



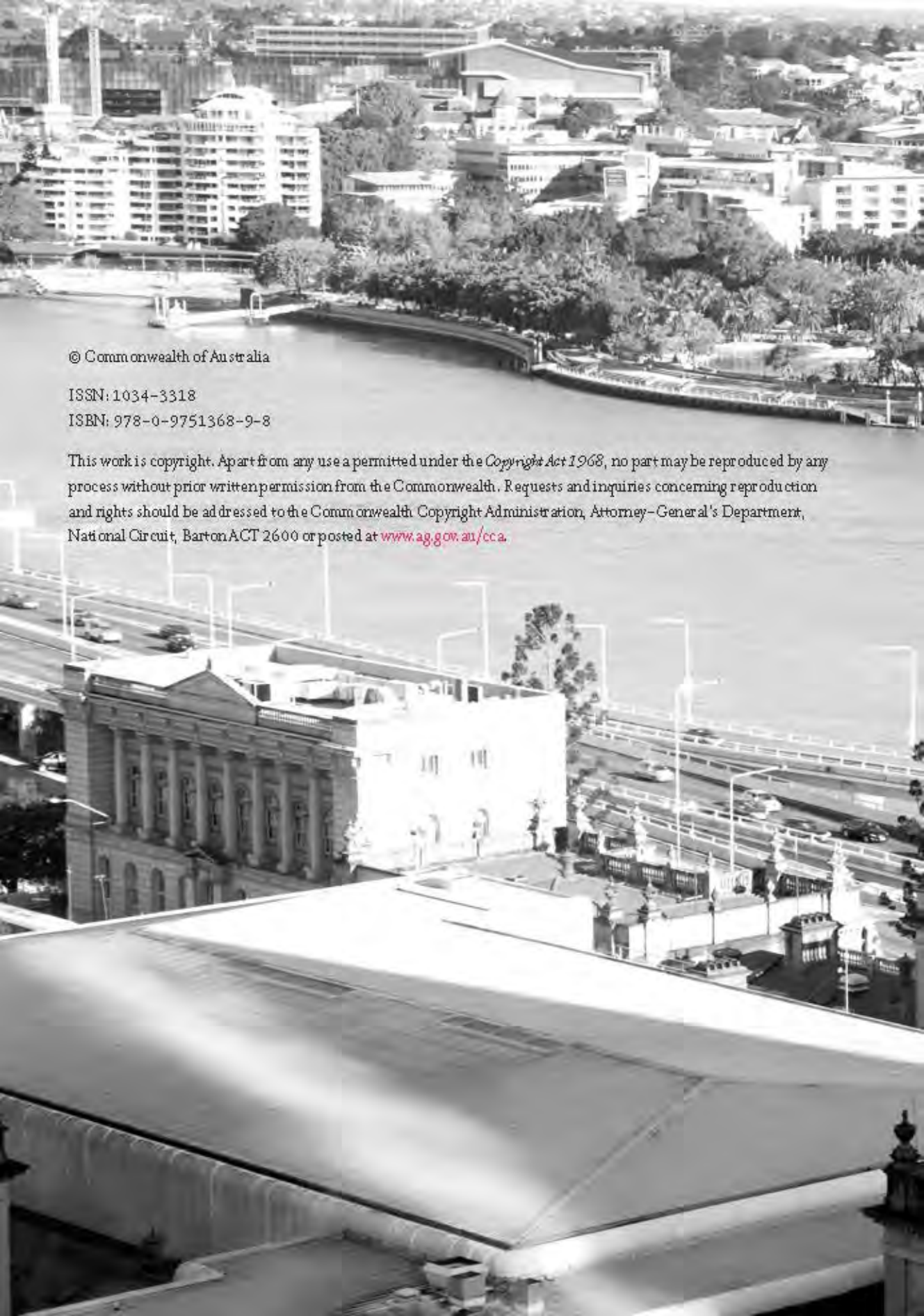
Commonwealth  
Director of Public  
Prosecutions

A large black and white photograph of a woman with short hair and glasses, smiling as she reads an open book. She is in a library, with bookshelves filled with books visible in the background.

# Annual Report

2010 – 2011





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Commonwealth  
Director of Public  
Prosecutions

30 September 2011

Attorney-General  
Parliament House  
Canberra

Dear Attorney

I have the honour to submit my report on the operations of the Office of the Commonwealth Director Public Prosecutions for the year ended 30 June 2011, 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 'C Craigie'.

CHRISTOPHER CRAIGIE SC  
Commonwealth Director of Public Prosecutions





## Office of the CDPP

### *Canberra Office*

**DIRECTOR: CHRISTOPHER CRAIGIE SC**

4 Marcus Clarke St,  
CANBERRA CITY ACT 2601  
Tel: 02 6206 5666, Fax: 02 6257 5709  
PO Box 3104, CANBERRA CITY ACT 2601  
Email: [inquiries@cdpp.gov.au](mailto: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](mailto:sydney@cdpp.gov.au)

### *Melbourne Office*

**DEPUTY DIRECTOR: SHANE KIRNE**

15<sup>th</sup> 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](mailto:melbourne@cdpp.gov.au)

### *Brisbane Office*

**DEPUTY DIRECTOR: DAVID ADSETT**

19<sup>th</sup> Floor, 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](mailto:brisbane@cdpp.gov.au)

### *Perth Office*

**DEPUTY DIRECTOR: ALLAN SHARP**

Level 1, 226 Adelaide Terrace,  
PERTH WA 6000  
Tel: 08 9264 7200, Fax: 08 9264 7266  
GPO Box B92, PERTH WA 6001  
Email: [perth@cdpp.gov.au](mailto:perth@cdpp.gov.au)

### *Adelaide Office*

**DEPUTY DIRECTOR: FRED A PROPSTING**

15<sup>th</sup> 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](mailto:adelaide@cdpp.gov.au)

**BACK ROW (LEFT TO RIGHT)** – David Adsett, Deputy Director Brisbane; John Thornton, First Deputy Director Head Office; Graeme Davidson, Deputy Director Head Office; Allan Sharp, Deputy Director Perth; Stela Walker, Deputy Director Head Office; Christopher Craigie SC, Director; Freda Propsting, Deputy Director Adelaide; Jim Joliffe, Deputy Director Sydney; James Carter, Deputy Director Head Office; Ian Arendt, Senior Assistant Director Hobart

**FRONT ROW (LEFT TO RIGHT)** – Megan Voller, Senior Assistant Director Darwin; Shane Kirne, Deputy Director Melbourne.

### *Hobart Office*

**ASSISTANT DIRECTOR: IAN ARENDT**

8<sup>th</sup> 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](mailto:hobart@cdpp.gov.au)

### *Darwin Office*

**ASSISTANT DIRECTOR: MEGAN VOLLER**

9<sup>th</sup> 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](mailto: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](mailto: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](mailto:cairns@cdpp.gov.au)

### *ACT and Southern NSW Prosecutions Office*

**ASSISTANT DIRECTOR: SARA CRONAN**

1 Farrell Place  
CANBERRA ACT 2600  
Tel: 02 6206 5666, Fax: 02 6257 1822  
PO 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 days of receipt.

The Report has been prepared in accordance with the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* issued on 8 July 2011 by the Department of the Prime Minister and Cabinet.

As aids to access, the Report includes a table of contents, glossaries referred to as ‘Acronyms and Abbreviations’ and ‘Legislation Abbreviations’, and an alphabetical index.

Anyone interested in knowing more about the CDPP should have regards to the following documents:

- The *Prosecution Policy of the Commonwealth*;
- CDPP Strategic Directions; and
- Portfolio Budget Statements for the Attorney-General’s Portfolio.

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

For further inquiries contact the media contact officer at CDPP Head Office on (02) 6206 5606.





## Director’s Overview

The CDPP provides an ethical, high quality and independent prosecution service for Australia in accordance with the Prosecution Policy of the Commonwealth. Prosecuting is important, sensitive work and it is a responsibility that we are charged with on behalf of the community.

The staff of the Office continue to apply the highest professional standards of competence, commitment and hard work. I thank all staff for their continued dedication.

This year the CDPP received briefs of evidence from 36 Commonwealth investigative agencies, as well as State and Territory agencies. I would like to acknowledge the important contribution made to Commonwealth law enforcement and regulatory activity by these agencies.

May I again thank referring agencies, as I did in my overview to last year’s Annual Report, for their cooperation and effort as they investigate alleged offences and refer matters to the CDPP and support their prosecution.

In particular, I acknowledge the close working relationship between the CDPP and the AFP. Commissioner Tony Negus has my thanks for the support provided to the Office. One development this year has been the very significant increase in people smuggling prosecutions pursuant to the *Migration Act 1958*. These matters have involved ongoing, productive and extensive liaison between our agencies.

The CDPP’s appropriation declined in 2010–2011 from \$105,421m in 2009–2010 and details for 2010–11 and coming years are included in the Portfolio Budget Statements 2011–2012, namely:

2010–11	2011–2012	2012–2013	2013–2014	2014–2015
\$95,927m	\$86,224m	\$85,590m	\$80,066m	\$79,360m

Prior to the close of the 2010 financial year the Government put in place interim funding arrangements to enable the CDPP to continue its work in prosecuting all matters referred which satisfy the requirements of the *Prosecution Policy of the Commonwealth*. At the time of writing, a review of CDPP funding arrangements has not been concluded.

This year has seen change in the leadership of three regional offices.

On 28 January Mark Pedley was sworn-in as Judicial Registrar for the Court of Appeal of the Supreme Court of Victoria. Mark's long and distinguished career extended across the CDPP's history, from his commencing with the CDPP in the newly-established CDPP Melbourne Office in June 1984, to his appointment as Deputy Director of that Office in 1994, and his distinguished service leading that Office for so many years. In addition, Mark made a most significant contribution to the CDPP nationally. Mark was a highly valued Deputy, respected across the whole Office, by investigative agencies and the legal fraternity.

It was my pleasure to present Mark, prior to his taking up his significant appointment, with the first CDPP Certificate of Service recognising 25 years of valued service to the Office. This was a fitting tribute, recognising Mark's great contribution to the criminal justice system and service to the people of Australia. Mark has been succeeded by Shane Kirne as Deputy Director in Melbourne.

Earlier this year I attended the Perth Office to farewell Ros Fogliani, who was called to the Bar in Perth after six years as Deputy Director in my Perth office. Ros had a long career at the CDPP and made a most valuable contribution as a prosecutor and Branch Head before being appointed to lead Perth Office. She led that Office with distinction and dedication.

It was a pleasure for me to work with Ros in this important leadership position. I valued the commitment and skill she brought to the CDPP in Perth and nationally. Allan Sharp, a senior lawyer formerly working in the Melbourne Office has been appointed Deputy Director in Perth.

There has also been change in Darwin on Mark McCarthy joining the Bar in Brisbane. Mark provided energetic leadership in Darwin for two years following service in CDPP Brisbane and Perth offices. Darwin Office is now led by Megan Voller, following her move from CDPP Melbourne.

In addition to the above departures, the Office farewelled longstanding senior executives, June Phillips and Sylvia Grono. Their contributions were acknowledged in the warm farewell functions held earlier this year. June was recognized nationally as a specialist in commercial prosecutions and over her career at the CDPP was an important member of my Brisbane and Sydney regional offices and Deputy Director in Adelaide. Sylvia played a very important role in the proceeds of crime practice of the Office in Brisbane and nationally and made a significant contribution to this work. I note that the Attorney-General personally acknowledged Sylvia's extensive career contribution as an expert in the field on being aware that she was present at a Proceeds of Crime related function earlier in the year. June and Sylvia had long and very successful careers in the CDPP and each made a tremendous contribution to the Office.

Over a number of years officers of the CDPP have participated in the Strongim Gavman Program and the earlier Enhanced Cooperation Program with Papua New Guinea. 'Strongim Gavman' is Tok Pisin for 'strengthening government' and one area of this programme involves law and justice and the Office of the Public Prosecutor.



This year the CDPP welcomed Andrew Lloyd and Andrew Buckland on their return to the Office following their deployment in Papua New Guinea and farewelled Paula Chiverall who is currently in PNG for two years as part of the program. I would like to thank all those who have been involved in supporting this program for their valuable contribution to capacity building in an important neighbouring jurisdiction.

In conclusion, may I thank the Attorney-General, the Honourable Robert McClelland and the Minister for Home Affairs, the Honourable Brendan O'Connor, for their ongoing support.

I record my thanks to the senior management of the CDPP in Head office, particularly by First Deputy Director John Thornton, and senior executives around Australia for their ongoing support and leadership within the Office.

This Annual Report reflects the significance and breadth of the Office's work and involves the contribution of many. For its compilation I thank James Carter, Deputy Director Legal, Practice Management and Policy, Penny McKay and Meredith Kershaw.

I acknowledge each of the staff of the Office and again thank them for their valuable contribution to the work of the CDPP and its high standing as an Office serving the Commonwealth.

I am pleased to present the Annual Report for 2010–2011.

A handwritten signature in black ink, appearing to read 'C. Craigie'.

**CHRISTOPHER CRAIGIE SC**

*Commonwealth Director of Public Prosecutions*





# 1

## Office of the CDPP





## 1 Office of the CDPP

*The Office of the Commonwealth Director of Public Prosecutions (CDPP) is an independent prosecuting service established by Parliament to prosecute alleged offences against Commonwealth law and to deprive offenders of the proceeds and benefits of criminal activity.*

*The CDPP's vision is for a fair, safe and just society where the laws of the Commonwealth are respected and maintained and there is public confidence in the justice system. It aims to provide an effective national criminal prosecution service to the community.*

*The CDPP's purpose is to provide an ethical, high quality and independent prosecution service for Australia in accordance with the Prosecution Policy of the Commonwealth.*

.....

### Establishment

The CDPP was established under the *Director of Public Prosecutions Act 1983* (the *DPP Act*) and began operations on 8 March 1984. The Office is under the control of the Director, who is appointed for a term of up to 7 years.

The current Commonwealth Director of Public Prosecutions, Christopher Craigie SC, was appointed on 13 October 2007 for a term of 5 years.

The CDPP is within the portfolio of the Commonwealth Attorney-General, but the Office operates independently of the Attorney-General and the political process. The Commonwealth Attorney-General has power under section 8 of the *DPP Act* to issue directions or guidelines to the Director. Directions or guidelines must be in writing and 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 2010–2011.

## Role

The role of the CDPP is to prosecute offences against Commonwealth law, and to confiscate the proceeds of Commonwealth crime.

The CDPP has a long-standing practice in the prosecution of the importation of serious drugs, fraud on the Commonwealth (including tax and social security fraud) and commercial prosecutions. The CDPP has prosecuted these matters, as well as a range of regulatory offences, for many years. These matters have long formed the backbone of the CDPP's prosecution practice.

Commonwealth law has significantly expanded in the last decade to include a range of offences not previously known to Commonwealth law.

The CDPP is now prosecuting in a range of other areas including counter-terrorism, money laundering, people trafficking, slavery and sexual servitude, child exploitation including on-line sexual exploitation, offences impacting upon the environment, and safety.

Commonwealth criminal activity continues to evolve and expand. The focus of Commonwealth offending reflects contemporary society and now includes areas such as identity crime, cybercrime and serious and organised crime.

Commonwealth offending can often involve very large and complex briefs of evidence which may take significant time and expertise to consider. In this way, prosecuting is not limited to litigation itself. Rather, prosecuting includes a range of other work such as assessing evidence, drafting charges and providing legal advice and assistance to investigators.

The State and Territory Directors of Public Prosecutions are responsible for the prosecution of alleged offences against State and Territory laws. The CDPP conducts prosecutions for offences against the laws of Jervis Bay and Australia's external territories, other than Norfolk Island.

The work of the CDPP extends through all levels of the courts from Magistrates Courts to the High Court and CDPP lawyers are involved at all stages of the prosecution process. Lawyers appear on mentions, bail, summary matters, committals, trials and appeals. This differs somewhat from the majority of State and Territory DPPs where the emphasis is mainly on committals and trials and there are police prosecutors who handle many matters at earlier stages.

Most Commonwealth prosecutions are conducted by the CDPP. However, there are a few areas where Commonwealth agencies conduct summary prosecutions for straightforward regulatory offences by arrangement with the CDPP. In 2010–2011, the ATO conducted 1,638 prosecutions in which offences were found proved against 1,518 people or entities, and fines totalling \$7.51 million were imposed. ASIC prosecuted 425 offenders for 761 offences, and obtained fines and costs totalling \$873,562.10. The AEC 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 public interest is served by cooperation among Commonwealth law enforcement agencies. This is reflected in the CDPP's Strategic Directions. The CDPP provides assistance to other agencies including in the form of online aids, guides and manuals. These resources address a range of topics relevant to the work of investigatory agencies, including obtaining search warrants, listening device or telephone interception warrants and the use of surveillance devices to gather evidence. They also provide commentary on a number of Commonwealth offences.

The CDPP can only prosecute or take confiscation action when there has been an investigation by an investigative agency. The CDPP does not have an investigative function. A large number of Commonwealth agencies have an investigative role and the CDPP receives briefs of evidence from, and provides legal advice to, a wide range of agencies. In 2010–2011, the CDPP received briefs of evidence from 36 Commonwealth investigative agencies as well as some State and Territory agencies.

## CDPP Strategic Directions

### VISION:

A fair, safe and just society where the laws of the Commonwealth are respected and maintained and there is public confidence in the justice system.

### PURPOSE:

To operate an ethical, high quality and independent prosecution service for Australia in accordance with the *Prosecution Policy of the Commonwealth*.



### CORE VALUES:

We value:

- applying the highest ethical standards to prosecutions and proceeds of crime action;
- applying the highest professional standards of competence, commitment and hard work to prosecutions and proceeds of crime action;
- maintaining the CDPP's prosecutorial independence;
- providing, and being recognised as providing, a high quality, timely, efficient and cost effective prosecution service;
- treating everyone with courtesy, dignity and respect;
- giving due recognition to the status of victims;
- the knowledge, skills and commitment of our people;
- leadership from senior lawyers and managers;
- accountability and excellence in governance within the CDPP; and
- protecting the natural environment.

## Social Justice and Equity

The CDPP advances the interests of social justice and equity by working with other agencies to enforce the criminal law for the benefit of the community. The CDPP recognises the importance of adopting the highest professional and ethical standards in prosecutions and in dealing with proceeds of crime. The *Prosecution Policy* underpins all of the decisions made by the CDPP throughout the prosecution process and promotes consistency in decision making.

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

Traditionally, in terms of numbers of prosecutions, much of the CDPP's work has not involved crime directed at individual victims. A range of new offences have been introduced into Commonwealth law, leading to an increased number of Commonwealth offences involving individual victims. This includes areas such as child sex tourism, online child sexual exploitation, and people trafficking including sexual servitude and slavery. The CDPP recognises that victims of Commonwealth offending have an important place in the criminal justice system, and has implemented a *Victims of Crime Policy*.

### CDPP Strategic Themes

The CDPP's strategic themes are:

- conduct cases ethically and professionally;
- recruit, develop and retain high quality people;
- continuously improve CDPP performance;
- provide professional assistance to referring agencies; and
- actively contribute to law reform and whole of Government law enforcement initiatives.

Each of these themes is underpinned by strategic priorities which are detailed in the Strategic Directions document at Appendix 2 to this Report.

## Prosecution Policy

The *Prosecution Policy of the Commonwealth* is a public document which sets out guidelines for the making of decisions in the prosecution process. It applies to all Commonwealth prosecutions. The *Prosecution Policy* is publicly available from any of the CDPP offices listed at the front of this Report or at [www.cdpp.gov.au](http://www.cdpp.gov.au).

The main purpose of the *Prosecution Policy* is to promote consistency in the making of the various decisions which arise in the institution and conduct of prosecutions. The *Prosecution Policy* outlines the relevant factors and considerations which are taken into account when a prosecutor is exercising the discretions relevant to his or her role and functions. The Policy also serves to inform the public and practitioners of the principles which guide the decisions made by the CDPP.

Under the *Prosecution Policy* there is a two-stage test that must be satisfied:

- there must be sufficient evidence to prosecute the case; 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.

In determining whether there is sufficient evidence to prosecute a case the CDPP must be satisfied that there is *prima facie* evidence of the elements of the offence and a reasonable prospect of obtaining a conviction. The existence of a *prima facie* case is not sufficient.

In making this decision, the prosecutor must evaluate how strong the case is likely to be when presented in court. The evaluation must take into account matters such as the availability, competence and credibility of witnesses and their likely effect on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence open to the alleged offender and any other factors that could affect the likelihood or otherwise of a conviction.

The possibility that any evidence might be excluded by a court should be taken into account and, if that evidence is crucial to the case, this may substantially affect the decision whether or not to institute or proceed with a prosecution. It is the prosecutor's role to look beneath the surface of the evidence in a matter, particularly in borderline cases.

Having been satisfied that there is sufficient evidence to justify the initiation or continuation of a prosecution, the prosecutor must then consider whether the public interest requires a prosecution to be pursued. In determining whether this is the case, the prosecutor will consider all of the provable facts and all of the surrounding circumstances. The factors to be considered will vary from case to case, but may include:

- whether the offence is serious or trivial;
- any mitigating or aggravating circumstances;
- the youth, age, intelligence, physical health, mental health or special vulnerability of the alleged offender, witness or victim;
- the alleged offender's antecedents and background;
- the passage of time since the alleged offence;
- the availability and efficacy of any alternatives to prosecution;
- the prevalence of the alleged offence and the need for general and personal deterrence;
- the attitude of the victim;
- the need to give effect to regulatory or punitive imperatives;
- the likely outcome in the event of a finding of guilt.

These are not the only factors, and other relevant factors are contained in the *Prosecution Policy*.

Generally, the more serious the alleged offence is, the more likely it will be that the public interest will require that a prosecution be pursued.



The decision to prosecute must be made impartially and must not be influenced by any inappropriate reference to race, religion, sex, national origin or political association. The decision to prosecute must not be influenced by any political advantage or disadvantage to the Government.

The CDPP 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 CDPP 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 *POC Act 2002*.

As noted above, the main functions of the Director are to prosecute offences against Commonwealth law and 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 CDPP a general power to recover pecuniary penalties under Commonwealth law.

The CDPP does not conduct proceedings under Part XIV of the *Customs Act*, 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 CDPP prosecutes all criminal matters arising under the *Customs Act*, including offences of importing and exporting narcotic goods and offences of importing and exporting ‘tier 1’ and ‘tier 2’ goods.

## Summary Prosecutions, Committals and Trials

In general terms, there are 2 basic types of prosecution action conducted by the CDPP.

Offences dealt with by a Magistrates or Local Court, 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.

Offences before superior courts are dealt with ‘on indictment’. 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. Where Commonwealth matters on indictment are contested, these are heard before a judge and jury.

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 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’ generally.

## Corporate Governance and Organisation

The CDPP has a Head Office in Canberra and Regional Offices in Sydney, Melbourne, Brisbane, Perth, Adelaide, Hobart and Darwin. There are sub-offices of the Brisbane Office in Townsville and Cairns, which perform prosecution and asset confiscation work in central and north Queensland.

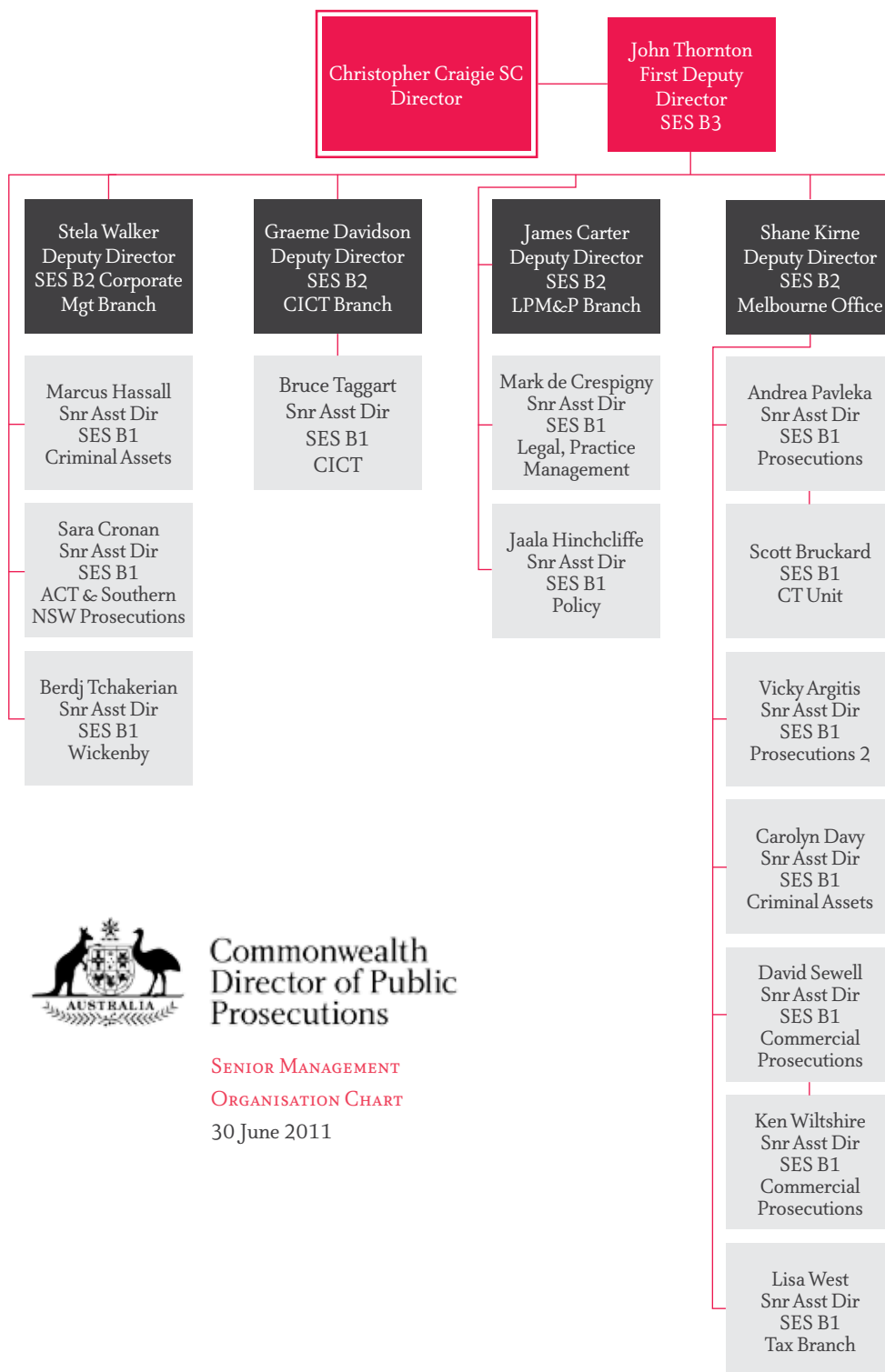
Head Office provides advice to the Director and coordinates the work of the Office across Australia. Head Office is also responsible for case work in the Australian Capital Territory. The CDPP Regional Offices are responsible for conducting prosecutions and confiscation action in the relevant region.

The CDPP has staff spread throughout its Offices Australia-wide, the largest being Sydney. The larger offices (Sydney, Melbourne, Brisbane and Perth) 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. The Director and the Deputy Directors meet at least twice annually to discuss policy and management issues.

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

# Outcome and Program Chart 2010–2011

DIRECTOR OF PUBLIC PROSECUTIONS Director: Christopher Craigie SC	
Total price of outputs	\$98.153 million
Departmental outcome appropriation	\$95.927 million
Outcome 1:	
Maintenance of law and order for the Australian community through an independent and ethical prosecution service in accordance with the <i>Prosecution Policy of the Commonwealth</i> .	
Total price	\$98.153 million
Departmental output appropriation	\$95.927 million
Program 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	\$98.153 million
Appropriation	\$95.927 million

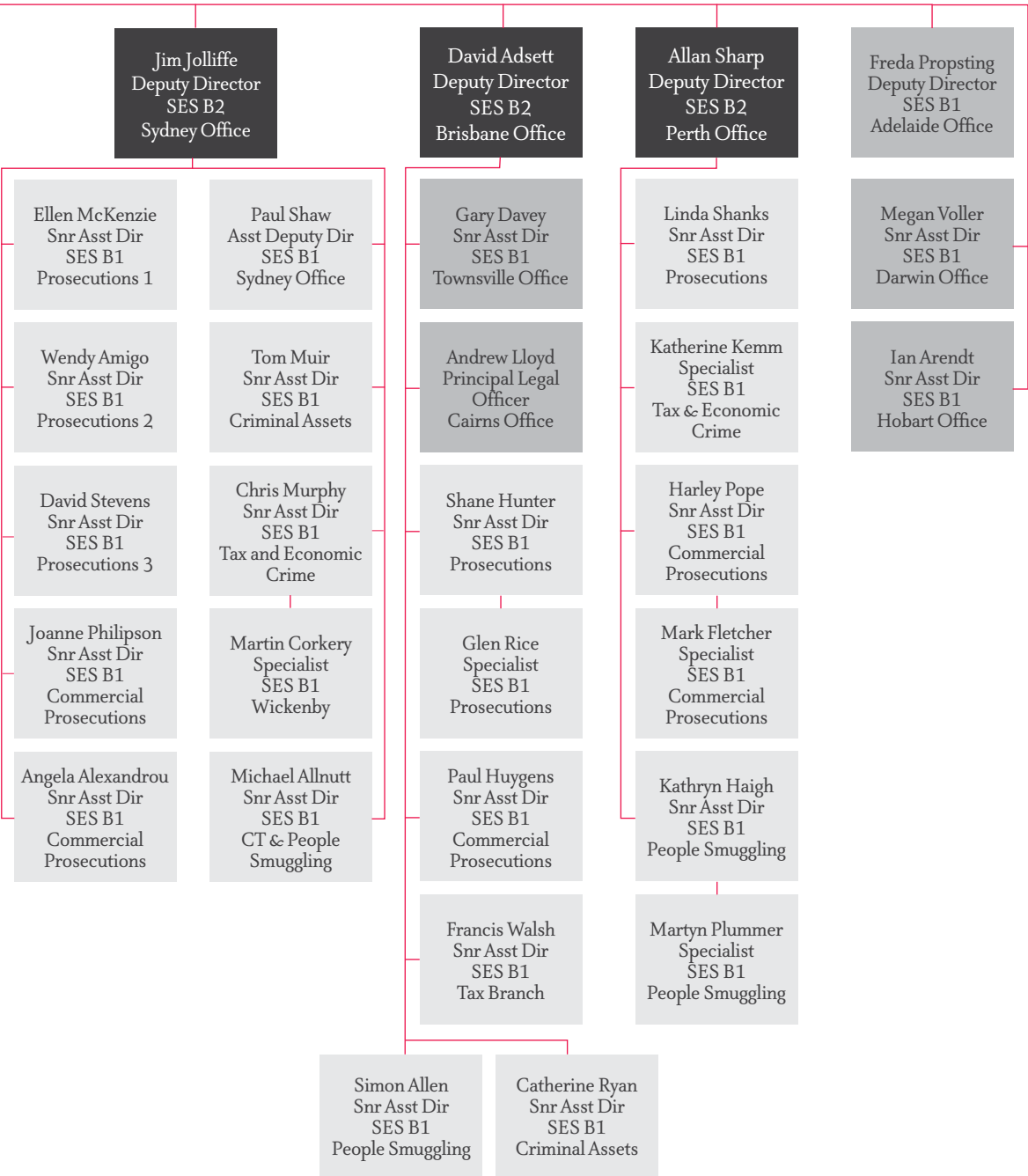


**Commonwealth  
Director of Public  
Prosecutions**

SENIOR MANAGEMENT

ORGANISATION CHART

30 June 2011









# 2

## Areas of Practice

2.1 Fraud	14
2.2 Serious Drugs	36
2.3 Commercial Prosecutions	54
2.4 Counter-Terrorism	68
2.5 Money Laundering	74
2.6 People Trafficking, Slavery and Sexual Servitude	80
2.7 People Smuggling	84
2.8 Child Exploitation	90
2.9 Environment, Safety, Cybercrime and General Prosecutions	104



## 2.1 Fraud

Fraud plays a major role in the practice of the CDPP. The CDPP assists in protecting the resources of the Commonwealth through the prosecution of fraud offences. Given the broad range of Commonwealth programmes and assistance available to the Australian community, fraud prosecutions are diverse and often involve complex mechanisms such as financial structures and multiple identities.

### *Australia Post Fraud*

EVE MARIE ELWORTHY

The defendant was the manager of the Warrawillah Licensed Post Office. On 18 separate occasions between November 2006 and May 2007, the defendant signed and issued Australian Money Orders for her own personal use. The defendant did not account for those money orders in the account books or reimburse Warrawillah Post Office for the money she obtained.

The offences were discovered during unannounced audits of the post office's accounts in January and July 2007, after irregularities were detected by the Australia Post Money Order Centre. Despite the discovery at the first audit, the defendant continued to commit the offences.

The defendant later admitted the offences and stated she had used the money to gamble or to pay off gambling debts. The total amount of money fraudulently obtained was \$7,250.23.

The defendant pleaded guilty to 18 counts of dishonestly intending to cause a loss to a Commonwealth entity contrary to section 135.1(3) of the *Criminal Code*. The matter was adjourned by the Local Court of NSW before sentence to allow the defendant to seek assistance with her problem gambling. On 8 December 2010 the defendant was convicted and released without passing sentence on a bond to be of good behaviour for 18 months and a reparation order was made in the amount of \$7,250.23.

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## Comcare Fraud

SUSAN GALLEY

Between April 2005 and March 2007 the defendant altered and created false receipts relating to remedial massage therapy treatment and lodged them with Comcare. By lodging the receipts, the defendant represented to Comcare that she had received and paid for each treatment, when in fact she had not received all, or in some cases any, of the treatment detailed and had not incurred the expenses specified. In total the defendant committed 90 acts of deception and received \$9,472.90 to which she was not entitled.

Comcare obtained evidence from the defendant's massage therapist as well as forensic document and fingerprint analysis performed by the AFP. The evidence indicated that the defendant had altered the receipts. The majority of the alterations involved the defendant adding a '1' to the front of the payment amounts specified and a list of dates on which the defendant had purportedly received treatment.

In an interview with Comcare the defendant denied making the alterations. However, in a letter to her massage therapist the defendant admitted to lodging altered receipts with Comcare and asked the therapist to assist in dishonestly concealing the offending conduct.

The defendant was charged with 90 counts of dishonestly obtaining a financial advantage by deception from a Commonwealth entity pursuant to section 134.2(1) of the *Criminal Code*.

As the defendant failed to attend court when required the charges were found proved in her absence. The defendant subsequently appeared before the court and applied to have the charges against her dismissed under section 20BQ of the *Crimes Act*, tendering evidence that she was suffering from a mental illness.

The Court found that whilst the defendant was suffering from a mental illness, it was more appropriate that the court proceed to hear the serious charges having regard to the defendant's condition as a mitigating factor on sentence, rather than dismissing the charges.

The defendant was convicted of all 90 charges and sentenced to a total effective sentence of 9 months imprisonment but, in light of her health, was released forthwith on a bond to be of good behaviour for 9 months.

## Disaster Relief Payment Fraud

SALLY LYNCH AND CARMEL BEGUN

In the weeks following the Victorian bushfires in February 2009, the defendants, who were friends, lodged a number of claims in fictitious identities for relief payments of Australian Government Disaster Relief Payment and Income Recovery Subsidy Assistance. Those payments were administered by Centrelink and were intended to assist people directly affected by the bushfire disaster.

Between 13 February 2009 and 2 March 2009 Lynch lodged claims in 14 fictitious identities and Begun lodged claims in 5 fictitious identities. In the claims the defendants purported to be victims of the bushfires whose houses had been destroyed, when in fact they had not been affected by the disaster in any way.

Lynch obtained a total of \$29,074.52 in disaster recovery and income subsidy payments and attempted to obtain a further \$5,000 in disaster recovery payments in relation to claims which were not granted.

Begun obtained a total of \$14,178.96 in disaster recovery and income subsidy payments and also dishonestly appropriated a further \$17,617.76 of income subsidy payments which had been paid into Lynch's bank accounts as a result of Lynch's fraudulent claims.

Lynch was charged with 9 counts and Begun was charged with 4 counts of obtaining property belonging to a Commonwealth entity by deception pursuant to section 134.1(1) of the *Criminal Code*.

Lynch was also charged with 3 counts of attempting to obtain property belonging to a Commonwealth entity by deception pursuant to sections 134.1(1) and (11).1(1) of the *Criminal Code* and Begun was charged with 1 count of theft of property belonging to a Commonwealth entity pursuant to section 131.1(1) of the *Criminal Code*.

Both defendants pleaded guilty to the charges in the County Court of Victoria. Lynch was sentenced to 26 months imprisonment to be released after serving 13 months upon giving security by entering into a recognisance in the sum of \$1000 on condition she be of good behaviour for a period of 26 months. She was also ordered to pay reparation.

Begun was sentenced to 18 months imprisonment, to be released after serving 6 months upon giving security by entering into a recognisance in the sum of \$1000 on condition she be of good behaviour for a period of 18 months. She was also ordered to pay reparation.

On sentence, the Court said:

*"...your conduct undermines the high level of public trust required for the administration of crisis assistance schemes such as the present ones and your conduct would of course be highly offensive to the public and deserves serious condemnation."*



# Customs Duty Fraud

NADA SOWAID

The defendant was the sole director, shareholder and secretary of the company Haz Management Pty Ltd (Haz Management). The company was set up in order for the defendant to engage in the importation and wholesale distribution of molasses tobacco and charcoal for use in hookahs or ‘hubbly bubblys’, instruments used to smoke molasses tobacco. The defendant and her husband had an interest in an Auburn café called *Sweets on Queen*.

In December 2008 2 shipping containers arrived in Sydney. Haz Management was the consignee for each container and the defendant was responsible on behalf of Haz Management for the receipt of the containers. The containers were inspected by ACBPS and found to contain cartons marked ‘Special Charcoal’, which held bags of molasses tobacco disguised between layers of charcoal. The total weight of the molasses tobacco shipments was 18,734kgs. The Import Entry

for Home Consumption lodged with ACBPS on behalf of Haz Management falsely declared the contents of each container to be 1,080 boxes of charcoal.

The failure to declare the tobacco shipment resulted in a total loss to the Commonwealth of \$5,960,034.76 in customs duty.

The defendant was charged with 2 counts of dishonestly causing a loss to a Commonwealth entity pursuant to section 135.1(3) of the *Criminal Code*. She pleaded not guilty to the charges and was convicted by a jury on 24 May 2010. On 3 September 2010 the defendant was sentenced to imprisonment for 3 years with a non-parole period of 1 year and 10 months to be released on condition that she be of good behaviour for 1 year and 2 months.

The defendant appealed against the severity of her sentence. On 28 July 2011 the defendant’s appeal was dismissed.

# Medicare Identity Fraud

MONICA WISE AND JULIANNE JOHNSON

*This is the first prosecution involving the use of Medicare’s Easy Claim system to commit fraud.*

Johnson was a receptionist at a medical centre on the central coast of NSW. The defendants were friends. Johnson accessed Medicare’s Easy Claim system by way of an EFTPOS payment facility and made 444 false claims for reimbursement for consultations said to be paid for at the medical centre. Johnson made the claims in her own name as well as in the names of Wise and 12 other people whose Medicare cards and bank account details she had obtained. Of the 12 names used, only 1 belonged to a patient at the medical centre.

It appears that the details of the other 11 people were obtained through subterfuge. The 10 people who were available for interview, all denied that they knew anything about the claims. Johnson stated that Wise provided her with her Medicare and EFTPOS debit cards.

Wise received benefits for 15 services falsely claimed in the names of 2 other people. Johnson paid those benefits directly into Wise’s bank account.

As a result of the 444 false claims for payment of benefits, Medicare paid a total of \$62,687.90 to 4 individuals, being Johnson, Wise and 2 others. Johnson received \$59,110.40, while Wise received \$2,315.25.

Johnson was charged with dishonestly causing a loss to the Commonwealth pursuant to section 135.1(5) of the *Criminal Code*. She pleaded guilty and was sentenced to 12 months imprisonment, to be released forthwith on condition that she be of good behaviour for 5 years. She was also ordered to pay reparation of \$60,372.65.

Wise was charged with dishonestly receiving stolen property pursuant to section 132.1 of the *Criminal Code* and pleaded guilty at an early stage. She was fined \$500 and ordered to pay reparation of \$2,315.25. Wise made complete reparation on the date of her sentence.



## School Funding Fraud

ANWAR SHAH WAFIQ SAYED

The defendant was a director of a company, Muslim Link Australia Ltd, that ran a non-government school, Muslim Ladies College of Australia. The defendant devised and instigated a scheme whereby the school would receive funding to which it was not entitled. The defendant committed the fraud by overstating the number of students attending the school, by at least 86, on census applications submitted to the Western Australian and Commonwealth Governments. The defendant also created 2 sets of enrolment and attendance records, one of which was genuine and the other falsified. He used the falsified records to convince authorities conducting post census audits of the accuracy of the information reported in the census applications. Evidence indicated that the defendant had told school staff that it was necessary to falsify the census applications in order to keep the school operational.

As a result of the defendant's offending Muslim Link Australia Ltd received \$163,785.82 from the Western Australian Government and \$961,422 from the Commonwealth Government to which it was not entitled.

The defendant was charged with fraud contrary to section 409(1)(c) of the *Criminal Code* (WA) and obtaining a financial advantage by deception contrary to section 134.2(1) of the *Criminal Code*. The defendant pleaded not guilty and was tried in the District Court of Western Australia.

During the trial, the defence objected to one of the prosecution witnesses wearing a full burqa including a naqid (face covering) whilst giving evidence. In ruling upon the defence objection, Deane DCJ said:

*"I accept that the demeanour of a particular witness, which includes the viewing of that person's face, is not the only means by which the reliability and credibility of their testimony may be assessed. That could never be the case. The jury may or may not consider the presentation and demeanour of a witness to be of assistance, but the issue is whether, in all of the circumstances, the jury should have the opportunity to be so assisted."*

*It is obviously undesirable for a witness to come before a court to give evidence under such pressure that they are unable to do so in a meaningful or proper way. That is why, as previously noted, courts endeavour in a range of ways to accommodate such witnesses as far as reasonably possible in order that they may give their evidence without excessive or unbearable pressure or distress.*

*In the end, however, the trial process must be fair to all concerned and the procedures and processes which have been in place in our legal and judicial system, including the criminal trial process and which to date have proved to be of assistance, should be observed and followed.*

*This, regrettably, at times may result in a degree of distress to individuals, as has occurred in the past and will, in all likelihood, occur in the future. That is the nature of the process. I have endeavoured to carefully consider, in the time available, the arguments before the court relevant to this matter and this difficult issue.*

*In the end, and I stress in the circumstances of this particular case, I do not consider it to be appropriate to permit the witness concerned to give evidence at trial whilst wearing her niqab. I will hear counsel in due course as to how the circumstances of the witness, in view of this ruling, are to be best accommodated in the event that she proceeds to give evidence at the forthcoming trial.”*

Due to the cultural sensitivities surrounding the issue, the Court was partially closed while the witness gave testimony via CCTV and all males not associated with the trial process itself were excluded from the proceedings. The exclusion extended to male journalists. The Court suppressed the witness’ surname and the publication of her image. A transcript of the witness’ evidence was made available to the media.

The defendant was found guilty and sentenced to a total effective sentence of 4½ years imprisonment to be released after serving 2 years and 9 months on condition that he be of good behaviour for 12 months.

## Tax Fraud

*Prosecuting frauds against the Australian taxation system continued to make up a significant part of the CDPP practice this year. The cases detailed below demonstrate various categories of taxation fraud and the deterrent penalties imposed by courts, including sentences of imprisonment.*

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As in previous years, the CDPP prosecuted a significant number of taxation prosecutions stemming from tax schemes and fraud relating to income tax and the GST.

The CDPP prosecutes taxation frauds referred by the Serious Non-Compliance area of the ATO, the AFP and the ACC. In addition the CDPP works closely with the In-House Prosecutions area of the ATO. By arrangement with the CDPP, the In-House Prosecutions area prosecutes most regulatory offences relating to taxation matters. If a matter becomes a defended hearing, the In-House Prosecutions area refers the matter to the CDPP to continue the prosecution. This cooperative relationship assists the ATO with its compliance program by enabling the efficient and effective prosecution of regulatory offences relating to the proper administration of Australia's taxation laws.

### Tax Fraud

ANTONY STANLEY BROUGHAM

The defendant lodged 10 false business activity statements (BAS) with the ATO over a 10 month period and received refunds to which he was not entitled, in relation to 9 of the BAS, totalling \$69,524. The ATO halted the issue of a refund in relation to the final BAS, claiming \$32,273, after commencing a review into the defendant's tax affairs.

During the ATO's audit and investigation, the defendant made a number of misleading statements to ATO officers and submitted false documentation. He also claimed that the funds received were spent on his family. The ATO petitioned for the defendant's bankruptcy.

Subsequent to his bankruptcy and being a dual citizen of Australia and New Zealand, the defendant left Australia and returned to his family in New Zealand. The Commonwealth sought the defendant's extradition from New Zealand and the defendant resisted, culminating in an appeal to the High Court of New Zealand. The defendant argued against extradition on the basis of his mental health problems, as he had a history of Post-Traumatic Stress Disorder.

After almost 2 years in New Zealand, the defendant was returned to Australia in March 2010 and remained in custody pending sentencing.

The defendant pleaded guilty to 9 counts of obtaining a financial advantage by deception contrary to section 134.2(1) of the *Criminal Code* and 1 count of conspiring to obtain a financial advantage by deception contrary to sections 134.2(1) and 11.1(1) of the *Criminal Code*.

The defendant was sentenced in the District Court of Queensland to 2½ years imprisonment to be released after serving 5½ months on condition that he be of good behaviour for 3 years. The Court considered that the usual leniency afforded to an ex-officio plea was negated by the defendant's attitude towards the extradition process, which resulted in significant costs and delays. His Honour indicated that he would have sentenced the defendant to a longer term of imprisonment if the defendant did not have a job offer in New Zealand which would shortly expire. The defendant's prison records also showed that he had been an exemplary prisoner during his time in custody.



## *Tax Fraud*

STEPHEN BRIAN COX, JOHN REGINALD CUFFE AND PETER JAMES MORRISON

Between May 1999 and March 2001 the defendants devised, promoted and implemented complex tax deduction schemes that were mass marketed to Australian taxpayers at seminars held both in Australia and overseas.

The schemes as promoted purported to enter taxpayers into loan agreements with offshore lenders. The loan funds were then supposedly invested in tax deductible investments, including retirement village joint ventures, employee welfare funds and charity deductions. In actual fact, the schemes were fictitious and bogus documentation was created and given to taxpayer participants.

In all, 410 participants took part in the schemes, giving the defendants and their company, National Health and Aged Care Pty Ltd, more than \$4.25 million in participation fees. The fictitious arrangements supposedly provided the participants with tax deductions totalling \$44.7 million. The extent of the schemes was uncovered by an ATO audit that commenced during the period of offending.

Deductions totalling \$8.6 million were claimed by 138 participants and, if allowed, these deductions would have resulted in a tax shortfall of \$3.2 million. Other participants were warned by the ATO about claiming tax deductions related to the schemes. Had all participants successfully claimed tax deductions under the schemes, the estimated tax shortfall would have been \$16.1 million

Cox was the inventor of the schemes and the main salesman. He received the majority of the revenue from participants. Morrison was the office manager and responsible for administering the schemes and producing the majority of the fictitious paperwork. Cuffe operated a registered charity, the Orthodox Catholic Church (Parish of Caboolture) College Building Fund, and provided fictitious charity receipts.





Cuffe and Morrison were each charged on 15 November 2007 with 1 count of conspiracy to defraud the Commissioner of Taxation pursuant to sections 29D and 86(1) of the *Crimes Act*. After an extensive search by the AFP, Cox was located and charged with the same offence on 28 June 2008.

The defendants pleaded not guilty to the charges and on 6 May 2011 a jury returned guilty verdicts against all 3 defendants. The defendants received the following sentences:

- **Cox:** 9 years and 11 months imprisonment with a non-parole period of 3 years and 4 months (Cox was already serving a sentence for State fraud offences);
- **CUFFE:** 6 years imprisonment with a non-parole period of 3 years;
- **MORRISON:** 6 years imprisonment with a non-parole period of 3 years.

On sentence the Court said:

*“It is well settled that general deterrence is a predominant consideration when sentencing for offences of defrauding the revenue. Those who systematically defraud the revenue of large sums of money over a substantial period should be sentenced to substantial terms of imprisonment... The same is true of those who conspire to defraud. None of the prisoners made any submission inconsistent with these propositions.”*

## Tax Fraud

BRIAN FRANCIS FOX, IAN SIDNEY HENKE AND ROBIN DAVID HUSTON

Between July 1999 and May 2001, the defendants (and others) devised, promoted and implemented a complex and sophisticated round-robin tax avoidance scheme that was mass marketed to owners of successful small businesses. Henke helped devise the scheme, whilst Fox and Huston were accountants who promoted and sold the scheme to some of their high wealth clients.

On 24 April 2008 the defendants were each charged with 1 count of conspiracy to defraud the Commissioner of Taxation pursuant to sections 29D and 86(1) of the *Crimes Act*. The defendants pleaded not guilty in the Supreme Court of Queensland. On 11 March 2011 the jury returned guilty verdicts against each defendant. The defendants received the following sentences:

“Over the period of the offending, 15 companies had their assets stripped by the scheme, resulting in tax of \$4.59 million being unavailable to the ATO.”

The scheme was designed to strip companies of their assets so that the companies were unable to meet their tax obligations. It involved the use of offshore entities and bank accounts based in Vanuatu set up specifically for the scheme. The scheme was structured to avoid detection and the ATO only became aware of it when a concerned accountant forwarded promotional material relating to the scheme to the ATO.

Over the period of the offending, 15 companies had their assets stripped by the scheme, resulting in tax of \$4.59 million being unavailable to the ATO.

- **FOX:** 3 years and 9 months imprisonment with a non-parole period of 9 months;
- **HENKE:** 4 ½ years imprisonment with a non-parole period of 12 months;
- **HUSTON:** 4 years imprisonment with a non-parole period of 10 months.

Each defendant has lodged appeals against their convictions. The Director lodged appeals against the inadequacy of the sentences imposed.

## Social Security Fraud

*Centrelink refers the largest number of briefs of any agency to the CDPP and these generally relate to people allegedly receiving Centrelink benefits knowing that they were not entitled to receive them. Cases typically involve a person receiving money from Centrelink that has been calculated on a false premise, such as the person was unemployed when in fact they were receiving income from paid employment or was a single parent when in fact s/he was a member of a couple.*

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Cases can also involve fraud where a person has received benefits on behalf of a person who is deceased or a person has used multiple false identities to obtain multiple Centrelink benefits.

Prosecutions may involve relatively small sums such as where a disaster relief payment is fraudulently claimed or significant sums where there has been a continuing fraud over many years.

General deterrence is particularly important when considering the prosecution of social security fraud offences.

Centrelink prosecutions may involve multiple false identities or concealing relationships and can be very complex and demanding. Prosecuting social security fraud involves technical evidence of Centrelink's benefits systems, often using electronic transactions. The CDPP and Centrelink work closely together to seek to achieve best practice in investigating and prosecuting in this important area.

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### Centrelink Fraud

ANN MARCIA CASEY

Between August 1984 and September 1991, the defendant claimed benefits from the Department of Social Security in 2 false names. She also claimed a payment in her real name, whilst earning income from 2 different employers. In total the defendant fraudulently obtained \$39,665.13.

In 1991 the AFP executed a search warrant on the defendant's premises. Evidence was located and the defendant made some admissions. Further investigation revealed that the defendant had been known by different names throughout her life as a result of marriage, divorce and a deed poll name change and that she had used her 'old' names to claim social security benefits.

The defendant was charged with 3 counts of defrauding the Commonwealth contrary to section 29D of the *Crimes Act* and 3 similar counts were to be taken into account.

The defendant was summoned to appear in the South Australian Magistrates Court in October 1992 and appeared several times thereafter. However, she failed to attend court in March 1993 and a warrant was issued for her arrest. The defendant used a friend's passport to flee Australia and enter the USA using her friend's identity. The defendant subsequently married a US citizen and obtained citizenship of the USA under the name 'Janette Harris'.

In 2009 the AFP advised the authorities in the USA of the defendant's whereabouts and she was subsequently arrested and charged with offences contrary to US law. The defendant pleaded guilty to 1 of those offences and was sentenced to 12 months probation, denaturalised and placed in immigration detention pending deportation.

In March 2010 the defendant was deported from the USA and arrived in Australia where she was subsequently arrested for the social security offences.

The defendant pleaded guilty to the 3 counts of defrauding the Commonwealth and admitted the further offences to be taken into account. She was convicted on the 3 counts and sentenced to 8 months imprisonment to be released after serving 2 months on condition that she be of good behaviour for 18 months. She was also ordered to pay \$2,000 for estreatment of bail.

In sentencing the defendant Magistrate Panagiotidis stated:

*“Your offending was the result of rational thinking. Your behaviour was intentional, you knew all along what you were doing and you knew your conduct was fraudulent.”*

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### *Centrelink Fraud – Dual Identity*

#### JUNE DAVIS

The defendant lodged a claim for Age Pension in January 1991 in the name June Davis. On the claim form the defendant stated that she had arrived in Australia from New Zealand in 1960 with her husband and lived at Leumeah. The pension was granted and paid into her husband's account.

In August 1994, the defendant made a second claim for Age Pension in the name June Cowie. In that claim she stated that she had only recently arrived in Australia and now resided on the north coast of NSW. The defendant also stated that she was not known by any other name, had not lived in Australia for the last ten years and that her husband had left her in 1960 in New Zealand and she did not know his whereabouts. The pension was granted. As a result of the claim, between 11 August 1994 and 18 March 2008 the defendant received \$149,325.47 to which she was not entitled.

A search was conducted on the Leumeah address in 2008. A large number of documents in the names of Davis, Cowie and a third name, June Kirby, were found.

The defendant was charged with 1 count of defrauding the Commonwealth contrary to section 29D of the *Crimes Act 1914* and 1 count of dishonestly causing a loss to a Commonwealth entity contrary to section 135.1(5) of the *Criminal Code*.

The defendant pleaded not guilty and gave evidence that her husband told her, while on his death bed in 2004, that he had made the claim for the Davis pension in 1991 without her knowledge. She had obtained the Cowie pension by her own accord in 1994. The defendant acknowledged that she knew about the 2 pensions from 2004. The jury rejected the defendant's testimony and found her guilty on both counts.

On 10 June 2011 in the District Court of NSW the defendant was sentenced to 6 months imprisonment to be released after serving 3 months on condition that she be of good behaviour for 3 months. The defendant's head sentence was reduced by 50% in recognition of her being aged 76 at the time of sentence, her medical conditions and the hardship she would suffer in custody. The Court noted that a normal sentence would be disproportionately punitive. The defendant was also ordered to make reparation in the amount of \$146,336.90.



## *Centrelink Fraud – Dual Identities*

DESMOND WILLIAM LEIGHTON (AKA DESMOND ROBERT LAYTON)

In 1994 the defendant, in the name Desmond Layton, received Disability Support Pension and from 2001, Age Pension. In 1996 the defendant, in the name Desmond Leighton, claimed Disability Support Pension. In that claim the defendant stated that he was not known by any other name and provided identification documents in the name Desmond Leighton in support of his claim. The defendant received Disability Support Pension in that name from 1996 to 2002 and Age Pension thereafter until 2006. In June 2006 a search warrant was executed at the defendant's premises and items in the names Layton and Leighton were located. The fraud resulted in a total overpayment of \$109,083.47

The defendant was charged with 1 count of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act* and 2 counts of dishonestly obtaining a financial advantage from a Commonwealth entity pursuant to section 134.2(1) of the *Criminal Code*.

The defendant pleaded guilty to the offences and was 72 years old at the time of sentence. Reports tendered on the defendant's behalf indicated that he was suffering from chronic poor health. On 26 August 2009 in the District Court of NSW the defendant was sentenced to a total effective sentence of 6 years imprisonment with a non-parole period of 4 years.

In imposing a sentence of full-time custody the Court noted that imprisonment would involve some hardship to the defendant given his age and health, however it could not find special circumstances such that a term of full-time imprisonment should not be ordered. The Court did not accept that the delay between a search warrant being executed on the defendant's home in June 2006 and the defendant being required to attend court in July 2008 created an additional unreasonable hardship on the defendant, particularly where the defendant gave evidence that he had lived in some trepidation since 1996 when he commenced the fraud.

The defendant appealed against the severity of the sentence.

The appeal was upheld and the Court of Criminal Appeal decided that it was open to the sentencing Court to conclude that the delay had no adverse impact upon the defendant and was not a mitigating factor. The Court also decided that although there was an abundance of evidence which demonstrated that the defendant's ill health would make his time in gaol significantly harder and that some weight should have been given to the defendant's ill health, when balanced against the seriousness of the offences, the extent of mitigation should have been modest.

In relation to the variation to the customary ratio of the non-parole period to the head sentence, the Court found that the seriousness of the offences, the defendant's lack of real prospects of rehabilitation and his antecedents were factors which justified a percentage which was slightly more than the norm.

The Court said that when sentencing for a Federal offence a sentencing Judge was not obliged to indicate a percentage discount for the utilitarian value of the pleas and was not persuaded that the sentencing Judge failed to give proper regard to the pleas.

The Court found that whilst a significant term of imprisonment was required the sentence imposed was manifestly excessive. The defendant's sentence was reduced to a total of 5 years imprisonment with a 3 year non-parole period.



## Centrelink Fraud – False Identities

ELIZABETH LEFFERS

The defendant was in receipt of Newstart Allowance and Widow's Allowance in the name Elizabeth Leffers and was also receiving income from 4 employers in 3 different names. Her employment income and Centrelink benefits were paid into different accounts.

The defendant made numerous false statements to Centrelink, including that she was unemployed; that she was not known by any name other than Elizabeth Leffers; that she had not been employed in the last 6 months and did not have any money in any bank accounts; and that she had not been in paid employment in the last 12 weeks. The defendant had actually been employed on a full-time basis by a bank for over 7 years.

During the period of offending the defendant earned \$309,732.10 from employment and did not declare any of that income to Centrelink. The fraud spanned 8½ years and resulted in a total overpayment of \$91,217.96.

The defendant was charged with 1 count of defrauding the Commonwealth contrary to section 29D of the *Crimes Act 1914* and 2 counts of dishonestly causing a loss to the Commonwealth contrary to section 135.1(5) of the *Criminal Code*.

The defendant was 57 years old when she pleaded guilty. On 25 February 2011 the defendant was sentenced to 15 months imprisonment to be released after serving 9 months on condition that she be of good behaviour for 2 years. A reparation order in the amount of \$89,317.96 was also made.

## Centrelink Fraud

MALGORZATA PONIATOWSKA

The defendant had been receiving fortnightly payments of Parenting Payment Single intermittently since 1995. Parenting Payment Single is a means tested benefit. The defendant was regularly sent notices reminding her of the requirement that she inform Centrelink of any change to her circumstances, including financial circumstances.

The defendant was employed from January 2005 to February 2006 and was paid commission. In April 2005 the defendant was placed on a requirement to report fortnightly any income she received. In September 2005 that requirement was dispensed with because in the preceding months she had reported that she received no income.

When the requirement was removed she was advised of her continuing obligation to report any change of circumstances, including income.

Between August 2005 and May 2007 the defendant received 17 payments of commission totalling approximately \$71,000. (The commission payments continued after her employment ceased.) The defendant did not notify Centrelink of receipt of any of that income.

As a consequence, during the relevant period the defendant continued to receive the payment of Parenting Payment Single to which she was not entitled (or was only partly entitled). The total amount the defendant obtained to which she was not entitled was \$20,000.17.

The defendant was charged with 17 counts of obtaining a financial advantage pursuant to section 135.2(1) of the *Criminal Code*.

The defendant pleaded guilty and on 16 October 2009 was sentenced in the South Australian Magistrates Court to 21 months imprisonment to be released immediately on condition that she be of good behaviour for 24 months. The defendant appealed against the severity of this sentence.

On 15 January 2010 the defendant's appeal against sentence was dismissed by a single Judge of the Supreme Court of South Australia.

The defendant then lodged a further appeal against sentence, and later conviction, to the Full Court of the Supreme Court of SA. On 2 August 2010 that appeal was allowed.

The Director filed an Application for Special Leave to Appeal to the High Court of Australia. In November 2010 the Application for Special Leave was referred to the Full Court of the High Court for consideration. The High Court heard the matter on 3 March 2011 and reserved their decision.

## *Project Wickenby*

In February 2006 a Commonwealth cross agency taskforce was set up to combat international tax evasion which posed a serious threat to the integrity of Australia's tax and other regulatory systems.

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 steps are taken to address serious non-compliance with tax laws, and reform of administrative practice, policy and legislation.

As well as the office of the CDPP, Project Wickenby involves a number of other Commonwealth 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 CDPP 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 under the *POC Act 2002*.

The CDPP has continued its participation in regular meetings of the Project Wickenby Chief Executive Officers and the Project Wickenby Cross Agency Advisory Committee which were established to oversee the project.

The CDPP plays 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 CDPP also participates in many of the other cross agency governance processes which have been established around Project Wickenby.

During the period 1 July 2010 to 30 June 2011 eight individuals were convicted and sentenced to terms of imprisonment as a result of Project Wickenby prosecutions undertaken in various States and one person was convicted of failing to take an oath or affirmation contrary to s.8D(2) of the *Taxation Administration Act*. Details of selected Project Wickenby prosecutions conducted this year follow and are in Chapter 2.5 of this report.

As at the end of June 2011 the CDPP was prosecuting a total of 41 defendants for offences arising out of investigations conducted as part of Project Wickenby by the ACC, ASIC, ATO and AFP. Thirty-nine of these persons were facing charges on indictment while two were facing summary charges. These matters are currently at different stages of the court process in various jurisdictions.

On 30 December 2008 Jersey Police arrested Philip Eric de Figueiredo in response to a request for his provisional arrest sent to Jersey by Australia. He is alleged to have committed a number of fraud and money laundering offences arising from his alleged involvement in a number of tax evasion schemes being investigated as part of Project Wickenby. These alleged offences were committed while de Figueiredo was employed by Strachans, a financial services organization which began its operations in Jersey, Channel Islands before moving to Switzerland in 2000.

After extensive appeals in Jersey de Figueiredo was extradited to Australia on 25 December 2010 and will next appear in the Queensland Magistrates Court on 10 October 2011 for committal proceedings.

The CDPP has so far taken action to restrain property valued at approximately \$25 million in relation to a number of Wickenby matters.

In one prosecution concluded in April 2010 the prosecution made an application by consent for a Pecuniary Penalty Order (PPO) in the amount of \$27,441.57. In addition to this amount, as at the present time the CDPP has successfully obtained a civil pecuniary penalty in the sum of \$900,000 in one matter and in a related matter a civil forfeiture order for real property with an estimated value of \$212,000 was made against another person. Also, consent orders were made by the District Court of Queensland in late 2007 that a person against whom criminal charges had not yet been laid pay a pecuniary penalty of \$955,000.

The CDPP has played a significant role in requests made to foreign jurisdictions for assistance pursuant to the *Mutual Assistance in Criminal Matters Act*. The requests have been to several different jurisdictions and have resulted in the obtaining of important evidence.

It is anticipated that over the coming twelve months a number of significant Project Wickenby prosecutions will proceed to trial and a number of other matters subject to appeals will be finalised. The flow of new work under Project Wickenby is also expected to continue, with the AFP in particular submitting briefs of evidence to the CDPP as it concludes its investigations into complex and difficult fraud cases. The conduct of these matters will require specialist legal expertise in both a prosecution and proceeds of crime context.



## *Tax Fraud*

ANTHONY LUIS HILI AND GLYN MORGAN JONES

This case was detected as a result of Project Wickenby.

The defendants were builders who participated in an income tax evasion scheme promoted by their Sydney-based accountants and a Vanuatu-based accountant.

The scheme was a ‘round robin’ scheme that enabled the defendants to evade both company tax and personal income tax. The scheme involved the defendants making regular funds transfers from the Australian accounts of their private trading companies to New Zealand accounts controlled by their Vanuatu accountant, disguised as payments to British and American entities for marketing and consultancy services. The funds were then, a short time later, transferred back to the defendants’ personal Australian accounts, disguised as personal loan drawdowns from an Irish lender.

The outgoing transfers, together with false commercial documentation supplied by the Vanuatu accountant and also false bookkeeping entries made by the Sydney accountants, were used to disguise false expense claims made in the defendants’ companies’ annual tax returns, thereby reducing their taxable income and the amount of company tax paid.

Likewise, the incoming transfers, together with false documentation (e.g. loan agreements and invoices) and false bookkeeping entries, were used to disguise the defendants’ failure to declare assessable dividend income in their annual tax returns, thereby reducing their taxable incomes and the amount of personal income tax paid.

The total tax shortfall referable to Hili’s criminal conduct was \$398,537.82 (relating to tax returns for the 2001, 2002 and 2003 financial years) and the total tax shortfall referable to Jones’ conduct was \$362,925.24 (relating to tax returns for the 2000, 2001, 2002, 2003 and 2004 financial years).

Hili was charged with 1 count of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code*. Jones was charged with 1 count of defrauding the Commonwealth pursuant to section 29D of the *Crimes Act 1914*, 1 count of obtaining a financial advantage by deception pursuant to section 134.2(1) of the *Criminal Code* and 1 count of intentionally dealing in an instrument of crime namely money or property worth \$100,000 or more pursuant to section 400.4(1) of the *Criminal Code*.



### DISTRICT COURT OF NSW

The defendants pleaded guilty and were sentenced in the District Court of NSW on 13 November 2009. Hili was sentenced to 18 months imprisonment to be released after serving 7 months on condition that he be of good behaviour for 11 months. The sentence included a 50% discount for the guilty plea and assistance to authorities of which 12.5% was attributed to future assistance.

Jones was sentenced to a total effective sentence of 18 months imprisonment to be released after serving 7 months on condition that he be of good behaviour for 11 months. The sentence included a 50% combined discount for the guilty plea and assistance to authorities of which 12.5% was attributed to future assistance.

### NSW COURT OF CRIMINAL APPEAL

The Director successfully appealed to the NSW Court of Criminal Appeal against the inadequacy of the sentences. On 14 May 2010 the Court of Criminal Appeal set aside the original sentences and sentenced both defendants to 3 years imprisonment to be released after serving 18 months on condition that they be of good behaviour for 18 months.

### HIGH COURT OF AUSTRALIA

The defendants sought Special Leave to Appeal to the High Court against the severity of their sentences. In particular, the defendants sought a decision on the following question:

*Is there, or should there be, a norm or starting point, expressed as a percentage for the period of imprisonment that a federal offender should actually serve in prison before release on a recognizance release order?*

The answer given by the High Court to this question was “No”, the court finding that:

*“There neither is, nor should be, a judicially determined norm or starting point (whether expressed as a percentage of the head sentence, or otherwise) for the period of imprisonment that a federal offender should actually serve in prison before release on a recognizance release order. More particularly ... it is wrong to say, as the Court of Criminal Appeal did, “that the ‘norm’ for a period of mandatory imprisonment under the Commonwealth legislation is between 60 and 66%, which figure will be affected by special circumstances applicable to a particular offender”.*

*It is wrong to begin from some assumed starting point and then seek to identify “special circumstances”. Rather, a sentencing judge should determine the length of sentence to be served before a recognizance release order takes effect by reference to, and application of, the principles identified by this Court in Power, Deakin and Bugmy.”*

The High Court also dealt with the more general question of how consistency in federal sentencing is to be achieved. The Court held that ‘reasonable consistency’ is achieved by the consistent application of the relevant sentencing principles under Part 1B of the *Crimes Act*, rather than by reference to a numerical or mathematical equivalence or range in sentences. It held that it is also achieved by courts having regard to not just what sentences have been imposed in other cases, but why those sentences were imposed. It also held that the presentation of comparative sentences in numerical tables, bar charts or graphs is also not useful to a sentencing Judge, because referring only to the lengths of sentences passed says nothing about why sentences were fixed as they were.

Importantly, in relation to intermediate appellate courts determining sentence appeals, the High Court also said:

*“[T]he need for consistency of decision throughout Australia is self-evident. ... [I]n considering the sufficiency of sentences passed on federal offenders at first instance, intermediate appellate courts should not depart from what is decided by other Australian intermediate appellate courts, unless convinced that the decision is plainly wrong.”*

Finally, in not interfering with the NSW Court of Criminal Appeal’s increased sentences for the defendants, the High Court emphasised the objective seriousness of tax fraud and the requirement for a deterrent and punitive effect in such sentences:

*“In the present matters, the inadequacy of the sentences imposed at first instance was evident from consideration of all of the matters that were relevant to fixing a sentence (and making a recognizance release order) “of a severity appropriate in all the circumstances of the offence”. The chief considerations which pointed to inadequacy in these cases were the nature of the offending, and the sentences that had been imposed in cases most closely comparable with the present.*

*The applicants’ offending was sustained over a long time. It was planned, deliberate and deceitful, requiring for its implementation the telling of many lies. The applicants acted out of personal greed. The amount of tax evaded was not small. Detection of offending of this kind is not easy. Serious tax fraud, which this was, is offending that affects the whole community. As was pointed out in Ruha, the sentences imposed had to have both a deterrent and a punitive effect, and those effects had to be reflected in the head sentences and the recognizance release orders that were made.”*







## 2.2 Serious Drugs

The prosecution of serious drug offences is a significant part of the CDPP's practice. Drug offences are among the most serious Commonwealth offences. The interception of illicit drugs and precursors at the border prevents them from entering the Australian community. Drug offences attract substantial penalties, including imprisonment for life for offences involving a commercial quantity of drugs.

There are a range of serious drug offences in the *Criminal Code* including trafficking and the commercial manufacture of drugs. The CDPP also prosecutes State and Territory drug offences usually where the investigation involves a Commonwealth agency and it is appropriate for the CDPP to conduct the prosecution.

This year the Federal Executive Council approved an Interim Regulation to list further substances and quantities of substances for the purposes of the serious drug offences in Part 9.1 of the *Criminal Code*. These were the first interim regulations to be approved pursuant to Division 301 of the *Criminal Code* and dealt with substances including 4-Methylmethcathinone (known as 4-MMC) and ketamine. The *Criminal Code Amendment Regulations 2011* commenced on 9 April 2011.

## Cocaine

### *Conspiracy To Possess Cocaine*

WILBER ANTONIO ARENILLA–CEPEDA AND SULEYMAN BOGA

Arenilla–Cepeda entered Australia from Colombia in 2006. In April 2008 he told another person (the police informant) about a plan to obtain cocaine from Colombia.

Arenilla–Cepeda anticipated the cocaine would be imported by a person referred to as the ‘cook’, who had impregnated the cocaine into plastic moulded into the shape of a suitcase. The cook’s role was to extract the cocaine from the plastic by means of a chemical process and deliver the product. The cook was to be responsible for transferring money to Colombia. Arenilla–Cepeda asked the police informant to find a purchaser for the refined product. The quantity of cocaine to be obtained was settled at 4–5kg with a purity of 95%.

The police informant, who was being prosecuted for fraud, informed the NSW Police about Arenilla–Cepeda’s plan and thereafter agreed to take part in a controlled operation.

The police informant made contact with Boga and introduced him to Arenilla–Cepeda in early June 2008. Boga indicated a willingness to buy 2kg of cocaine at \$120,000 per kilogram and also agreed to pay \$10,000 in advance for the cook’s airfare and the chemicals required for the extraction process. Thereafter all communications between the police informant and the defendants, whether by telephone or in person, were the subject of electronic and physical surveillance.

In late June 2008 Boga delivered \$10,000 to Arenilla–Cepeda as promised which he then, with the assistance of the police informant, transferred to Bolivia.

Between July and September 2008 Arenilla–Cepeda repeatedly telephoned and e-mailed people in Colombia regarding the cocaine. The Colombians sought to reassure Arenilla–Cepeda that they were reliable and could be trusted to deliver as promised despite ongoing delays said to be due to visa problems encountered by the cook. The police informant assisted Arenilla–Cepeda to draft a bogus letter in support of the cook’s visa application.

In September 2008 the police informant met Boga at a Sydney casino. At the instigation of the police, the police informant falsely stated to Boga that the cocaine had arrived and was being processed. Boga reaffirmed his commitment to purchase 2kg. The police informant subsequently arranged to meet Boga at a Sydney park on 22 September 2008 to complete the sale.

On 22 September 2008 Boga arrived at the designated place and was arrested. In his vehicle the police found \$99,950 in cash. During a search of Boga’s home the police found an unlicensed pistol and ammunition, a money counting machine and 107g of MDMA. Arenilla–Cepeda was arrested at his place of employment at the same time.

Arenilla–Cepeda was convicted of conspiracy to possess a commercial quantity of cocaine contrary to sections 11.5 and 307.5(1) of the *Criminal Code*. Boga was convicted of conspiracy to possess a commercial quantity of cocaine contrary to sections 11.5 and 307.5(1) of the *Criminal Code*; dealing

Boga was sentenced in the District Court of NSW to a total effective sentence of 10½ years imprisonment with a non-parole period of 6½ years backdated to commence on 22 September 2008. The \$99,950 found in Boga's vehicle was forfeited.

“ In his vehicle the police found \$99,950 in cash. During a search of Boga's home the police found an unlicensed pistol and ammunition, a money counting machine and 107g of MDMA. ”

with money with intent it would become an instrument of crime contrary to section 400.5 of the *Criminal Code* and supplying a prohibited drug (MDMA) contrary to section 25(1) of the *Drug Misuse and Trafficking Act 1985* (NSW). A charge of possessing an unlicensed pistol was also taken into account in sentencing.

Arenilla–Cepeda was sentenced in the District Court of NSW to 14 years imprisonment with a non-parole period of 8½ years backdated to commence on 22 September 2008. The defendant has lodged a notice of intention to appeal.



## *Importing Cocaine*

DAN NING WANG, YUE MA AND FRANK HUYANG

The AFP commenced investigations into a company, Australia China International Exchange Centre Pty Ltd (ACIEC) and its director, Huyang. Between November 2006 and February 2008 remittances were made by Huyang or by others on his instructions to various bank accounts in China totalling over \$17 million AUD. AFP officers became aware of ACIEC's impending importation of a shipping container from China, said to contain furniture and handicraft work.

On 2 February 2008 the shipping container arrived in Sydney. On examination, at the very rear of the container, 10 boxes were discovered to each contain 23–27 vacuum sealed foil packets, purporting to be Chinese tea. Each of the 251 packets was found to contain cocaine blocks or powder, which were ultimately found to total approximately 249kgs gross, with purity ranging between 72.3% to 88.2%, giving a total pure weight of cocaine of approximately 201kgs. At the time, this was the 4<sup>th</sup> largest importation of cocaine into Australia detected by law enforcement authorities. The wholesale value of the cocaine was estimated to range between \$32.5 million to \$45 million and the street value ranged between \$50 million to \$112.5 million. AFP officers substituted the cocaine with an inert substance and undertook a controlled delivery.

Wang contacted Huyang before the container arrived in Sydney and they remained in telephone contact and discussed its arrival and unloading. Wang informed Ma of her communications with Huyang. On 10 February 2008 Wang arrived in Sydney from Hong Kong, having left China a few days earlier.

Prior to the delivery of the container, Huyang took Wang to the business premises of Win Furniture at Auburn and instructed her as to how to unload the container. Wang hired removalists to unload the entire container after it was delivered to Auburn, and to retrieve the 10 boxes of drugs and transport them to her home unit in Rockdale. Wang recruited her friend, Ma to assist her in overseeing the removalists unload the container and to help her to unpack the boxes in her unit as they discussed their further delivery. During their discussions, Wang told Ma that each of the packets was valued at \$150,000.

On 11 March 2008, police arrested Huyang, Wang and Ma. Crime scene investigations revealed the 10 boxes had been opened and the packets rearranged in 9 of the 10 boxes. One of the packets was found to have been opened and another packet was missing.

Wang and Ma both pleaded guilty to 1 count of attempting to possess an unlawfully imported commercial quantity of cocaine pursuant to sections 307.5(1) and 11.1 of the *Criminal Code*. Both defendants agreed to assist police and give evidence against Huyang.

Wang and Ma were sentenced on 26 August 2009 in the District Court of NSW. Wang was sentenced to 18 years imprisonment with a non-parole period of 11½ years backdated to commence on 11 March 2008. Wang received a 20% discount on her sentence for her guilty plea and assistance to police and a 15% discount for future assistance – in total a 35% discount.

Ma was sentenced to 15 years imprisonment with a non-parole period of 9 years backdated to commence on 11 March 2008. Ma received a 29% discount for her guilty plea and assistance to police and a 6% discount for future assistance – in total a 35% discount.

Huyang was charged with 1 count of importing a commercial quantity of cocaine pursuant to section 307.1(1) of the *Criminal Code* and 1 count of aiding, abetting, counselling or procuring an attempt to possess an unlawfully imported commercial quantity of cocaine pursuant to sections 307.5(1), 11.1(1) and 11.2(1) of the *Criminal Code*.

Huyang pleaded not guilty to both charges and was tried in 2 lengthy trials. Firstly in late 2009, a jury was unable to reach a verdict following a 12 week trial, and then, following a 15 week trial in late 2010 a jury found Huyang guilty of both charges.

On 22 July 2011 in the District Court of NSW Huyang was sentenced to life imprisonment for the importation offence and 30 years imprisonment for the attempt to possess offence. The Court fixed a non-parole period of 21 years. Huyang will be eligible for parole in March 2029.

Wang and Ma each appealed to the NSW Court of Criminal Appeal against the severity of their respective sentences. Their appeals were heard simultaneously on 5 November 2010 and dismissed on 17 December 2010.



## Methamphetamine

### *Importing Methamphetamine*

FESTUS PRECIOUS IYOHA

Between August and December 2008 the AFP conducted a major controlled operation involving the use of an AFP Undercover Operative (UCO).

The defendant sought the assistance of that UCO to negotiate a deal whereby the defendant would arrange for his South African contact to send methamphetamine to Australia. The defendant communicated regularly via international telephone calls with an unidentified male person in South Africa, often in a dialect which made it difficult for authorities to translate the calls.

Approximately 700g of methamphetamine with a purity of 77% was intercepted by the AFP and was substituted for an inert substance. On 8 December 2008 the defendant met with the UCO in Perth during which they confirmed \$20,000 would be the payment for delivery of the package. On 9 December 2008 the defendant again met with the UCO where the offender took possession of the package in exchange for \$17,000.

The defendant was charged with 1 count of importing a marketable quantity of methamphetamine pursuant to section 307.2(1) of the *Criminal Code*.

On 9 September 2010 in the District Court of WA the defendant was sentenced to 11 years imprisonment with a non-parole period of 7 years backdated to commence on 25 September 2009. At sentence the court took into account that the defendant had prior convictions for possessing heroin and failing to declare currency from 2001 when he was sentenced to 9 years imprisonment with a non-parole period of 5 years. The non-parole period of this sentence had expired in January 2007.

Whilst there is no defence of entrapment in Australia, this is a factor which in certain circumstances can be successfully argued in mitigation on sentence. A sentence may be significantly reduced in circumstances where the offence would not have been committed but for the activities of the agent provocateur. The defendant argued at sentencing that he should receive a discount on his sentence as he was induced or encouraged to enter into the illegal activity by an informer and that but for that inducement or encouragement, he would not have committed the offence.

The Court concluded there was no mitigation available to the defendant by reason of entrapment. The defendant had not satisfied the Court on the balance of probabilities that he was induced or encouraged to carry out an illegal purpose that he would not otherwise have engaged in. The defendant took an opportunity to become engaged in the importation and having taken that opportunity, also had every opportunity to pull out of the scheme but he did not do so.

The defendant appealed against the severity of his sentence. On 22 February 2011 the WA Court of Criminal Appeal dismissed the defendant's appeal.

## Importing Methamphetamine

HOOI HEE NG, KWING WONG, CHOI HUNG LAM, WING CHEONG LAM, CHUI LUI CHAN

These prosecutions arose from Operation Gatton – an AFP investigation into the illegal importation of methamphetamine from Hong Kong to Perth. Three of the offenders were foreign nationals from Hong Kong who were visiting Australia on a short term basis; 1 offender was a foreign student on a student visa; and 1 offender was a Malaysian citizen who has been a permanent resident in Australia for a significant period of time.

The AFP investigated the importation of consigned parcels containing methamphetamine which were coming through the postal system. The methamphetamine was being imported into Australia by an organised syndicate that was concealing it in desiccant sachets contained in packets of Asian noodles. These packets of Asian noodles were placed in consigned parcels along with t-shirts in Hong Kong and sent to Australia by post.

On 7 January 2010 Chan and Wing Cheong Lam each collected a parcel of packets of Asian noodles containing the methamphetamine. They were arrested in Perth along with Wong and Choi Hung Lam on the same day the parcels were collected. The arrest and search warrants revealed further evidence of the offending.

After these 4 arrests further similar parcels continued to be delivered through the postal system. This led the AFP to conduct a controlled delivery of further parcels which resulted in the arrest and charging of Ng.

The defendants were charged with the following offences:

- **Ng:** 2 counts of attempting to import a marketable quantity of methamphetamine pursuant to sections 11.1(1) and 307.6(1) of the *Criminal Code*.
- **Wong:** 1 count of possessing a marketable quantity of methamphetamine reasonably suspected of being unlawfully imported pursuant to section 400.5(1) of the *Criminal Code*.
- **Choi Hung Lam:** 1 count of aiding, abetting, counselling or procuring another person to possess an imported parcel containing a marketable quantity of methamphetamine pursuant to sections 11.2(1) and 307.6(1) of the *Criminal Code*.
- **Wing Cheong Lam:** 1 count of possessing an imported parcel containing a marketable quantity of methamphetamine pursuant to section 307.6(1) of the *Criminal Code*.
- **Chan:** 1 count of possessing an imported parcel containing a marketable quantity of methamphetamine pursuant to section 307.6(1) of the *Criminal Code*.



Ng and Wong both pleaded not guilty. Wing Cheong Lam and Chan pleaded guilty on 23 September 2010. Choi Hung Lam pleaded guilty on 24 January 2011, the first day of trial.

In March 2011, following a trial against Ng, a jury was unable to reach a verdict in relation to either offence. However, following a re-trial in May/June 2011 Ng was found guilty of both offences.

In June 2011, following a lengthy trial against Wong, a jury found the defendant guilty of the possession offence.

The defendants were subsequently sentenced in the District Court of WA to the following sentences:

- **Ng:** 7½ years imprisonment with a non-parole period of 4 years and 10 months.
- **Wong:** 2 years imprisonment to be released after serving 1 year and 4 months.
- **CHOI HUNG LAM:** 4 years imprisonment with a non-parole period of 2 years and 3 months. \$9,878.00 forfeited to the Crown pursuant to section 48(2) of the *POC Act 2002*.
- **WING CHEONG LAM:** 3½ years imprisonment with a non-parole period of 2 years. \$226.00 forfeited to the Crown pursuant to section 48(2) of the *POC Act 2002*.
- **CHAN:** 3½ years imprisonment with a non-parole period of 2 years. \$1,330 forfeited to the Crown pursuant to section 48(2) of the *POC Act 2002*.

In sentencing Choi Hung Lam, Staudé DCJ stated:

*"I find that yours was an important role in the operation. It involved importing by mail, in packages of food sent from Hong Kong to Perth, quantities of methylamphetamine which were disguised as the contents of desiccant packets in the food packages."*

In sentencing Wong, Stong DCJ stated:

*"I'm also satisfied beyond reasonable doubt that at the time of your apprehension, you were aware of the illicit drug activity of the trio [Chui Lui Chan, Choi Hung Lam and Wing Cheong Lam], and you were aware that the black sports bag you had been given to carry by one of the trio contained a marketable quantity of unlawfully imported border controlled drug."*

*It follows from this that you would be aware the black sports bag also contained accoutrements of illicit drug dealers..."*

## Gammabutyrolactone

### *Importing Gammabutyrolactone (GBL)*

PAUL COLLEDGE

On 15 May 2009 an international mail package addressed to the defendant at a business premises was intercepted at the Sydney Gateway Facility. The package was opened and found to contain 2 bottles labelled Gammabutyrolactone (GBL), each containing approximately 1L of clear liquid. Further testing indicated that both bottles contained a total pure weight of 2060g GBL. The Department of Health and Ageing confirmed that neither the defendant nor the business had any relevant approval or permission to import GBL.

On 25 June 2009 a search warrant was executed at the defendant's home and business premises. He made admissions to importing GBL but stated that he did not know that it was a border controlled drug.

The defendant was charged with 1 count of importing a commercial quantity of GBL pursuant to section 307.1 of the *Criminal Code*. The defendant pleaded guilty and on 20 April 2010 in the District Court of NSW was fined \$500.

The Director appealed against the inadequacy of this sentence. On 10 December 2010 the NSW Court of Criminal Appeal allowed the appeal and the defendant's fine was increased to \$3,000.

## Ecstasy (MDMA)

### *Importing Ecstasy*

DAVID DEGHANI, DAWN BURLING AND KAREN GILL

*This case was reported in the 2009–10 Annual Report at pages 30–31.*

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**Correction:** In last year's report the charges against Dehghani were incorrectly reported. Rather than being charged with 1 count of importing a commercial quantity of a border controlled drug pursuant to section 307.1 of the *Criminal Code*; 2 counts of conducting transactions so as to avoid reporting requirements pursuant to section 31(1) of the *Financial Transaction Reports Act 1988*; 4 counts of conducting transactions so as to avoid reporting requirements relating to threshold transactions pursuant to section 142 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and 6 counts of dealing in proceeds of crime pursuant to section 400.4(1) of the *Criminal Code*, Dehghani was charged with 1 count of importing a commercial quantity of a border controlled drug pursuant to section 307.1 of the *Criminal Code*, 1 count of conducting transactions so as to avoid reporting requirements pursuant to section 31(1) of the *Financial Transaction Reports Act 1988*; 1 count of conducting transactions so as to avoid reporting

*requirements relating to threshold transactions pursuant to section 142 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006; and 1 count of dealing in proceeds of crime pursuant to section 400.4(1) of the Criminal Code. Dehghani did not enter a plea until the day before his Supreme Court trial was due to commence.*

.....

Burling and her partner Dehghani dispatched 4 boxes of ecstasy tablets by post from the UK to Gill at her address near Brisbane. The boxes purported to contain toys, DVDs and children's games, but in fact contained a total of 81,292 tablets with a gross weight of 26.096kg (5.2193kg pure weight of MDMA). Two of the boxes were selected by the AFP for a controlled delivery to Gill on 8 February 2007. Dehghani and Burling attended Gill's address shortly after the delivery of the boxes and all 3 were subsequently arrested.

For his role in the drug importation, Dehghani was charged with the offences reported above.

Burling and Gill were charged with one count each of importing a commercial quantity of a border controlled drug pursuant to section 307.1 of the *Criminal Code*.

Dehghani pleaded guilty the day before the start of his trial in the Supreme Court of Qld and gave an undertaking to give evidence against Burling and Gill.

On 24 July 2009 in the Supreme Court of Qld Dehghani received a reduced sentence as a result of his undertaking to give evidence against Burling and Gill. Dehghani was sentenced to 10 years and 10 months imprisonment with a non-parole period of 6½ years for his role in the drug importation, and to concurrent terms of 2 years imprisonment for the structuring offences involving cash deposits amounting to \$579,000 and money laundering transactions in excess of \$400,000.

Dehghani subsequently applied for leave to appeal against his sentence. In November 2009 the Qld Court of Appeal refused his application.

The Qld Supreme Court heard a number of pre-trial applications by Burling and Gill including an unsuccessful application by Burling to stay the indictment.

In March 2010 Dehghani gave evidence at the trial of Burling and Gill in relation to their role in the drug importation, however on the prosecution's application Dehghani was declared hostile. The prosecution appealed against Dehghani's sentence on the ground that he failed to cooperate with the prosecution after his sentence was handed down.

On 12 March 2010 Burling and Gill were convicted following a trial in the Qld Supreme Court. Burling was sentenced to 12 years imprisonment to be released after serving 7 years and 3 months. Gill was sentenced to 9 years imprisonment to be released after serving 5½ years. Burling and Gill filed appeals against their convictions and sentences.

On 1 March 2011 the Qld Court of Appeal heard the Director's appeal pursuant to section 21E(2) of the *Crimes Act* against the inadequacy of the sentence and the non-parole period imposed on Dehghani. The appeal was the first of its kind in Queensland.

The Court of Appeal allowed the appeal. The Court set aside Dehghani's sentence and non-parole period and ordered that Dehghani be sentenced to 14 years imprisonment with a non-parole period of 7 years 9 months. The Court found that Dehghani's failure to fulfil his undertaking was partial, but nevertheless serious. In the event, Burling and Gill were convicted, but their trial was made longer and more complex by Dehghani's behaviour, with attendant cost to the community.

On 21 December 2010 the Qld Court of Appeal dismissed Burling and Gill's appeals against their convictions, and on 25 March 2011 their applications for leave to appeal against sentence were refused.

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### *Conspiracy to Import and Traffic MDMA*

FABIAN QUAID, DIMITRIOS PAPADIMITRIOU, RADE LJUBOJA AND DEJAN MEDAN

These prosecutions arose out of Operation Interstice, a joint investigation between the AFP, ACC, WA Police and the ACBPS. The investigation into an international organised crime syndicate involved in importing border controlled drugs into Australia began in 2007. The drugs that were the subject of this prosecution were imported via the cargo ship *MSC Monica* which docked in Fremantle in April 2008. The final seizure of narcotics constituted 35.2kg of pure MDMA, which was the largest seizure of pure MDMA in WA. Depending on which State the drugs were sold in, the AFP estimated the approximate value of the MDMA imported to be between \$8,800,000 and \$30,000,000. The investigation and subsequent prosecutions incorporated significant amounts of telephone interceptions and covert surveillance evidence, as well as a controlled substitution of the drugs shortly prior to the arrest of all 4 co-offenders.

Ljuboja, the syndicate's main organiser in Australia, organised the importation of the drugs into Australia and planned the trafficking of the MDMA. He met with all co-conspirators and organised various other persons who assisted in the importation or the preparations to traffic the drugs and was the main hub of communications between the co-conspirators as necessary to achieve the purpose of the conspiracy.

Quaid's role was primarily focused on the future distribution of the drugs after the MDMA had been converted into pills.

Papadimitriou was an associate of an overseas conspirator and was primarily involved in organising a safe house for the storage of the MDMA, sourcing the pill press and transporting the pill press from NSW to WA.

Medan provided support to his co-offenders and was responsible for converting the MDMA powder into tablets and providing chemicals and other ingredients.

Quaid, Papadimitriou and Medan were charged with 1 count of conspiring to traffic a commercial quantity of MDMA pursuant to sections 11.5(1) and 302.2(1) of the Criminal Code.

Ljuboja was charged with 1 count of conspiring to traffic a commercial quantity of MDMA pursuant to sections 11.5(1) and 302.2(1) of the *Criminal Code* and 1 count of importing a commercial quantity of MDMA pursuant to section 307.1(1) of the *Criminal Code*.

Medan and Ljuboja pleaded guilty.

On 23 March 2010 in the Supreme Court of WA, Medan was sentenced to 14 years imprisonment with a non-parole period of 8½ years. The sentence was backdated to commence on 19 May 2008. Medan appealed against the severity of this sentence and on 4 July 2011 WA Court of Criminal Appeal allowed his appeal and reduced his sentence to 12 years imprisonment with a non-parole period of 7 years.

On 23 March 2010 in the Supreme Court of WA, Ljuboja was sentenced to a total effective sentence of 25 years imprisonment with a non-parole period of 16 years. The sentence was backdated to commence on 19 May 2008.

Ljuboja appealed against the severity of this sentence but the WA Court of Criminal Appeal dismissed the appeal. Ljuboja has now sought special leave to appeal to the High Court of Australia in relation to his sentence.

Quaid and Papadimitriou pleaded not guilty. Following a 6 week trial in November and December 2009, a jury found both defendants guilty.

On 16 December 2009 in the Supreme Court of WA, both Quaid and Papadimitriou were sentenced to 17 years imprisonment with a non-parole period of 10½ years. These sentences were backdated to commence on 21 May 2008. Quaid appealed against his conviction but the WA Court of Criminal Appeal dismissed the appeal. Papadimitriou appealed against his conviction and sentence but the WA Court of Criminal Appeal dismissed the appeals. Quaid and Papadimitriou have now sought Special Leave to appeal to the High Court of Australia in relation to their convictions.



## Heroin

### *Internal Importation Of Heroin*

BALAMURUGAN GOVINDARAJU

On 12 April 2009 the defendant, a 31 year old Malaysian citizen, arrived in Sydney on a flight from Malaysia. When questioned by ACBPS officers about the purpose of his visit, the defendant initially claimed he had travelled to Australia from Malaysia for a holiday following an earlier trip to India. A swab from the defendant taken by ACBPS officers indicated the defendant had come into contact with heroin. The defendant subsequently admitted that he had travelled to Australia to smuggle ‘gold’, which he had swallowed in India.

The defendant was found to have concealed 75 plastic-wrapped foreign objects containing 594.9g of a powdered substance in his gastro-intestinal tract. Analysis of the powder indicated it contained 372.4g of pure heroin. The drugs were estimated to have a ‘street value’ of between about \$148,000 and \$267,000.

The defendant had prior convictions in Malaysia and Singapore for offences related to drug use and in relation to smuggling goods across international borders to avoid payment of duty.

At a bed-side court hearing in hospital the defendant was charged with 1 count of importing a marketable quantity of heroin pursuant to section 307.2(1) of the *Criminal Code*. He pleaded guilty and on 16 July 2010 was sentenced to 9 years imprisonment with a non-parole period of 5 years. In passing sentence, the Court held that the defendant’s role in the importation was more than that of a mere courier and also had regard to his prior criminal convictions in foreign jurisdictions.

The defendant lodged an appeal against the sentence. The NSW Court of Criminal Appeal heard the appeal on 6 July 2011 and reserved judgment.



## Pseudoephedrine

### *Supplying a Precursor – Pseudoephedrine*

GARY MATTHEW EL HELOU

In July 2008 law enforcement authorities detected an importation into Australia of 3 separate consignments of goods in 2 shipping containers shipped from the same consignor company in Thailand. The shipping containers contained the border controlled precursor, pseudoephedrine. Pseudoephedrine may be used to manufacture the drug methamphetamine, which is commonly referred to as 'ice'. The total weight of pseudoephedrine in tablet form was 839.436kgs and it was hidden inside various homeware objects, including statues and vases. This importation is the largest importation of pseudoephedrine into Australia detected by law enforcement authorities to date.

The police removed and substituted the pseudoephedrine with another substance and undertook a controlled delivery. One of the consignments was consigned to the defendant's uncle, 'Gaby'. Another of the consignments, comprising 10 crates, was consigned to the company which employed 'CA'. On 10 July 2008 CA was observed loading 4 of those crates into a trailer and driving to a location where he exchanged vehicles with another man, who took the crates and left them in a garage in an eastern Sydney suburb.

The next day CA hired another trailer, loaded the remaining 6 crates and drove to his home in a western Sydney suburb. Police observed a blue vehicle parked in the vicinity of CA's home. Shortly thereafter police observed CA leaving his home with the defendant as passenger in CA's vehicle, towing the trailer with the 6 crates, and driving to the defendant's home. The trailer was reversed into the defendant's garage and the crates were unloaded.

A listening device in the crates detected banging noises consistent with hammers being used to open the crates. The defendant and CA left the premises and drove a short distance when they were approached by 3 unidentified males and entered a conversation. CA then drove the defendant back to his home and left. The defendant left his home driving a red vehicle which was followed by a vehicle containing the 3 unidentified males with whom they had been talking. The defendant returned to his home for a brief period and left again. He returned to his home over 1½ hours later. A short time after that the defendant and another person who had arrived at his premises were engaged in a conversation which was recorded on the listening device.

Statements made by the defendant included:

*“Yeah, \$15 million dollars worth here this morning.”*

*“I had 500 kilos. It’s all, it’s all, it’s all been changed... it’s all take ... here, taste that. Is that, is that, is that psuedofed?”*

*“Gaby’s, Gaby’s got one in the garage. He’s getting watched, his house is getting watched.”*

A short time later police entered the garage and arrested the defendant. Crime scene investigations confirmed a number of the homeware objects in the garage had been broken to reveal tablets and powder. In addition, tablets and powder were found in the boot of the red vehicle which the defendant had driven earlier that day.

The defendant was charged with 1 count of knowingly taking part in the supply of a prohibited drug, being more than a large commercial quantity of pseudoephedrine, pursuant to section 25(2) of the *Drug Misuse and Trafficking Act 1985* (NSW).

#### DISTRICT COURT OF NSW

The defendant pleaded guilty and gave evidence at his sentence hearing that he believed he was dealing with steroids and that he was to have been paid \$2,000 to transport, warehouse and deliver the drugs to other persons. This evidence was not accepted by the sentencing judge, who found that the recorded conversations indicated a deep knowledge by the defendant of the drug’s importation and the value of the drugs warehoused by him.

On 10 July 2009 in the District Court of NSW the defendant was sentenced to a total effective penalty of 10½ years imprisonment with a non-parole period of 6½ years. The Director lodged an appeal against the inadequacy of this sentence.

The defendant also appealed against his conviction, notwithstanding that he pleaded guilty, on the ground that the provision of the *Drugs Misuse and Trafficking Act 1985* (NSW) under which he was convicted was Constitutionally invalid.

#### NSW COURT OF CRIMINAL APPEAL

The grounds of challenge were that section 25 of the *Drugs Misuse and Trafficking Act 1985* (NSW):

- a) was inconsistent with a law of the Commonwealth for the purposes of section 109 of the *Constitution*; and
- b) required a sentencing court to engage in a process which was incompatible with the court’s capability to exercise the judicial power of the Commonwealth.

The asserted inconsistency was said to be between section 25(2) of the *Drugs Misuse and Trafficking Act 1985* (NSW) – supply or take part in supply of prohibited drug, and section 306.2 of the *Criminal Code* – pre-trafficking commercial quantities of controlled precursors, by virtue of the prescription of different penalties in relation to the same proscribed conduct. Pseudoephedrine is a prohibited drug under the *Drugs Misuse and Trafficking Act 1985* (NSW) and is a controlled precursor under the *Criminal Code*.

The NSW Court of Criminal Appeal found that the elements of both offences were different and that the Commonwealth Parliament did not intend to ‘cover the field’, as section 300.4 of the *Criminal Code* expressly permits the concurrent operation of State laws. The Court of Criminal Appeal held that there was no invalidity or inoperativeness of section 25(2) by reason of section 109 of the *Constitution* and dismissed the defendant’s appeal.

The Court concluded the sentencing judge had failed to have any real regard to the standard non-parole period, and as a consequence of this error, the sentence imposed was manifestly inadequate.

On 21 May 2010 the NSW Court of Criminal Appeal upheld the Director’s appeal and re-sentenced the defendant to 12 years imprisonment with a non-parole period of 8 years.

“...a number of the homeware objects in the garage had been broken to reveal tablets and powder.”

On 21 April 2010 the NSW Court of Criminal Appeal heard the Director’s appeal against the inadequacy of the sentence. The Court accepted the prosecution argument that the non-parole period of 6½ years betrayed a failure to give sufficient weight to the ‘standard non-parole period’, which was 15 years for this particular offence, given the sentencing judge correctly found the offence to be above the ‘mid-range of seriousness’.

## *Importing a Precursor – Pseudoephedrine*

MING WONG

On 12 June 2010 the defendant arrived in Sydney on a flight from Malaysia with 26 boxes of what appeared to be commercially produced mung bean cakes in his luggage. Each box contained 8 cakes. The defendant had a receipt from the duty free shop at the airport in Vietnam where he had originally boarded the flight for a purchase of 26 boxes of mung bean cakes.

The defendant pleaded guilty to 1 count of importing a commercial quantity of a border controlled precursor pursuant to section 307.11(1) of the *Criminal Code*.

On 3 June 2011 in the District Court of NSW the defendant was sentenced to 4½ years imprisonment with a non-parole period of 2 years and 9 months.

“ Subsequent analysis revealed that the cakes contained 2,626g of pure pseudoephedrine. ”

Subsequent analysis revealed that the cakes contained 2,626g of pure pseudoephedrine. It is estimated that this amount of pseudoephedrine could be used to manufacture methamphetamine in a range of between 1190g and 2032g, with an estimated street value of between \$119,000 and \$508,000.

The boxes of cakes had been purchased in advance and the individual cakes removed and replaced with substitute ‘cakes’ containing pseudoephedrine, each of which had been individually wrapped. The offender gave evidence during the sentence proceedings that he had committed the offence as a way of cancelling out substantial gambling debts.

## Other drugs

### *Importing Human Growth Hormone*

WISSAM MEHANNA

On 31 October 2009 a package addressed to a post office box at Kingsway West, was imported into Australia from China via mail. The contents of the package were described as ‘neon electrodes’. Upon examination, 3 of the 6 boxes of electrodes were each found to contain 100 vials of a white powder. Analysis of the powder revealed it contained human growth hormone (HGH), a tier 1 good. Approval from the Department of Health and Ageing is required to import HGH.

The mobile telephone number on the consignment note belonged to the defendant’s company and was billed to his residential address. The defendant was also a mail recipient for the post office box to which the package was addressed.

A search of the defendant’s premises located the defendant’s work diary containing references to HGH, several boxes of vials labelled ‘Jintropin’ (a form of HGH) and a computer containing tracking details for the delivery of the package and files with references to HGH and Jintropin. No permit to import HGH had been issued to the defendant.

The defendant pleaded guilty to 1 count of intentionally importing tier 1 goods, namely human growth hormone, without approval, pursuant to section 233BAA(4) of the *Customs Act 1901*.

On 8 February 2011 in the Local Court of NSW the defendant was convicted and released upon a bond to be of good behaviour for 2 years. At sentence the magistrate agreed that this was a significant matter and that the only thing saving the offender from a gaol sentence was his prior good character.



## 2.3 Commercial Prosecutions

Each of the CDPP's larger Regional Offices has a specialist Commercial Prosecutions' branch. Those branches are responsible for dealing with matters referred by the Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC) and the Regulation and Enforcement Branch of the Insolvency and Trustee Service Australia (ITSA). The Commercial Prosecutions branches also deal with large fraud matters where there is a corporate element. In the smaller Regional Offices commercial prosecution matters are handled by prosecutors who specialise in such matters.

ASIC is responsible for investigating alleged contraventions of the *Corporations Act*, the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*, the *National Consumer Credit Protection Act 2009 (NCCP Act)* and any associated State or Territory offences. If an investigation appears to disclose the commission of a serious offence, ASIC will, where appropriate, refer a brief of evidence to the CDPP for consideration and prosecution action. By arrangement with the CDPP, ASIC conducts prosecutions for minor regulatory offences against the *Corporations Act*, *NCCP Act* and the *ASIC Act*.

The investigation of large commercial matters can be long and resource intensive and frequently the materials that ASIC provides to the CDPP in relation to such matters are both voluminous and complex. The prosecution of these matters requires specialist skill. There is regular liaison between ASIC and the CDPP at head of agency, management and regional office levels.



Where an investigation by ASIC reveals both Commonwealth offences and State or Territory offences the CDPP will prosecute the State or Territory offences pursuant to arrangements with State and Territory Directors of Public Prosecutions.

The ACCC is responsible for investigating alleged contraventions of the *Trade Practices Act 1974*, including the serious cartel offences in sections 44ZZRF and 44ZZRG. There is regular liaison between the ACCC and the CDPP at head of agency, management and regional office levels.

Where the ACCC makes a recommendation to the Director that an applicant for conditional immunity under the ACCC's Immunity Policy for Cartel Conduct should be granted immunity from criminal prosecution the Director will decide whether to grant an undertaking under section 9(6D) of the *DPP Act* by applying the criteria in Annexure B of the *Prosecution Policy of the Commonwealth*.

ITSA investigates the majority of alleged contraventions of the *Bankruptcy Act 1966*. The CDPP and ITSA meet regularly at both the national and regional office level to discuss issues relevant to the prosecution of offences under the *Bankruptcy Act 1966*.

Case reports in this chapter deal with insider trading and market manipulation, unlicensed financial services and fraud. The statistics that appear in Chapter 3 of this Report include statistics for prosecutions conducted by the Commercial Prosecutions Branches.

## Insider Trading and Market Manipulation

### *Insider Trading – ‘Front Running’*

OSWYN INDRA DE SILVA

This is only the second case referred to the CDPP involving the activity known as ‘front running’.

The defendant was involved in insider trading over a 4 month period between December 2006 and April 2007. His offending involved ‘front running’ securities and ‘contracts for difference’ in respect of securities on the Singapore Stock Exchange in 12 separate sets of transactions. As a result of his offending, the defendant made a total gross profit equivalent to approximately AUD\$2.477 million.

On 5 November 2010 the defendant pleaded guilty to 1 count of insider trading pursuant to section 1043A of the *Corporations Act*.

On 31 March 2011 in the Supreme Court of NSW the defendant was sentenced to 2½ years imprisonment to be released after serving 18 months on condition that he be of good behaviour for 12 months.

### *Insider Trading*

JOHN KIZON AND NIGEL CUNNINGHAM SWIFT MANSFIELD

The case deals with the interpretation of the term ‘information’ as that term is used in the insider trading provisions of the *Corporations Act*.

The case concerns the defendant’s activities with respect to 2 corporate entities, namely *My Casino Limited*, later known as *Euraust Limited*, and *AdultShop.com Limited*. Whilst possessing information obtained from sources within the corporate entities the defendants conspired to engage in insider trading. The information was both material in the sense of being price sensitive and not generally available at the relevant time.

In relation to *My Casino* 8 separate groups of ‘inside information’ were alleged to have been possessed by the relevant defendant during the relevant periods. In relation to *AdultShop.com*, the prosecution particularised 4 separate groups of ‘inside information’ alleged to have been possessed by the relevant defendant during the relevant period.

Kizon and Mansfield were jointly prosecuted in relation to the following charges on indictment:

- Counts 1, 9, 12, 13, 14, 16, 17, 21 and 23 each alleged a conspiracy between Mansfield and Kizon pursuant to section 11.5 *Criminal Code* to commit an offence contrary to section 1311(1) *Corporations Act* by contravening the insider trading provisions of s.1002G (before 11 March 2002) and s.1043A (on and after 11 March 2002);

- Counts 1A to 1G, 9A to 9E, 13A, 14A and B, 16A and 16B, 21A to 21H and 23A alleged substantive insider trading offences against Mansfield alone. These were alternatives to the conspiracy charges;
- Counts 2, 3, 4, 5, 7, 8, 10, 11, 15, 19 and 20 alleged substantive insider trading offences against Mansfield alone. These were ‘stand alone’ insider trading offences;
- Counts 12A to 12C, 18 and 22 alleged substantive insider trading offences against Kizon alone. These were also alternatives to conspiracy charges;
- Count 6 alleged a communication count against Mansfield alone.

#### DISTRICT COURT OF WA

The trial commenced in the District Court of WA on 18 January 2010 and ran for 10 weeks. On 22 March 2010, pursuant to section 108(1)(a) of the *Criminal Procedure Act 2004* (WA) Wisbey DCJ entered a verdict of acquittal with respect to all counts other than counts 2, 3, 19 and 20. On 25 March 2010 the jury returned a verdict of not guilty on the 4 remaining counts against Mansfield alone.

On 19 March 2010 Wisbey DCJ handed down a ruling on the effect of the falsity of ‘information’ possessed by accused persons. In relation to the

counts which were the subject of the Ruling and as a result of evidence given at trial by various witnesses, the prosecution conceded that the jury could not be satisfied beyond reasonable doubt that the information relied upon in support of those counts was fact.

In the ruling, His Honour concluded that the ‘information’, particularised by the prosecution and allegedly possessed by each of the defendants at relevant times, “*must, in general circumstances, be a factual reality*”. Accordingly, he ruled he would direct a verdict of acquittal in respect of all counts on the indictment save for counts 2, 3, 19 and 20. With respect to the 4 remaining counts there was evidence capable of establishing the factual reality of all or most of the particularised matters.

#### WA COURT OF APPEAL

Subsequently, the prosecution successfully appealed the ruling to the WA Court of Appeal with judgment being handed down on 16 June 2011. The Court of Appeal allowed the appeal, set aside the verdicts of acquittal and remitted the *AdultShop.com* counts back to the District Court for retrial.

Kizon and Mansfield have now each lodged applications for special leave to appeal to the High Court against the judgment of the Court of Appeal.

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## Insider Trading

### JEFFREY BATESON

The defendant was a director of Wind Hydrogen Limited (WHN) between June 2006 and July 2008. In that capacity, between 4 and 9 May 2008 he became privy to confidential information regarding a proposed ‘farm-in’ deal in a shale-gas project in Kentucky USA between WHN and a Canadian and North American company.

He became aware of WHN’s chief executive officer’s view that the project could contribute potential share price value of 85c per WHN ordinary share. He obtained the inside information through his participation in board discussions, meetings and email communications.

While in possession of this inside information, on 11 May 2008 the defendant placed a buy order with his broker for 500,000 WHN shares, which he later amended to 550,000 shares. The order was filled in 5 increments, from 12 May 2011 to 16 May 2011, with Bateson receiving trading advice updates during this period. He paid between 8 and 10.5c for each share being a total of \$53,497.97.

The deal was announced on the Australian Stock Exchange on 16 May 2008. In the fortnight following the announcement, the daily closing share price for WHN ranged between 10.5c and 13.5c.

Bateson did not ultimately derive a profit from his trading.

The defendant was charged with insider trading contrary to section 1043A(1) with section 1311(1) of the *Corporations Act* and pleaded guilty to that offence.

On 24 June 2011 the defendant was sentenced to imprisonment for 2 years to be served by way of an Intensive Correction Order and fined \$70,000.

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## *Market Manipulation*

JEFFREY JOSEPH BRAYSICH

This matter was reported in the 2007–2008 Annual Report at pages 40–41.

This matter involved a large and complicated stock market manipulation. The trading spanned almost 2 months, involved a large pool of traders and trading account entities and the trading of several million shares in a lightly traded stock.

Between 2 January 1998 and 27 February 1998, a co-accused of Braysich, Dean George Scook who was based in WA, orchestrated a number of transactions in the shares of Intrepid Mining Corporation NL (IRO), including transactions resulting in no change in beneficial ownership and the placing of corresponding buy and sell orders designed to substantially match in price and volume. Section 998(5) of the *Corporations Act* deems this type of trading to create a false or misleading appearance of active trading.

Scook also orchestrated trades in IRO shares between third parties who traded at his direction. Such trades were often designed to substantially match, thereby keeping the defendant-controlled IRO shares in constant circulation.

The share trades that were the subject of the charges utilised over 11 million IRO shares and represented 50% of the total volume of IRO shares traded during the period of the charges. Braysich, who was a director of stockbroking firm, Paul Morgan Securities Ltd, facilitated much of Scook's unlawful trading, particularly trades involving no change in beneficial ownership, whilst knowing of Scook's unlawful purpose.

### **DISTRICT COURT OF WA**

On 10 November 2007 Scook and Braysich were convicted of 158 and 24 counts respectively of creating a false appearance of active trading pursuant to section 998(1) of the *Corporations Act*.

The defendants were sentenced on 23 November 2007. Scook was sentenced to 3 years imprisonment to be released after 14 months upon entering into a recognisance release order in the sum of \$5,000 to be of good behaviour for 22 months. Braysich was fined \$1,000 for each count, totalling \$24,000.

## WA COURT OF APPEAL

Scook appealed to the WA Court of Appeal against both his conviction and sentence. The appeal against conviction was abandoned before the hearing and the appeal against sentence was dismissed.

Braysich also appealed against his conviction to the Court of Appeal of the Supreme Court of WA. That appeal was unsuccessful and subsequently Braysich sought and obtained Special Leave to Appeal to the High Court.

## HIGH COURT OF AUSTRALIA

Braysich's appeal to the High Court was heard in Perth on 19 October 2010 and judgment was delivered by the High Court on 11 May 2011 with the appeal having been allowed, Braysich's convictions quashed and the matter remitted to the District Court for a new trial. The prosecution case at trial had been that Braysich had caused a sale of listed shares to be made in circumstances in which, to his knowledge, there had been no change in their beneficial ownership. If that fact were established Braysich was, by force of section 998(5) of the *Corporations Act*, deemed to have created a false or misleading appearance of active trading in shares.

The prosecution case was that the finding of fact and the application of the deeming provision was sufficient for conviction. Braysich, however, wished to rely at trial upon a statutory defence, under section 998(6) of the *Corporations Act*, that the purpose or purposes for which he caused the sales to take place did not include the purpose of creating a false or misleading appearance of active trading.

At trial, the judge ruled at the close of Braysich's testimony that he had not raised the statutory defence and he directed the jury accordingly.

The outcome of Braysich's appeal both to the Court of Appeal and to the High Court turned upon whether the trial Judge erred in withdrawing the statutory defence from the jury and in not permitting the appellant to call expert evidence said to be relevant to that defence.

The Court of Appeal dismissed Braysich's appeal against conviction and held that the statutory defence was properly withheld from the jury however the High Court disagreed with that view and held by majority that the trial judge erred in withdrawing the statutory defence from the jury.

It should be noted that the provision under which Braysich was tried and convicted and which contained the statutory defence provision has now been repealed.

On 8 August 2011 the prosecution of Braysich was discontinued on public interest grounds.

## Unlicensed Financial Services

### *Dishonest Conduct*

GRAEME RONALD HOY AND IAN STUART RAU [CHARTWELL ENTERPRISES PTY LTD]

In this case Hoy received the highest head sentence ever imposed in a matter referred by ASIC.

Chartwell Enterprises Pty Ltd operated a financial services business in Geelong. Hoy was the sole director and was responsible for attracting investors and liaising with them and Rau was the company secretary and primarily responsible for trading investor funds.

Investors were informed and understood that their funds would be pooled with other funds which would then be used to trade on the financial markets in the expectation of generating profits. Most funds were raised through ‘syndicate leaders’.

ASIC conducted an investigation relating to the period January 2007 to April 2008 (when Chartwell was placed into administration), during which period Chartwell received \$21,852,062.18 of investor funds. Only \$429,139.00 was traded on the financial markets. The balance of the funds was either returned to investors as purported interest or used to pay wages and lifestyle expenses – including payments on a luxury yacht and Rolls Royce. In effect Chartwell was what is commonly known as a Ponzi scheme whereby funds of one investor are used to pay ‘interest’ to other investors or in some cases to the same investor.

Hoy explained to potential investors that Chartwell had developed sophisticated trading systems, and used the trading methodologies of WD Gann, to generate high profits for its investors, regardless of whether the financial markets were going up or down. Hoy said that the trading systems used by Chartwell allowed it to make profits that were not generally available to others. In many cases Hoy told investors that Chartwell had sophisticated risk management systems that identified when investments would be affected. It was asserted that these systems allowed Chartwell to take evasive action to minimise the prospect of making a loss on the trades.

In the majority of cases Hoy explained to investors that Chartwell would pay a fixed interest rate on their investments, which would be paid either monthly, quarterly or yearly. However, in some circumstances Hoy offered to pay investors a variable return based on the performance of the trading activity. Alternatively, investors could also roll over their interest payments so that interest they received on their investments was compounding. The defendants also represented that interest was paid on a sliding scale and was indexed according to the level of investment. That is, the more invested the greater the interest rate.

In addition to the verbal representations made by Hoy, most investors were shown the business operations of Chartwell. That usually included a tour of the Chartwell office in Geelong, where numerous staff were employed as market analysts and where numerous charts were displayed on walls depicting the financial markets in which Chartwell had purportedly invested. This tour reinforced the representations made by the defendants and influenced the decision to invest in Chartwell.

Contrary to the assertions by the defendants and the facade of success and systems, in reality Chartwell was a poorly run organisation, with a lack of proper systems and funds with which to trade. Chartwell was effectively broke from mid-2006, and required new investor funds in order to meet its daily financial commitments and to pay purported interest to investors. Investor funds were not invested as represented by Hoy, but were utilised on a needs-basis to pay ‘interest’ – failure to pay would have revealed the parlous state of Chartwell’s finances, caused a run on its remaining funds and effectively brought to an end its operations much sooner than transpired – as well as to pay ongoing business expenses of Chartwell and personal expenses of the defendants.

The defendants were charged with the following offences:

#### Hoy

- 34 counts of obtaining a financial advantage by deception pursuant to section 82(1) of the *Crimes Act 1958* (Vic);
- 10 counts of obtaining property by deception pursuant to section 81(1) of the *Crimes Act 1958* (Vic);
- 1 count of carrying on a financial services business without a licence pursuant to section 911A(1) of the *Corporations Act*;
- 1 count of engaging in dishonest conduct in carrying on a financial services business pursuant to section 1041G(1) of the *Corporations Act*; and
- 1 count of dishonestly making improper use of his position as a director with an intent to gain an advantage pursuant to section 184(2)(a) of the *Corporations Act*.

#### Rau

- 1 count of carrying on a financial services business without a licence pursuant to section 911A(1) of the *Corporations Act*;
- 4 counts of engaging in dishonest conduct in carrying on a financial services business pursuant to section 1041G(1) of the *Corporations Act*;



- 1 count of make a false document pursuant to section 83A(1) of the *Crimes Act 1958* (Vic);
- 1 count of use a false document pursuant to section 83A(2) of the *Crimes Act 1958* (Vic); and
- 1 count of obtaining property by deception pursuant to section 81(1) of the *Crimes Act 1958* (Vic).

Rau pleaded guilty and was sentenced in the Supreme Court of Vic on 19 August 2010 to a total effective sentence of 2 years and 7 months to be released after serving 18 months. Rau's sentence was discounted due to both his plea of guilty and agreement to give evidence against Hoy. The Court indicated that if Rau had neither pleaded guilty nor undertaken to give evidence a sentence of 5 years imprisonment with a non-parole period of 3 years and 3 months would have been imposed. Also, if Rau had pleaded guilty but not undertaken to give evidence a sentence of 3 years and 9 months with a non-parole period of 2 years and 3 months would have been imposed.

Hoy pleaded guilty and was sentenced in the Supreme Court of Victoria on 23 March 2011 to a total effective sentence of 13 years and 9 months imprisonment with a non-parole period of 9 years. His Honour declared pursuant to section 6AAA of the *Sentencing Act 1991* (Vic) that but for the defendant's plea of guilty he would have fixed a total effective sentence of 16½ years with a non-parole period of 12 years.

On sentence Forrest J said:

*"I consider that the aspects of general deterrence, punishment and denunciation must be given significant weight in this exercise. You have been responsible for fraud on a grand scale. You have practised it on the vulnerable and the gullible. You have caused incalculable damage to decent people whose only fault was to believe your lies. Those people have either been ruined financially or significantly financially impaired. You have humiliated them all. The sentence I am about to pass is designed in part to punish your criminality, denounce your conduct and deter like-minded others. Those contemplating fraud on this scale must understand that long terms of imprisonment await them."*





## *Unlicensed Financial Services and Fraud*

STEPHEN McARDLE AND POWER FINANCIAL PLANNING

McArdle was a director of a number of companies that made up the Power Loan group of companies. Power Loan was primarily involved in mortgage broking. It also had a financial planning limb to its business that utilised the services of licensed financial planners from another company. In about October 2004 the properly authorised financial planners ended their relationship with Power Loan, leaving no one with an Australian Financial Service Licence (AFSL), nor any authorised representatives of an AFSL holder, and therefore an inability to provide financial services. McArdle was aware of this, and was also aware that Power Loan would have legal problems if it dealt in financial products without an AFSL.

Shortly after the financial planners left, McArdle was involved in establishing Power Financial Planning (PFP) which was created for the purpose of resuming the sale of financial products. McArdle was a director of PFP and entered into both marketing and commission arrangements on behalf of PFP with a group of companies that sold financial products (collectively referred to as 'Kebbel'). Whilst Kebbel had an AFSL, it was only permitted to provide limited financial services. Kebbel advised McArdle of a method whereby PFP could supposedly become involved in the sale of financial products as a referrer, without breaching the law.



Kebbel provided McArdle with literature relating to products that it was authorised to sell. These included promissory notes issued by the Westpoint group. From December 2004 Power Loan employees were instructed to refer potential clients to marketers within the company so that investment in various financial products could be discussed with them. The marketers then assisted the clients to apply to purchase financial products and in many instances, made favourable comments about the products. The completed application forms and investment monies were then collected by the marketers and forwarded to McArdle, who then forwarded them to Kebbel. McArdle was involved in overseeing commission payments made by Kebbel to PFP, and distributing the payments to the marketers and others involved in the particular sale. McArdle instructed his marketers to advise the clients that PFP was acting as an agent for Kebbel and that PFP was not providing advice. Clients were required to complete a 'no advice' form confirming that they had not received any financial advice from the marketers/PFP.

McArdle was charged with aiding, abetting counselling or procuring PFP to carry on a financial services business when PFP did not hold an Australian financial services licence covering the provision of financial services pursuant to sections 911A(1) and 1311(1) of the *Corporations Act*.

McArdle pleaded not guilty and PFP pleaded guilty. McArdle's trial ran for approximately 9 days in September 2010. Judgment was delivered on 12 November 2010.

The court found that between 1 January 2005 and 30 November 2005 PFP presented investors with financial product advice, accepted investment application forms from investors, forwarded those to Kebbel, arranged for loans to fund purchase of financial products and received commission payments from Kebbel for those services. The court held that any one of these activities may have been sufficient to constitute dealing in financial products, but in combination was clearly dealing in financial products, and found the charge proven. The behaviour was intentional and PFP/McArdle knew that it did not hold an AFSL. The court found McArdle guilty of aiding, abetting counselling or procuring the conduct of PFP by virtue of his involvement in the scheme.

The investments failed, generating significant losses to the investors. The court found that the losses to the investors who provided statements at trial were \$961,000 although the total loss to investors was in the order of \$10.3 million. The court also noted the hardship endured by the investors who provided victim impact statements to the court.

Both defendants were sentenced in the SA Magistrates Court on 24 November 2010. PFP was convicted and fined \$33,000. McArdle was sentenced to 1 year imprisonment to be released after serving 6 months on condition he be of good behaviour for 6 months. Both defendants were ordered to make reparation to the victims in this matter.

The Judge on sentence remarked that:

*“...strict compliance with the financial services law requires a provider to have adequate resources to supervise the compliance, to maintain competence to provide the financial services, to ensure that representatives are adequately trained and to have adequate risk management systems. There are also other requirements to have arrangements for compensating retail clients for losses or damages suffered. All this is designed to achieve the main object of that chapter of the Corporations Act 2001, which is that consumers should be able to be confident and make informed decisions about financial products, that there is fairness, honesty and professionalism by those who provide the financial service and a reduction of systemic risk... it is clear that the failure of the company PFP to have a licence – with the awful consequences to the victims that have been demonstrated – goes to the heart of the reason why the licensing regime is in place.”*

## Commercial Fraud

### *Commercial Fraud*

ERIC KRECICHWOST

The defendant was the principal of the Fincorp Group during 2003 (the period of the charges). Fincorp Investments Ltd was the corporate vehicle through which the Fincorp Group obtained investments from the public by offering secured and unsecured notes through prospectuses issued in 2002, 2003 and 2005. Fincorp Investments Ltd (via a related service company Guardian Mortgages Pty Ltd), lent most of the funds it raised through the prospectuses to a number of property development companies beneficially owned and controlled by the defendant and members of his family.

On or about 1 September 2003, the defendant in his position as a director of Fincorp Investments Ltd signed a cheque in the amount of \$900,000 payable to one of the property development companies (Bridgewater Developments Pty Ltd) for the purpose of enabling Bridgewater Pty Ltd to pay himself or his private company Crest Capital Pty Ltd purportedly for ‘commission and management fees’. Neither he nor anyone associated with Crest Capital Pty Limited had provided any such services in relation to those properties to justify the payment of such a fee.

On or about 27 October 2003, the defendant in his position as a director of Fincorp Investments Ltd, co-signed a cheque in the amount of \$1,980,000 payable to Prime Consulting Group Pty Ltd, a company owned and controlled by his brother, purportedly for services provided in relation to the identification of a property. Neither the offender nor anyone associated with Prime Consulting Group Pty Ltd had provided any such services to justify the payment of such a fee.

The total financial advantage obtained by the defendant from the transactions was \$2,310,000 for himself and \$495,000 for his family.

The defendant was charged with 3 counts of intentionally directly or indirectly gaining an advantage for himself or someone else or causing detriment to the corporation pursuant to section 184(2)(a) of the *Corporations Act*.

The defendant pleaded not guilty and was found guilty by a jury on 16 February 2011. He was sentenced on 8 April 2011 in the NSW District Court to a total sentence of 3 years and 7 months imprisonment with a non-parole period of 8 months.



## 2.4 Counter Terrorism

The prosecution of terrorism offences pursuant to Part 5.3 of the *Criminal Code* continues to be an essential part of the work of the CDPP.

The CDPP has designated specialist counter-terrorism prosecutors in each regional office and has established Counter-Terrorism Branches in the Sydney and Melbourne Offices and Head Office. These branches are staffed by experienced senior prosecutors. Head Office oversees the conduct of counter-terrorism prosecutions.

Following the provision of briefs of evidence, the CDPP evaluates whether the *Prosecution Policy* is satisfied and when appropriate conducts any prosecution. In addition to prosecuting such matters, the CDPP also makes itself available to investigative agencies to provide early advice during the course of the investigations. The CDPP enjoys positive and effective working relationships with these agencies. The CDPP continues to contribute to inter-agency projects which assist in building counter-terrorism investigative and prosecutorial capacity.

The terrorism matters prosecuted by the CDPP under the *Criminal Code* have involved conduct preparatory to the commission of a terrorist act. The majority of these prosecutions have been built around surveillance and electronic intercept evidence collected by Australian authorities over extended periods of time. The circumstantial nature of these cases and the quantity of surveillance and intercept evidence collected means that these prosecutions are very complex factually. The CDPP's experience has been that terrorism prosecutions are often subject to numerous interlocutory appeals and challenges.



This year, as reported below, the CDPP prosecuted 5 Melbourne men accused of conspiring to do an act in preparation of a terrorist act that involved a threat to the Holsworthy Army Barracks in Sydney. This investigation involved tens of thousands of telephone calls, SMS messages and hours of recorded material from listening devices. The trial, including pre-trial legal argument, was successfully completed within 6 months, and only 16 months after the initial arrests. The jury found 3 of the 5 defendants guilty.

As at 30 June 2011, there were 5 people facing charges for Commonwealth terrorism offences, all of whom were held in custody. A further 3 people were awaiting sentence under Commonwealth terrorism offences, and there were 6 individuals involved with appeals under the same provisions.

## Counter-Terrorism

ABDIRAHMAN MOHAMUD AHMED, SANAY EDWO AWEYS, WISSAM MAHMOUD FATTAL, YACQUB KHAYRE & NAYEF EL SAYED

This case was reported in the 2009–2010 Annual Report at page 47.

Each of the defendants in this matter were alleged to be part of a plan for a number of men, armed with high powered weapons, to enter the Holsworthy Army Barracks and fire at whoever they saw until they themselves were killed or overwhelmed. The AFP arrested the defendants in Melbourne on 4 August 2009.

The defendants were charged with conspiring to do acts in preparation for, or planning, a terrorist act pursuant to sections 11.5(1) and 101.6(1) of the *Criminal Code*.

On 23 December 2010, following a trial lasting some 5 months in the Supreme Court of Victoria, a jury found Fattal, Aweys and El Sayed guilty of conspiring to do acts in preparation for, or planning, such a terrorist act. The remaining defendants, Khayre and Ahmed, were acquitted.

The convicted defendants are yet to be sentenced.

## Counter-Terrorism

ABDUL NACER BENBRIKA, AIMEN JOUD, FADL SAYADI, ABDULLAH MERHI, AHMED RAAD, EZZIT RAAD, AMER HADDARA

Cases involving these defendants were reported in the 2007–2008 Annual report at pages 49–50 and the 2008–2009 Annual Report at pages 57–58.

On 15 and 16 September 2008 in the Supreme Court of Victoria a jury found the defendants guilty of intentionally being members of a terrorist organisation pursuant to section 102.3(1) of the *Criminal Code*. The organisation was said to be a local, home grown, terrorist organisation led by Benbrika committed to preparing, planning, assisting in or fostering the doing of a terrorist act. Joud, Ahmed Raad and Sayadi were also each found guilty of intentionally providing resources to the same terrorist organisation pursuant to section 102.7(1) of the *Criminal Code*. Ahmed Raad, Joud and Ezzit Raad were found guilty of attempting to intentionally make funds available to the terrorist organisation pursuant to section 102.6(1) of the *Criminal Code*.

Joud and Benbrika were found guilty of possessing a thing connected with the preparation for a terrorist act pursuant to section 101.4(1) of the *Criminal Code*. Benbrika was also found guilty of intentionally directing the activities of the terrorist organisation pursuant to section 102.2(1) of the *Criminal Code*.

On 3 February 2009 the Supreme Court of Victoria sentenced the defendants as follows:

**BENBRIKA:** convicted and sentenced to a total effective penalty of 15 years imprisonment with a non-parole period of 12 years;

**JOUD:** convicted and sentenced to a total effective penalty of 10 years imprisonment with a non-parole period of 7½ years;

**SAYADI:** convicted and sentenced to a total effective penalty of 8 years imprisonment with a non-parole period of 6 years;

**MERHI:** convicted and sentenced to be imprisoned for 6 years with a non-parole period of 4½ years;

**AHMED RAAD:** convicted and sentenced to a total effective penalty of 10 years imprisonment with a non-parole period of 7½ years;

**EZZIT RAAD:** convicted and sentenced to a total effective penalty of 6½ years imprisonment with a non-parole period of 5 years and 9 months;

**HADDARA:** convicted and sentenced to 6 years imprisonment with a non-parole period of 4½ years.

Applications for leave to appeal against conviction and sentence were lodged by all the defendants sentenced on 3 February 2009.

These appeals were heard by the Victorian Court of Appeal in March 2010. On 25 October 2010 the Court delivered judgment. The convictions recorded against each of the defendants with respect to the principal offences were upheld. Convictions recorded against Benbrika and Joud for possessing a thing connected with preparations for a terrorist act, contrary to sub-section 101.4(1) of the *Criminal Code*, were overturned. The defendants were re-sentenced. Applications for special leave to appeal to the High Court of Australia against this judgment were lodged by Benbrika, Joud and Ezzit Raad. These applications were heard by the High Court in Melbourne on 10 June 2011. The applications were refused.

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## Counter-Terrorism

**BELAL SAADALLAH KHAZAAL**

This case was reported in the 2008–2009 Annual Report at page 59.

This was the first prosecution where a person was charged with attempting to incite a terrorist act. The defendant made a number of challenges to the indictment as well as Constitutional challenges to the validity of the *Telecommunications (Interception) Act 1979* and *Australian Security Intelligence Organisation Act 1979*.

The prosecution alleged that the defendant compiled a ‘book’ titled “*Provisions on the Rules of Jihad – Short Judicial Rulings for Fighters and Mujahideen Against Infidels*” using a pseudonym. The 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 that the book be published on a website. The book was subsequently published on the website and downloaded numerous times before it was removed. The defendant was arrested and charged on 2 June 2004.

The defendant was charged with 1 count of knowingly making a document connected with assistance in a terrorist act pursuant to section 101.5(1) of the *Criminal Code* and 1 count of attempting to incite the commission of a terrorist act pursuant to sections 11.1(1), 11.4(1) and 101.1(1) of the *Criminal Code*.

Following a 22 day trial the defendant was convicted of knowingly making a document connected with assistance in a terrorist act, but the jury was unable to reach a unanimous verdict on the offence of attempting to incite the commission of a terrorist act. The jury was discharged.

Sentence proceedings were heard over 14 November 2008, 20 February 2009 and 31 July 2009. On 25 September 2009 in the Supreme Court of NSW the defendant was sentenced to 12 years imprisonment with a non-parole period of 9 years. The defendant was due for parole on 31 August 2017.

On the same day as the defendant was sentenced, he lodged a notice of appeal against conviction and sentence. Appeal arguments were heard in the NSW Court of Criminal Appeal on 6 October 2010 and judgment was reserved.

On 9 June 2011 the majority of the NSW Court of Criminal Appeal found that the evidential burden in relation to the defence that the making of the document was not intended to facilitate assistance in a terrorist act had been satisfied. The appeal against conviction in relation to the fourth ground of appeal was allowed, the conviction was quashed and a new trial ordered.

On 6 July 2011 the CDPP filed an application for Special Leave to the High Court. The retrial is due to commence on 7 November 2011 pending resolution of the Special Leave Application.





## 2.5 Money Laundering

Money laundering prosecutions are typically complex prosecutions, involving complicated factual circumstances. These often involve overseas conduct requiring international cooperation and evidence to assist investigation and prosecution. The prosecution of these offences often requires detailed financial analysis and evidence. The CDPP is prosecuting an increasing number of money laundering prosecutions since the enactment of the money laundering offences in the *Criminal Code*.

The Federal Government enacted specific money laundering offences in 1987 with the passage of the *POCA Act 1987*. The Act included 2 money laundering offences – section 81 (money laundering) and section 82 (possession of property suspected of being proceeds of crime).

Following recommendations by the Australian Law Reform Commission in its report No. 87 – *Confiscation that Counts – A Review of the Proceeds of Crime Act 1987*, the legislature repealed sections 81 and 82 of the *POCA Act 1987* and replaced them with the current provisions relating to money laundering in Part 10.2 (Division 400) of the *Criminal Code*. Those provisions came into effect on 1 January 2003.

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## Money Laundering

TANESH BERNARD DIAS

The defendant, a foreign national, was a low to middle level operator of a Singapore based money laundering syndicate. The syndicate laundered cash derived from commercial narcotics trafficking. It used a method called ‘cuckoo smurfing’, which involved depositing cash into innocent third party bank accounts in Australia. This released the equivalent legitimate funds from the overseas money remitters also involved in the syndicate, which could then be forwarded to Europe as payment for the drugs.

The defendant received approximately \$8,115,560 from a drug syndicate, which he then counted and deposited. The bulk of the cash dealt with by the defendant was the proceeds of drug trafficking and related to the trafficking of 1.2 million ecstasy tablets in 2008. The defendant derived a personal benefit of approximately \$23,000 from the transactions. The defendant entered Australia on a false passport.

The defendant was charged with 1 count of recklessly dealing in the proceeds of crime where the value of the money was \$1,000,000 or more pursuant to section 400.3(2) of the *Criminal Code*.

The defendant pleaded guilty and was sentenced on 10 November 2010 in the County Court of Victoria to 7 years imprisonment with a non-parole period of 4½ years. The Judge declared that if the defendant had not pleaded guilty, he would have imposed a sentence of 8 years imprisonment with a non-parole period of 5½ years.

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## Money Laundering and Identity Fraud

MAN HON MA

This prosecution resulted from Operation Avarice, a joint operation by various crime authorities into large scale credit and identity card fraud in NSW. It is the largest prosecution of its kind to have been conducted by the Melbourne Office.

The defendant was supplied with false identification documentation and credit cards by a contact in Sydney. He then recruited, organised and instructed ‘shoppers’ to either withdraw large sums of cash from compromised bank accounts or make purchases using false credit cards.

The defendant on-sold the goods purchased to the Sydney contact, amongst others. As a result of the offending, approximately \$160,000 was withdrawn directly from bank accounts. The value of the goods purchased using compromised credit cards could not be determined.

The defendant’s operation was sophisticated and well organised. He had access to a banking call centre employee who supplied bank account details, including passcodes.



The defendant was charged with 3 counts of dealing in personal financial information pursuant to section 480.4 of the *Criminal Code*; 1 count of dealing in proceeds of crime greater than \$1,000 pursuant to section 400.7(1) of the *Criminal Code*; 1 count of dealing in proceeds of crime greater than \$10,000 pursuant to section 400.6(1) of the *Criminal Code*; and 1 count of conspiracy to obtain property by deception pursuant to sections 221 and 81(1) of the *Crimes Act* (Vic).

The defendant pleaded guilty and was sentenced in the County Court of Victoria on 6 December 2010 to 2 years imprisonment to be released after serving 12 months on condition that he be of good behaviour for 12 months.

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## Money Laundering

WENDY HUANG

Where a cash dealer, such as a bank, is a party to a transaction involving \$10,000 or more, or the transfer of funds overseas, it must report details of the transaction to AUSTRAC.

Between August 2003 and September 2010 the defendant used various false names to request a number of banks and a money remitter to transfer funds to bank accounts held in the People's Republic of China. By using false names, the defendant caused the cash dealers to make false reports to AUSTRAC. The defendant dealt with the money intending that it would become an instrument of crime by intentionally thwarting the reporting requirements relating to cash transactions. Over the course of the offending, the defendant made 295 separate transactions and transferred a total amount of \$2,652,470. The majority of the transfers involved amounts under \$10,000. Some of the transfers took place on the same day or on consecutive days.

The defendant was charged with 1 count of dealing with money intending that it would become an instrument of crime, when the value of the money was \$1,000,000 or more pursuant to section 400.3(1) of the *Criminal Code*.

The defendant also admitted an offence against section 30(1)(b) of the *Australian Passport Act 2005* and asked that this offence be taken into account by the Court in passing sentence.

The defendant was sentenced in the District Court of NSW to 6 years and 5 months imprisonment with a non-parole period of 4 years.

## Money Laundering

JIAN PING WANG AND ALEXANDER ROIZMAN

This matter was one of a number of complex prosecutions arising from an AFP investigation codenamed Operation Riparian.

On 24 December 2003 a number of persons, other than the defendants, defrauded the Commonwealth Superannuation Scheme (the Scheme) by way of a fraudulent facsimile. The fax was sent to the bank that was acting as custodian of the Scheme, instructing that funds of approximately AUD\$150 million be transferred to 4 designated bank accounts. Relevantly, the amount of HKD\$178,624,839.38 (approximately AUD\$30,582,000) was sent to an account held by a bank, located in Hong Kong, in the name of Hong Kong Power Ltd.

On 29 December 2003 the money transferred into the account held in the name of Hong Kong Power Ltd was made available on board a gambling vessel for use in playing baccarat.

Wang was involved in obtaining the account details for Hong Kong Power Ltd into which the funds from the Scheme were to be deposited. He travelled to Hong Kong on 23 December 2003. He later boarded the gambling vessel with a number of people, including Roizman. Wang returned to Australia on 6 January 2004.

Roizman assisted Wang in obtaining the account details for Hong Kong Power Ltd. He travelled to Hong Kong on 27 December 2003 and subsequently boarded the gambling vessel with a number of people. After gaming on board the vessel, Roizman was issued with a receipt in his name for HKD\$95,924,000 (approximately AUD\$16,700,000) which could be cashed at the Lisboa Hotel in Macau. Roizman travelled to Macau on 30 December 2003 and attempted, unsuccessfully, to cash the receipt. He returned to Australia on 1 January 2004.

The amount lost in the course of gambling was HKD\$19,700,000 (AUD\$3,430,500).

Wang was charged with recklessly dealing in the proceeds of crime to the value of \$1,000,000 or more pursuant to section 400.3(2) of the *Criminal Code*. Roizman was charged with recklessly aiding and abetting Wang in dealing with the proceeds of crime to the value of \$1,000,000 or more pursuant to sections 11.2 and 400.3(2) of the *Criminal Code*.

Following a trial in the District Court of NSW the defendants were convicted. Wang was sentenced to 10 years imprisonment with a non-parole period of 6½ years. Roizman was sentenced to 9½ years imprisonment with a non-parole period of 5½ years.

Both defendants have lodged notices of intention to appeal to the NSW Court of Criminal Appeal.



## A Project Wickenby Matter

### *Money Laundering and Fraud*

This Project Wickenby matter was investigated by the AFP that involved significant co-operation between AGD, CDPP, AFP and ATO.

The defendant was charged with money laundering contrary to section 400.3(1) of the *Criminal Code* and one count of doing an act with the intention of dishonestly obtaining a gain from the Commonwealth contrary to section 135.1(1) of the *Criminal Code*.

The defendant pleaded not guilty. In November 2010, following a 4 week trial, a Supreme Court jury found the defendant guilty of both charges. He was sentenced on 17 December 2010 to an effective head sentence of imprisonment for 8½ years with a non-parole period of 4 years and 9 months.

The defendant has appealed to the NSW Court of Criminal Appeal against the convictions and sentence.





## 2.6 People Trafficking, Slavery and Sexual Servitude

Australia's Commonwealth people trafficking offences include the offences of slavery, sexual servitude, deceptive recruiting, trafficking in persons and debt bondage. These offences are contained in Divisions 270 and 271 of the *Criminal Code*. While the majority of prosecutions to date have focused on trafficking for the purposes of sexual exploitation, labour trafficking is an emerging issue.

Since the commencement of Divisions 270 and 271 of the *Criminal Code*, 13 people have been convicted of people trafficking related offences. Nine of those defendants were convicted of slavery offences, 3 of sexual servitude offences and 1 of trafficking in persons. As at 30 June 2011, 6 people trafficking matters, involving 7 defendants, were before the courts. Two of those 6 matters were at the appeal stage.

The CDPP has now gained considerable experience in the area of people trafficking, which is a challenging one given the factual situations involved, the need for interpreters and reliance on overseas witnesses. Given the challenges in this area an effective and coordinated whole of government response is required in investigating, prosecuting and supporting victims. The CDPP works closely with government departments in the area of people trafficking and is a member of the Anti-People Trafficking Interdepartmental Committee.

These prosecutions rely on evidence from victims of the alleged offences. These victims require considerable support. The CDPP Victims of Crime Policy recognises the importance of treating victims with courtesy, dignity and respect.

## Sexual Servitude

### NAMTHIP NETTHIP

Between August 2005 and March 2008 the defendant conducted a business through which she organised the placement of 11 Thai women in brothels in Australian cities. Each victim was recruited from Thailand and had agreed that once in Australia, she would repay a ‘debt’ to the defendant of \$53,000.

The defendant was responsible for organising food, work-related medical expenses and mobile telephones for the victims, as well as supervising the placement of each victim in an Australian brothel. If a victim was dissatisfied with her placement, the defendant facilitated acceptable work conditions or transferred the victim to another brothel.

Except in the case of 1 brothel, each brothel deducted its fee and paid the remainder of her earnings to the victim. From her net earnings, each victim repaid her debt to the defendant by transferring cash or making a bank deposit. On average, repayment took about 6 months.

After expenses, the defendant received a net profit of between \$10,000 and \$18,000 per victim. The Court stated that it could not be confident that the total net profit to the defendant in relation to the 11 women exceeded \$70,000.

After a victim arrived in Australia on a visitor’s visa, the defendant would assist her to apply for a protection visa. For the purpose of substantiating a claim for refugee status made by each victim, the defendant provided her with false information about the conditions that she had experienced in Thailand and coached her in relation to the answers she should provide to DIAC officers. Once a victim had applied for a protection visa, she was entitled to work while she awaited the outcome of the immigration assessment.

The defendant pleaded guilty to 1 offence of conducting a business involving sexual servitude pursuant to section 270.6(2) of the *Criminal Code* and 1 offence relating to false migration documentation pursuant to section 234 of the *Migration Act 1958*. Ten other *Migration Act 1958* offences were also taken into account.

On 29 July 2010 the defendant was sentenced to 2 years and 3 months imprisonment to be released on a recognisance release order after serving a period of 13 months.

## Sexual Slavery

### TREVOR MCIVOR AND KANOKPORN TANUCHIT

This case was reported in the 2007–08 Annual Report at page 63 and in the 2009–2010 Annual Report at page 59.

This case resulted in the first convictions for slavery in New South Wales.

The defendant, McIvor, owned and co-managed with his wife, Tanuchit, a brothel known as ‘Marilyn’s’ in Fairfield, NSW. All 5 victims were recruited in Thailand to work in Australia between July 2004 and June 2006. Four of the 5 victims knew that they would be providing sexual services and 1 of the victims was given the false impression that she was coming to work as a masseuse.

When the victims arrived at Marilyn's, the defendants enforced an artificial 'debt contract' to repay an amount of between \$35,000 and \$45,000 by servicing clients at the brothel. The evidence at trial revealed that the defendants forced all victims to work 7 days a week, on average for 16 hours a day. Normally for each sexual service performed, the worker would be paid a portion of the full amount and the remainder went to the 'house'. However, the victims were paid cash on only 1 day of the week and the amount earned on the remainder of the week went to clearing their 'debt'.

During the victims' period of slavery, the defendants forced the victims to work and sleep in locked premises. The victims were not allowed to leave the brothel without being in the company of the defendants or a trusted associate. The defendants confiscated the victims' passports on their arrival and for a period of 1 to 2 months, restricted their access to telephones by confiscating their mobile telephones and locking brothel telephones with a PIN code. The defendants forced the victims to work during their menstruation and during severe illnesses and vaginal infections.

These offences were discovered by the AFP when one of the victims (the victim who thought she was to work as a masseuse), covertly obtained the telephone number of the Thai Consul-General and requested assistance.

#### DISTRICT COURT OF NSW

Following a jury trial, the defendants were each convicted of 5 counts of possessing a slave pursuant to section 270.3(1)(a) of the *Criminal Code* and 5 counts of exercising over a slave, powers attaching to the right of ownership, namely the power to use, pursuant to section 270.3(1)(a) of the *Criminal Code*.

The defendants were sentenced on 29 August 2008. McIvor was sentenced to a total effective sentence of 12 years imprisonment with a non-parole period of 7½ years. Tanuchit was sentenced to a total effective sentence of 11 years imprisonment with a non-parole period of 7 years.

The defendants appealed against their convictions to the NSW Court of Criminal Appeal.

#### NSW COURT OF CRIMINAL APPEAL

On 28 October 2009 the Court of Criminal Appeal allowed the defendants' appeals, quashed their convictions and ordered a new trial. This was due to the significant miscarriage of justice caused by the directions given to the jury based on the subsequently overruled judgment in *R v Wei Tang* (2007) 16 VR 454. The High Court appeal in *Tang* was reported in the 2008–2009 Annual Report at pages 70–71.

#### RE-TRIAL IN DISTRICT COURT OF NSW

On 30 July 2010, following the retrial, a jury found the defendants guilty of all the charges proven at the first trial. The defendants were sentenced in the District Court of NSW. McIvor was sentenced to 12 years imprisonment backdated to commence on 15 December with a non-parole period of 7½ years – the same penalty as was imposed after the first trial.

Tanuchit was sentenced to 12 years imprisonment backdated to commence on 18 December 2008 with a non-parole period of 7 years – a higher head sentence than that imposed after the first trial.



## Allowing a Non-Citizen to Work

SOONG MIN TAN

This matter was the first in Australia charging the offence of allowing a non-citizen to work in breach of a visa condition pursuant to section 245AC(1) *Migration Act 1958*. This offence provision came into force on 19 August 2007.

From November 1996 the defendant was the licensed operator of a brothel business known

The defendant was charged with 1 count of allowing a non-citizen to work in breach of a visa condition pursuant to section 245AC(1) of the *Migration Act 1958*. The defendant elected to have the matter proceed upon indictment and entered a plea of guilty on 31 August 2010.

“ a female non-citizen from Thailand was located hiding in the garage of the premises. ”

as ‘Oriental Plums’ under the *Prostitution Control Act 1994* (Vic). On 15 November 2007 a search warrant pursuant to section 251 of the *Migration Act 1958* was executed at Oriental Plums. The defendant was present during the execution of the search warrant. During the search, a female non-citizen from Thailand was located hiding in the garage of the premises. Investigations by DIAC officers confirmed that this woman held a sub-class 676 tourist visa with an ‘8101 no-work’ condition. With the assistance of a Thai interpreter, the woman informed DIAC officers that she had been working in the brothel as a sex worker and subsequently made a statement in relation to her employment.

On 8 December 2010 in the County Court of Victoria the defendant was convicted and released on condition that the defendant be of good behaviour for 4 years. As a condition of the bond the defendant was ordered to pay to the Commonwealth a pecuniary penalty of \$12,000. Pursuant to section 6AAA of the *Sentencing Act 1991* (Vic), His Honour stated but for the plea of guilty he would have imposed a sentence of 6 months imprisonment to be of good behaviour for 4 years and a fine of \$13,000.00.



## 2.7 People Smuggling

Offences for smuggling people into Australia are contained in the *Migration Act 1958*. Offences include organising or facilitating the bringing of groups of non-citizens into Australia, taking part in bringing a non-citizen into Australia in contravention of the *Migration Act 1958* and concealing a person who has illegally entered or intends to enter Australia.

“As at 30 June 2011 there were 304 people smuggling prosecutions involving organisers, captain and crew before the courts.”

This year has seen a substantial increase in the number of people smuggling matters prosecuted by the CDPP. As at 30 June 2011 there were 304 people smuggling prosecutions involving organisers, captain and crew before the courts.

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## *Extradition and People Smuggling*

HADI AHMADI

This case was reported in the 2009–2010 Annual Report at pages 60–61. It was the first trial of an extradited people smuggler involving multiple boats.

The defendant, an Iraqi national, facilitated the travel of people from Indonesia to Australia on board 4 separate vessels carrying a total of 911 passengers. The vessels arrived at Christmas Island on 25 March 2001, 22 April 2001, 4 August 2001 and 22 August 2001. The defendant was extradited to Australia from Indonesia on 26 May 2009.

The defendant was charged with 4 counts of facilitating the bringing of a group of 5 or more non-citizens to Australia pursuant to section 232A of the *Migration Act 1958*. In the alternative, the defendant was charged with 17 counts of taking part in bringing to Australia a non-citizen in circumstances where it might reasonably have been inferred that the non-citizen intended to enter Australia in contravention of the *Migration Act 1958*, pursuant to section 233(1)(a) of the *Migration Act 1958*.

Prior to the commencement of the trial, the defence argued that before their journey to Australia, the lives and safety of the passengers were threatened and the defendant's behaviour was the only reasonable way to respond to that threat. The trial judge rejected the prosecution's pre-trial application to remove the availability of the common law defence of necessity. His Honour was not prepared to make a determination as to whether the defence of necessity should be considered by the jury until all the evidence had been led.

The trial commenced in the District Court of Western Australia on 31 May 2010. After all the evidence had been led, the Judge revisited the prosecution's application and withdrew the defence of necessity from the jury.

On 11 August 2010 the defendant was found guilty of 2 of the 4 counts of facilitating the bringing of a group of 5 or more non-citizens to Australia.

On 24 September 2010 the defendant was sentenced to 7½ years imprisonment with a non-parole period of 4 years. The offences related to ventures prior to the mandatory sentencing regime. The defendant lodged an appeal against conviction.



## *People Smuggling*

MOHAMAD RUDI

In December 2009 the defendant and 3 others crewed a vessel carrying 55 Afghan asylum seekers from Indonesia to a point 16 Nautical Miles inside the Contiguous Zone near Ashmore Island, where the vessel was intercepted by officers of HMAS Launceston. Initially there were 6 crew on the vessel, but 2 left the vessel before it reached international waters.

It was established that in order to board the vessel, the passengers were taken on a long bus ride in the middle of the night to a remote beach where they were taken out in smaller boats to the vessel, which was moored in the ocean. There were no lights on the vessel or around it. The passengers were told to stay below deck and hide. During the journey the passengers, in cramped and uncomfortable conditions below deck, inhaled exhaust fumes from the engines and had to help the crew bail water when the vessel started filling with water. The food on board ran out after 2 days.

The defendant was charged with facilitating the bringing or coming to Australia of a group of 55 Afghani people, pursuant to section 232A of the *Migration Act 1958*. During the journey the defendant steered the boat and looked after the engine.

The defendant pleaded not guilty and was tried in the District Court of Western Australia along with 2 others. The trial lasted 15 days. After deliberating for 2½ days, the jury found the defendant guilty and acquitted the other persons tried.

The defendant was sentenced to 8 years imprisonment with a 5 year non-parole period. The defendant had a prior conviction in 2001 for an offence against section 232A of the *Migration Act 1958*, under the alias Moane, which predated the introduction of the higher mandatory minimum sentences for repeat offenders in section 233C of the *Migration Act 1958*. Whilst the higher mandatory minimum penalties did not apply to the defendant, the Court found these to be a helpful guide in sentencing.

An order was made to forfeit 5,724,000 Indonesian Rupiah found in the defendant's possession at the time of interception. This amount was equivalent to \$622.86.

## People Smuggling

ANWAR ABDULLAH, ANTO AND SAMSUL BAHAR

On 23 June 2009 a vessel carrying 50 passengers was intercepted near Ashmore Reef.

The defendants were each charged with 1 count of facilitating the bringing or coming to Australia of a group of 5 or more people to whom subsection 42(1) of the *Migration Act 1958* applied pursuant to section 232A of the *Migration Act 1958*.

The defendants pleaded not guilty and were tried by jury in the District Court of WA between 6 and 23 September 2010. The jury returned verdicts of guilty in relation to the defendants and one not guilty in relation to a further defendant.

On 8 October 2010 the defendants were sentenced to the mandatory minimum sentence of 5 years imprisonment to be released after serving 3 years pursuant to section 236B(3)(c) of the *Migration Act 1958*.

The defendants appealed against their convictions on the grounds that the trial Judge erred in law and fact and that there was a miscarriage of justice when he failed to direct the jury with regard to the defence of ‘mistake’ pursuant to section 9.1 of the *Criminal Code*. The purported mistake of fact claimed by the defendant was that they ‘did not know’ that the boat they were on would be used to transport passengers to Australia. Instead, they claim they were ‘duped’ or ‘tricked by other men’ and were under the mistaken belief that they had been hired to transport cargo, such as sugar syrup and crockery, to other parts of Indonesia and that by the time they realised this was not the case, it was too late to disembark.

The defendants claimed that there was evidence capable of supporting a defence of mistake of fact but the trial Judge failed to leave that defence to the jury for consideration and failed to direct that the prosecution had to disprove this defence beyond reasonable doubt. Leave to appeal has been granted.

The prosecution has also lodged an appeal against sentence on the grounds that the trial Judge erred as to the correct approach to sentencing in the context of the application of section 233C of the *Migration Act 1958* and that the trial judge erred by imposing a sentence which was manifestly inadequate having regard to all of the circumstances of the case.

Leave to appeal has been granted in relation to the prosecution’s first ground of appeal. The application for leave to appeal on ground 2 has been referred to the hearing of the appeal. Both the defence appeal against conviction and Crown appeal against sentence will be heard by the Court of Appeal at the Supreme Court of WA on 16 September 2011.

## *Detention Centre Riots*

ANPURAJAN ANTON, PRANAVAN SIVASUBRAMANIAM, KOLIKUMAR SUBRAMANIAM,  
GNANARAJAH JESURAJAH, ANANATHARAJEEVAN THANGARASHA.

This case relates to the Christmas Island Immigration Detention Centre riots that occurred in November 2009.

At about 4:30pm on Saturday 21 November 2009 an argument broke out within the compound of the Northwest Point Immigration Detention Centre on Christmas Island between persons detained as unlawful non-citizens. The initial argument concerned a game of pool and the use of a pool table in the Green Compound of the Centre. The argument escalated into a violent disturbance involving more than 50 people.

The disturbance culminated in a violent riot involving over 200 people at about 8:00pm that night. The riot involved detainees fighting and chasing one another with tree branches, pool cues, the tubing from broken soccer goals and broom handles. As a result of the violence, more than 50 people required medical treatment including 3 men who were immediately evacuated to Perth.

The defendants were each charged with 1 count of rioting pursuant to section 67 of the *Criminal Code* (WA) and 1 count of possessing a weapon pursuant to section 197B of the *Migration Act 1958*.

The defendants pleaded not guilty and a hearing was conducted in September 2010 in the Perth Magistrates Court. On 4 November 2010 Anton and Sivasubramaniam were convicted of both counts. Jesurajah was found not guilty of rioting but guilty of possessing weapons. Subramaniam and Thangarasha were found not guilty on both counts.

The 3 defendants were sentenced on the weapons charges to a 12 month good behaviour bond. On the riot charges, the 3 defendants were sentenced to 6 months and 1 day imprisonment to be suspended for a period of 6 months.

## *People Smuggling*

AHMAT BALA AND RUSLI MISI

The defendants were aboard a vessel that travelled from Indonesia to Ashmore Island carrying 28 passengers. The vessel was intercepted by the Royal Australian Navy on 27 September 2009. Bala was the captain and owner of the vessel. During a record of interview with the AFP, Bala said that he and his crew happened upon a distressed vessel while fishing in the seas of Indonesia. In return for payment of 5 million Indonesian rupiah, Bala and his crew were engaged to transport the passengers to Ashmore Island.

It was alleged that Misi was the mechanic and crew member who assisted Bala with steering the vessel. Two other crew members pleaded guilty to people smuggling offences and were sentenced in July 2010 to mandatory minimum terms of imprisonment.

The defendants pleaded not guilty to 1 count of facilitating the bringing to Australia of a group of 5 or more non-citizens, reckless as to whether those people had a lawful right to enter Australia pursuant to section 232A of the *Migration Act 1958*.

In February 2011 the defendants' trial commenced in the District Court of WA. Ten passenger witnesses and numerous witnesses from the Royal Australian Navy, DIAC and the AFP were called to give evidence. The prosecution relied upon passenger evidence to establish that each defendant actively participated as crew on the journey.

His Honour Judge Scott stated:

*“The conditions aboard your boat were cramped and very uncomfortable for the passengers. A number of the passengers were kept on the lower deck. The majority of them, it would seem, were seasick for a great deal of the voyage towards Ashmore Island. There were no lifejackets, nor*

*There were no lifejackets, nor other safety equipment. The boat was in poor condition for open-sea travel.*

Following a 23 day trial in the District Court of WA Bala was found guilty and sentenced to 5 years and 9 months imprisonment with a non-parole period of 3 years and 4 months. Misi was acquitted. At the sentence hearing the court found that the rendezvous with the second boat was a pre-arranged occurrence.

*other safety equipment. The boat was in poor condition for open-sea travel. The bilge pump was ineffective, for example, and the crew were required to operate a hand pump. ... To that end, the lives of the passengers during the course of this journey were potentially at risk.”*





## 2.8 Child Exploitation

Commonwealth legislation creates a number of offences relating to child pornography material, child abuse material, and grooming and procuring persons under the age of 16 to engage in, or submit to, sexual activity. These Commonwealth offences focus on use of telecommunication services such as the internet and telephone and postal services.

The purpose of the telecommunications-based child exploitation offences is to cover the range of activities that a person can engage in when using the internet, email, mobile phones and other applications to deal with child pornography and child abuse material, including viewing, copying, downloading, sending, exchanging and making available for viewing, copying or downloading. It also includes offences for using a carriage service to engage in sexual activity with a child, or causing a child to engage in sexual activity with another person.

The grooming and procuring offences are targeted at adult offenders who use the anonymity of the internet to win the trust of a child as a first step to the future sexual abuse of the child and to allow law enforcement to intervene before a child is actually assaulted.

Maximum penalties for some of these offences have recently been increased and reflect the community's abhorrence of this conduct. There are higher maximum penalties for aggravated offences, such as where the offending conduct occurs on 3 or more occasions and involves 2 or more people, or where the sexual activity involves a child with a mental impairment or a child who is under the care, supervision or authority of the defendant.

These offences are increasingly becoming more sophisticated through the use of networks to distribute material and the protection of material by encryption. Cases can involve hundreds of thousands of depraved and disturbing images of children and the scale and seriousness of this industry poses challenges for investigation and prosecution. Prosecuting these offences often involves complex technical and evidentiary issues. The CDPP works closely with the AFP, ACBPS and other law enforcement agencies in this area.

Dealing with such material requires prosecutors to hear or read stories of a disturbing nature and may involve viewing pornographic movies, photos and/or graphic material depicting explicit sexual acts involving serious harm to children. The CDPP has established an Employee Wellbeing Programme designed to implement practical policies and guidelines to support employees who may be at risk of experiencing trauma as a result of exposure to potentially distressing materials.

Division 272 of the *Criminal Code* focuses on child sex offences committed outside Australia by Australian citizens and permanent residents, ranging from possessing child pornography and child abuse material to engaging in sexual activity overseas with children under the age of 16. It is also an offence to encourage or benefit from these types of offences or to do an act preparatory to committing a child sex tourism offence.

## Online Child Pornography

### *Online Child Pornography*

CRAIG ALAN COLEMAN

On 4 October 2010, as a result of information provided to the AFP, a search warrant was executed at the defendant's home. During the search warrant AFP members seized 2 laptop computers, a computer tower and an external hard drive. Analysis of the seized computers and hard drives located 39,214 child pornography images and 2,489 child pornography videos.

Alleged State offences based on the video material are currently ongoing and are being conducted by the Office of the Director of Public Prosecutions (Vic).

The defendant pleaded guilty to 1 count of accessing child pornography using a carriage service pursuant to section 474.19(1) of the *Criminal Code* and 1 count of possessing child pornography pursuant to section 70(1) of the *Crimes Act 1958* (Vic).

On 25 May 2011 in the County Court of Victoria the defendant was sentenced to a total effective sentence of 18 months imprisonment to be released after serving 3 months on condition that he be of good behaviour for 15 months. The defendant was also registered as a sex offender pursuant to the *Sex Offenders Registration Act 2004* (Vic) for a period of 15 years. The defendant's computer equipment was forfeited.

In sentencing the defendant the court found that 'exceptional circumstances' existed as the defendant's wife suffered from severe multiple sclerosis. However, this did not mean that a wholly suspended sentence must follow. The court stated that the true balance in this sentence lay on the one hand between a consideration of the number and seriousness of the images which were downloaded, and on the other, the extent to which the Court ought to exercise mercy given the effect of a period of incarceration upon the defendant's wife.



## Online Child Pornography

BRADLEY JOHN GARGET-BENNETT

Queensland Police received information from Interpol regarding commercial child exploitation websites and, as a result, identified the defendant as having accessed a hard core child exploitation material website on 19 November 2006. The website consisted of a series of images of a young girl aged under 4 years old being raped by an adult male. A second series of images depicted several children, aged about 7 years old, engaged in a range of sexual acts with an adult male. The defendant's credit card was used to subscribe to the site.

On 13 September 2008, police officers executed a search warrant at the defendant's home. The defendant directed police to a computer and a number of compact discs that he admitted contained child pornography. Examination of the defendant's computer found 44,197 images of child pornography. A significant proportion of the images involved female children aged between 6 and 12 years of age.

Eighty-nine video files of child pornography involving children aged between 1 and 12 years were also identified. The majority of the videos involved children being penetrated.

The defendant advised police that he had been seeking therapy.

The defendant pleaded guilty to 1 count of using a carriage service to access child pornography pursuant to section 474.19(1) of the *Criminal Code* and 1 count of knowingly possessing child exploitation material pursuant to section 228D of the *Criminal Code (Qld)*.

### DISTRICT COURT OF QUEENSLAND

On 20 November 2009 in the District Court of Qld the defendant was sentenced to a total effective sentence of 3½ years imprisonment to be suspended after serving 21 months with an operational period of 2 years. The defendant appealed against the severity of the sentences imposed.

### QUEENSLAND COURT OF APPEAL

The Qld Court of Appeal heard the defendant's appeal on 1 April 2010. At the hearing the Court of Appeal raised whether charging an offence pursuant to section 474.19(1) between dates, as in this case, was duplicitous as the *Criminal Code* offence contemplated a discrete offence on every occasion a carriage service was used to obtain access to child pornography rather than an offence defined in terms of a course of conduct or state of affairs.

On 31 August 2010 the Qld Court of Appeal allowed the defendant's appeal on sentence and resented the defendant to total effective sentence of 2½ years imprisonment suspended after serving 10 months with an operational period of 2 years.

The CDPP sought Special Leave to appeal this decision to the High Court based upon the charging issue raised by the Queensland Court of Appeal.

#### HIGH COURT OF AUSTRALIA

On 13 May 2011 the High Court refused Special Leave however discussed the issue raised by the Qld Court of Appeal. The High Court held that the Court of Appeal did not hold that a charge under section 474.19(1) of the *Criminal Code* can never be constituted by more than one act. It followed then that a charge under that section can be brought as a composite 'between dates' count provided there is sufficient particularity to give certainty at sentence.

Justice Bell stated:

*"For the purposes of this application it is sufficient to note that the majority did not hold that a charge under section 474.19(1) of the Criminal Code can never be constituted by more than one act. Accordingly, the application does not raise an issue of general importance in the orderly administration of criminal justice. The interests of justice neither generally nor in this particular case, require a grant of special leave. Special leave is refused"*

## Online Grooming and Procuring

### *Online Grooming*

KENNETH JAMES ASPLUND

This case was reported in the 2009–10 Annual Report at page 66.

This case involved a cross–appeal on sentence. The defendant appealed to the NSW Court of Criminal Appeal on the basis that the sentence was manifestly excessive and the Crown appealed on the basis that the sentence was manifestly inadequate. The Crown appeal was upheld and the defendant was resentenced to serve more than double the original sentence.

On 29 October 2006 the defendant and the victim met in a public chat room on a website known as ‘*The Friendship Page*’. At the time of the offences, the defendant was 61–62 years of age and he believed the victim was 14 years of age. The victim was in fact 13 years of age. The defendant concealed his true age and told the victim he was 28. They were known to each other by their online usernames, ‘homie’ and ‘aussiegirl’.

The next day the defendant and the victim engaged in a private chat where they exchanged mobile telephone numbers.

Over the 3 month offence period, the defendant communicated frequently with the victim by mobile telephone and the internet. The communications included 7 public and private online chats on ‘*The Friendship Page*’ and hundreds of telephone calls and text messages to the victim’s mobile telephone. Throughout this period, the defendant also deposited \$2500 into the victim’s bank account.

The nature of the communications was sexually explicit, including the defendant questioning the victim about her sexual experience; requesting the victim to take an explicit photograph of herself; and asking the victim whether she would meet him for sexual activity in a hotel in Adelaide. The defendant also took an explicit photograph of himself and sent it to the victim’s mobile phone.

The offences were discovered when the victim’s mother discovered the photograph on the mobile phone and alerted South Australian Police.

The defendant was charged with 2 counts of using a carriage service to procure a person under 16 years of age for sex pursuant to section 474.27(1) of the *Criminal Code*.

The defendant pleaded not guilty to the charges and on 20 November 2009 the jury returned guilty verdicts on both counts. The defendant was sentenced on 19 March 2010 to a total effective sentence of 3½ years imprisonment with a non–parole period of 1 year and 9 months.

Both the defendant and the Crown appealed against this sentence.

On 16 December 2010 the NSW Court of Criminal Appeal upheld the Crown appeal and re–sentenced the defendant to a total effective sentence of 7 years imprisonment with a non–parole period of 4 years. The defendant will be eligible for parole on 18 March 2014.

## Online Grooming

CHRISTOPHER FRANCIS COSTELLO

A covert police officer posed as a 14 year old female in a message program and chat room.

Despite being advised during their first chat that the covert police officer was a 14 year old girl, the defendant engaged in sexually explicit chats with the ‘girl’ on 11 occasions over 10 days in a 31 day period in early 2009.

The defendant befriended the ‘girl’ by demonstrating an interest in her life. He gave the ‘girl’ instructions to masturbate, encouraged the ‘girl’ to masturbate, and took actions to desensitise the ‘girl’ to sexual matters. He described what he was doing as ‘sex education’. On 4 separate occasions, the defendant exposed himself to the ‘girl’ via webcam. He masturbated himself and shaved his pubic hair whilst on webcam with the ‘girl’ watching.

The defendant participated in a record of interview and confirmed that he chatted with the covert police officer online. During the interview with police, the defendant claimed that he thought the covert police officer was an adult male and did not believe that it was a female child. He did not deny taking part in the chat room conversations but claimed that they were fantasy. He also admitted exposing himself over webcam shaving his genitals to several people.

The defendant was charged with 1 count of using a carriage service to groom a person under 16 years pursuant to section 474.27 of the *Criminal Code* and 4 counts of using an electronic communication to expose a person under 16 years to indecent matter pursuant to section 218A(1)(b) of the *Criminal Code (Qld)*. He pleaded not guilty to these charges.

On 28 July 2010, following a 3 day trial in the Qld District Court, the defendant was found guilty on all counts. On 19 November 2010 the defendant was sentenced to a total effective sentence of 27 months imprisonment with a non-parole period of 13½ months.

The defendant appealed to the Qld Court of Appeal against the conviction and sentence. In a unanimous decision, the Court of Appeal dismissed the defendant’s appeals.



## Grooming and Procuring

JOHN KEITH WRIGHT

This matter involved the systematic attempt by an adult male to procure and groom a number of teenage girls to engage in sexual activity with him. The defendant successfully procured 2 teenage girls to engage in sexual activity with him. This matter demonstrates the interconnection between online and contact sexual offences involving children.

The defendant, who was aged between 23 and 24, was identified as a person who had been downloading child pornography from the internet. During a preliminary examination of the defendant's laptop that had been stolen from a school, police located internet chat logs recording conversations between the defendant and other internet users who appeared to be under the age of 16 years. Through further investigation into those chat logs, police were able to identify some of the other internet users who were under 16 years of age.

There were 10 female children involved between the ages of 13 and 15 years. The defendant engaged in sexual activity with 2 girls aged 15 years following communications via the internet. One of the offences related to the defendant leaving a message on one of the girl's social networking pages threatening her after she had spoken to police.

The defendant was also charged in relation to accessing and possessing child pornography.

The defendant pleaded guilty to the following 32 offences:

### COMMONWEALTH OFFENCES

- 7 counts of using a carriage service to procure a child under 16 pursuant to section 474.26(1) *Criminal Code*;
- 6 counts of using a carriage service to access child pornography material pursuant to section 474.19(1) *Criminal Code*;
- 3 counts of using a carriage service to groom a child under 16 pursuant to section 474.27(1) *Criminal Code*;
- 1 count of using a carriage service to cause child pornography material to be transmitted pursuant to section 474.19(1) *Criminal Code*;
- 1 count of using a carriage service to menace, harass or cause offence pursuant to section 474.17(1) *Criminal Code*.

### STATE OFFENCES

- 2 counts of indecent treatment of a child contrary to section 215(1) *Criminal Code (Qld)*;
- 10 counts of using the internet to expose a child to indecent matter pursuant to section 218A(1)(b) *Criminal Code (Qld)*;
- 1 count of receiving stolen property pursuant to section 433(1) *Criminal Code (Qld)*;
- 1 count of knowingly possessing child exploitation material pursuant to section 228D *Criminal Code (Qld)*.

On 13 December 2010 in the Supreme Court of Queensland the defendant was sentenced to a total effective sentence of 6 years imprisonment with a non-parole period of 2 years and 9 months. The laptop was forfeited.

## Child Sex Tourism

### *Child Sex Tourism*

GEOFFREY JOHN PRIGGE

*This was a complex child sex tourism case. The victims all resided in remote rural areas in Nepal and other relevant witnesses resided in Nepal, London and Ireland. The defendant was also convicted in his absence by a Nepalese Court of taking and publishing vulgar material pursuant to section 2(c1) of Some Public (Offence and Punishment) Act 2027. The defendant was fined 10,000 Nepalese Rupees (approximately AUD140 – AUD145). Significant legal argument regarding section 50FC of the Crimes Act and the principle of double jeopardy took place before the trial commenced.*

The defendant travelled to Nepal in 2006. Whilst in Nepal he met the young male victims whilst they were swimming at a river bank. The defendant asked and was provided with the victims' names, ages and addresses. The defendant also took indecent photographs of the victims at this time. In 2007 the defendant returned to Nepal and re-established contact with the boys. During this visit the defendant played and watched pornographic DVDs with the victims in his hotel room and showed them indecent photographs of other young males. The defendant committed an act of indecency on one of the young boys and attempted to engage in acts of indecency with the others whilst they were visiting him in his hotel room.

The defendant pleaded not guilty to 1 count of committing an act of indecency on a person under the age of 16 while outside Australia pursuant to section 50BC(1)(a) of the *Crimes Act* and 4 counts of attempting to commit an act of indecency on a person under the age of 16 while outside Australia pursuant to section 11.1 of the *Criminal Code* and section 50BC(1)(a) of the *Crimes Act*.

On 7 July 2010, following a trial, a jury found the defendant guilty on all counts. The defendant also pleaded guilty to 1 count of possessing child pornography pursuant to section 91H(3) of the *Crimes Act* (NSW). In the District Court of NSW the defendant was sentenced to a total effective sentence of 27 months imprisonment to be released on his own recognisance after serving 15 months.

## Child Sex Tourism

OSMAN SALMAN

In January 2009 a member of the community made a report to the AFP about the defendant stating that the defendant had shown him photographs of naked Thai girls and told him that he had sex with the girls during his trips to Thailand. The defendant said that the girls would start in ages from 13 to 15 years and were from villages surrounding Pattaya in Thailand.

On 29 April 2009 the defendant arrived in Australia by plane from Thailand. During an examination of the defendant's luggage by ACBPS officers, several DVDs, video cassettes and a video camera were located. On further examination of the DVDs, 6 DVDs were identified as containing footage of the defendant engaged in sexual activity with young girls under the age of 18. In particular, there was footage from December 2007 showing the defendant with one young girl on two different occasions in which the defendant was seen repeatedly sucking on her breasts. While doing so, he gave a running commentary on camera expressing his intention to have sexual intercourse with her. He also made other lengthy vulgar comments which were also classified as child pornography.

The defendant pleaded guilty to 1 count of importing child pornography without approval pursuant to section 233BAB(5) of the *Customs Act*; 1 count of committing an act of indecency on a person under the age of 16 outside Australia pursuant to section 50BC(1)(a) of the *Crimes Act* and 1 count of possessing a foreign travel document not issued to him pursuant to section 21(4) of the *Foreign Passports (Law Enforcement and Security) Act 2005*. Two further offences against the *Customs Act* were taken into account.

On 23 July 2010 in the District Court of NSW the defendant was sentenced to a total effective sentence of 5 years imprisonment with a non-parole period of 3 years and 4 months. The defendant will be eligible for parole on 31 October 2013.

The defendant has lodged an appeal against the severity of the sentence.

## Child Sex Tourism

JULIAN RONALD MOTI

This case was reported in the 2009–10 Annual Report at page 73.

On 27 December 2007 the defendant was deported from the Solomon Islands and returned to Brisbane. On his arrival, he was arrested and charged with 7 counts of having sexual intercourse with a child whilst outside Australia contrary to section 50BA of the *Crimes Act*.

The defendant entered a plea of not guilty and submitted in the Qld Supreme Court that the prosecution against him should be permanently stayed on grounds of abuse of process and bringing the administration of justice into disrepute.

The defendant argued that his deportation from the Solomon Islands was a ‘disguised extradition’ conducted at the behest of Australian authorities; that his removal from the Solomon Islands was unlawful and in contravention of his rights under Solomon Islands law; that the investigation was politically motivated and delayed; that the prosecution in Australia offended the principle of double jeopardy; that his arrest in Brisbane was unlawful; and that payments made to witnesses undermined confidence in the administration of justice.

On 15 December 2009 the Qld Supreme Court determined that the prosecution should be permanently stayed as the payments made by the AFP to witnesses living in Vanuatu brought the administration of justice into disrepute. The Court found that all the other grounds advanced by the defendant lacked merit.

The Director appealed against the decision of the Qld Supreme Court and the appeal was heard in the Qld Court of Appeal on 1 June 2010. On 16 July 2010 the Court of Appeal delivered its judgment and ordered that the stay be set aside. The Court of Appeal determined that there were 2 crucial errors in the original decision in that it failed to recognise that the payments were not designed to, and did not, procure evidence from the prosecution witnesses and it failed to pay sufficient regard to the fact that the payments, whilst outside existing guidelines, were not illegal.

The Court of Appeal stated:

*‘The conclusion that the making of the payments was such as to bring the administration of justice into disrepute if the prosecution were allowed to proceed was not, in my view, open on the facts.’*

On 13 August 2010 the defendant filed an application for Special Leave to Appeal in the High Court.

On 8 April 2011 the High Court of Australia granted special leave to the defendant to appeal against the order of the Court of Appeal. This case was heard by the High Court on 3–4 August 2011 and decision was reserved.



## Online Child Exploitation

### *Trolling*

BRADLEY PAUL HAMPSON

This is believed to be one of the first internet trolling cases prosecuted in Australia.

The defendant subscribed to tribute pages on a social networking site relating to the murders of 2 Queensland children in February 2010. One of the deceased children had lived in Brisbane and the other in Bundaberg. As news of their deaths spread through the media, thousands of people subscribed to each of these tribute pages and posted various sentiments of sympathy. Soon after the tribute pages were established, a number of ‘posts’ which contained offensive and insulting material, were posted on the tribute pages. This internet practice is commonly referred to as ‘trolling’.

A number of users were identified as having posted the offensive comments and material, but only the defendant was identified as being in Australia. The defendant posted not only offensive and sexualised comments about the children but he also morphed or manipulated publicly available images of each of the deceased children’s faces into sexualised and/or offensive contexts.

On his social networking profile, the defendant used the name of a person he knew from his childhood in Bundaberg who in turn received threats for this conduct. The posts were identified as originating from the defendant’s computer in Brisbane. Upon police executing a search warrant, the police located 96 images depicting or describing children in sexual acts and 106 images depicting sadistic images of children. The majority of these images were manipulated images of missing or murdered children, including Madeline McCann and James Bulger.

During the course of the prosecution of the matter, the defendant breached his bail undertakings by changing his residence without authorisation and accessing internet dating websites.

The defendant pleaded guilty to 1 count of distributing child exploitation material pursuant to section 228C of the *Criminal Code (Qld)*; 2 counts of using a carriage service to cause offence pursuant to section 474.17 of the *Criminal Code*; and 1 count of knowingly possessing child exploitation material pursuant to section 228D of the *Criminal Code (Qld)*.

On 22 March 2011 in the District Court of Qld the defendant was sentenced to a total effective sentence of 3 years imprisonment to be released after serving 12 months on condition that he be of good behaviour for 3 years.

The defendant appealed against this sentence to the Qld Court of Appeal. On 3 June 2011 the Court of Appeal allowed the defendant's appeal, took into account 220 days of imprisonment as time already served and resented the defendant to a total effective penalty of 2 years imprisonment to be released forthwith on condition that he be of good behaviour for 2 years.

The majority of the Court of Appeal expressed the view that an appropriate sentence for the Commonwealth offences would have been 2 years imprisonment to serve 8 months.







## 2.9 Environment, Safety, Cybercrime and General Prosecutions

The prosecution of Commonwealth offences that have an impact on the environment and public safety are an important part of the practice of the CDPP. Due to the breadth of Commonwealth criminal legislation, the CDPP is also responsible for prosecuting a range of offences that do not fall within the areas addressed in the previous sub-chapters.

With respect to crime impacting upon the environment and safety, the CDPP works closely with a number of investigative agencies. These include the Australian Customs and Border Protection Service (ACBPS); the Australian Competition and Consumer Commission (ACCC); the Australian Quarantine and Inspection Service (AQIS); and the Civil Aviation Safety Authority (CASA).

“Cybercrime is now a sophisticated transnational threat that operates on an industrial scale and has become an increasingly important issue for the global community.”

The House of Representatives Standing Committee on Communications has stated that, “Cybercrime is now a sophisticated transnational threat that operates on an industrial scale and has become an increasingly important issue for the global community.” Criminal activity is increasingly being committed utilising the internet and there are specific Commonwealth computer offences relating to the unauthorised access and modification of data and the impairment of electronic communications.

Offences in these areas can raise novel factual, technical and evidential issues and have cross-jurisdictional and transnational aspects, all of which give rise to challenges in prosecuting. Offences prosecuted this year cover a diverse range of subject areas including breaching an airport curfew; environmental pollution; unlawfully importing and possessing live specimens including shrimp and corn snakes; unlawfully importing restricted plants; and selling unsafe goods.

The CDPP has also prosecuted in areas such as perjury and in relation to ACC examinations.



## *Breach of Airport Curfew*

TIGER AIRWAYS PTY LTD

This is the first prosecution for this offence in South Australia since the legislation was enacted in 2000.

According to the curfew applying to Adelaide Airport, certain planes are not permitted to take off or land between the hours of 11pm and 6am, unless the take-off or landing is permitted under the *Adelaide Airport Curfew Act 2000*. The authority to grant permission is delegated to various people.

Tiger Airways was the operator of an aircraft that was due to depart from Adelaide Airport for Perth at 10.15pm on 30 August 2010. At about 10.30pm, information was received in Adelaide that the plane was likely to need a curfew dispensation. A few minutes later a Tiger employee phoned the delegate saying that the new scheduled departure time was about 11.05pm as the aircraft had experienced an engineering problem just prior to the scheduled departure time. A dispensation until 11.10pm was sought and granted.

At about 10.51pm, the delegate received another call from a Tiger employee requesting another dispensation until 11.20pm, as the plane didn't have enough fuel to depart and the fuel truck hadn't arrived yet. The delegate indicated that they might get another dispensation, but that this would be 'the absolute latest' that would be permitted. A further dispensation was granted.

At 11.22pm the defendant called the delegate and indicated that the Captain was seeking a further 5 minutes dispensation as the fuel truck had only recently arrived. The delegate advised that this was unlikely, and shortly thereafter the defendant indicated that it did not need the extra 5 minutes after all. The defendant was warned that if they breached the curfew they would be 'liable under the Act for not having approval for the take-off'. There was further contact between the defendant and Air Traffic Control in Adelaide (ATC), resulting in the Captain phoning ATC and conceding that the plane may not be able to meet the curfew and seeking to clarify the dispensation situation. He was advised that the dispensation did not apply after 11.20pm. About a minute later, the Captain rang back and asked if ATC would allow the plane to depart. ATC confirmed that they did not police the curfew and reiterated that there was no extension. The Captain then sought clearance to depart, saying that their 'Ops' were speaking to the Department at the time and would 'sort it out in the morning'. He advised that he had been told to depart. Just prior to departure one of the pilots was heard to make a comment to the effect that Tiger must think that 'it's worth paying a fine'. The plane departed at 11.41pm.



The defendant pleaded guilty to 1 count of engaging in conduct that results in a breach of curfew pursuant to section 6(1) of the *Adelaide Airport Curfew Act 2000*.

On 12 December 2010 in the Adelaide Magistrates Court the defendant was convicted and fined \$5,000. The Crown appealed against the inadequacy of this sentence.

On 22 March 2011 in the Supreme Court of South Australia the appeal was allowed and the defendant was resentenced and a fine of \$21,250 was imposed.

In resentencing the defendant Justice Anderson of the Supreme Court stated:

*"I think it is important to indicate that a flagrant breach, albeit with some deficiencies in the airlines communication systems, including its operation manuals, is a serious breach.*

*I am of the view that the magistrate did not properly consider the aspect of general deterrence in his assessment of the seriousness of the offence. It is a small price to pay, that is \$5000, for a deliberate breach of the curfew purely for reasons associated with the convenience and commercial advantage of the airline. It does not adequately bring home to the corporate offender the seriousness of the offence."*

## Crimes Impacting Upon Safety

### *Selling Unsafe Goods*

PHILIP JAMES ROBINSON

The defendant operated an online account for the purpose of selling clothing for infants and children. He used his account to advertise and sell ‘Grobag’ infant sleeping bags which he imported from a supplier in China.

In December 2007 the exclusive distributor for the products in Australia discovered that unauthorised Grobags were being sold online with a number of deficiencies, including no fire warnings or sizing at the neckline as required by the Australian Product Safety Standard (the Standard). The Grobags were covertly purchased and it was confirmed that they were old and rejected stock.

The exclusive Australian distributor posted a statement on its website advising potential purchasers of the existence of these Grobags on the market and also contacted the ACCC alleging that a number of online traders were selling Grobag infant sleeping bags which did not appear to adhere to the requirements of the Standard.

In January 2008 the exclusive Australian distributor emailed the defendant directly and recommended that he remove all Grobag items from his stock ‘in the interests of child safety’ and asked to buy all of his remaining stock. The distributor thereafter had several further contacts with the defendant seeking details of his stock and reiterating that the bags he was selling were non-compliant. The defendant asserted that the ACCC had assured him that the Grobags met Australian Standards and that he had examined the bags himself and was satisfied that there was no part of the bags that could harm a baby. He agreed to sell his stock to the distributor.

In January 2008 the ACCC sent a letter to the defendant’s email address informing him of the allegations and outlining requirements of the Standard. The defendant did not respond to the letter, but it was noted that he appeared to have ceased advertising Grobags online. At about that time the distributor informed the ACCC that the defendant had agreed to sell his remaining stock to it for destruction. The ACCC determined not to take any further action.

In May 2008 the distributor noticed the defendant was selling Grobags online again and advised the ACCC. ACCC staff then covertly purchased a number of Grobags from the defendant. In order to comply with the Standard, all garments were required to be labelled with a fire danger label and the bags purchased from the defendant did not have any such labels.

The defendant was subsequently interviewed and denied being aware of the letter from the ACCC.

The defendant pleaded guilty to 8 counts of supplying goods in respect of which there was a consumer product safety standard and the goods did not comply with the standard pursuant to section 76AZS(1)(a)–(c)(i) *Trade Practices Act 1974*.

On 17 January 2011 in the Federal Court the defendant was convicted and fined a total amount of \$11,000. In sentencing the defendant Besanko J said:

*“... I take into account the fact that the risk of fire and burning is a very dangerous one and that the goods which were the subject of the Standard were goods to be used by infants.”*

## Crimes Impacting upon the Environment

### *Environmental Pollution*

#### BOCIMAR INTERNATIONAL NV

The defendant was operating a Belgian vessel known as the CMB Yangtze off the coast of South Australia. On 23 June 2008 the CMB Yangtze was approximately 9 nautical miles south-west of Kangaroo Island when a RAAF surveillance flight observed discoloured water consistent with an oil slick trailing in the vessel's wake. The incident was reported to the AMSA, who then monitored the vessel. The CMB Yangtze eventually berthed at Whyalla, where it was to load a cargo of iron ore for delivery in China.

AMSA boarded and inspected the CMB Yangtze and served it with a 'Notice of Detention'. The defendant and crew cooperated with investigators. AMSA noted

and upon realising what had happened, became scared and did not report the incident.

Prior to being permitted to leave Whyalla, the vessel underwent repairs and the crew underwent training. AMSA undertook another survey and then permitted the vessel to depart.

The defendant was charged with 1 count of discharging oil/oily mixture into the sea in the Exclusive Economic Zone contrary to section 9(1B) of the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. The defendant pleaded guilty at an early stage.

On 2 March 2011 the Adelaide Magistrates Court convicted the defendant and imposed a fine of \$27,000.

... a RAAF surveillance flight observed discoloured water consistent with an oil slick trailing in the vessel's wake.

significant deficiencies in the operating procedures on board the vessel and the equipment that had discharged oil into the sea. It was found, for example, that the relevant equipment had not been installed in accordance with the manufacturer's requirements. An investigation revealed that at the time of the spillage, a junior engineer had incorrectly activated the equipment without supervision. About 15 minutes after commencing operation of the equipment, he realised that something was wrong. The engineer had not intended to cause a spillage

## Illegally Importing Animals

CHIH-HAN CHEN

In early 2008, the defendant and her boyfriend took an active interest in Bee Shrimp, including Crystal Red Shrimp (CRS). The defendant actively sought to obtain CRS and made some purchases from local pet shops in Brisbane. At the same time, she made enquiries in Taiwan about the availability of and breeding of CRS.

In mid-2008 the defendant commenced a series of advertisements and blogs on various internet fish forum sites advertising CRS for sale. This coincided with the arrival of Express Mail Service parcels from Taiwan that were intercepted at the Brisbane Airport Logistic Centre on 15 July 2008 and 27 August 2008.

On 4 November 2008 AQIS officers executed a search warrant at the premises where the defendant was working at the time. A number of items were seized from that address, including 3 computers. Subsequent analysis of these computers located a number of AQIS documents containing information relating to importation permits and importation of live animals.

On 16 December 2008, the defendant participated in a record of interview. She denied any involvement in the importations.

The importation of live crustaceans is prohibited absolutely. No import risk assessment has been conducted on live crustaceans and therefore even if the defendant had applied for an import permit, the application would have been rejected.

The defendant pleaded guilty to 2 counts of illegally importing animals pursuant to section 67(1) of the *Quarantine Act 1908*. On 28 January 2011 the defendant was sentenced to a total effective sentence of 15 months imprisonment to be released after serving 3 months on condition that she be of good behaviour for 2 years.

In sentencing the defendant Judge Shanahan said:

*“..It’s also clear that you became aware that it was illegal to bring these items into Australia and that is clear from the simple fact that there was attempts made to conceal the nature of them in the postage.*

*In my view, it’s a serious offence. Those quarantine laws are in place to protect Australia’s wildlife and industry and I note in that regard that the importation of such animals is totally banned. It seems to me that there is significant risk to the community in terms of the wildlife and commercial ventures which warrant the serious penalties that such offences bring.”*



## Possession of Cites Specimens

TIMOTHY JACKSON

In 2009 the defendant was the holder of a NSW National Parks and Wildlife Animal Keepers Licence enabling him to possess native reptiles. With the licence, the defendant was issued with a list of protected fauna permitted to be kept under the conditions of the licence.

DSEWPC officers executed a monitoring warrant at the defendant's residence. They found enclosures within the lounge room which contained exotic live reptiles, including a Veiled Chameleon, a Boa Constrictor and 2 Leopard Geckos. The evidence indicated that these

“ They found enclosures within the lounge room which contained exotic live reptiles, including a Veiled Chameleon, a Boa Constrictor and 2 Leopard Geckos. ”

Officers of the NSW National Parks and Wildlife Service executed a search warrant on the defendant's residence and found information about the sale of regulated live specimens. The information detailed a purchase of 2 live Leopard Geckos and was passed onto the Department of Sustainability, Environment, Water, Population and Communities (DSEWPC). At this time, DSEWPC began monitoring an Australian based website at [www.petlink.com.au](http://www.petlink.com.au) that facilitated the trade of live animals. Advertisements seeking 'Exotics' and postings such as 'Wanted: Chameleon' were discovered to be linked to the defendant.

reptiles could all be characterised as exotic (non-native) specimens and therefore were not permitted pursuant to the defendant's licence. Experts ascertained that the Veiled Chameleon, a CITES specimen, originates from Yemen in the Middle East, the Boa Constrictor, also a CITES specimen, originates from Central and South America and the origins of the Leopard Gecko are Central Asia and the Middle East.

All of the exotic specimens were seized and euthanized in accordance with the provisions of the *Environment Protection and Biodiversity Conservation Act 1999*.

The defendant pleaded guilty to 3 counts of possessing of CITES specimens pursuant to section 303GN(2) of the *Environment Protection and Biodiversity Conservation Act 1999*. On 31 May 2011 in the Local Court of NSW the defendant was convicted and fined \$2,500.

Possess Regulated Live Specimens

DAMIEN SHERRY

On 3 March 2010 DSEWPC officers executed an *Environmental Protection and Biodiversity Conservation Act 1999* search warrant at the defendant’s residence.

During the search they found 4 live Corn snakes (*Elaphe guttata*) and 2 Californian King Snakes (*Lampropeltis getulus californiae*). These species are classified as regulated live specimens under section 303EA of the *Environmental Protection and Biodiversity Act 1999*.

Evidence was tendered in the proceedings in relation to the Corn Snakes that:

- the species was scored as a serious establishment risk and is a declared Class 1 Pest animal in Queensland;
- in the event that it successfully naturalised in Queensland, detection and eradication would be unlikely;
- it breeds freely and prolifically and has successfully naturalised elsewhere;

- illegal wild-type specimens can sell from \$500 and \$1000 in Australia, with selectively bred snakes being much more valuable;
- the Corn Snake has comparable biological attributes to the Brown Tree Snake, which ranks as one of the most destructive invasive animals in the world due to its irreversible impacts on native bird species in Micronesia; and
- the species’ most likely invasion pathway into Australia is via the illegal pet trade.

The defendant pleaded guilty to 2 counts of possessing a regulated live specimen pursuant to section 303GN(2) of the *Environment Protection and Biodiversity Conservation Act 1999*.

On 2 September 2010 in the Local Court of NSW the defendant was convicted and fined \$3,000. The snakes were seized and euthanized in accordance with the provisions of the *Environmental Protection and Biodiversity Act 1999*.

Importing Live Plants

GABRIEL SUNNY LIM

*The import of live plants and soil without a permit is an offence against Australian quarantine laws. Such laws serve to protect the Australian community, environment and economy from risks posed by the introduction of diseases and pests into Australia.*

On 23 November 2009 AQIS officers intercepted a parcel addressed to the defendant and sent by post from the USA. The parcel was found to contain 4 live pot plants. The contents of the parcel had been declared by the sender to be ‘candle holders’. The defendant had purchased the plants from a mail order nursery in the USA and had the plants sent to his estranged wife who resided in the USA.

The defendant’s estranged wife posted the plants to Australia. The parcel had been repackaged by the sender prior to being sent to Australia to conceal the true contents of the package. When interviewed by AQIS investigators, the defendant admitted that he had known that a permit was required to import live plants into Australia.

The plants imported were a species of *Heuchera*, a plant that has been known to transport exotic diseases such as ‘impatiens necrotic spot tospovirus’. This disease has caused significant damage to the ornamental nursery industry and to horticultural and agricultural crops in the USA.

The defendant pleaded guilty to 1 count of aiding, abetting, counselling or procuring the import of live plants pursuant to section 67(1) of the *Quarantine Act 1908*.

On 30 May 2011 in the Local Court of NSW the defendant was convicted and fined \$2,500. The defendant subsequently abandoned an appeal against the severity of this sentence.

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## *Contravene Quarantine Notice*

SHUJAAT ALI SIDDIQUI

The defendant was one of the directors of a company which imported and distributed hardware products. The defendant was solely responsible for the importation of goods from overseas on behalf of the company.

In August 2009 the defendant faxed instructions to a Customs broker in relation to the clearance of 4,128 wooden handled paintbrushes which were being imported from China. The broker requested a fumigation certificate but the defendant insisted that one was not required.

In early September 2009 the paintbrushes arrived in Australia and were subsequently inspected. The defendant was asked by AQIS to nominate whether he wished to have the goods fumigated, destroyed or re-exported. When the defendant nominated fumigation, AQIS issued a direction that the paintbrushes were to be taken directly to a particular facility for fumigation. One week later, and despite a further request by AQIS officers, the defendant collected the goods and failed to take them to the facility nominated in the direction and to have them fumigated.

Approximately one-quarter of the paintbrushes was recovered by AQIS officers. The remainder were sold by the company.

The defendant pleaded guilty to contravening a requirement of a notice pursuant to section 56(6) of the *Quarantine Act 1908* and was fined \$1,500.

## Cybercrime

### *Spam Attacks*

ADAM WILLIAM BOGERS

In February 2008 police investigated several denial of service attacks or spam attacks against the email service of the WA and NSW Police Services. A denial of service attack takes place when a person uses a large number of spam emails to target a victim's email account or server resulting in computer server crashes or delays in routing email to users of the service.

The WA Police computer crimes squad investigated these attacks and traced the emails used in the denial of service attacks to an IP address owned by a person who had asked the defendant to help her set up her computer as she had been having difficulties with her internet access. An IP address relating to a computer located in an internet café used only by staff where the defendant worked was also traced.

The person the defendant was helping had registered the defendant on her computer as a user so that he could work on the computer for her. The defendant worked on the computer for hours virtually every day from November 2007 to early February 2008. It was estimated the defendant worked on average 3 to 4 days per week for between 5 to 12 hours at a time.

It was not unusual for the defendant to be working on the computer until the early hours of the morning. When the defendant acquired his own computer at home he stopped attending at the person's home.

The defendant posted the following message on 27 January 2008:

*Subject: SHOW RESPECT TO THE  
SMARTER THE ONES THAT HAS  
COMPROMISED YOUR SYSTEM  
IN ORDER TO RETURN TO THE  
RIGHTFULL OWNER*

*You are all wrong with the assumptions  
you make on somewhat silly statements  
you make! you must dismiss this kid its  
only going to get worse return the pc  
NOW! That is not urs you don't know  
how to control something more powerfull  
then every one of you! beware you take  
it any more it will only get worse! no  
standby for the damage.*

On 9 and 16 February 2008, WA Police email addresses received tens of thousands of spam emails with this message resulting in severe impairment of electronic communication.



On 1 February 2008 the defendant posted the following message:

*Subject: RETURN THE PC that u  
wrongly stole*

*DISMISS THE SMART KID YOU KNOW  
THAT DID NOTHING WRONG! You  
are not listening. let the kid go that you  
wrongly thought was doing things wrong,  
when really it was the corruption most  
of you all corrupted and let the smart  
one that you believe committed a crime!  
DISMISS HIM!: go! You know who it is!  
demand this or you system is in so much  
more trouble then you think this kid got  
wrongly charged of a crime he never  
done so let him go !! DISMISS THE KID  
YOU THOUGHT COMMITTED A CRIME  
INFACT IT WAS NO CRIME*

On 10 February 2008 NSW Police received 53,000 emails with this message spread across 4 mail boxes. This caused severe impairment of electronic communications and delays in delivery of legitimate emails.

As a result of these attacks the mobile device used by the WA Police Commissioner was filled with 2,700 messages backed up on the server making it impossible for the Commissioner to delete enough messages from the inbox to clear the spam. The mailbox of the targeted NSW Police Inspector was also filled with 53,000 emails, halting all mail going through a pair of servers for some time over a weekend.

On 9 April 2008 Police attended the defendant's mother's address and arrested the defendant.

A few months prior to 9 April 2008 the defendant spoke to the person whose computer he used about the police and said "Those ... . . . took my computer they wouldn't know how to crack my protection. They can get in whoever they like and never crack my security". He further told her his friend in Canada had got into and was hacking the police computer. He threatened that if the police ever left him alone anywhere near their computers he would crash them.

The defendant pleaded not guilty to 3 counts of unauthorised impairment of electronic communication pursuant to section 477.3 of the *Criminal Code*. Following a lengthy trial in the District Court of WA a jury found the defendant guilty of all charges and he was sentenced to a total effective sentence of 12 months imprisonment to be released forthwith on condition he be of good behaviour for 12 months and comply with the conditions imposed by the court. The defendant had been in custody for 7 weeks prior to sentence.

In sentencing the defendant O'Neal DCJ said the following:

*“The early hopes for the Internet as a tool for communication, expression and the dissemination of knowledge were perhaps unduly optimistic in light of all that’s known about human nature. Despite that, the Internet remains not only useful, but it’s become essential to communication for many individuals and organisations.*

*Unfortunately, it’s also provided a means for disaffected people like you, gifted with a particular type of narrow intelligence, to express your malice for other members of the community.*

*Offences of this kind are particularly difficult to detect and to prosecute. In this case, it’s fortunate that the consequences were relatively limited, although, as I said, that wasn’t for want of trying on your part.”*

## General Prosecutions

### Perjury

CHRISTOPHER STEAD MERFIELD

The Deputy Commissioner of Taxation commenced debt recovery proceedings against the defendant. On 14 April 2003 the initiating documents were personally served on the defendant at his home by the bailiff. The defendant failed to file a defence and default judgment was obtained against him. After the defendant was served with a Bankruptcy Notice, he filed an application to set aside the default judgment.

On 10 August 2006 the defendant swore an affidavit which contained the following statement:

*“I say that I did not have any discussion with [the bailiff] or any other person on the purported day of service being 14 April 2003. On that date I was not in Queensland. I was in Sydney...”*

At the hearing of the application on 22 September 2006 the defendant relied upon that affidavit which annexed a copy of the bailiff’s affidavit of service and also an invoice from the Ritz Hotel in Sydney purportedly showing that he was a guest of the hotel on the day of service. The Deputy Commissioner of Taxation obtained evidence from the Ritz Hotel confirming that the defendant was not a guest at the Hotel on the day of service and also mobile phone records showing the defendant used his phone in the Whitsunday area (the place of service) on the day of service.

The application was dismissed and the court ordered that the matter of the false affidavit and the invoice be referred to the Attorney-General for consideration of criminal offences.

The defendant pleaded guilty to 1 count of intentionally giving false testimony pursuant to section 35(1) of the *Crimes Act 1914*.

On 1 October 2010 in the District Court of Queensland the defendant was sentenced to 9 months imprisonment to be released after serving 2 months on condition that he be of good behaviour for 2 years.

In sentencing the defendant the court noted that it was difficult to identify any clear financial advantage resulting from the defendant’s actions but that perjury was a serious offence striking at the heart of the justice system.



## False Answers to the ACC

DAVID SAMUEL PERRY

The defendant was summonsed to appear before the ACC in November 2006 “...to give evidence of federally relevant criminal activity involving the unlawful importation, sale and supply of amphetamines and other synthetic drugs...” After giving an affirmation, during the course of the examination, on 2 occasions the defendant falsely answered questions. The questions related to the defendant’s involvement with a shipping container connected to drug trafficking.

The defendant pleaded not guilty to 2 counts of giving false answers pursuant to section 33(1) of the *Australian Crime Commission Act 2002*. Following a 3 day trial in the District Court of Queensland a jury found the defendant guilty. On 18 May 2011 the defendant was sentenced to 12 months imprisonment to be released after serving 5 months on condition that he be of good behaviour for 3 years.

In sentencing the defendant the Court said these were serious offences which needed to attract a custodial sentence to give effect to the examinations. The court referred to the principle in *R v Abell* [2007] QCA 448 at [33] “...the Act would become a toothless paper tiger in the legislature’s patent intent to detect and prosecute organised criminal activities by impinging on the common law right to silence and compelling witnesses to answer the examiner’s questions.”

The defendant has lodged appeals against conviction and sentence.





# 3

## Statistics and Performance Indicators





### 3 Statistics and Performance Indicators

#### 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 arise either as a result of an application by the defendant or on the initiative of the CDPP. A submission made to the Director to discontinue such a matter is known as a ‘no bill’ application.

In the past year, there were 18 no bill applications received from defendants or their representatives. Of these, 4 were granted and 14 were refused. A further 29 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 33.

Of the 33 cases which were discontinued, in 16 cases the primary reason for discontinuing was because there was insufficient evidence. Eight cases were discontinued because the public interest did not warrant the continuation of the prosecution. In the remaining 9 cases, the reason for discontinuing the prosecution was both the insufficiency of evidence and the public interest.

Eight of the 33 discontinued cases involved fraud offences, 6 involved drugs offences, 2 involved corporations offences and 17 involved other types of offences.

Three of the 33 cases were discontinued after a previous trial.

## Indemnities

The *DPP Act* empowers the Director to give an indemnity to a potential witness. Section 9(6) of the *DPP Act* authorises the Director to give an indemnity to a potential witness in Commonwealth proceedings that any evidence the person may give, and anything derived from that evidence, will not be used in evidence against the person, other than in proceedings for perjury. Section 9(6D) empowers the Director to give an indemnity 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 indemnity to a person that any evidence he or she may give in proceedings under State or Territory law will not be used in evidence against them in a Commonwealth matter.

In the past year, the CDPP gave indemnities under sections 9(6) and 9(6D) to 18 people. The CDPP gave 2 indemnities under section 9(6B), 1 to a person who also received an indemnity under section 9(6). Five witnesses were indemnified in drugs prosecutions, 9 in prosecutions for fraud, 4 in prosecutions for a corporations offence and 1 in a prosecution for another offence.

## 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* 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 Director exercised this power in 2010–2011 in relation to 3 people who had commenced the prosecution of a total of 21 defendants. One person had commenced prosecuting 17 people.

## 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 2010–2011 the Director did not exercise this power. 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 2010–2011 the Director consented to the commencement of conspiracy proceedings against 88 defendants in relation to 31 alleged conspiracies. Twenty-five of the alleged conspiracies related to drugs offences, 1 of the alleged conspiracies related to a fraud offence and 5 consents related to a conspiracy for another offence.



## Prosecution Performance Indicators 2010–2011

In 2010–2011 the CDPP met all prosecution performance indicators.

In Table 2 the number of cases upon which the percentages were calculated is published in the CDPP's Annual Reports for those years.

Copies of the reports are available from the CDPP's website at [www.cdpp.gov.au](http://www.cdpp.gov.au).

In 2007–2010 the CDPP met all its targets for prosecution performance except in relation to prosecution appeals against sentence dealt with on indictment in 2007–2008.

### Prosecution appeals against sentence

The *Prosecution Policy* provides that the prosecution right to appeal against sentence should be exercised with appropriate restraint. In deciding whether to appeal, consideration is to be given as to whether there is a reasonable prospect that the appeal will be successful. Factors which may be considered when deciding to appeal include whether:

- a) the sentence is manifestly inadequate;
- b) the sentence reveals an inconsistency in sentencing standards;
- c) the sentence proceeded on the basis of a material error of law or fact requiring appellate correction;
- d) the sentence is substantially and unnecessarily inconsistent with other relevant sentences;
- e) an appeal to a Court of Appeal would enable the Court to lay down some general principles for the governance and guidance of sentencers;
- f) an appeal will enable the Court to establish and maintain adequate standards of punishment for crime;
- g) an appeal will ensure, so far as the subject matter permits, uniformity in sentencing; and whether
- h) an appeal will enable an appellate court to correct an error of legal principle.

## 2010–2011

In 2010–2011, appeal courts decided 23 prosecution appeals against sentence in indictable matters. In 10 out of the 23 indictable appeals, the CDPP's appeals were upheld and in the other 13 appeals, the CDPP's appeals were dismissed.

In 2 of the dismissed appeals the appeal court agreed with the CDPP that the sentences imposed at first instance were manifestly inadequate but declined to allow the appeals. In one appeal involving a defendant convicted of drug offences, the Court of Criminal Appeal of the Northern Territory found that notwithstanding that the original sentence was manifestly inadequate, the circumstances of the case were such that the appeal should not be allowed. The Court noted that this was a case where the purposes of the Crown appeal can be satisfactorily achieved by the court indicating that the sentence was manifestly inadequate and should not be regarded as a precedent. The other appeal concerned the sentence imposed upon a defendant who was a prominent solicitor and conspirator in a scheme to evade tax described by the original sentencing judge as a “*sophisticated deceit*”. The Supreme Court of Victoria Court of Appeal found that the original sentence that the defendant be released after serving 12 months imprisonment was manifestly inadequate. However, the Court was satisfied that this was an appropriate case in which to exercise the Court's residual discretion to decline to intervene and accordingly dismissed the appeal.



*Table 1: Prosecution performance indicators for 2010–2011  
– National Totals*

Description	Target	Outcome	Details [successful (total)]
Prosecutions resulting in a conviction*	90%	99%	4026 (4083)
Defendants in defended summary hearings resulting in conviction	60%	70%	86 (122)
Defendants in defended committals resulting in a committal order	80%	99%	478 (485)
Defendants tried on indictment and convicted	60%	80%	86 (107)
Prosecution sentence appeals in summary prosecutions upheld	60%	100%	6 (6)
Prosecution sentence appeals in a prosecution on indictment upheld	60%	61%	14 (23)

\* The conviction rate is calculated by taking the number of defendants convicted as a percentage of defendants convicted or acquitted. The calculation does not include defendants where the CDPP discontinued the prosecution against them in its entirety or where a prosecution has commenced and the defendant failed to appear before a court.

*Table 2: Prosecution performance indicators for 2007–2010  
– National Totals*

Description	Target	2007–08 Outcome	2008–09 Outcome	2009–10 Outcome
Prosecutions resulting in a conviction*	90%	98%	99%	99%
Defendants in defended summary hearings resulting in conviction	60%	64%	73%	79%
Defendants in defended committals resulting in a committal order	80%	97%	95%	98%
Defendants tried on indictment and convicted	60%	72%	71%	81%
Prosecution sentence appeals in summary prosecutions upheld	60%	67%	71%	67%
Prosecution sentence appeals in a prosecution on indictment upheld	60%	39%	83%	68%

\* The conviction rate is calculated by taking the number of defendants convicted as a percentage of defendants convicted or acquitted. The calculation does not include defendants where the CDPP discontinued the prosecution against them in its entirety or where a prosecution has commenced and the defendant failed to appear before a court.

In a joint prosecution sentence appeal the New South Wales Court of Criminal Appeal considered sentences for drugs offences imposed upon 2 defendants. Simpson J with whom the other members of the Court of Appeal agreed, stated, *“I am left with the uncomfortable feeling that the sentences here imposed were inadequate. But to allow a Crown appeal and increase a sentence involves a very serious step, and one which this Court does not undertake lightly.”* Her Honour stated that it was unnecessary finally to decide that as Her Honour concluded that the Crown appeal should be dismissed given the Court’s discretion to dismiss a Crown appeal, even where error, whether by manifest inadequacy or otherwise, is established. Her Honour referred to the unusual history of the case and that the respondents, through no fault of their own, had suffered an inordinate delay in the resolution of the appeals and that their potential release date was a few months away.

### 2009–2010

In 2009–2010, appeal courts decided 19 prosecution appeals against sentence in indictable matters. In 9 out of the 19 indictable appeals, the CDPP’s appeals were upheld. In 4 of the dismissed appeals, the appeal court agreed with the CDPP that the sentences imposed at first instance were too low but declined to allow the appeals because of the principle of double jeopardy and other factors. Two of the appeals concerned child sex crime offences and the other 2, who were co-offenders, concerned corporation offences. Six other prosecution appeals were dismissed.

Also in 2009–2010, in 1 of the 3 dismissed prosecution appeals against sentence following summary prosecution, the appeal judge found that the sentence imposed was manifestly inadequate but declined to intervene because of double jeopardy.

### 2008–2009

In 2008–2009, 12 prosecution appeals against sentence in indictable matters were decided.

In 6 cases the CDPP appeals were upheld.

In 4 of the 6 dismissed appeals, the appeal court agreed with the CDPP that the sentences imposed at first instance were too low but declined to allow the appeals because of the principle of double jeopardy and other factors.

### 2007–2008

In 2007–2008, 23 prosecution appeals against sentence in indictable matters were decided.

In 9 cases, the CDPP appeals were upheld and in 14 cases the appeals were unsuccessful.

Of the 14 unsuccessful appeals, 7 defendants were co-offenders in 1 drug prosecution and 2 were co-offenders in another drug prosecution.

In a number of these cases where the appeals were unsuccessful, the appeal court agreed that the sentences imposed at first instance were too low but declined to allow the appeals because of the principle of double jeopardy and other factors.

The effect of these appeal court findings is that the sentences at first instance are not precedents for future sentences in comparable cases given the comments and guidance provided by the Courts. The CDPP regards these as being successful outcomes for the purposes of CDPP prosecution performance indicators.

## Prosecution Statistics

In the course of the year, apart from ongoing matters, the CDPP dealt with 4,957 people in Court. The cases were referred by 36 Commonwealth investigative agencies as well as a number of State and Territory agencies. The following tables set out details of these prosecutions conducted in 2010–2011.

This year there was a significant increase in the number of defendants committed for trial or sentence. This is largely due to the significant increase in people smuggling prosecutions dealt with under the *Migration Act 1958*. Overall, the CDPP prosecuted 110 trials, of which 18 exceeded 31 days in duration. The decision in *Poniatowska* discussed in Chapter 2.1 had an impact upon the CDPP summary prosecution practice and affected the number of matters commenced, ongoing and concluded this year.

Table 3: Outcomes of successful prosecutions in 2010–2011

Description	No.
Defendants convicted of offences prosecuted summarily	3392
Defendants convicted of offences prosecuted on indictment	634
Defendants committed for trial or sentence	858

Table 4: Summary Prosecutions in 2010–2011

Description	No.
Defendants convicted after a plea of guilty	3306
Defendants convicted after a plea of not guilty	86
Total defendants convicted	3392
Defendants acquitted after a plea of not guilty	36
TOTAL	3428

Table 5: Committals in 2010–2011

Description	No.
Defendants committed after a plea of guilty	380
Defendants committed after a plea of not guilty	478
Total defendants committed	858
Defendants discharged after a plea of not guilty	7
TOTAL	865

Table 6: Prosecutions on indictment in 2010–2011

Description	No.
Defendants convicted after a plea of guilty	548
Defendants convicted after a plea of not guilty	86
Total defendants convicted	634
Defendants acquitted after a plea of not guilty	21
TOTAL	655

Table 7: Prosecutions on indictment – duration of trials in 2010–2011

Length	No.
1–5 days	42
6–10 days	20
11–15 days	14
16–20 days	9
21–25 days	3
26–30 days	4
over 31 days	18
TOTAL	110

Table 8: Prosecution appeals against sentence in 2010–2011

Appeal Type	Outcome	Summary	Indictable
Appeals against sentence	Upheld	6	10
	Dismissed	0	13
TOTAL		6	23

*Table 9: Defence appeals in 2010–2011*

Appeal Type	Outcome	Summary	Indictable
Against Conviction Only	Upheld	4	3
	Dismissed	4	4
Against Sentence Only	Upheld	56	20
	Dismissed	21	32
Conviction & Sentence	Upheld	14	18
	Dismissed	13	11
TOTAL		112	88

*Table 10: Legislation under which charges were dealt with in 2010–2011*

Legislation	Summary (Charges)	Indictable (Charges)
A New Tax System (Australian Business Number) Act 1999	59	0
Adelaide Airport Curfew Act 2000	1	0
Aged Care Act 1997	0	1
Agricultural and Veterinary Chemicals (Administration) Act 1992	1	0
Anti-Money Laundering and Counter-Terrorism Financing Act 2006	8	94
Australian Citizenship Act 1948	3	0
Australian Crime Commission Act 2002	4	87
Australian Federal Police Act 1979	2	0
Australian Passports Act 2005	82	29
Australian Postal Corporation Act 1989	1	0
Australian Securities and Investments Commission Act 2001	0	2
Australian Wine and Brandy Corporation Act 1980	165	0
Aviation Transport Security Act 2004	30	0
Aviation Transport Security Regulations 2005	22	1

Legislation	Summary (Charges)	Indictable (Charges)
Bankruptcy Act 1966	365	24
Building and Construction Industry Improvement Act 2005	1	0
Child Support (Registration and Collection) Act 1988	10	0
Civil Aviation Act 1988	82	5
Civil Aviation Regulations 1988	66	0
Classification (Publications, Films and Computer Games) Act 1995	8	0
Common law offence	0	5
Commonwealth Authorities and Companies Act 1997	0	2
Copyright Act 1968	673	0
Corporations (Aboriginal and Torres Strait Islander) Act 2006	16	0
Corporations Act 1989	0	5
Corporations Act 2001	65	82
Crimes (Aviation) Act 1991	46	3
Crimes (Currency) Act 1981	86	40
Crimes Act 1914	51	173
Criminal Code Act 1995	8555	1203
Customs Act 1901	167	37
Environment Protection and Biodiversity Conservation Act 1999	15	1
Environment Protection and Biodiversity Conservation Regulations 2000	8	0
Excise Act 1901	8	0
Export Control Act 1982	1	0
Financial Management and Accountability Act 1997	63	8
Financial Transaction Reports Act 1988	52	52
Fisheries Management Act 1991	54	0
Foreign Passports (Law Enforcement and Security) Act 2005	3	12
Great Barrier Reef Marine Park Act 1975	17	0
Great Barrier Reef Marine Park Regulations 1983	26	0
Health Insurance Act 1973	93	3

Legislation	Summary (Charges)	Indictable (Charges)
Imported Food Control Act 1992	1	0
Income Tax Assessment Act 1936	86	0
Maritime Transport and Offshore Facilities Security Regulations 2003	1	0
Marriage Act 1961	3	0
Migration Act 1958	58	164
National Health Act 1953	51	0
Navigation Act 1912	10	0
Passports Act 1938	28	10
Primary Industries Levies and Charges Collection Act 1991	25	0
Proceeds of Crime Act 1987	0	9
Protection of the Sea (Prevention of Pollution from Ships) Act 1983	3	0
Public Order (Protection of Persons and Property) Act 1971	9	0
Quarantine Act 1908	15	2
Radiocommunications Act 1992	1	0
Social Security (Administration) Act 1999	810	1
Social Security Act 1991	336	1
Statutory Declarations Act 1959	1	0
Superannuation Industry (Supervision) Act 1993	0	9
Taxation Administration Act 1953	460	1
Telecommunications (Interception and Access) Act 1979	1	0
Therapeutic Goods Act 1989	101	0
Torres Strait Fisheries Act 1984	2	0
Trade Marks Act 1995	12	0
Trade Practices Act 1974	8	0
Workplace Relations Act 1996	2	0
Non Commonwealth Legislation	231	366
<b>TOTAL</b>	<b>13164</b>	<b>2432</b>



*Table 11: Crimes Act 1914 charges dealt with in 2010–2011*

Section	Title	Summary (Charges)	Indictable (Charges)
3LA(3)	Person with knowledge of a computer or a computer system to assist access etc.	1	0
3V(2)(d)	Refuse or fail to comply with request	1	0
29(1)	Destroying or damaging Commonwealth property	7	2
29A(1)	False pretences (repealed)	1	0
29B	False representation (repealed)	1	48
29D	Fraud (repealed)	17	103
35(1)	Giving false testimony	2	1
36A(a)	Threatens, intimidates or restrains witness	2	0
37(a)	Corruption of witnesses	1	0
39	Destroying evidence	0	1
43(1)	Attempting to pervert justice	0	6
50BC(1)(a)	Sexual conduct involving child under 16 (repealed)	0	12
67(a)	Forgery of Commonwealth documents (repealed)	6	0
70(1)	Disclosure of information by Commonwealth officer	1	0
85G(1)	Forgery of postage stamps	1	0
85G(3)	Make or sell article having affixed to it anything resembling a postage stamp	1	0
85U	Obstructing carriage of articles by post	7	0
89(1)	Trespassing on Commonwealth land	2	0
<b>TOTAL</b>		<b>51</b>	<b>173</b>

*Table 12: Criminal Code 1995 charges dealt with in 2010–2011*

Part	Section	Description	Summary (Charges)	Indictable (Charges)
<b>PART 5.3 – TERRORISM</b>			<b>0</b>	<b>2</b>
	101.6(1)	Other acts done in preparation for, or planning, terrorist acts	0	2
<b>PART 7.2 – THEFT AND OTHER PROPERTY OFFENCES</b>			<b>56</b>	<b>29</b>
	131.1(1)	Theft	46	8
	132.1(1)	Receiving	4	0
	132.5(1)	Aggravated burglary	0	2
	132.8(2)	Dishonest retention of property	1	0
<b>PART 7.3 – FRAUDULENT CONDUCT</b>			<b>7919</b>	<b>454</b>
	134.1(1)	Obtaining Commonwealth property by deception	5	19
	134.2(1)	Obtaining a financial advantage by deception	129	313
	135.1(1)	Dishonestly intending to obtain a gain	92	18
	135.1(3)	Dishonestly intending to cause a loss	27	2
	135.1(5)	Dishonestly causing a loss or risk of loss	24	102
	135.1(7)	Dishonestly intending to influence a Commonwealth public official	5	1
	135.2(1)	Obtaining financial advantage from a Commonwealth entity	7621	9
	135.2(2)	Obtaining a financial advantage for another person	21	3
	135.4(3)	Conspiracy to defraud	0	6
<b>PART 7.4 – FALSE OR MISLEADING STATEMENTS</b>			<b>59</b>	<b>0</b>
	136.1(1)	False or misleading statements in applications	27	0
	137.1(1)	False or misleading information	19	0
	137.2(1)	False or misleading documents	13	0

Part	Section	Description	Summary (Charges)	Indictable (Charges)
<b>PART 7.6 – BRIBERY AND RELATED OFFENCES</b>			<b>9</b>	<b>0</b>
	142.1(1)	Giving a corrupting benefit	6	0
	142.1(3)	Receiving a corrupting benefit	1	0
	142.2(1)	Abuse of public office	2	0
<b>PART 7.7 – FORGERY AND RELATED OFFENCES</b>			<b>82</b>	<b>21</b>
	144.1(1)	Making forged document with intention is it accepted as genuine by Commonwealth public official	23	6
	144.1(5)	Making forged Commonwealth document with intention it is accepted as genuine by a third person	1	0
	145.1(1)	Using forged/false document with intention that is accepted as genuine by Commonwealth public official	56	11
	145.1(5)	Using forged Commonwealth document with intention it is accepted as genuine by a third person	1	2
	145.2(5)	Possession of forged document	1	0
	145.3(3)	Possession of device for making forgeries without excuse	0	1
	145.5(1)	Giving information derived from false or misleading documents	0	1
<b>PART 7.8 – CAUSING HARM TO, AND IMPERSONATION AND OBSTRUCTION OF, COMMONWEALTH PUBLIC OFFICIALS</b>			<b>27</b>	<b>3</b>
	147.1(1)	Cause harm to a Commonwealth public official etc.	2	1
	147.2(1)	Threatening to cause harm to a Commonwealth public official etc.	1	2
	148.1(2)	Impersonation of an official by a non-official	6	0
	148.1(3)	Impersonation of public official with intent	1	0
	149.1(1)	Obstruction of Commonwealth public officials	17	0

Part	Section	Description	Summary (Charges)	Indictable (Charges)
CHAPTER 8 – OFFENCES AGAINST HUMANITY AND RELATED OFFENCES			0	21
	270.3(1)	Slavery offences	0	20
	270.6(2)	Sexual servitude businesses	0	1
PART 9.1 – SERIOUS DRUG OFFENCES			95	198
	302.2(1)	Trafficking commercial quantities of controlled drugs	1	5
	302.3(1)	Trafficking marketable quantities of controlled drugs	0	4
	302.4(1)	Trafficking controlled drugs	7	2
	307.1	Importing and exporting commercial quantities of border controlled drugs or border controlled plants	0	17
	307.2	Importing and exporting marketable quantities of border controlled drugs or border controlled plants	6	87
	307.3(1)	Importing and exporting border controlled drugs or border controlled plants	9	5
	307.4(1)	Importing and exporting border controlled drugs or border controlled plants – no defence relating to lack of commercial intent	30	6
	307.5(1)	Possessing commercial quantities of unlawfully imported border controlled drugs or border controlled plants	1	24
	307.6(1)	Possessing marketable quantities of unlawfully imported border controlled drugs or border controlled plants	2	17
	307.7(1)	Possessing unlawfully imported border controlled drugs or border controlled plants	6	1
	307.9(1)	Possessing marketable quantities of border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported	1	2

Part	Section	Description	Summary (Charges)	Indictable (Charges)
	307.10(1)	Possessing border controlled drugs or border controlled plants reasonably suspected of having been unlawfully imported	7	0
	307.11(1)	Importing and exporting commercial quantities of border controlled precursors	1	5
	307.12(1)	Importing and exporting marketable quantities of border controlled precursors	0	17
	307.13(1)	Importing and exporting border controlled precursors	7	2
	308.1(1)	Possessing controlled drugs	14	3
	308.2(1)	Possessing controlled precursors	1	1
	310.2(1)	Danger from exposure to unlawful manufacturing	2	0
<b>PART 10.2 – MONEY LAUNDERING</b>			<b>39</b>	<b>69</b>
	400.3(1)	Dealing in proceeds of crime etc. – money or property worth \$ 1,000,000 or more: knowing/believing	0	7
	400.3(2)	Dealing in proceeds of crime etc. – money or property worth \$ 1,000,000 or more: reckless	0	8
	400.4(1)	Dealing in proceeds of crime etc. – money or property worth \$ 100,000 or more: knowing/believing	0	8
	400.4(2)	Dealing in proceeds of crime etc. – money or property worth \$ 100,000 or more: reckless	0	14
	400.5(1)	Dealing in proceeds of crime etc. – money or property worth \$ 50,000 or more: knowing/believing	0	7
	400.5(2)	Dealing in proceeds of crime etc. – money or property worth \$ 50,000 or more: reckless	0	2
	400.6(1)	Dealing in proceeds of crime etc. – money or property worth \$ 10,000 or more: knowing/believing	3	4

Part	Section	Description	Summary (Charges)	Indictable (Charges)
	400.6(2)	Dealing in proceeds of crime etc. – money or property worth \$10,000 or more: reckless	9	2
	400.7(1)	Dealing in proceeds of crime etc. – money or property worth \$1,000 or more: knowing/believing	3	7
	400.7(2)	Dealing in proceeds of crime etc. – money or property worth \$1,000 or more: reckless	13	0
	400.8(1)	Dealing in proceeds of crime etc. – money or property of any value	0	1
	400.8(2)	Dealing in proceeds of crime etc. – money or property of any value	1	0
	400.9(1)	Possession etc. of property reasonably suspected of being proceeds of crime etc.	10	9
<b>PART 10.5 – POSTAL SERVICES</b>			<b>54</b>	<b>3</b>
	471.1(1)	Theft of mail receptacles, articles or postal messages	25	0
	471.2(1)	Receive stolen mail article	10	0
	471.3	Taking or concealing of mail receptacles, articles or postal messages	3	1
	471.4(a)	Dishonest removal of postage stamps or postmarks	1	0
	471.5(1)(a)	Dishonestly use a postage stamp that has previously been used for postal services	4	0
	471.6(1)	Damaging or destroying mail receptacles, articles or postal messages	1	0
	471.7(1)(a)	Dishonestly opening a mail-receptacle	2	0
	471.11(1)	Use postal service to make threat to kill	3	0
	471.12	Using a postal service to menace/harass/ cause offence	5	2
<b>PART 10.6 – TELECOMMUNICATIONS SERVICES</b>			<b>186</b>	<b>363</b>
	474.4(1)(a) (ii)	Interception devices (advertises, displays or offers for sale)	5	0

Part	Section	Description	Summary (Charges)	Indictable (Charges)
	474.4(1)(a) (iii)	Interception devices (sells)	1	0
	474.14(1)	Using a telecommunications network with intention to commit a serious offence	0	4
	474.15(1)	Using a carriage service to make a threat to kill	8	0
	474.15(2)	Use carriage service to threaten serious harm	4	0
	474.16	Using a carriage service for a hoax threat	4	0
	474.17(1)	Use carriage service to menace, harass or cause offence	74	50
	474.18(1)	Improper use of emergency call service	16	2
	474.18(2)	Vexatious call to emergency service number	8	0
	474.19	Using a carriage service for child pornography material	59	252
	474.22(1) (a)(iii)	Using a carriage service to transmit child abuse material	1	0
	474.26(1)	Use carriage service to procure persons under 16 years of age	0	25
	474.27(1)	Use carriage service to “groom” persons under 16 years of age	4	30
	474.27A(1)	Using a carriage service to transmit indecent communication to persons under 16 years of age	2	0
<b>PART 10.7 – COMPUTER OFFENCES</b>			<b>12</b>	<b>4</b>
	477.1(4)	Intention to commit serious Commonwealth offence	0	1
	477.3(1)	Unauthorised impairment of electronic communication	4	3
	478.1(1)	Unauthorised access to, or modification of, restricted data	7	0
	478.3(1)	Possession or control of data with intent to commit a computer offence	1	0



Part	Section	Description	Summary (Charges)	Indictable (Charges)
PART 10.8 – FINANCIAL INFORMATION OFFENCES			17	36
	480.4	Dishonestly obtaining or dealing in personal financial information	16	12
	480.5(1)	Possession or control of thing with intent to dishonestly obtain or deal in personal financial information	0	23
	480.6	Importation of thing with intent to dishonestly obtain or deal in personal financial information	1	1
TOTAL			8555	1203

**NOTE:** Some of the charges shown as dealt with summarily were indictable charges discontinued at an early stage. Some other charges shown as dealt with summarily were indictable charges which resulted in a warrant for the arrest of the defendant. Some summary charges were dealt with on indictment as they were scheduled under s16BA of the *Crimes Act 1914*.

*Table 13: Charges dealt with involving extensions of criminal responsibility under the Crimes Act 1914 and Criminal Code 1995*

Extension of Criminal Responsibility Act and Section		Principal Act and Section		Charges	
ACT	SECTION	ACT	SECTION	SUMMARY	INDICTABLE
Crimes Act 1914	5(1) Aid & Abet	Criminal Code Act 1995	135.1(3)	1	0
	86(1) Conspiracy	Crimes Act 1914	29D	0	5
Criminal Code 1995	11.1(1) Attempt	Australian Passports Act 2005	35(1)	2	1
		Aviation Transport Security Act 2004	47(1)	2	0
		Bankruptcy Act 1966	265(7)	0	1
		Corporations Act 2001	590(1)(c)(i)	0	1

Extension of Criminal Responsibility Act and Section		Principal Act and Section		Charges	
ACT	SECTION	ACT	SECTION	SUMMARY	INDICTABLE
		Crimes (Currency) Act 1981	7(a)	0	3
		Crimes Act 1914	50BC(1)(a)	0	5
		Criminal Code 1995	134.1(1)	0	3
			134.2(1)	4	55
			135.2(1)	5	0
			135.4(3)	0	1
			302.2(1)	0	1
			307.2(1)	1	0
			307.4(1)	2	0
			307.5(1)	1	12
			307.6(1)	1	12
			307.7(1)	2	1
			307.10(1)	1	0
			308.2(1)	1	1
		Customs Act 1901	233B(1)	0	2
		Financial Management and Accountability Act 1997	60	3	0
		Health Insurance Act 1973	128B(1)	4	0
	11.2(1) Complicity	Australian Passports Act 2005	32(1)	0	1

Extension of Criminal Responsibility Act and Section		Principal Act and Section		Charges	
ACT	SECTION	ACT	SECTION	SUMMARY	INDICTABLE
		Crimes Act 1914	39	0	1
		Criminal Code 1995	135.2(1)	1	0
			302.2(1)	0	1
			307.1	0	5
			307.2(1)	0	5
			307.3(1)	2	0
			307.6(1)	0	1
			307.12(1)	0	1
		Customs Act 1901	233BAA(4)	1	2
			233BAB(5)	1	0
		Migration Act 1958	234(1)(b)	0	1
			234(1)(c)	1	0
		Therapeutic Goods Act 1989	41MI(4)	90	0
	11.4(1) Incitement	Criminal Code 1995	477.3(1)	2	0
	11.5(1) Conspiracy	Criminal Code 1995	101.6(1)	0	2
			302.3(1)	0	3
			307.1(1)	0	6
			307.2(1)	0	6
			307.5(1)	0	2
			307.11(1)	0	1
			400.3(1)	0	1

Extension of Criminal Responsibility Act and Section		Principal Act and Section		Charges	
ACT	SECTION	ACT	SECTION	SUMMARY	INDICTABLE
			400.3(2)	0	4
			400.4(2)	0	2
		Customs Act 1901	233B(1)(a)(iii)	0	1
TOTALS				128	150

NOTE: These charges are also included in tables 10, 11 and 12.

*Table 14: Reparation orders and fines*

	Actual 2010–2011 \$'000	Actual 2009–2010 \$'000
Reparation orders made	51,694	44,574
Fines and costs orders made	2,946	3,720

*Table 15: Referring Agencies: defendants dealt with in 2010–2011*

Referring Agency	Summary (Defendants)	Indictable (Defendants)
Australian Competition and Consumer Commission	1	0
Australian Crime Commission	4	27
Australian Customs & Border Protection Service	73	30
Australian Customs Service	1	3
Australian Federal Police	334	416
Australian Fisheries Management Authority	44	0
Australian Maritime Safety Authority	5	0
Australian Pesticides & Veterinary Medicines Authority	1	0
Australian Postal Corporation	36	4
Australian Quarantine and Inspection Service	11	1
Australian Securities & Investments Commission	42	23
Australian Taxation Office	77	31
Australian Trade Commission	2	0

Referring Agency	Summary (Defendants)	Indictable (Defendants)
Australian Wine & Brandy Corporation	2	0
Centrelink	2953	67
Child Support Agency	4	0
Civil Aviation Safety Authority	12	1
COMCARE	1	0
Department of Human Services	1	0
Department of Agriculture, Fisheries and Forestry	9	0
Department of Defence	8	0
Department of Education, Employment and Workplace Relations	14	1
Department of Foreign Affairs and Trade	57	5
Department of Health and Ageing	1	2
Department of Immigration and Citizenship	13	4
Department of Infrastructure, Transport, Regional Development and Local Government	1	0
Department of Sustainability, Environment, Water, Population and Communities	1	0
Department of the Environment, Water, Heritage and the Arts	5	0
Department of Veterans' Affairs	1	1
Great Barrier Reef Marine Park Authority	35	0
Insolvency and Trustee Service, Australia	316	5
Medicare Australia	17	3
Office of the Australian Building and Construction Commissioner	1	0
Office of the Registrar of Indigenous Corporations	5	0
Private Prosecution	1	0
Therapeutic Goods Administration	5	0

Referring Agency	Summary (Defendants)	Indictable (Defendants)
Workplace Ombudsman	2	0
Non-Commonwealth Agencies including State or Territory Police	136	101
TOTAL	4232	725

**NOTE:** This list contains names of only current Commonwealth agencies. Where an agency’s name has changed over time, all the cases emanating from that agency, whatever its name, are included under the most current agency that has assumed the function. For example, prosecutions that were originally referred by the National Crime Authority are included under the Australian Crime Commission.

**NOTE:** The CDPP reviewed the methodology used to calculate the number of defendants dealt with. As a result, the figures in this table are not directly comparable to figures reported in the 2008–2009 and 2009–2010 versions of this table.







## 4

## Criminal Confiscation





## 4 Criminal Confiscation

### Overview

Confiscating the proceeds of crime is a critical measure in combating the wide range of financially motivated offences and maintaining public confidence in the criminal justice system.

Criminal confiscation legislation is aimed at depriving criminals of the proceeds of offences against Commonwealth laws and punishing and deterring offenders. It prevents the reinvestment of proceeds of crime in further criminal activities and gives effect to Australia's obligations under international conventions and agreements regarding proceeds of crime and anti-money laundering.

Confiscation action is taken in a wide range of areas including fraud, corporations, money laundering and serious drugs.

### Legislation

#### *Proceeds of Crime Act 2002*

The *Proceeds of Crime Act 2002* (POC Act 2002) is the principal legislation under which the CDPP currently operates in the area of criminal confiscation.

The *POC Act 2002* came into effect on 1 January 2003 and provides a regime for the tracing, restraint and confiscation of 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 or State and Territory 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 ('non-conviction 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. Non-conviction 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'. Non-conviction action is available in relation to a narrower range of cases.

There are 4 types of final confiscation 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 an amount equal to the benefit derived by the person from the commission of an offence; and
- **UNEXPLAINED WEALTH ORDERS** – where the court orders a person to pay an amount calculated by reference to that part of the person's wealth which the person cannot demonstrate was lawfully acquired; and
- **LITERARY PROCEEDS ORDERS** – where the court orders an offender to pay 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.

Statutory or automatic forfeiture (i.e. forfeiture of restrained property without express order of the court) is also available in certain circumstances. 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.

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 on in an investigation. Restraining orders can be made either in reliance on the charging (or proposed charging) of a person, or on a non-conviction basis.

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 access to restrained property for the purpose of paying reasonable living or business expenses; exclusion of property from restraint or from forfeiture in appropriate circumstances; and payment of compensation or hardship amounts out of the proceeds of forfeited property. In addition, a court can require the CDPP to give an undertaking as to costs and damages as a condition of 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. There is only a minimal amount of residual litigation under the *POC Act 1987*.

The CDPP 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 CDPP has the function of bringing applications to forfeit the employer-funded component of superannuation payable to Commonwealth and AFP employees who have been convicted of corruption offences.

The CDPP has 2 further responsibilities in this area which are now used infrequently following the enactment of proceeds of crime legislation, namely:

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

Each State and Territory in Australia has legislation dealing with the confiscation of property derived from State and Territory offences. The CDPP is not involved in proceedings brought pursuant to State and Territory proceeds of crime legislation.

## Operating Structure

In 2010 the Government announced it would establish a Criminal Assets Confiscation Taskforce led by the AFP. The interim task force consisting of the AFP, CDPP, ATO and the ACC was launched in March 2011. Each agency in the taskforce exercises its own roles and functions in accordance with its legislative mandate. No change in statutory function is involved.

The CDPP criminal assets work is coordinated nationally by a senior lawyer in Head Office. Each of the larger regional offices has a Criminal Assets Branch whilst the other offices have criminal assets lawyers to conduct this specialised work.

Criminal assets lawyers consider the appropriateness of criminal confiscation action in particular matters, decide on the type of action which ought to be taken and, where appropriate, commence and conduct confiscation litigation. In large and complex cases the CDPP may also be involved in the provision of advice during the investigative phase of a criminal confiscation matter.

The CDPP’s confiscation work relies on referrals from, and close cooperation with, relevant Commonwealth law enforcement agencies. Key responsibility in this area now rests with the interim task force. In addition, the ACBPS, ASIC and the ACLEI each retain their responsibilities as an enforcement agency under the *POC Act 2002* and exercise specific investigative and other powers under this Act. All Commonwealth agencies with the capacity to investigate crime, particularly fraud, play a role in identifying and referring proceeds of crime matters and supporting proceeds of crime litigation.

The CDPP also works closely with the Insolvency and Trustee Service of Australia (ITSA). ITSA has specific responsibilities under the *POC Act 2002* in relation to the management of restrained property, the realisation of confiscated property, and management of the Confiscated Assets Account.

## 2010–2011 Financial Year

During 2010–2011 a total sum of \$13.81 million was recovered as a result of litigation under the *POC Act 2002*. In 2009–10 a number of long-running, complex proceeds of crime matters were resolved and \$18.31 million was recovered.

Since 1 January 2003 approximately \$126.81 million has been recovered as a result of action commenced under the *POC Act 2002*.

This year the number of new proceedings commenced increased slightly with 48 new restraining orders. Restraining orders have varied from 44 to 52 over the past 3 financial years, down from a peak of 173 in the 2004–5 financial year.

Last year saw the enactment of significant amendments to the *POC Act 2002*, including the introduction of unexplained wealth provisions. To date no unexplained wealth applications have been made, however the CDPP continues to consider the unexplained wealth provisions as one of a number of options available for action under the *POC Act 2002*.

## Statistics

A detailed breakdown of the CDPP's criminal confiscation activities for 2010–2011 is provided by the tables at the end of this Chapter, however the following is a summary of key data.

Under the *POC Act 2002*:

- 48 new restraining orders were obtained;
- 115 restraining orders were in force as at 30 June 2011;
- 14 pecuniary penalty orders were obtained;
- 107 forfeiture orders were obtained;
- automatic forfeiture occurred in 5 matters;
- 4 compulsory examinations were undertaken;
- the total estimated value of confiscation orders (including automatic forfeiture) obtained was \$24.18 million;
- the total amount recovered as a result of litigation (including automatic forfeiture) was \$13.81 million.

In relation to matters still continuing under the *POC Act 1987* a total of \$0.133 million was recovered.

Two 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 CDPP's civil remedies powers or pursuant to the provisions of Division 3 of Part XIII of the *Customs Act*.

## POC Act 2002 Performance Indicators

The CDPP's performance in cases under the *POC Act 2002* during 2010–2011 is measured against the following performance indicators. Information in relation to the previous 3 years is included and in each instance the CDPP has met or exceeded the applicable performance indicator.

Description	Number	Target	Outcome
<b>Applications for restraining orders that succeeded</b>	<b>48</b>	<b>90%</b>	<b>100%</b>
Figures for 2009 – 2010	44	90%	98%
Figures for 2008 – 2009	52	90%	100%
Figures for 2007 – 2008	75	90%	100%
<b>Applications for pecuniary penalty orders that succeeded</b>	<b>14</b>	<b>90%</b>	<b>100%</b>
Figures for 2009 – 2010	18	90%	100%
Figures for 2008 – 2009	20	90%	100%
Figures for 2007 – 2008	17	90%	100%
<b>Applications for forfeiture orders that succeeded</b>	<b>107</b>	<b>90%</b>	<b>100%</b>
Figures for 2009 – 2010	104	90%	99%
Figures for 2008 – 2009	111	90%	100%
Figures for 2007 – 2008	62	90%	100%
<b>Damages awarded against undertakings</b>	<b>0</b>		<b>\$0</b>
Figures for 2009 – 2010	0		\$0
Figures for 2008 – 2009	1		\$150,000
Figures for 2007 – 2008	1		\$150,000
<b>Number of cases where costs awarded against DPP</b>	<b>1</b>		<b>\$35,000</b>
Figures for 2009 – 2010	4		\$2,319
Figures for 2008 – 2009	1		\$14,000
Figures for 2007 – 2008	5		\$100,701

## Case Reports

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### STEVEN IRVINE HART

This case was reported in the 2005–06 Annual Report at page 81.

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 an alleged tax minimisation scheme known as the Employment Retention Plan.

Hart was charged with 9 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 9 fraud offences in May 2005 and sentenced to a term of imprisonment. Subsequent appeals by Hart and by the CDPP 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. 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.

On 19 November 2010 the Supreme Court of Qld ordered Hart to pay a pecuniary penalty order in the amount of \$14,757,287.35. This decision is subject to appeal.

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### MENG FATT LEONG

Leong is a Singaporean national who, along with others, were investigated for operating a business which facilitated the hiring of labour for agricultural businesses where the labourers were not permitted by their visa conditions to work in Australia. Banking transactions indicated Leong had received regular large payments from entities associated with the agricultural businesses which were then distributed in smaller amounts to individuals. Australian authorities allege the smaller amounts were payments to the labourers. Significant funds were also traced to Singapore.

In July 2010, the County Court of Victoria ordered the restraint under the *POC Act 2002* of funds credited in 4 bank accounts in the name of Leong on the basis they were reasonably suspected of being the proceeds of crime, namely an offence of referring a non-citizen for work in breach of a visa condition contrary to the *Migration Act 1958*. No application was made to exclude the property from restraint.

On 8 February 2011 the same court ordered the restrained property be forfeited to the Commonwealth. The bank accounts contained a total of \$315,798. The application for forfeiture was not opposed.

## HI NGO

In March 2004 the ACS, AFP and ATO commenced a joint investigation into the suspected evasion of customs and excise duty for manufactured tobacco products by a number of duty free stores operating in Brisbane.

It was suspected that the stores were selling tobacco products to distributors who then on-sold them to tobacco outlets in Brisbane. False documents were also suspected to have been provided to Customs to create the appearance that the tobacco products were being sold in legitimate duty-free transactions to crews of overseas ships. No excise duty or customs duty was paid in relation to the diverted tobacco product.

One of the stores alleged to have been involved was operated by Queensland Jewellery and Gift Company Pty Ltd, trading as Queensland Duty Free (QDF). Sen-Hung Chen and Chui-Yuan Hsiao established and operated QDF.

It was alleged they conspired with Hi Ngo and Thanh Hiey Troung who sold the tobacco products locally.

In April 2005 the CDPP obtained restraining orders over property in the name of Ngo on the basis there were reasonable grounds to suspect he had committed an offence involving defrauding the Commonwealth. In November 2007 further property alleged to be under the effective control of Ngo was restrained. The restrained property included bank accounts, shares, cash, a motor vehicle and real estate. A number of examinations under the *POC Act 2002* were conducted.

Ngo pleaded guilty and was convicted on 23 July 2009. The proceedings were resolved by consent on the basis that restrained funds totalling \$927,217.34 and shares valued at \$275,708.46 forfeited to the Commonwealth on 25 August 2010. In addition Ngo was to forfeit a further \$70,000.

## NASHWAN KAMAL

In October 2009, on the application of the CDPP the District Court of WA ordered a restraining order over specified property of Kamal on the basis there were reasonable grounds to suspect he had committed a serious offence. The restraining order was sought *ex parte*, that is, without notice to Kamal. Kamal challenged the order in the District Court seeking a declaration that section 26(4) of the *POC Act 2002* was unconstitutional. Section 26(4) is the subsection that enables the CDPP to request the Court to consider a restraining order application on an *ex parte* basis, without notice being given to the owner of the property, the suspect or anyone else.

The District Court held that section 26(4) was invalid on the basis that it invested powers that were repugnant to the concept of a Court under Chapter III of the Constitution.

The Director appealed the decision to the WA Court of Appeal. The Commonwealth Attorney-General intervened in support of the appeal. On 15 March 2011, the Court of Appeal upheld the appeal and reinstated the restraining order. The Court of Appeal was divided in its reasons, but all 3 judges agreed that section 26(4) was constitutionally valid. The *POC Act 2002* proceedings were subsequently settled with part of the restrained property of Kamal being forfeited to the Commonwealth.



# Criminal Assets Confiscation Tables

The tables below set out details relating to the criminal confiscation work conducted by the CDPP in 2010–2011.

*Table 1: POC Act 2002: new orders and forfeitures in 2010 – 2011*

	Number	Value
Restraining orders	48	\$42,946,410*
Pecuniary penalty orders	14	\$17,326,726
Forfeiture orders	107	\$5,603,954
Automatic forfeiture under section 92	5	\$1,250,226
Literary proceeds orders	–	–

\*This is the current estimated net value of the property covered by restraining orders.

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

*Table 2: POC Act 2002: restraining orders obtained by reference to enforcement agency*

	No.	Value
Australian Crime Commission	–	–
Australian Federal Police	48	\$42,946,410
Australian Securities & Investments Commission	–	–

*Table 3: POC Act 2002: restraining orders obtained by offence type*

	No.	Value
Corporations	–	–
Drugs	17	\$10,648,699
Fraud	10	\$1,016,319
Laundering	18	\$13,176,304
Other	4	\$18,105,088

Table 4: POC Act 2002: restraining orders in force as at 30 June 2011

	Number	Value
Number of restraining orders in force	115	\$95,967,734

Table 5: POC Act 2002: money recovered in 2010 – 2011

	Amount Recovered
Pecuniary penalty orders	\$2,174,142
Forfeiture orders	\$7,674,764
Automatic forfeiture under section 92	\$3,543,350
Literary proceeds orders	–
Matters where money recovered but no formal orders made	\$421,209
TOTAL RECOVERED	\$13,813,465

Table 6: POC Act 2002: new post forfeiture orders in 2010 – 2011 \*

	Number	Value
Post forfeiture orders under section 102	–	–

\*Post forfeiture orders are court orders made in restricted circumstances requiring the Commonwealth to return property previously forfeited.

Table 7: POC Act 1987: restraining orders in force as at 30 June 2011

	Number	Value
Number of restraining orders in force	2	\$238,613

Table 8: POC Act 1987: Money recovered in 2010 – 2011

	Amount recovered
Pecuniary penalty orders	\$71,303
Forfeiture orders	\$61,543
Automatic forfeiture	\$
Matters where money recovered but no formal orders made	–
TOTAL RECOVERED	\$132,846

Table 9: Criminal assets: summary of recoveries for 2010 – 2011

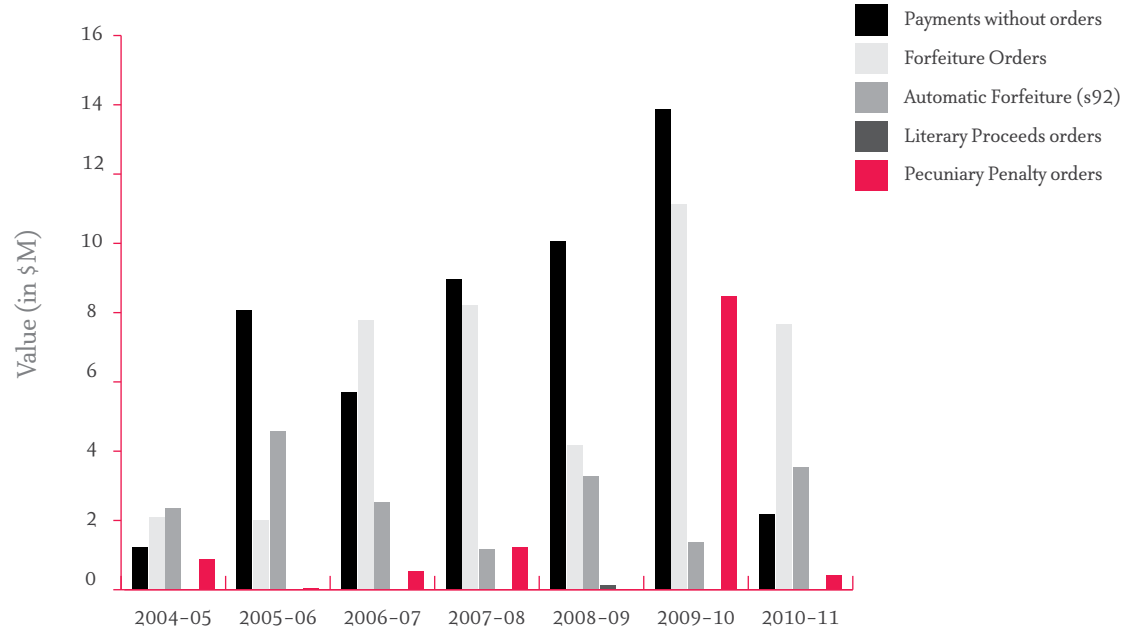
POC Act 1987 pecuniary penalty orders	\$71,303
POC Act 1987 forfeiture orders	\$61,543
POC Act 1987 automatic forfeiture	–
Matters where money recovered but no formal orders made	–
POC ACT 1987 TOTAL	\$132,846
POC Act 2002 pecuniary penalty orders	\$2,174,142
POC Act 2002 forfeiture orders	\$7,674,764
POC Act 2002 automatic forfeiture	\$3,543,350
POC Act 2002 literary proceeds orders	–
Matters where money recovered but no formal orders made	\$421,209
POC ACT 2002 TOTAL	\$13,813,465
Customs Act condemnation	–
CUSTOMS ACT TOTAL	–
GRAND TOTAL	\$13,946,311

Table 10: CSB Act: orders made in 2010 – 2011

Name	State	Date
Page	VIC	5 October 2010
Read	VIC	6 October 2010

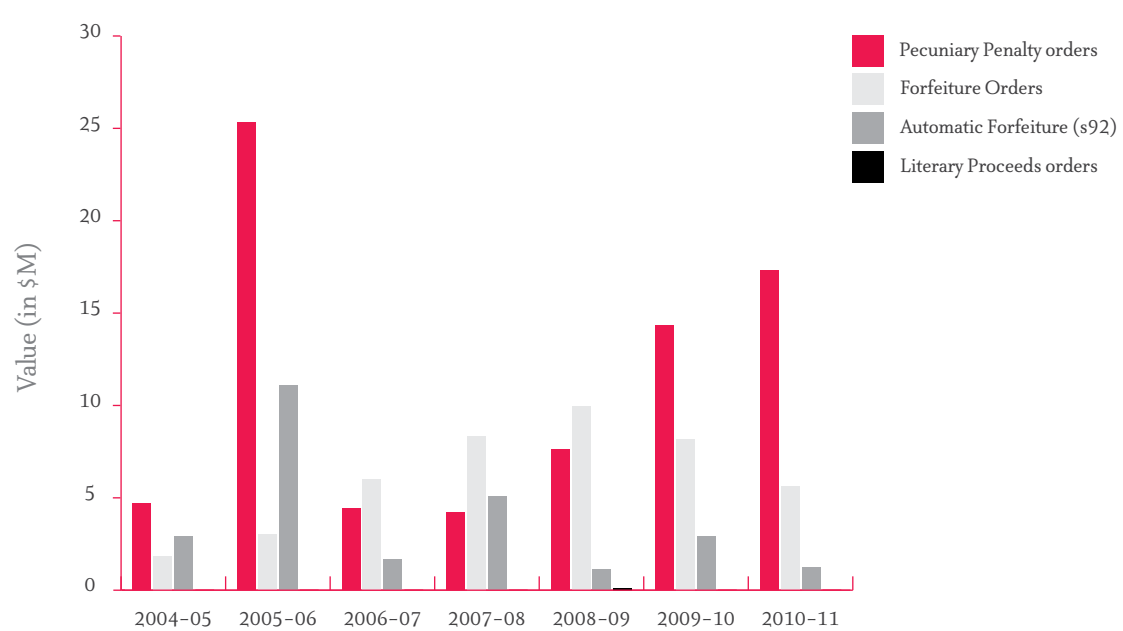
Money Recovered POC Act 2002

2004 – 05 to 2010 – 11



Value of Confiscation POC Act 2002

2004 – 05 to 2010 – 11









# 5

## International Crime Cooperation



## 5 International Crime Cooperation

The CDPP views international crime cooperation as an important tool in the successful prosecution of transnational crime. The proliferation of cases with an international aspect requires assistance and cooperation from other countries in order to effectively investigate and prosecute serious offences such as people smuggling, sexual servitude, drug trafficking, money laundering and the dissemination of child pornography.

The CDPP increasingly seeks cooperation from other countries to assist in the prosecution of transnational crime and to apprehend and extradite fugitives.

The CDPP is involved in 2 main areas of international criminal cooperation: Extradition and Mutual Assistance. Both areas involve the dedication of specialised resources which reflects the priority placed by the CDPP on this important area of work. The CDPP works closely with AGD, Australia's Central Authority for mutual assistance in criminal matters and extradition.

### Mutual Assistance

Mutual assistance is a formal process used by countries to provide assistance to each other to investigate and prosecute criminal offences, and to recover the proceeds of crime.

The formal mutual assistance regime runs parallel with the less formal system of international cooperation between investigating agencies, known as 'agency to agency' assistance. Formal mutual assistance channels are most commonly used when the request for assistance involves the use of coercive powers or when the material requested is required to be in a form that is admissible in criminal proceedings.

The mutual assistance regime rests on a network of international relations and obligations, together with the willingness of participating countries to provide assistance to each other.



This international network is underpinned by a number of bilateral treaties and multilateral conventions. Australia has ratified 28 bilateral mutual assistance treaties, and a number of multilateral conventions, which bind the signatories to provide mutual assistance to each other, including the:

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

Countries which are not signatories to mutual assistance treaties or conventions may also request mutual assistance from, and provide mutual assistance to, each other. This is done under the principle of reciprocity whereby countries agree to provide assistance to each other on a case by case basis on the understanding that they will receive similar assistance in return.

In relation to requests from other countries, the CDPP conducts applications authorised under the *Mutual Assistance in Criminal Matters Act 1987* to register and enforce orders made by foreign courts to restrain and forfeit the proceeds of crime.

The CDPP was also involved in assisting in the drafting of 59 outgoing requests made by Australia to 29 foreign countries in relation to matters where charges have been laid and a brief of evidence has been received from a Commonwealth investigative agency or where the CDPP has received specific funding to draft mutual assistance requests in respect of a particular matter or type of matter.

These outgoing requests were generally made in conjunction with Commonwealth investigative agencies, or joint taskforces comprising law enforcement officers from Commonwealth, State and Territory agencies.

## Extradition

Extradition is a formal process whereby offenders who are outside the jurisdiction are returned to Australia to be prosecuted or to serve a sentence of imprisonment. Extradition is both an important and effective mechanism in law enforcement. Modern advances in technology have led to an increase in transnational crime. Effective global law enforcement cooperation enhances the ability to bring to justice offenders who seek to avoid being dealt with for serious criminal conduct by fleeing the jurisdiction, or by committing offences against Australian law from outside the jurisdiction.

AGD has sole responsibility for international extradition for all countries except New Zealand. The CDPP's current role in extradition is confined to requesting that extradition be sought in Commonwealth matters and the execution of incoming requests from New Zealand.

The CDPP did, however, continue to conduct proceedings relating to 2 incoming requests from other foreign countries of which it had carriage prior to relinquishing the function of appearing generally in such proceedings. The CDPP appeared on behalf of the foreign country and took instructions from AGD in the conduct of those matters.

In the case of outgoing extradition requests, the CDPP prepares documents in support of requests for extradition in serious cases where a person is wanted for prosecution for an offence against Commonwealth law or to serve a sentence of imprisonment and is found to be in a foreign country. The CDPP has no role in cases where a person is wanted for prosecution by State or Territory authorities. In such cases, the authorities of the relevant State or Territory deal directly with AGD.

Requests from New Zealand are made on a police to police basis and referred to the CDPP by the AFP. The CDPP appears on behalf of New Zealand in proceedings before a Magistrate to determine whether a person will be surrendered, and in any review or appeal arising from those proceedings.

## Incoming Requests

In the past year, the CDPP commenced proceedings in respect of a request from a foreign country which had been referred to the CDPP in a previous financial year. Those proceedings resulted in the person consenting to extradition. The CDPP also retained carriage of 1 matter in which the person has instituted proceedings to review of a finding of eligibility for surrender. That matter remains before the Court.

The CDPP also appeared on behalf of New Zealand in relation to 7 requests for extradition received this year. Four people consented to their surrender. Three people contested their surrender, resulting in a Magistrate ordering the surrender of each of those persons. Two of the 3 people have sought a review of the surrender order. Both matters are currently before the Courts.

The CDPP also commenced proceedings for review of a Magistrate's order releasing a person made in the previous financial year. The Federal Court dismissed the CDPP's application for review. The CDPP appealed against that decision to the Full Court of the Federal Court and was ultimately successful, with the Full Federal Court ordering that the person be surrendered to New Zealand.

## Outgoing Requests

During the course of the year, the CDPP asked AGD to make 8 formal extradition requests to foreign countries in relation to prosecutions being conducted by the CDPP. The CDPP also made 1 request for provisional arrest pending the submission of a formal request. The requests resulted in 3 people being surrendered to Australia following extradition proceedings in the foreign country. Contested extradition proceedings in relation to 2 people arrested in response to requests are continuing before the Courts of the relevant foreign country. One person was deported to Australia.

The CDPP made 1 formal request to New Zealand.

Two people were also surrendered to Australia during the year as a result of requests made in previous financial years, including 1 person charged with offences arising from Project Wickenby.







of Public Prosec

# 6

## International Contribution



## 6 International Contribution

*Strengthening prosecuting capacity is important given the increasingly international character of contemporary criminal activity and the need to respond with coordinated international law enforcement.*

*The CDPP is in a unique position to contribute to training and development programmes relating to prosecuting in Australia and internationally, based on its expertise and practical experience. This contribution is significant in building linkages between Australia and other countries and facilitating future cooperation. However, resource constraints have impacted on the CDPP's capacity to provide this assistance.*

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### Prosecutors' Pairing Programme

The Prosecutors' Pairing Programme is a joint initiative of the CDPP and the Anti-Money Laundering Assistance Team (AMLAT) within the Attorney-General's Department. Prosecutors from a Pacific Island Forum country are typically placed in one of the CDPP's proceeds of crime teams. The purpose of the programme is to strengthen the capacity of prosecution services in Pacific countries to conduct effective proceeds of crime action through practical experience training and mentoring.

The Perth Office's Criminal Assets Branch hosted an Indonesian prosecutor for 2 weeks in October 2010. A second Indonesian prosecutor was hosted by Criminal Assets Branches in Head Office and Brisbane.



In May 2011 2 Malaysian prosecutors nominated by the Malaysian Attorney General's Chambers undertook placements with the CDPP. They visited Head Office, where they had the opportunity to discuss Commonwealth sentencing and the prosecutorial process. Perth Office then hosted the prosecutors in the People Smuggling and Criminal Assets Branches. They were provided the opportunity to gain experience in the preparation of people smuggling prosecutions and observe the presentation of proceeds of crime applications and court proceedings in Western Australia.

## Visits by Delegations

The CDPP hosts visits by international delegations and these provide an opportunity to share experiences and to provide information about prosecuting in the Australian criminal justice system. In August 2010 the CDPP hosted a delegation from the National Police Agency of Japan and provided a presentation on the independent role of the prosecutor and the *Prosecution Policy*.

In March 2011 a second delegation from Japan, which included a prosecutor from the Tokyo District Public Prosecutor's Office, visited Head Office.

In March 2011 the CDPP, with representatives from the Attorney-General's Department and the AFP, met with a delegation of senior government officials from China. The purpose of the meeting was to share information regarding the Australian legal framework, the process of Mutual Legal Assistance, the repatriation of criminals and the recovery of proceeds of crime.

A delegation from the Vietnamese Supreme People's Procuracy was hosted by the Melbourne Office in May 2011. The CDPP provided information on its role in the Mutual Assistance process and the confiscation and recovery of the proceeds of crime. The visit contributed to a stronger international crime cooperation relationship between Australia and Vietnam.

Also in 2011 the CDPP's Head Office and Melbourne Office hosted a delegation of senior public prosecutors (including the Acting Public Prosecutor) from Papua New Guinea. The delegation was accompanied by a CDPP prosecutor who was serving at the time as an international prosecutor in Papua New Guinea. The purpose of the delegation's visit was to discuss criminal assets recovery, Mutual Assistance procedures, extradition and other topics relevant to the practice of Commonwealth criminal law.

## Assistance to International Counterparts and Agencies

A team of researchers conducting research on behalf of the United States Department of Justice visited the CDPP's Head Office in May 2011 to discuss the development and implementation of Australia's unexplained wealth laws. The researchers were undertaking a comparative study on unexplained wealth laws and chose Australia as a country of focus.

In June 2011 the CDPP provided information to the Public Prosecution Service of Canada regarding the *Prosecution Policy*, particularly in relation to the decision to prosecute and the choice of charges.

## Deployment of CDPP Prosecutors

Two CDPP prosecutors returned to work at the CDPP in 2011 after placements in the Office of the Public Prosecutor in Lae, Papua New Guinea. Both officers made a significant contribution to the work of the Office of the Public Prosecutor during their time in Papua New Guinea. In May 2011 another CDPP prosecutor commenced a similar placement in Papua New Guinea.

## United Nations Counter Terrorism Committee Directorate Seminar

In December 2010 the CDPP participated in the United Nations Prosecutor's Seminar in New York. The aim of the seminar was to bring together expert practitioners from various member states to share their experience and identify, share and promote best practice in prosecuting terrorism cases. The CDPP gave a presentation on the management of security classified materials in counter-terrorism prosecutions in Australia.

## Indonesia Australia Counter-Terrorism Legal Dialogue

In February 2011 the CDPP attended the *Indonesia Australia Counter-Terrorism Legal Dialogue* in Sydney. The Legal Dialogue was the first activity under the *Strengthening Legal Frameworks to Counter-Terrorism Program* administered by the Attorney-General's Department and Indonesian partners. The Legal Dialogue brought together members of a range of Australian and Indonesian agencies involved in counter-terrorism work to share experiences and challenges investigating and prosecuting terrorism offences.

## Malaysia Australia Technical Legal Working Group on People Smuggling and Trafficking in Persons

In February 2011 the CDPP provided assistance to the Attorney-General's Department by participating in Working Group discussions on people smuggling and people trafficking. The CDPP presented on Australia's approach to the prosecution of people smuggling and people trafficking matters.

## Australia and Sri Lanka Legal Training and Seminar Series

In March 2011 the CDPP provided assistance to the Attorney-General's Department in delivering seminars to senior members of the Attorney-General's Department of Sri Lanka. The focus was the prosecution of transnational crimes, in particular, people smuggling and people trafficking. The CDPP presented seminars providing an overview of the Australian justice system and the role of the CDPP as well as issues associated with the prosecution of people smuggling cases.

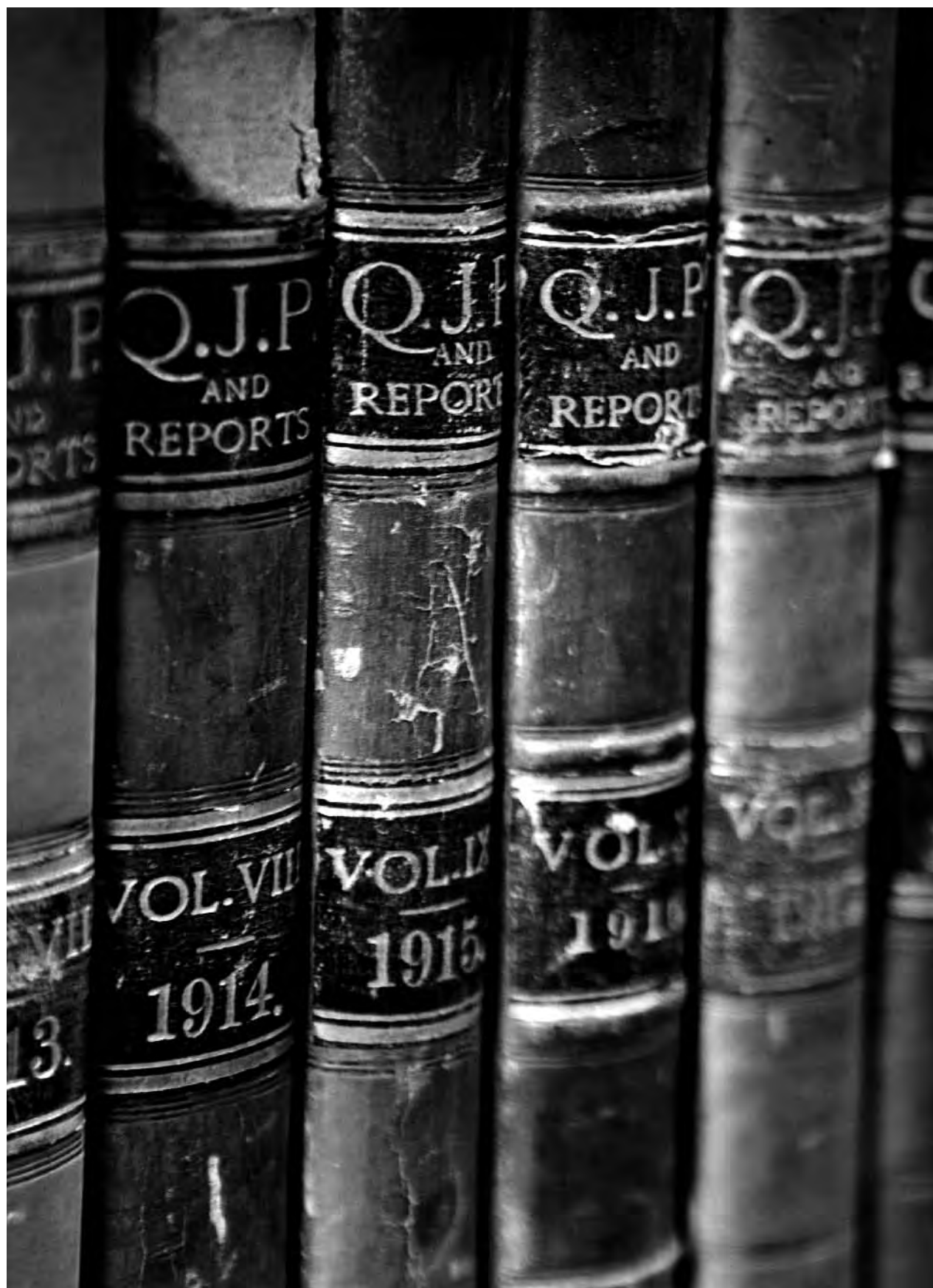
These seminars build linkages between Australian and Sri Lankan Government agencies to facilitate future cooperation to fight transnational crime.



## Other International Activities

The CDPP continues its association and involvement with the International Association of Prosecutors (IAP) and the International Society for the Reform of Criminal Law. In September 2010 the Director addressed the 15<sup>th</sup> conference of the IAP, convened in The Hague, on prosecuting human trafficking in Australia.

Although not convened this year, the CDPP participates in international meetings of prosecution agencies from countries with criminal justice systems based on the common law. The Heads of Prosecutors Agencies Conference (HOPAC) brings together the heads of prosecution services. The Managing Officers, Prosecutors and Executive Directors meeting (MOPED) is an international meeting of key operational officers from prosecution agencies in England, Scotland, New Zealand, Canada, Australia and the Republic of Ireland. This meeting focuses on management and areas such as professional development and information technology.



## 7

## Law Reform





## 7 Law Reform

The CDPP's contribution to law reform includes providing advice about the practical implications of:

- existing legislation;
- new policy proposals; and
- proposed legislation.

The CDPP's ongoing contribution to law reform stems from its practical experience conducting criminal prosecutions and taking proceeds of crime actions in courts across Australia.

As the agency responsible for the conduct of prosecutions against the laws of the Commonwealth in all Australian jurisdictions, the CDPP is in a unique position to provide feedback to policy formulators and law-makers about the operation of Commonwealth laws and the CDPP's experience working with these laws in the courts.

The CDPP also has an interest in ensuring that Commonwealth legislation regarding the criminal law is clear, consistent and practical. However, it is important to recognise that the CDPP does not develop criminal law policy.

The Policy Branch in Head Office coordinates the CDPP's work in the area of law reform.

The Policy Branch acts as a coordination point for the various areas of specialist expertise within the CDPP, 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 within the Legal, Practice Management and Policy Branch to establish and maintain links between prosecutors in Regional Offices and Commonwealth law-makers.

The CDPP contributes to law reform through commenting on legislative proposals, contributing to reviews, considering discussion papers and maintaining liaison relationships with Government departments and agencies.

### Legislative proposals

The CDPP commented on a wide range of legislative proposals and draft legislation during the course of the year, including:

- **SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES) ACT 2011 (NO 91 OF 2011)**

This Bill was introduced in to the Senate on 23 June 2011, debated and passed on 6 July 2011 and received Royal Assent on 4 August 2011.

The Act inserts section 66A into the *Social Security (Administration) Act 1999* requiring social security recipients to inform Centrelink of a change in circumstances likely to affect their benefit within 14 days. This provision operates from 20 March 2000.

- **CRIMINAL CODE AMENDMENT REGULATIONS No 1 2011**

This amendment provided an Interim Regulation to list additional substances and substance quantities for the purposes of the serious drug offences in Part 9.1 of the *Criminal Code*. This regulation expanded the prosecution of drug offences to incorporate substances and quantities of substances not currently listed in the *Criminal Code*. One of these substances, ketamine, prior to these regulations could only attract a penalty of a fine for its importation pursuant to the *Customs Act*. The CDPP brought this and other matters to the attention of AGD.

- **EXPOSURE DRAFT OF THE WORK HEALTH AND SAFETY BILL WHICH WAS RELEASED IN 2011;**

- **LAW AND JUSTICE LEGISLATION AMENDMENT (IDENTITY CRIMES AND OTHER MEASURES) ACT 2011**

This Act included new identity crime offences in the *Criminal Code*, amendments to the administration of justice offences in the *Crimes Act* and amendments to the *DPP Act* relating to the delegation of powers and immunity from civil proceedings.

- **EVIDENCE AMENDMENT (JOURNALISTS' PRIVILEGE) ACT 2011**

This Act received Royal Assent in April 2011.

- **CRIMINAL CODE AMENDMENT (CLUSTER MUNITIONS PROHIBITION) BILL 2010**

This Bill was introduced into the House of Representatives in October 2010 and sought to allow Australia to ratify the Convention on Cluster Munitions and make it an offence to use, develop, produce, otherwise acquire, stockpile, retain or transfer cluster munitions, and assist, encourage or induce anyone to undertake these activities.

- **SOCIAL SECURITY AMENDMENT (SUPPORTING AUSTRALIAN VICTIMS OF TERRORISM OVERSEAS) BILL 2011**

This Bill was introduced into the House of Representatives in March 2011 and sought to create a scheme to provide financial assistance to Australian victims of overseas terrorism.

The CDPP has also contributed to the policy development of a number of law reform proposals which have not at this stage been introduced into Parliament.

## Discussion papers

The CDPP provided comments in relation to a number of Government public discussion papers throughout the year. Discussion papers are one of the forms of consultation with respect to issues under consideration by Government. This year the CDPP considered discussion papers dealing with the following issues:

- **PRIVILEGE IN RELATION TO TAX ADVICE**

In April 2011 the Assistant Treasurer released a discussion paper for public comment which explored the appropriateness of establishing a tax advice privilege. The CDPP considered the discussion paper and provided a submission which indicated concern regarding the impact that the expansion of privileges could have on the investigation and prosecution processes. The CDPP also highlighted the difficulties that law enforcement agencies have faced with client legal privilege in the investigation of Commonwealth offences.

- **FORCED AND SERVILE MARRIAGE**

This year the Attorney-General and the Minister for Justice invited public comment on possible reforms to address the practices of forced and servile marriage. The CDPP provided practical input on how a proposed offence of forced and servile marriage may operate and the geographical jurisdiction of the proposed offence.

- **THE CRIMINAL RESPONSE TO SLAVERY AND PEOPLE TRAFFICKING, REPARATION AND WITNESS PROTECTION**

The Minister for Justice invited public comment on available criminal sanctions for slavery and people trafficking offences and on matters with relevance for people trafficking prosecutions. The CDPP considered and commented upon this discussion paper particularly in regard to the protection of vulnerable witnesses, the current legislation and frameworks and harbouring or receiving victims of people trafficking.

- **IMPLEMENTATION OF MODEL SCHEDULES FOR COMMONWEALTH SERIOUS DRUG OFFENCES**

The Minister for Justice invited public comment on issues relating to the implementation of model drug, plant and precursor schedules for Commonwealth serious drug offences. The CDPP provided comments particularly regarding the proposal for a scheme to deal with the dual listing of substances, interim regulations and emergency determinations and the legislative structure of Part 9.1 of the *Criminal Code*.

## Reviews

The CDPP also participated in a number of reviews throughout this year. Participating in reviews is an important part of the CDPP's contribution to law reform because it is a mechanism to discuss how the law currently operates or to comment on proposed changes to the law or Commonwealth guidelines or standards.

- **FRAUD CONTROL GUIDELINES**

The Commonwealth Fraud Control Guidelines were reviewed in 2010–2011 and the CDPP participated in this review. The revised Guidelines were publically released in April 2011.

- **AUSTRALIAN GOVERNMENT INVESTIGATION STANDARDS**

The CDPP participated in the joint-agency working group tasked with reviewing the Australian Government Investigation Standards.

- **REVIEW OF THE MIGRATION AMENDMENT (EMPLOYER SANCTIONS) ACT 2007**

In May 2010 the Government appointed Mr Stephen Howells to conduct a Review of the *Migration Amendment (Employer Sanctions) Act 2007*. In providing his report to the Minister for Immigration and Citizenship, Mr Howells thanked officers of the CDPP for the capable and timely support and assistance provided.

## Liaison and Committees

The CDPP's input on legislative reform is facilitated by a close working relationship with AGD, in particular the Criminal Law and Law Enforcement Division and the National Security Law and Policy Division. It is also facilitated by close liaison relationships with the Commonwealth departments and agencies which investigate Commonwealth offences or develop legislative proposals.

Where the CDPP identifies deficiencies in laws or aspects of laws that in the view of the CDPP should be clarified, these are brought to the attention of AGD or another department or agency that has responsibility for the administration of the legislation involved. The CDPP may also raise possible legislative changes for consideration.

In addition, the CDPP is active in law reform through its discussions with departments and agencies, particularly through its liaison function, and at various interdepartmental committees where law reform issues are raised.











# 8

## Practice Management



## 8 Practice Management

*The CDPP prosecutes a wide range of criminal offences referred by over 36 different investigative agencies in 8 States and Territories. The Legal, Practice Management and Policy Branch in Head Office plays an important role in implementing the strategic priorities of the CDPP that are critical to ensuring that the CDPP delivers an efficient, effective and independent federal prosecution service to the Australian community.*



The Branch deals with a broad range of legal, policy and liaison responsibilities and supports the CDPP's Regional Offices and Executive in relation to the prosecution work of the Office. This includes providing legal and strategic advice in significant and sensitive prosecutions; responsibility for national liaison with referring agencies; coordinating the review of national policies and guidelines; and designing and implementing national training programs for prosecutors.

The Branch provides specialist coordination, advice and training in specific areas of the CDPP's practice, particularly in new areas, and assists with the sharing of knowledge and experience within the CDPP. It also monitors and seeks to enhance CDPP performance.

The CDPP works hard to maintain effective working relationships with investigative agencies and departments. A system of national liaison with the CDPP's major referring client agencies complements liaison conducted at the regional level. The CDPP maintains a number of manuals and policies designed to assist law enforcement agencies in their role in investigating Commonwealth offending.

The Branch contributes to policy development and law reform in the Commonwealth criminal justice system through a close liaison relationship with the Commonwealth Attorney-General's Department. The CDPP is closely involved in the development of offences and legislation relating to criminal law.

## Advice to the Director

One of the key areas of the CDPP's work is the provision of high-level legal advice to the Director on the exercise of the Director's statutory functions in accordance with the *Prosecution Policy*. This includes consideration of no bills, ex officio indictments, appeals against sentence, reference appeals, indemnities, conspiracy consents and taking over and discontinuing prosecutions.

## National Coordination

*The Legal, Practice Management and Policy Branch assists in coordinating and supporting the CDPP's national practice.*

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The Branch seeks to build expertise within the CDPP and develop national consistency including by facilitating the sharing of information around Australia, establishing networks for prosecutors working in specialised areas, providing on-line legal resources, and arranging national meetings. For example, there are networks in the areas of people smuggling, Centrelink prosecutions, people trafficking, child pornography and money laundering.

There is liaison between Commonwealth and State prosecuting authorities at national and regional levels. The Conference of Australian Directors of Public Prosecutions provides a forum for Directors of Public Prosecutions to discuss best practice in prosecuting, professional standards, training and liaison. The National Executive Officers' Meeting of the heads of legal practice and corporate services of the Commonwealth and State and Territory prosecution services provides a valuable opportunity to share information and discuss the management of prosecuting agencies.

The CDPP also gains from international experience in areas such as the management of prosecution agencies, professional development and information technology by attending the Managing Officers, Prosecutors and Executive Directors meeting (MOPED).

## Liaison with Investigative Agencies

The CDPP works closely with Commonwealth agencies that refer matters for prosecution.

The CDPP has in place *General Guidelines for Dealing with Investigative Agencies* and also Memoranda of Understanding with a range of agencies. The CDPP holds regular meetings at the national and regional level with many Commonwealth agencies. It also maintains relationships with other investigative agencies that from time to time refer briefs of evidence to the CDPP.

To support liaison relationships, on occasion the CDPP hosts national conferences addressing specific areas of work. These conferences provide a useful opportunity for prosecutors and investigators to discuss issues involved in dealing with specific types of criminal conduct and to strengthen prosecution action.

## Victims

*The CDPP is prosecuting an increasing number of matters that involve individual victims of crime as the nature of Commonwealth crime changes. The CDPP recognises the importance of keeping victims informed about matters and providing appropriate support to victims participating in the criminal justice process.*

.....

The *Prosecution Policy* states that it is important in all prosecution action that victims are treated with respect for their dignity. In the context of the *Prosecution Policy* a victim of crime is an identified individual who has suffered harm as the direct result of an offence or offences committed against Commonwealth law or prosecuted by Commonwealth authorities. ‘Harm’ includes physical or mental injury, emotional suffering and economic loss.

The *Prosecution Policy* provides for the views of any victims, where those views are available, and where it is appropriate, to be considered and taken into account when deciding whether it is in the public interest to:

- commence a prosecution;
- discontinue a prosecution;
- agree to a charge negotiation; or
- decline to proceed with a prosecution after a committal.

The *Prosecution Policy* also provides that the CDPP will comply with its *Victims of Crime Policy* in its dealings with victims.

The CDPP has produced a number of documents about the prosecution process which may be of assistance to victims, such as a step by step guide to the prosecution process, a guide to witnesses giving evidence in court, a glossary of commonly used terms and questions and answers for victims and witnesses. These resources are available at [www.cdpp.gov.au](http://www.cdpp.gov.au).

The CDPP has a Witness Assistance Service officer located in the Sydney Office. This officer provides assistance to witnesses in the Sydney Office and acts as a resource for other offices. A range of information and support services are provided to those referred to the Witness Assistance Service Officer including court tours; support at court; referrals to support services; and assistance with Victim Impact Statements.

## Training

The CDPP recognises the importance of developing skills within the office through structured training. This year the CDPP has maintained its Continuing Legal Education training program.

The CDPP provides national online induction material for the use of new officers as they join the CDPP. This program has been developed to provide a comprehensive introduction to the Office and to cover all relevant procedures and policies to ensure that prosecutors are skilled for the work they perform. This includes areas such as the *Prosecution Policy*, the Guidelines and Directions Manual, and the respective roles and responsibilities of the CDPP and other agencies. This online resource is provided in addition to the training provided by supervisors.

Due to resourcing constraints the CDPP has not been able to contribute to the extent that it has previously to training courses for investigative officers conducted by referring agencies. Our contribution has been focussed on the role of the CDPP and the *Prosecution Policy of the Commonwealth*.

## Manuals

The CDPP continues to maintain and update the Search Warrants Manual, the Telecommunications (Interception and Access) Manual and the Surveillance Devices Warrants Manual. These manuals provide guidance on the legal requirements for obtaining and executing warrants under Commonwealth law. Given the technical nature of this area of law, the CDPP 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 CDPP officers and relevant Commonwealth investigators. The CDPP has also produced a Copyright Prosecutions Outline and a Trademark Prosecutions Outline which provide guidance regarding the investigation and prosecution of offences relating to intellectual property.

## Statistics

An important element of the CDPP's practice management is the collection and analysis of statistical information regarding Commonwealth prosecutions. Statistical information is collected in the CDPP's Case Recording Information Management System (CRIMS) and is used internally and externally to measure the work of the CDPP against performance indicators and provide information to referring agencies. CRIMS is a very important resource for the CDPP and is under continuous development.

## Online Resources

The CDPP provides an *Information Service* to its Client Agencies via its Client Agencies website to update them on criminal law issues. The website covers Commonwealth criminal cases, new legislation, and recently published books, articles, conference papers and Government reports. This is in addition to the CDPP's online manuals for search warrants and electronic surveillance warrants.

This website also includes offence breakdowns and draft charges so that investigators are able to readily identify the physical and fault elements that must be proven in order to establish an offence and to assist in charges being formulated.

The *Commonwealth Sentencing Database* is a joint project of the CDPP, the National Judicial College of Australia and the Judicial Commission of NSW, based on sentencing information provided by the CDPP. The purpose of the Database is to provide judicial officers and other users with rapid and easy access to information about sentencing for Commonwealth offences and to assist judicial officers with their sentencing decisions. The Database is designed to provide primary research sources, such as judgments and legislation, linked to secondary resources including commentary on sentencing principles and sentencing statistics.

Contemporary prosecuting increasingly involves the management and presentation to court of voluminous evidential material. The CDPP has adopted the Ringtail computer litigation support system. Ringtail has replaced the previous LSS system as the method of handling electronic briefs of evidence and the innovative presentation of evidence using computers in court. This system enables the effective electronic management of large numbers of documents and is a particularly valuable resource in complex and protracted litigation.

## Joint Trials – State and Territory DPPs

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 CDPP has arrangements in place with each of the Directors of Public Prosecutions in Australia concerning procedures for conducting trials which involve both Commonwealth and State or Territory offences.

## Disclosure

An important and ongoing issue in the CDPP's practice and in its work with Commonwealth investigative agencies is ensuring proper disclosure in prosecutions, as provided for in the CDPP *Statement on Prosecution Disclosure*. The CDPP is continuing to work with agencies to assist them to meet disclosure obligations by producing resources for investigators. The CDPP's *Statement on Prosecution Disclosure* is available at [www.cdpp.gov.au](http://www.cdpp.gov.au).





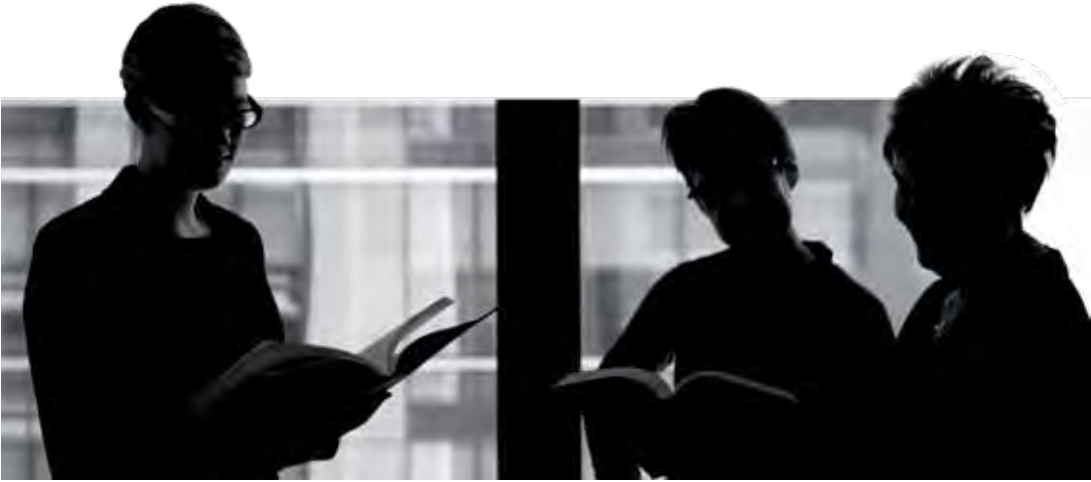






# 9

## Corporate Management



## 9 Corporate Management

### Human Resources

There is a central Human Resource (HR) section in Head Office supplemented by staff in all regions who deal with HR issues at a local level.

The Head Office section is responsible for providing policy direction and guidelines to the Regional Offices to ensure consistency of practice throughout the CDPP. The section also provides national payroll services, advice on entitlements and conditions of service, and is responsible for negotiating and implementing Enterprise Agreements and other employment instruments.

The Regional HR representatives provide day to day HR services on local matters. They also contribute to national HR initiatives through a forum of Executive Officers and HR practitioners that meets regularly.

### Staffing Profile

The employees of the CDPP are the most valuable resource of the Office. Fifty-five per cent of staff members are lawyers. Forty-five per cent of staff 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 2011 the total number of staff was 587. A breakdown of this figure appears in the tables at the end of this Chapter. The average staffing level for the year was 530.31. All staff members are employed under the *Public Service Act 1999* or section 27 of the *DPP Act*.

## Workforce Planning and Staff Retention and Turnover

In 2010–2011 the CDPP continued the emphasis of its workforce planning activities away from externally focussed recruitment campaigns to internally focused staff retention.

Commitments to developing and retaining high quality people expressed in the Strategic Priorities continue to be realised across all regions and at all levels with the completion of leadership and management training and cultural awareness programs. A range of other developmental opportunities including professional development activities and varying job experiences support the enhancement of the skills base and more competitive recruitment and selection processes.

## Workplace Agreements

### *Enterprise Agreement*

The CDPP Enterprise Agreement for 2009–2011 came into effect on 30 November 2009. The nominal expiry date of the Agreement is 30 June 2011. The Agreement covers all employees of the CDPP except for Senior Executive Service (SES) employees and employees whose salaries are not paid by the CDPP.

The main features of the current Enterprise Agreement are the Competency Framework project; flexible employment and leave provisions; a focus on developing our people; and recognition of those employees with additional responsibilities in providing a safe, secure and healthy workplace.

As at 30 June 2011, there were 560 employees covered by the Agreement.

The process of developing and negotiating a replacement Enterprise Agreement is underway. The replacement Agreement is similar in terms to the existing Agreement, builds on the initiatives contained in it and supports the concept of ‘one APS’ by incorporating a number of the recommended common APS terms and conditions of employment and model clauses.

### *Common Law Contracts*

The CDPP has a Common Law Contract (CLC) in place for each substantive SES employee. As at 30 June 2011 there were 26 CLCs in place.

### *Section 24(1) Determination*

In 2010–2011 the CDPP made 1 determination pursuant to section 24(1) of the *Public Service Act 1999*.

### *Workplace Participation*

The CDPP Enterprise Agreement includes provision for employees and their representatives to be consulted in relation to the implementation of major change. Consultation occurs mainly through regular workplace participation meetings, special purpose meetings called to discuss specific issues, or all staff communications.

## Human Resource Management Information System (HRMIS)

On 23 June 2011, the CDPP implemented phase 1 of a new HRMIS. Phase 1 encompasses delivery of payroll services including administration of employee salary and leave entitlements. Phase 2 scheduled for 2011–12 will deliver on other important areas of human resource activity such as a new e-recruitment module and more automated performance management, learning and development and OHS functionality.

The HRMIS will become the prime source of data on employee history, information and entitlements. It will reduce duplication of employee information across corporate systems, minimise manual processing and improve reporting capability. The medium term aim is for the system to facilitate the holistic human resource management model envisioned by the Strategic Priorities and reflected in the Enterprise Agreement and the draft Competency Framework. It is expected to become a significant enabler of ongoing measures that support transparent and effective recruitment and selection and employee performance and development.

## Learning and Development

A key strategic theme for the CDPP is *‘to recruit, develop and retain high quality people’* and core values of the CDPP are *‘knowledge, skills and commitment of our people’* and *‘leadership from senior lawyers and managers’*. The CDPP has rolled out a number of initiatives to translate this theme and values into tangible learning and development programmes for all staff at all levels.

An ongoing program of leadership and management training continued in 2010–11. The training focused on developing leadership skills, an appreciation of effective communication techniques and a deeper understanding of teamwork. The training was tailored to suit employees at all levels and delivered accordingly.

The CDPP conducts in-house legal training to ensure that CDPP lawyers comply with any continuing legal education requirements which apply to them. The CDPP also runs in-house advocacy training courses for CDPP lawyers.

The CDPP met an important commitment to provide Indigenous cultural awareness training as set out in the Enterprise Agreement and identified as one of the key practical measures of the Reconciliation Action Plan.

Direct expenditure on training for the year was \$257,438.14. There was also considerable ‘on the job’ training, which was not costed.

## Competency Framework

The concept of a competency framework was initially introduced into the CDPP with a focus on recruitment and selection. Five broad competencies were considered to capture the skills required for most CDPP positions and were used instead of selection criteria as the basis for selecting staff. Based on the Australian Public Service Commission’s (APSC) Integrated Leadership System (ILS) but with greater emphasis on technical skills, the competencies are currently set out under the headings of Aptitude and Experience, Research and Advice, Working Relationships, Drive and Integrity and Communication.

The framework has now been developed and expanded to include a structural link between the Strategic Priorities, the Enterprise Agreement and major HR activities. The framework will do so primarily by maintaining a focus on achieving organisational outcomes down to an individual level through recruitment, learning and development, and performance management activities. The expanded Framework is in draft form and was developed in conjunction with senior managers and tested and refined through a consultation process with all employees.

## Employee Wellbeing Program (EWP)

The CDPP recognises that a supportive work environment is an important factor in protecting employees against psychological harm and promoting psychological resilience. The EWP incorporates a range of positive employment practices and support services that promote and protect employee wellbeing within the CDPP.

The practical implementation of the EWP has encompassed the provision of mental health literacy and education workshops for staff and managers across the CDPP and access to wellbeing assessments and counselling for employees working with potentially offensive or traumatic case materials. The CDPP also conducts regular and appropriate short courses related to employee wellbeing through its Employee Assistance Programme (EAP).

The EWP is reviewed to ensure its continued application and relevance. In particular, changes have been made to the content of recruitment and selection materials and the Wellbeing Check Program. Recruitment and selection materials provide clearer information to applicants about work in areas that deal with offensive or traumatic materials. The Wellbeing Check Program is now more clearly defined in terms of the nature and level of service available to an employee.

## Occupational Health and Safety

Information about the CDPP Occupational Health and Safety management arrangements in accordance with section 74 of the *OHS Act 1991* is at Appendix 3.

## Workplace Diversity

The CDPP aims to integrate the principles of workplace diversity into all aspects of human resource 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 CDPP's current Workplace Diversity Program builds on earlier workplace diversity plans and programs. The program recognises and incorporates developments and progress the CDPP has made as an organisation in this area.

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

### *Reconciliation Action Plan (RAP)*

The CDPP's RAP was officially launched by the Director on 4 August 2010 following a period of development in consultation with employees, management and Reconciliation Australia. The RAP working group included representatives from CDPP Aboriginal and Torres Strait Islander employees, human resources and senior management with support from the Director.

The CDPP's RAP contains achievable targets to enable the organisation to implement the Plan. The RAP was reviewed in February 2011. The review found that progress had been made on 15 of the 17 agency specific action items included in the RAP. The RAP will undergo a further review in early 2011–12.

## Status of Women

As at 30 June 2011, women comprised 68.94% of CDPP employees, and 68.42% of lawyers.

Of the 42 full-time members of the SES, 12 were women. There were 5 part-time members of the SES, all of whom were women. In percentage terms, 36.17% of SES positions were filled by women.

As at 30 June 2011, there were 51 women working as legal officers on a part-time basis.

The CDPP 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.

## National Disability Strategy

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service Report* and the *APS Statistical Bulletin*. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au). From 2010–11, departments and agencies are no longer required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by a new National Disability Strategy which sets out a 10 year national policy framework for improving life for Australians with disability, their families and carers. A high level report to track progress for people with disability at a national level will be produced by the Standing Council on Community, Housing and Disability Services to the Council of Australian Governments and will be available at [www.fahcsia.gov.au](http://www.fahcsia.gov.au).

The Social Inclusion Measurement and Reporting Strategy agreed by the Government in December 2009 will also include some reporting on disability matters in its regular *How Australia is Faring* report and, if appropriate, in strategic change indicators in agency Annual Reports. More detail on social inclusion matters can be found at [www.socialinclusion.gov.au](http://www.socialinclusion.gov.au).

## Privacy

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

## Performance Pay

The CDPP does not pay performance pay.

## 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 2010) 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 CDPP has only 1 outcome with 1 program. Further information about the CDPP's budget is in the Attorney-General's Portfolio Budget Statements.

### Financial Performance

The CDPP'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 CDPP.

In accordance with the *DPP Act*, the CDPP 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. The recovery of fines and costs will be undertaken by the relevant referring agency from 1 October 2011.

## Operating Results

Operating revenues for 2010–2011 were \$8.463m (7.8%) less than 2009–2010. This decrease is largely due to decreased appropriations from government.

Operating expenses for 2010–2011 were \$3.582m (3.5%) less than 2009–2010. This decrease is largely due to a reduction in employee expenses and prosecution activities, as a result of decreased appropriations from government.

This has impacted on CDPP's activities:

- the average staffing level in 2010–2011, on a full-time equivalent basis, decreased by 46 (7.9%) from 2009–2010 which led to an decrease in employee expenses of \$2.993m;
- supplier expenses for prosecution legal costs decreased by \$0.865m;
- supplier expenses for property decreased by \$0.103m as a result of a small reduction in leased office space;
- supplier expenses for other items decreased by \$0.517m as a result of the overall decrease in activity, including on staff training and travel; and
- depreciation and amortisation expenses increased by \$0.218m as a result of the acquisition of a new PABX in 2010.

## Cost Recovery Arrangements

The CDPP has a Memorandum of Understanding with the ATO. The ATO transfers part of their appropriation to the CDPP to cover the cost of prosecutions for offences under GST legislation. The amount receipted in 2010–2011 under this arrangement was \$2.9 million, an increase of \$0.9m from 2009–2010.

## Purchasing

The CDPP adheres to the principles of value for money; encouraging competition amongst actual and potential suppliers; the 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* (CPGs).

## 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

Many individuals, partnerships and corporations provide services to agencies under contracts for services. However, not all such contractors are categorised as consultants for the purposes of annual reporting. Consultants are distinguished from other contractors by the nature of the work they perform.



As a general rule, consultancy services involve the development of an intellectual output that assists with the CDPP’s decision making, and that the output reflects the independent views of the service provider. For more information on what constitutes a consultancy, refer to <http://www.finance.gov.au/procurement/>.

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

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. Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website [www.tenders.gov.au](http://www.tenders.gov.au).

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 Australian Government AusTender internet site.
Select Tender:	A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders (this includes tenders submitted through Multi-Use Lists). This procurement process may only be used under defined circumstances.
Direct Sourcing:	A form of restricted tendering, available only under certain defined circumstances, with a single potential 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.
Panel:	An arrangement under which a number of suppliers, initially selected through an open tender process, may each supply property or services to an agency as specified in the panel arrangements. Quotes are sought from suppliers that have pre-qualified on agency panels to supply the government. This category includes standing offers and supplier panels where the supply of goods and services may be provided for a pre-determined length of time, usually at a pre-arranged price.



During 2010–2011, the CDPP did not enter into any new consultancy contracts with an estimated value of \$10,000 or more. Further details are provided in Table 6 at the end of this Chapter.

In addition, 4 ongoing consultancy contracts were active during the 2010–2011 year, involving total actual expenditure of \$104,273.

### *Australian National Audit Office Access Clauses*

During the reporting period, the CDPP did not let any contracts for \$100,000 or more (inclusive of GST) that do not provide for the Auditor-General to have access to the contractor's premises.

### *Exempt Contracts*

The CDPP has exempted the publication of details of legal counsel on the basis that to do so would disclose exempt matters under the *Freedom of Information Act 1982*.

## Asset Management

The CDPP's major assets are office fit-out, office furniture, purchased software and library holdings. A stocktake was conducted during the year to ensure the accuracy of asset records. The procurement of a significant number of desktop and notebook computers was performed during 2010–2011. It is expected that this will result in cost savings to the CDPP over the life of these assets. The CDPP undertook a comprehensive review of its asset management policies and procedures during the year. Also during the year, the CDPP vacated 1 floor of office space in Perth. Alternative office accommodation has been secured in Perth, and it is planned that the remaining 2 floors in Perth will move to the new premises during 2011–2012.

## Audit Committee

The *Financial Management and Accountability Act 1997* requires Chief Executives to establish an Audit Committee to assist them in the financial governance of their agency. The Committee reviews, monitors and recommends improvements to the CDPP's corporate governance framework, with a focus on risk management, internal controls, compliance and financial reporting. As part of this role it oversees CDPP's internal and external audit processes. Through internal audits, the Committee reviews key processes, systems and financial accountabilities across the whole CDPP.

The Committee reviewed its functions and responsibilities during 2010–2011. The CDPP's Audit Committee is appointed by the Director. It comprises 4 members: the First Deputy Director, the Deputy Director, Legal, Practice Management and Policy, Deputy Director, Corporate Management and an independent Audit Committee Member. In addition, there is a standing invitation to the Australian National Audit Office to observe Committee meetings.

## Internal Audit and Fraud Control

Internal audits are carried out every year. Internal audit work is outsourced to provide an independent review of CDPP's processes and procedures. Like the previous 3 internal audits, the 2010–2011 internal audit was carried out by Deloitte Touche Tohmatsu. The review was undertaken at Head Office and 3 regional offices – Sydney, Melbourne and Hobart. The following areas were reviewed:

- purchases and payables (including credit cards);
- domestic and international travel;

- revenue and debtors;
- human resources and payroll functions;
- nomination of counsel;
- Certificate of Compliance processes; and
- accountable forms.

The overall results of the internal audit were good with minor procedural changes recommended that the CDPP will implement. An analysis of the issues identified by internal audits over the previous 4 years has highlighted a decrease in the number of issues reported.

The CDPP has an integrated risk management framework which standardises all risk assessment methods and documentation.

Using this framework, the CDPP has prepared and implemented a Fraud Risk Assessment and Fraud Control Plan, which is in accordance with the Commonwealth Fraud Control Guidelines 2011. 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 2 years providing that there is no major change in functions. The CDPP Fraud Control Plan and Fraud Risk Assessment were last updated during 2008–2009. A review of this Plan and Risk Assessment has been undertaken, and a revised Plan will be implemented during 2011–2012.

All fraud control related material is made available to all staff via DPP–Net.

## External Scrutiny

The Auditor–General issued an unqualified audit report for the CDPP’s 2010–2011 financial statements.

During the reporting period, the Auditor–General issued 2 reports which includes information on the operations of the CDPP:

- ANAO Audit Report No. 22 ‘*Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2010*’; and
- ANAO Audit Report No. 38 ‘*Management of the Certificate of Compliance Process in FMA Act Agencies*’.

The CDPP provided responses to both reports and agreed with the recommendations made. The report, and the CDPP’s response, is available on the ANAO website: <http://www.anao.gov.au>.

The CDPP was not referred to in any report by a Parliamentary Committee.

## Advertising and Market Research

Information about advertising and market research undertaken by the CDPP is at Appendix 4 to this Report.

## Legal Services Expenditure

The *Legal Services Directions 2005* require agencies to report on expenditure on legal services.

The Legal Services Directions are not intended to cover the handling of criminal prosecutions and related proceedings (see General Note 4 to the Directions). The CDPP’s report therefore relates to the CDPP’s administrative activities only.

The total expenditure by the CDPP on legal services (excluding the handling of criminal prosecutions and related proceedings) during 2010–2011 was \$31,744. Further details are in Table 9 at the end of this Chapter.

## Other Areas

### *Information Technology*

The CDPP has a computer installation comprising personal computers with local and wide area networks and in-house applications running in a client-server environment. The basic office tools are Windows 7 and Office 2010.

The CDPP maintains the following in-house systems:

- Case Recording and Information Management System (CRIMS), which records details of prosecutions conducted by the CDPP;
- Criminal Assets Recording System (CARS), which records actions by the Criminal Assets Branches; and
- File Registry System (FILE), which keeps a record of general and administrative files.

The CDPP recently moved from SAP R/3 HR modules to Aurion Resource Information Management System to support payroll and human resource management functions. SAP R/3 Financials has been replaced by Agresso Finance management system to support our financial functions. The Office also operates the FIRST library management system. Ringtail Legal 2005 provides support for litigation. All systems are based on Microsoft technology.

The AGIMO ICT Panels have been used for re-equipment projects. The CDPP recently replaced personal computers using the desktop panel. The re-equipment of personal computers provided the opportunity to incorporate AGIMO's core operating environment and move from Microsoft Vista to Windows 7. The CDPP's Major Office Machines (MOM) are also due for replacement and the AGIMO MOM Panel will be used for their purchase.

### *Intranet and Internet*

The CDPP continues to maintain a Portal based platform to provide access to the CDPP's legal and administrative information.

All CDPP 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 CDPP provides access to remaining resources on the Internet through stand-alone computers. Libraries and some IT staff have full desktop access to the Internet.

The CDPP has an online recruitment site on the CDPP Internet home page. The site provides potential applicants with electronic access to information relating to current vacancies and to CDPP policies and procedures. The site has been very successful and experience has shown that it has been used effectively.

### *Libraries*

The CDPP has a library collection in each Regional Office and access to an extensive range of online resources is provided. CDPP libraries provide valuable research, reference, information and training services to CDPP officers. Each library provides support to the office in which it is based and library staff contribute nationally to the online reference enquiry system introduced in 2011. Every CDPP officer has access, through the library network, to the combined resources of all the CDPP's libraries. This includes the national current awareness service sent electronically each week.

The library provides access to both external legal information resources and in-house materials on the CDPP Portal Legal Resources page. Regular training sessions are provided by library staff on these electronic resources.

The Head Office library has a national coordinating and management role. National services include policy development in conjunction with the Deputy Directors; updating CDPP in-house databases; distributing in-house materials; disseminating information; cataloguing; managing the library system; and managing library subscriptions. Regular meetings of librarians are held to coordinate activities and develop shared procedures.

The CDPP uses the FIRST library management system. A major web based upgrade to the FIRST software was implemented in 2011. Links to electronic copies are included on records when the material is available in an electronic format.

The results of a survey of CDPP lawyers conducted in 2010 informed a review of library resources and services. The resulting Library Strategic Directions and Information Access Policy was approved by the Deputy Directors in 2010–2011 and library staff are now implementing this new policy.

### *Public Relations*

All media inquiries are handled by a media contact officer in Head Office, Canberra, who can be contacted on (02) 6206 5606 during office hours.

The CDPP 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 CDPP officers via the CDPP computer network. The summary forms the basis of a database that can be used for research purposes.

### *Ecologically Sustainable Development and Environmental Performance*

Information about the CDPP's ecologically sustainable development and environmental performance is at Appendix 5 to this Report.

### *Business Regulation*

The CDPP has no direct role in business regulation other than to prosecute criminal offences in appropriate cases. The CDPP's activities in the area of Commercial Prosecutions are reported in Chapter 2.3 of this Report.

### *Public Comment*

Any person is free to write to the CDPP about any matter at the addresses shown at the front of this Report or email any comments, suggestions or queries about the office of the CDPP and its functions to [inquiries@cdpp.gov.au](mailto:inquiries@cdpp.gov.au).

*Table 1(a): Staff as at 30 June 2011\**

	ACT	NSW	VIC	QLD	SA	WA	TAS	NT	TOTAL
Director	1								1
SES Band 3	1								1
SES Band 2	3	1	1	1		1			7
SES Band 1	6	10	7	7	1	6	1	1	39
PLO	10	22	18	18	5	13		1	87
SLO	9	31	24	19	4	14	1	1	103
LO2	4	12	16	6	4	2	4		48
LO1	1	17	5	11	1	2		2	39
EXEC 2	11	2	1	1					15
EXEC 1	8	6	2	3	2	2			23
APS 6	9	4	3	2	1	1		1	21
APS 5	11	7	6	3		6	1	1	35
APS 4	8	13	8	15	2	14			60
APS 3	1	30	22	17	8	8	2	2	90
APS 2		9	3			5			17
APS 1		1							1
<b>TOTAL</b>	<b>83</b>	<b>165</b>	<b>116</b>	<b>103</b>	<b>28</b>	<b>74</b>	<b>9</b>	<b>9</b>	<b>587</b>

\*Includes inoperative staff. Staff on Temporary Assignment of Duties (TAD) for 3 months or more at 30 June 2011 reported at their TAD classification.

*Table 1(b): Staffing Summary 2010–2011\**

Category	Number
Statutory Office Holders	1
Total Staff Employed under the <i>Public Service Act 1999</i>	517
Total Staff Employed under the DPP Act	69
<b>TOTAL</b>	<b>587</b>

\*Includes inoperative staff

The total number of non-ongoing staff in this table is 112.

Table 2: Staff as at 30 June 2011 by gender and category\*

CATEGORY	Full-Time		Part-Time		
	MALE	FEMALE	MALE	FEMALE	
Director	1				1
Senior Executives –					
Band 3	1				1
Band 2	6	1			7
Band 1	23	11		5	39
Legal Officers	71	154	1	51	277
Executive Officers	20	16	1	1	38
APS 1–6	57	136	2	29	224
TOTAL	179	318	4	86	587

\*Includes inoperative staff. Staff on Temporary Assignment of Duties (TAD) for 3 months or more at 30 June 2011 reported at their TAD classification.

Table 3: Staff usage by Office

Office	Actual Average Staffing 2010–2011
ACT	77.07
NSW	162.95
VIC	99.82
QLD	89.22
SA	25.37
WA	58.99
TAS	8.03
NT	8.86
TOTAL	530.31

*Table 4: Workplace diversity profile as at 30 June 2011\**

Classification	Male	Female	ATSI**	PWD***	First Language English Plus Another	First Language Other than English
Director	1					
SES Band 3	1					
SES Band 2	6	1				1
SES Band 1	23	16			3	2
Legal Officers	72	205	3	5	32	20
Executive Officers	21	17				6
APS Employees	59	165	3	9	31	21
<b>TOTAL</b>	<b>183</b>	<b>404</b>	<b>6</b>	<b>14</b>	<b>66</b>	<b>50</b>

\*Includes inoperative staff. Staff on Temporary Assignment of Duties (TAD) for 3 months or more at 30 June 2011 reported at their TAD classification.

\*\*Aboriginal and Torres Strait Islander

\*\*\*Person with a Disability

*Table 5: Salary Scales as at 30 June 2011*

Classification	Salary
SES Band 3	\$217,571 – \$232,553
SES Band 2	\$174,752 – \$198,814
SES Band 1	\$159,013 – \$168,008
Principal Legal Officer	\$113,062 – \$117,931
Executive Level 2	\$103,622 – \$115,010
Senior Legal Officer	\$85,280 – 103,622
Executive Level 1	\$85,280 – \$92,035
APS 6	\$66,668 – \$76,485
Legal Officer 2	\$62,178 – \$74,428
APS 5	\$61,775 – \$65,467

Classification	Salary
Legal Officer 1	\$55,454 – \$60,155
APS 4	\$55,454 – \$60,155
APS 3	\$49,823 – \$53,723
APS 2	\$45,011 – \$48,527
APS 1	\$23,280 – \$42,815

*Table 6: Consultancy services let during 2010–2011 of \$10,000 or more*

Consultant Name	Description	Contract Price (inc. GST)*	Selection Process**	Justification++
Nil	N/A	–	N/A	N/A
TOTAL		–		

**NOTES:**

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

\*\*Procurement Method

- Publicly advertised and an open tender process was adopted.
- Not publicly advertised. Firms may be approached through a selective tender process.
- Direct sourcing and receive an extension of an existing contract.
- Quotes sought from suppliers who were previously selected through an open tender process.

++Reason for Contract

- Skills currently unavailable within CDPP
- Need for specialised or professional skills
- Need for independent research or assessment

*Table 7: Agency Resource Statement*

	Actual Available Appropriation for 2010–11 \$'000 (a)	Payments Made 2010–11 \$'000 (b)	Balance Remaining 2010–11 \$'000 (a)–(b)
ORDINARY ANNUAL SERVICES			
Departmental appropriation			
Prior year departmental appropriation	68,713	97,387	(28,674)
Departmental appropriation <sup>1</sup>	99,600		99,600
Reductions in appropriations		378	(378)



	Actual Available Appropriation for 2010–11 \$'000 (a)	Payments Made 2010–11 \$'000 (b)	Balance Remaining 2010–11 \$'000 (a)–(b)
s.30 Repayments to the Commonwealth	138		138
s.30A GST Recoverable			
s.31 Relevant agency receipts	3,494		3,494
<b>TOTAL</b>	<b>171,945</b>	<b>97,765</b>	<b>74,180</b>
<b>ADMINISTERED EXPENSES</b>			
s.28 Repayments required or permitted by law	–	24	(24)
<b>TOTAL</b>	<b>–</b>	<b>24</b>	<b>(24)</b>

1. *Appropriation Act (No. 1) 2009–2010.*

**Table 8: Expenses by Outcome**

<b>Expenses and Resources for Outcome 1</b>			
<b>OUTCOME 1:</b> Maintenance of law and order for the Australian community through an independent and ethical prosecution service in accordance with the Prosecution Policy of the Commonwealth.	Budget 2010–11 \$'000 (a)	Actual Expenses 2010–11 \$'000 (b)	Variation 2010–11 \$'000 (b)–(a)
<b>PROGRAM 1.1:</b> 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.			
<b>ADMINISTERED EXPENSES</b>			
<b>TOTAL ADMINISTERED EXPENSES</b>	<b>2,300</b>	<b>1,627</b>	<b>673</b>
<b>PRICE OF DEPARTMENTAL OUTPUTS</b>			
Program 1.1: Revenue from Government (Appropriations) for Departmental Outputs	96,305	95,927	378
Revenue from other sources	2,764	3,681	(917)
<b>TOTAL PRICE OF DEPARTMENTAL OUTPUTS</b>	<b>102,369</b>	<b>99,608</b>	<b>2,761</b>
<b>(TOTAL PRICE OF OUTPUTS AND ADMINISTERED EXPENSES)</b>	<b>104,669</b>	<b>101,235</b>	<b>3,434</b>

**Table 9: Legal Services Expenditure** – This is a statement of legal services expenditure published in compliance with paragraph 11.1(ba) of the *Legal Services Directions 2005*.

Totals	
Total Costs Recovered <sup>1</sup>	\$0.00
Total External Legal Services Expenditure	\$31,744
Total Internal Legal Services Expenditure	\$0.00
<b>TOTAL (EXTERNAL + INTERNAL) EXPENDITURE</b>	<b>\$31,744</b>
Summary of External Legal Services Expenditure	
Total value of briefs to Counsel (A)	\$0.00
Total value of disbursements (excluding counsel) (B)	\$0.00
Total value of professional fees paid (C)	\$31,744
<b>TOTAL EXTERNAL LEGAL SERVICES EXPENDITURE (A + B + C)</b>	<b>\$31,744</b>
Counsel	
Number of briefs to male counsel	0
Number of briefs to female counsel	0
<b>TOTAL NUMBER OF BRIEFS TO COUNSEL</b>	<b>0</b>
Number of direct briefs to male counsel	0
Number of direct briefs to female counsel	0
<b>TOTAL NUMBER OF DIRECT BRIEFS TO COUNSEL</b>	<b>0</b>
Total value of briefs to male counsel (including direct briefs) <sup>2</sup>	\$0.00
Total value of briefs to female counsel (including direct briefs) <sup>2</sup>	\$0.00
<b>TOTAL VALUE OF BRIEFS TO COUNSEL (A)<sup>3</sup></b>	<b>\$0.00</b>

Disbursements	
TOTAL VALUE OF DISBURSEMENTS (EXCLUDING COUNSEL) (B)	\$0.00
Professional Fees	
Australian Government Solicitor	
List each law firm and the amount paid in professional fees in the financial year	\$31,744
TOTAL VALUE OF PROFESSIONAL FEES PAID (C)	\$31,744

**NOTE:** Excludes the handling of criminal prosecutions and related proceedings.

- 1. Do not subtract this figure from the legal services expenditure total
- 2. Includes the value of direct briefs
- 3. Includes all expenditure on Counsel

## Appendix 1 Statement under the *Freedom of Information Act 1982*

From 1 May 2011 onwards the CDPP is required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the *Freedom of Information Act 1982* (the *FOI Act*) and has replaced the former requirement to publish a section 8 statement in an annual report. The CDPP plan showing what information is published in accordance with the IPS requirements is accessible from the FOI section of the CDPP website.

However, because the requirement to publish a section 8 statement in our Annual Report applied for the period between 1 July 2010 and 30 April 2011, one has been included in this report. Section 8(1)(b) of the pre-amended *FOI Act*, requires the CDPP 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 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 *FOI Act*; or
  - (ii) Documents that are customarily made available to the public, otherwise than under the *FOI Act*, free of charge on request.

The following categories of documents are available (other than under the *FOI Act*) via the CDPP website or can be requested as hardcopies:

- CDPP Annual Reports;
- *The Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process*;
- *Statement on Prosecution Disclosure*;
- *Guidelines on Brief Preparation*;
- *Guide to Witnesses of Commonwealth Crimes – Giving Evidence in Court*;
- *Steps in the Commonwealth Prosecution Process*;
- *Victims of Crime Policy*;
- *Guide to prepare a Victim Impact Statement*; and
- Budget Statements.

- 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 CDPP 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 to 5:00 p.m. Some documents may also be viewed on the CDPP website at [www.cdpp.gov.au](http://www.cdpp.gov.au).

- 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 2 Commonwealth Director of Public Prosecutions Strategic Directions

### *a) Corporate Profile*

**VISION:** A fair, safe and just society where the laws of the Commonwealth are respected and maintained and there is public confidence in the justice system.

**PURPOSE:** To operate an ethical, high quality and independent prosecution service for Australia in accordance with the *Prosecution Policy of the Commonwealth*.

**CORE VALUES:** We value:

- applying the highest ethical standards to prosecutions and proceeds of crime action;
- applying the highest professional standards of competence, commitment and hard work to prosecutions and proceeds of crime action;
- maintaining the CDPP's prosecutorial independence;
- providing, and being recognised as providing, a high quality, timely, efficient and cost effective prosecution service;
- treating everyone with courtesy, dignity and respect;
- giving due recognition to the status of victims;
- the knowledge, skills and commitment of our people;
- leadership from senior lawyers and managers;
- accountability and excellence in governance within the CDPP; and
- protecting the natural environment.

**OUTCOMES:** A contribution to the safety and well-being of the people of Australia by assisting in the protection of the resources of the Commonwealth through the maintenance of law and justice and by combating crime.

**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.

### *b) Strategic Themes*

1. Conduct cases ethically and professionally;
2. Recruit, develop and retain high quality people;
3. Continuously improve CDPP performance;
4. Provide professional assistance to referring agencies; and
5. Actively contribute to law reform and whole of Government law enforcement initiatives.

## c) Strategic Priorities

1 Conduct cases ethically and professionally				
2 Recruit, develop and retain high quality people				
3 Continuously improve CDDPP performance				
4 Provide professional assistance to referring agencies				
5 Actively contribute to law reform & whole of Govt law enforcement initiatives				
PRIORITIES	PRIORITIES	PRIORITIES	PRIORITIES	PRIORITIES
1.1 Adopt the highest professional and ethical standards in prosecutions and in dealing with proceeds of crime	2.1 Recruit and retain high quality people	3.1 Monitor CDDPP performance against standards and goals to improve quality, efficiency and effectiveness	4.1 Provide professional and timely legal advice to investigators and agencies	5.1 Assist with development of law reform proposals and whole of Government law enforcement initiatives by providing:
1.2 Make all case decisions in accordance with:	2.2 Implement strategies to build and sustain the CDDPP as an employer of choice	3.2 Continue to develop national consistency recognising that the CDDPP operates in different jurisdictions	4.2 Liaise effectively with referring agencies at regional and national level	- timely, high quality legal and strategic advice; and
- the law;	2.3 Develop skilled people through:	3.3 Continuously review and adopt the highest professional and ethical standards in:	4.3 Identify and co-operate with referring agencies' enforcement strategies	- useful, timely and accurate statistical reports
- the <i>Prosecution Policy of the Commonwealth</i> ; and	- training courses;	- prosecutions;	4.4 Advise on investigator training needs and assist Commonwealth agencies with training investigators on areas of CDDPP legal expertise	5.2 Encourage prosecutors to identify deficiencies in the application of Commonwealth law
- CDDPP policy	- on the job experience;	- proceeds of crime action;	4.5 Develop and provide high quality materials on areas of CDDPP legal expertise	5.3 Review and identify prosecutions and proceeds related issues requiring law reform and/or whole of Government law enforcement initiatives and contribute to solutions and strategies to address them
1.3 Ensure compliance with the Director's Instructions and CDDPP policies	- mentoring;	- resource management;	4.6 Conduct regular referring agency surveys	
1.4 Capture and share important corporate knowledge amongst our people	- the CDDPP's performance management scheme; and	- the use of technology; and	4.7 Continue to develop nationally consistent approaches to assistance for referring agencies	
1.5 Undertake case reviews	- other innovative ways.	- personnel management including:		
1.6 Ensure processes and programs maintain our people's adherence to ethical standards	2.4 Foster and acknowledge good quality performance	• workforce planning;		
1.7 Treat victims with respect and dignity	2.5 Manage people effectively and professionally and have regard to feedback on performance	• performance management; and		
1.8 Decisions to be made:		• employment practices		
- in a timely fashion; and		Provide a safe, secure and healthy workplace		
- by people at the appropriate level		3.4 Adhere to and promote:		
1.9 Use our people's expertise throughout and between our offices		- Australian Public Service values;		
1.10 Meet challenges arising from changing technology		- APS and CDDPP Codes of Conduct; and		
		- diversity principles		
		3.6 Value our people's ideas		
		3.7 Ensure that the CDDPP's library, IT and administrative people and systems continue to provide high level support		

## Appendix 3 Occupational Health and Safety

The CDPP's Health and Safety Management Arrangements (HSMAs) were developed in accordance with the *Occupational Health and Safety Act 1991 (OHS Act)* and were first released in August 2008.

A Comcare review of agency HSMAs found that the CDPP HSMAs are compliant with the *OHS Act* and that there are appropriate processes in place to review and vary the agreement and resolve disputes in accordance with the *OHS Act*.

In 2010–11, the HSMAs were reviewed by the CDPP National Health and Safety Committee (NHSC). The review was open to employee comment and feedback throughout the process including formal opportunities for input at the beginning of the review and prior to its completion. The most significant issue arising from the review was manual handling, particularly the transport of materials to court. Substantial research was conducted and the services of CRS Australia engaged to provide advice in relation to the selection and use of appropriate equipment when transporting materials to court. Subsequent amendments were made to the manual handling provisions of the HSMAs and applied in a practical sense at the local level.

The measures contained in the HSMAs and supplementary policies assist the CDPP to achieve its strategic priority to 'provide a safe, secure and healthy workplace'.

The CDPP managed 19 non-compensable cases and 11 compensable cases during 2010–2011.

There were no accidents or dangerous occurrences reported under section 68 of the *OHS Act* during the year. There were no investigations under sections 29, 46 or 47 of the *OHS Act* reported during the year.



Appendix 4 Advertising and Market Research

Payments to media advertising organisations during 2010–2011 totalled \$53,432 (including GST) (\$83,276 for 2009–2010). No advertising campaigns were undertaken by the CDPP during 2010–11. The CDPP did not use the services of any creative advertising agencies to develop advertising campaigns, market research organisations, direct mailing or polling organisations.

Details of payments of \$11,500 (including GST) and above, as required under section 311A of the *Commonwealth Electoral Act 1918*, are in the table below.

Advertising and Market Research Payments

Organisation	Purpose	Payments <sup>2</sup> \$ (incl. GST)
Adcorp Australia Ltd	Recruitment and Procurement Advertising	26,827
Cre8ive Australasia Pty Ltd <sup>1</sup>	Annual Report and Publications Production	26,605

1. The services provided by Cre8ive Australasia Pty Ltd were for Annual Report and publications production and did not include any creative advertising or advertising campaigns.

2. Does not include particulars of payments of \$11,500 or less (inclusive of GST) as per reporting requirements contained in section 311A of the *Commonwealth Electoral Act 1918*.

## Appendix 5 Ecologically Sustainable Development and Environmental Performance

One of the core values of the CDPP is protecting the natural environment. One of the CDPP's priorities is the ongoing efficient and effective management of resources. In this context, the CDPP is in the process of developing a number of initiatives which will contribute to a more sustainable environment.

The CDPP uses energy saving methods in its operations. The CDPP uses technology to minimise energy use, including automatic power down devices on electrical equipment. All computer equipment used by the CDPP 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 CDPP provides staff with access to video and teleconferencing facilities in our regional offices and sub-offices with the aim of reducing the overall amount of air travel undertaken.

The CDPP 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 demand for paper.

## Environmental Performance

The following tables summarises the environmental performance of CDPP sites during 2010–2011:

Performance 2010–2011	
OFFICE – TENANT LIGHT AND POWER	
Electricity	1,564,640 (kWh)
Green power	282,037 (kWh)
Total	6,648 (GJ)
Total electricity consumed per employee	10,669 (MJ)
PASSENGER VEHICLES	
Petrol	24,653 (L)
Total	843 (GJ)
Distance	281,544 (km)
MJ/km	2.99
L/100km	8.76
TOTAL AGENCY CONSUMPTION	7,491 (GJ)
GENERAL WASTE	
Total waste generated	43.4 (tonnes)
Total packaging generated	6.3 (tonnes)
Total packaging landfilled	5.2 (tonnes)
Total packaging recycled	1.1 (tonnes)

### NOTES:

1. CDPP sites for the reporting period included Canberra (Head Office), Sydney, Melbourne, Brisbane, Perth, Adelaide, Hobart and Darwin. There are also sub-offices of the Brisbane office in Townsville and Cairns.

## Appendix 6 List Of Requirements

Ref*	Location of Information	Description	Requirement
8(3) & A.4	Preliminary	Letter of transmittal	Mandatory
A.5	Preliminary	Table of contents	Mandatory
A.5	Following Financials	Index	Mandatory
A.5	Following Financials	Glossary	Mandatory
A.5	Compliance Statement – Preliminary	Contact officer(s)	Mandatory
A.5	Compliance Statement – Preliminary	Internet home page address and Internet address for report	Mandatory
REVIEW BY SECRETARY			
9(1)	Director's Overview – Preliminary	Review by departmental secretary	Mandatory
9(2)	Director's Overview & Chapters 1–9	Summary of significant issues and developments	Suggested
9(2)	Chapters 3–9	Overview of department's performance and financial results	Suggested
9(2)	–	Outlook for following year	Suggested
9(3)	Not applicable	Significant issues and developments – portfolio	Portfolio departments – suggested

Ref*	Location of Information	Description	Requirement
DEPARTMENTAL OVERVIEW			
10	Chapter 1	Overview	Mandatory
10(1)	Chapter 1	Role and functions	Mandatory
10(1)	Chapter 1	Organisational structure	Mandatory
10(1)	Chapter 1	Outcome and program structure	Mandatory
10(2)	Not applicable, structures do not differ	Where outcome and program structures differ from PB Statements/PAES or other portfolio statements accompanying any other additional appropriation bills (other portfolio statements), details of variation and reasons for change	Mandatory
10(3)	Not applicable, the CDPP is a portfolio agency	Portfolio structure	Mandatory for portfolio – departments
REPORT ON PERFORMANCE			
11(1)	Chapter 1	Review of performance during the year in relation to programs and contribution to outcomes	Mandatory
11(2)	Chapter 3	Actual performance in relation to deliverables and KPIs set out in PB Statements/PAES or other portfolio statements	Mandatory
11(2)	Not applicable	Where performance targets differ from the PBS/PAES, details of both former and new targets, and reasons for the change	Mandatory
11(2)	Chapter 3	Narrative discussion and analysis of performance	Mandatory
11(2)	Chapter 3	Trend information	Mandatory
	Not applicable	Performance of purchaser/provider arrangements	If applicable, suggested
11(3)	Not applicable	Significant changes in nature of principal functions/services	Suggested

Ref*	Location of Information	Description	Requirement
11(3)	Chapter 3	Factors, events or trends influencing departmental performance	Suggested
11(3)	Chapter 9	Contribution of risk management in achieving objectives	Suggested
11(4)	Not applicable	Social inclusion outcomes	Suggested
11(5)	Not applicable	Performance against service charter customer service standards, complaints data, and the department's response to complaints	If applicable, mandatory
11(6)	Chapter 9	Discussion and analysis of the department's financial performance	Mandatory
11(7)	Chapter 9	Discussion of any significant changes from the prior year or from budget	Suggested
11(8)	Chapter 9	Agency resource statement and summary resource tables by outcomes	Mandatory
11(9)	Director's Overview	Developments since the end of the financial year that have affected or may significantly affect the department's operations or financial results in future	If applicable, mandatory
MANAGEMENT ACCOUNTABILITY			
CORPORATE GOVERNANCE			
12(1)	Chapter 9	Agency heads are required to certify that their agency complies with the Commonwealth Fraud Control Guidelines	Mandatory
12(2)	Chapter 1	Statement of the main corporate governance practices in place	Mandatory
12(3)	Chapter 1	Names of the senior executive and their responsibilities	Suggested
12(3)	Chapter 1	Senior management committees and their roles	Suggested
12(3)	Chapter 1 & Appendix 2	Corporate and operational planning and associated performance reporting and review	Suggested
12(3)	Chapter 9	Approach adopted to identifying areas of significant financial or operational risk	Suggested
12(3)	Chapter 1 & Appendix 2	Policy and practices on the establishment and maintenance of appropriate ethical standards	Suggested

Ref*	Location of Information	Description	Requirement
12(3)	–	How nature and amount of remuneration for SES officers is determined	Suggested
EXTERNAL SCRUTINY			
12(4)	Chapter 9	Significant developments in external scrutiny	Mandatory
12(4)	Chapters 1–9	Judicial decisions and decisions of administrative tribunals	Mandatory
12(4)	Not applicable	Reports by the Auditor-General, a Parliamentary Committee or the Commonwealth Ombudsman	Mandatory
MANAGEMENT OF HUMAN RESOURCES			
12(5)	Chapter 9	Assessment of effectiveness in managing and developing human resources to achieve departmental objectives	Mandatory
12(6)	Chapter 9	Workforce planning, staff turnover and retention	Suggested
12(6)	Chapter 9	Impact and features of enterprise or collective agreements, individual flexibility arrangements (IFAs), determinations, common law contracts and AWAs	Suggested
12(6)	Chapter 9	Training and development undertaken and its impact	Suggested
12(6)	Appendix 3	Occupational health and safety performance	Suggested
12(6)	–	Productivity gains	Suggested
12(7)	Chapter 9	Statistics on staffing	Mandatory
12(8)	Chapter 9	Enterprise or collective agreements, IFAs, determinations, common law contracts and AWAs	Mandatory
12(9) & B	Chapter 9	Performance pay	Mandatory
ASSETS MANAGEMENT			
12(10)–(11)	Chapter 9	Assessment of effectiveness of assets management	If applicable, mandatory
PURCHASING			
12(12)	Chapter 9	Assessment of purchasing against core policies and principles	Mandatory

Ref*	Location of Information	Description	Requirement
CONSULTANTS			
12(13)–(24) & C,D	Chapter 9	The annual report must include a summary statement detailing the number of new consultancy services contracts let during the year; the total actual expenditure on all new consultancy contracts let during the year (inclusive of GST); the number of ongoing consultancy contracts that were active in the reporting year; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST). The annual report must include a statement noting that information on contracts and consultancies is available through the AusTender website. (Additional information as in Attachment D to be available on the Internet or published as an appendix to the report. Information <b>must</b> be presented in accordance with the pro forma as set out in Attachment D.)	Mandatory
AUSTRALIAN NATIONAL AUDIT OFFICE ACCESS CLAUSES			
12(25)	Chapter 9	Absence of provisions in contracts allowing access by the Auditor-General	Mandatory
EXEMPT CONTRACTS			
12(26)	Chapter 9	Contracts exempt from the AusTender	Mandatory
FINANCIAL STATEMENTS			
13	Financials	Financial Statements	Mandatory
OTHER MANDATORY INFORMATION			
14(1)& C	Appendix 3	Occupational health and safety (section 74 of the <i>Occupational Health and Safety Act 1991</i> )	Mandatory
14(1)& C	Appendix 1	Freedom of Information for the period 1 July 2010 to 30 April 2011 inclusive (see terms of subsection 8(1) of the <i>Freedom of Information Act 1982</i> as it existed prior to 1 May 2011)	Mandatory
14(1)& C	Appendix 4	Advertising and Market Research (Section 311A of the <i>Commonwealth Electoral Act 1918</i> ) and statement on advertising campaigns	Mandatory



Ref*	Location of Information	Description	Requirement
14(1)& C	Appendix 5	Ecologically sustainable development and environmental performance (Section 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> )	Mandatory
14(2)& D	Not applicable	Grant programs	Mandatory
14(3)& D	Chapter 9	Disability reporting – explicit and transparent reference to agency-level information available through other reporting mechanisms	Mandatory
14(4)	Chapter 2.2	Correction of material errors in previous annual reports	If applicable, mandatory
F	Appendix 6	List of Requirements	Mandatory

\* The reference is to the location of the item in the requirements.



Financials

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

**FINANCIAL STATEMENTS 2010-2011**

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

**FINANCIAL STATEMENTS 2010-2011**

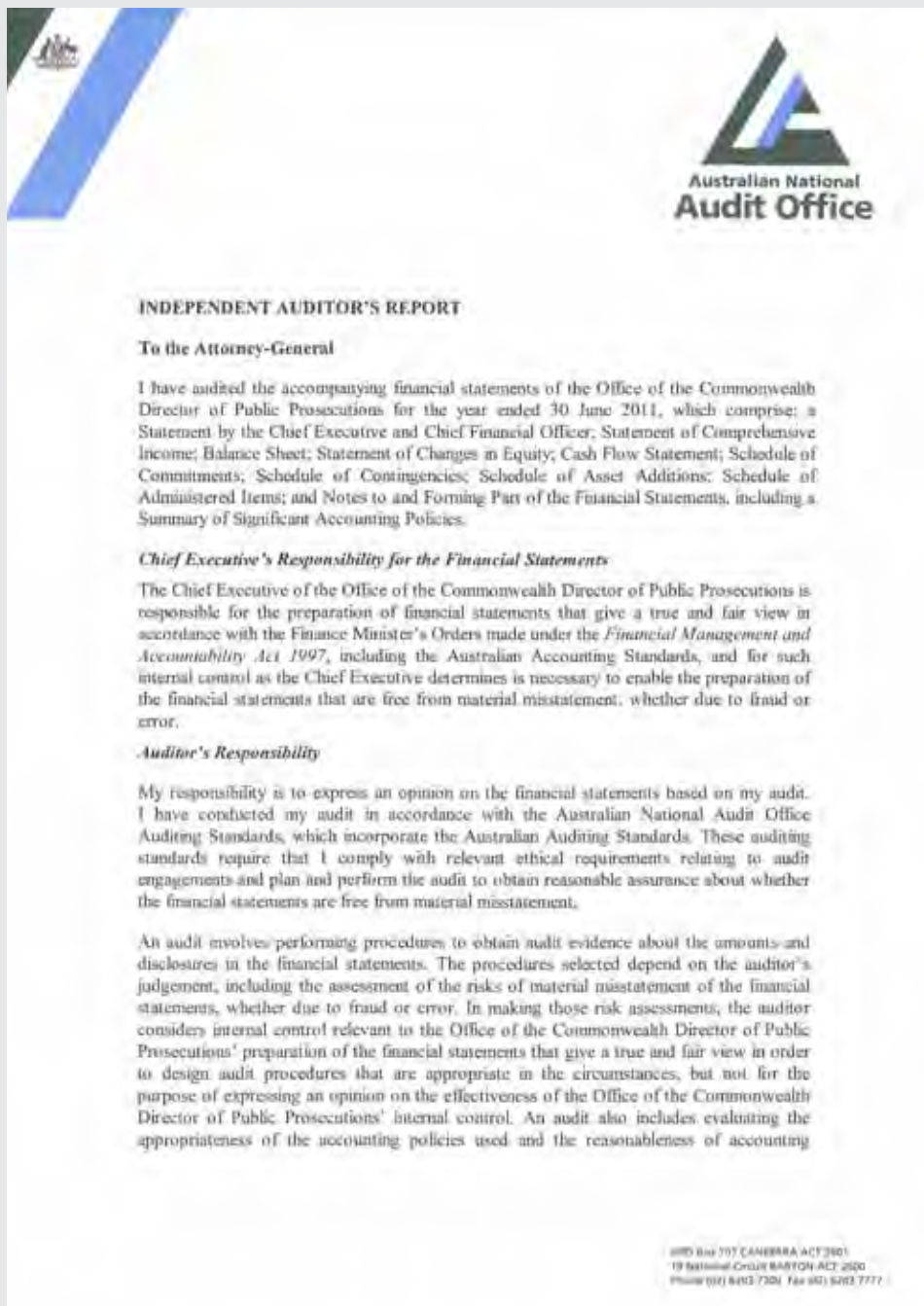
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**OFFICE OF THE COMMONWEALTH DIRECTOR OF  
PUBLIC PROSECUTIONS**

**INDEPENDENT AUDIT REPORT 2010-2011**





estimates made by the Chief Executive, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

#### ***Independence***


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

#### ***Opinion***

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

- have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- give a true and fair view of the matters required by the Finance Minister's Orders including the Office of the Commonwealth Director of Public Prosecutions' financial position as at 30 June 2011 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office



John McCullough  
Executive Director  
Delegate of the Auditor-General

Canberra  
29 September 2011

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**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**STATEMENT BY THE CHIEF EXECUTIVE AND CHIEF FINANCIAL OFFICER**  
*For the period ended 30 June 2011*

---

In our opinion, the attached financial statements for the year ended 30 June 2011 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.

Signed.....

Christopher Craigie SC  
Director  
(Chief Executive)

[Date] 29 SEP 2011

Signed.....

Stela Walker  
Deputy Director Corporate Management  
(Chief Financial Officer)

[Date] 29 SEP 2011

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**STATEMENT OF COMPREHENSIVE INCOME**

*For the period ended 30 June 2011*

	Notes	2011 \$'000	2010 \$'000
<b>EXPENSES</b>			
Employee benefits	3A	56,042	59,035
Supplier expenses	3B	35,987	37,472
Depreciation and amortisation	3C	4,924	4,706
Finance costs	3D	106	-
Write-down and impairment of assets	3E	6	70
Losses from sale of assets	3F	5	16
Other	3G	1,083	437
<b>Total expenses</b>		<b>98,153</b>	<b>101,735</b>
<b>LESS:</b>			
<b>OWN-SOURCE INCOME</b>			
<b>Own-source revenue</b>			
Sale of goods and rendering of services	4A	3,164	2,105
Other	4B	334	393
<b>Total own-source revenue</b>		<b>3,498</b>	<b>2,498</b>
<b>Gains</b>			
Sale of assets	4C	9	10
Other	4D	174	142
<b>Total gains</b>		<b>183</b>	<b>152</b>
<b>Total own-source income</b>		<b>3,681</b>	<b>2,650</b>
<b>Net cost of (contribution by) services</b>		<b>(94,472)</b>	<b>(99,085)</b>
Revenue from Government	4E	95,927	105,421
<b>Surplus (Deficit) before income tax on continuing operations</b>		<b>1,455</b>	<b>6,336</b>
<b>Surplus (Deficit) attributable to the Australian Government</b>		<b>1,455</b>	<b>6,336</b>
Other comprehensive income		-	-
<b>Total comprehensive income (loss) attributable to the Australian Government</b>		<b>1,455</b>	<b>6,336</b>

The above statement should be read in conjunction with accompanying notes

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS****BALANCE SHEET***As at 30 June 2011*

	Notes	2011 \$'000	2010 \$'000
<b>ASSETS</b>			
<b>Financial Assets</b>			
Cash and cash equivalents	5A	241	438
Trade and other receivables	5B	74,809	69,117
<b>Total financial assets</b>		<b>75,050</b>	<b>69,555</b>
<b>Non-Financial Assets</b>			
Land and buildings	6A	8,488	10,979
Property, plant and equipment	6B, 6C	5,845	5,864
Intangibles	6D, 6E	1,175	537
Other	6F	991	675
<b>Total non-financial assets</b>		<b>16,499</b>	<b>18,055</b>
<b>Total Assets</b>		<b>91,549</b>	<b>87,610</b>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	7A	6,900	7,124
Other	7B	1,490	1,453
Lease incentives	8	904	607
<b>Total payables</b>		<b>9,294</b>	<b>9,184</b>
<b>Provisions</b>			
Employee provisions	9A	15,108	16,005
Other	9B	2,701	2,725
<b>Total provisions</b>		<b>17,809</b>	<b>18,730</b>
<b>Total Liabilities</b>		<b>27,103</b>	<b>27,914</b>
<b>Net Assets</b>		<b>64,446</b>	<b>59,696</b>
<b>EQUITY</b>			
<b>Parent Entity Interest</b>			
Contributed equity		(6,001)	(9,296)
Reserves		12,067	12,983
Retained surplus		58,380	56,009
<b>Total parent entity interest</b>		<b>64,446</b>	<b>59,696</b>
<b>Total Equity</b>		<b>64,446</b>	<b>59,696</b>

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**  
*As at 30 June 2011*

	Retained earnings		Asset revaluation reserve		Contributed equity/capital		Total equity	
	2011	2010	2011	2010	2011	2010	2011	2010
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Opening balance</b>								
Balance carried forward from previous period	56,009	49,673	12,983	10,262	(9,296)	360	59,696	60,295
Adjustment for errors	-	-	-	-	-	-	-	-
Adjustment for changes in accounting policies	-	-	-	-	-	-	-	-
<b>Adjusted opening balance</b>	<b>56,009</b>	<b>49,673</b>	<b>12,983</b>	<b>10,262</b>	<b>(9,296)</b>	<b>360</b>	<b>59,696</b>	<b>60,295</b>
<b>Comprehensive income</b>								
Other comprehensive income	-	-	-	2,721	-	-	-	2,721
Surplus (Deficit) for the period	1,455	6,336	-	-	-	-	1,455	6,336
<b>Total comprehensive income</b>	<b>1,455</b>	<b>6,336</b>	<b>-</b>	<b>2,721</b>	<b>-</b>	<b>-</b>	<b>1,455</b>	<b>9,057</b>
of which:								
Attributable to the Australian Government	1,455	6,336	-	-	-	-	1,455	6,336
<b>Transactions with owners</b>								
<b>Distributions to owners</b>								
Returns on capital:								
Appropriation	-	-	-	-	-	(9,656)	-	(9,656)
<b>Contributions by owners</b>								
Departmental capital budget	-	-	-	-	3,295	-	3,295	-
<b>Sub-total transactions with owners</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3,295</b>	<b>(9,656)</b>	<b>3,295</b>	<b>(9,656)</b>
Transfers between equity components	916	-	(916)	-	-	-	-	-
<b>Closing balance as at 30 June</b>	<b>58,380</b>	<b>56,009</b>	<b>12,067</b>	<b>12,983</b>	<b>(6,001)</b>	<b>(9,296)</b>	<b>64,446</b>	<b>59,696</b>
<b>Closing balance attributable to the Australian Government</b>	<b>58,380</b>	<b>56,009</b>	<b>12,067</b>	<b>12,983</b>	<b>(6,001)</b>	<b>(9,296)</b>	<b>64,446</b>	<b>59,696</b>

An amount of \$916k was transferred from the Computer Software Asset Revaluation Reserve to Retained Earnings during the 2010-2011 financial year. This amount relates to a reserve balance for computer software previously revalued as permissible under the Australian Accounting Standards. However, due to a change in AASB 116, computer software is now to be recognised at amortised cost, resulting in the transfer.

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

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS****CASH FLOW STATEMENT***For the period ended 30 June 2011*

	Notes	2011 \$'000	2010 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Goods and services		2,871	2,287
Appropriations		94,179	97,463
Net GST received		3,435	3,269
Other		104	977
<b>Total cash received</b>		<b>100,589</b>	<b>103,996</b>
<b>Cash used</b>			
Employees		57,987	58,668
Suppliers		39,243	41,550
Other		1,135	476
Appropriation cash returned to the OPA		3,916	1,774
<b>Total cash used</b>		<b>102,281</b>	<b>102,468</b>
<b>Net cash from (used by) operating activities</b>	10	<b>(1,692)</b>	<b>1,528</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of property, plant and equipment		31	11
Lease incentives receipt		-	-
<b>Total cash received</b>		<b>31</b>	<b>11</b>
<b>Cash used</b>			
Purchase of property, plant and equipment		1,639	1,204
Other		192	127
<b>Total cash used</b>		<b>1,831</b>	<b>1,331</b>
<b>Net cash from (used by) investing activities</b>		<b>(1,800)</b>	<b>(1,320)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>		<b>3,295</b>	
Contributed equity		-	-
<b>Total cash received</b>		<b>3,295</b>	<b>-</b>
<b>Cash used</b>			
Nil		-	-
<b>Total cash used</b>		<b>-</b>	<b>-</b>
<b>Net cash from (used by) financing activities</b>		<b>3,295</b>	<b>-</b>
<b>Net increase (decrease) in cash held</b>		<b>(197)</b>	<b>208</b>
Cash and cash equivalents at the beginning of the reporting period		438	230
<b>Cash and cash equivalents at the end of the reporting period</b>	5A	<b>241</b>	<b>438</b>

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 2011*

	Notes	2011 \$'000	2010 \$'000
<b>BY TYPE</b>			
<b>Commitments receivable</b>			
Sublease rental income		(27)	(109)
Other income		-	
Net GST recoverable on commitments		(3,363)	(3,290)
<b>Total commitments receivable</b>		<b>(3,390)</b>	<b>(3,399)</b>
<b>Commitments payable</b>			
<b>Capital commitments</b>			
Land and buildings	A	2,106	-
Property, plant and equipment	B	201	518
<b>Total capital commitments</b>		<b>2,307</b>	<b>518</b>
<b>Other commitments</b>			
Operating leases	C	32,919	37,020
Goods and services		1,794	1,772
<b>Total other commitments</b>		<b>34,713</b>	<b>38,792</b>
<b>Net commitments by type</b>		<b>33,630</b>	<b>35,911</b>
<b>BY MATURITY</b>			
<b>Commitments receivable</b>			
<b>Operating lease income</b>			
One year or less		(24)	(75)
From one to five years		-	(24)
Over five years		-	-
<b>Total operating lease income</b>		<b>(24)</b>	<b>(99)</b>
<b>Other commitments receivable</b>			
One year or less		(1,227)	(1,096)
From one to five years		(1,783)	(2,199)
Over five years		(356)	(5)
<b>Total other commitments income</b>		<b>(3,366)</b>	<b>(3,300)</b>



**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
SCHEDULE OF COMMITMENTS**
*As at 30 June 2011*

	2011 \$000	2010 \$000
<b>Commitments payable</b>		
<b>Capital commitments</b>		
One year or less	2,307	518
From one to five years	-	-
Over five years	-	-
<b>Total capital commitments</b>	<b>2,307</b>	<b>518</b>
<b>Operating lease commitments</b>		
One year or less	9,922	11,160
From one to five years	19,087	25,860
Over five years	3,910	-
<b>Total operating lease commitments</b>	<b>32,919</b>	<b>37,020</b>
<b>Other commitments</b>		
One year or less	1,269	1,246
From one to five years	525	466
Over five years	-	60
<b>Total other commitments</b>	<b>1,794</b>	<b>1,772</b>
<b>Net commitments by maturity</b>	<b>33,630</b>	<b>35,911</b>

NB: Commitments are GST inclusive where relevant.

**A** Land and building commitments are primarily contracts related to fitout under construction

**B** Plant and equipment commitments are primarily contracts for purchase of IT Equipment

**C** Operating leases included are effectively non-cancellable and comprise:

Nature of lease/general description

***Leases for office accommodation***

Lease payments are subject to annual increases in accordance with terms and conditions of each lease.

***Leases for motor vehicles (for general office use)***

No contingent rentals exist. There are no renewal or purchase options available to the CDPP.

***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.

This 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 2011*

	<b>2011</b>	<b>2010</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>Contingent assets</b>		
Guarantees	-	-
Indemnities	-	-
Claims for damages or costs	-	-
<b>Total contingent assets</b>	<b>-</b>	<b>-</b>
<b>Contingent liabilities</b>		
Guarantees	-	-
Indemnities	-	-
Claims for damages or costs	-	-
<b>Total contingent liabilities</b>	<b>-</b>	<b>-</b>
<b>Net contingent assets (liabilities)</b>	<b>-</b>	<b>-</b>

Details of each class of contingent liabilities and contingent assets listed above are disclosed in Note 11: Contingent Liabilities and Assets, along with information on significant remote contingencies and contingencies that cannot be quantified.

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

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**SCHEDULE OF ASSET ADDITIONS**  
*For the period ended 30 June 2011*

**The following non-financial non-current assets were added in 2010-11:**

	Land & Buildings \$'000	Other property, plant & equipment \$'000	Intangibles \$'000	Total \$'000
By purchase - appropriation ordinary annual services				
Departmental capital budget	1,087	1,203	787	3,077
Ordinary operating costs	-	-	-	-
<b>Total funded additions funded in the current year</b>	<b>1,087</b>	<b>1,203</b>	<b>787</b>	<b>3,077</b>
<b>Additions: recognised in 2010-11 to be funded in future years:</b>				
Make-good	-	-	-	-
Other	-	-	-	-
<b>Total future years/unfunded additions</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total additions</b>	<b>1,087</b>	<b>1,203</b>	<b>787</b>	<b>3,077</b>

**The following non-financial non-current assets were added in 2009-10:**

	Land & Buildings \$'000	Other property, plant & equipment \$'000	Intangibles \$'000	Total \$'000
By purchase - appropriation ordinary annual services				
Departmental capital budget	-	-	-	-
Ordinary operating costs	89	1,470	-	1,559
<b>Total additions</b>	<b>89</b>	<b>1,470</b>	<b>-</b>	<b>1,559</b>
<b>Additions: recognised in 2009-10 to be funded in future years:</b>				
Make-good	-	-	-	-
Other	-	-	-	-
<b>Total future years/unfunded additions</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total additions</b>	<b>89</b>	<b>1,470</b>	<b>-</b>	<b>1,559</b>

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

	Notes	2011 \$	2010 \$
<b>Income administered on behalf of Government</b>			
<i>For the period ended 30 June 2011</i>			
<b>Revenue</b>			
<b>Non-taxation revenue</b>			
Fines and costs	15	<b>2,946,496</b>	3,720,091
Other	16	<b>370</b>	-
Reversal of previous asset write-downs	17	<b>223,995</b>	344,503
<b>Total non-taxation revenue</b>		<b>3,170,861</b>	4,064,594
<b>Total revenues administered on behalf of Government</b>		<b>3,170,861</b>	4,064,594
<b>Expenses administered on behalf of Government</b>			
<i>For the period ended 30 June 2011</i>			
Write-down and impairment of assets	18	<b>1,627,494</b>	2,201,961
<b>Total expenses administered on behalf of Government</b>		<b>1,627,494</b>	2,201,961

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

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

	Notes	2011 \$	2010 \$
<b>Assets administered on behalf of Government</b>			
<i>As at 30 June 2011</i>			
<b>Financial assets</b>			
Cash and cash equivalents	19A	-	-
Receivables	19B	<u>836,831</u>	<u>1,268,197</u>
<b>Total financial assets</b>		<u>836,831</u>	<u>1,268,197</u>
<b>Total assets administered on behalf of Government</b>		<u>836,831</u>	<u>1,268,197</u>
<b>Liabilities administered on behalf of Government</b>			
<i>As at 30 June 2011</i>			
<b>Payables</b>			
Other	20	<u>150</u>	<u>1,414</u>
<b>Total payables</b>		<u>150</u>	<u>1,414</u>
<b>Total liabilities administered on behalf of Government</b>		<u>150</u>	<u>1,414</u>

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

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

	Note	2011 \$	2010 \$
<b>Administered Cash Flows</b>			
<i>For the period ended 30 June 2011</i>			
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Fines and costs		<u>1,997,013</u>	<u>2,183,114</u>
<b>Total cash received</b>		<u>1,997,013</u>	<u>2,183,114</u>
<b>Cash used</b>			
Refund of fines and costs		<u>(23,544)</u>	<u>(52,261)</u>
<b>Total cash used</b>		<u>(23,544)</u>	<u>(52,261)</u>
<b>Net cash flows from (used by) operating activities</b>		<u>1,973,469</u>	<u>2,130,853</u>
<b>Net Increase (Decrease) in Cash Held</b>		<u>1,973,469</u>	<u>2,130,853</u>
Cash and cash equivalents at the beginning of the reporting period			
		-	932
Cash from Official Public Account for:			
- Appropriations		<u>23,544</u>	<u>52,261</u>
		<u>23,544</u>	<u>53,193</u>
Cash to Official Public Account for:			
- Refund of Receipts		<u>(1,997,013)</u>	<u>(2,184,046)</u>
		<u>(1,997,013)</u>	<u>(2,184,046)</u>
<b>Cash and cash equivalents at the end of the reporting period</b>		<u>-</u>	<u>-</u>

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

OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS			
SCHEDULE OF ADMINISTERED ITEMS			
	Note	2011	2010
		\$	\$
<b>Administered Commitments</b>			
<i>As at 30 June 2011</i>		<u>Nil</u>	<u>Nil</u>
<b>Administered Contingencies</b>			
<i>As at 30 June 2011</i>		<u>Nil</u>	<u>Nil</u>
Details of each class of contingent liabilities and assets listed above are disclosed in Note 38 - Administered contingent liabilities and assets, along with information on significant remote contingencies and contingencies that cannot be quantified.			
This schedule should be read in conjunction with the accompanying notes.			

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

*For the period ended 30 June 2011*

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<b>Note</b>	<b>Description</b>
1	Summary of Significant Accounting Policies
2	Events After the Reporting Period
3	Expenses
4	Income
5	Financial Assets
6	Non-Financial Assets
7	Payables
8	Lease Incentives
9	Provisions
10	Cash Flow Reconciliation
11	Contingent Liabilities and Assets
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16	Administered Other Revenue
17	Reversal of Previous Administered Asset Write-Downs
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21	Administered Reconciliation Table
22	Administered Contingent Assets and Liabilities
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24	Appropriations
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26	Compensation and Debt Relief
27	Reporting of Outcomes
28	Comprehensive Income (loss) Attributable to the entity



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

*For the period ended 30 June 2011*

**Note 1: Summary of Significant Accounting Policies****1.1 Objectives of the Office of the 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 prosecution service to the Commonwealth and to the people of Australia which is fair, independent, accountable, effective and efficient in order to advance social justice by deterring and discouraging breaches of Commonwealth law and ensuring that serious offenders are brought to justice.

The CDPP is structured to meet one outcome:

Maintenance of law and order for the Australian community through an independent and ethical prosecution service in accordance with the Prosecution Policy of the Commonwealth.

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.

Departmental activity is identified under one program:

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.

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

**1.2 Basis of Preparation of the Financial Statements**

The financial statements are general purpose financial statements and are required by section 49 of the *Financial Management and Accountability Act 1997* and are general purpose financial statements.

The Financial Statements have been prepared in accordance with:

- Finance Minister's Orders (or FMO) for reporting periods ending on or after 1 July 2010; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

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

*For the period ended 30 June 2011*

Unless an alternative treatment is specifically required by an accounting standard or the FMOs, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow to the entity or a future sacrifice of economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under executor contracts are not recognised unless required by an accounting standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments or the Schedule of Contingencies.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the income statement when and only when the flow, 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 departmental items, except where otherwise stated at Note 1.19.

### 1.3 Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in this note, the CDPP has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of property, plant and equipment has been taken to be the market value of similar items as determined by an independent valuer.

No accounting assumptions and 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.

### 1.4 New Australian Accounting Standards

#### Adoption of New Australian Accounting Standard Requirements

No accounting standard has been adopted earlier than the application date as stated in the standard.

Other new or revised standards, interpretations or amending standards that were issued prior to the signing of the Statement by the Chief Executive and Chief Financial Officer and are applicable to the current reporting period did not have a financial impact, and are not expected to have a future financial impact on the CDPP.

#### Future Australian Accounting Standard Requirements

Other new or revised standards, interpretations or amending standards that were issued prior to the signing of the Statement by the Chief Executive and Chief Financial Officer and are applicable to the future reporting period are not expected to have a future financial impact on the CDPP.

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**1.5 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 probable economic benefits associated with the transaction will flow to the entity; and
- the amount of revenue, stage of completion and transaction costs incurred can be reliably measured.

The stage of completion of contracts at the reporting date is determined by reference to services performed to date as a percentage of total services to be performed.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at balance date. Allowances are made when collectability of the debt is no longer probable.

**Resources Received Free of Charge**

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government agency or authority as a consequence of a restructuring of administrative arrangements (Refer to Note 1.7).

**Revenue from Government**

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the CDPP gains control of the appropriation, 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.

**Parental Leave Payments Scheme**

The CDPP will offset amounts received under Parental Leave Payments Scheme (for payment to employees) by amounts paid to employees under that scheme, because these transactions are only incidental to the main revenue-generating activities of the CDPP.

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

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Amounts received by the CDPP not yet paid to employees are presented gross as cash and a liability (payable). No amounts were received under this scheme, and this is disclosed as a footnote to Note 4E: Revenue from Government.

### 1.6 Gains

#### Resources Received Free of Charge

Resources 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. Resources received free of charge are recorded as either revenue or gains depending on their nature.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government agency or authority as a consequence of a restructuring of administrative arrangements (Refer to Note 1.7).

#### Sale of Assets

Gains from disposal of assets is recognised when control of the asset has passed to the buyer.

#### Grants

Grants revenue is predominantly amounts received from the Department of Defence, and relate to Defence Reserve Service Subsidies.

These are recognised as gains when, and only when, a fair value can be reliably determined.

### 1.7 Transactions with the Government as Owner

#### Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

#### Restructuring of Administrative Arrangements

Net assets received from or relinquished to another Australian Government agency or authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

#### Other Distributions to Owners

The FMO's require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2010-2011, by agreement with the Department of Finance and Deregulation, the CDPP relinquished control of surplus output appropriation funding of \$378,063 which was returned to the Official Public Account (2009-2010: \$12,553,084)

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**1.8 Employee Benefits**

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) 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.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

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

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that applied at the time the leave is taken, including the CDPP'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 as at 30 June 2011. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

**Separation and Redundancy**

Provision is made for separation and redundancy benefit payments. The CDPP recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

**Superannuation**

Staff of the CDPP are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS accumulation plan (PSSap) or employee nominated superannuation funds.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

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The CDPP makes employer contributions to the employee superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government of the superannuation entitlements of the CDPP's employees. The CDPP accounts for the contributions as if they were contributions to defined contribution plans.

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.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

The CDPP has no finance leases.

### 1.10 Borrowing Costs

All borrowing costs are expensed as incurred.

### 1.11 Cash

Cash is recognised at its nominal amount. Cash and cash equivalents includes:

- cash on hand;
- demand deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amount of cash and subject to insignificant risk of changes in value;
- cash held by outsiders; and
- cash in special accounts.

### 1.12 Financial Assets

The CDPP classifies its financial assets in the following categories:

- held-to-maturity investments;
- financial assets at fair value through profit or loss; and
- loans and receivables.

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The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition.

Financial assets are recognised and derecognised upon trade date.

*Effective Interest Method*

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets that are recognised at fair value through profit or loss.

*Financial Assets at Fair Value Through the Profit or Loss*

Financial assets are classified as financial assets at fair value through profit or loss where the financial assets:

- have been acquired principally for the purpose of selling in the near future;
- are a part of an identified portfolio of financial instruments that the CDPP manages together and has a recent actual pattern of short-term profit-taking; or
- are derivatives that are not designated and effective as hedging instrument.

Assets in this category are classified as current assets.

Financial assets at fair value through profit or loss are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest earned on the financial asset.

*Held-to-Maturity Investments*

Non-derivative financial assets with fixed or determinable payments and fixed maturity dates that the group has the positive intent and ability to hold to maturity are classified as held-to-maturity investments. Held-to-maturity investments are recorded at amortised cost using the effective interest method less impairment, with revenue recognised on an effective yield basis.

*Loans and Receivables*

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

*Impairment of Financial Assets*

Financial assets are assessed for impairment at the end of each reporting period.

- 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

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investments 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 the Statement of Comprehensive Income.

- Available-for-sale financial assets – If there is objective evidence that an impairment loss on an available-for-sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to the Statement of Comprehensive Income.
- Financial assets held at cost - If there is objective evidence that an impairment loss has been incurred 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.

### 1.13 Financial Liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or 'other financial liabilities'.

Financial liabilities are recognised and derecognised upon 'trade date'.

#### Financial Liabilities at Fair Value Through Profit or Loss

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

#### Other Financial Liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

### 1.14 Contingent Liabilities and Contingent Assets

Contingent Liabilities and Contingent Assets are not recognised in the Balance Sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to



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the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

### 1.15 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 income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of 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.

### 1.16 Property, Plant and Equipment

#### 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 fitout, 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 the CDPP where there exists an obligation to restore the property to its original condition. These costs are included in the value of the CDPP's leasehold improvements with a corresponding provision for the 'makegood' recognised.

#### Revaluations

Fair values for each class of asset are determined as shown below:

Asset class	Fair value measured at
Leasehold improvements	Depreciated replacement cost
Infrastructure, plant and equipment	Market selling price

Following initial recognition at cost, property plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from 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.

Formal revaluations are carried out at least every three years.

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During 2009-2010 an independent valuation of all land and buildings and infrastructure, plant and equipment, excluding library holdings and artwork, was carried out by Daryl G Bird, Certified Practising Valuer AVAA, of Preston Rowe Paterson NSW Pty Ltd.

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 in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is restated proportionately with the change in the gross carrying amount of the asset so that the carrying amount of the asset after revaluation equals the revalued amount.

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.

Depreciation rates (useful lives), residual values and 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:

	<b>2011</b>	<b>2010</b>
Leasehold improvements	Lease term	Lease term
Plant and equipment	2 to 30 years	2 to 30 years

Impairment

All assets are assessed for impairment at 30 June 2011. 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 the CDPP were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

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### 1.17 Intangibles

The CDPP's intangibles comprise software licenses and configuration costs of purchased software. These assets are carried at cost less accumulated amortisation and accumulated impairment losses. 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 (2009-2010: 3 to 20 years).

All software assets are assessed for indications of impairment as at 30 June 2011.

### 1.18 Taxation / Competitive Neutrality

#### Taxation

The CDPP is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Revenues, expenses 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 the CDPP operations is subject to competitive neutrality arrangements.

### 1.19 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 departmental items, including the application of Australian Accounting Standards.

#### Administered Cash Transfers to and from the Official Public Account

Revenue collected by the CDPP for use by the Government rather than the CDPP is administered revenue.

Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. 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 CDPP 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 21.

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*For the period ended 30 June 2011*

The Schedule of Administered Items largely reflects the Government's transactions, through the CDPP, with parties outside the Government.

### Revenue

All administered revenues are revenues relating to the course of ordinary activities performed by the CDPP 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.

### 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.

- **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.
- **Allowance for doubtful debts**  
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

At 30 June 2011 the value of the Fines and Cost debts is recognised at fair value which is based upon the actuary assessment methodology developed by the Australian Government Actuary.

### Loans and 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. Impairment allowances are raised against receivables for any doubtful debts and are based on a review of outstanding accounts as at year end. This includes examination of individual large debts over \$50,000.

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**Note 2: Events After the Reporting Period**

In May 2011, as part of the 2011-2012 Federal Budget, the Government announced that from 1 July 2011 the CDPP will cease its role in reporting fines and costs that relate to Commonwealth offences. This role will be transferred to the relevant Commonwealth Agency. The impact of this decision will be that the CDPP's role in relation to fines and costs will be significantly reduced during 2011-2012.

Since 30 June 2011 to the reporting date, the courts have awarded fines and costs. For further information see Note 22.

There were no other events occurring after the balance date that would materially impact on these financial statements.

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**Note 3: Expenses**

	2011 \$'000	2010 \$'000
<b>Note 3A: Employee Benefits</b>		
Wages and salaries	42,927	43,828
Superannuation:		
Defined contribution plans	2,772	2,811
Defined benefit plans	4,929	5,419
Leave and other entitlements	4,630	5,676
Separation and redundancies	-	283
Other employee benefits	784	1,018
<b>Total employee benefits</b>	<b>56,042</b>	<b>59,035</b>

Due to a change in the interpretation of the Australian Accounting Standards, some allowances have been reclassified from Employee Benefits to Supplier Expenses. Comparative amounts for 2010 have been changed accordingly.

**Note 3B: Suppliers**

**Goods and services**

Prosecution legal costs	16,490	17,355
ICT	2,269	2,135
Property	1,707	2,531
Library	1,407	1,519
Other	3,322	3,754
<b>Total goods and services</b>	<b>25,195</b>	<b>27,294</b>

Goods and services are made up of:

Provision of goods – related entities	26	40
Provision of goods – external parties	2,420	3,098
Rendering of services – related entities	1,814	1,612
Rendering of services – external parties	20,935	22,544
<b>Total goods and services</b>	<b>25,195</b>	<b>27,294</b>

**Other supplier expenses**

Operating lease rentals - external entities:

Minimum lease payments	10,387	9,669
Rental expense for sub-leases	77	74
Workers compensation expenses	328	435
<b>Total other supplier expenses</b>	<b>10,792</b>	<b>10,178</b>
<b>Total supplier expenses</b>	<b>35,987</b>	<b>37,472</b>

Due to a change in the interpretation of the Australian Accounting Standards, some allowances have been reclassified to Suppliers Expense from Employee Benefits. Comparative amounts for 2010 have been changed accordingly.

The splits for goods and services in the related and external entities disclosure has been changed from 2010 due to an error. The comparative values have been changed accordingly.

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	2011	2010
	\$'000	\$'000

**Note 3C: Depreciation and Amortisation**

Depreciation:

Leasehold improvements	3,578	3,514
Infrastructure, plant & equipment	1,197	1,030
<b>Total depreciation</b>	<b>4,775</b>	<b>4,544</b>

Amortisation:

Intangibles:		
Computer Software	149	162
<b>Total amortisation</b>	<b>149</b>	<b>162</b>
<b>Total depreciation and amortisation</b>	<b>4,924</b>	<b>4,706</b>

**Note 3D: Finance Costs**

Unwinding of discount	106	-
<b>Total finance costs</b>	<b>106</b>	<b>-</b>

**Note 3E: Write-down and Impairment of Assets**

Asset write-downs and impairments from:

Impairment of leasehold improvements	-	63
Impairment of plant and equipment	6	7
<b>Total write-down and impairment of assets</b>	<b>6</b>	<b>70</b>

**Note 3F: Losses from Asset Sales**

Infrastructure, plant and equipment:

Proceeds from disposal	(24)	(1)
Carrying value of assets sold	29	17
Selling expense	-	-
<b>Total losses from asset sales</b>	<b>5</b>	<b>16</b>

**Note 3G: Other Expenses**

Costs awarded against the Commonwealth	1,083	366
Payments under s.73 of the <i>Public Service Act 1999</i>	-	2
Payments under the CDDA Scheme	-	69
<b>Total other expenses</b>	<b>1,083</b>	<b>437</b>

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**Note 4: Income**

	2011	2010
	\$'000	\$'000

**REVENUE**

**Note 4A: Sale of Goods and Rendering of Services**

Provision of goods - related entities	-	-
Provision of goods - external entities	1	2
Rendering of services - related entities	3,136	2,076
Rendering of services - external entities	27	27
<b>Total rental income</b>	<b>3,164</b>	<b>2,105</b>

**Note 4B: Other Revenue**

Resources received free of charge - external entities	326	364
Subsidies received	8	29
<b>Total other revenue</b>	<b>334</b>	<b>393</b>

Due to a change in the interpretation of the Australian Accounting Standards, Grants have been reclassified as Subsidies Received. Comparatives have been adjusted.

**GAINS**

**Note 4C: Sale of Assets**

Property, plant and equipment:		
Proceeds from sale	24	10
Carrying value of assets sold	(15)	-
Selling expense	-	-
<b>Net gain from sale of assets</b>	<b>9</b>	<b>10</b>

**Note 4D: Other Gains**

Resources received free of charge - related entities	54	83
Other	120	59
<b>Total other gains</b>	<b>174</b>	<b>142</b>

Due to a change in the interpretation of the Australian Accounting Standards, Grants have been reclassified as Subsidies Received. Comparatives have been adjusted.

**REVENUE FROM GOVERNMENT**

**Note 4E: Revenue from Government \***

Appropriations:		
Departmental appropriation	95,927	105,421
<b>Total revenue from Government</b>	<b>95,927</b>	<b>105,421</b>

\* CDPP received \$0 (2010: \$nil) under the Paid Parental Leave Scheme; these amounts were offset against the amounts paid to employees in the Statement of Comprehensive Income.



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## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

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**Note 5: Financial Assets**

	2011 \$'000	2010 \$'000
<b>Note 5A: Cash and Cash Equivalents</b>		
Cash on hand or on deposit	241	438
<b>Total cash and cash equivalents</b>	<b>241</b>	<b>438</b>
<b>Note 5B: Trade and Other Receivables</b>		
<b>Good and Services:</b>		
Goods and services - related entities	273	139
Goods and services - external parties	-	-
<b>Total receivables for goods and services</b>	<b>273</b>	<b>139</b>
<b>Appropriations receivable:</b>		
For existing programs	73,939	68,275
<b>Total appropriations receivable</b>	<b>73,939</b>	<b>68,275</b>
<b>Other receivables:</b>		
GST receivable from the Australian Taxation Office	512	674
Other	85	29
<b>Total other receivables</b>	<b>597</b>	<b>703</b>
<b>Total trade and other receivables (gross)</b>	<b>74,809</b>	<b>69,117</b>
Less impairment allowance account		
Goods and services	-	-
<b>Total impairment allowance account</b>	<b>-</b>	<b>-</b>
<b>Total trade and other receivables (net)</b>	<b>74,809</b>	<b>69,117</b>
Receivables are expected to be recovered in:		
No more than 12 months	74,804	69,112
More than 12 months	5	5
<b>Total trade and other receivables (net)</b>	<b>74,809</b>	<b>69,117</b>
Receivables are aged as follows:		
Not overdue	74,809	69,117
Overdue by:		
0 to 30 days	-	-
31 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	-	-
<b>Total receivables (gross)</b>	<b>74,809</b>	<b>69,117</b>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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*For the period ended 30 June 2011*

**Note 6: Non-Financial Assets**

	2011 \$'000	2010 \$'000
<b><u>Note 6A: Land and Buildings</u></b>		
Leasehold improvements:		
Work in progress	1,057	-
Fair value	36,727	38,627
Accumulated depreciation	(29,296)	(27,648)
<b>Total leasehold improvements</b>	<b>8,488</b>	<b>10,979</b>
<b>Total land and buildings</b>	<b>8,488</b>	<b>10,979</b>

No indicators of impairment were found for land and buildings.

Two leased premises in Perth are expected to be disposed of within the next 12 months.

**Note 6B: Property, Plant and Equipment**

Other property, plant and equipment:		
Fair value	14,632	13,821
Accumulated depreciation	(8,787)	(7,957)
<b>Total other property, plant and equipment</b>	<b>5,845</b>	<b>5,864</b>
<b>Total property, plant and equipment</b>	<b>5,845</b>	<b>5,864</b>

No indicators of impairment were found for property, plant and equipment.

A number of items of property, plant and equipment are expected to be disposed of due to the cessation of the two leased premises in Perth. Additionally, a small number of items are expected to be disposed as part of normal operations.

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**Note 6C: Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2010-11)**

	Buildings \$'000	Other property, plant & equipment \$'000	Total \$'000
<b>As at 1 July 2010</b>			
Gross book value	38,627	13,821	52,448
Accumulated depreciation and impairment	(27,648)	(7,957)	(35,605)
<b>Net book value 1 July 2010</b>	<b>10,979</b>	<b>5,864</b>	<b>16,843</b>
Additions *	1,087	1,203	2,290
Revaluations and impairments recognised in other comprehensive income	-	-	-
Depreciation expense	(3,578)	(1,197)	(4,775)
Disposals:			
Other	-	(25)	(25)
<b>Net book value 30 June 2011</b>	<b>8,488</b>	<b>5,845</b>	<b>14,333</b>
<b>Net book value as of 30 June 2011 represented by:</b>			
Gross book value	37,784	14,632	52,416
Accumulated depreciation	(29,296)	(8,787)	(38,083)
	<b>8,488</b>	<b>5,845</b>	<b>14,333</b>

\* Disaggregated additions information is disclosed in the Schedule of Asset Additions.

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**Note 6C (Cont'd): Reconciliation of the Opening and Closing Balances of Property, Plant and Equipment (2009-10)**

	Buildings \$'000	Other property, plant & equipment \$'000	Total \$'000
<b>As at 1 July 2009</b>			
Gross book value	33,537	13,269	46,806
Accumulated depreciation and impairment	(21,642)	(8,469)	(30,111)
<b>Net book value 1 July 2009</b>	<b>11,895</b>	<b>4,800</b>	<b>16,695</b>
Additions *	89	1,470	1,559
Revaluations and impairments recognised in other comprehensive income	2,572	648	3,220
Depreciation expense	(3,514)	(1,030)	(4,544)
Disposals:			
Other	(63)	(24)	(87)
<b>Net book value 30 June 2010</b>	<b>10,979</b>	<b>5,864</b>	<b>16,843</b>
<b>Net book value as of 30 June 2010 represented by:</b>			
Gross book value	38,627	13,821	52,448
Accumulated depreciation	(27,648)	(7,957)	(35,605)
	<b>10,979</b>	<b>5,864</b>	<b>16,843</b>

\* Disaggregated additions information is disclosed in the Schedule of Asset Additions.

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	2011 \$'000	2010 \$'000
<b>Note 6D: Intangibles</b>		
<b>Computer software:</b>		
Work in progress	737	-
Purchased	2,983	2,933
<b>Total computer software (gross)</b>	<b>3,720</b>	<b>2,933</b>
Accumulated amortisation	(2,545)	(2,396)
<b>Total computer software (net)</b>	<b>1,175</b>	<b>537</b>
<b>Total intangibles</b>	<b>1,175</b>	<b>537</b>

No indicators of impairment were found for intangible assets.

No intangibles are expected to be sold or disposed of within the next 12 months.

**Note 6E: Reconciliation of the Opening and Closing Balances of Intangibles (2010-11)**

	Computer software purchased \$'000
<b>As at 1 July 2010</b>	
Gross book value	2,933
Accumulated amortisation and impairment	(2,396)
<b>Net book value 1 July 2010</b>	<b>537</b>
Additions *	787
Revaluations and impairments recognised in other comprehensive income	-
Amortisation	(149)
Disposals:	
Other movements	-
<b>Net book value 30 June 2011</b>	<b>1,175</b>
<b>Net book value as of 30 June 2011 represented by:</b>	
Gross book value	3,720
Accumulated amortisation and impairment	(2,545)
	<b>1,175</b>

\* Disaggregated additions information is disclosed in the Schedule of Asset Additions.

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**Note 6E (Cont'd): Reconciliation of the Opening and Closing Balances of Intangibles (2009-10)**

	Computer software purchased
	\$'000
<b>As at 1 July 2009</b>	
Gross book value	2,971
Accumulated amortisation and impairment	(2,272)
<b>Net book value 1 July 2009</b>	<b>699</b>
Additions *	-
Amortisation	(162)
Disposals:	
Other	-
<b>Net book value 30 June 2010</b>	<b>537</b>

**Net book value as of 30 June 2010 represented by:**

Gross book value	2,933
Accumulated depreciation/amortisation and impairment	(2,396)
	<b>537</b>

\* Disaggregated additions information is disclosed in the Schedule of Asset Additions.

	<b>2011</b>	<b>2010</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>Note 6F: Other Non-Financial Assets</b>		
Prepayments	<b>991</b>	675
<b>Total other non-financial assets</b>	<b>991</b>	<b>675</b>

No indicators of impairment were found for other non-financial assets.

Total other non-financial assets - are expected to be recovered in:

No more than 12 months	<b>982</b>	675
More than 12 months	<b>9</b>	-
<b>Total other non-financial assets</b>	<b>991</b>	<b>675</b>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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**Note 7: Payables**

	2011	2010
	\$'000	\$'000
<b>Note 7A: Suppliers</b>		
Trade creditors and accruals	4,401	4,540
Operating lease rentals	2,499	2,584
<b>Total supplier payables</b>	<b>6,900</b>	<b>7,124</b>

Supplier payables expected to be settled within 12 months:

Related entities	99	64
External parties	4,796	4,860
<b>Total</b>	<b>4,895</b>	<b>4,924</b>

Supplier payables expected to be settled in greater than 12 months:

Related entities	-	-
External parties	2,005	2,200
<b>Total</b>	<b>2,005</b>	<b>2,200</b>
<b>Total supplier payables</b>	<b>6,900</b>	<b>7,124</b>

Settlement is usually made within 30 days.

Due to a change in the interpretation of the Australian Accounting Standards, amounts relating to supplier payables have been reclassified to Supplier Payables from Other Payables. Comparative for 2010 has been changed accordingly.

**Note 7B: Other Payables**

Salaries and wages	1,037	916
Superannuation	168	143
Other	285	394
<b>Total other payables</b>	<b>1,490</b>	<b>1,453</b>

Total other payables are expected to be settled in:

No more than 12 months	1,416	1,152
More than 12 months	74	301
<b>Total other payables</b>	<b>1,490</b>	<b>1,453</b>

Due to a change in the interpretation of the Australian Accounting Standards, a provision for superannuation on leave has been reclassified from Other Payables to Employee Provisions. Additionally, amounts relating to supplier payables have been reclassified from Other Payables to Supplier Payables. Comparative for 2010 has been changed accordingly.

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**Note 8: Lease Incentives**

	2011	2010
	\$'000	\$'000
<b>Note 8: Lease Incentives</b>		
Lease incentives	904	607
<b>Total lease incentives</b>	<b>904</b>	<b>607</b>

Lease incentives are expected to be settled:

Within one year	204	161
In one to five years	700	446
In more than five years	-	-
	<b>904</b>	<b>607</b>

**Note 9: Provisions**

	2011	2010
	\$'000	\$'000
<b>Note 9A: Employee Provisions</b>		
Leave	15,108	16,005
<b>Total employee provisions</b>	<b>15,108</b>	<b>16,005</b>

Employee provisions are expected to be settled in:

No more than 12 months	4,001	4,576
More than 12 months	11,107	11,429
<b>Total employee provisions</b>	<b>15,108</b>	<b>16,005</b>

Due to a change in the interpretation of the Australian Accounting Standards, a provision for workers compensation on leave has been reclassified to Employee Provisions from Other Payables. Comparative for 2010 has been changed accordingly.



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	2011 \$'000	2010 \$'000
<b>Note 9B: Other Provisions</b>		
Provision for restoration obligations	2,701	2,725
<b>Total other provisions</b>	<b>2,701</b>	<b>2,725</b>
Other provisions are expected to be settled in:		
No more than 12 months	378	342
More than 12 months	2,323	2,383
<b>Total other provisions</b>	<b>2,701</b>	<b>2,725</b>

	Provision for restoration \$'000
<b>Carrying amount 1 July 2010</b>	<b>2,725</b>
Additional provisions made	-
Revaluation	-
Amounts used	(129)
Amounts reversed	-
Unwinding of discount or change in discount rate	105
<b>Closing balance 2011</b>	<b>2,701</b>

CDPP currently has 13 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 present value of this obligation.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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**Note 10: Cash Flow Reconciliation**

	2011 \$'000	2010 \$'000
<b>Reconciliation of cash and cash equivalents as per Balance</b>		
<b>Cash and cash equivalents as per:</b>		
Cash flow statement	241	438
Balance sheet	241	438
<b>Difference</b>	-	-
<b>Reconciliation of net cost of services to net cash from operating activities:</b>		
Net cost of services	(94,472)	(99,085)
Add revenue from Government	95,927	105,421
<b>Adjustments for non-cash items</b>		
Depreciation / amortisation	4,924	4,706
Net write down of non-financial assets	6	70
(Gain)/loss on disposal of assets	5	6
<b>Changes in assets / liabilities</b>		
(Increase) / decrease in net receivables	(6,069)	(9,730)
(Increase) / decrease in prepayments	(316)	(382)
Increase / (decrease) in employee provisions	(899)	613
Increase / (decrease) in other provisions	82	111
Increase / (decrease) in supplier payables	(1,213)	(314)
Increase / (decrease) in other payables	36	337
Increase / (decrease) in lease incentives	297	(225)
<b>Net cash from (used by) operating activities</b>	<b>(1,692)</b>	<b>1,528</b>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS****NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS***For the period ended 30 June 2011***Note 11: Contingent Liabilities and Assets**

	<b>Claims for damages or costs</b>	
	<b>2011</b>	<b>2010</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>Contingent assets</b>		
Balance from previous period	-	69
New	-	-
Re-measurement	-	(69)
Assets recognised	-	-
Expired	-	-
<b>Total contingent assets</b>	<b>-</b>	<b>-</b>
<b>Contingent liabilities</b>		
Balance from previous period	-	555
New	-	-
Re-measurement	-	(555)
Liabilities recognised	-	-
Obligations expired	-	-
<b>Total contingent liabilities</b>	<b>-</b>	<b>-</b>
<b>Net contingent assets (liabilities)</b>	<b>-</b>	<b>-</b>

**Quantifiable Contingencies**

The schedule of contingencies reports contingent liabilities in respect of claims for damages/costs of \$0 (2010: \$0).

The Schedule also reports contingent assets in respect of claims for damages/costs of \$0 (2010: \$0).

**Unquantifiable Contingencies**

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.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS***For the period ended 30 June 2011*

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**Note 11: Contingent Liabilities and Assets - cont'd**

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.

**Significant Remote Contingencies**

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

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

*For the period ended 30 June 2011*

**Note 12: Senior Executive Remuneration**

**Note 12A: Actual remuneration expensed during the reporting period**

	2011	2010
	\$	\$
<b>Short term employee benefits:</b>		
Salary (including annual leave taken)	7,194,376	7,838,256
Annual leave accrued	538,557	612,291
Other (allowances and reportable fringe benefits)	214,170	364,283
<b>Total short term employee benefits</b>	<u>7,947,103</u>	<u>8,814,830</u>
<b>Post employment benefits:</b>		
Superannuation	1,254,313	1,537,496
<b>Total post employment benefits</b>	<u>1,254,313</u>	<u>1,537,496</u>
<b>Other long term benefits:</b>		
Long service leave	193,016	274,392
<b>Total other long term benefits</b>	<u>193,016</u>	<u>274,392</u>
<b>Total</b>	<u>9,394,432</u>	<u>10,626,718</u>

**Notes**

1. Note 12A was prepared on an accrual basis.
2. Note 12A excludes acting arrangements and part-year services where remuneration expensed is less than \$150,000.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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**Note 12: Senior Executive Remuneration**

**Note 12B: Average Annual Remuneration Packages and Bonus Paid for Substantive Senior Executives as at the end of the reporting period**

**As at 30 June 2011**

Fixed Elements and Bonus Paid <sup>1</sup>	Senior Executives No.	Fixed Elements			Bonus Paid <sup>2</sup>
		Salary	Allowances	Total	
		\$	\$	\$	\$
<b>Total remuneration (including part-time arrangements):</b>					
less than \$150,000	3	123,206	5,626	128,832	-
\$150,000 - \$179,999	11	168,008	8,704	176,712	-
\$180,000 - \$209,999	8	183,041	10,539	193,580	-
\$210,000 - \$239,999	3	216,510	7,643	224,153	-
\$240,000 - \$269,999	1	254,674	5,443	260,117	-
\$270,000 - \$299,999	-	-	-	-	-
\$300,000 - \$329,999	-	-	-	-	-
\$330,000 - \$359,999	-	-	-	-	-
\$360,000 - \$389,999	-	-	-	-	-
\$390,000 - \$419,999	1	394,157	-	394,157	-
\$420,000 - \$449,999	-	-	-	-	-
\$450,000 - \$479,999	-	-	-	-	-
<b>Total</b>	<b>27</b>				

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

1. This table reports on substantive senior executives who are employed by the entity as at the end of the reporting period. Fixed elements are based on the employment agreement of each individual - each row represents an average annualised figure (based on headcount) for the individuals in that remuneration package band (i.e. the 'Total' column).
2. Represents average actual bonuses paid during the reporting period.

Variable Elements

Variable elements are not included in the 'Fixed Elements and Bonus Paid' table above. The following variable elements are available as part of senior executives' remuneration package:

- (a) On average senior executives are entitled to the following leave entitlements:
- Recreational leave of 4 weeks per annum (or pro-rata for part-time Executives).
  - Long service leave in accordance with statutory requirements.
  - Personal leave of 20 days in accordance with the CDDP Enterprise Agreement 2009-2011.
- (b) Senior executives are members of one of the following superannuation funds:
- Commonwealth Sector Superannuation Scheme
  - Public Sector Superannuation Defined Benefit Scheme
  - Public Sector Superannuation Accumulation Plan Scheme
- (c) Variable allowances:
- A "Health & Fitness" allowance is claimable for expenditure on approved health and well-being activities and equipment.
  - A mobile phone allowance is allowed.

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		Fixed Elements			Bonus Paid <sup>2</sup> \$
		Senior Executives No.	Salary \$	Allowances \$	Total \$
Relevant remuneration bands					
Total remuneration (including part-time arrangements):					
less than \$150,000	2		130,492	7,887	138,379
\$150,000 - \$179,999	17		163,115	9,530	172,645
\$180,000 - \$209,999	8		188,085	8,670	196,755
\$210,000 - \$239,999	1		214,499	4,979	219,478
\$240,000 - \$269,999	1		247,256	4,979	252,235
\$270,000 - \$299,999	-		-	-	-
\$300,000 - \$329,999	-		-	-	-
\$330,000 - \$359,999	-		-	-	-
\$360,000 - \$389,999	1		380,550	-	380,550
\$390,000 - \$419,999	-		-	-	-
\$420,000 - \$449,999	-		-	-	-
\$450,000 - \$479,999	-		-	-	-
<b>Total</b>	<b>30</b>				



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

Variable Elements

Variable elements are not included in the 'Fixed Elements and Bonus Paid' table above. The following variable elements are

- (a) On average senior executives are entitled to the following leave entitlements:
  - Recreational leave of 4 weeks per annum (or pro-rata for part-time Executives).
  - Long service leave in accordance with statutory requirements.
  - Personal leave of 20 days in accordance with the CDPP Enterprise Agreement 2009-2011.
- (b) Senior executives are members of one of the following superannuation funds:
  - Commonwealth Sector Superannuation Scheme
  - Public Sector Superannuation Defined Benefit Scheme
  - Public Sector Superannuation Accumulation Plan Scheme
- (c) Variable allowances:
  - A "Health & Fitness" allowance is claimable for expenditure on approved health and well-being activities and equipment.
  - A mobile phone allowance is allowed.

**Note 12C: Other Highly Paid Staff**

During the reporting period, there were no (2010: nil) employees whose salary plus performance bonus were \$150,000 or more. These employees did not have a role as senior executive and are therefore not disclosed as senior executive in Note 12A and Note 12B.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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**Note 13: Remuneration of Auditors**

2011	2010
\$000	\$000

Financial statement audit services were provided free of charge to the CDPP.

The fair value of the services provided was:

Provision of Audit Services	54	83
<b>Total</b>	<b>54</b>	<b>83</b>

No other services were provided by the auditors of the financial statements.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS****NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS***For the period ended 30 June 2011***Note 14: Financial Instruments**

	2011	2010
	\$000	\$000
<b><u>Note 14A: Categories of Financial Instruments</u></b>		
<b>Financial Assets</b>		
Loans & Receivables		
Cash & cash equivalents	241	438
Trade and other receivables	358	168
<b>Total</b>	<b>599</b>	<b>606</b>
<b>Carrying amount of financial assets</b>	<b>599</b>	<b>606</b>
<b>Financial Liabilities</b>		
At amortised cost:		
Supplier payables	6,900	7,124
<b>Total</b>	<b>6,900</b>	<b>7,124</b>
<b>Carrying amount of financial liabilities</b>	<b>6,900</b>	<b>7,124</b>

Due to a change in the interpretation of the Australian Accounting Standards, amounts relating to Other receivables have been reclassified to Trade receivables from Other Payables. Comparative for 2010 has been changed accordingly.

Due to a change in the interpretation of the Australian Accounting Standards, amounts relating to supplier payables have been reclassified to Supplier Payables from Other Payables. Comparative for 2010 has been changed accordingly.

**Note 14B: Net Income and Expense from Financial Assets****Loans and receivables**

Interest revenue	-	-
<b>Net gain/(loss) from financial assets</b>	<b>-</b>	<b>-</b>

There is no income or expenses from financial assets in 2010-11 or 2009-10.

**Note 14C: Net Income and Expense from Financial Liabilities****Financial liabilities - at amortised cost**

Interest expense	106	-
<b>Net gain/(loss) from financial liabilities</b>	<b>106</b>	<b>-</b>

**Note 14D: Fee Income and Expense**

CDPP did not earn any fee income or incur any fee expenses from financial instruments not at fair value through profit or loss or trust activities in 2010-11 or 2009-10.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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**Note 14E: Fair Value of Financial Instruments**

	Carrying amount 2011 \$000	Fair value 2011 \$000	Carrying amount 2010 \$000	Fair value 2010 \$000
<b>Financial Assets</b>				
Loan & Receivables:				
Cash and cash equivalents	241	241	438	438
Trade and other receivables	358	358	168	168
<b>Total</b>	<b>599</b>	<b>599</b>	<b>606</b>	<b>606</b>
<b>Financial Liabilities</b>				
At amortised cost:				
Payables-Suppliers	6,900	6,900	7,124	7,124
<b>Total</b>	<b>6,900</b>	<b>6,900</b>	<b>7,124</b>	<b>7,124</b>

**Note 14F: Credit Risk**

The CDPP is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The CDPP has policies and procedures that guide debt recovery techniques that are to be applied. The CDPP holds no collateral to mitigate against credit risk. The carrying amount of financial assets, net of impairment losses, reported in the balance sheet represent the maximum exposure to credit risk.

**Credit quality of financial instruments not past due or individually determined as impaired**

	Not past due nor impaired 2011 \$000	Not past due nor impaired 2010 \$000	Past due or impaired 2011 \$000	Past due or impaired 2010 \$000
<b>Loans and receivables</b>				
Cash and cash equivalents	241	438	-	-
Trade and other receivables	358	168	-	-
<b>Total</b>	<b>599</b>	<b>606</b>	<b>-</b>	<b>-</b>

Trade debtors and receivables that are past due are not considered as risky in both credit risk and quality.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2011*

**Note 14F: Credit Risk - cont'd**

**Ageing of financial assets that were past due but not impaired for 2011**

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Loans and receivables:					
Trade and other receivables	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**Ageing of financial assets that were past due but not impaired for 2010**

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Loans and receivables:					
Trade and other receivables	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

There are no financial assets which have been individually assessed as impaired.

**Note 14G: Liquidity Risk**

The CDPP's financial liabilities only include payables. The exposure to liquidity risk is based on the notion that CDPP will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the CDPP (Eg. Advance from the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

The CDPP is appropriated funding from the Australian Government. The CDPP manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. CDPP has policies in place to ensure payments are made when due and has not past experience of default.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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**Note 14G: Liquidity Risk - cont'd**

**Maturities for non-derivative financial liabilities 2011**

	On demand \$000	within 1 year \$000	1 to 2 years \$000	2 to 5 years \$000	> 5 years \$000	Total \$000
At amortised cost:						
Supplier payables	-	4,913	1,087	900	-	6,900
<b>Total</b>	-	4,913	1,087	900	-	6,900

**Maturities for non-derivative financial liabilities 2010**

	On demand \$000	within 1 year \$000	1 to 2 years \$000	2 to 5 years \$000	> 5 years \$000	Total \$000
At amortised cost:						
Supplier payables	-	4,924	656	1,544	-	7,124
<b>Total</b>	-	4,924	656	1,544	-	7,124

CDPP has no derivative financial liabilities in both the current and prior year.

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

*For the period ended 30 June 2011*

**14H: Market Risk**

The CDPP holds basic financial instruments that do not expose the CDPP to certain market risks. The CDPP is not exposed to 'Currency risk', 'Interest rate risk' or 'Other price risk'.

**14I: Assets Pledged/or Held as Collateral**

The CDPP has not pledged any assets as collateral or does not hold any assets as collateral.

**14J: Concessional Loans**

The CDPP does not hold any concessional loans.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO THE SCHEDULE OF ADMINISTERED ITEMS**
*For the period ended 30 June 2011*
**Income Administered on Behalf of Government**

	2011 \$	2010 \$
<b>REVENUE</b>		
<b>Non-Taxation Revenue</b>		
<b><u>Note 15: Administered fines and costs revenue</u></b>		
Fines and costs	2,946,496	3,720,091
<b>Total fees and fines</b>	<b>2,946,496</b>	<b>3,720,091</b>
<b><u>Note 16: Administered other revenue</u></b>		
Other	370	-
<b>Total other revenues</b>	<b>370</b>	<b>-</b>
<b><u>Note 17: Reversal of previous administered asset write-downs</u></b>		
Reinstate receivable previously written-off	223,995	344,503
<b>Total reversal of previous administered asset write-downs</b>	<b>223,995</b>	<b>344,503</b>

**Expenses Administered on Behalf of Government**

	2011 \$	2010 \$
<b>EXPENSES</b>		
<b><u>Note 18: Write-down and impairment of administered assets</u></b>		
<b>Financial Assets</b>		
Write-off	1,388,116	3,045,363
Prison sentence	6,296	84,818
Community service orders	5,897	50,576
Received by other agencies	77,081	616,904
(Decrease) Increase in provision for doubtful debts	150,104	(1,595,700)
<b>Total write-down of administered assets</b>	<b>1,627,494</b>	<b>2,201,961</b>

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.



**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO THE SCHEDULE OF ADMINISTERED ITEMS**  
*As at 30 June 2011*

**Note 19: Assets Administered on Behalf of Government**

	2011	2010
	\$	\$
<b>FINANCIAL ASSETS</b>		
<b><u>Note 19A: Cash and Cash Equivalents</u></b>		
Cash on hand or on deposit	-	-
<b>Total cash and cash equivalents</b>	-	-
<b><u>Note 19B: Receivables</u></b>		
Other receivables:		
Fines	6,412,786	6,694,048
<b>Total receivables (gross)</b>	6,412,786	6,694,048
Less: impairment allowance account:		
Other	(5,575,955)	(5,425,851)
<b>Total impairment allowance account</b>	(5,575,955)	(5,425,851)
<b>Total receivables (net)</b>	836,831	1,268,197
Receivables are expected to be recovered in:		
No more than 12 months	373,931	850,801
More than 12 months	462,900	417,396
<b>Total trade and other receivables (net)</b>	836,831	1,268,197
Receivables were aged as follows:		
Not overdue	388,005	382,441
Overdue by:		
0 to 30 days	139,616	266,142
31 to 60 days	148,315	391,759
61 to 90 days	120,337	380,246
More than 90 days	5,616,513	5,273,460
<b>Total receivables (gross)</b>	6,412,786	6,694,048
The impairment allowance account is aged as follows:		
Not overdue	(95,765)	(117,958)
Overdue by:		
0 to 30 days	(58,470)	(107,351)
31 to 60 days	(74,497)	(97,117)
61 to 90 days	(72,352)	(244,547)
More than 90 days	(5,274,871)	(4,858,878)
<b>Total impairment allowance account</b>	(5,575,955)	(5,425,851)

Goods and services receivables are with entities external to the Australian Government.  
Credit terms are net 30 days (2009-10: 30 days)

Note 19B: Receivables (cont'd)		
Reconciliation of Impairment Allowance Account (Other Receivables)		
Opening balance	(5,425,851)	(7,021,551)
Amounts written off	1,477,390	3,797,661
Amounts recovered and reversed	(223,995)	(344,503)
Increase/decrease recognised in net surplus	<u>(1,403,499)</u>	<u>(1,857,458)</u>
Closing balance	<u>(5,575,955)</u>	<u>(5,425,851)</u>

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO THE SCHEDULE OF ADMINISTERED ITEMS**
*As at 30 June 2011*
**Note 20: Liabilities Administered on Behalf of Government**

	2011	2010
	\$	\$

**PAYABLES**
**Note 20: Other Payables**

Other	150	1,414
<b>Total other payables</b>	<b>150</b>	<b>1,414</b>

Other payables are expected to be settled in:

No more than 12 months	150	1,414
More than 12 months	-	-
<b>Total other payables</b>	<b>150</b>	<b>1,414</b>

**Note 21: Administered Reconciliation Table**

	2011	2010
	\$	\$
<b>Opening administered assets less administered liabilities as at 1 July</b>	<b>1,266,783</b>	<b>1,535,935</b>
Plus: Administered income	3,170,861	4,064,594
Less: Administered expenses (non CAC)	(1,627,494)	(2,201,961)
Administered transfers to/from Australian Government:		
Appropriation transfers from OPA:		
Annual appropriations for administered expenses	23,544	52,261
Transfers to OPA	(1,997,013)	(2,184,046)
<b>Closing administered assets less administered liabilities as at 30 June</b>	<b>836,681</b>	<b>1,266,783</b>

**Note 22: Administered Contingent Assets and Liabilities**
**Quantifiable Administered Contingencies**

Since 30 June 2011 to the reporting date, the courts have ordered fines and costs of \$362,640 (2010: \$1,081,516).

**Unquantifiable Administered Contingencies**

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

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 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.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
NOTES TO THE SCHEDULE OF ADMINISTERED ITEMS**

*For the period ended 30 June 2011*

**Note 23: Administered Financial Instruments**

	2011	2010
	\$	\$

The administered assets and liabilities of the CDPP, other than cash, do not constitute as financial instruments

**Note 23A: Categories of Financial Instruments**
**Financial Assets**

Nil

Carrying amount of financial assets	-	-
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**Financial Liabilities**

Nil

Carrying amount of financial liabilities	-	-
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**Note 23B: Net Income and Expense from Financial Assets**
**Loans and receivables**

Nil

Net gain/(loss) from financial assets	-	-
---------------------------------------	---	---

There is no net income or expenses from financial assets in 2010-11 or 2009-10.

**Note 23C: Net Income and Expense from Financial Liabilities**

There is no net income and expenses from financial liabilities in 2010-11 or 2009-10.

**Note 23D: Fee Income and Expense**

CDPP did not earn any fee income or incur any fee expenses from financial instruments not at fair value through profit or loss or trust activities in 2010-11 or 2009-10.

**Note 23E: Fair Value of Financial Instruments**

	Carrying amount 2011 \$	Fair value 2011 \$	Carrying amount 2010 \$	Fair value 2010 \$
<b>Financial Assets</b>				
Cash and cash equivalents	-	-	-	-
Trade and other receivables	-	-	-	-
<b>Total</b>	-	-	-	-
<b>Financial Liabilities</b>				
Other payables	-	-	-	-
<b>Total</b>	-	-	-	-

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO THE SCHEDULE OF ADMINISTERED ITEMS**
*For the period ended 30 June 2011*
**Note 23: Administered Financial Instruments - cont'd**
**Note 23F: Credit Risk**

The CDPP is exposed to minimal credit risk as loans and receivables are cash. CDPP holds no collateral to mitigate against credit risk.

The carrying amount of financial assets, net of impairment losses, reported in the balance sheet represent the maximum exposure to credit risk.

The following table illustrates CDPP's gross exposure to credit risk, excluding any collateral or credit enhancements

	2011	2010
	\$	\$
<b>Financial assets</b>		
<b>Loans and receivables:</b>		
Nil	-	-
<b>Total</b>	-	-
<b>Financial liabilities</b>		
Nil	-	-
<b>Total</b>	-	-

No assets are held as collateral against possible default.

**Credit quality of financial instruments not past due or individually determined as impaired**

	Not Past Due Nor Impaired 2011 \$	Not Past Due Nor Impaired 2010 \$	Past due or impaired 2011 \$	Past due or impaired 2010 \$
<b>Loans and receivables:</b>				
Nil	-	-	-	-
<b>Total</b>	-	-	-	-

**Ageing of financial assets that were past due but not impaired for 2011**

	0 to 30 days \$	31 to 60 days \$	61 to 90 days \$	90+ days \$	Total \$
<b>Loans and receivables:</b>					
Nil	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

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**NOTES TO THE SCHEDULE OF ADMINISTERED ITEMS**

For the period ended 30 June 2011

**Ageing of financial assets that were past due but not impaired for 2010**

	0 to 30 days	31 to 60 days	61 to 90 days	90+ days	Total
	\$	\$	\$	\$	\$
Nil	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**Note 23G: Liquidity Risk**

The CDPP's administered financial liabilities are payables. The exposure to liquidity risk is based on the notion that CDPP will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and internal policies and procedures in place to ensure there are appropriate resources to meet financial obligations.

**Maturities for non-derivative financial liabilities 2011**

	On demand	1 to 2 years	2 to 5 years	> 5 years	Total
	\$	\$	\$	\$	\$
At amortised cost:					
Payables-suppliers	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**Maturities for non-derivative financial liabilities 2010**

	On demand	1 to 2 years	2 to 5 years	> 5 years	Total
	\$	\$	\$	\$	\$
At amortised cost:					
Payables-suppliers	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**Note 23H: Market Risk**

The CDPP holds basic financial instruments that do not expose the CDPP to certain market risks. The CDPP is not exposed to 'Currency risk', 'Interest rate risk' or 'Other price risk'.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
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**Note 24: Appropriations**

**Table A: Annual Appropriations**

2011	Appropriation Act			FMA Act			Total Appropriation \$'000	Appropriation applied in 2011 (current and prior years) \$'000	Variance \$'000
	Annual Appropriation <i>Note (a)</i> \$'000	Appropriations Reduced <i>Note (b)</i> \$'000	Advance to Finance Minister \$'000	Section 30 \$'000	Section 31 (GST excl) \$'000	Section 32 \$'000			
DEPARTMENTAL									
Ordinary annual services	96,305	(378)	-	138	3,494	-	99,559	95,565	3,994
Other services	3,295	-	-	-		-	3,295	1,831	1,464
Equity	-	-	-	-		-	-	-	-
Loans	-	-	-	-		-	-	-	-
Total Departmental	99,600	(378)	-	138	3,494	-	102,854	97,396	5,458
2010	Appropriation Act			FMA Act			Total Appropriation \$'000	Appropriation applied in 2010 (current and prior years) \$'000	Variance \$'000
	Annual Appropriation <i>Note (c)</i> \$'000	Appropriations Reduced <i>Note (d)</i> \$'000	Advance to Finance Minister \$'000	Section 30 \$'000	Section 31 (GST excl) \$'000	Section 32 \$'000			
DEPARTMENTAL									
Ordinary annual services	108,318	(12,553)	-	234	3,040	-	99,039	98,647	392
Other services	-	-	-	-		-	-	-	-
Equity	-	-	-	-		-	-	-	-
Loans	-	-	-	-		-	-	-	-
Total Departmental	108,318	(12,553)	-	234	3,040	-	99,039	98,647	392

(a) *Appropriation Act (No. 1) 2010-11*

(b) *Appropriation Act (No. 1) 2010-11: s.10.* On the 29th of June 2011, the Finance Minister determined a reduction in departmental appropriations following a request by the Attorney General of Australia. The amount of the reduction determined under *Appropriation Act (No. 1) of 2010-11* was \$378,000.

(c) *Appropriation Act (No. 1) 2009-10*

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*For the period ended 30 June 2011*

(d) *Appropriation Act (No. 1) 2009-10: s.10 and Appropriation Act (No.3) 2009-10: s.14.* On the 29th of June 2010, the Finance Minister determined a reduction in departmental appropriations following a request by the Attorney General of Australia. The amount of the reduction determined under *Appropriation Act (No. 1) of 2009-10* was \$1,624,000, and *Appropriation Act (No. 1) 2006-07* was \$5,442,084.28. On the 13th of May 2010, the Finance Minister determined a reduction in departmental appropriations following a request by the Attorney General of Australia. The amount of the reduction under *Appropriation Act (No. 3) of 2009-10* was \$1,273,000, and *Appropriation Act (No. 1) of 2004-05* was \$4,214,000.

**Table B: Unspent Departmental Annual Appropriations**

	2011 \$'000	2010 \$'000
Cash at bank and on hand	241	438
<i>Appropriation Act (No. 1) 2010-11</i>	5,664	-
<i>Appropriation Act (No. 1) 2009-10</i>	9,732	9,732
<i>Appropriation Act (No. 1) 2008-09</i>	13,907	13,907
<i>Appropriation Act (No. 1) 2007-08</i>	17,609	17,609
<i>Appropriation Act (No. 1) 2006-07</i>	13,954	13,954
<i>Appropriation Act (No. 1) 2005-06</i>	5,315	5,315
<i>Appropriation Act (No. 1) 2004-05</i>	7,758	7,758
	74,180	68,713



OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS  
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*For the period ended 30 June 2011*

**Note 24: Appropriations (continued)**

**Table C: Special Appropriations**

Authority	Type	Purpose	Appropriation Applied 2011 \$'000	2010 \$'000
<i>Financial Management and Accountability Act 1997 - Section 28 (Administered)</i>	Refund	To allow for the expenditure of amounts the Commonwealth is legally required to pay, but for which there is no other appropriation.	24	52

**Table D: Disclosure by Agent in Relation to Annual and Special Appropriations**

Not applicable

**Table E: Reduction in Administered Items**

Not applicable

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2011*

**Note 25: Special Accounts**

Services for Other Entities and Trust Moneys - Office of the Director of Public Prosecutions Special Account	2011	2010
	\$	\$
Appropriation: <i>Financial Management and Accountability Act 1997 section 20</i>		
Establishing Instrument: <i>Financial Management and Accountability Determination 2009/29</i>		
<i>Purpose:</i> (a) disburse amounts held on trust or otherwise for the benefit of a person other than the Commonwealth; (b) disburse amounts in connection with services performed on behalf of other governments and bodies that are not FMA Act agencies; (c) repay amount where an Act or other law requires or permits the repayments of an amount received; and (d) reduce the balance of the Special Account (and, therefore, the available appropriation for the Account) without making a real or notional payment.		

There were no transactions during 2010-11 or 2009-10.

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

*For the period ended 30 June 2011*

**Note 26: Compensation and Debt Relief**

	2011	2010
	\$	\$
<b>Departmental</b>		
No 'Act of Grace' expenses were incurred during the reporting period. (In 2009-10, one payment was provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme.)	Nil	68,645
No payments were made under any legislative authority during the reporting period. (In 2009-10, one payment was provided in special circumstances relating to APS employment pursuant to s73 of the <i>Public Service Act 1999</i> .)	Nil	1,761
<b>Total</b>	-	70,406

**Administered**

No 'Act of Grace' expenses were incurred during the reporting period (2009-10: Nil).

No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the *Financial Management and Accountability Act 1997* (2009-10: Nil).

No waivers of amounts owing to the Australian Government were made (2009-10: Nil).

No ex-gratia payments were provided for during the reporting period (2009-10: Nil).

No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the *Public Service Act 1999* (PS Act) during the reporting period (2009-10: Nil).

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
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**Note 27: Reporting of Outcomes**

The CDPP has only one outcome. Therefore no attribution is required.

**Note 27A: Net Cost of Outcome Delivery**

	Outcome 1	
	2011 \$'000	2010 \$'000
<b>Expenses</b>		
Administered	1,627	2,202
Departmental	98,153	101,735
<b>Total expenses</b>	<b>99,780</b>	<b>103,937</b>
<b>Cost recovered from provision of goods and services to the non government sector</b>		
Administered		
Fines and costs	2,946	3,720
Other administered revenue	-	-
Reversal of previous asset write-downs	224	345
<b>Total administered</b>	<b>3,170</b>	<b>4,065</b>
Departmental		
Goods and services revenue	3,164	2,105
Gains from disposal of assets	9	10
Other revenues	334	393
Other gains	174	142
<b>Total departmental</b>	<b>3,681</b>	<b>2,650</b>
<b>Total</b>	<b>6,851</b>	<b>6,715</b>
<b>Net cost/(contribution) of outcome delivery</b>	<b>92,929</b>	<b>97,222</b>

**Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that were eliminated in calculating the actual Budget outcome.**

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget Outcome. Refer to Outcome 1 Resourcing Table of this Annual Report.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2011*

**Note 27: Reporting of Outcomes - cont'd**

**Note 27B: Major Classes of Departmental Expense, Income, Assets and Liabilities by Outcomes**

	Outcome 1	
	2011 \$'000	2010 \$'000
<b>Departmental Expenses:</b>		
Employees	56,042	59,036
Suppliers	35,987	37,472
Depreciation and amortisation	4,924	4,706
Other	1,200	523
<b>Total</b>	<b>98,153</b>	<b>101,736</b>
<b>Departmental Income:</b>		
Income from government	95,927	105,421
Sales of goods and services	3,164	2,105
Other non-taxation revenue	517	545
<b>Total</b>	<b>99,608</b>	<b>108,071</b>
<b>Departmental Assets</b>		
Cash and cash equivalents	241	438
Trade and other receivables	74,809	69,117
Land and buildings	8,488	10,979
Property, plant and equipment	5,845	5,864
Intangibles	1,175	537
Other non financial assets	991	675
<b>Total departmental assets</b>	<b>91,549</b>	<b>87,610</b>
<b>Departmental Liabilities</b>		
Suppliers	6,900	7,124
Other payables	1,490	1,453
Lease incentives	904	607
Employee provisions	15,108	16,005
Other provisions	2,701	2,725
<b>Total</b>	<b>27,103</b>	<b>27,914</b>

Due to a change in the reporting requirements during 2010-2011, a number of reclassifications have been made. These relate to Suppliers and Employee Expenses and Liabilities, Other Payables and Other Provisions. The comparatives has been adjusted.

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that were eliminated in calculating the actual Budget outcome.

**OFFICE OF THE COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*For the period ended 30 June 2011*

**Note 27: Reporting of Outcomes - cont'd**

**Note 27C: Major Classes of Administered Expenses, Income, Assets and Liabilities by Outcomes**

	Outcome 1	
	2011 \$'000	2010 \$'000
<b>Administered expenses</b>		
Write-down of assets	1,627	2,202
<b>Total</b>	<b>1,627</b>	<b>2,202</b>
<b>Administered income</b>		
Fines and costs	2,946	3,720
Other administered revenues	-	-
Other non-taxation revenues	224	345
<b>Total</b>	<b>3,170</b>	<b>4,065</b>
<b>Administered assets</b>		
Cash and cash equivalents	-	-
Receivables	837	1,268
<b>Total</b>	<b>837</b>	<b>1,268</b>
<b>Administered liabilities</b>		
Payables	-	1
<b>Total</b>	<b>-</b>	<b>1</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that were eliminated in calculating the actual Budget outcome.

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

*For the period ended 30 June 2011*

**Note 28: Comprehensive Income (Loss) Attributable to the entity**

	2011 \$'000	2010 \$'000
<b>Total Comprehensive Income (loss) Attributable to the entity</b>		
Total Comprehensive Income (loss) Attributable to the Australian Government	1,455	6,336
Plus: non-appropriated expenses		
Depreciation and amortisation	<u>4,924</u>	<u>-</u>
<b>Total comprehensive income (loss) attributable to the entity</b>	<u>6,379</u>	<u>6,336</u>

## Acronyms and Abbreviations

ABN	Australian Business Number
ABS	Australian Bureau of Statistics
ACBPS	Australian Customs and Border Protection Service
ACBPS officers	Australian Customs and Border Protection Service officers
ACC	Australian Crime Commission
ACCC	Australian Competition and Consumer Commission
ACLEI	Australian Commission for Law Enforcement Integrity
ACS	Australian Customs Service (former)
ACS officers	Australian Customs Service officers (former)
ACT DPP	Australian Capital Territory Director of Public Prosecutions
AEC	Australian Electoral Commission
AFMA	Australian Fisheries Management Authority
AFP	Australian Federal Police
AGD	Attorney-General's Department
AGS	Australian Government Solicitor
AFZ	Australian Fishing Zone
AISBL	Australian/Indonesian Seabed Boundary Line
AMLAT	Anti-Money Laundering Assistance Team
AMSA	Australian Maritime Safety Authority
APS	Australian Public Service
APSC	Australian Public Service Commission
AQIS	Australian Quarantine and Inspection Service
ASIC	Australian Securities and Investments Commission
ASIO	Australian Security Intelligence Organisation
ASX	Australian Stock Exchange



ATO	Australian Taxation Office
AUD	Australian dollars
AUSTRAC	Australian Transaction Reports and Analysis Centre
AWA	Australian Workplace Agreement
AWBC	Australian Wine and Brandy Corporation
BAS	Business Activity Statement
CARS	Criminal Assets Recording System
CASA	Civil Aviation Safety Authority
CCB	Child Care Benefit
CDPP	Commonwealth Director of Public Prosecutions
CITES	Convention on International Trade in Endangered Species
COAG	Council of Australian Governments
CPG	Commonwealth Procurement Guideline
CRIMS	Case Reporting and Information Management System
defendant	a person who has been charged with an offence
DEWHA	Department of Environment, Water, Heritage and the Arts
DEWR	Department of Employment and Workplace Relations (former)
DPP	Director of Public Prosecutions
DSEWPC	Department of Sustainability, Environment, Water, Population and Communities
EAP	Employee Assistance Program
EEO	Equal Employment Opportunity
ESS	Employee Self Service Scheme
ERP	Employee Wellbeing Program
FAO	Family Assistance Office
FOI	Freedom of Information
GBRMPA	Great Barrier Reef Marine Park Authority
GST	Goods and Services Tax
HOCOLEA	Heads of Commonwealth Law Enforcement Agencies

HOPAC	Heads of Prosecutors Agencies Conference
HR	Human Resources
HSMA	Health and Safety Management Arrangement
IAP	International Association of Prosecutors
ICT	Information and Communication Technology
ILS	Integrated Leadership System
IPS	Information Publication Scheme
ISP	Internet Service Provider
IT	Information Technology
ITSA	Insolvency and Trustee Service Australia
LAME	Licensed Aircraft Maintenance Engineer
LSS	Litigation Support System
MDMA	methylenedioxymethamphetamine (otherwise known as ecstasy)
MOPED	Managing Officers, Prosecutors and Executive Directors
NOPSA	National Offshore Petroleum Safety Authority
PBS	Pharmaceutical Benefits Scheme
PPO	Pecuniary Penalty Order
<i>Prosecution Policy</i>	<i>Prosecution Policy of the Commonwealth</i>
RAAF	Royal Australian Air Force
RAP	Reconciliation Action Plan
SES	Senior Executive Service
SIEV	suspected illegal entry vessel
SKSA	Sydney Kingsford Smith Airport

# Legislation Abbreviations

<i>ACC Act</i>	<i>Australian Crime Commission Act 2002 (Cth)</i>
<i>AFP Act</i>	<i>Australian Federal Police Act 1979 (Cth)</i>
<i>ASIC Act</i>	<i>Australian Securities and Investments Commission Act 2001 (Cth)</i>
<i>Corporations Act</i>	<i>Corporations Act 2001 (Cth)</i>
<i>Criminal Code</i>	<i>Commonwealth Criminal Code (Criminal Code Act 1995 (Cth))</i>
<i>Crimes Act</i>	<i>Crimes Act 1914 (Cth)</i>
<i>CSB Act</i>	<i>Crimes (Superannuation Benefits) Act 1989 (Cth)</i>
<i>Customs Act</i>	<i>Customs Act 1901 (Cth)</i>
<i>DPP Act</i>	<i>Director of Public Prosecutions Act 1983 (Cth)</i>
<i>FMA</i>	<i>Fisheries Management Act 1991 (Cth)</i>
<i>OHS Act</i>	<i>Occupational Health and Safety Act 1991 (Cth)</i>
<i>POC Act 1987</i>	<i>Proceeds of Crime Act 1987 (Cth)</i>
<i>POC Act 2002</i>	<i>Proceeds of Crime Act 2002 (Cth)</i>



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