006, Mokbel's bail was revoked, and a warrant to arrest was issued following his disappearance.

Proceedings are currently being undertaken by the Victorian Office of Public Prosecutions in relation to all Mokbel's property, under the *Confiscation Act 1997* (Victoria).

▪ Henri Robert Morgan

On 16 October 2004, Henri Morgan went to the Sydney Kingsford Smith airport intending to fly to South Africa. Officers of the Australian Customs Service detained Morgan for a frisk search. Upon being informed of this, Morgan struck himself about four times around the abdominal area. Examination by Customs officers revealed that underneath Morgan's clothing he was wearing a form of cummerbund and vest which appeared to contain crushed eggs. There were 22 crushed eggs and two intact eggs. Analysis of the eggs revealed that they were nine Major Mitchell cockatoo eggs, eight sulphur-crested cockatoo eggs, and seven galah eggs. The two uncrushed eggs did not hatch.

Australian wildlife faces a continuing and growing threat posed by illicit trade. It is an offence under section 303DD(1) of the *Environment Protection and Biodiversity Conservation Act 1999* to attempt to export a native specimen. Morgan was charged with one offence under that section, and one offence of hindering a Commonwealth public official under the *Criminal Code*.

Morgan entered a plea of guilty, and on 20 April 2006 in the District Court of New South Wales, His Honour Judge Berman convicted Morgan and sentenced him to two years' imprisonment, to be released after serving 18 months of that term. Morgan has indicated an intention to appeal against this sentence.

This matter, and matters like it, emphasise the success of the Australian Customs Service in detecting illegal trafficking in native fauna. The outcome of the prosecution in this matter also demonstrates that the courts recognise the seriousness of these matters.

▪ **Thomas Michael Morris**

On 24 December 2003, Thomas Morris arrived at Perth International Airport from the United Kingdom with 120.7 grams of pure ecstasy and 36.9 grams of pure cocaine in sealed plastic bags strapped to his groin area.

During his trial, Morris claimed that he was under duress when he committed the offences. He claimed that he had owed money to a man in the United Kingdom called Mr Hodge. Mr Hodge had arranged for the importation. Morris told the Court that, over the course of six months, Mr Hodge had threatened to terrorise Morris' family, had hit him with a baton, broke his car windows, and put a gun to his back. There were numerous opportunities for Morris to go to the police or his parents both before and after he had the drugs strapped to his body, but he failed to take those opportunities.

Morris was convicted on 22 November 2004 following a five day trial in the District Court of Western Australia. He was sentenced to four years' imprisonment in relation to the ecstasy, and four years' imprisonment in relation to the cocaine. A single non-parole period of 20 months was imposed.

An appeal of his conviction was subsequently lodged, and was heard on 14 February 2006. The decision was delivered 12 July 2006. The appeal was dismissed unanimously by the Court of Appeal of Western Australia.

The appeal was made on the basis that the Trial Judge erred in directing the jury, when weighing the testimony of a witness, to consider the interest of the witness in the outcome of the case, the witness relevant to the appeal being Morris. The Court decided that it was not open to the jury to find that Morris reasonably believed that there was no reasonable way that Hodge's threat could be rendered ineffective. The Court therefore concluded that the misdirection by the Trial Judge did not give rise to a miscarriage of justice, and that the appeal must fail.

Further, the Court gave consideration to the interpretation of section 10.2 of the *Criminal Code* relating to duress.

▪ **Operation Idyll – Wing Kai Keung, Wai Kwan Bow and Miller Liu**

On 9 May 2004, a container was consigned on a vessel from the Netherlands to Sydney. The container contained frozen food products which were packed into a large number of boxes. Thirty-seven boxes out of a total of one thousand boxes in the container were specially marked with adhesive tape. Each of those boxes contained 60 blocks of ecstasy, individually wrapped in plastic. The total weight of pure drug was 234.92 kilograms.

The defendants, Wing Kai Keung, Wai Kwan Bow and Miller Liu, became suspicious that police were interested in their activities and did not claim the consignment. On 20 June 2004, they were arrested by the AFP whilst attempting to board international flights from Australia.

The defendants were each charged with one offence of conspiracy to import a commercial quantity of a prohibited import contrary to section 233B(1)(b) of the *Customs Act 1901* and section 11.5 of the *Criminal Code*. The defendants pleaded not guilty. The trial commenced on 13 March 2006, and the jury returned a guilty verdict for Keung on 30 May 2006, and guilty verdicts for both Bow and Liu on 31 May 2006.

The defendants have not been sentenced, and it is anticipated that they will be sentenced in September 2006.

▪ **Operation Sorbet – Yau Kim Lam, Kiam-Fah Teng, Wee Quay Tan (also known as Chin Kwang Lee), Ta Song Wong, Dong Song Choi, Man Sun Song, Man Jin Ri, and Ju Chon Ri**

In mid April 2003, 150 kilograms of heroin was offloaded from the MV *Pong Su*, a North Korean owned cargo vessel, off the coast of Victoria near Lorne. Of that 150 kilograms, 125 kilograms of heroin was taken to shore. During the operation to bring the heroin to shore, one man drowned and 25 kilograms of heroin was lost at sea.

Four men were arrested on shore, being the man who brought the heroin from the ship to shore and the three men who had travelled to collect the heroin from the shore and arrange for its distribution. A further 30 North Korean crew of the MV *Pong Su*, including the Political Secretary, Master, Chief Mate and Chief Engineer, were intercepted off the coast of New South Wales by the Australian Navy, and brought into Sydney (and then extradited to Victoria to face committal proceedings).

The proceedings in this matter were long and complex. On 5 March 2004, twenty-seven crew members, including the Political Secretary, were discharged at committal. That same day, the remaining seven defendants were committed for trial.

On 1 June 2004, the DPP indicted the four people who were arrested on shore, namely Ta Wong (who brought the heroin to shore), Yau Lam, Kiam-Fah Teng and Wee Tan. Also indicted were four people who were arrested on the MV *Pong Su*, namely Dong Choi (the Political Secretary who had been discharged at committal, and in relation to whom the DPP presented an *ex officio* indictment), Man Song (the Master), Ri Man Jin (the Chief Mate) and Ri Ju Chon (the Chief Engineer).

The Supreme Court of Victoria made 28 rulings during the course of the trial, a number of which involved the interpretation of sections of the *Criminal Code* that had not previously been the subject of judicial consideration. During the course of pre-trial argument, the Trial Judge made a number of rulings concerning the interpretation of section 11.2 of the *Criminal Code* (complicity and common purpose), the form of an indictment where reliance is placed on section 11.2 of the *Code*, and the manner in which the fault element of intention may be established for the offence of importing prohibited imports contrary to section 233B(1)(b) of the *Customs Act 1901*.

The four people arrested on shore pleaded guilty in the six month period leading up to the trial. The remaining four people from the MV *Pong Su* pleaded not guilty and, after a seven month trial, were acquitted by the jury on 5 March 2006.

Wong, Lam, Teng and Tan were sentenced to lengthy terms of imprisonment ranging from 24 years' imprisonment with a non-parole period of 16 years, to 22 years' imprisonment with a non-parole period of 15 years. Tan, who was sentenced to 24 years' imprisonment with a non-parole period of 16 years, has since appealed against the severity of his sentence. That appeal is pending.

On 22 March 2006, the MV *Pong Su* was destroyed pursuant to the *Customs Act 1901*.

▪ **Pan Pharmaceuticals Ltd and Shyama Jain**

The prosecution of Pan Pharmaceuticals Ltd and Shyama Jain was the result of the largest investigation into the pharmaceutical industry in Australian history. This matter also involved the largest recall of pharmaceutical products in Australian history. It is the first time that charges have been laid for injuries suffered by consumers of counterfeit therapeutic goods, and the prosecution resulted in the first term of imprisonment being handed down to a defendant prosecuted under the *Therapeutic Goods Act 1989*.

In January 2003, reports of adverse reactions from consumers who had taken the travel sickness medication Travacalm were received by the Therapeutic Goods Administration (TGA). The adverse reactions ranged from mild to extremely severe. In some cases, people were admitted to hospital suffering

from symptoms similar to those of stroke, as well as hallucinations, visual disturbances, altered behaviour patterns and other physical reactions. The TGA and the sponsor of Travacalm, Key Pharmaceuticals, ran independent tests of retention samples of the product which failed uniformity of content testing. It was found that the active ingredient, hyoscine hydrobromide, ranged between 0 to 707% of the amount stated on the label. The Travacalm products were urgently recalled at consumer level. A further, general consumer level recall of all pharmaceutical products manufactured by Pan Pharmaceuticals followed shortly after.

Travacalm was manufactured by Pan Pharmaceuticals Ltd, a contract manufacturer of pharmaceutical products. The TGA audited Pan Pharmaceuticals' laboratory. The results of the audit indicated that there had been manipulation of test results, and the TGA began a criminal investigation. The analyst responsible for the manipulation of test data was identified as Shyama Jain.

Pan Pharmaceuticals Ltd was charged with 19 counts relating to the manufacture of counterfeit therapeutic goods, being Travacalm and another seven products, contrary to section 42E of the *Therapeutic Goods Act 1989*. Pan Pharmaceuticals Ltd was also charged with 23 counts of inflicting grievous bodily harm by a negligent act contrary to the *Crimes Act 1900* (New South Wales). Jain was charged with 19 counts of aiding and abetting Pan Pharmaceuticals Ltd in the manufacture of counterfeit therapeutic goods, and 23 counts of inflicting grievous bodily harm by a negligent act contrary to the *Crimes Act 1900* (New South Wales).

Jain pleaded guilty to the 19 Therapeutic Goods Act offences and five of the Crimes Act offences with the remaining 18 charges taken into account on a schedule on sentence. He was sentenced on 2 September 2005 in the District Court of New South Wales in Sydney. On the first charge, he received a sentence of 18 months' imprisonment, to be released after serving 12 months. On the second charge, he received a sentence of 18 months' imprisonment, to be released after serving 12 months. The sentence for the second charge was partly cumulative on the sentence for the first charge. Jain received terms of imprisonment, to be served concurrently, on the remaining charges. All sentences were to be served by way of periodic detention.

Pan Pharmaceuticals Ltd pleaded guilty to the 19 Therapeutic Goods Act offences and five of the Crimes Act offences, with the remaining 18 charges taken into account on a schedule on sentence. The company was sentenced on 12 December 2005 to total fines of \$3 million, being \$2,500,000 for the Therapeutic Goods Act offences and \$500,000 for the Crimes Act offences. Pan Pharmaceuticals Ltd was in liquidation at the time of the proceedings, and the Sentencing Judge remarked that the gross negligence of the

company had been motivated by cost cutting. However, the Judge noted that general deterrence was an extremely important consideration in sentencing, and that breaches of duty under this important legislation would not be accepted.

▪ **Queensland Cement Limited**

In early 2003, the defendant company acquired a ship called the MV *Alcem Calaca*. In the course of making the ship ready for work in Australian waters, the defendant became aware of the presence of asbestos in various parts of the ship. It commissioned the removal or containment of that asbestos, but during that process and for a period of three months between April and July 2003, it failed to notify employees and contractors working on the ship of the presence of asbestos. It also failed to label the areas in which asbestos was present, did not keep an asbestos register or appoint a designated officer, did not have an asbestos management plan in place, did not supply protective clothing and provided no education or information sessions regarding the correct procedures to be followed.

Exposure to asbestos is potentially lethal, and the development of mesothelioma (the form of lung cancer associated with asbestos exposure) can often take many years to manifest itself.

The defendant company was charged with two offences contrary to the *Occupational Health & Safety (Maritime Industry) Act 1993*. Section 11(1) of that Act requires that an operator of certain types of ships must take all reasonable steps to protect the health and safety of employees. Section 13 of that Act applies the same obligations with respect to contractors.

The defendant entered a plea of guilty to the two charges in the Queensland Magistrates' Court. On 14 July 2006, it was convicted and fined \$180,000. The significant amount of the fine reflects the serious nature of the offences.

▪ **Ross Andrew Richmond**

On 17 April 2004, an officer of Victoria Police personally served Ross Richmond with a summons to appear before the Australian Crime Commission. Pursuant to sub-section 28(1) of the *Australian Crime Commission Act 2002*, Richmond was required to attend before an examiner at the ACC to give evidence about the importation, sale or supply of chemicals, glassware, laboratory and other equipment for use in the manufacture of amphetamines and other synthetic drugs.

On 21 April 2004, Richmond attended the ACC, but refused to take the oath or answer any questions. The examiner instructed his assistant to

administer the oath. In response to a question from the examiner as to whether he was prepared to take the oath, Richmond responded, 'no'.

Richmond indicated that he understood that he had committed a criminal offence and that he would be charged.

During the examination, Richmond's legal representative indicated that Richmond had instructed him that he had concerns about the safety of himself and his family if he answered any questions in the examination. The examiner gave Richmond's legal representative an opportunity to put on the record particulars of the concerns, however he declined to do so.

Richmond entered a plea of guilty to failing to take the oath. He was sentenced on 16 September 2005 before His Honour Judge Nixon in the County Court of Victoria. Richmond was sentenced to 12 months' imprisonment, to be released after serving two months of that term.

▪ **Jose Melgar Sevilla**

Melgar Sevilla was a Bolivian national who travelled to Australia on 22 July 2004 to oversee the safe arrival and offloading of a commercial quantity of cocaine (100 kilograms gross, 78.3 kilograms pure) at Albany in Western Australia. The cocaine had been secretly loaded onto the merchant vessel the *MV Marcos Dias*.

Sevilla adopted a supervisory role in relation to the importation. He co-ordinated his activities with people both locally and internationally, as well as with crewmen on board the vessel. Under cover of darkness, Sevilla piloted a small dinghy across Princess Royal Harbour and alongside the *MV Marcos Dias* once it had docked in Albany Port, where the cocaine was then lowered down. Extensive surveillance by the AFP and the Australian Customs Service (both physical and electronic) resulted in many of the activities of Sevilla and his co-accused being observed and recorded.

Sevilla entered a pleas of guilty to two charges: one charge of aiding the importation of a commercial quantity of cocaine contrary to section 11.2(1) of the *Criminal Code* and section 233B(1)(b) of the *Customs Act 1901*, and one charge of possession of a commercial quantity of cocaine contrary to section 233B(1)(c) of the *Customs Act 1901*. On 21 October 2005, he was sentenced to life imprisonment on each charge, with a non-parole period of 21 years.

Sevilla has lodged an appeal against sentence, and that appeal is pending. It is anticipated that his co-accused will be re-tried in early 2007.

▪ Leon Wicks

This was the first child sex tourism case to be considered by the Court of Criminal Appeal of New South Wales, and was significant in establishing sentencing guidelines and principles for these types of offences.

On 25 September 2004, police executed a search warrant on the residential premises of Leon Wicks and seized a number of computer hard-drives and related computer equipment. The computer equipment was found to contain a large number of images of child pornography. Police also found two video cassettes depicting boys under the age of sixteen engaged in sexual acts with Wicks.

During the execution of the search warrant, a number of travel documents were also seized which indicated travel movement by Wicks to Thailand. Wicks made a number of admissions about engaging in sexual activities with boys during a holiday to Thailand in February 2003.

The Crown case was that Wicks travelled to Thailand from Australia with the principal intention of engaging the 'services' of young boys in Thailand. Whilst in Thailand, Wicks participated in numerous sexual activities with boys. Wicks paid the boys to engage in various sexual activities with him and also induced them to engage in sexual acts with one another. The seriousness of the offences was compounded because Wicks videotaped the commission of the offences.

Wicks was charged with four offences of having sexual intercourse with a child under 16 years of age outside Australia, contrary to section 50BA of the *Crimes Act 1914*, one charge of indecency under section 50BB of the *Crimes Act 1914*, and one charge of inducing a person under 16 years of age to have sexual intercourse with another person contrary to section 50BD(1) of the *Crimes Act 1914*.

At first instance, the District Court of New South Wales at Dubbo sentenced Wicks to an effective head sentence of five years' imprisonment, with a non-parole period of three years. In relation to the act of indecency, he was sentenced to three years' imprisonment.

The Crown appealed the sentence on the grounds that it was manifestly inadequate. The New South Wales Court of Criminal Appeal upheld the appeal, and re-sentenced Wicks. For each of four offences of having sexual intercourse with a child under 16 years of age, he was sentenced to five years' imprisonment to commence from 8 June 2005 and to expire 7 June 2010 (with a non-parole period of three years to commence 8 June 2005 and to expire on 7 June 2008). For the one charge of indecency, he was sentenced five years' imprisonment to commence from 8 June 2007

and to expire on 7 June 2012 (with a non-parole period of three years to commence 8 June 2007 and to expire on 7 June 2010). For the one charge of inducing a person under 16 years of age to have sexual intercourse with another person, Wicks was sentenced to three years' imprisonment to commence on 8 June 2005 and expire 7 June 2008.

CHAPTER 3

Commercial Prosecutions

Practice

There are specialist Commercial Prosecutions' branches in each of the larger Regional Offices of the DPP. Those branches prosecute breaches of the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* (the 'ASIC Act'). By virtue of transitional provisions contained in those Acts, offences that were committed against the Corporations and ASIC Laws of the States prior to 15 July 2001 are now treated as offences against those Acts.

Responsibility for investigating breaches of the *Corporations Act 2001* and the ASIC Act rests with ASIC. By arrangement with the DPP, ASIC conducts minor regulatory prosecutions for offences against those Acts. However, where an investigation appears to disclose the commission of a serious offence, ASIC refers the matter to the DPP for consideration and prosecution action, where appropriate. Where an investigation reveals both Commonwealth offences and State offences the DPP will prosecute the State offences pursuant to arrangements with State and Territory Directors of Public Prosecutions.

On 1 March 2006, the DPP signed a new Memorandum of Understanding with ASIC, which sets out the principles that will underpin the future relationship between the DPP and ASIC. The Memorandum of Understanding replaces the 1992 document which, with the passage of time and some changes in practice, no longer reflected the working relationship between the DPP and ASIC.

The investigation of large fraud matters can be long and resource intensive and frequently the materials provided to the DPP by ASIC in relation to such matters are both voluminous and complex. The prosecution of these matters requires specialist skill.

The DPP is available to provide early advice to ASIC in the investigation of these matters. The provision of early advice can assist to direct and focus the investigation, which ensures that any prosecution is as effective as possible. There is regular liaison between ASIC and the DPP at head of agency, management and operational levels.

The DPP's Commercial Prosecutions branches also deal with any large fraud matters where there is a corporate element and all prosecutions for offences against the *Trade Practices Act 1974*.

The responsibility for investigating breaches of the *Trade Practices Act 1974* rests with the Australian Competition and Consumer Commission (ACCC). The DPP meets regularly with the ACCC to discuss specific case and general liaison issues.

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

Significant Cases

Prosecutions Arising Out of the Collapse of HIH

As was reported on page 16 of last year's Annual Report, the DPP has the carriage of the criminal prosecutions which have arisen from the financial collapse of HIH Insurance Ltd 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 ASIC investigation into the circumstances of the collapse has resulted in a number of prosecutions. Last year's Annual Report reported on, amongst other things, the prosecutions of Charles Abbott, Terence Cassidy and Raymond Williams. Those matters have now been finalised. Updated reports on other defendants are as follows:

▪ Rodney Stephen Adler

Rodney Adler was a non-executive director of HIH. As was reported in last year's Report, Adler pleaded guilty to two counts under section 999 of the *Corporations Act 2001* (false statements in relation to securities), and one count under section 184 of the same Act (dishonest use of position). He also pleaded guilty to one count under section 178BB of the *Crimes Act 1900* (New South Wales) (false statement with intent to obtain a financial advantage).

On 14 April 2005, Adler was sentenced in the Supreme Court of New South Wales to imprisonment of four years and six months, to serve two years and six months of that term. Adler appealed this sentence to the Court of Criminal Appeal of New South Wales. On 18 May 2006, the Court dismissed Adler's appeal.

▪ Antony Boulden

Prior to the takeover of FAI Insurances Ltd (FAI) by HIH, Antony Boulden was employed by FAI as a management accountant and the financial

controller of its Corporate and Professional Insurance Division. In November 2005, Boulden was charged with one offence under section 590(1)(c)(iii) of the *Corporations Act 2001*. This charge relates to his conduct, on 23 January 1998, in directing adjustments to the general ledger of the company when there was no proper basis for these adjustments. Without these adjustments, FAI would have recorded a loss of approximately \$2.325 million for the half-year ended 31 December 1997. Instead it reported a profit of \$3.175 million.

On 28 March 2006, Boulden was committed for trial, and on 2 June 2006, he pleaded guilty to this offence. He is expected to be sentenced in October 2006.

▪ **Geoffrey Arthur Cohen**

Geoffrey Cohen was a non-executive director of HIH and the chairman of the board.

Cohen has been charged with one offence against section 1309(1) and one offence against section 1309(2) of the *Corporations Act 2001*, of making a statement which was false or misleading to shareholders at the Annual General Meeting of HIH on 15 December 2000. It is alleged that at this meeting, Cohen read an address to shareholders that contained statements about HIH receiving \$200 million in cash from Allianz Australia Ltd. This was misleading as the \$200 million was to be paid into a trust and therefore would not be available to HIH to meet its day-to-day cash flow requirements.

A committal hearing in relation to this charge has been set down for 25 September 2006.

▪ **Bradley David Cooper**

As was reported in last year's Annual Report, Bradley Cooper was charged with six offences against section 249B of the *Crimes Act 1900* (New South Wales) of corruptly offering a benefit to another person in order to influence him to show favour to Cooper and his companies. Cooper was also charged with seven offences against section 178BB of the *Crimes Act 1900* (New South Wales) of publishing a false or misleading statement with intent to obtain a financial advantage. During the period of the alleged offences, HIH paid approximately \$11.3 million to companies associated with Cooper, and a further \$1.79 million in debt was forgiven.

After a ten-week trial, on 31 October 2005 a jury in the Supreme Court of New South Wales found Cooper guilty of all thirteen charges. On 23 June 2006, he was sentenced to eight years' imprisonment, to serve five years of that term.

▪ **Dominic Fodera**

Dominic Fodera was an executive director of HIH and its chief financial officer.

Fodera has been charged with one offence under section 996 of the *Corporations Act 2001*. It is alleged that on 26 October 1998, he authorised the issue of a prospectus for \$155 million unsecured converting notes by HIH Holdings (NZ) Ltd from which there was a material omission. An unsecured converting note is, in effect, a loan to a company that can be converted to shares upon the occurrence of a specified event. The Crown case against Fodera is that the prospectus contained a material omission in that it set out that a company, Societe Generale Australia Ltd (SGA), would take up as a priority allocation the lesser of 30 per cent of the amount to be raised or \$35 million. The prospectus failed to set out that at the time HIH and SGA had entered into a separate transaction, the effect of which was that HIH would deposit an amount of money equal to the commitment by SGA to buy shares with SGA and that SGA's subscription would be secured against any loss on resale of the converting notes by recourse to this deposit.

A committal hearing in this matter took place on 1 and 2 June 2006 and on 25 July 2006, Fodera was committed for trial.

Fodera has also been charged with two offences against sections 232(2) and 1317FA of the *Corporations Act 2001* of failing to act honestly in the performance of his duties as a director, and four offences against section 1309(1)(a) of the same Act of making available and furnishing information that was to his knowledge false or misleading. These charges relate to reinsurance arrangements entered into in August 1999 between HIH and Hannover Re, a company which undertakes reinsurance. It is alleged that these reinsurance arrangements were essentially financial reinsurance arrangements, as distinct from traditional reinsurance arrangements, and that no real risk transferred from HIH to Hannover Re under the arrangements.

On 9 August 2006, Fodera was committed for trial on these charges.

▪ **Robert Kelly**

Robert Kelly is the former assistant company secretary of HIH.

On 4 July 2006, Kelly pleaded guilty to one offence against section 178BB *Crimes Act 1900* (New South Wales). On 26 May 2000, Kelly concurred in the making of a false or misleading statement to officers of Westpac Banking Corporation (Hong Kong). In this case, Westpac represented the interests of noteholders who had invested in a US\$150 million note issue by FAI. The issue of these notes amounted to a loan to FAI. The officers of Westpac were told that the reason HIH was not able to produce consolidated accounts of

the FAI Group for the financial period ended 30 June 1999 was because the company structure had changed, the accounts could not be reconstructed and it would be too costly. This was false or misleading. The reason HIH would not produce consolidated accounts of the FAI Group was because it would alert Westpac to a potential event of default under the US\$150 million note facility which in turn could result in the note holders requesting repayment of the loans.

Kelly has been committed for sentence to the Supreme Court of New South Wales.

▪ **Daniel Wilkie and Ashraf Kamha**

Daniel Wilkie and Ashraf Kamha are former officers of FAI and directors of FAI General Insurance Company Ltd (FAIG) which was a wholly owned subsidiary of FAI. In late 2005, Wilkie and Kamha were each charged with one offence under sections 1317FA and 232(2) of the *Corporations Act 2001*, and one offence under section 590(1)(c)(iii) of the Act. It is alleged that on 2 January 1998, alterations were made to FAIG's claims database when there was no proper basis for these adjustments. These adjustments had the result that profit contained in FAI's accounts released to the Australian Stock Exchange for the six months to 31 December 1997 was artificially inflated. On 7 August 2006, Wilkie and Kamha were each charged with a further offence under sections 1317FA and 232(2) of the *Corporations Act 2001* of failing to act honestly with the intention of deceiving the FAI external actuary.

Committal proceedings are pending.

▪ **Daniel Wilkie, Timothy Mainprize and Stephen Burroughs**

As is referred to above, Wilkie is a former officer of FAI. Timothy Mainprize and Stephen Burroughs are also former officers of the FAI group. As was reported in last year's Annual Report, Wilkie and Mainprize were each charged with one offence against section 1309(2) of the *Corporations Act 2001* of providing information to the auditor which omitted matters which rendered the information misleading. In addition, Wilkie and Mainprize were each charged with two offences, and Burroughs was charged with one offence, against section 232(2) of the *Corporations Act 2001* of failing to act honestly as an officer of a company.

On 4 November 2005, Wilkie and Mainprize were acquitted by direction from the trial judge on the section 1309(2) charges. On 14 November 2005, all three accused were acquitted by direction from the trial judge on the section 232(2) charges.

Other Commercial Cases

▪ Gavin William Brown

Gavin Brown was tried and convicted of four counts of 'rigging' the market contrary to section 998(1) of the *Corporations Act 2001*. Brown placed offers on both sides of the market in a thinly traded stock, and by having his bids leapfrog each other (achieved by using three different brokers), he did something likely to create a false or misleading appearance for those shares on the market.

Brown pleaded not guilty to the charges, and was found guilty by a jury. He was sentenced in the District Court of Western Australia to a fine of \$10,000 on each count, with counts two and three being concurrent, making the total fine \$30,000. Brown appealed that sentence.

On 25 July 2006, the Court of Appeal of Western Australia dismissed the appeal. The Court did not accept Brown's contention that section 998 creates three different offences that have a hierarchy of seriousness depending on the mental element which was reflected in the charge. The Court found that section 998 is a single offence that covers a wide range of conduct that results in the offence being committed.

In considering the matter, the Court of Appeal emphasised the importance of general deterrence in such matters as these, likening these matters of market rigging to a fraud upon the revenue. The Court held that the sentence imposed was at the bottom end of the range of possible acceptable sentences for the conduct.

▪ Alan Raymond Dawson

Alan Dawson was the managing director of a listed public company, Voicenet (Aust) Ltd (VNA). He controlled a private company that itself held two million listed options in VNA. Shortly before the options were to expire, Dawson executed exercise forms to turn the options into shares and caused the forms to be given to VNA's company secretary. Dawson personally provided cheques to the secretary (totalling \$1 million) to cover the exercise price at a time when he knew the private company did not have the money to support the cheques. He instructed the secretary on numerous occasions not to present the cheques. Dawson knew that as a result of the option exercise the private company's options would be turned into shares in time for the private company to receive additional bonus options being offered by VNA.

After four months, Dawson caused his private company to sell the shares and additional options that had been issued as a result of the exercise. The shares were sold for a total of \$4,430,017.60. From the proceeds of the sale, Dawson repaid VNA the \$1 million, resulting in VNA unwittingly providing finance for the exercise of its own options. The remaining profit was used to purchase and renovate a substantial house in Perth, which Dawson and his family then moved into.

Dawson was charged with two counts of failing to act honestly in the exercise of his duties and powers as a director of a company intending by that conduct to gain an advantage for another contrary to sections 232 and 1317FA of the Corporations Law as incorporated in the *Corporations Act 2001*.

Dawson entered pleas of not guilty to the charges, and was found guilty after a jury trial in the District Court of Western Australia in January 2006. On 31 March 2006, he was sentenced to an effective term of imprisonment of two years, to be released after serving 12 months of that term.

The DPP also took conviction based confiscation action against Dawson under the *Proceeds of Crime Act 2002*. At sentence, Dawson was ordered to pay a pecuniary penalty to the Commonwealth for an amount of \$3,740,237.62, being the net profit made by Dawson's private company by dealing in the shares in VNA. Property with an estimated net value of about \$1.1 million has been located and restrained as security for this pecuniary penalty.

Appeals against conviction and sentence have been lodged with the Court of Appeal. Those appeals are pending.

- **Luke Edward Duffy, Gianni Gray, David Matthew Bullen, Vincent Adam Ficarra**

A case report about this matter appeared at page 18 of last year's Report.

In January 2004, the National Australia Bank Limited (NAB) discovered that four of its Foreign Exchange Currency Options Desk traders had been engaged in systematic manipulation of the profit and loss figures of the trading desk. The traders had hidden losses totalling approximately \$160 million through the entry of fictitious spot and options trades and obtained substantial bonuses as a result of the purported achievement of meeting the desk's budget of a \$37 million profit. Charges were laid in December 2004 against the head of the trading desk Luke Duffy, and three other traders David Bullen, Gianni Gray and Vincent Ficarra.

Duffy and Gray entered pleas of guilty and both gave evidence at the later trial against Bullen and Ficarra. Bullen and Ficarra were both convicted by a jury.

Last year's Report indicated that Duffy had been sentenced to a term of 29 months' imprisonment, to be released after serving 16 months of that term. He had lodged an appeal against the severity of his sentence at the time that last year's Report was published. Duffy later abandoned his appeal.

On 6 April 2006, Gray was sentenced to a total effective term of 16 months' imprisonment to be released after serving eight months of that sentence. But for his undertaking to give evidence in the trial of Bullen and Ficarra, the sentence would have been 26 months' imprisonment, to be released after serving 15 months.

On 4 July 2006, Bullen was sentenced to a total effective term of 44 months' imprisonment to be released after serving 30 months. On the same day, Ficarra was sentenced to a total effective term of 28 months' imprisonment to be released after serving 15 months of that term.

The conduct of the defendants in this matter was particularly serious. The Chairman of ASIC, Jeff Lucy, stated, 'there is no excuse for conduct of this nature, and shareholders have every right to expect company officers to act in the interests of the company. Their actions resulted in a significant loss of shareholder value'. The effective prosecution of this case illustrates the seriousness with which this type of conduct is treated by law enforcement authorities. This is reflected in the significant penalties awarded by the Courts.

▪ **Kevin Anthony Gaw and Melanie Louise Ash**

Kevin Gaw and Melanie Ash operated the 'Crownstar International Holiday and Travel Club' which sold memberships in the Club to the public. The Club purported to offer its members discounted travel, accommodation and other benefits. Gaw and Ash as directors (or de facto directors) of the two companies operating the business dishonestly used company funds, including membership fees, amounting to nearly \$143,000 and \$128,000 respectively for their own use. Gaw used the money to purchase a house and to fund his legal and other costs arising out of an earlier prosecution conducted by the DPP for other offences. A provisional liquidator was appointed to both companies in 2001 on the basis that they were insolvent.

On 18 May 2005, Gaw pleaded guilty to eight counts of dishonestly using his position as a director or officer of a company to gain an advantage for himself or another, or being knowingly concerned in similar offences by Ash contrary to section 184(2) of the *Corporations Act 2001*. Gaw also requested that a further offence of managing a company whilst disqualified contrary to section 206A(1) of the *Corporations Act 2001* be taken into account.

On the same day, Ash pleaded guilty to six counts of dishonestly using her position as a director or officer of a company to gain an advantage for herself or another.

Gaw had been prosecuted by DPP in 2001 for offences of a similar nature arising out of his management of a previous company. Some of the offences before the Court in 2005 and 2006 were committed whilst he was on bail awaiting trial for the earlier offences. Gaw was sentenced to a term of imprisonment on the earlier offences in 2001, and was disqualified from managing companies by reason of those convictions. However, despite his disqualification, he continued to manage the companies in this matter whilst serving his prison sentence for the earlier offences.

On 30 June 2005, Gaw was sentenced to an effective penalty of a fully suspended term of imprisonment of three and a half years. He was released upon his entering into a recognisance in the amount of \$50,000, to be of good behaviour for a period of three and a half years. On the same date, Ash was sentenced to an effective penalty of a fully suspended term of imprisonment of two years and four months. She was released upon her entering a recognisance in the amount of \$35,000, to be of good behaviour for a period of 28 months.

In July 2005, the DPP lodged an appeal against the order for Gaw's immediate release. The DPP argued that the sentence was manifestly inadequate and that the Sentencing Judge had failed to take sufficiently into account the principles of general and specific deterrence.

On 15 March 2006, the Court of Appeal dismissed the DPP's appeal against sentence. However, the Court found that it was an appropriate case for a Director's appeal against sentence. The Court found that Gaw's immediate release by the County Court was not appropriate. The Court found that the sentence failed to give effect to general and specific deterrence and revealed an error of principle on the part of the Sentencing Judge. However, the Court declined to interfere with the sentence, taking into account the principle of double jeopardy (that is, the fact that the defendant's liberty is placed in jeopardy for a second time on an appeal by the Crown), the hardship to Gaw's young children if he were incarcerated, the fact that Gaw had not offended since October 2001, and the fact that Gaw had been at liberty since May 2002.

▪ David John Muir

David Muir became a director of Hallmark Gold NL (HLM), along with two others, with the intention of stripping HLM of cash. Specifically, he caused HLM to spend or commit to spending in excess of \$4 million of the company's money. In so doing, he acted dishonestly in that this expenditure was not motivated by the best interests of HLM but rather by an intention to gain an advantage for others, being his associates.

Muir's associates purchased an interest in Kanowna Lights NL (KLS). Muir's associates' entities were in need of cash. HLM was flush with funds at that time. Muir took steps to ensure that his associates' entities gained a controlling interest in HLM. Muir and a co-offender were appointed to the board of HLM and immediately set about trying to pass resolutions that would result in HLM purchasing the shares and options bought by Muir's associates in KLS. It was suggested that the shares and options be purchased (or exercised) at enormously inflated prices, and that HLM enter into a management contract with Muir's associates on an uncommercial basis. When this was unsuccessful Muir, with others, convinced resistant members of the board to resign. A third member known to Muir's associates was then appointed and the resolutions passed within 24 hours of that appointment. The new board also agreed not to take up an offer of options. The failure to take up the options would result in an entity controlled by the associates of Muir receiving the options. This was the result of an arrangement made by Muir's associates for one of their entities to be the sub-underwriters of the option issue which, in effect, would result in that entity purchasing the unsold options that HLM failed to take up.

Muir was charged with seven counts of knowingly making improper use of his position as an officer of the company, dishonestly and intending to gain, directly or indirectly, an advantage for another contrary to sections 232(6) and 1317FA of the *Corporations Law* as incorporated in the *Corporations Act 2001*.

The trial commenced on 12 June 2006, and the following day Muir indicated that he was changing his plea to guilty. Muir's sentence is pending.

▪ Karl Suleman

Between December 1999 and November 2001, Karl Suleman operated a trolley collection business at supermarkets located between Cairns and Adelaide. Investments were sought from the public in the trolley collection business, which took the form of a 'Financial Investment Agreement', which was entered into between each investor and Karl Suleman Enterprises Pty Ltd, which Suleman personally signed. Investors were paid a generous fortnightly return from the time of making the investment.

Pursuant to the Financial Investment Agreements, the investors were to be paid the fortnightly return out of the income generated by the trolley collection business. However, the income generated by the business was a small fraction of the repayments guaranteed to the investors, and Suleman was aware of the shortfall. At all material times, there was no prospect that the increasing fortnightly repayments promised by Suleman could be funded other than by paying out new investor funds, and the business inevitably collapsed. The investors who have made statements in these proceedings sustained a loss of \$813,815 from a commitment of \$3,185,000.

On 1 May 2006, Suleman entered pleas of guilty to charges arising out of this conduct. He is expected to appear for a sentence hearing on 27 October 2006 in the District Court of New South Wales in Sydney.

CHAPTER 4

Statistics and Performance Indicators for Prosecutions

Exercise of Statutory Powers

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

▪ No Bill Applications

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

In the past year, there were 23 no bill applications received from defendants or their representatives. Of these, six were granted and 17 were refused. A further 12 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 18.

Of the 18 cases which were discontinued, in 13 of the matters the primary reason for discontinuing the prosecution was because there was insufficient evidence. One of the matters was discontinued because the public interest did not warrant the continuation of the prosecution. In the remaining four cases, the reason for discontinuing the prosecution was both the insufficiency of evidence and the public interest. Of the discontinued cases, six involved fraud, none involved drugs, four involved corporations offences, and eight involved other matters.

▪ Indemnities

The DPP Act empowers the Director to give what is commonly known as an 'indemnity' (which is more properly called an 'undertaking') to a potential witness.

Section 9(6) of the DPP Act authorises the Director to give an undertaking to a potential witness in Commonwealth proceedings, which is to the effect that any evidence the person may give, and anything derived from that evidence, will not be used in evidence against the person, other than in proceedings for perjury. Section 9(6D) empowers the Director to give an 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 him or her in a Commonwealth matter.

In the past year, the DPP gave undertakings under sections 9(6) and 9(6D) to 15 people. In some cases, indemnities were given to more than one witness in a single matter, or more than one type of indemnity was given to the one witness.

▪ **Taking Matters Over - Private Prosecutions**

Traditionally, it has been open to any person to bring a private prosecution for a criminal offence. That right is protected in Commonwealth matters by section 13 of the *Crimes Act 1914*, and is expressly preserved under section 10(2) of the DPP Act.

Under section 9(5) of the DPP Act, the Director has the power to take over a prosecution for a Commonwealth offence that has been instituted by another person. The Director is empowered to either carry on the prosecution or, if appropriate, to discontinue it. The power to take over and discontinue a prosecution was exercised once in 2005-2006.

▪ ***Ex Officio* Indictments**

The Director has the power under section 6(2D) of the DPP Act to file an indictment against a person who has not been committed for trial. In 2005-2006, the Director exercised this power in relation to one defendant who was charged with drug offences.

In a number of other cases, a defendant stood trial on different charges from those on which he or she was committed, or the defendant stood trial in a different State or Territory jurisdiction from that in which the person was committed. The indictments filed in those cases are sometimes referred to as *ex officio* indictments, but they are not treated as *ex officio* indictments for the purpose of these statistics.

▪ **Consent to Conspiracy Proceedings**

The consent of the Director is required before proceedings for Commonwealth conspiracy offences can be commenced. In 2005-2006, the Director gave

consent to the commencement of conspiracy proceedings against 22 defendants in relation to nine alleged conspiracies. Seven of the alleged conspiracies related to drugs offences and two related to other types of offences.

Performance Indicators 2005-2006

The following table lists the DPP's performance indicators for the conduct of all prosecutions for 2005-2006 and compares them with figures for the previous year.

Graphs depicting the DPP's performance indicators for the conduct of all prosecutions for 2005-2006, and compares those indicators with 2003-2004 and 2004-2005 are at Appendix 4 of this Report.

Prosecution Performance Indicators for 2005-2006

Description	Target	Outcome	Details (by no. of defs)
Prosecutions resulting in a conviction	90%	98%	5085 (5200)
Figures for 2004 – 2005	90%	98%	5069 (5186)
Defended summary hearings resulting in conviction	60%	66%	138 (208)
Figures for 2004 – 2005	60%	67%	157 (235)
Defended committals resulting in a committal order	80%	96%	287 (299)
Figures for 2004 – 2005	80%	97%	295 (305)
Defendants tried and convicted	60%	63%	75 (120)
Figures for 2004 – 2005	60%	68%	84 (123)
Prosecution sentence appeals in summary matters upheld	60%	77%	10 (13)
Figures for 2004 – 2005	60%	54%	7 (13)
Prosecution sentence appeals on a prosecution on indictment upheld*	60%	60%	9 (15)
Figures for 2004 – 2005	60%	48%	15 (31)

This table:

- includes one prosecution appeal where details have been suppressed;
- does not include an appeal conducted by the state DPP where the original prosecution had been conducted by the DPP; and
- counts as two matters, two separate charges against the same person separately prosecuted but which were dealt with together after the defendant pleaded guilty. The defendant was sentenced for both charges at the same time and the appeals against the sentences were heard together.

In 2005-2006, the DPP reached or exceeded all of its prosecution performance indicators.

Last year, the DPP did not reach target on two of the six performance indicators, being ‘prosecution sentence appeals in summary matters’ and ‘prosecution sentence appeals on prosecution on indictment’. A discussion of those matters commences at page 28 of last year’s Report. In March 2005, new guidelines for DPP officers were issued about preparing a submission to the Director seeking approval for an appeal against sentence. In 2005-2006, the target for ‘prosecution appeals in prosecutions on indictment’ has been met, and the target for ‘prosecution appeals in summary matters’ has been exceeded.

Prosecution Statistics

In the course of the year the DPP dealt with 6,255 people for a total of 8,784 charges. The cases came from 32 Commonwealth agencies as well as a number of State and Territory agencies. The following tables set out details of the prosecutions conducted in 2005-2006.

Table 1: Outcomes of Successful Prosecution Action 2005-2006

Defendants convicted of summary offences	4702
Defendants convicted of indictable offences	383
Defendants committed for trial or sentence	458

Table 2: Summary Prosecutions in 2005-2006

Defendants convicted after a plea of guilty	4564
Defendants convicted after a plea of not guilty	138
Total defendants convicted	4702
Defendants acquitted after a plea of not guilty	70
Total	4772

Table 3: Committals in 2005-2006

Defendants committed after a plea of guilty	171
Defendants committed after a plea of not guilty	287
Total defendants committed	458
Defendants discharged after a plea of not guilty	12
Total	470

Table 4: Prosecutions on Indictment in 2005-2006

Defendants convicted after a plea of guilty	308
Defendants convicted after a plea of not guilty	75
Total defendants convicted	383
Defendants acquitted after a plea of not guilty	45
Total	428

Table 5: Prosecutions on Indictment – Duration of Trials in 2005-2006

1 – 5 days	36
6 – 10 days	25
11 – 15 days	19
16 – 20 days	6
21 – 25 days	4
26 – 30 days	4
Over 31 days	26
Total Trials	120

Table 6: Prosecution Appeals Against Sentence in 2005-2006

	Summary	Indictable
Number of appeals upheld	10	9
Number of appeals dismissed	3	6
Total number of appeals	13	15
Percentage of Appeals Upheld	77%	60%

This table includes:

- one prosecution appeal where details have been suppressed;
- does not include an appeal conducted by the State or Territory DPP where the original prosecution had been conducted by the DPP; and
- counts as two matters, two separate charges against the same person separately prosecuted but which were dealt with together after the defendant pleaded guilty. The defendant was sentenced for both charges at the same time and the appeals against the sentences were heard together.

Table 7: Defence Appeals in 2005-2006

	Summary	Indictable
Appeals against sentence upheld	77	13
Appeals against sentence dismissed	48	20
Appeals against conviction upheld	2	3
Appeals against conviction dismissed	0	7
Appeals against conviction & sentence upheld	22	7
Appeals against conviction & sentence dismissed	6	12
Total Appeals	155	62

Table 8: Legislation: Charges dealt with in 2005-2006

	Summary	Indictable
<i>A New Tax System (Australian Business Number) Act 1999</i>	3	0
<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>	6	0
<i>Air Navigation Act 1920</i>	2	0
<i>Air Navigation Regulations</i>	1	0
<i>Australian Crime Commission Act 2002</i>	8	11
<i>Australian Federal Police Act 1979</i>	4	0
<i>Australian Passports Act 2005</i>	17	0
<i>Australian Postal Corporation Act 1989</i>	1	0
<i>Australian Securities and Investments Commission Act 2001</i>	0	2
<i>Aviation Transport Security Act 2004</i>	4	0
<i>Aviation Transport Security Regulations 2005</i>	32	0
<i>Bankruptcy Act 1966</i>	238	10
<i>Civil Aviation Act 1988</i>	12	0
<i>Civil Aviation Regulations</i>	47	0
<i>Classification of Computer Games and Images Act 1995</i>	1	0
<i>Commonwealth Electoral Act 1918</i>	10	0
<i>Companies Act 1981</i>	0	6
<i>Copyright Act 1968</i>	25	0
<i>Corporations Law 1989</i>	5	10
<i>Corporations Act 2001</i>	40	18
<i>Crimes (Aviation) Act 1991</i>	19	0
<i>Crimes (Currency) Act 1981</i>	61	19
<i>Crimes Act 1914</i>	147	139
<i>Criminal Code (Commonwealth)</i>	3719	217
<i>Customs Act 1901</i>	45	208
<i>Environmental Protect and Biodiversity Act 1999</i>	24	7
<i>Environmental Protection and Biodiversity Conservation Regulations</i>	9	0
<i>Excise Act 1901</i>	47	17
<i>Extradition Act 1988</i>	1	0
<i>Family Law Act 1975</i>	2	0

Table 8: Legislation: Charges dealt with in 2005-2006 cont.

	Summary	Indictable
<i>Financial Management and Accountability Act 1997</i>	1	0
<i>Financial Transaction Reports Act 1988</i>	64	19
<i>Fisheries Management Act 1991</i>	813	52
<i>Foreign Acquisitions and Takeovers Act 1975</i>	2	0
<i>Foreign Passports (Law Enforcement and Security) Act 2005</i>	10	2
Great Barrier Reef Marine Park Regulations	2	0
<i>Great Barrier Reef Marine Park Act 1975</i>	107	0
<i>Health Insurance Act 1973</i>	30	0
<i>Income Tax Assessment Act 1936</i>	21	0
Income Tax Assessment Regulations	1	0
<i>Maritime Transport Security Regulations 2003</i>	2	0
<i>Migration Act 1958</i>	75	26
<i>National Health Act 1953</i>	5	1
<i>Navigation Act 1912</i>	2	0
<i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i>	1	0
<i>Occupational Health and Safety (Maritime Industry) Act 1993</i>	2	0
<i>Passports Act 1938</i>	42	11
<i>Primary Industries Levies and Charges Collection Act 1991</i>	8	0
<i>Proceeds of Crime Act 2002</i>	1	1
<i>Protection of Sea (Prevention of Pollution from Ships) Act 1983</i>	2	0
<i>Public Order (Protection of Persons and Property) Act 1971</i>	1	0
<i>Quarantine Act 1908</i>	10	0
<i>Radiocommunications Act 1992</i>	16	0
<i>Regulatory Offences Act 1985</i>	1	0
<i>Service and Execution of Process Act 1992</i>	1	0
<i>Social Security (Administration) Act 1999</i>	1407	0
<i>Social Security Act 1947</i>	5	0
<i>Social Security Act 1991</i>	373	0
<i>Statutory Declarations Act 1959</i>	8	0
<i>Superannuation Industry (Supervision) Act 1993</i>	8	0
<i>Taxation Administration Act 1953</i>	200	0
<i>Telecommunications Act 1997</i>	2	0
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	1	0
<i>Therapeutic Goods Act 1989</i>	0	7
<i>Torres Strait Fisheries Act 1984</i>	14	0
<i>Trade Marks Act 1995</i>	5	0
<i>Veterans Entitlements Act 1986</i>	2	0
<i>Weapon Prohibition Act 1998</i>	1	0
<i>Wildlife Protection (Regulation of Exports and Imports) Act 1984</i>	0	1
<i>Workplace Relations Act 1996</i>	1	0
Non Commonwealth Drugs	15	25
Non Commonwealth Other	112	71
Total	7904	880

Table 9: Crimes Act 1914: Charges Dealt with in 2005-2006

	Summary	Indictable
Aid and abet (s.5)	1	0
Accessory after the fact (s.6)	0	2
Attempt (s.7)	0	1
Damage property (s.29)	11	1
Imposition (s.29B)	45	6
Fraud (s.29D)	48	106
Sexual conduct children overseas (s.50)	1	5
Forgery (ss.65-69)	2	1
Administration of justice offences (Part III)	4	4
Disclosure of Information (s.70)	1	2
Stealing Commonwealth property (s.71)	0	6
Corruption and bribery (s.73)	0	1
Postal offences (ss.85E-85ZA)	8	0
Telecommunications offences (ss.85ZB-85ZKB)	13	0
Conspiracy (s.86)	0	4
Trespass on Commonwealth land (s.89)	12	0
Total	147	139

Table 10: Commonwealth Criminal Code 1995 : Charges Dealt with in 2005-2006

	Summary	Indictable
Part 2.4 Extensions of criminal liability	7	3
Div 73 People smuggling and related offences	0	1
Part 5.3 Terrorism	0	2
Part 7.2 Theft and other property offences	30	8
Part 7.3 Fraudulent conduct offences	3473	129
Part 7.4 False or misleading statements	34	1
Part 7.5 Unwarranted demands	1	1
Part 7.6 Bribery and related offences	6	0
Part 7.7 Forgery and related offences	19	13
Part 7.8 Causing harm to, impersonating, obstructing Commonwealth officials	46	14
Part 7.20 Division 270 Slavery, sexual servitude and deceptive recruiting	0	24
Part 9.1 Serious drug offences	10	2
Part 10.2 Money laundering offences	6	9
Part 10.5 Postal offences	33	3
Part 10.6 Telecommunications offences	31	5
Part 10.7 Computer offences	7	2
Part 10.8 Financial information offences	16	0
Total	3719	217

Table 11: Defendants Dealt with in 2005-2006: Referring Agencies

	Summary	Indictable
Australian Communications Authority	12	0
Australian Crime Commission	9	25
Australian Customs Service	40	12
Australian Electoral Commission	10	0
Australian Fisheries Management Authority	494	31
Australian Federal Police	378	253
Australian Government Solicitor	2	0
Australian Maritime Safety Authority	3	0
Australian National Parks and Wildlife Service	5	0
Australian Postal Corporation	43	5
Australian Prudential Regulation Authority	8	0
Australian Securities and Investments Commission	34	30
Australian Taxation Office	251	46
Building Industry Royal Commission	1	0
Centrelink	3936	50
Civil Aviation Safety Authority	8	0
Comcare	1	0
Department of Agriculture, Fisheries and Forestry	10	0
Department of Defence	7	0
Department of Education Science and Training	1	0
Department of Employment and Workplace Relations	2	0
Department of the Environment and Heritage	6	0
Department of Foreign Affairs and Trade	9	1
Department of Immigration and Multicultural Affairs	28	2
Department of the Treasury	1	0
Department of Veterans' Affairs	12	3
Great Barrier Reef Marine Park Authority	109	0
Insolvency Trustee Services Australia	184	3
Medicare Australia	43	4
Office of Indigenous Policy Coordination	1	0
Royal Australian Air Force	1	0
Therapeutic Goods Administration	1	5
Non Commonwealth Agencies	4	0
State or Territory Police	102	29
Total	5756	499

CHAPTER 5

Criminal Confiscation

Overview

In addition to its prosecutorial responsibilities, the DPP has important functions relating to the taking of criminal confiscation action under Commonwealth legislation. Criminal confiscation legislation is an important weapon in the Commonwealth's fight against financially motivated crime, and has as its aims depriving criminals of the proceeds of offences against Commonwealth laws; punishment and deterrence of offenders; preventing the reinvestment of proceeds of crime in further criminal activities; and giving effect to Australia's obligations under international conventions and agreements regarding proceeds of crime and anti-money laundering.

Legislation

Proceeds of Crime Act 2002

The principal legislation under which the DPP operates in this area is the *Proceeds of Crime Act 2002* (POC Act 2002), which came into effect on 1 January 2003. The POC Act 2002 provides a comprehensive scheme to trace, restrain and confiscate the proceeds and instruments of crime against Commonwealth law. In some cases it may also be used to confiscate the proceeds of crime against foreign law.

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

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

In order to preserve property pending the outcome of confiscation proceedings, the POC Act 2002 provides for restraining orders over property to be made

early in an investigation. There are four different types of restraining orders which may be made under the POC Act 2002 in different circumstances.

There are three types of 'final' orders which may be made under the POC Act 2002:

- Forfeiture orders – where the Court orders that property which is the proceeds or an instrument of crime be forfeited to the Commonwealth;
- Pecuniary penalty orders – where the Court orders an offender to pay to the Commonwealth an amount equal to the benefit derived by the person from the commission of crime; and
- Literary proceeds orders – where the Court orders an offender to pay to the Commonwealth an amount calculated by reference to benefits the person has derived through commercial exploitation of his or her notoriety resulting from the commission of an offence.

In addition to the above orders, in certain circumstances the POC Act 2002 provides for 'automatic' forfeiture of property. This can occur where a person has been convicted of a 'serious offence' within the meaning of the POC Act 2002, and involves the forfeiture of restrained property, after a waiting period, without further order of the Court.

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

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

Other Legislation

The *Proceeds of Crime Act 1987* (POC Act 1987) applies to cases in which confiscation action was commenced prior to 1 January 2003. The DPP is still conducting a small amount of residual litigation under the POC Act 1987, however the proportion of this litigation is gradually diminishing.

The DPP also has statutory duties under the *Crimes (Superannuation Benefits) Act 1989* (the CSB Act) and Part VA of the *Australian Federal Police Act 1979* (the AFP Act). The CSB Act provides that the employer-funded proportion of a Commonwealth employee's superannuation entitlements may be liable to confiscation if he or she is convicted of a 'corruption offence' within the

meaning of the Act. If the Attorney-General or the Minister for Justice and Customs issues an authority in such a case, the DPP must apply to a Court for orders confiscating the employer-funded superannuation entitlements of the person. The AFP Act makes similar provision in relation to members of the AFP found guilty of corruption offences or certain disciplinary offences.

The DPP has two further responsibilities in this area which were used more regularly prior to the enactment of the POC Act 1987, but which are now used relatively infrequently. Those powers are as follows:

- Under Division 3 of Part XIII of the *Customs Act 1901* the DPP is vested with power to bring proceedings to recover profits earned from “prescribed narcotic dealings”; and
- Under the *Director of Public Prosecutions Act 1983*, the DPP has power to take traditional civil remedies action on behalf of the Commonwealth in cases where there is a connection with a prosecution.

Operating Structure

The DPP has specialised Criminal Assets Branches in each of the larger Regional Offices, and Criminal Assets lawyers in the other offices, who deal with criminal confiscation matters referred to them by the various investigating agencies. There is also a National Coordinator for Criminal Assets in Head Office who coordinates the work in this area on a national basis. The functions of the DPP's Criminal Assets lawyers include considering the appropriateness of criminal confiscation action in matters referred to them by the relevant investigating agencies, and, if appropriate, commencing and conducting confiscation litigation. In large and complex cases the DPP may also be involved in the provision of advice during the investigative phase of a criminal confiscation matter.

The DPP works in partnership in this area with a variety of Commonwealth agencies. All Commonwealth agencies with the capacity to investigate crime, particularly fraud, have a role in the identification and referral of proceeds of crime matters. Principal investigative responsibility however rests with agencies such as the AFP, the ACC, the Australian Customs Service, ASIC, and the ATO, some of which have specific investigative powers under the POC Act 2002.

The DPP also works closely with the Insolvency and Trustee Service of Australia (ITSA). ITSA is given specific responsibilities under the POC Act 2002 in relation to the management of restrained property and the realisation of confiscated property.

2005-2006 Financial Year

2005-2006 was the third full financial year of operation of the POC Act 2002. The year was the busiest to date for DPP staff involved in criminal confiscation work, with continued high levels in the overall volume and complexity of work.

The trend of increased confiscations and recoveries under the POC Act 2002 continued in 2005-2006, with the estimated value of confiscations up from \$9.511 million in 2004-2005 to \$39.440 million in 2005-2006, and recoveries up from \$6.545 million to \$14.691 million during the same period. These figures reflect in part the successful resolution of a number of highly complex and resource intensive matters during the financial year.

2005-2006 saw continued widespread use by the DPP of the civil confiscation provisions contained in the POC Act 2002. More than half of new restraining orders obtained by the DPP used the civil confiscation provisions contained in the Act. Fraud offences continued to be the most common basis for the initiation of criminal confiscation action by the DPP.

In 2005-2006, DPP initiated criminal confiscation action in relation to a number of significant and complex matters, including for example Project Wickenby. The criminal assets recovery action taken in Project Wickenby is discussed in the Significant Cases section of this Chapter.

During the year, the DPP also played a major role in the statutory review of the operation of the POC Act 2002 initiated by the Minister for Customs and Justice in early 2006. Section 327 of the Act required that such a review take place as soon as practicable after its third full year of operation. As the lead agency responsible for conduct of litigation under the POC Act 2002, the DPP made a significant effort to collate relevant information and statistics in preparation for the review, and then made a very detailed and comprehensive submission to the person responsible for conducting the review, including suggestions for amending the Act to improve aspects of its operation.

In relation to other legislation, during 2005-2006 the DPP conducted a small amount of work under the POC Act 1987, and also under the CSB Act (details of which appear later in this Chapter).

Statistics

A detailed breakdown of the results for the 2005-2006 year is provided by the tables at the end of this Chapter. The following is a summary of the DPP's criminal confiscation activities.

Under the POC Act 2002:

- 74 new restraining orders were obtained.
- 179 restraining orders were in force at as 30 June 2006.
- 21 pecuniary penalty orders were obtained.
- 37 forfeiture orders were obtained.
- Automatic forfeiture occurred in 24 matters.
- 49 compulsory examinations were undertaken.
- The total estimated value of confiscation orders obtained was \$39.440 million.
- The total amount recovered in relation to confiscation orders was \$14.691 million.

Whilst the number of new restraining orders obtained under the POC Act 2002 was less than in the 2004-2005 financial year, the overall number of active matters on hand increased.

A comparative graph depicting the amounts of money recovered under the POC Act 2002 from 2003-2004 to 2005-2006 is at Appendix 5 of this Report. A comparative graph depicting the value of confiscation orders made under POC Act 2002 from 2003-2004 to 2005-2006 is also at Appendix 5.

In relation to the POC Act 1987, no new orders were obtained however \$3.7 million was recovered in respect of existing matters.

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

No new action was taken pursuant to the DPP's civil remedies powers or pursuant to the provisions of Division 3 of Part XIII of the *Customs Act 1901*, however property worth \$15,960 was realised in relation to one prior condemnation under the *Customs Act 1901*.

POC Act 2002 Performance Indicators

The DPP's performance in cases under the POC Act 2002 during 2005-2006 is measured against various performance indicators below.

Description	Number	Target %	Outcome %
Applications for restraining orders that succeeded	74	90%	100%
Figures for 2004 – 2005	173	90%	100%
Applications for pecuniary penalty orders that succeeded	21	90%	100%
Figures for 2004 – 2005	10	90%	100%
Applications for forfeiture orders that succeeded	37	90%	100%
Figures for 2004 – 2005	56	90%	98%
Damages awarded against undertakings	0	-	\$0
Figures for 2004 – 2005	1	-	\$5,000
Number of cases where costs awarded against DPP	0	-	\$0
Figures for 2004 – 2005	4	-	\$1,932

Significant Cases

Heather Patricia Baker

Heather Baker was a registered tax agent who submitted a number of fraudulent tax returns depriving the Commonwealth of approximately \$1.49 million.

On 7 July 2003 *ex parte* orders were made in the Supreme Court of New South Wales under the POC Act 2002 preventing any disposal of or dealing with Baker's property. Property covered by the order included residential real estate and money in a bank account.

A further order was made in the Supreme Court of New South Wales on 1 August 2003 in relation to property owned by a company, ICAN Australia Pty Ltd. The property was able to be restrained on the basis that it was suspected of being subject to the effective control of Baker. This second order covered money in a bank account and a Mercedes Benz motor vehicle.

On 19 November 2004, Baker entered a plea of guilty at the District Court at Brisbane to one offence contrary to section 29D of the *Crimes Act 1914* of defrauding the Commonwealth and one offence contrary to section 134.2(1) of the *Criminal Code* of obtaining financial advantage by deception. Baker was sentenced to six years' imprisonment, with a non-parole period of 18 months.

No applications were made to exclude property subject to restraining orders under the POC Act 2002. Consequently, all of the abovementioned property was forfeited to the Commonwealth on 20 May 2005. The property was worth approximately \$604,646. In addition, on 13 December 2005 an order was made in the Supreme Court of New South Wales that Baker pay the Commonwealth a pecuniary penalty in the sum of \$1,390,313.63.

Stephen Irvine Hart

A case note about the prosecution action taken in this matter appears in Chapter 2 of this Report. This note relates to criminal confiscation action taken against Stephen Hart.

Hart was a tax agent and the owner of a large accounting practice in Queensland. Following a joint investigation by the ATO and the AFP, Hart was charged with offences relating to a tax minimisation scheme involving false claims to the ATO. The false claims amounted to \$1,417,000.

Hart was charged with nine fraud offences in October 2001. In May 2003 restraining orders were obtained under the POC Act 2002 over property including a motor vehicle, 11 aeroplanes, several residential properties, a farm, and hangar leases. Part of the property was restrained on the basis that, though legally owned by other entities, it was subject to the effective control of Hart.

Hart was convicted of the nine fraud offences in May 2005 and sentenced to a term of imprisonment. Subsequent appeals by Hart and by the DPP against sentence were dismissed.

In April 2006, as a result of the above convictions, all of the property still under restraint was forfeited to the Commonwealth. Since that time a number of post-forfeiture applications have been made seeking recovery of a number of items of the forfeited property, and the litigation relating to these aspects is ongoing.

Project Wickenby

In 2005-2006 the DPP took part in a joint task force of Australian government agencies called Project Wickenby with the aim of combating international tax avoidance and evasion. A report about the DPP's involvement in Project Wickenby from a prosecution perspective is in Chapter 2 of this Report.

From a proceeds of crime perspective, as part of Project Wickenby, the DPP (with support from the ACC and the ATO), commenced criminal confiscation action under the POC Act 2002. The action was taken based on suspected tax offences. In July 2005, the DPP obtained civil based restraining orders

over property including real estate, motor vehicles, money held in bank accounts, cash and shares.

The DPP has filed applications for forfeiture orders and pecuniary penalty orders in relation to benefits alleged to have been derived from a suspected conspiracy to defraud the ATO. The litigation in these matters is ongoing.

Alexander Leon Shumsky

This case involved an alleged fraud against the Export Market Development Grants ('EMDG') Scheme administered by Austrade. It was alleged that over an eight year period Alexander Shumsky, through the company Shellfox Pty Ltd, claimed grants for expenses which either were not incurred, or were incurred on behalf of another company for activities unrelated to export market development. During the relevant period, Austrade had paid Shellfox a total amount of \$1,413,455.

The DPP commenced civil based proceedings under the POC Act 2002 in August 2004. Restraining orders were obtained over property including funds in a bank account and a share portfolio held by AL Shumsky Nominees Pty Ltd. The share portfolio was able to be restrained on the basis that it was suspected of being subject to the effective control of Shumsky. No prosecution action had been brought against Shumsky.

Shumsky passed away prior to the finalisation of the confiscation proceedings brought against him.

In May 2006, the DPP reached an agreement with Shumsky's executors whereby a pecuniary penalty order for \$530,000 would be paid to the Commonwealth out of Shumsky's estate. As civil confiscation proceedings may only be taken in relation to conduct which occurred within the preceding six years, this sum represented the maximum amount recoverable by the Commonwealth in the proceedings.

George Skiverton

In January 2003, German authorities in Frankfurt located A\$396,670 in cash in the possession of a transit passenger, George Skiverton, *en route* from Brisbane to London. When German authorities questioned Skiverton about the source of the cash, Skiverton said that it represented winnings from betting on horses. However, he was unable to recall on which horses he had bet or at which race track.

German authorities contacted the AFP and it was ascertained that Skiverton, a British citizen, had spent only 11 days in Australia and on departing Brisbane, had not declared the large amount of cash he was carrying. Under Australian law, all cash amounts of \$10,000 are required to be

declared upon entering or departing Australia. Australian law enforcement authorities suspected that Skiverton may have been a money courier for a drug syndicate.

The DPP obtained a civil based order restraining the cash on the basis that it was suspected of being the proceeds of drug offences. As the POC Act 2002 has extraterritorial effect it did not matter that the cash was located in Germany.

The restraining order was provided to German authorities who enforced it in relation to the cash seized in Germany. The restraining order was served on Skiverton, who had since returned to the United Kingdom. Skiverton retained legal representation but did not contest an application by the DPP for forfeiture of the cash. On 19 August 2003, the District Court of Queensland made an order for the cash to be forfeited to the Commonwealth of Australia on the basis that it was the proceeds of crime.

In February 2006, German authorities returned the forfeited amount of \$396,670 to Australia by depositing it into an account controlled by the Official Trustee in Bankruptcy.

George Andrew Thompson

George Thompson was a chartered accountant and registered tax agent in Albany, Western Australia. Between March 2001 and September 2003, Thompson lodged 158 income tax returns on behalf of clients which contained false claims for tax refunds. As a result Thompson fraudulently obtained over \$3.1 million from the ATO, which he caused to be deposited into bank accounts under his control.

Thompson left Australia in November 2003, but following contact from the AFP, he agreed to return and was arrested at Perth Airport on 4 December 2003. On 16 December 2003, the DPP, with assistance from the AFP and the ATO, obtained restraining orders under the POC Act 2002 over numerous items of property including over A\$1.7 million located in an offshore account with the Bank of Cyprus, approximately \$232,000 in cash and travellers' cheques found on Thompson's person at his arrest, three properties in Albany and one in Broome, and a number of valuable paintings.

Thompson was ultimately convicted of numerous fraud offences and on 5 November 2004 was sentenced to a term of imprisonment. On 10 November 2005, the proceeds of crime proceedings against Thompson were finalised, resulting in the confiscation to the Commonwealth of property valued at close to \$3 million. This included the A\$1.7 million which had been held in the offshore account with the Bank of Cyprus.

X

X was a recipient of social security payments from the early 1980s until 2005. In 2005, Centrelink commenced an investigation in relation to an allegation that X had been receiving payments in two names, and further that X was not entitled to receive any payments because he had failed to declare to Centrelink his ownership of an investment property. The amount suspected to have been fraudulently obtained by X was in excess of \$200,000.

The DPP commenced civil confiscation proceedings under the POC Act 2002 in August 2005, when orders were made restraining both X's residential premises and his investment unit. Later in the proceedings, with the consent of all the parties, the investment unit was sold with the net proceeds being placed into the custody and control of the Official Trustee in Bankruptcy pending the outcome of the proceedings.

In March 2006, the proceedings against X were resolved when he agreed to pay to the Commonwealth a pecuniary penalty order corresponding to the full amount of the benefits that he had derived from the alleged offences, together with an adjustment made for changes in the Consumer Price Index. The pecuniary penalty was able to be fully satisfied by payment out of the proceeds of the sale of X's investment property.

The civil confiscation proceedings against X were able to be finalised prior to the commencement of prosecution proceedings against X.

Y

Y came to the attention of the ACC as part of an investigation in Queensland into the suspected importing, trafficking and supply of narcotics being ecstasy, methylamphetamine and cannabis. Evidence obtained by the ACC linked Y to the suspected purchase of a large quantity of ecstasy tablets. An examination of Y's financial records further suggested that his assets and various deposits of cash into his accounts were well in excess of his earnings.

On the basis of suspected drug offences, the DPP obtained civil restraining orders under the POC Act 2002 over a number of motor vehicles, a residential property and a bank account.

Following negotiations, consent orders were made on 5 May 2005 for Y to pay a pecuniary penalty of \$430,000 in respect of benefits allegedly derived from the commission of drug offences. In January 2006, the order was fully satisfied as a result of funds derived from the sale of Y's residential property.

Criminal Assets Confiscation Tables

The tables which follow set out details of the criminal confiscation work conducted by the DPP in 2005-2006.

TABLE 1: POC Act 2002: orders and forfeitures in 2005 – 2006

	Number	Value
Restraining orders	74	\$35,645,215
Pecuniary penalty orders	21	\$25,322,733*
Forfeiture orders	37	\$3,011,788
Automatic forfeiture under section 92	24	\$11,106,176
Literary proceeds orders	0	0

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

TABLE 2: POC Act 2002: restraining orders in force as at 30 June 2006

	Number	Value
Number of restraining orders in force	179	\$113,350,199

TABLE 3: POC Act 2002: money recovered in 2005 – 2006

	Amount Recovered
Pecuniary penalty orders	\$8,062,014
Forfeiture orders	\$2,023,690
Automatic forfeiture under section 92	\$4,579,576
Literary proceeds orders	0
Matters where money recovered but no formal orders made	\$25,918
Total recovered	\$14,691,198

TABLE 4: POC Act 1987: orders and forfeitures in 2005 – 2006

	Number	Value
Restraining orders	0	0
Pecuniary penalty orders	0	0
Forfeiture orders	0	0
Automatic forfeiture	1	\$12,000

TABLE 5: POC Act 1987: restraining orders in force as at 30 June 2006

	Number	Value
Number of restraining orders in force	15	\$4,051,579

TABLE 6: POC Act 1987: Money recovered in 2005 – 2006

	Amount recovered
Pecuniary penalty orders	\$234,386
Forfeiture orders	\$515,226
Automatic forfeiture	\$2,629,348
Matters where money recovered but no formal orders made	\$334,438
Total recovered	\$3,713,398

TABLE 7: Criminal assets: summary of recoveries for 2005 – 2006

POC Act 1987 pecuniary penalty orders	\$234,386
POC Act 1987 forfeiture orders	\$515,226
POC Act 1987 automatic forfeiture	\$2,926,348
Matters where money recovered but no formal orders made	\$334,438
POC Act 1987 total	\$3,713,398
POC Act 2002 pecuniary penalty orders	\$8,062,014
POC Act 2002 forfeiture orders	\$2,023,690
POC Act 2002 automatic forfeiture	\$4,579,576
Matters where money recovered but no formal orders made	\$25,918
POC Act 2002 total	\$14,691,198
Customs Act condemnation	\$15,960
Customs Act total	\$15,960
Grand total	\$18,420,556

TABLE 8: CSB Act – orders made in 2005 – 2006

Name	State	Date
Pipes	NSW	25 October 2005
Low	VIC	23 November 2005
Sayachack	VIC	23 November 2005
Smith	QLD	16 January 2006
Whitehouse	QLD	19 January 2006
Ting	VIC	24 February 2006

CHAPTER 6

International

Practice

The DPP is involved in two main categories of international work: Extradition and Mutual Assistance. Extradition and Mutual Assistance are essentially international systems which allow cooperation between governments in the investigation and prosecution of criminal matters. Australia participates in those systems through the Australian Central Authority, which is in the Commonwealth Attorney-General's Department.

The DPP's international work is coordinated in the Commercial, International and Counter-Terrorism Branch of the DPP's Head Office. Head Office provides an important link between the Australian Central Authority and the DPP's Regional Offices. Head Office is the main point of liaison with the Australian Central Authority, and works closely with the officers of the Attorney-General's Department who represent the Authority.

Extradition

Extradition is an important mechanism in law enforcement. Increased efficiency in extradition practices world-wide has helped to challenge the perception that offenders can avoid being dealt with by law enforcement authorities by fleeing the jurisdiction. This has important consequences, not only for global law enforcement cooperation, but also in terms of domestic law enforcement, especially in terms of the deterrence of crime. The DPP has an important role to play in the efficiency of the extradition system in Australia.

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

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

In the case of outgoing extradition requests, the DPP prepares requests for extradition in any case where a person is wanted for prosecution for an

offence against Commonwealth law and is found to be in a foreign country. 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.

A breakdown of the numbers of new extradition requests is given in the tables at the end of this section.

Incoming Requests

In the past year, the DPP received instructions from the Attorney-General's Department to act, or requests to provide advice or other assistance, in relation to 30 new requests from foreign countries. Eight of those matters have resulted in court proceedings in Australia, with three of the people consenting to extradition. One person, having been provisionally arrested, was released by the Magistrate because no notice was issued by the Minister within the required time. Four matters are currently before the Courts.

The DPP appeared on behalf of foreign countries in a number of continuing extradition matters before the Courts throughout the year. Extradition can be a technical legal process, and may take a substantial amount of time to effect. This is especially the case if the person decides to challenge each step of the process. In some cases, extradition may take a number of years to reach finality.

The DPP also appeared on behalf of New Zealand in relation to four requests for extradition received this year. Two of the people sought consented to their surrender, one person's surrender was ordered by the Magistrate, and one matter is currently before the Court.

In addition to the DPP's role in formal cases referred to it, the DPP also provides advice to the Attorney-General's Department on a preliminary basis on a number of matters referred to the Attorney-General's Department from foreign countries. The technical nature of extradition proceedings requires that documents submitted in support of an extradition request must meet the requirements of the *Extradition Act 1988* and the relevant Treaty. Given the widely differing legal systems throughout the world, assistance is often provided to foreign countries to ensure that requests meet the standard required.

Outgoing Requests

During the course of the year, the DPP asked the Attorney-General's Department to make seven extradition requests to foreign countries in relation to prosecutions being conducted by the DPP. These requests

were either formal requests, or requests for provisional arrest pending the submission of a formal request. Of these requests, one has resulted in the surrender of the person to Australia.

Extradition requests involving the DPP*: source country

Country	Incoming Requests	Outgoing Requests#
Indonesia	2	
Italy	5	
Croatia	3	
Belgium	2	
UK	3	
USA	1	2
Germany	2	
Denmark	1	
Ireland	1	
Korea	2	
Hong Kong	2	
Poland	1	
Algeria	1	
Greece	1	
France	1	
Finland	1	
Turkey		1
Costa Rica		1
Malaysia		1
Thailand		1
South Africa		1
New Zealand^	4	
Total requests	34 (no. for previous year 22)	7 (no. for previous year 8)

* Includes work done on both provisional arrest and formal extradition requests and advice to the Attorney-General's Department.

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

^ New Zealand requests have not previously been included in this Report.

Extradition requests involving the DPP: type of matter

Type of Matter	Incoming Requests	Outgoing Requests
Fraud	10	2
Murder/Assault	5	
Sex offences	3	
Drugs	2	4
Money-laundering		1
War Crimes	2	
Other	12	
Total requests	34	7

A graph depicting the numbers of outgoing and incoming requests for extradition from 1999-2000 to 2005-2006 is at Appendix 6 of this Report.

Mutual Assistance

Mutual assistance is the formal process by which countries provide assistance to each other to investigate and prosecute offences, and to recover the proceeds of crime. The formal mutual assistance regime runs parallel with a less formal system of international cooperation between investigating agencies. The formal mutual assistance channel is usually used when a request for assistance requires the use of coercive powers in the requested country, or the material requested is required in a form that may be admissible in criminal proceedings in the requesting country.

The main types of assistance provided under the mutual assistance regime include:

- taking evidence from witnesses for use in foreign criminal proceedings;
- executing search warrants and notices to produce material; and
- locating, restraining and recovering proceeds of crime.

The formal mutual assistance regime relies on a network of international relations, and the goodwill of countries to assist each other in the investigation and prosecution of criminal matters. Australia has entered into 24 bilateral treaties with other countries to facilitate obtaining and providing mutual assistance in criminal investigations and prosecutions. Australia is also a party to a number of international conventions which assist the mutual assistance process, including:

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

Australia also seeks assistance from, and provides assistance to, countries with which Australia does not have a treaty. This assistance may be requested or provided on the basis of reciprocity, which is an undertaking by the requesting country to provide similar assistance in similar circumstances, if requested.

The mutual assistance regime in Australia is governed by the Mutual Assistance in *Criminal Matters Act 1987*.

The DPP generally becomes involved in assisting in the execution of an incoming request if the request requires the use of coercive powers, such as the execution of search warrants. The DPP prosecutors are responsible for appearing in Court to examine witnesses to obtain evidence required for foreign criminal proceedings. The DPP also becomes involved where action to restrain and/or forfeit the proceeds of foreign offences is requested.

In the past year, the DPP was involved in providing assistance in response to 20 requests for mutual assistance made to the Australian government by 11 countries. This included obtaining evidence from 23 witnesses for use in foreign legal proceedings and obtaining nine search warrants for material for use in foreign investigations. It also involved providing assistance in investigations to locate the proceeds of foreign offences and litigation to restrain and forfeit the proceeds of foreign offences.

In the past year, the DPP provided assistance to a number of Commonwealth investigative agencies and the Australian Central Authority to make 122 requests for mutual assistance to 44 countries.

The Australian government is working actively with other countries in the region to increase their capacity to obtain and provide mutual assistance. In the past year the DPP made the following contribution to this capacity building effort:

- December 2005 representatives from the Attorney-General's Department, the DPP and the AFP facilitated a workshop conducted by the Law Enforcement and Legal Issues Working Groups on Regional Counter-Terrorism Training into Practical Aspects of International Cooperation held in Semarang, Indonesia.
- April 2006 representatives from the Attorney-General's Department, the DPP and the AFP provided a practical workshop to Chinese officials in Beijing, China on Australian proceeds of crime mechanisms, and were actively involved in the Asia Pacific Economic Cooperation (APEC) Anticorruption and Transparency Taskforce Experts Workshop held in Shanghai.
- May 2006 representatives from the Attorney-General's Department and the DPP provided training to the Association of Southeast Asian Nations (ASEAN) Government Legal Officers Training on Mutual Assistance in Criminal Matters forum held in Kuala Lumpur, Malaysia.

The emergence of new technology has continued to contribute to the increasing globalisation of crimes such as drug trafficking, money laundering, people smuggling, and the threat from terrorism. The past year has seen a correspondent increase in the complexity of both incoming and outgoing mutual assistance requests.

A graph depicting the numbers of outgoing and incoming requests for mutual assistance from 1999-2000 to 2005-2006 is at Appendix 6 of this Report.

Mutual assistance requests involving the DPP

Country	Incoming requests	Outgoing requests
Belgium	1	2
Brazil		1
British Virgin Islands		1
Bulgaria	1	
Canada		1
China		3
Cook Islands		1
Costa Rica		1
Cyprus		2
Dubai		1
France	2	
Germany		4
Ghana		1
Hong Kong SAR	2	12
India		2
Iran		1
Indonesia	3	2
Israel		2
Italy		2
Japan		1
Jersey		2
Lebanon		3
Macau		1
Macedonia		1
Malaysia		3
New Caledonia		1
New Zealand	1	8
Norway		2
Pakistan		2
Peru		3
Serbia & Montenegro		2

Mutual assistance requests involving the DPP Cont.

Country	Incoming requests	Outgoing requests
Singapore		1
South Africa	1	1
Spain		1
Switzerland	1	6
Thailand		5
The Netherlands	1	3
The Netherlands Antilles		1
Turkey		1
United Arab Emirates		1
United Kingdom	3	9
USA	5	18
Uruguay		1
Vanuatu		3
Venezuela		1
Vietnam		2
Total requests	20	122

Mutual Assistance Matters Involving the DPP: Type of Matter

Type of Matter	Incoming	Outgoing
Corporations		3
Drugs	4	40
Fraud	2	32
Money Laundering	5	9
Other	8	27
Terrorism	1	11
Total	20	122

CHAPTER 7

Law Reform

The Policy Branch in Head Office coordinates the DPP's work in the area of law reform. As the agency responsible for the conduct of prosecutions against the laws of the Commonwealth 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 an interest in ensuring that Commonwealth legislation regarding the criminal law is clear, consistent and practical.

In the law reform context, the Policy Branch acts as a coordination point for the various areas of specialist expertise within the DPP, as well as between branches within the office, including the Commercial, International and Counter-Terrorism Branch and the Criminal Assets Branch. The Policy Branch operates closely with the Legal and Practice Management Branch in establishing and maintaining links between prosecutors in Regional Offices and Commonwealth law-makers.

The DPP contributes to law reform in a number of ways, including providing advice about the practical implications of existing legislation, new policy proposals, and proposed legislation. The DPP's ongoing contribution to law reform stems from its practical experience conducting criminal prosecutions in courts across Australia. The DPP provides feedback to policy formulators and law-makers about the operation of Commonwealth laws and the DPP's experience working with these laws in the courts. It is important to recognise that the DPP does not develop criminal law policy.

On occasion, the DPP may identify deficiencies in laws or aspects of laws that in the view of the DPP should be clarified. These are brought to the attention of the Attorney-General's Department or another department or agency that has responsibility for the administration of the legislation involved. The DPP may also raise possible legislative changes for consideration.

The *Law and Justice Legislation Amendment (Video Link Evidence and Other Measures) Act 2005* provides a recent example of legislative change as a result of the DPP providing information about practical difficulties encountered in conducting cases. These difficulties related to ensuring the physical attendance of witnesses at court in counter-terrorism and related cases. This legislation enables witnesses for the prosecution and the defence to give evidence by audio-visual link and provides a mechanism for using modern technology to address these practical difficulties.

The DPP's input is facilitated by a close working relationship with the Attorney-General's Department, in particular the Criminal Justice Division and the Security and Critical Infrastructure Division, as well as with other Commonwealth departments and agencies.

The DPP commented on a wide range of legislative proposals and draft legislation during the course of the year.

One of the most significant legislative developments in the past year was the *Law and Justice Legislation (Serious Drug Offences and Other Measures) Act 2005*. This legislation repealed the long-standing drug importation and related offences in the *Customs Act 1901* and inserted offences involving importing drugs into the *Criminal Code*. Offences involving the importation of drugs into Australia are among the most serious Commonwealth offences, and comprise a very significant part of the DPP's practice. In addition to offences relating to the import and export of drugs, the Act extended the existing range of Commonwealth offences to drug trafficking, the commercial cultivation and selling of controlled plants, the commercial manufacture of controlled drugs, and pre-trafficking in the precursor chemicals used to manufacture drugs. These new offences came into operation on 6 December 2005.

The DPP was pleased to be able to contribute to the development of this important legislation, working together with the Attorney-General's Department and a number of agencies. The DPP also played a lead role in the implementation of the legislation by providing training and materials to assist investigators and prosecutors with using the new provisions.

The *Telecommunications (Interception) Amendment Act 2006* introduced a new means of accessing stored communications held by a telecommunications carrier via a stored communications warrant. The stored communications warrant regime relates to obtaining access to electronic messages located on a computer, Internet server or other equipment, whether read or unread, such as emails, text messages and voicemail. This new means of accessing electronic messages exists in addition to other means that law enforcement officers have of gaining access to messages, for example by way of a search warrant executed on the premises of the person where a computer is located. The *Telecommunications (Interception) Amendment Act 2006* also amended the *Telecommunications (Interception) Act 1979* to implement recommendations of the Blunn Report on the review of the regulation of access to communications under the *Telecommunications (Interception) Act 1979*. This area of the law is highly technical and complex. The DPP has provided ongoing input in this area and has provided training, both internal and external, on the extent and effect of the new provisions.

The *Defence Amendment (Aid to Civilian Authorities) Act 2005* provides for the use of members of the Australian Defence Force (ADF) who are employed

in a reserve capacity, in domestic security operations. It also allows for the call-out of the ADF in sudden and extraordinary emergencies, and for ADF powers to be employed to protect designated critical infrastructure. The Act also allows the ADF to respond to domestic security incidents or threats in offshore areas or in the air. Importantly, in relation to the DPP, the Act provides in section 51WA that the substantive law of the Jervis Bay Territory applies in relation to a criminal act committed by a member of the ADF in one of these situations. It provides that prosecutions for any offences are the responsibility of the DPP to the exclusion of State or Territory DPPs.

In December 2005, the Attorney-General's Department publicly released a first exposure draft of the *Anti-Money Laundering and Counter-Terrorism Financing Bill* for comment. This package of reforms seeks to improve and strengthen Australia's current anti-money laundering and counter-terrorism financing system in line with international standards issued by the Financial Action Task Force on Money Laundering. The DPP has provided comments to the Attorney-General's Department about the Bill and also provided a submission to the Legal and Constitutional Legislation Committee inquiry about the exposure draft. The DPP expects to provide further comments as the Bill is developed. Again, the DPP is able to contribute to legislative reform in this context by providing advice and assistance regarding the practical ramifications of the legislation and the way in which the provisions are likely to operate in a prosecuting environment.

This year has seen the Australian Law Reform Commission (ALRC) finalise its consideration of two important areas, namely the reviews of the uniform Evidence Acts and of federal sentencing.

The ALRC presented its final report about the uniform Evidence Acts to the Attorney-General in December 2005. The provisions of the legislation were found to be working well generally, although a number of specific recommendations were made for reform. The DPP made extensive submissions to the ALRC on the review. One of the DPP's submissions stemmed from the evidentiary difficulties involved in proving electronic communications. The DPP observed that currently, investigative agencies devote considerable resources to strictly proving that a person sent or received an email. The DPP submitted that, given the prevalence of email communication, the proof of electronic communications should be facilitated by presumptions as to the source and destination of the communication and this reform was recommended by the ALRC.

The ALRC presented the Attorney-General with its final report *Same Crime, Same Time: Sentencing of Federal Offenders* in April 2006. The terms of reference asked the ALRC to examine and report on, amongst other matters, whether the sentencing provisions in Part 1B of the *Crimes Act 1914* provide an appropriate, effective and efficient mechanism for the sentencing and

imprisonment of federal offenders and what, if any, changes are desirable. The review was to have particular regard to the changing nature and scope of federal criminal law and the question of consistency in the treatment of federal offenders across Australia.

Sentencing is a fundamental part of the criminal justice process and, as a key stakeholder within the Commonwealth criminal justice system, the DPP assisted the ALRC with information and input based on its experience in prosecuting Commonwealth offences. The ALRC consulted extensively with the DPP on legal and procedural issues during its review and described its collaboration with the DPP in relation to the provision and analysis of data as a special feature of the inquiry.

The principal recommendation made by the ALRC is that the Australian Parliament should enact a separate federal sentencing Act and that federal sentencing legislation should be redrafted to make its structure clearer and more logical. In consultations with the ALRC, the DPP supported the enactment of a separate federal sentencing Act and submitted that the main principles reflected in new provisions should be clarity, order and flexibility. The DPP made detailed submissions about many aspects of sentencing, but one of the important matters emphasised, and which forms part of the ALRC's many recommendations, is that a wide range of sentencing options should be available to enable a sentencing court to appropriately sentence an offender.

Also in the area of sentencing federal offenders, the Commonwealth is presently reviewing the criminal penalties provided for in legislation. The purpose of this exercise is to ensure that penalties for Commonwealth offences reflect community standards. The existing mechanisms for setting penalties is to be assessed, as well as the appropriateness of Commonwealth criminal penalties in light of comparable penalties in other jurisdictions. The review is seeking to understand community expectations about penalising criminal offences. The DPP is working with the Attorney-General's Department on this review, and is participating as a member of an interdepartmental committee considering these issues.

The DPP has participated in other legislative reviews, such as that conducted by the Security Legislation Review Committee, which considered counter-terrorism legislation. The DPP submitted that terrorism is a national issue that requires a national response and that it is vital for there to be a national approach with laws that allow for a consistent and coordinated approach to prosecutions. The DPP further submitted that it considered the counter-terrorism legislation which was the subject of review, to be appropriate and necessary. The DPP also assisted Parliamentary committees in reviewing legislation.

In addition, the DPP is active in law reform through its discussions with departments and agencies and at various interdepartmental committees where law reform issues are raised. For example, the DPP is represented on an interdepartmental committee, chaired by the Attorney-General's Department, which deals with measures to combat international trafficking in persons. The DPP contributes to proposed law reform in that context.

In addition, the DPP contributes to law reform through participation in working groups and committees. One important example of this is the DPP's participation on the National Working Group on the Prevention of the Diversion of Precursor Chemicals into Illicit Drug Manufacture. The Working Group brings together State, Territory and Commonwealth law enforcement and health officials, as well as representatives of industry. The Working Group examines issues surrounding the diversion of pseudoephedrine and other precursor chemicals from both legitimate and illegitimate sources, including pharmacies and the chemical industry, into the manufacture of methylamphetamine and other illicit drugs. The DPP draws on its experience in the prosecution of drugs and other offences to provide information and input into the Working Group's consideration of this important area. At the December 2005 meeting of the Working Group, the DPP gave a presentation on the Commonwealth serious drug offences relating to the importation and domestic pre-trafficking of precursor chemicals and the manufacturing of illicit drugs.

The DPP's expertise in the prosecution of federal offences provides these working groups, interdepartmental committees, agencies and departments with information about the practical implications of proposed law reform.

Another avenue in contributing to law reform is through participation in legal conferences. In early July 2006, the 20th Annual Conference of the International Society for the Reform of Criminal Law was held in Brisbane. DPP officers played significant roles in organising the conference during 2005-2006. In addition, officers of the DPP attended the conference as delegates and gave papers on a number of important issues. The conference was very well attended, and provided a forum in which the DPP could contribute to national and international debate about law reform at a conceptual level.

Last year, the DPP reported on its participation in two international evaluations of the effectiveness of Commonwealth criminal law. One of these was the report which arose out of the review conducted by the Organisation for Economic Cooperation and Development into Australia's compliance with the *Convention Against Bribery of Foreign Public Officials in International Business Transactions*. This review was conducted in Australia by a team of evaluators from Japan and New Zealand. The DPP contributed to this review in a number of ways. As well as providing statistics and practical

insight into the prosecution process and the criminal law in Australia, the DPP's contribution included discussing with the reviewers the operation of the relevant criminal offences.

The DPP valued the opportunity to assist in the review and contribute to international steps to ensure the effectiveness of laws in the area of anti-corruption. The DPP was able to further assist in these efforts in May 2006 by providing a DPP lawyer to be part of the review team comprising officials from Australia and Korea to conduct a similar review of New Zealand. Australia and Korea will report to the Organisation for Economic Cooperation and Development in October 2006 on New Zealand's compliance with the *Convention Against Bribery of Foreign Public Officials in International Business Transactions*.

These activities undertaken by the DPP in the last year are indicative of the valuable contribution that the DPP makes, on an ongoing basis, to law reform in Australia.

CHAPTER 8

Practice Management

In addition to casework and law reform work, the DPP also contributes to the work of the criminal justice system in broader ways. The DPP's corporate plan envisages a prosecution service which involves 'best practice' in both the recruitment and development of staff, and also in the delivery of a prosecution service to the Australian people. The DPP actively pursues this goal in the management of its practice.

The DPP manages its practice in terms of being a national office in ways which enhance both the effectiveness of prosecutors and the maintenance of a federal prosecution service. The DPP has a number of policies and guidelines which it continues to review on a national basis. For example, the DPP's Disclosure Statement has been reviewed in the last year and is discussed below. In addition, the DPP provides training on a national level to prosecutors in a range of areas, including advocacy.

The DPP works hard to maintain good working relationships with investigating agencies and departments. There is a system of national liaison with all of the DPP's major referring client agencies, which complements liaison which is conducted at a regional level. In addition, the DPP maintains a number of manuals and policies which assist law enforcement agencies in their role in investigating Commonwealth offending. The DPP also provides a valuable system of training and other support to investigators, and this work is discussed below.

Warrants Manuals

During the course of the year, the DPP released updated versions of the DPP Search Warrants Manual, the Telecommunications Interception Warrants Manual and the Surveillance Devices Warrants Manual. The DPP also amended the Telecommunications Interception Warrants Manual to include information on the new stored communications warrants regime. These manuals provide practical guidance on obtaining, executing and defending warrants under Commonwealth law.

This area of law is very technical. The DPP has an important role in ensuring that investigators are provided with clear and appropriate advice in relation to the exercise of powers under the relevant legislation and case law. Each of these manuals is reviewed on a regular basis and is available electronically to DPP officers and Commonwealth investigators.

Training for Investigators

The DPP provides extensive training for investigators across the country, both at a regional and national level. This training covers legal, practical and evidential issues raised in the context of prosecuting offences against Commonwealth law. The training often deals with the effect and implementation of new legislation, the consequences of particular case law, and issues raised in the context of dealing with specialist areas of prosecution. Providing this training ultimately assists investigators in the provision of high quality briefs to the DPP in particular matters. Further, the DPP's involvement in the training of investigators helps to ensure that the relationship between the DPP and investigating agencies is productive.

In the past year, the DPP has continued to provide high quality training to a range of different agencies. Those agencies include Centrelink, the AFP, the ACCC, the ATO and Medicare Australia. The DPP provides tailored and specific training to investigators from these agencies based on an assessment of the types of issues faced by those agencies. Providing the training is often time-consuming and requires specialist skill.

There are many examples of the type of training that the DPP has provided in the past year. The DPP has been involved in training about warrants, including telecommunications interception warrants and search and seizure warrants, covering both the legal framework and the practical realities of obtaining a warrant. The DPP has also provided training to Centrelink on a range of issues including specific matters such as the prosecution of people for fraud involving disentitlement because of the existence of a marriage-like relationship. DPP officers have been involved in training investigators of the ACCC in giving evidence and in being cross-examined. DPP officers have delivered training to investigators about a broad range of matters including serious drug offences, sexual servitude and slavery offences, child sex tourism offences, online child pornography offences, evidence, court process and practice and procedure.

The DPP considers its contribution to training of investigators to be an important part of its role in the Australian justice system. The training helps to keep investigators' knowledge current and relevant, and assists in ensuring that investigations are conducted effectively and lawfully.

Liaison with Investigating Agencies

The DPP has productive working relationships with investigating agencies. The DPP values and maintains these working relationships, at both national and regional levels. At a regional level, prosecutors endeavour to ensure that communications with investigators are helpful and clear, and that cases are dealt with effectively and in a timely manner. At a national level, issues of

strategic significance between agencies are discussed and resolved. Difficult legal questions, or issues about practice and procedure, are dealt with at both regional and national levels.

On a case by case basis, the DPP and the investigating agency must work closely together if prosecution action is to be effective. The DPP aims to provide timely, accurate and useful advice to investigators in particular matters. Often this advice is sought and provided at a very early stage of the investigation, which serves to direct the investigation in a useful way. There are multiple examples of the DPP working closely with client agencies to produce effective prosecution action. In some instances, prosecutors have been involved in providing advice and assistance to investigators for years before charges are laid.

On 4 August 2006, the DPP was pleased to receive a letter from a client agency, Australia Post, about a long and complex matter being conducted by the Melbourne Office of the DPP. The letter noted that the prosecutor had been involved from an early stage in the matter, and that her skills, legal knowledge and guidance were reliable, considered and prompt. Australia Post stated that it was appreciative of the excellent service that the prosecutors of the Office of the DPP always provided to their investigators. The DPP strives to continue to provide this level of support to all of its client agencies.

Advocacy Training

The DPP held a number of in-house advocacy courses in 2005-2006, on both a regional and national basis. Effective advocacy is an important part of the work of prosecuting, and the DPP provides training for DPP staff in a number of fora.

On a national level, in July 2005, the DPP held a conference for prosecutors on Centrelink prosecutions. As part of the conference, prosecutors conducted a moot prosecution of a Centrelink case involving evidence of lodgement via the Internet and via an automated telephone lodgement system. Prosecutors and Centrelink staff attended. The training was important as it focussed on a new and significant type of Centrelink prosecution.

In August 2005, the DPP held an in-house course on how to conduct a sentence in an indictable prosecution. Sentence proceedings are a very large part of the DPP's court work, and training in this area is therefore important.

In February 2006, the DPP held a basic advocacy course in which prosecutors attended a seminar and then conducted a moot summary prosecution. The course used cases involving fraud on Centrelink and Australia Post. The course used genuine Centrelink and Australia Post investigators, which meant that in addition to providing training for prosecutors, the course gave investigators an important opportunity to experience court-like conditions.

Joint Trials – State and Territory DPPs

As noted in Chapter 1, the Director is empowered to prosecute indictable offences against State and Territory laws, where the Director holds an authority to do so under the laws of the relevant State or Territory. In addition, the Director is empowered to conduct committal proceedings and summary prosecutions for offences against State or Territory law where a Commonwealth officer is the informant.

The DPP has arrangements in place with each of the Directors of Public Prosecutions in Australia. The DPP is in the process of reviewing the arrangements with each of the State and Territory DPPs, with a view to establishing similar arrangements with each State and Territory DPP.

This year, the DPP has entered into a new joint trial arrangement with the Western Australian DPP. Consultations are continuing with other jurisdictions.

Disclosure Statement

The DPP has a policy in place to deal with the disclosure of material in the cases that it prosecutes. In general terms, the DPP is obliged to inform the defendant of:

- the prosecution's case against him or her;
- any information in relation to the credibility or reliability of the prosecution witnesses; and
- any unused material.

Disclosure requirements continue throughout the prosecution.

There are exceptions to the requirement to disclose material to the defence. These exceptions include situations where the material is immune from disclosure on public interest grounds, where the disclosure of the material is precluded by statute, or where legal professional privilege applies to the material.

Last year's Report indicated that the DPP had reviewed its policy in relation to prosecution disclosure. The DPP had revised its policy to ensure that it was current and in a readily understandable format. The DPP had produced a draft Statement that was the subject of consultation with Commonwealth agencies.

The consultation process with Commonwealth agencies was completed this year, and the Statement on Prosecution Disclosure has been finalised. The Statement on Prosecution Disclosure is publicly available on the DPP's website, and a copy of the Statement is at Annexure 3 of this Report.

Prosecution Policy

The DPP is conducting an ongoing review of the *Prosecution Policy of the Commonwealth*. This is a significant exercise, and includes a comparison of prosecution policies around Australia and the United Kingdom and Canada. Whilst it is some years since the last edition of this document was released, the *Prosecution Policy of the Commonwealth* continues to be very significant in promoting consistency in decisions made by the DPP, and in informing the public of the principles that underlie those decisions.

CHAPTER 9

Resource Management

Overview

Management

The DPP has a Corporate Management Branch in Head Office, which is nationally responsible for Financial and Human Resource Management, Library Services and Information Technology (IT). 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, a Financial Management Section, a Library Section and an IT 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 Collective Agreements and Australian Workplace Agreements. The Human Resource Management 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. The Library Section provides specialist library services throughout the Office including reference, research, current awareness and online resources. The Information Technology Section is responsible for the technical infrastructure of the Office including the communications network, the computing capacity and the development and maintenance of various systems including the DPP's Intranet and litigation support.

Significant Developments

▪ Certified Agreement

The Commonwealth DPP Agreement for 2003-2006 was certified by the Industrial Relations Commission on 26 November 2003. The next Agreement is currently being negotiated. Human Resource staff attended training and information sessions to familiarise themselves with the new Workchoices legislation.

▪ Australian Workplace Agreements

The DPP has an Australian Workplace Agreement in place for each substantive Senior Executive Service (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 DPP is upgrading its Intranet to a Portal based platform to provide access to DPP's legal and administrative information. The Portal's new home page was implemented in mid November 2005 and a new administrative site was added in August 2006. The administrative site includes the Director's Personnel Instructions, Director's Financial Instructions, Financial Delegations, IT Policies and Procedures, Explanatory Notes, the Certified Agreement, and other policies and procedures including the Performance Management Scheme and the Workplace Diversity Program. The portal implementation is now focussed on the provision of legal information.

The DPP has an online recruitment site on the DPP Internet home page. The site provides potential applicants with 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 used effectively.

▪ Performance Management

The DPP has a Performance Management Scheme for non-SES staff. There was a full cycle of the scheme during 2005-2006, with eligible staff advancing in salary with effect from 1 July 2006. 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.

Training in giving and receiving feedback was provided to a number of staff during the year.

▪ 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 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 consult specialists who have the skills needed to carry out inspections and develop strategies to overcome the problem.

Other Issues

There have been a number of other significant issues within the Resource Management area as follows:

- New Superannuation Scheme (PSSap) was introduced for new employees who commenced after 1 July 2005;
- Security Policy and Procedures were finalised and approved;
- Increased security measures - the changing nature of the work of the DPP has necessitated the need for more employees to obtain a security clearance to a higher classification level. It has also resulted in the creation of Top Secret Secure areas within DPP Offices;
- A 'Best Practice' Committee continues to identify and streamline many administrative processes which will result in a number of new national contracts; and
- The Head Office of the DPP underwent a major fit-out to accommodate an increase in staff and functions.

Staff

Overview

The employees of the DPP are the most valuable resource of the Office. Fifty-five percent of the staff members are lawyers or in-house counsel. The remainder provide a range of services including litigation support, financial analysis, accountancy, IT services, library services, human resource services, and finance and administrative support.

As at 30 June 2006, the total number of staff was 515, there having been 498 as at 30 June 2005. A breakdown of this figure appears in the tables at the end of this Chapter. The average staffing level for the year was 485.62 (481.76 for 2004-2005). As at 30 June 2006, the full time equivalent staffing number was 492.13. All staff members are employed under the *Public Service Act 1999* or section 27 of the DPP Act 1983.

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 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 any continuing legal education requirements which apply to them. The DPP also runs an in-house advocacy training course for DPP lawyers.

In-house training was provided in giving and receiving feedback to assist with performance management. In-house training was also provided for employees who may have an opportunity to be on a selection panel. These in-house training programs were provided by the Australian Public Service Commission. Training has commenced within the Office in relation to the elimination of workplace harassment. This training will continue into the next financial year.

Direct expenditure on external training for the year was \$163,082. There was also considerable in-house training and 'on the job' training which was not costed.

Workplace Diversity and Equal Employment Opportunity

It is a requirement of the *Public Service Act 1999* that every Australian Public Service workplace be free from discrimination, and recognise and use the diversity of the Australian community it serves. Section 18 of that Act provides that an agency head must establish a workplace diversity program. A Workplace Diversity Plan for the DPP was approved in April 2004. The aim of the Plan is to support diversity by creating an environment which enables DPP staff members to realise their full potential and contribute meaningfully 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. It also involves embedding those principles into all human resource management policies and practices, including the performance management scheme, and selection and induction processes.

The DPP's Equal Employment Opportunity (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 EEO employment levels have varied since last year. The number of women employees has increased from 329 to 334. The number of people who have self-identified as having a non-English speaking background is 84.

As at 30 June 2006, the DPP had one Indigenous Legal Cadet, who is located in the Brisbane Office.

Status of Women

A table showing a breakdown of DPP employees by sex is at the end of this Chapter.

As at 30 June 2006, women made up 65% of DPP employees, and 60% of lawyers.

Of the 44 full-time members of the SES, 13 of those were women. There were three part-time members of the SES, all of whom were women. In percentage terms, 36% of SES positions were filled by women.

As at 30 June 2006, there were more women part-time employees than men. In addition to the only three part-time SES officers being women, of the 30 part-time legal officers working for the DPP, 29 were women.

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

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

Financial Statements

The audited financial statements at the end of this Report were prepared in accordance with the *Financial Management and Accountability (Financial Statements for reporting periods ending on or after 1 July 2005) Orders* issued by the Minister for Finance and Administration. Detailed information on the accounting policies used to prepare the audited financial statements is at Note 1 in the financial statements.

Under current budget arrangements, the DPP has only one outcome with one output. Further information about the DPP's budget is in the Attorney-General's Portfolio Budget Statements.

Financial Performance

▪ Introduction

The DPP's operations are largely funded through parliamentary appropriations. A small amount of revenue is received independently, which under an arrangement pursuant to section 31 of the *Financial Management and Accountability Act 1997*, is accounted for as agency revenue and retained for use by the DPP.

In accordance with the DPP Act, the DPP prosecutes offences that result in fines and costs being ordered. The revenue is accounted for as administered funds, and when received as cash, is paid directly into Consolidated Revenue.

▪ Operating Results

Operating revenues for 2005-2006 were \$4.467 million (5.8%) more than 2004-2005. This increase in revenues is largely due to increased appropriations from government for increased prosecutions as a result of the counter-terrorism measures, enhanced enforcement measures against illegal foreign fishers and the Pan Pharmaceuticals recall (which were announced in the 2005-2006 Additional Estimates Budget).

Operating expenses for 2005-2006 were \$0.06 million (0%) more than 2004-2005. The expense level is comparable to last year's. There was an increase in legal expenses which is a direct result of the new measures as stated above. This was offset by the decrease in IT and communication expenses and by the expense for employees leave entitlements (resulting from the increase in bond rate) reducing the net present value of the liability.

▪ Purchasing

The DPP adheres to the principles of value for money; encouraging competition amongst actual/potential suppliers; efficient, effective and ethical use of resources; and accountability and transparency during the procurement process. These policies and principles are set out in the Commonwealth Procurement Guidelines.

▪ Competitive Tendering and Contracting

Competitive tendering and contracting is the contracting out of the delivery of government activities, previously performed by a Commonwealth agency, to another organisation. It may be undertaken for the provision of either goods or services. No such contracts were entered into during the year.

▪ Consultancy Services

As a general rule, all consultancies with a value over \$80,000 are publicly advertised. Consultancies with a value of less than \$80,000 are either publicly advertised or sought by quote.

The methods of selection used for consultancies are categorised as follows:

Open Tender: A procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are sought from the marketplace using national and major metropolitan newspaper advertising and the Australian Government AusTender Internet site.

Select Tender: A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. Tenders are invited from a short list of competent suppliers.

Direct Sourcing: A form of restricted tendering, only used in certain defined circumstances, with a single supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and/or services sought.

During 2005-2006, the DPP entered into four new consultancy contracts with an estimated value of \$10,000 or more. Further details of these consultancies are provided in Table 6 at the end of this Chapter.

During 2005-2006, the DPP spent a total of \$197,268 on seven consultancy contracts. This includes \$92,690 on the four new consultancy contracts entered into during 2005-2006.

▪ Asset Management

The DPP's major assets are office fit-out, office furniture and library holdings. Asset stocktakes were conducted during the year to maintain the accuracy of asset records. 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.

During the year:

- Additional space in Sydney Office was fitted out, and
- A staged refurbishment of Head Office was completed.

▪ Internal Audit and Fraud Control

During the year, an internal audit was conducted in all offices for the following areas:

- Asset Management
- Purchases and Payables
- Travel
- Credit cards
- Revenue and Receivables
- Administered Fines and Costs
- Human Resources, and
- Information Technology.

The overall results of the internal audit were good with only minor procedural changes recommended. DPP will take necessary actions to implement them during 2006-2007.

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 Fraud Control Plan.

In accordance with the Commonwealth Fraud Control Guidelines 2002, the DPP has in place fraud risk assessments and fraud control plan. The Director approved the Fraud Control Plan in September 2004. Agencies subject to the *Financial Management and Accountability Act 1997* are only required to undertake a total review of the effectiveness of fraud control arrangements, including conducting a fresh risk assessment, at least every two years providing that there is no major change in functions.

The DPP conducted fraud awareness training to all staff. All fraud control related materials are also made available to all staff on the DPP Intranet. These materials complement the Director's Financial Instruction 8.01, which deals with fraud control. This year, the Audit Committee approved a project to review and update the plan. Fraud risk assessments will be undertaken in 2006-2007 to form the basis of the 2006-2008 two year plan. During 2005-2006, the DPP investigated two fraud incidents, one of which was initially reported late last year.

▪ External Scrutiny

The Auditor-General issued an unqualified audit report for the DPP's 2005-2006 financial statements.

During the reporting period, the Auditor-General issued three reports which include information on the operations of the DPP:

- Report No. 21 on audits of the financial statements of Australian Government entities for the period ended 30 June 2005;
- Report No. 27 on audits of the reporting of expenditure on consultants; and
- Report No. 28 on audits of management of net appropriation agreements.

The DPP provided a response to the reports. The DPP generally agreed with the recommendations made. The reports as tabled by the Auditor-General in Parliament as well as the DPP's responses to specific recommendations are available on the Australian National Audit Office web-site, <http://anao.gov.au>.

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.

▪ Advertising and Market Research

During 2005-2006, total expenditure on media advertising organisations was \$0.103 million (\$0.066 million for 2004-2005). The DPP did not use the services of any creative advertising agencies, direct mailing or polling organisations.

Details of payments of \$1,500 (including GST) and above, as required under Section 311A of the *Commonwealth Electoral Act 1918*, are contained in the following list.

Organisation	Purpose	Expenditure \$
HMA Blaze Pty Ltd	Recruitment Advertising	102,583

▪ Audit Committee

The DPP's Audit Committee comprises three members: the First Deputy Director, the Deputy Director Legal and Practice Management and the Deputy Director Corporate Management. In addition, there is a standing invitation to the Australian National Audit Office to observe Committee meetings. The Committee reviews, monitors and recommends improvements to the DPP's

corporate governance framework, with a focus on risk management, internal controls, compliance and financial reporting. As part of this role it oversees DPP's internal and external audit processes. Through the internal audit, the Committee reviews key processes, systems and financial accountabilities across the whole DPP.

Other Areas

▪ Information Technology

The DPP has a computer installation which is made up of personal computers with local and wide area networks and in-house applications running in a client-server environment. The basic office tools are Windows XP and Office 2003. Most IT assets are leased.

All DPP staff have access to external email including to Fed-link, which provides secure delivery of email classified up to and including the classification of 'protected'.

All staff have limited access to the Internet from their desktops, for the purpose of accessing commercial legal databases, government sites, legal organisations and some non-legal commercial sites. The DPP provides access to the remaining resources on the Internet through stand alone computers. Libraries and some IT staff have a full 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; and
- File Registry System (FILE), which keeps a record of general and 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 2003 servers using MS SqlServer database. The Office also operates the FIRST library system which also runs MS SqlServer database on the Windows 2003 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 ASIC. It was used on a regular basis during 2005-2006.

In the course of the year the DPP upgraded its printers and copy machines as part of its four-yearly upgrade cycle.

▪ Libraries

The DPP has a library in each Regional Office staffed by qualified librarians. The librarians provide valuable research, reference and information services to DPP officers, as well as 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 access to high quality current awareness services.

The librarians use the DPP Intranet to provide access to legal information through legal resource pages, in-house databases and legal publishers' electronic services. Subscriptions to the major legal publishers' electronic services were converted from regional CD licences to national Internet licences from 1 July 2005. Library staff in each office provide regular training sessions on the use of 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.

The DPP uses the FIRST library management system. All new items are catalogued onto the system including all court decisions of interest to the Office. Staff members have desktop access to the library catalogue through the Intranet. The system is regularly upgraded. Recent enhancements include a re-design of the user interface to the library catalogue and the customisation and implementation of a request management module.

▪ 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.

▪ **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, Melbourne and Head Office 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 were once distributed in paper form. In addition, the Employee Self Service scheme gives employees electronic access to personnel records, 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 the area of Commercial Prosecutions are reported in Chapter 3 of this Report.

▪ **Public comment**

Any person is free to write to the DPP about any matter, at the addresses shown at the front of this Report.

▪ **Privacy**

There were no reports served on the DPP by the Privacy Commissioner under section 30 of the *Privacy Act 1988* in the past year.

Resource Management Tables

Table 1(a): Staff as at 30 June 2006*

	ACT	NSW	VIC	Qld	SA	WA	TAS	NT	TOTAL
Director	1								1
SES Band 3	2								2
SES Band 2	4	1	1	1		1			8
SES Band 1	2	12	8	8	1	3			34
PLO	11	27	19	15	5	6	2	1	86
SLO	7	21	19	12	5	10		2	76
LO 2	4	14	5	5	1	2	2	1	34
LO 1	1	18	10	8	5	2	1		45
Exec 2	7	3	1	1					12
Exec 1	7	3	2	3	1	1			17
APS 6	8	7	3	1		2		1	22
APS 5	4	4	4	4	2			2	20
APS 4	9	17	8	13	1	7	2		57
APS 3	1	22	12	16	6	9	1	3	70
APS 2	1	12	10	1		2	1		27
APS 1		1	1				1		3
Cadet				1					1
Totals	69	162	103	89	27	45	10	10	515

*Includes inoperative staff.

Legend:

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

Table 1(b): Staffing summary 2005-2006*

Category	Number
Statutory Office Holders	1
Total staff employed under the <i>Public Service Act 1999</i>	470
Total staff employed under the DPP Act	44
Total	515

*Includes inoperative staff.

The total number of non-ongoing employees included in this table is 76

Table 2: Staff as at 30 June 2006 by sex and category*

Category	Full Time		Part Time	
	Male	Female	Male	Female
Director	1			
Senior Executives -				
Band 3	2			
Band 2	6	2		
Band 1	20	11		3
Legal Officers	84	127	1	29
Executive Officers	16	12		1
APS 1 – 6	47	125	4	23
Cadet		1		
Total: 515	176	278	5	56

*Includes inoperative staff

Table 3: Staff usage by Office*

Office	Actual Average Staffing 2005 – 2006
ACT	64.65
NSW	147.62
VIC	99.99
QLD	85.4
SA	26.84
WA	43.63
TAS	8.03
NT	9.46
Total	485.62

*Includes inoperative staff

Table 4: EEO Profile as at 30 June 2006

Classification	Male	Female	ATSI	PWD	First Language English plus Another	First Language other than English
Director	1					
SES Band 3	2					
SES Band 2	6	2				2
SES Band 1	20	14	1	1	1	1
Legal Officers	85	156	1	5	20	10
Executive Officers	16	13			2	4
APS Employees	51	149	3	13	29	15
Cadet						
Article Clerk						
Total 515	181	334	5	19	52	32

*Includes inoperative staff

Legend:

ATSI Aboriginal and Torres Strait Islander
 PWD Person with disability

Table 5: Salary Scales as at 30 June 2006

Classification	Salary
SES Band 3	\$181,008 - \$193,473
SES Band 2	\$145,385 - \$165,403
SES Band 1	\$132,292 - \$139,775
Principal Legal Officer	\$95,226 - \$99,326
Executive Level 2	\$82,757 - \$96,866
Senior Legal Officer	\$71,826 - \$87,275
Executive Level 1	\$71,826 - \$77,517
Legal Officer 2	\$52,368 - \$62,687
APS 6	\$56,150 - \$64,419
APS 5	\$52,030 - \$55,139
Legal Officer 1	\$43,221 - \$50,665
APS 4	\$46,706 - \$50,665
APS 3	\$41,964 - \$45,248
APS2	\$37,910 - \$40,871
APS 1	\$19,607 - \$36,059

Table 6: New Consultancy Contracts for 2005-2006 with an Estimated Value over \$10,000

Consultant	Purpose	Est Value \$ (inc. GST) *	Procurement Method **	Reason ++
Masters Le Mesurier	Internal Audit Service	\$51,480	1	C
Frontier Group Australia Pty Ltd.	Workplace Planning	\$27,600	1	A
Herron Todd White	Asset Revaluation Service	\$18,050	2	B
Unique World Pty Ltd.	IT Support Services for Portal Software	\$27,600	3	A
TOTAL		\$124,730		

Notes:

* Actual value if completed, estimated value at 30 June if not completed.

** Procurement Method

1. Publicly advertised and an open tender process was adopted.
2. Not publicly advertised. Firms may be approached through a selective tender process.
3. Direct sourcing and receive an extension of an existing contract.

++ Reason for Contract

A. Skills currently unavailable within DPP

B. Need for specialised or professional skills

C. Need for independent research or assessment

Table 7: Resources for Outcome

	Budget* 2005-2006 \$'000	Actual 2005-2006 \$'000	Budget 2006-2007 \$'000
Administered appropriations	-	-	-
Total administered expenses	2,900	10,431	2,900
Price of departmental appropriations Output 1.1	79,210	80,059	94,054
Total revenue from government appropriations	79,210	80,059	94,054
Contributing to price of departmental outputs	79,210	80,059	94,054
Revenue from other sources Output 1.1	2,095	1,666	1,724
Total revenue from other sources	2,095	1,666	1,724
Total price of departmental outputs	81,035	81,725	95,778
Total estimated resourcing for outcome	81,035	81,725	95,778

* The figures are as per the original budget for the year, as published in May 2005.

Table 8: Average Staffing Level (Full Time Equivalents)*

	2004-2005	2005-2006 (estimate)
Average staffing level (number)	469	472

* Excludes inoperative staff members

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 2005–2006	Actions for 2005-2006
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 Workplace Diversity Plan 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.

Table 9: Commonwealth Disability Strategy Report Cont.

Performance Indicator	Performance Measure	Current level of performance	Goals for 2005–2006	Actions for 2005–2006
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 2005–2006 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.

Appendix One

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 that are:
 - (i) documents referred to in paragraph 12(1)(b) or 12(1)(c) of the Freedom of Information Act; or
 - (ii) documents that are customarily made available to the public, otherwise than under the Freedom of Information Act, free of charge on 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.

Appendix Two

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 wellbeing 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; and
- best possible use of resources.

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

ACTION PLAN

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

Appendix Three

Disclosure Statement



COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

Statement on Prosecution Disclosure

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3. Disclosure affecting credibility or reliability of a prosecution Witness
 - 3.1 Previous convictions
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 - 3.3 Concessions to witnesses
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4. Disclosure of unused material
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 - 4.3 Timing of disclosure of unused material
 - 4.4 How unused material should be disclosed
 - 4.5 Unused material held by third parties
 - 4.6 Other material
5. Disclosure to CDPP by investigation agencies

Statement on Prosecution Disclosure

1. Introduction

This statement sets out the CDPP's disclosure obligations in the cases it prosecutes.

"Disclosure" refers to informing the defendant of:

- the prosecution's case against him/her;
- any information in relation to the credibility or reliability of the prosecution witnesses; and
- any unused material (see section 4.1).

Disclosure requirements continue throughout the prosecution.

The requirements imposed by this statement are to be complied with subject to any laws which are applicable in the prosecution of Commonwealth offences, including State and Territory laws and the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

There are exceptions to the requirement to disclose material to the defence. These exceptions include situations where the material is immune from disclosure on public interest grounds, where the disclosure of the material is precluded by statute or where legal professional privilege applies to the material. These exceptions to disclosure are discussed below.

2. Disclosure of the Prosecution's case

2.1 In summary matters

There is no general disclosure obligation imposed under this policy where a defendant intends to plead guilty to charges in the summary jurisdiction.

Where the defendant has entered a plea of not guilty in proceedings for summary conviction the CDPP should provide the defence with the following:

- copies of any written statements by persons whom the prosecution intends to call to give evidence at the hearing. If the prosecution intends to call a person who has not made a written statement, the defence should be so advised.
- reasonable access to inspect proposed exhibits and, where it is practicable to do so, photocopies or photographs of such exhibits.

This material should be provided to the defence with as much notice as is reasonably practicable.

2.2 In indictable matters

2.2.1 At committal

In each Australian jurisdiction there is provision for disclosure of the evidence relied upon by the prosecution in matters proceeding on indictment. In most cases, this disclosure takes place in the course of committal proceedings.

2.2.2 Post committal

When the prosecution intends to rely on evidence that was not disclosed during the committal, the additional evidence should be disclosed to the defence with as much notice as is reasonably practicable.

If the prosecution intends to call a witness whose evidence was not relied on at the committal, the defence should be provided with a copy of the witness's statement or, if the witness has not made a written statement, the defence should be informed of the essence of the witness's anticipated evidence. The defence should also be provided with reasonable access to any proposed exhibit which was not relied on at the committal hearing and, where it is practicable to do so, a photocopy or photograph of any such exhibit.

2.3 Likely intimidation of a witness

Where the prosecutor is of the opinion that to disclose evidence is likely to lead to a witness being intimidated or result in some other interference with the course of justice, the prosecutor may delay disclosing the evidence until a time more proximate to the witness giving evidence. In summary matters, the prosecutor may decline to disclose the evidence. Where particular information has been withheld in accordance with this paragraph the defence should be so informed.

3. Disclosure affecting credibility or reliability of a prosecution witness

The prosecution is under a duty to disclose to the defence information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:

- a relevant previous conviction or finding of guilt,
- a statement made by a witness which is inconsistent with any prior statement,
- a relevant adverse finding in other criminal proceedings or in non-criminal proceedings (such as disciplinary proceedings, civil proceedings or a Royal Commission),

- evidence before a court, tribunal or Royal Commission which reflects adversely on a witness (e.g. allegations in relation to civil penalty proceedings or dishonesty offences which are yet to be finalised),
- any physical or mental condition which may affect reliability,
- any concession which has been granted to a witness in order to secure that person's testimony for the prosecution.

3.1 Previous convictions

It is not possible for investigating agencies to conduct criminal checks for all prosecution witnesses. Prosecutors should only request a criminal history check for a prosecution witness where there is reason to believe that the credibility of the prosecution witness may be in issue.

While the duty to disclose to the defence the previous convictions of a prosecution witness extends only to relevant prior convictions, a prior conviction recorded against a prosecution witness should be disclosed unless the prosecutor is satisfied that the conviction could not reasonably be seen to affect credibility having regard to the nature of, and anticipated issues in, the case. In that regard, previous convictions for perjury and offences involving dishonesty should always be disclosed.

The defence may request that the prosecution provide details of any criminal convictions recorded against a prosecution witness. Such a request should be complied with where the prosecutor is satisfied that the defence has a legitimate forensic purpose for obtaining this information, such as where there is a reason to know or suspect that a witness has prior convictions.

3.2 Adverse findings in non-criminal proceedings

Where a prosecution witness has been the subject of an adverse finding in other criminal proceedings or in non-criminal proceedings (such as disciplinary proceedings, civil proceedings or a Royal Commission), the matter should be disclosed to the defence unless the prosecutor is satisfied that the finding could not reasonably be seen to affect credibility having regard to the nature of, and anticipated issues in, the case. Findings involving dishonesty should always be disclosed. On the other hand, it may not be necessary to disclose adverse findings, for example, of inefficiency, incompetence or disobedience to orders.

3.3 Concessions to witnesses

The prosecution should disclose:

- any concession provided to a witness with respect to his or her involvement in criminal activities in order to secure his or her evidence for the prosecution, whether as to choice of charge, the grant of an

undertaking under subsection 9(6) or subsection 9(6D) of the *Director of Public Prosecutions Act 1983* or otherwise,

- any monetary or other benefit that has been claimed by, or offered or provided to, a witness. This does not include any payments made in the ordinary and usual course of securing the evidence of a witness (eg the payment of travel and accommodation expenses or the fees of expert witnesses) and disclosure will be subject to any legislative requirements such as witness protection legislation,
- where the witness participated in the criminal activity the subject of the charges against the defendant, whether the witness has been dealt with in respect of his or her own involvement and, if so, whether the witness received a discount on sentence as a result of undertaking to cooperate with law enforcement authorities in relation to the current matter.

3.4 Timing of disclosure affecting credibility or reliability of a prosecution witness

Where the prosecution is in possession of information which is relevant to the credibility or reliability of a prosecution witness that information should be disclosed to the defence:

- in matters to be disposed of summarily – as soon as reasonably practicable after the defendant has entered a plea of not guilty and the case has been set down for hearing,
- in matters to be dealt with on indictment – prior to the committal proceedings.

The requirement to disclose information affecting the credibility or reliability of a prosecution witness continues throughout a prosecution. If the prosecution becomes aware of the existence of such information during the course of a prosecution which has not been disclosed, that information should be disclosed as soon as reasonably possible.

4. Disclosure of unused material

4.1 Obligation to disclose unused material

The prosecution should disclose to the defence unused material.

For the purposes of this statement “unused material” is all information relevant to the charge/s against the defendant which has been gathered in the course of the investigation and which:

- (a) the prosecution does not intend to rely on as part of its case, and
- (b) either runs counter to the prosecution case (i.e. points away from the defendant having committed the offence) or might reasonably be expected

to assist the defendant in advancing a defence, including material which is in the possession of a third party (i.e. a person or body other than the investigating agency or the prosecution) (see section 4.5).

4.2 Exceptions to the requirement to disclose unused material

The prosecution should disclose to the defence all unused material in its possession unless:

- it is considered that the material is immune from disclosure on public interest grounds,
- disclosure of the material is precluded by statute, or
- it is considered that legal professional privilege should be claimed in respect of the material.

Where material has been withheld from disclosure on public interest grounds the defence should be informed of this and the basis of the claim in general terms (for example, that it would disclose the identity of an informant or the location of premises used for surveillance) unless to do so would in effect reveal that which it would not be in the public interest to reveal.

In some cases it will be sufficient to delay rather than withhold disclosure, for example if disclosure might prejudice ongoing investigations, disclosure could be delayed until after the investigations are completed.

4.3 Timing of disclosure of unused material

In matters to be disposed of summarily the prosecution should disclose any unused material to the defence as soon as reasonably practicable after the defendant has entered a plea of not guilty and the case has been set down for hearing.

In matters to be dealt with on indictment the prosecution should disclose any unused material to the defence prior to the committal proceedings. If committal proceedings are not going to be conducted, the prosecution should disclose unused material to the defence as soon as is reasonably practicable after the defendant has been informed of the decision to proceed with a trial on indictment.

Where the defendant has entered a plea of guilty on indictment the prosecution should disclose to the defence any information in its possession which might reasonably be expected to be of assistance to the defence on the hearing of the plea.

The requirement to disclose unused material continues throughout a prosecution. If the prosecution becomes aware of the existence of unused material during the course of a prosecution which has not been disclosed, that material should be disclosed as soon as reasonably possible.

4.4 How unused material should be disclosed

Where feasible the defence should be provided with copies of the unused material. If this is not feasible (for example because of the bulk of the material) the defence should be provided with a schedule listing the unused material, with a description making clear the nature of that material. The defence should then be informed that arrangements may be made to inspect the material.

If the prosecution has a statement from a person who can give material evidence but who will not be called because they are not credible, the defence should be provided with the name and address of the person and, ordinarily, a copy of the statement.

4.5 Unused material held by third parties

Where the prosecution is aware that material which runs counter to the prosecution case or might reasonably be expected to assist the defendant is in the possession of a third party, the defence should be informed of:

- the name of the third party;
- the nature of the material; and
- the address of the third party (unless there is good reason for not doing so and if so, it may be necessary for the prosecutor to facilitate communication between the defence and the third party.)

4.6 Other material

There may be cases where, having regard to:

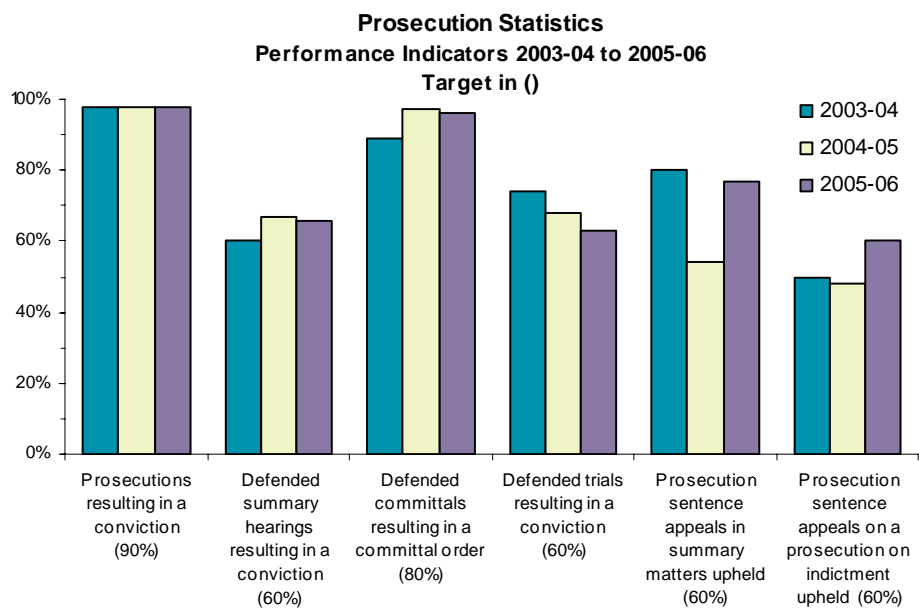
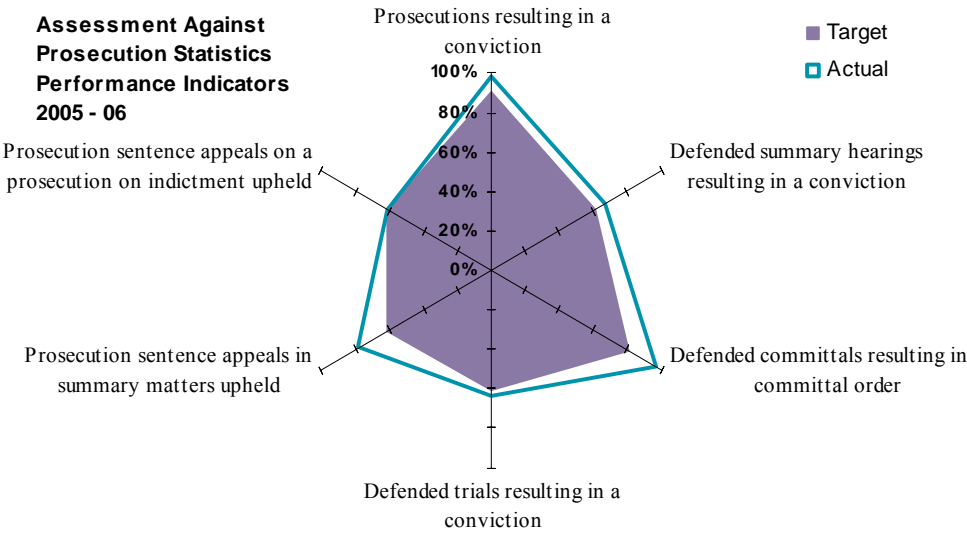
- the absence of information available to the prosecutor as to the lines of defence to be pursued, and/or
- the nature, extent or complexity of the material gathered in the course of the investigation, there may be special difficulty in accurately assessing whether particular material satisfies the description of unused material. In these cases, after consultation with the relevant investigating agency, the prosecutor may permit the defence to inspect such material.

5. Disclosure to CDPP by investigation agencies

This Statement on Prosecution Disclosure relates to information and material held by the CDPP, investigation agencies and third parties. In order for the prosecution to meet its disclosure obligations, the CDPP depends on investigation agencies informing it of information and material covered by this Statement.

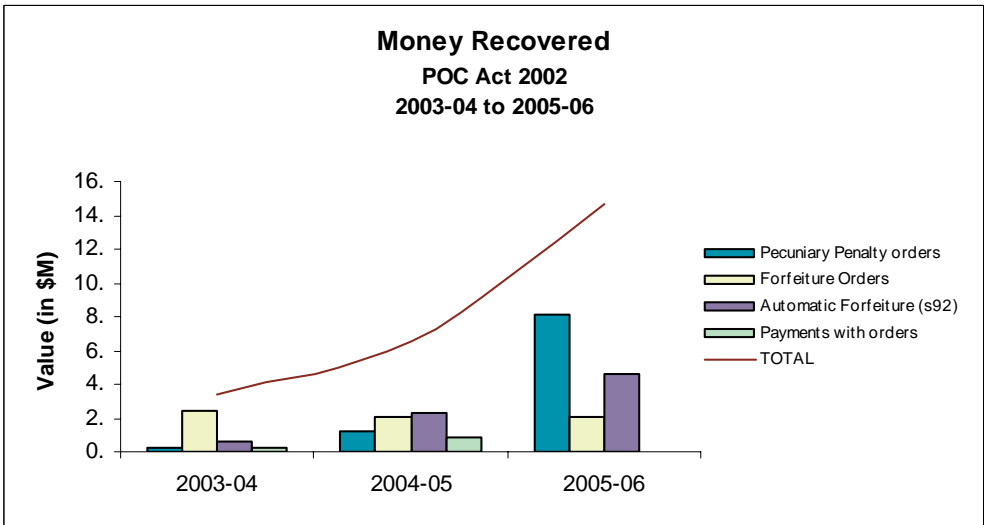
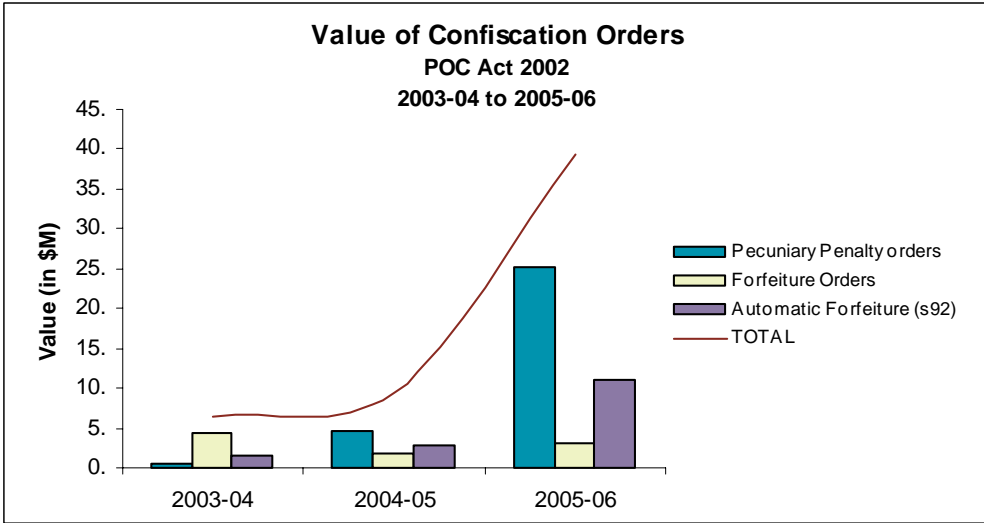
Appendix Four

Prosecution Statistics Charts



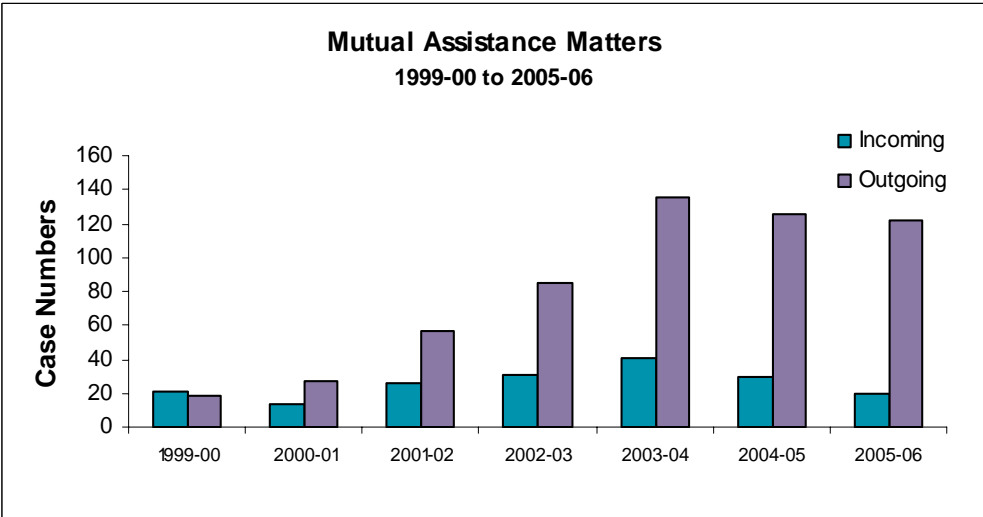
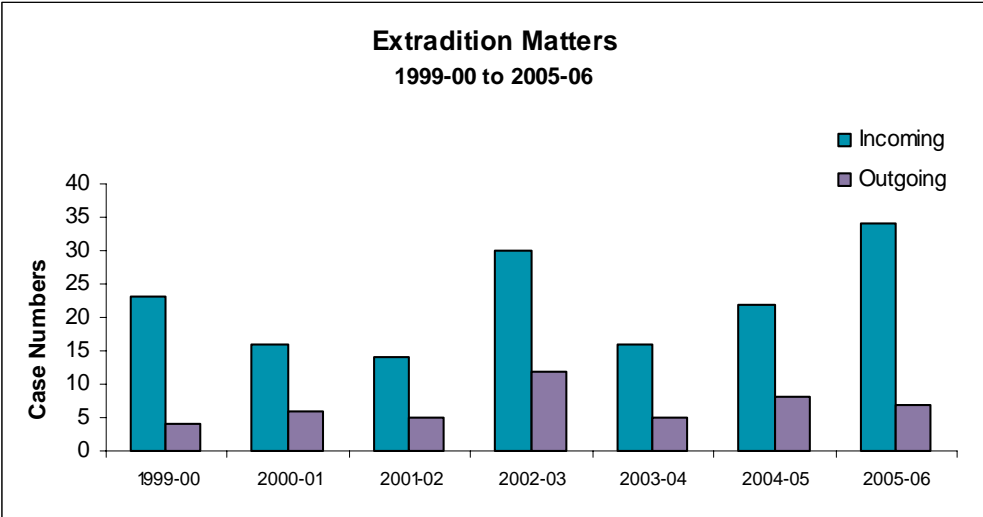
Appendix Five

Criminal Confiscation Statistics Charts



Appendix Six

International Statistics Charts



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
Crimes Act	<i>Crimes Act 1914</i>
CSB Act	<i>Crimes (Superannuation Benefits) Act 1989</i>
DPP	Director of Public Prosecutions
DPP Act	<i>Director of Public Prosecutions Act 1983</i>
EEO	Equal Employment Opportunity
ESS	Employee Self Service Scheme
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

Office of the Commonwealth Director of Public Prosecutions

Independent Audit Report 2005 – 2006

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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2005-2006

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Notes to and forming part of the Financial Statements

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OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

INDEPENDENT AUDIT REPORT 2005-2006



INDEPENDENT AUDIT REPORT

To the Attorney General

Scope

The financial statements and Director's responsibility

The financial statements comprise:

- Statement by the Director and Deputy Director Corporate Management;
- Income Statement, Balance Sheet and Cash Flow Statement;
- Statement of Changes in Equity;
- Schedules of Commitments and Contingencies;
- Schedule of Administered Items; and
- Notes to and forming part of the Financial Statements

of the Commonwealth Director of Public Prosecutions for the year ended 30 June 2006.

The Commonwealth Director of Public Prosecutions' Director is responsible for preparing financial statements that give a true and fair presentation of the financial position and performance of the Office of Commonwealth Director of Public Prosecutions and that comply 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. The Commonwealth Director of Public Prosecutions' Director is also responsible 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 Commonwealth Director of Public Prosecutions' financial position, and of its 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 Director.

Independence

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

Audit Opinion

In my opinion, the financial statements of the Office of the Commonwealth Director of Public Prosecutions:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and
- (b) give a true and fair view of the Office of the Commonwealth Director of Public Prosecutions' financial position as at 30 June 2006 and of its performance and cash flows for the year then ended, in accordance with:
 - (i) the matters required by the Finance Minister's Orders; and
 - (ii) applicable Accounting Standards and other mandatory financial reporting requirements in Australia.

Australian National Audit Office



Michael J. Watson
Group Executive Director

Delegate of the Auditor-General


Canberra
15 September 2006

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

FINANCIAL STATEMENTS 2005-2006

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

In our opinion, the attached Financial Statements for the year ended 30 June 2006 have been prepared based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Damian Bugg AM QC
Director

15 September 2006



Stela Walker
Deputy Director Corporate Management

15 September 2006

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
INCOME STATEMENT

For the year ended 30 June 2006

	Notes	2005-2006 \$ '000	2004-2005 \$ '000
INCOME			
Revenue			
Revenues from Government	4	80,059	75,102
Goods and services	5	1,126	1,302
Total revenue		81,185	76,404
Gains			
Net gains from disposal of assets	6	-	22
Other gains	7	540	832
Total gains		540	854
TOTAL INCOME		81,725	77,258
EXPENSES			
Employees	8	42,951	43,875
Suppliers	9	29,313	28,746
Depreciation and amortisation	10	3,175	3,102
Write-down and impairment of assets	11	-	2
Net losses from disposal of assets	6	24	-
Other expenses	12	693	371
TOTAL EXPENSES		76,156	76,096
Operating result before income tax		5,569	1,162
OPERATING RESULT		5,569	1,162

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

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

As at 30 June 2006

	Notes	2005-2006 \$ '000	2004-2005 \$ '000
ASSETS			
Financial Assets			
Cash and cash equivalents	13	222	330
Receivables	14	23,181	15,163
Total Financial Assets		23,403	15,493
Non-Financial Assets			
Land and buildings	15,17	12,823	12,784
Infrastructure, plant and equipment	16,17	7,001	6,852
Intangibles	18	403	390
Other non-financial assets	19	933	1,059
Total Non-Financial Assets		21,160	21,085
TOTAL ASSETS		44,563	36,578
LIABILITIES			
Payables			
Suppliers	20	1,283	1,139
Other payables	21	1,796	1,995
Total payables		3,079	3,134
Non-interest bearing liabilities			
Other	22	1,225	1,437
Total non-interest bearing liabilities		1,225	1,437
Provisions			
Employee provisions	23	13,840	14,350
Other provisions	24	4,439	3,956
Total Provisions		18,279	18,306
TOTAL LIABILITIES		22,583	22,877
NET ASSETS		21,980	13,701
EQUITY			
Contributed equity		1,507	1,507
Reserves		7,568	4,858
Retained surpluses		12,905	7,336
TOTAL EQUITY		21,980	13,701
Current assets		24,336	16,552
Non-current assets		20,227	20,026
Current liabilities		16,452	16,167
Non-current liabilities		6,131	6,710

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 year ended 30 June 2006

	Notes	2005-2006 \$ '000	2004-2005 \$ '000
OPERATING ACTIVITIES			
Cash received			
Goods and services		1,138	1,531
Appropriations		71,916	77,975
Net GST received from ATO		2,664	3,267
Other (a)		542	514
Total cash received		<u>76,260</u>	<u>83,287</u>
Cash used			
Employees		43,840	44,058
Suppliers		31,156	32,005
Cost awarded		685	386
Total cash used		<u>75,681</u>	<u>76,449</u>
Net cash from or (used by) operating activities	25	<u>579</u>	<u>6,838</u>
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		5	41
Lease incentives receipt		-	60
Total cash received		<u>5</u>	<u>101</u>
Cash used			
Purchase of property, plant and equipment and intangibles		692	6,847
Total cash used		<u>692</u>	<u>6,847</u>
Net cash from or (used by) investing activities		<u>(687)</u>	<u>(6,746)</u>
FINANCING ACTIVITIES			
Cash used			
Return of contributed equity		-	-
Total cash used		<u>-</u>	<u>-</u>
Net cash from or (used by) financing activities		<u>-</u>	<u>-</u>
Net increase or (decrease) in cash held		(108)	92
Cash at the beginning of the reporting period		330	238
Cash at the end of the reporting period	13	<u>222</u>	<u>330</u>

(a) Employee and supplier expense recoveries

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
STATEMENT OF CHANGES IN EQUITY

For the year ended 30 June 2006

	Accumulated Results		Asset Revaluation Reserve		Contributed Equity		Total Equity	
	2005-2006	2004-2005	2005-2006	2004-2005	2005-2006	2004-2005	2005-2006	2004-2005
	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000	\$ '000
Opening Balance	7,336	6,174	4,858	4,512	1,507	1,507	13,701	12,193
Income and Expense								
Revaluation adjustment	-	-	2,710	346	-	-	2,710	346
Subtotal income and expenses recognised directly in equity	-	-	2,710	346	-	-	2,710	346
Net Operating Results (1)	5,569	1,162	-	-	-	-	5,569	1,162
Total income and expenses	5,569	1,162	2,710	346	-	-	8,279	1,508
Closing balance at 30 June	12,905	7,336	7,568	4,858	1,507	1,507	21,980	13,701

(1) Under the AASB 117, lease payments under an operating lease are to be recognised as an expense on a straight-line basis over the lease term. An adjustment of \$761,379 has been taken up by the CDDP retrospectively for 2004-2005 closing balance.

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 2006

	2005-2006 \$ '000	2004-2005 \$ '000
BY TYPE		
Capital commitments		
Land and buildings	-	197
Infrastructure, plant and equipment	351	-
Total capital commitments	351	197
Other commitments		
Operating leases	53,604	60,136
Legal services	6,153	4,877
Goods and services (excluding legal services)	3,273	3,602
GST payable on commitments receivable	2	8
Total other commitments	63,032	68,623
Commitments receivable		
Sub-lease rental	(21)	(85)
GST receivable on commitments payable	(5,762)	(6,253)
Total commitments receivable	(5,783)	(6,338)
Net commitments by type	57,600	62,482
BY MATURITY		
Capital commitments		
One year or less	319	179
From one to five years	-	-
Over five years	-	-
Total Capital Commitments	319	179
Operating lease commitments		
One year or less	7,518	7,171
From one to five years	27,073	27,393
Over five years	14,121	20,028
Total Operating Lease Commitments	48,712	54,592
Other commitments		
One year or less	6,671	6,127
From one to five years	1,898	1,560
Over five years	-	24
Total Other Commitments	8,569	7,711
Net commitments by maturity	57,600	62,482

NB: Commitments are GST inclusive where relevant.

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 2006

<u>Contingent Liabilities</u>	<u>Guarantees</u>		<u>Claims for damages / costs</u>		<u>Total</u>	
	2005-2006 \$ '000	2004-2005 \$ '000	2005-2006 \$ '000	2004-2005 \$ '000	2005-2006 \$ '000	2004-2005 \$ '000
Balance from previous period	-	-	-	-	-	-
New	-	-	-	-	-	-
Re-measurement	-	-	-	-	-	-
Liabilities crystallised	-	-	-	-	-	-
Obligations expired	-	-	-	-	-	-
Total Contingent Liabilities	-	-	-	-	-	-
<u>Contingent Assets</u>	<u>Guarantees</u>		<u>Claims for damages / costs</u>		<u>Total</u>	
	2005-2006 \$ '000	2004-2005 \$ '000	2005-2006 \$ '000	2004-2005 \$ '000	2005-2006 \$ '000	2004-2005 \$ '000
Balance from previous period	-	-	151	89	151	89
New	-	-	-	151	-	151
Re-measurement	-	-	-	-	-	-
Assets crystallised	-	-	(151)	(89)	(151)	(89)
Contingencies expired	-	-	-	-	-	-
Total Contingent Assets	-	-	-	151	-	151
Net Contingent (Liabilities) / Assets	-	-	-	-	-	(151)

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 26: 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			
	Notes	2005-2006 \$ '000	2004-2005 \$ '000
Income Administered on Behalf of Government			
<i>For the year ended 30 June 2006</i>			
Revenue			
Non-taxation			
Fees and fines	32	10,748	8,070
Reversal of previous asset write-downs	33	50	38
Total non-taxation		<u>10,798</u>	<u>8,108</u>
Total Income Administered on Behalf of Government		<u>10,798</u>	<u>8,108</u>
Expenses Administered on Behalf of Government			
<i>For the year ended 30 June 2006</i>			
Write-down of assets	34	10,431	3,764
Total Expenses Administered on Behalf of Government		<u>10,431</u>	<u>3,764</u>
This schedule should be read in conjunction with the accompanying notes.			

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)

	Note	2005-2006 \$ '000	2004-2005 \$ '000
Assets Administered on Behalf of Government			
<i>As at 30 June 2006</i>			
Financial Assets			
Cash and cash equivalents	35	3	-
Receivables	36	2,449	4,159
Total financial assets		<u>2,452</u>	<u>4,159</u>
Total Assets Administered on Behalf of Government		<u>2,452</u>	<u>4,159</u>
Liabilities Administered on Behalf of Government			
<i>As at 30 June 2006</i>			
Payables			
Other payables	37	4	-
Total Payables		<u>4</u>	<u>-</u>
Total Liabilities Administered on Behalf of Government		<u>4</u>	<u>-</u>
Current assets		2,001	3,323
Non-current assets		451	836
Current liabilities		4	-
Non-current liabilities		-	-

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)

	Note	2005-2006 \$ '000	2004-2005 \$ '000
Administered Cash Flows			
<i>For the year ended 30 June 2006</i>			
Operating Activities			
Cash received			
Fines and costs		2,109	2,012
Cash from Official Public Account-refunds		28	161
Total cash received		2,137	2,173
Cash used			
Cash to Official Public Account		2,106	2,012
Other		28	161
Total cash used		2,134	2,173
Net cash from / (used by) Operating Activities		3	-
Net increase / (decrease) in Cash Held		3	-
Cash at the beginning of the reporting period		-	-
Cash at the end of the reporting period		3	-

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)

	Note	2005-2006 \$ '000	2004-2005 \$ '000
Administered Commitments			
<i>As at 30 June 2006</i>			
		<u>Nil</u>	<u>Nil</u>
Administered Contingencies			
<i>As at 30 June 2006</i>			
		<u>Nil</u>	<u>Nil</u>

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 schedule should be read in conjunction with the accompanying notes.

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

For the year ended 30 June 2006

Note	Description
1	Summary of Significant Accounting Policies
2	The impact of the transition to AEIFRS from previous AGAAP
3	Events After the Balance Sheet Date
4	Revenues from Government
5	Goods and Services
6	Net Gains/Losses from Disposal of Assets
7	Other Gains
8	Employees
9	Suppliers
10	Depreciation and Amortisation
11	Write-down of Assets
12	Other Expenses
13	Cash and Cash Equivalents
14	Receivables
15	Land and Buildings
16	Infrastructure, Plant and Equipment
17	Analysis of Property, Plant and Equipment
18	Intangibles Assets
19	Other Non-Financial Assets
20	Suppliers Payables
21	Other Payables
22	Non-Interest Bearing Liabilities
23	Employee Provisions
24	Other Provisions
25	Cash Flow Reconciliation
26	Contingent Liabilities and Assets
27	Executive Remuneration
28	Remuneration of Auditors
29	Average Staffing Level
30	Compensation and Debt Relief
31	Financial Instruments
32	Administered Fees and Fines Revenue
33	Reversal of Previous Administered asset write-downs
34	Write-down of Administered Assets
35	Administered Cash
36	Administered Receivables
37	Administered Payables
38	Administered Reconciliation Table
39	Administered Contingent Liabilities and Assets
40	Administered Financial Instruments
41	Appropriations
42	Special Accounts
43	Reporting of Outcomes

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

For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies**1.1 Objectives of the Office of the Commonwealth Director of Public Prosecutions**

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

The CDPP 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.

Agency activities contributing toward the outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Agency in its own right. Administered activities involve the management or oversight by the Agency, on behalf of the Government, of items controlled or incurred by the Government.

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

1.2 Basis of Preparation of the Financial Statements

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 (or FMOs, being the *Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 1 July 2005)*);
- Australian Accounting Standards issued by the Australian Accounting Standards Boards (AASB) that apply for the reporting period; and
- Interpretations issued by the AASB and UIG that apply for the reporting period.

This is the first financial report prepared under Australian Equivalents to International Financial Reporting Standards (AEIFRS). The impacts of adopting AEIFRS are disclosed in Note 2.

The Income Statement and Balance Sheet have been prepared on an accrual basis and are in accordance with historical cost convention, except for certain assets and liabilities, which as noted, are at fair value or amortised cost. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)

The financial report is presented in Australian dollars and values are rounded to the nearest thousand dollars unless disclosure of the full amount is specifically required.

Unless alternative treatment is specifically required by an accounting standard, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies (other than unquantifiable or remote contingencies, which are reported at Note 26).

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the Income Statement when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for Agency items.

1.3 Significant Accounting Judgements and Estimates

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

In applying the accounting policies in this note, the CDPP has made a judgement that has significant impact on the amount recorded as Administered receivables. The collectability of fines and costs debts are assessed at balance date by reviewing the debt, by age and amount, against the past payments history of similar debts. A provision for doubtful debt is then made based on that judgement.

1.4 Statement of Compliance

The financial report complies with Australian Accounting Standards, which include AEIFRS.

Australian Accounting Standards require the CDPP to disclose Australian Accounting Standards that have not been applied, for standards that have been issued but are not yet effective.

The AASB has issued amendments to existing standards, these amendments are denoted by year and then number, for example 2005-1 indicates amendment 1 issued in 2005.

The table below illustrates standards and amendments that will become effective for the CDPP in the future. The nature of the impending change within the table, has been out of necessity abbreviated and users should consult the full version available on the AASB's website to identify the full impact of the change. The expected impact on the financial report of adoption of these standards is based on the CDPP's initial assessment at this date, but may change. CDPP intends to adopt all of standards upon their application date.

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

For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)

Title	Standard affected	Application date*	Nature of impending change	Impact expected on financial report
2005-1	AASB 139	1 Jan 2006	Amends hedging requirements for foreign currency risk of a highly probable intra-group transaction.	No expected impact.
2005-4	AASB 139, AASB 132, AASB 1, AASB 1023 and AASB 1038	1 Jan 2006	Amends AASB 139, AASB 1023 and AASB 1038 to restrict the option to fair value through profit or loss and makes consequential amendments to AASB 1 and AASB 132.	No expected impact.
2005-5	AASB 1 AASB 139	1 Jan 2006	Amends AASB 1 to allow an entity to determine whether an arrangement is, or contains, a lease. Amends AASB 139 to scope out a contractual right to receive reimbursement (in accordance with AASB 137) in the form of cash.	No expected impact.
2005-6	AASB 3	1 Jan 2006	Amends the scope to exclude business combinations involving entities or businesses under common control.	No expected impact.
2005-9	AASB 4, AASB 1023, AASB 139 and AASB 132	1 Jan 2006	Amended standards in regards to financial guarantee contracts.	No expected impact.
2005-10	AASB 132, AASB 101, AASB 114, AASB 117, AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 and AASB 1038	1 Jan 2007	Amended requirements subsequent to the issuing of AASB 7.	No expected impact.
2006-1	AASB 121 AASB 7	31 Dec 2006 1 Jan 2007	Changes in requirements for net investments in foreign subsidiaries depending on denominated currency. Revise the disclosure requirements for financial instruments from AASB 132 requirements.	No expected impact. No expected impact.

* Application date is for annual reporting periods beginning on or after the date shown

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)

1.5 Revenue

Revenues from Government

Amounts appropriated for Departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

Other Revenue

Revenue from the sale of goods is recognised when:

- The risks and rewards of ownership have been transferred to the buyer;
- The seller retains no managerial involvement nor effective control over the goods;
- The revenue and transaction costs incurred can be reliably measured; and
- It is probable that the economic benefits associated with the transaction will flow to the entity.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction will flow to the entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debt is reviewed at balance date. Provisions are made when collectability of the debt is no longer probable.

1.6 Gains

Resources Received Free of Charge

Services received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Other Gains

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

1.7 Transactions with the Government as Owner

There were no transactions with the Government as Owner during the reporting periods.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)

1.8 Employee Benefits

As required by the Finance Minister's Orders, CDPP has early adopted AASB 119 Employee Benefits as issued in December 2004.

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

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

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

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 benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Agency 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.

The liability for long service leave has been determined by reference to the work of an actuary carried out during 2004-2005. The estimate of the present value of the liability takes into account attrition rates and pay increase through promotion and inflation.

B. Separation and Redundancy

Provision is made for separation and redundancy payments. The CDPP has developed a detailed formal plan for terminations and has informed those employees affected that it will carry out the terminations.

C. Superannuation

Staff of the CDPP are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Commonwealth. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognized in the financial statements of the Government and is settled by the Australian Government in due course.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)

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.

From 1 July 2005, new employees are eligible to join PSSap scheme.

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

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Operating lease payments are expensed on a straight line basis which is the representative of the pattern of benefits derived from the leased assets.

Lease incentives taking the form of 'free' leasehold improvements and rent 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:

Nature of lease	General description of leasing arrangement
Leases for office accommodation.	Lease payments are subject to increases in accordance with terms and conditions of each lease. The initial term of the leases vary, as do the options to renew.
Leases for motor vehicles (for general office use).	No contingent rentals exist. There are no renewal or purchase options available to the CDPP.
Leases in relation to computer and printing equipment.	There are two separate agreements, the first master planned rental agreement commenced w.e.f. 1 July 2001 and the second commenced w.e.f. 1 Oct 2004. Lease payments are determined at the start of the lease made under the master planned rental agreement, are based on the prevailing interest rates at that time and are fixed for the lease period. The term of the lease can be extended.
Sub-lease for shared office accommodation	Lease payments are subject to increase in accordance with the terms and conditions of the head-lease. There is an option to renew in the head-lease.

The CDPP has no finance leases.

1.10 Borrowing Costs

The CDPP has no borrowings.

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

For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)**1.11 Cash**

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

1.12 Financial Risk Management

CDPP's activities expose it to normal commercial financial risk. As a result of the nature of CDPP's business and internal and Australian Government policies, dealing with the management of financial risk, CDPP's exposure to market, credit, liquidity and cash flow and fair value interest rate risk is considered to be low.

1.13 Impairment of Financial Assets

As prescribed in the Finance Minister's Orders, CDPP has applied the option available under AASB 1 adopting AASB 132 and 139 from 1 July 2005 rather than 1 July 2004.

Financial assets are assessed for impairment at each balance date.

Financial Assets held at Amortised Cost

If there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investment held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in profit and loss.

Financial Assets held at Cost

If there is objective evidence that an impairment loss has been incurred on an unquoted equity instrument that is not carried at fair value because it cannot be reliably measured, or a derivative asset that is linked to and must be settled by delivery of such an unquoted equity instrument, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

Comparative Year

The above policies were not applied for the comparative year. For receivables, amount were recognised and carried at original invoice amount less a provision for doubtful debts based on an estimate made when collection of the full amount was no longer probable. Bad debts were written off as incurred.

Other financial assets carried at cost which were not held to generate net cash inflows, were assessed for indicators of impairment. Where such indicators were found to exist, the recoverable amount of the assets was estimated and compared to the assets carrying amount and, if less, reduced to the carrying amount. The reduction was shown as an impairment loss.

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)

1.14 Trade Creditors

Trade 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 or services have been received (and irrespective of having been invoiced).

1.15 Contingent Liabilities and Contingent Assets

Contingent Liabilities and Assets are not recognised in the Balance Sheet but are discussed in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an existing liability or asset in respect of which settlement is not probable or the amount cannot be reliably measured. Remote contingencies are part of this disclosure. Where settlement becomes probable, a liability or asset is recognised. A liability or asset is recognised when its existence is confirmed by a future event, settlement becomes probable (virtually certain for assets) or reliable measurement becomes possible.

1.16 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

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

1.17 Property, Plant and Equipment

A. Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total). The \$2,000 threshold is not applied to library holdings, original artworks and limited edition prints.

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by CDPP where there exists an obligation to restore the property to its original condition. These costs are included in the value of CDPP's leasehold improvements with a corresponding provision for the 'makegood' taken up.

B. Revaluations

Basis

Land, buildings, plant and equipment are carried at fair value, being revalued with sufficient frequency such that the carrying amount of each asset is not materially different, at reporting date, from its fair value. Valuations undertaken in each year are as at 30 June.

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

For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)

Fair values for each class of asset are determined as shown below:

<u>Asset class</u>	<u>Fair value measured at:</u>
Leasehold Improvements	Depreciated replacement cost
Property, Plant and Equipment	Market selling price

Following initial recognition at cost, valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not materially differ with the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through profit and loss. Revaluation decrements for a class of assets are recognised directly through profit and loss except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

C. Depreciation

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 are depreciated on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation rates (useful lives), residual values and the methods, are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

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

<u>Class</u>	<u>2005-2006</u>	<u>2004-2005</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 10.

D. Impairment

All assets were assessed for impairment at 30 June 2006. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its *fair value less costs to sell* and its *value in use*. *Value in use* is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if CDPP were deprived of the asset, its *value in use* is taken to be its depreciated replacement cost.

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

For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)

No indicators of impairment were found for assets at fair value.

1.18 Intangibles

CDPP's intangibles comprise software licenses and configuration costs of purchased software. These assets are carried at cost. Purchases of intangibles are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$5,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the CDPP's software are 3 to 20 years (2004-05: 3 to 20 years).

1.19 Taxation / Competitive Neutrality

The CDPP is exempt from all forms of taxation except 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.

Competitive Neutrality

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

1.20 Foreign Currency

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

1.21 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.

1.22 Comparative Figures

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

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

For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)

1.23 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.

1.24 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.

1.25 Executive Remuneration

Finance Minister's Orders (FMOs) 7.B require agencies to show the aggregate remuneration of all managers whose remuneration for the financial year is \$130,000 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.

1.26 Reporting of Administered Activities

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

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for Agency items, including the application of Australian Accounting Standards.

Administered Cash Transfers to and from Official Public Account

Revenue collected by CDPP for use by the Government rather than the Agency is Administered Revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Administration. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Agency on behalf of the Government and reported as such in the Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 38. Thus the Schedule of Administered Items largely reflects the Government's transactions, through the Agency, with parties outside the Government.

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

For the year ended 30 June 2006

Note 1 - Summary of Significant Accounting Policies (cont)*Administered Revenue*

All administered revenues are revenues relating to the course of ordinary activities performed by the Agency on behalf of the Australian Government.

Fines and costs are set down in a decision by a Court and are recorded as revenue on the date of the Court's decision. Where applicable, changes to the amount of fines and costs by subsequent appeals are recorded as a variation to the revenue (plus or minus) on the date of the Court's decision in respect of the appeal.

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

Administered Expenses

All expenses described in this note are expenses relating to the course of ordinary activities performed by the CDPP on behalf of the Australian Government.

A. Write-down of assets

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

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.

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.

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

For the year ended 30 June 2006

Note 2 – The impact of the transition to AEIFRS from previous AGAAP
Reconciliation of total equity as presented under previous AGAAP to that under AEIFRS

	2004-2005 \$'000	2003-2004 \$'000
Total equity under previous AGAAP	16,451	14,214
Adjustments to retained earnings:		
Provision for Annual Leave (a)	90	90
Provision for Make Good (b)	(49)	(80)
Provision for lease payment under straight-line basis	<u>(2,791)</u>	<u>(2,030)</u>
Total equity translated to AEIFRS	<u>13,701</u>	<u>12,194</u>

- (a) AEIFRS require that annual leave that is not expected to be taken within 12 months of balance date is to be discounted. After assessing the staff leave profile and seeking advice from the Australian Government Actuary the impact of the change has been calculated as a reduction of \$89,699 to the liability for leave as at 1 July 2004. The impact of the change to the Statement of Financial Performance is a reduction in leave expense of \$468 and a corresponding increase in leave provisions.
- (b) AEIFRS require that such liabilities that are not expected to materialise within 12 months of balance date is to be discounted. The impact of this change has been calculated as an increase of \$79,860 to the liability for make good as at 1 July 2004. The impact of the change to the 2004-2005 Statement of Financial Performance is a reduction in make good expense of \$31,141 and a corresponding increase in make good provisions.

Reconciliation of profit or loss as presented under previous AGAAP to AEIFRS

	2004-2005 \$'000
Prior year profit as previously reported	1,891
Adjustments:	
Make Good	31
Additional Lease expense under straight-line basis	<u>(761)</u>
Prior year profit translated to AEIFRS	<u>1,161</u>

The cash flow statement presented under previous AGAAP is equivalent to that prepared under AEIFRS.

There is no impact of the transition to AEIFRS from previous AGAAP for the administered items.

Note 3 - Events after the Balance Sheet Date

There were no events occurring after balance date that has any material effect on the 2005-2006 Financial Statements.

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 4 - Revenues from Government		
Appropriations for outputs	80,059	75,102
Total revenue from government	80,059	75,102
Note 5 - Goods and Services		
Goods	4	5
Services	1,122	1,297
Total sales of goods and services	1,126	1,302
Provision of goods to:		
Related entities	-	-
External entities	4	5
Total sales of goods	4	5
Rendering of services to:		
Related entities	1,098	1,128
External entities	24	169
Total rendering of services	1,122	1,297
Note 6 - Net Gains / (Losses) from Disposal of Assets		
Net gains from Sale of Assets		
Infrastructure, plant and equipment:		
Proceeds from disposal	5	40
Net book value at assets disposal	(29)	(33)
Net gain / (loss) from disposal of infrastructure, plant and equipment	(24)	7
Intangibles		
Proceeds from disposal	-	15
Net book value at assets disposal	-	-
Net gain / (loss) from disposal of intangibles	-	15
Total proceeds from disposals	5	55
Total value of assets disposed and selling expenses	(29)	(33)
Total net gain / (loss) from disposal of assets	(24)	22

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 7 - Other Gains		
Employment subsidies	7	20
Resources received free of charge - Related entities	68	66
Resources received free of charge - External entities	408	375
Other	57	371
Total other gains	540	832
Note 8 - Employees		
Wages and Salaries	31,580	30,744
Superannuation	6,904	6,623
Leave and other entitlements	3,021	4,554
Separation and redundancies	293	880
Other employee benefits	110	120
Other employee cost	1,043	954
Total employee expenses	42,951	43,875
Note 9 - Suppliers		
Supply of goods	3,161	3,582
Supply of services	18,200	17,206
Operating leases	7,671	7,733
Workers' compensation premiums	281	225
Total supplier expenses	29,313	28,746
Goods were purchased as follows:		
Provision of goods - related entities	19	4
Provision of goods - external entities	3,142	3,578
Total	3,161	3,582
Services were purchased as follows:		
Rendering of services - related entities	1,437	1,420
Rendering of services - external entities	16,763	15,786
Total	18,200	17,206
Operating lease payments comprise:		
Operating lease rentals*	7,611	7,584
Rental expense for sub-leases	60	149
Total	7,671	7,733

* According to the AASB 117, lease payments under operating lease shall be recognised as an expense on a straight-line basis over the lease term. A prior period adjustment of \$761,379 had been identified and added to the comparative figure.

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 10 - Depreciation and Amortisation		
Depreciation		
Leasehold improvements	1,857	1,722
Other infrastructure, plant and equipment	1,210	1,189
Total Depreciation	3,067	2,911
Amortisation		
Intangibles - Computer Software	108	191
Total Amortisation	108	191
Total depreciation and amortisation	3,175	3,102
The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:		
Leasehold improvements	1,857	1,722
Plant and equipment	1,210	1,189
Intangibles	108	191
Total depreciation and amortisation	3,175	3,102
Note 11 - Write-down of Assets		
Non-financial assets - write-off		
Plant and equipment	-	2
Sub-total	-	2
Total write-down of assets	-	2
Note 12 - Other Expenses		
Costs awarded against the Commonwealth	693	371
Total other expenses	693	371
Note 13 - Cash and Cash Equivalents		
Cash at bank	197	284
Cash on hand	25	46
Total cash and cash equivalents	222	330

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 14 - Receivables		
Appropriations receivable:		
- <i>for existing outputs</i>	22,832	14,689
Goods and services	13	88
GST receivable from the Australian Taxation Office	251	285
Other	85	101
Total receivables (net)	23,181	15,163
Receivables is represented by:		
Current	23,181	15,163
Non-current	-	-
Total receivables (net)	23,181	15,163
All receivables are with external entities to the entity. Credit terms are net 30 days (2005:30 days).		
Receivables (gross) are aged as follows:		
Current	23,175	15,145
Overdue by:		
Less than 30 days	-	-
30 to 60 days	6	-
61 to 90 days	-	12
More than 90 days	-	6
Total receivables (gross)	23,181	15,163
There are no provisions for doubtful debts.		
Note 15 - Land and Buildings		
Leasehold improvements		
Leasehold improvements at fair value	22,555	19,059
Accumulated amortisation	(9,732)	(6,275)
	12,823	12,784
Total land and buildings (non-current)	12,823	12,784

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 16 - Infrastructure, Plant and Equipment		
<i>Plant and equipment</i>		
Computer equipment at fair value	772	1,040
Accumulated depreciation	(374)	(657)
	<u>398</u>	<u>383</u>
Furniture at fair value	5,378	4,619
Accumulated depreciation	(2,354)	(1,388)
	<u>3,024</u>	<u>3,231</u>
Office equipment at fair value	1,810	2,429
Accumulated depreciation	(875)	(1,247)
	<u>935</u>	<u>1,182</u>
Artwork at fair value	142	123
Accumulated depreciation	(81)	(59)
	<u>61</u>	<u>64</u>
Library holdings at fair value	3,676	3,274
Accumulated depreciation	(1,093)	(1,282)
	<u>2,583</u>	<u>1,992</u>
Total plant and equipment	<u>7,001</u>	<u>6,852</u>
Total Infrastructure, Plant and Equipment (non-current)	<u>7,001</u>	<u>6,852</u>

All revaluations are conducted in accordance with the revaluation policy stated at Note 1. In 2005-2006, Herron Todd White Independent Property Advisors conducted the revaluation of all assets except Library Holding, which was carried out by CDPP staff.

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

For the year ended 30 June 2006

Note 17 - Analysis of Property, Plant and Equipment

Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment

Item	Buildings: Leasehold Improvements \$ '000	Other Infra- structure, plant and equipment \$ '000
As at 1 July 2005		
Gross book value	19,059	11,485
Accumulated depreciation / amortisation	(6,275)	(4,633)
Opening net book value	<u>12,784</u>	<u>6,852</u>
Additions:		
by purchase	223	345
Net revaluation increment / (decrement)	1,673	1,043
Depreciation / amortisation expense	(1,857)	(1,210)
Disposals:		
by sales and trade-ins	-	(29)
As at 30 June 2006		
Gross book value	22,555	11,778
Accumulated depreciation / amortisation	(9,732)	(4,777)
Closing net book value	<u>12,823</u>	<u>7,001</u>

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 18 - Intangibles Assets		
Computer software:		
Purchased software at cost	2,298	2,177
Accumulated amortisation	(1,895)	(1,787)
Total computer software	403	390
Total intangible (non-current)	403	390

Reconciliation of the Opening and Closing Balances of Intangibles:

Item	Computer software purchased \$ '000
As at 1 July 2005	
Gross book value	2,177
Accumulated amortisation	(1,787)
Opening net book value	390
Additions:	
by purchase	121
Amortisation expense	(108)
Disposals:	
by write-off	-
As at 30 June 2006	
Gross book value	2,298
Accumulated amortisation	(1,895)
Closing net book value	403

Note 19 - Other Non-Financial Assets

Prepayments	688	863
Other	245	196
Total other non-financial assets	933	1,059

All other non-financial assets are current assets.

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 20 - Suppliers Payables		
Trade Creditors	1,283	1,139
Total supplier payables	1,283	1,139
Supplier payables are represented by:		
Current	1,283	1,139
Non-current	-	-
Total supplier payables	1,283	1,139
Settlement is usually made net 30 days		
Note 21 - Other Payables		
Prepayments received	16	32
Accrued expenses	1,780	1,963
Total other payables	1,796	1,995
Other payables are represented by:		
Current	1,796	1,995
Non-current	-	-
Total other payables	1,796	1,995
Note 22 - Non-Interest Bearing Liabilities		
Lease incentives	1,225	1,437
Total non-interest bearing liabilities	1,225	1,437
Lease incentives are represented by:		
Current	212	212
Non-current	1,013	1,225
Total non-interest bearing liabilities	1,225	1,437
Note 23 - Employee Provisions		
Salaries and wages	264	131
Leave	12,948	13,397
Superannuation	107	120
Sub-total employee benefits liability	13,319	13,648
Other	521	702
Total employee provisions	13,840	14,350
Employee provisions are represented by:		
Current	12,270	12,821
Non-current	1,570	1,529
Total employee provisions	13,840	14,350

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 24 - Other Provisions		
Provision for Makegood (a)	1,099	1,165
Provision for lease payment under straight-line basis (b)	3,340	2,791
Total other provisions	4,439	3,956

(a) The CDPP currently has 10 agreements for the leasing of premises which have provisions requiring the CDPP to restore the premises to their original condition at the conclusion of the lease. The CDPP has made a provision to reflect the net present value of this obligation.

(b) In accordance with the AASB 117, lease payments under operating lease are to be recognised as an expense on a straight-line basis over the lease term. A prior period adjustment of \$2,790,936 had been identified and added to the comparative figure.

Reconciliation of opening and closing balances

	Provision for Makegood \$ '000	Provision for lease payments under straight-line basis \$ '000	Total \$ '000
Carrying amount at beginning of	1,165	2,791	3,956
Additional provision made	(66)	549	483
Carrying amount owing at end of	1,099	3,340	4,439

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 25 - Cash Flow Reconciliation		
Reconciliation of cash per Income Statement to Statement of Cash Flows:		
Cash at year end per Statement of Cash Flows	222	330
Statement of Financial Position items comprising above cash: 'Financial Asset-Cash'	222	330
Reconciliation of operating result to net cash from operating activities:		
Operating result	5,569	1,162
Depreciation /amortisation	3,175	3,102
Loss on disposal of assets	24	(22)
Net write-down of non-financial assets	-	2
Assets not previously recognised	-	25
(Increase) / decrease in net receivables	(8,018)	3,449
(Increase) / decrease in prepayments	126	227
Increase / (decrease) in debt	(212)	(678)
Increase / (decrease) in employee provisions	(510)	276
Increase / (decrease) in supplier payables	441	(2,700)
Increase / (decrease) in other payables	(16)	1,995
Net cash from / (used by) operating activities	579	6,838

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

For the period ended 30 June 2006

Note 26 – Contingent liabilities and assets**Unquantifiable contingent liabilities**

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

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

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

Unquantifiable contingent assets

Nil.

Remote contingent liabilities

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

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

For the year ended 30 June 2006

	2005-2006	2004-2005
Note 27 - Executive Remuneration		
The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:		
\$130,000 to \$144,999	1	4
\$145,000 to \$159,999	5	5
\$160,000 to \$174,999	18	15
\$175,000 to \$189,999	6	4
\$190,000 to \$204,999	6	8
\$205,000 to \$219,999	5	2
\$220,000 to \$234,999	1	2
\$370,000 to \$384,999	1	1
\$385,000 to \$399,999	-	1
Total	43	44
The aggregate amount of total remuneration of the executives shown above.	\$ 7,802,967	\$ 8,269,517
The aggregate amount of separation and redundancy / termination benefit payments during the year to executives shown above.	Nil	Nil
Note 28 - Remuneration of Auditors		
Financial statement audit services are provided free of charge to the CDPP.		
The fair value of audit services provided was:		
Financial statements	\$ 68,000	\$ 60,000
2004-2005 Opening AEIFRS Balance	\$ -	\$ 6,500
	\$ 68,000	\$ 66,500
No other services were provided by the Auditor-General.		
Note 29 - Average Staffing Level		
The average full time equivalent staffing level for the CDPP during each year was:	472	469

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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2006

	2005-2006	2004-2005
	\$	\$
Note 30 - Compensation and Debt Relief		
Departmental		
Act of Grace payments	Nil	Nil
<i>Number of payments 2005-2006:Nil, 2004-2005:Nil</i>		
Ex-gratia payments	Nil	Nil
<i>Number of payments 2005-2006:Nil, 2004-2005:Nil</i>		
Waivers made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i>		
<i>Number of payments 2005-2006:Nil, 2004-2005:Nil</i>	Nil	Nil
Defective Administration Scheme	Nil	Nil
<i>Number of payments 2005-2006:Nil, 2004-2005:Nil</i>		
Payments made pursuant to section 73 of the <i>Public Service Act 1999</i>	Nil	Nil
<i>Number of payments 2005-2006:Nil, 2004-2005:Nil</i>		
Total	\$ -	\$ -
Administered		
Act of Grace payments	Nil	Nil
<i>Number of payments 2005-2006:Nil, 2004-2005:Nil</i>		
Ex-gratia payments	Nil	Nil
<i>Number of payments 2005-2006:Nil, 2004-2005:Nil</i>		
Waivers made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i>		
<i>Number of payments 2005-2006:Nil, 2004-2005:Nil</i>	Nil	Nil
Defective Administration Scheme	Nil	Nil
<i>Number of payments 2005-2006:Nil, 2004-2005:Nil</i>		
Total	\$ -	\$ -

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
For the year ended 30 June 2006

Note 31 – Financial Instruments

(a) Interest Rate Risk:

Financial Instrument	Note	Floating Interest Rate		Fixed Interest Rate Maturing In						Non-Interest Bearing				Total				Weighted Average Effective Interest Rate			
		2005-2006 \$ '000		1 Year or Less		1 to 5 Years		> 5 Years		2005-2006 \$ '000		2005-2006 \$ '000		2005-2006 \$ '000		2005-2006 \$ '000		2005-2006 \$ '000		2005-2006 \$ '000	
				2005-2006 \$ '000	2004-2005 \$ '000	2005-2006 \$ '000	2004-2005 \$ '000	2005-2006 \$ '000	2004-2005 \$ '000												
Financial Assets																					
Cash at bank	13	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Receivables for goods and services (gross)	14	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Receivables - other	14	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Assets																					
Financial Liabilities																					
Trade creditors	20	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Liabilities																					

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For the year ended 30 June 2006

Note 31 - Financial Instruments (cont)

(b) Fair Values of Financial Assets and Liabilities

	Notes	2005-2006		2004-2005	
		Total carrying amount \$ '000	Aggregate net fair value \$ '000	Total carrying amount \$ '000	Aggregate net fair value \$ '000
Departmental					
Financial Assets					
Cash at bank	13	197	197	284	284
Receivables for goods and services (net)	14	13	13	88	88
Receivables - other	14	85	85	101	101
Total Financial Assets		295	295	473	473
Financial Liabilities (Recognised)					
Trade creditors	20	1,283	1,283	1,139	1,139
Total Financial Liabilities (Recognised)		1,283	1,283	1,139	1,139

(c) Credit Risk Exposures

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

The CDPP has no significant exposures to any concentrations of credit risk.

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

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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 32 - Administered Fees and Fines Revenue		
Fines and Costs	10,748	8,070
<i>Total</i>	<u>10,748</u>	<u>8,070</u>
Note 33 - Reversal of Previous Administered asset write-downs		
Reinstate receivable previously written-off	50	38
<i>Total</i>	<u>50</u>	<u>38</u>
Note 34 - Write-down of Administered Assets		
Financial Assets		
Write-off	762	511
Prison sentence	600	460
Community service orders	109	97
Received by other agencies	449	1,663
Increase in provision for doubtful debts	8,511	1,033
<i>Total</i>	<u>10,431</u>	<u>3,764</u>
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.		
Note 35 - Administered Cash		
Cash and Cash Equivalents	3	-
<i>Total</i>	<u>3</u>	<u>-</u>

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 36 - Administered Receivables		
Fines and Costs	20,328	13,527
Less : Provision for doubtful debts	(17,879)	(9,368)
Total receivables (net)	2,449	4,159
Fines and costs receivable (gross) are aged as follows:		
Current	679	900
Overdue by:		
Less than 30 days	497	884
30 to 60 days	414	804
61 to 90 days	266	296
More than 90 days	18,472	10,643
Total receivable (gross)	20,328	13,527
The allowance for doubtful debts is aged as follows:		
Current	-	(29)
Overdue by:		
Less than 30 days	(363)	(20)
30 to 60 days	(263)	(39)
61 to 90 days	(176)	(109)
More than 90 days	(17,077)	(9,170)
Total provision for doubtful debts	(17,879)	(9,367)
Note 37 - Administered Payables		
Other payables	4	-
Total	4	-
All liabilities are expected to be settled within 12 months of balance date.		
Note 38 - Administered Reconciliation Table		
Opening administered assets less administered liabilities as at 1 July	4,159	1,666
Plus: Administered revenues	10,798	8,108
Less: Administered expenses	(10,431)	(3,764)
Administered transfers to/from Australian Government:		
Less: Transfers to OPA	(2,106)	(2,012)
Plus: Transfers from OPA	28	161
Closing administered assets less administered liabilities as at 30 June	2,448	4,159

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

For the period ended 30 June 2006

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 year ended 30 June 2006

Note 40 - Administered Financial Instruments (cont)**(b) Net Fair Values of Agency Financial Assets and Liabilities**

	Note	2005-2006		2004-2005	
		Total carrying amount \$ '000	Aggregate net fair value \$ '000	Total carrying amount \$ '000	Aggregate net fair value \$ '000
Financial Assets					
Cash	35	3	3	-	-
Receivables - Fees and Fines (net)	36	2,449	2,449	4,159	4,159
Total Financial Assets		2,452	2,452	4,159	4,159
Financial Liabilities					
Payables - other	37	4	4	-	-
Total Financial Liabilities		4	4	-	-

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.

(c) 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 year ended 30 June 2006

	2005-2006 \$	2004-2005 \$
Note 41 - Appropriations		
A. Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations		
Balance carried from previous period	15,195,597	18,047,333
Reduction of appropriation (prior years)	-	-
Adjusted Balance carried for previous period	15,195,597	18,047,333
Appropriations Act (No. 1)	79,240,000	75,212,000
Appropriations Act (No. 3)	819,000	(110,000)
Departmental Adjustments by the Finance Minister (Appropriation Acts)	-	-
Advance to the Finance Minister	-	-
Refunds credited (FMA s.30)	108,822	130,999
Sub-total Annual Appropriation	80,167,822	75,232,999
Appropriations to take account of recoverable GST (FMAA s.30A)	2,707,067	3,405,531
Annotations to 'net appropriations' (FMA s.31)	1,710,960	2,014,960
Total appropriations available for payments	99,781,446	98,700,823
Cash payments made during the year (GST inclusive)	76,586,679	83,505,226
Balance of Authority to Draw Cash from the CRF for Ordinary Annual Services Appropriations	23,194,767	15,195,597
Represented by:		
Cash at bank and on hand	221,524	329,684
Receivable - departmental appropriations	22,831,807	14,689,023
GST receivable from the ATO	250,987	285,291
GST receivable from customers	599	3,234
GST payable payable to suppliers	(110,150)	(111,635)
	23,194,767	15,195,597

B. Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for other than Ordinary Annual Services Appropriations

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

C. Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund - Special Appropriations (Unlimited Amount)

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 year ended 30 June 2006

	2005-2006 \$	2004-2005 \$
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Note 42 - Special Accounts

A. Other Trust Monies Special 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 carried from previous period	-	-
Add: Appropriation for reporting period	-	-
Receipts from Courts o.b.o. defendants	2,108,922	2,011,582
Available for payment	2,108,922	2,011,582
Less: Payments to OPA	(2,078,321)	(1,850,139)
Payments of refunds	(28,093)	(20,964)
Payments to related entities	-	(140,479)
Sub-total payments made	(2,106,414)	(2,011,582)
Balance carried to the next period	2,508	-
Represented by:		
Cash - transferred to the Official Public Account	-	-
Cash - held by the entity	2,508	-
Total balance carried to the next period	2,508	-

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 carried from previous period	-	-
Add: Receipts from appropriations	-	-
Receipts from other sources	-	-
Less: Payments to related entities	-	-
Balance carried to the next period	-	-
Represented by:		
Cash - transferred to the Official Public Account	-	-
Cash - held by the entity	-	-
Total balance carried to the next 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.

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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2006

	2005-2006 \$	2004-2005 \$
Note 42 - Special Accounts (cont)		
Comcare Component (Departmental)		
Balance carried from previous period	-	-
Appropriation for reporting period	-	-
Cost recovered	-	-
Other receipts - Comcare receipts paid in accordance with the <i>Safety Rehabilitation and Compensation Act 1998</i> .	34,068	50,719
Available for payments	34,068	50,719
Less: Payments made to employees	(34,068)	(50,719)
Balance carried to the next period	-	-
Represented by:		
Cash - transferred to the Official Public Account	-	-
Cash - held by the entity	-	-
Total balance carried to the next 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*.

B. Service for other Governments & Non-Agency Bodies Account

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

Purpose - for expenditure in connection with services performed on behalf of other Governments and bodies that are not FMA agencies.

* There were no transactions during either year.

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 43 - Reporting of Outcomes		
(a) Net Cost of Outcome Delivery		
The CDPP has only one outcome. Therefore no attribution is required.		
	Outcome 1	
Expenses		
Administered	10,431	3,764
Departmental	76,156	76,096
Total expenses	86,587	79,860
Other external revenues		
Administered		
Fee and fines	10,748	8,070
Reversal of previous asset write-downs	50	38
Total Administered	10,798	8,108
Departmental		
Goods and services revenue	1,126	1,302
Gain from sale of assets	-	22
Other gains	540	832
Total Departmental	1,666	2,156
Total other external revenues	12,464	10,264
Net cost/(contribution) of outcome	74,123	69,596

Outcome 1 is described in Note 1.

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

For the year ended 30 June 2006

	2005-2006 \$ '000	2004-2005 \$ '000
Note 43 - Reporting of Outcomes (cont)		
(b) Major Classes of Departmental Revenues & Expenses by Output groups and Outputs		
The CDPP has only one output.		
	Outcome 1	Output 1
Departmental expenses		
Employees	42,951	43,875
Suppliers	29,313	28,746
Depreciation and amortisation	3,175	3,102
Other expenses	717	373
Total departmental expenses	76,156	76,096
Funded by:		
Revenues from Government	80,059	75,102
Sales of goods and services	1,126	1,302
Other non-taxation revenues	540	854
Total departmental revenues	81,725	77,258
(c) Major Classes of Administered Revenues & Expenses by Outcomes		
Administered Revenues		
Fees and Fines	10,748	8,070
Other non-taxation revenues	50	38
Total Administered Revenues	10,798	8,108
Administered Expenses		
Write-down of assets	10,431	3,764
Total Administered Expenses	10,431	3,764

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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 2006. The Office of the Commonwealth Director of Public Prosecutions' Director 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' annual report.

Scope

The financial statements and Director's responsibility

The financial statements comprise:

- Statement by the Director and Deputy Director Corporate Management;
- Income Statement, Balance Sheet and Cash Flow Statement;
- Statement of Changes in Equity;
- 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 2006.

The Office of the Commonwealth Director of Public Prosecutions' Director is responsible for preparing financial statements that give a true and fair presentation of the financial position and performance of the Office of the Commonwealth Director of Public Prosecutions, and that comply 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. The Office of the Commonwealth Director of Public Prosecutions' Director is also responsible 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 Prosecutions' financial position, and of its 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 Director.

Independence

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

Audit Opinion

In my opinion, the financial statements of the Office of the Commonwealth Director of Public Prosecutions:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and
- (b) give a true and fair view of the Office of the Commonwealth Director of Public Prosecutions' financial position as at 30 June 2006 and of its performance and cash flows for the year then ended, in accordance with:
 - (i) the matters required by the Finance Minister's Orders; and
 - (ii) applicable Accounting Standards and other mandatory financial reporting requirements in Australia.

Australian National Audit Office



Michael J. Watson
Group Executive Director

Delegate of the Auditor-General

Canberra
15 September 2006