



OFFICE OF THE
DIRECTOR OF
PUBLIC PROSECUTIONS
NEW SOUTH WALES

Annual Report

2001–2002



THE OFFICE

The ODPP was established by the Director of Public Prosecutions Act, 1986 (“the DPP Act”) and commenced operation on 13 July, 1987. The creation of a Director of Public Prosecutions changed the administration of criminal justice in New South Wales. The day to day control of criminal prosecutions passed from the hands of the Attorney General to the Director of Public Prosecutions.

There now exists a separate and independent prosecution service which forms part of the criminal justice system in New South Wales. That independence is a substantial safeguard against corruption and interference in the criminal justice system.

Functions

The functions of the Director are specified in the DPP Act and include:-

- Prosecution of all committal proceedings and some summary proceedings before the Local Courts.
- Prosecution of indictable offences in the District and Supreme Courts.
- Conduct of District Court, Court of Criminal Appeal and High Court appeals on behalf of the Crown; and
- Conduct of related proceedings in the Supreme Court and Court of Appeal.

The Director has the same functions as the Attorney General in relation to:-

- Finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial;
- Directing that no further proceeding be taken against a person who has been committed for trial or sentence; and
- Finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial.

Section 21 of the DPP Act provides that the Director may appear in person or may be represented by a counsel or solicitor in any proceedings which are carried on by the Director.

The functions of the Solicitor for Public Prosecutions are prescribed in section 23 of the DPP Act. These are:

- (a) to act as solicitor for the Director in the exercise of the Director’s functions; and
- (b) to instruct the Crown Prosecutors and other counsel on behalf of the Director.

The functions of Crown Prosecutors are set out in section 5 of the Crown Prosecutors Act 1986. They include:

- (a) to conduct, and appear as counsel in, proceedings on behalf of the Director;
- (b) to find a bill of indictment in respect of an indictable offence;
- (c) to advise the Director in respect of any matter referred for advice by the Director;
- (d) to carry out such other functions of counsel as the Director approves.



OUR ROLE

To provide for the State of New South Wales, an independent, efficient, fair and just prosecution service.

OUR VISION

A criminal prosecution system that is accepted by the community as being equitable and acting in the public interest.

OUR STAKEHOLDERS

The NSW Parliament, the Judiciary, the Courts, Police, victims, witnesses, accused persons and others in the criminal justice system.

OUR VALUES

Independence

Advising in, instituting and conducting proceedings in the public interest, free of influence from inappropriate political, individual and other sectional interests.

Service

The timely and cost efficient conduct of prosecutions.

Anticipating and responding to the legitimate needs of those involved in the prosecution process, especially witnesses and victims.

Highest Professional Standards

Manifest integrity, fairness and objectivity.

Management Excellence

Continual improvement.

Encouraging individual initiative and innovation.

ODPP

New South Wales

DIRECTOR'S CHAMBERS



Mr R J Debus MP
Attorney General
Level 25
59-61 Goulburn Street
Sydney NSW 2000

Dear Attorney

2001–2002 Annual Report

Pursuant to section 34 of the Director of Public Prosecutions Act 1986 and in compliance with the Annual Reports (Departments) Act 1985 and the Public Finance and Audit Act 1983, I am pleased to forward to you, for laying before both Houses of Parliament, my Office's report and financial statements for the year ending 30 June 2002

Yours faithfully

A handwritten signature in black ink, appearing to read 'NR Cowdery'.

NR Cowdery QC
Director of Public Prosecutions

21st October 2002

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Director's Overview

Directors Overview

Towards the end of the reporting year, a series of particularly difficult and high profile trials came to an end with convictions being recorded. The Office and the officers involved in the proceedings received high public praise for their work. A few points should be made:

- Praise for the Office is not commonly given by public commentators, even when it should be. It was gratefully received on this occasion.
- The officers concerned earned it by disciplined and professional application to the tasks at hand, often in the face of personal abuse and provocation.
- The Office deals with thousands of cases every year across the State in which officers apply themselves equally diligently but do not attract individual or public praise.
- The results in the matters referred to and in all other matters should not be relevant to the level of praise given. It is the work done that is praiseworthy, not the outcome.

Accordingly, it is a pleasure to present my eighth Annual Report (the Office's 15th) and to acknowledge once again the untiring dedication of ODPP officers to the achievement of criminal justice across the State. A great deal has been done in those years; but a great deal more can be done to improve the system in which we are but one participant.

To that end, ODPP officers serve on committees of legal professional associations and in groupings of agencies involved in the criminal justice system numbering well over 40. This commitment is additional to their core functions and requires a great deal of extra work, often in their own time. I thank and applaud all those involved. Their efforts to improve the criminal justice system of NSW also go largely unremarked in public.

Through these efforts we are reviewing court security for all court users, improving inter-agency communications, working towards the creation and transmission of electronic briefs and enhancing information technology applications generally, improving services to victims of crime, reviewing legislation that applies in the criminal justice system and much, much more. It would be heartening to see for discussion something like the Criminal Justice Board proposed in the just published English White

Paper "Justice For All" which is to be responsible for overall criminal justice system service delivery. At present there is still a lack of proper coordination and cooperation in the criminal justice system of NSW.

On 19 November the misnamed Criminal Procedure Amendment (Pre-Trial Disclosure) Act 2000 commenced. It imposed additional requirements on the prosecution – notably, the requirement that a final indictment be settled within four weeks of committal, amendable only by consent of the parties or leave of the court – while requiring very little of the defence. Fortunately, the government recognised the need for additional resources for the Office and provided extra funds to enable extra staff to be employed to meet the additional requirements. It will be a permanent need. This has facilitated the earlier settlement of indictments and the earlier opening of discussions with the defence which in turn have identified pleas of guilty at an earlier stage. Trial delay has been reduced in most areas and as a consequence savings will be registered elsewhere in the criminal justice system. The legal profession has responded positively to the change. Nevertheless, it is a great pity that the recommendations of the Law Reform Commission on this subject were not implemented more fully. They would have resulted in even more work being done at the front end of proceedings with consequential savings and improvements later in the process.

In May the Hon Gordon Samuels AC CVO QC published the Report of his Review of my Policy and Guidelines for Charge Bargaining and Tendering of Agreed Facts. The review was commissioned following publicity about two specific cases in which there had been inadequate communication with police and victims during the conduct of proceedings. Mr Samuels found that the Policy and Guidelines were adequate and appropriate, but made some suggestions for improvement that are being implemented. He found that individuals had not fully applied the Policy and Guidelines in the two particular cases. That is regrettable; but human error must always be anticipated where humans are active.

Mr Samuels strongly endorsed the contribution of the Office's Witness Assistance Service (WAS) and I have asked for additional funding to enable it to be expanded substantially. The need is there. It is interesting to note that the Crown Agent in

Scotland is the most recent common law agency to adopt the model for such a service.

The WAS is particularly valuable (among its many tasks) in assisting prosecutors to address the needs of victims of child sexual assault, which remains a challenge for the Office. I am a member of the National Child Sexual Assault Law Reform Committee which is expected to produce in the next year practical suggestions for improvements in the ways in which these offences may be dealt with in the criminal justice system. There is also a NSW Parliamentary Committee Inquiry into Child Sexual Assault to which my officers and I have made submissions and given evidence and we look forward to its recommendations.

While ways are sought to improve the system, however, the work must go on. The Office's information technology applications are continually improved and provide an indispensable service to prosecutors for record keeping, communication and research. We are engaging electronically with other agencies in the criminal justice system. Accommodation and facilities, especially at Head Office, have been significantly improved throughout this year; increasing the level of comfort and efficiency of staff, witnesses and victims. The centralised committals initiative continues to reap significant benefits for the trial courts – and, of course, for all persons involved in the process.

DNA technology has proved to be a very valuable tool in the fight against crime; but the application of a new and powerful facility has required careful oversight and the involvement of myself and others from the Office on various committees. I am also a member of the NSW Innocence Panel which will facilitate the review of convictions where DNA technology may be applied.

Internationally, I welcome the creation of the International Criminal Court, to which so many Australians (including staff of this Office) have contributed. Throughout the year we have hosted and held discussions with groups of visiting prosecutors from various Provinces of China and other countries. We have continued our staff exchange program with Canada and have been able to provide professional assistance to Vanuatu and Tonga (as well as the Northern Territory in the case of one prosecution). The Annual Conference of the International Association of Prosecutors (IAP) – of

which I continue as President – was a great success in Sydney in September. I thank the Attorney General for his support and participation and I thank all staff who continued the Olympic volunteer spirit to contribute to a great result.

Independence and Accountability

No new Prosecution Guidelines were issued in this year. No guideline under section 26 of the Director of Public Prosecutions Act 1986 has been received from the Attorney General, nor has notice been received from him of the exercise by him of any of the functions described in section 27. No request has been made to the Attorney General pursuant to section 29.

The Office has now established an Executive Board which I chair and which includes two independent members. That body is not involved directly in the prosecution function, but provides valuable assistance to the Office on matters of management and administration.

Senior Staff

Mr A M Blackmore, then Deputy Director, was appointed Senior Counsel on 26 September and a Judge of the District Court of NSW on 11 March.

Mr G E Smith, Deputy Senior Crown Prosecutor, was appointed Deputy Director on 18 April.

Mr R D Ellis continued in office as Deputy Director.

Crown Prosecutors

Mr J P Booth resigned as Crown Prosecutor on 8 August upon appointment as Public Defender from 9 August.

Ms V J Lydiard continued as Acting Crown Prosecutor.

Mr P V Conlon was appointed Senior Counsel on 26 September.

Mr F A Veltro continued as Acting Crown Prosecutor until appointment as Crown Prosecutor on 22 October.

Mr R J Willis, Ms S J Huggett and Mr J D Favretto were appointed Acting Crown Prosecutors on 22 October.

Mr J Crespo was appointed Crown Prosecutor on 5 November.

Messrs K H Alder and Mr D K Brack, Ms J E Cash and Mr J H Pickering were appointed Acting Crown Prosecutors on 27 November.

Mr P S Dare was appointed Acting Deputy Senior Crown Prosecutor on 19 December.

Messrs K L McKay and G H Fatches continued as Acting Crown Prosecutors until appointment as Crown Prosecutors on 24 January.

Mr M W Sherring continued as Acting Crown Prosecutor until appointment as Crown Prosecutor on 24 January. He retired on 15 May.

Mr D P Degnan and Ms T A Bright continued as Acting Crown Prosecutors until appointment as Crown Prosecutors on 24 January.

Ms S J Huggett was appointed Crown Prosecutor on 24 January.

Messrs A J Clout, T R Bailey and M McL Hobart were appointed Crown Prosecutors on 29 January.

Mr P A Leask was appointed Acting Crown Prosecutor on 29 January.

Mr P Cattini was appointed Crown Prosecutor on 4 February.

Ms S P Herbert was appointed Crown Prosecutor on 11 February.

Mr L J Carr was appointed Crown Prosecutor on 25 February.

Ms N J Adams was appointed Acting Crown Prosecutor on 4 February.

Mr J M McLennan was appointed Crown Prosecutor on 18 February.

Mr E Balodis was appointed Crown Prosecutor on 25 February.

Mr P G Berman SC resigned as Deputy Senior Crown Prosecutor on 3 March upon appointment as Deputy Senior Public Defender on 4 March.

Ms J A Girdham was appointed Crown Prosecutor on 18 March.

Mr L M B Lamprati continued as Acting Deputy Senior Crown Prosecutor until appointment as Deputy Senior Crown Prosecutor on 17 April.

Messrs D N Wilson, M G Pincott and S G Apps were appointed Acting Crown Prosecutors on 17 April.

Mr B T Kelly resigned as Crown Prosecutor on 26 April upon retirement.

Mr H C Hamilton resigned as Crown Prosecutor on

5 May upon appointment as a Magistrate and Mining Warden on 6 May.

Ms G M Kinnane retired as Crown Prosecutor on 12 June.

The Annual Crown Prosecutors' Conference was held in the Hunter Valley in April.

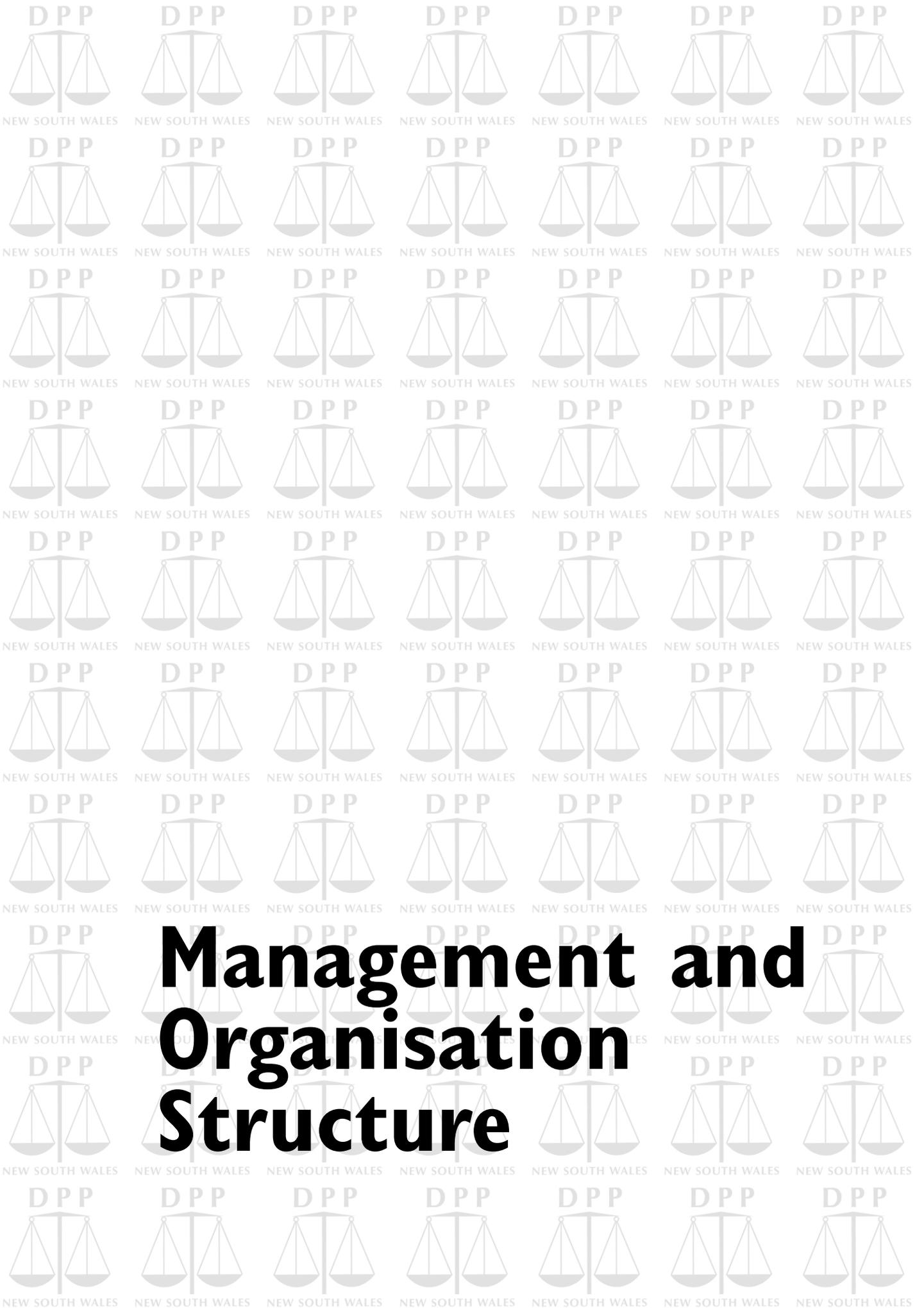
The NSW Bar Association's Continuing Professional Development program applies to Crown Prosecutors and complementary educational sessions have been designed to be conducted in house.

Travel

- The Deputy Directors and I have continued to visit regional offices, at times delivering papers in MCLE sessions.
- I have participated in various NSW and interstate conferences and meetings on a range of matters connected with the criminal law.
- The Conference of Australian Directors of Public Prosecutions (CADs) met informally during the IAP conference in Sydney in September and formally in Melbourne in April.
- In August I participated for the second time in workshops for prosecutors (procurators) in China, along with others including Ms H Wilson, Crown Prosecutor. This is an Australia-China government program funded by AusAID and coordinated by HREOC.
- In October I attended the 17th LAWASIA Biennial Conference in Christchurch, New Zealand where I participated in the criminal law and human rights programs.
- In November, in my IAP capacity, I attended the Regional Conference of Attorneys-General in Guangzhou, China as a speaker on criminal law issues.
- In January I attended and addressed the Annual Senior Management Conference of the National Prosecuting Authority of South Africa in the Eastern Cape Province, South Africa.
- In February I participated as a consultant in a team reviewing the Papua New Guinea Attorney General's Department Institutional Strengthening Project in Port Moresby and Lae, Papua New Guinea.

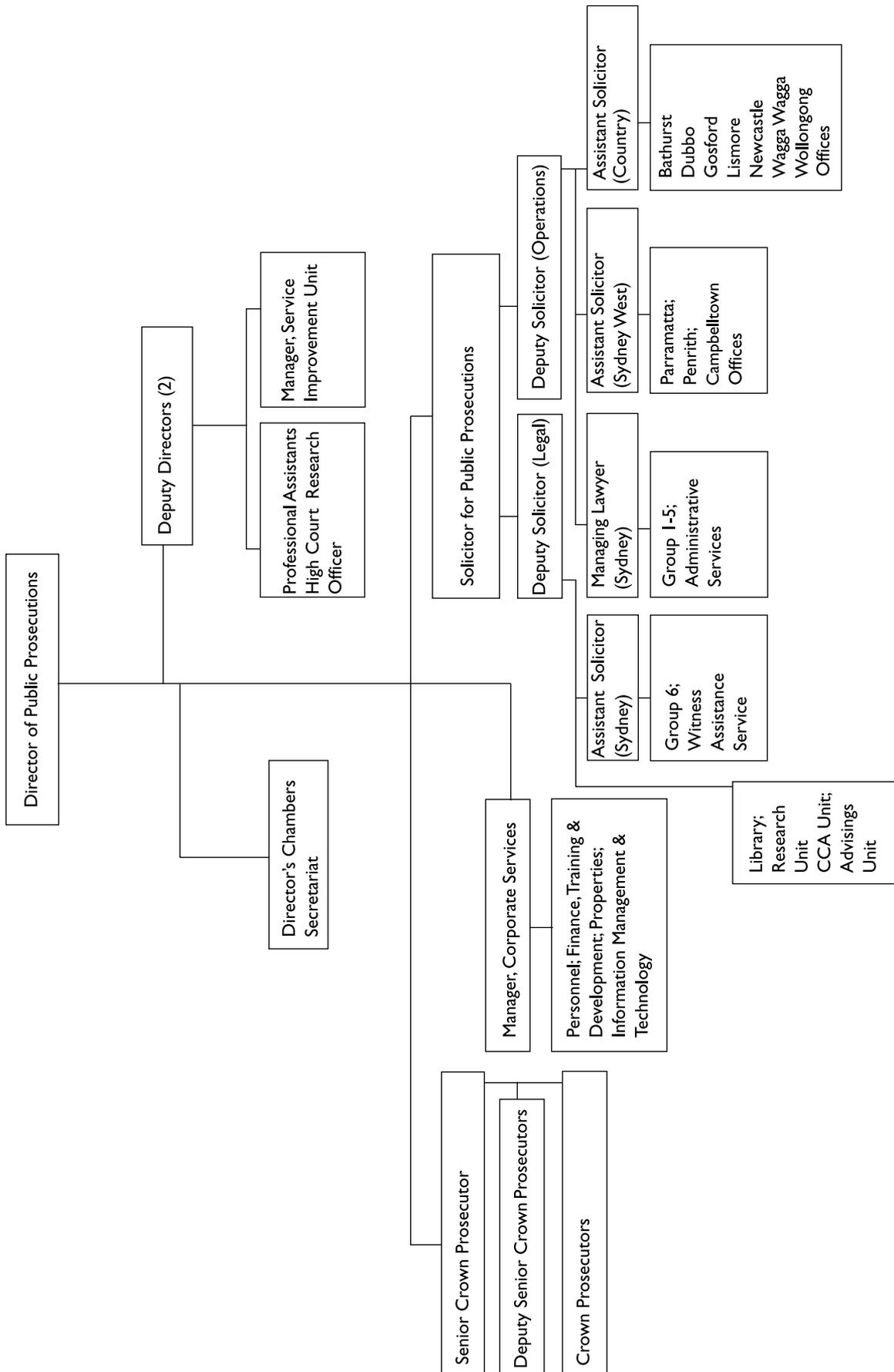
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- In March I made an official visit to Hong Kong at the invitation of the government of Hong Kong, China.
 - In May I attended (in my IAP capacity – as an observer) the 3rd Conference of Prosecutors General of Europe in Ljubljana, Slovenia; chaired the semiannual meeting of the Executive Committee of the IAP in Baku, Azerbaijan; visited the IAP Secretariat in The Hague, The Netherlands (and attended the Milosevic trial in the ICTY); and addressed and participated in the IBA Alleged Transnational Criminal Seminar in Miami, USA.
 - In June I participated for the third time in workshops for procurators in China with Ms H Wilson, Crown Prosecutor and Mr C Smith, Deputy Solicitor for Public Prosecutions (Operations). This was a continuation of the inter-government program mentioned above.

As in previous years, a large proportion of the costs associated with my official overseas travel (all of which is undertaken only with the approval of the Attorney General) was not paid by the NSW taxpayer. The amounts involved are shown in Appendix 26.



Management and Organisation Structure

Organisational Structure of the Office of the Director of Public Prosecutions in NSW



Nicholas Cowdery QC

BA, LL. B

Director of Public Prosecutions

Appointed Director of Public Prosecutions in 1994. He was admitted as a barrister in NSW in 1971 and practised as a Public Defender in Papua New Guinea from 1971 to 1975 when he commenced private practice at the Sydney bar. He took silk in 1987 and practised in many Australian jurisdictions. He was an Associate (Acting) Judge of the District Court of New South Wales for periods in 1988, 1989 and 1990. He is President of the International Association of Prosecutors.

Greg Smith

LL. B

Deputy Director of Public Prosecutions

Practised as a Solicitor from admission in 1973 in several city firms and later at the Commonwealth Deputy Crown Solicitor's Office, Sydney from 1975 to 1984. From April 1984 to May 1985, acted as Senior Assistant DPP at the Commonwealth DPP's office. May 1985 appointed as Senior Adviser (Legal) to National Crime Authority, Sydney. Admitted to the Bar in 1987. Appointed a NSW Crown Prosecutor in 1987 and Deputy Senior Crown Prosecutor in January 1998. From September 1992 to November 1993, seconded to the ICAC as Counsel Assisting. Appointed as Deputy Director of Public Prosecutions in April 2002.

Provides advice to the Director of Public Prosecutions; appears in the High Court and other appellate courts; reviews recommendations by Crown Prosecutors on various matters; assists in the management of the Office and performs the Director's functions as delegated.

Roy Ellis

B. Leg. S

Deputy Director of Public Prosecutions

Member of Clerk of Petty Sessions Office from 1973 to 1979. Member of Clerk of the Peace Office from 1979 to 1984. Admitted to the Bar in 1981. Appointed a Crown Prosecutor in 1984 and a Deputy Senior Crown Prosecutor for the Northern Territory in 1986. Appointed a Crown Prosecutor in 1987 and a Deputy Senior Crown Prosecutor for New South Wales in 1997. Appointed as Deputy Director of Public Prosecutions in 1999.

Steve O'Connor

Dip Law (BAB), Dip CRIM

Solicitor for Public Prosecutions

Admitted as lawyer in 1978. He was a member of the Public Trust Office from 1973 before joining the Clerk of the Peace in 1983. After the creation of the Office of the Director of Public Prosecutions in 1987, appointed to the position of Assistant Solicitor, and then Deputy Solicitor for Public Prosecutions. In 1988, appointed as the Solicitor for Public Prosecutions. Seconded to the Legal Aid Commission in 1992. Appointed an Acting Magistrate in 1999.

Acts as a solicitor in the conduct of prosecutions on behalf of the Director.

Manages the resources of the Solicitor's Office statewide.

Patrick McMahon

Grad Certif in Management, AFAM

Manager, Corporate Services

Employed in the NSW Police Service for over 25 years in a variety of administrative and management positions culminating in the position of Regional Manager, Support Services (South). Joined NSW Fisheries as Director, Corporate Services in 1992 and commenced with the Office of the Director of Public Prosecutions as Change and Improvement Manager in 1996. Appointed as Manager, Corporate Services in February 1999.

Responsible for personnel, training and development, financial management, information technology, change and improvement and property functions of the Office. Co-ordinates corporate planning, statutory reporting and implementation of sector-wide management initiatives.

Mark Tedeschi QC

MA, LLB

Senior Crown Prosecutor

Was previously a private barrister and a lecturer in law. He has been a Crown Prosecutor since 1983, a Queen's Council since 1988, and Senior Crown Prosecutor since 1997. He is the author of a book on international trade law and of numerous articles on business law, environmental law, social welfare law, mental health law and criminal law as well as articles on photography and genealogy. His photographs are part of the permanent collection of the Art Gallery of NSW and the State Library. He is the President of the Australian Association of Crown Prosecutors.

Prosecutes major trials in the Supreme and District Courts. Responsible for the allocation of trials to Crown Prosecutors and private Barristers and for the management of the Crown Prosecutors and Support Staff.

Management Board and Committees

The following committees are established to augment strategic and operational management of the Office:

Executive Board

During the year, the Attorney General approved the expansion of the Board to include two independent members. Associate Professor Sandra Egger of the Faculty of Law, University of NSW and Mr John Hunter, Principal, John Hunter Management Services were subsequently appointed and attended the inaugural meeting of the newly constituted Board on 24 June 2002.

The Board meets quarterly and its role is to:

- advise the Director on administrative and managerial aspects of the ODPP with a view to ensuring that it operates in a co-ordinated, effective, economic and efficient manner;
- advise the Director on issues relating to strategic planning, management improvement and monitoring performance against strategic plans;
- monitor the budgetary performance of the ODPP and advise the Director on improving cost effectiveness;
- identify and advise the Director on initiatives for change and improvement in the criminal justice system; and
- provide periodic reports on its operations to the Attorney General and report to the Attorney General upon request on any matter relating to the exercise of its functions, or, after consultation with the Attorney General, on any matters it considers appropriate.

Management Committee

This Committee comprises all members of the Executive Board as well as the Deputy Solicitors (Legal and Operations), the Assistant Solicitor (Sydney) and the Assistant Solicitors (Sydney West and Country).

The Committee meets monthly. Its primary function is to discuss operational and management issues as well as being a forum for sharing information on the activities, challenges and initiatives of the various functional areas of the Office.

Audit Committee

This Committee is chaired by a Deputy Director of Public Prosecutions with the Solicitor for Public Prosecutions, Senior Crown Prosecutor, Manager Corporate Services and Manager, Service Improvement Unit as members. Representatives of the Audit Office of NSW and of the internal audit provider attend meetings by invitation.

The Audit Committee monitors the internal audit function across all areas of the Office's operations, ensuring that probity and accountability issues are addressed.

Information Management and Technology Steering Committee

The IM&T Steering Committee (IM&TSC) is the management body convened to ensure and promote effective use and management of information and technology; to guide the selection, development and implementation of information and technology projects; and, to assure the strategic and cost effective use of information and systems to support ODPP activities.

The Committee consists of the Chief Information Officer (currently the Deputy Solicitor Operations) as chair; Solicitor for Public Prosecutions, Manager Corporate Services, Deputy Solicitor (Legal), Assistant Solicitor (Country), Manager, Information Management & Technology Services, Managing Lawyer (Sydney) and the Assistant Manager (Services) as Executive Officer.

The Committee meets monthly.

ODPP Internal Committees/Steering Groups

Committee Steering Group	ODPP Representative	
Executive Board	Nicholas Cowdery QC (Chair) Greg Smith Roy Ellis Patrick McMahon	Stephen O'Connor Mark Tedeschi QC
Management Committee	Nicholas Cowdery QC Greg Smith Roy Ellis Patrick McMahon Stephen O'Connor Mark Tedeschi QC	Craig Smith Robyn Gray Philip Dart Graham Bailey Claire Giroto
Information Management & Technology Steering Committee	Craig Smith (Chair) Graham Bailey Michael Sands Patrick McMahon Hop Nguyen	Stephen O'Connor Patrick Quill Robyn Gray William Dawe QC
Audit Committee	Roy Ellis (Chair) Mark Tedeschi QC Steve O'Connor Patrick McMahon Jeff Shaw	
Occupational Health & Safety Committee	Country Region Colin Shaw (Chair) Peter Bridge Roger Hyman Sydney Head Office Helen Langley Andrew Dziedzic Sydney West Michael Frost	Employer Representatives Susan Maxwell Philip Dart Proxy Representatives Christopher Brown Claire Giroto David O'Neill Jenny Wells Jim Hughes Ross Stainer Susan Ayre
Crowns Committee	Christopher Maxwell QC Mark Tedeschi QC (Chair) Peter Dare William Dawe QC	Greg Smith David Frearson Daniel Howard Nicolas Harrison
PSA/Management Committee	Graham Bailey Gary Corkill David Curran	Andrew Dziedzic Craig Smith Patrick McMahon



Achievements

I. Corporate Goal: Timely and Cost Efficient Conduct of Prosecutions

Key Result Areas

All Indictable prosecutions

Outcomes Sought

- Increased public confidence
- Improvements in stakeholder satisfaction

Strategy

Continually review, evaluate and improve standards for indictable prosecutions

Performance Indicator

- Prosecution Outcomes
 - Time for disposal of matters
 - Prompt plea negotiation
- Cost per court day serviced

Report

- The Office has a strategy for preparing defended indictable matters that focuses on early screening, victim contact and an improved standard of brief preparation. This aspect has been significantly improved with the advent of the Criminal Procedure Amendment (Pre-Trial Disclosure) Act, through the involvement of Crown Prosecutors in the early stages of the screening process.
- The Centralised Committal Project continues to be a very successful means of reducing the number of matters committed for trial by facilitating pre-committal negotiations with the defence. This has reduced trial delays, with significant benefits to all stakeholders.
- The Office is generally able to accept a trial date in the District Court within 3 months of committal. This means that matters are being prepared and dealt with more efficiently.
- All requirements imposed by the High Court, Court of Appeal and Court of Criminal Appeal were met within the prescribed timeframes. The statistics for appeals dealt with during 2001/02 (see Appendix 13) indicate an increase in the number of appeals disposed of by the CCA, as a result of increases in the number of sittings this year.
- An Organisational Performance Management System is being developed which will have the facility to report on activity costing.

2. Corporate Goal: High Quality Service

Timeliness

Median delay of trial matters from Committal to completion for trial matters completed.

Region	Median Delays in Days 2001–2002
Sydney	230
Sydney West	194
Country	250

Key Result Areas

Witness Services

Outcomes Sought

- Greater sense of confidence in witnesses
- Efficiency in the use of lawyers' time
- Greater attention to child and other vulnerable witnesses

Strategy

Improve services to victims and witnesses

Performance Indicator	Report
<ul style="list-style-type: none"> • Level of stakeholder satisfaction • Time standards for advisings achieved 	<ul style="list-style-type: none"> • The Office's Witness Assistance Service (WAS) employs a Best Practice Referral Flow Chart outlining a process for referral of matters involving victims of violent crime. • The DPP website contains extensive information for victims and witnesses, as well as links to other sites of relevance to them. • The Office undertakes a biennial survey of victims and witnesses to gauge the level of satisfaction with our services and to seek feedback with the aim of improving service delivery. Surveys were conducted in 1994, 1996, 1998 and 2000. The next survey is due to be conducted next financial year. • All advisings were provided to the referring agency within the timeframe required to meet the statutory requirements applicable to the relevant offence/s. The Office continually monitors advisings on hand to ensure this result. Prosecutors and external agencies are encouraged to screen matters and make relevant referrals to the WAS.

3. Corporate Goal: Accountability

3.1 Key Result Areas

Workload Measurement

Outcomes Sought

- *Reliable data on how Office costs are generated*
- *A sound basis for comparing operational performance and allocating resources*

Strategy

Measure costs and time associated with all prosecution functions undertaken by the Office

Performance Indicator	Report
<ul style="list-style-type: none"> • Resources allocated according to workload • Valid comparison of operational activity throughout the Office 	<ul style="list-style-type: none"> • The Office's primary operational system (CASES) was upgraded in 2001–02. This upgrade has provided an increased capacity for providing comprehensive management information through a linkage to an Organisational Performance Management System, currently in development. • Workload is present assessed and resources allocated on both the basis of the extent of Court sittings to be serviced and on caseload. Workload and resource allocation are continually monitored and adjustments made where necessary. • Work is progressing in the development of an Organisational Performance Management System to provide the facility for detailed measurement of prosecution functions and costs.
<h4>3.2 Key Result Areas</h4> <p><i>Accountability to Stakeholders</i></p>	<h4>Outcomes Sought</h4> <ul style="list-style-type: none"> • <i>Public confidence in the prosecution process</i> • <i>Recognition of the Office's achievements</i> • <i>Disability and Privacy Management Plans developed and implemented</i>
<h4>Strategy</h4>	<p>Promote a stakeholder focus</p>

Performance Indicator	Report
<ul style="list-style-type: none"> • Basis for decisions stated • Compliance with statutory reporting requirements • Participation in inter-agency fora • Responsible financial management 	<ul style="list-style-type: none"> • The Office has utilised its website to increase accountability to stakeholders by making relevant DPP policies, guidelines and plans readily accessible and by providing a means for victims and witnesses to provide direct feedback on the services provided. • The Office is represented on the Victims Advisory Board which includes Victims Support Groups. • The basis for decisions is stated where appropriate. • All reports have been provided to central agencies within the statutory timeframes. • The Office chairs an inter-departmental and community committee reviewing sexual assault prosecutions. • Appendix 36 contains a list of the inter agency committees and similar groups in the criminal justice system on which the DPP is represented at a senior level. The other agencies represented on these committees include our major stakeholders; eg. the Police Service, other investigative agencies, the Courts, Legal Aid Commission, NSW Law Society, Bar Association and the Attorney General's Department. • Strategies implemented under the Office Disability Action Plan. • Budget performance is monitored quarterly by Executive Board.

4. Corporate Goal: Staff Development and Support

4.1 Key Result Areas

Efficient delivery of corporate services

Strategy

Outcomes Sought

- *More cost efficient service to officers of the ODPP*
- *Electronic access to staff records and transactions*

Continually review, evaluate and improve systems, policies and procedures to support the executive, managers and all staff

Performance Indicator	Report
<ul style="list-style-type: none"> • Electronic self-service (ESS) implemented • Accurate and timely budget advice and reports • Improved access to management information systems • Corporate services provided in accordance with branch service standards 	<ul style="list-style-type: none"> • Personnel policies (Grievance Handling, Workplace Relations, Working from Home, Placement of Volunteers and Reporting Disciplinary Matters) revised and published. • The implementation of ESS is proceeding, following funding being provided by the NSW Premier's Department. • Financial reports being provided electronically. • Corporate Services' branches providing services according to published service standards. • SUN Financial Management System is being expanded to cost centres to provide the facility for raising local purchase orders, generating commitment information and providing a range of financial information online.

4.2 Key Result Areas

People management and development

Strategy

Outcomes Sought

- All staff provided with opportunities to equip them with the skills and knowledge to achieve effective performance
- Flexible conditions of service are continually developed and applied equitably and fairly

Provide staff with the opportunity to develop and perform their functions in a safe, equitable and ethical environment

Performance Indicator

- Training and development strategy implemented
- Investment in technology per employee
- Staff provided with accommodation in accordance with Office standards

Report

- Revised performance management system implemented.
- The average value of investment in technology per employee is \$3,460 per annum.
- All office fitouts and refurbishments were completed in accordance with ODPP accommodation standards.
- All management plans reflect the importance of equity strategies.
- Staff turnover 14.5% for the year.
- Employee assistance program promoted and utilised.

5. Corporate Goal: Improvements in the Criminal Justice System

5.1 Key Result Areas

Revolutionise the Criminal Justice Process by the use of Technology

Strategy

Outcomes Sought

- Achievement of justice
- Speedy resolution of matters
- Massive reduction in costs to the system
- Improved witness reliability and satisfaction

Radically reduce the duration of the criminal justice process from charge to conclusion

Performance Indicator

Inter-agency initiatives implemented

Report

- The e-Briefs project is a major initiative to revolutionise the criminal justice process and is designed to facilitate full and early disclosure and improved information sharing between justice agencies. This Office is the lead agency in partnership with the NSW Police, Attorney General's Department and Legal Aid Commission.

5.2 Key Result Areas

Use of technology

Strategy

Outcomes Sought

- Efficient use of available resources
- Culture of co-operation in gathering useful precedents
- Increased skills throughout the Office

Increase efficiency in the prosecution process through the use of technology

Performance Indicator

More effective use of technology

Report

- The Office strategy for the use of technology is focussed on 3 key issues:
 1. Delivering process efficiencies to allow staff to concentrate on the intellectual component of case preparation.
 2. Provide stringent document control to ensure full and prompt disclosure.
 3. Provide immediate and wide access to information and resources to support case preparation and decision making.
- Refer to Appendix 20 – Report of the Chief Information Officer in relation to project information.
- Staff are making increased use of email and internet/intranet facilities for their business needs.

5.3 Key Result Areas

Improve Court Listing Systems

Outcomes Sought

- *Increased public confidence*
- *A more cost effective and efficient criminal justice system*
- *Increased victim/witness satisfaction*
- *Prosecution ready to proceed within time standards set*
- *Earlier disclosure by defence of issues in dispute*
- *Improve Court Listing Systems*
- *Realistic estimates of case duration*

Strategy

Develop solutions, in partnership with stakeholders, to streamline and improve court listing systems

Performance Indicator

- More effective use of prosecutions resources
- Increased victim/witness satisfaction
- Extent of trials not reached

Report

- The Office continues to work with stakeholders in an effort to improve court listing systems.
- Achievements such as centralising committals, centralising arraignments, reducing the number of matters not reached and hearing date certainty have allowed for the more effective use of resources by all stakeholders.
- There were no trials not reached before the Sydney District Court again this year. There were 32 trials not reached in Sydney West (44 last year), and 125 trials not reached in the Country (257 last year).

5.4 Key Result Areas

Law Reform

Strategy

Outcomes Sought

Significant improvements to the criminal justice system

Initiate and contribute to law reform to improve the criminal justice process

Performance Indicator

- Submissions adopted
- Quality of briefs improved through co-operation with investigative agencies

Report

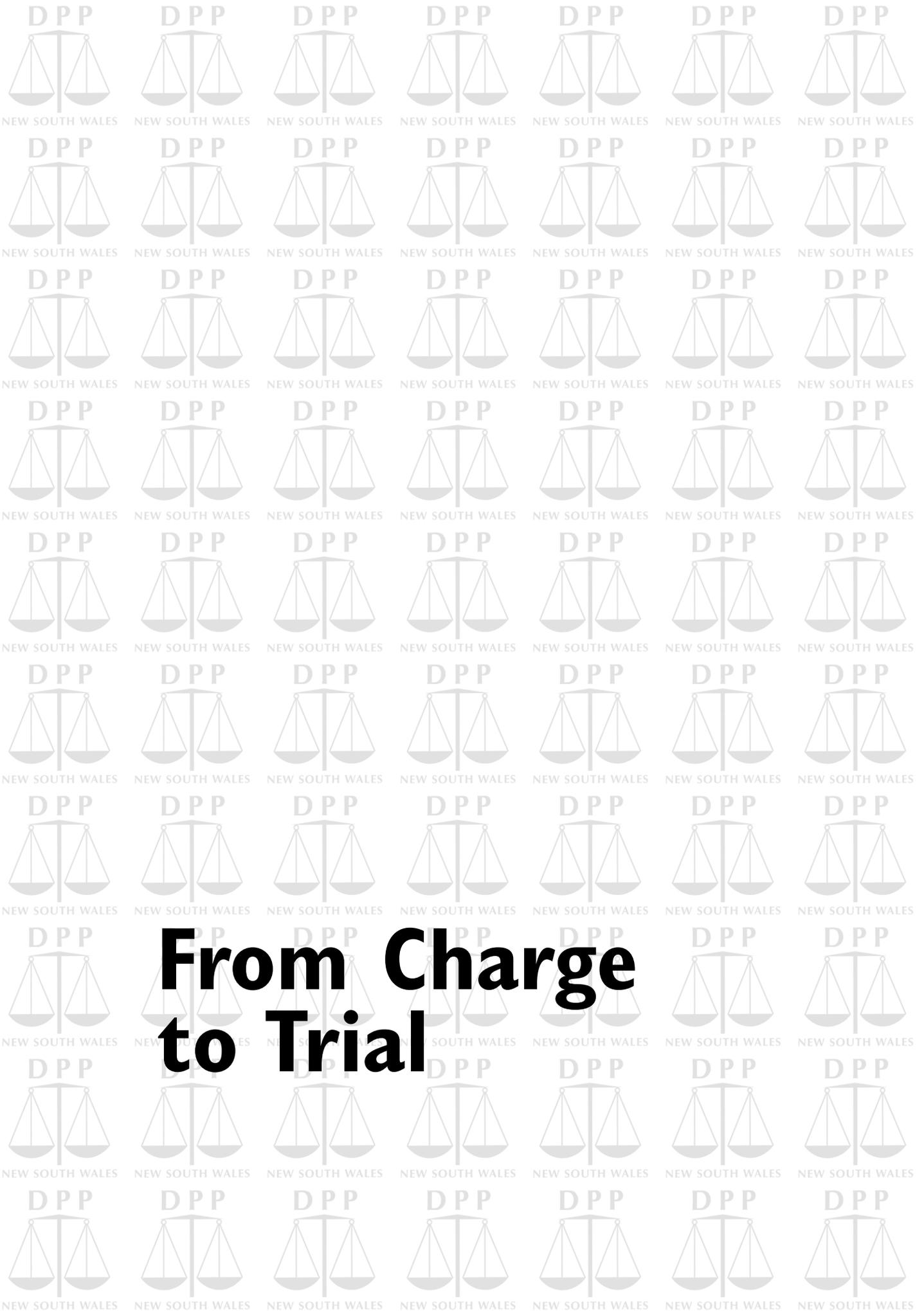
- The High Court decision in **Wong v Leung** [2001] HCA 64 raised issues relevant to guideline judgments that had been issued by the NSW Court of Criminal Appeal. To obtain clarification on some of these issues, the DPP identified Crown appeals in areas such as dangerous driving and armed robbery in which these issues could be canvassed more fully. In **R v Sharma** [2002] NSWCCA 142 for example, the DPP appealed against alleged leniency of sentence in an armed robbery in company matter. The NSW Court of Criminal Appeal convened a five judge bench to determine, among other things, whether a sentencing judge is permitted, when taking into account a plea of guilty, to quantify a discount for the plea and to give weight to its utilitarian value. The guidance provided in this and other judgments such as **R v Whyte** [2002] NSWCCA 343 (dangerous driving causing grievous bodily harm) has resolved a number of legal questions confronting prosecution authorities and defence lawyers.
- The DPP is a principal stakeholder in the implementation of the **Criminal Procedure Amendment (Pre-Trial Disclosure) Act 2001** which commenced on 19 November 2001. This legislation allows the DPP and the defence to focus on contentious issues in a trial rather than on preparing evidence for issues not in dispute. Section 15A of the **Director of Public Prosecutions Act 1986** was also amended to formalise the duty of police to disclose relevant information, documents or other things obtained during an investigation that might reasonably be expected to assist the case for the prosecution or the accused. Anticipated key results arising from the legislation are a significant reduction in delay between committal and trial and a reduction in number of no bills on the eve of a trial.
- The DPP continues to participate in the Drug Court team at the Parramatta Drug Court Pilot Program. Under the program persons charged with offences involving "violent conduct" are ineligible to participate, although the meaning of "eligible person" and an offence "involving violent conduct" has not been terribly clear. To obtain clarification of these terms, the DPP appealed to the NSW Court of Appeal in **DPP v Ebsworth** [2001] NSWCA 318. The court's ruling that elements of the charge layed are highly significant (as opposed to the particular conduct of the offender) in determining whether an offence charged is an offence "involving violent conduct" has provided a degree of certainty for parties involved in the assessment of an offender's eligibility for the program.
- The DPP is a member of the inter-agency working party on reforming Part 10A of the **Crimes Act** which deals with detention after arrest for purposes of investigation. The office has also made recommendations to the Attorney General or his department for reform of the **Crimes Act** in relation to kidnapping and aggravated sexual assault in company,

The result of this inter-agency participation was the enactment of gang specific offences by introducing the concept of “in company” to an extended range of existing and new offences. The amendments also included the imposition of higher maximum penalties in respect of those offences. Other key areas of criminal justice legislation in which the DPP has made recommendations for reform are the **Victims Rights Act 1996**, the **Victims Support and Rehabilitation Act 1995**, the **Firearms Act 1996**, the **Law Enforcement (Powers and Responsibilities) Bill 2002** and the **Justices Act 1902**. The DPP has recommended that the Justices Act be altered in two respects, first to enable the inclusion of a magistrate’s judgment as part of the transcript of a matter to be taken into account by the judge and secondly to specify that the judge is bound by the magistrate’s finding of credit in relation to re-hearings on the transcript.

Acronyms

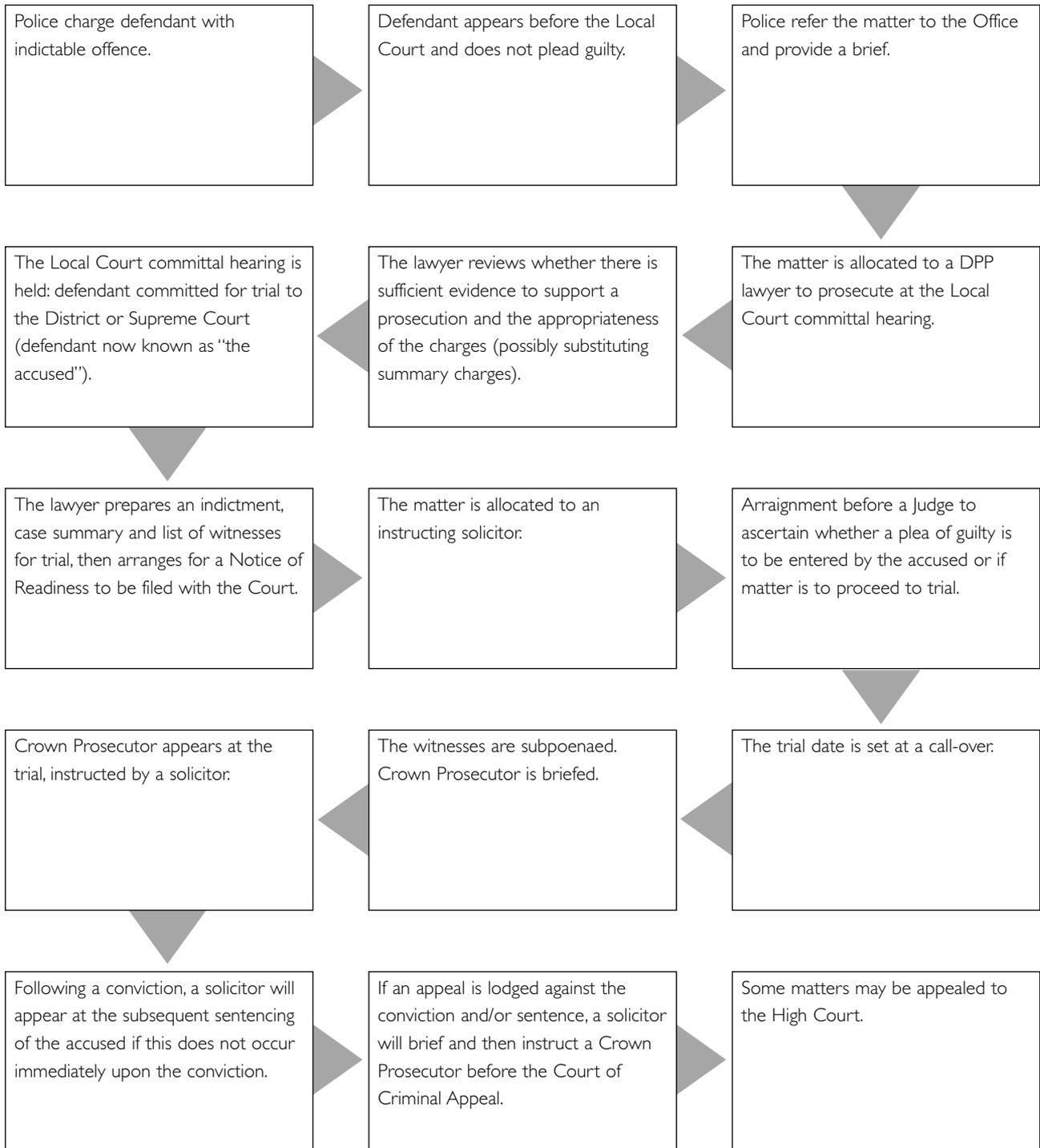
Glossary Of Acronyms

Acronym	Definition
•ABC	Activity Based Costing
•AIJA	Australian Institute of Judicial Administration
•BOCSAR	Bureau of Crime Statistics and Research
•CASES	Computerised Case Tracking System
•CCA	Court of Criminal Appeal
•COCOG	Council on the Cost of Government
•COPS	Computerised Operating Policing System
•CSA	Child Sexual Assault
•DAL	Division of Analytical Laboratories
•EAP	Employee Assistance Program
•ERIC	Electronic Referral of Indictable Cases
•FIRST	Future Information Retrieval & Storage Technology Library Management System
•GSA	Guided Self Assessment
•ICAC	Independent Commission Against Corruption
•IDITC	Interdepartmental Information Technology Committee
•JIR	Joint Investigation Responses
•JIT	Joint Police/Department of Community Services Child Abuse Investigation Teams
•MCLE	Mandatory Criminal Law Education
•ODPP	Office of the Director of Public Prosecutions (NSW)
•SALO	Sexual Assault Liaison Officer
•WAS	Witness Assistance Service



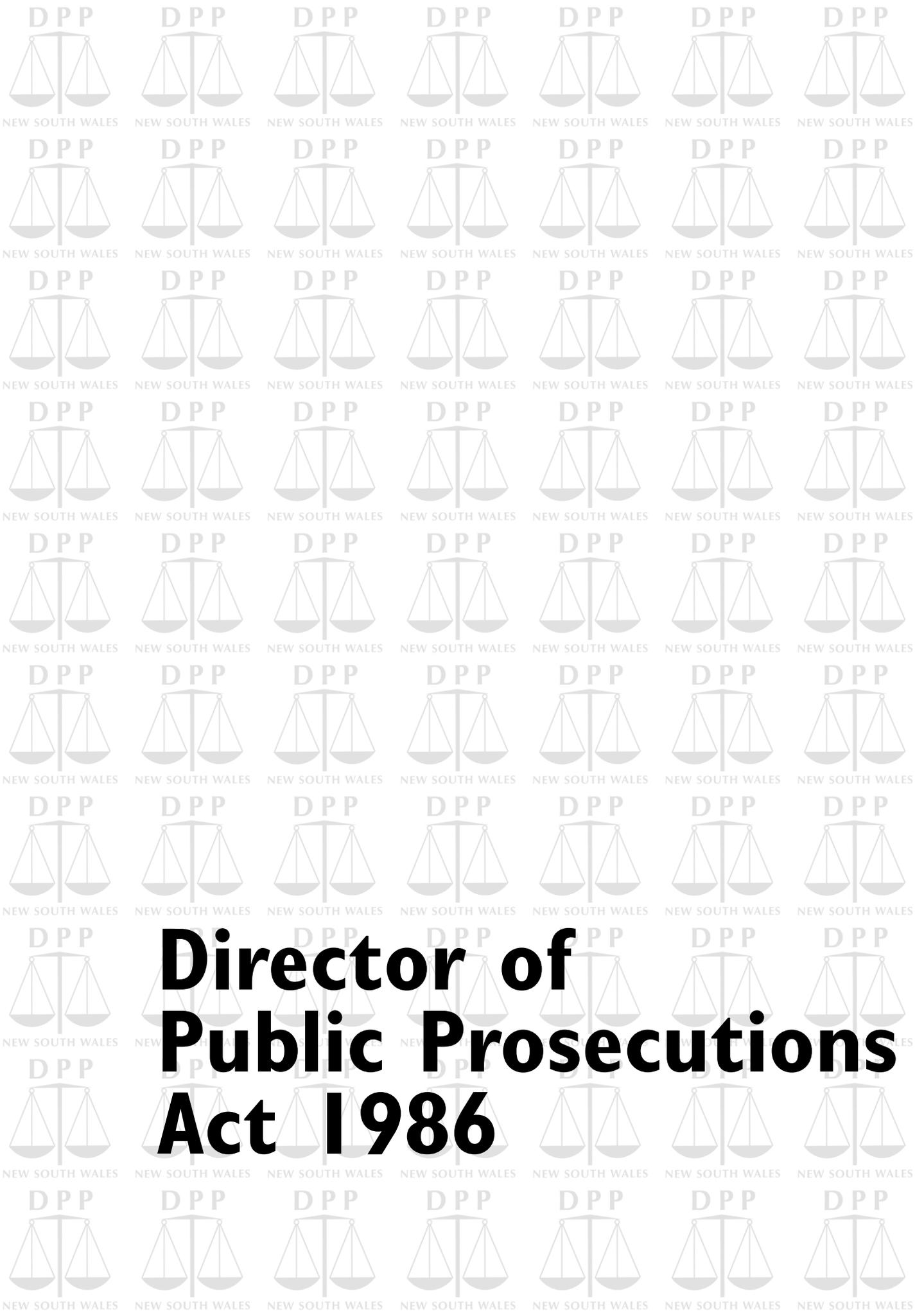
From Charge to Trial

An Outline of a Typical Defended Matter



Not all matters proceed all the way to trial:

- the defendant may be discharged in the Local Court;
- the defendant may, depending on the seriousness of the charge/s, be dealt with summarily in the Local Court;
- the defendant may plead guilty in the Local Court to the indictable charge/s and, again depending on their seriousness, be committed for sentence to the District or Supreme Court;
- after committal for trial the accused may enter a plea of guilty (at arraignment or at any time up to and including the trial); or
- the Director can at any stage, discontinue proceedings.



Director of Public Prosecutions Act 1986

Important Provisions

Section 4(3)

“The Director is responsible to the Attorney General for the due exercise of the Director’s functions, but nothing in this subsection affects or derogates from the authority of the Director in respect of the preparation, institution and conduct of any proceedings.”

Section 7(1)

The principal function and responsibilities of the Director are:

- to institute and conduct prosecutions in the District and Supreme Courts;
- to institute and conduct appeals in any court;
- to conduct, as respondent, appeals in any court.

Section 7(2)

The Director has the same functions as the Attorney General in relation to:

- finding bills of indictment;
- determining that no bill be found;
- directing no further proceedings;
- finding ex officio indictments.

Section 8

Power is also given to the Director to institute and conduct proceedings of either a committal or summary nature in the Local Court.

Section 9

The Director can take over prosecutions commenced by any person.

Section 11

The power to give consent to various prosecutions has been delegated to the Director.

Section 12

The director may assist a Coroner.

Section 13

The Director can furnish guidelines to Crown Prosecutors and officers within the ODPP.

Section 14

Guidelines can also be issued to the Commissioner of Police in respect of the prosecution of offences.

Section 15

New guidelines furnished during the reporting year must be published.

Section 15a

Police must disclose to the Director all information relevant to any matter that might reasonably be expected to assist the prosecution or defence case. Police must retain such information and record it.

Section 16

The Director may give directions to the Commissioner of Police or other prosecuting agencies.

Section 19

The Director may request the Attorney General to grant indemnities and give undertakings from time to time.

Section 24

Appointment to prosecute Commonwealth offences is provided for by this section.

Section 25

Consultation with the Attorney General is provided for.

Section 26

The Attorney General may furnish guidelines to the Director.

Section 27

“The Attorney General shall notify the Director whenever the Attorney General exercises any of the following functions:

finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial; directing that no further proceedings be taken against a person who has been committed for trial or sentence; finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial; appealing under s5D of the Criminal Appeal Act 1912 to the Court of Criminal Appeal against a sentence.”

The Director shall include in Annual Reports information as to the notifications received by the Director from the Attorney General under this

section during the period to which the report relates.

Section 29

“If the Director considers it desirable in the interests of justice that the Director should not exercise certain functions in relation to a particular case, the Director may request the Attorney General to exercise the Attorney General’s corresponding functions.”

Section 33

The Director may delegate certain of his /her functions.

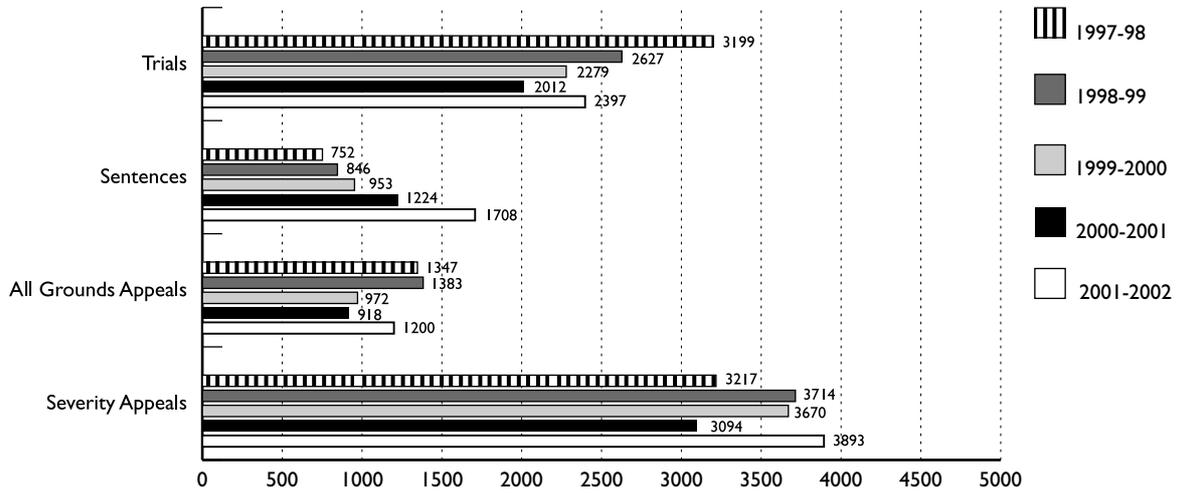


Appendices

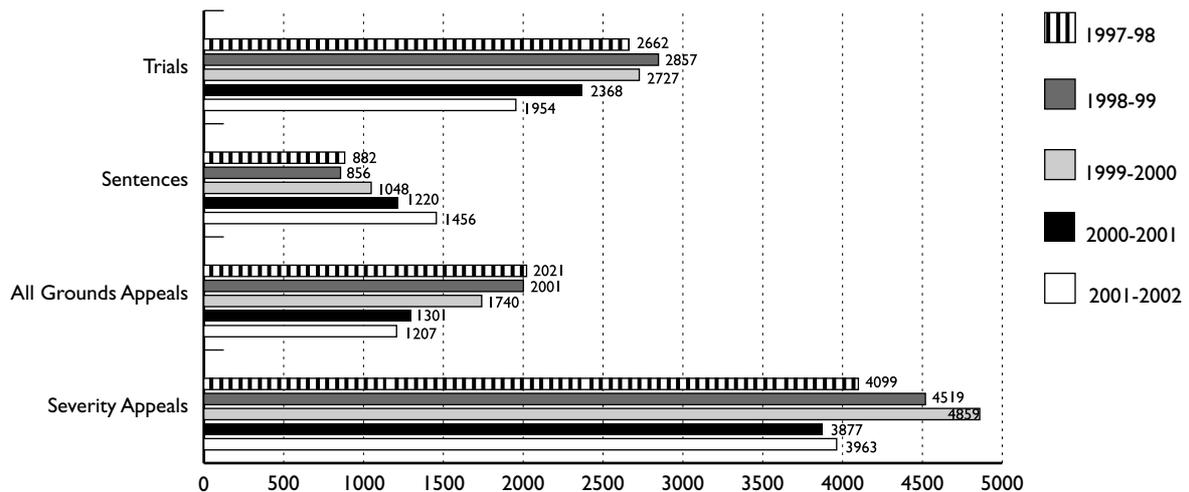
Appendix I

District Court – State Summary

District Court Matters Received – State



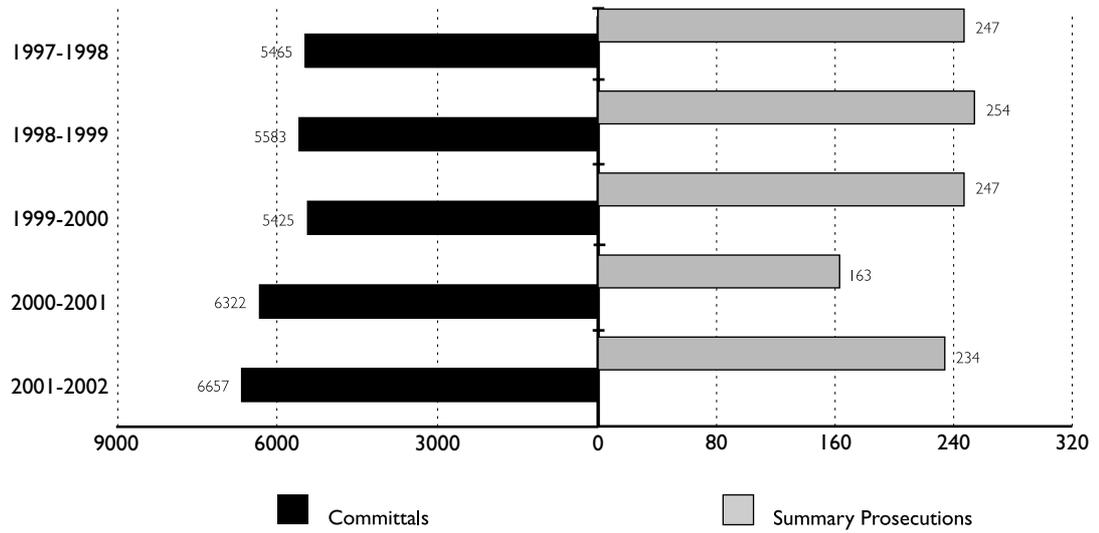
District Court Matters Completed – State



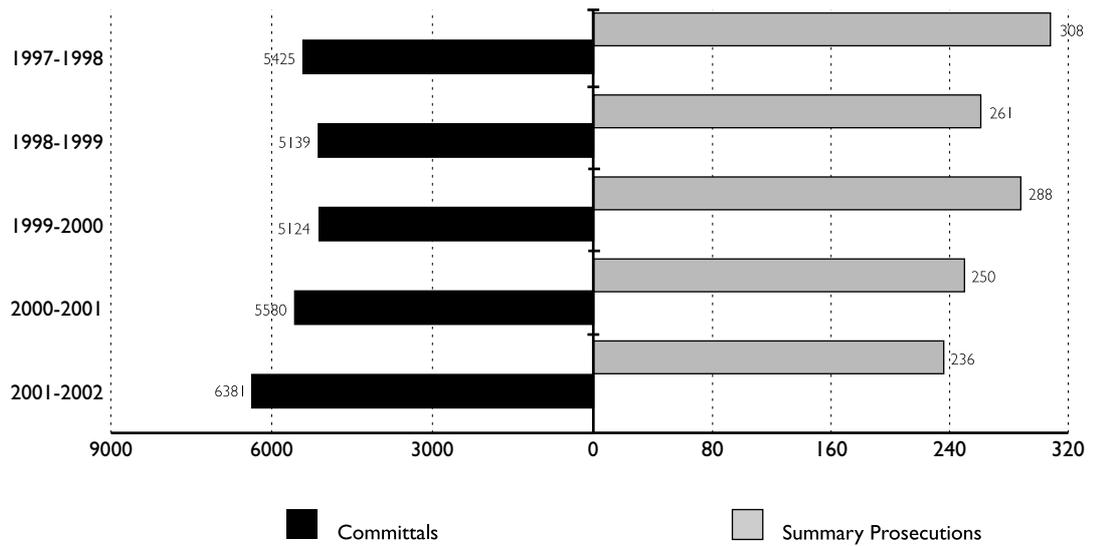
Appendix 2

Local Court – State Summary

Local Court Matters Received – State



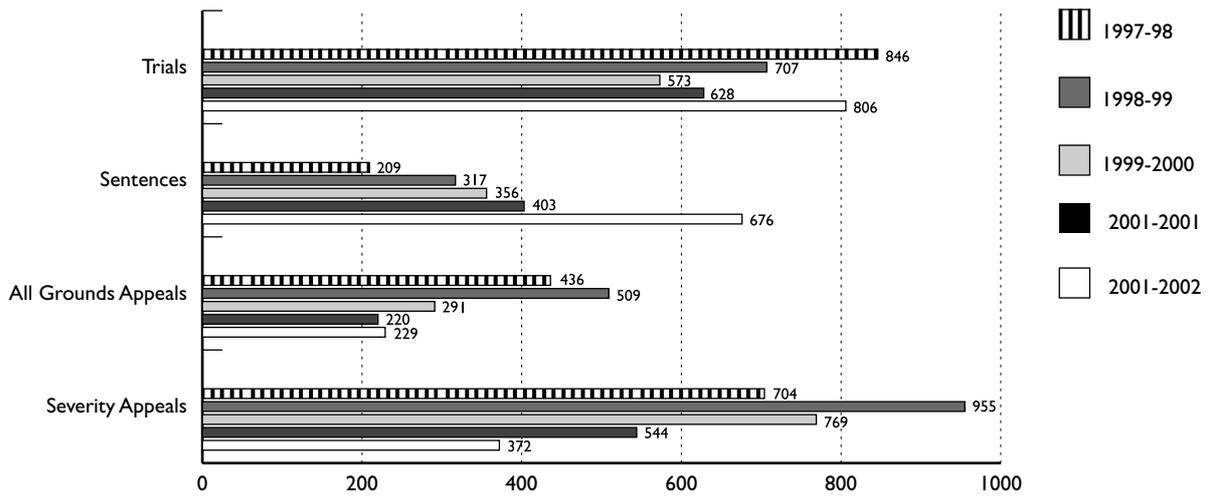
Local Court Matters Completed – State



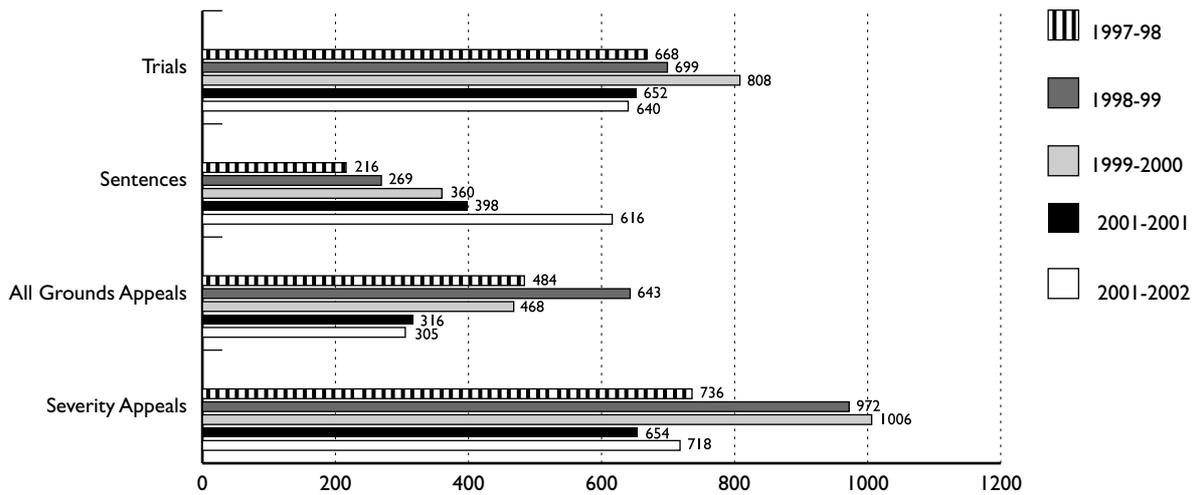
Appendix 3

District Court – Sydney Summary

District Court Matters Received – Sydney



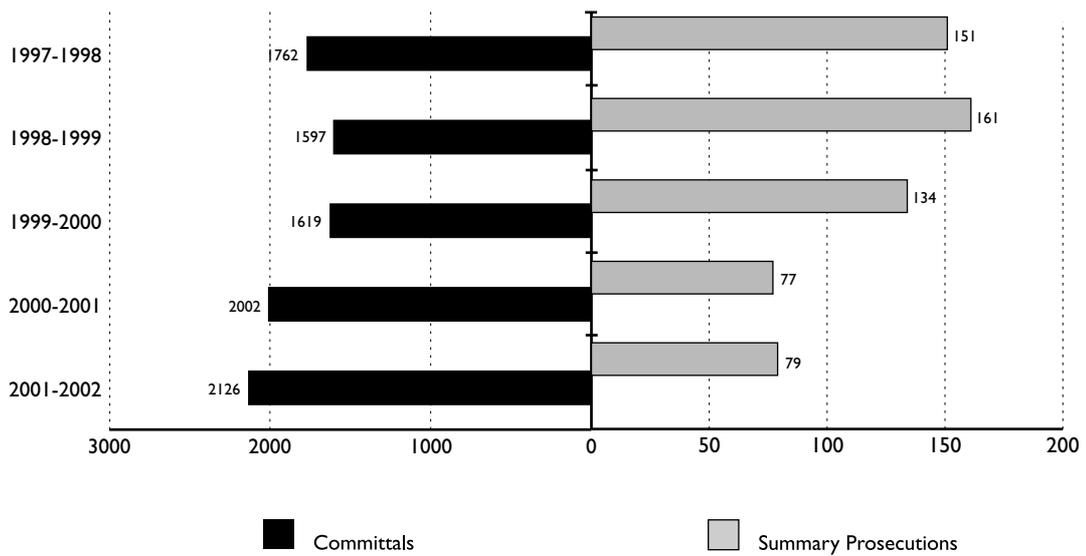
District Court Matters Completed – Sydney



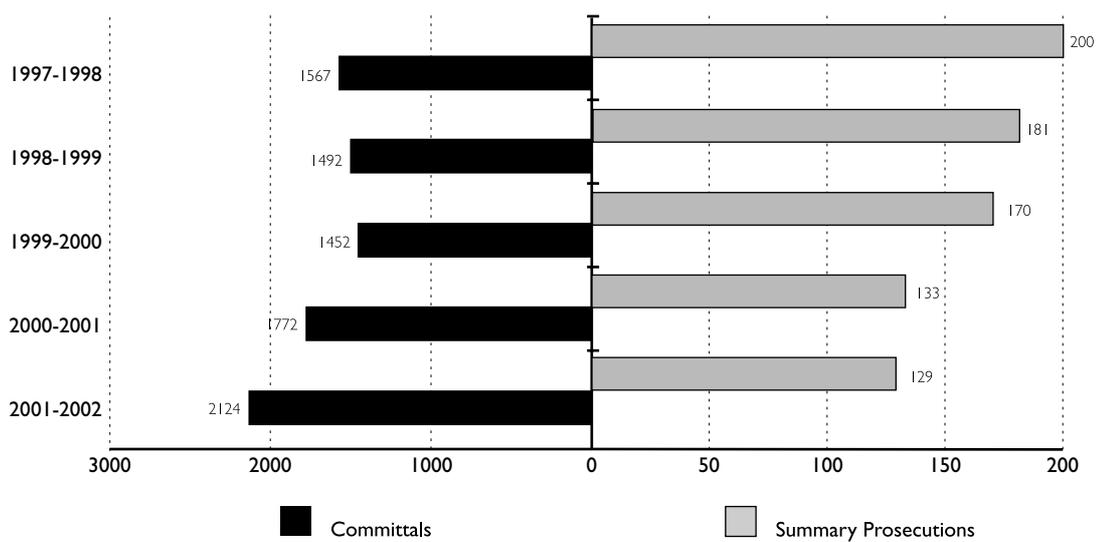
Appendix 4

Local Court – Sydney Summary

Local Court Matters Received – Sydney



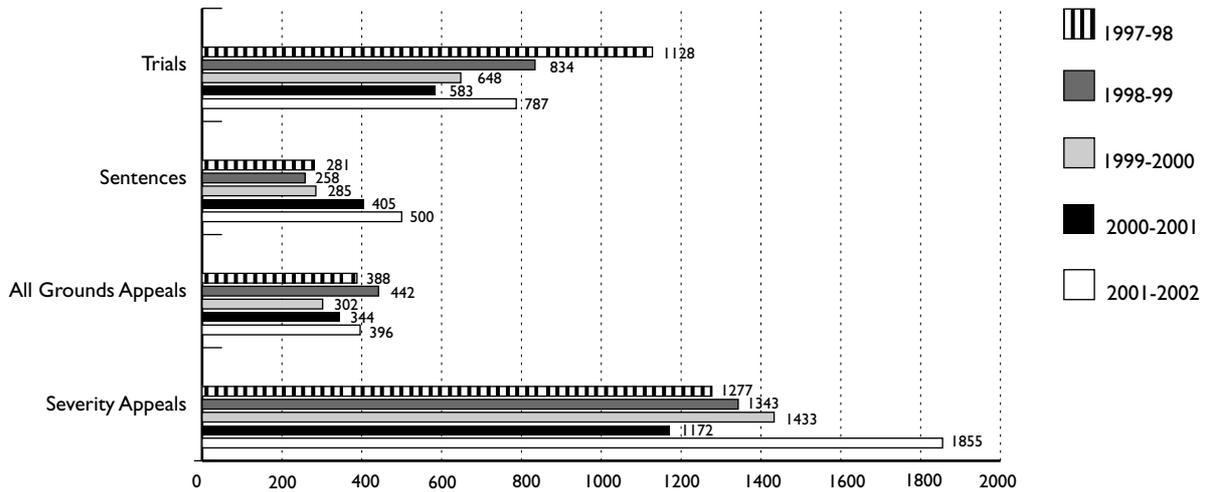
Local Court Matters Completed – Sydney



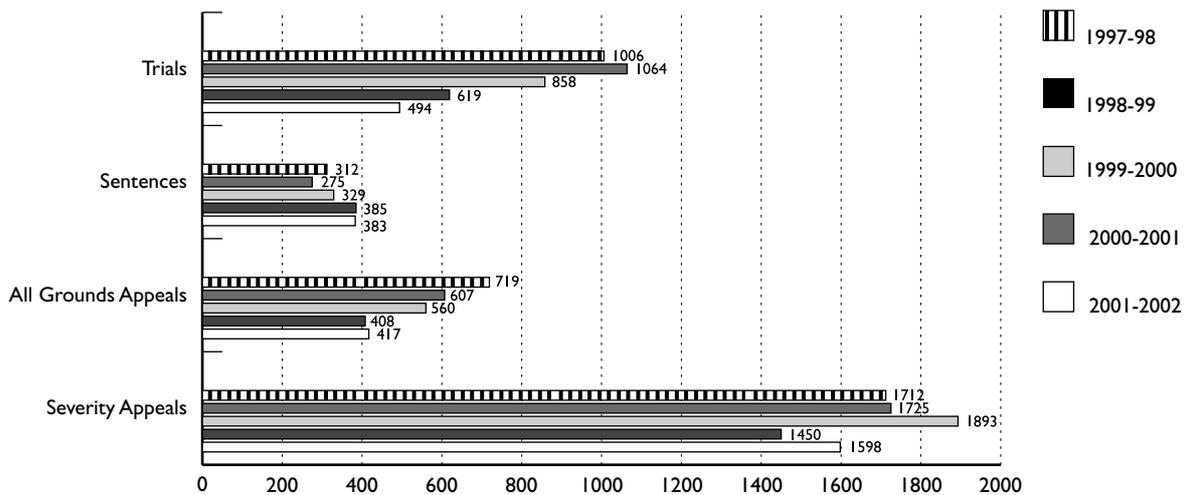
Appendix 5

District Court – Sydney West Summary

District Court Matters Received – Sydney West



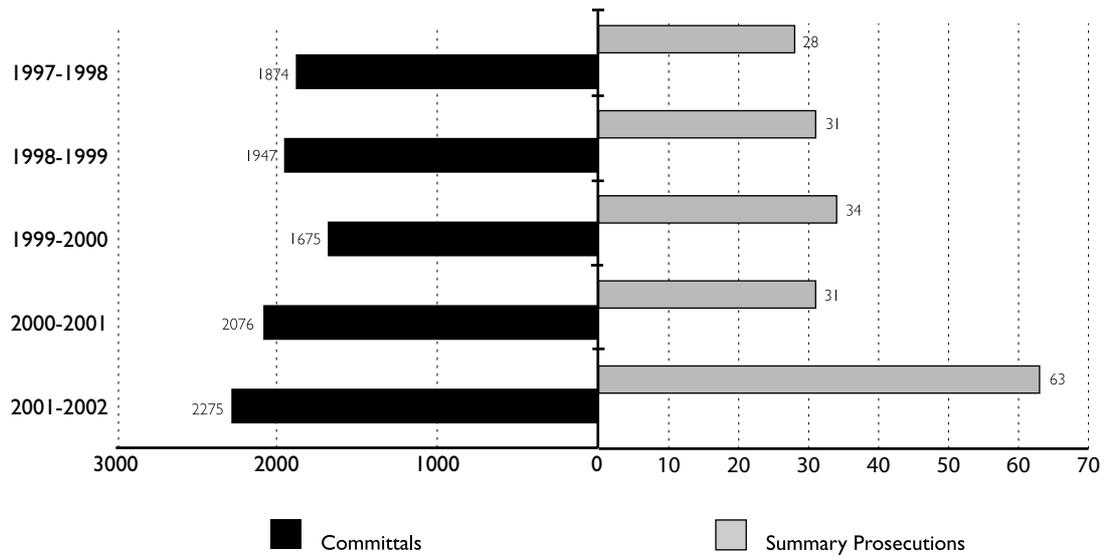
District Court Matters Completed – Sydney West



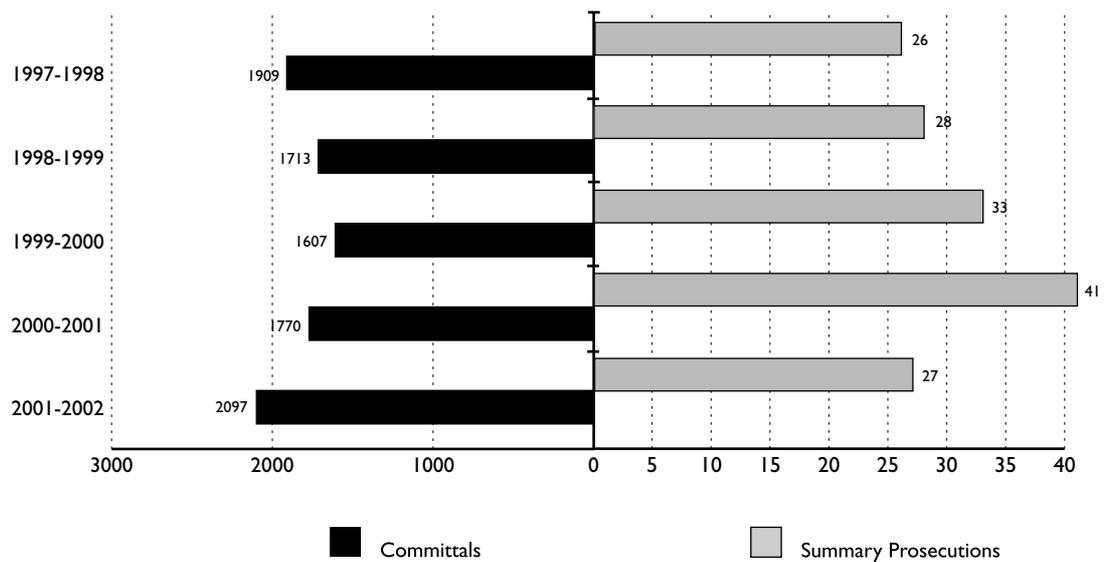
Appendix 6

Local Court – Sydney West Summary

Local Court Matters Received – Sydney West



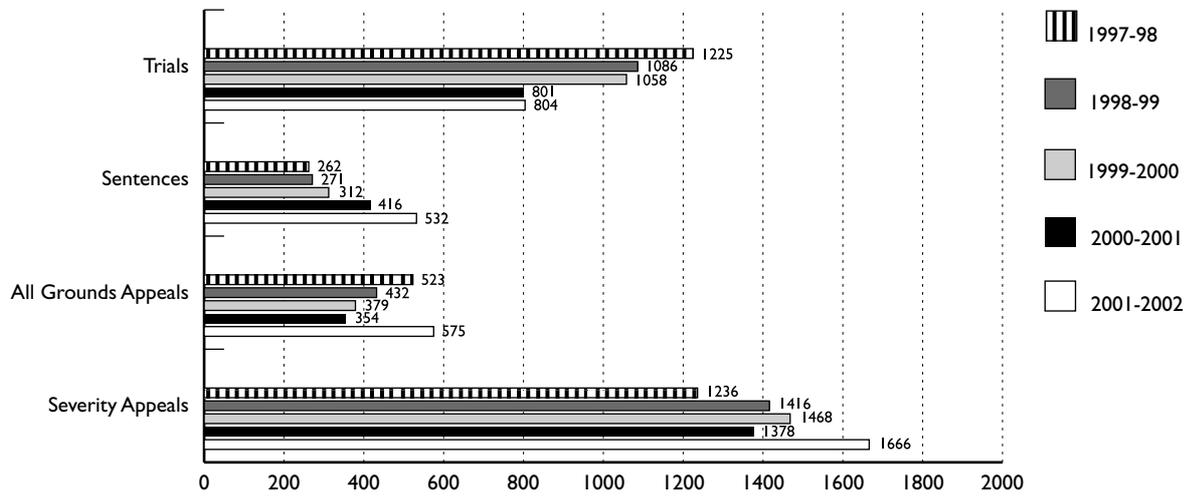
Local Court Matters Completed – Sydney West



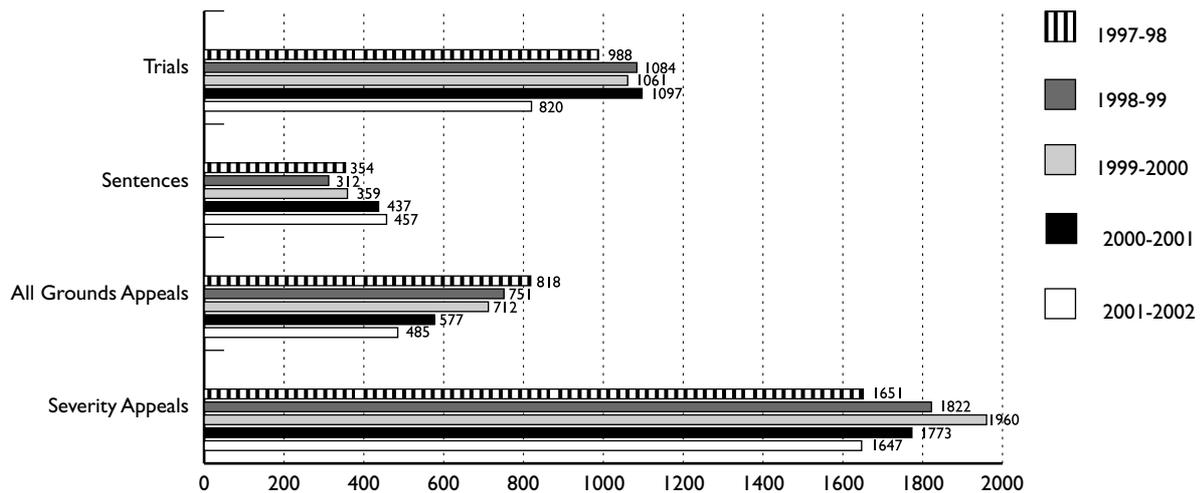
Appendix 7

District Court – Country Summary

District Court Matters Received – Country



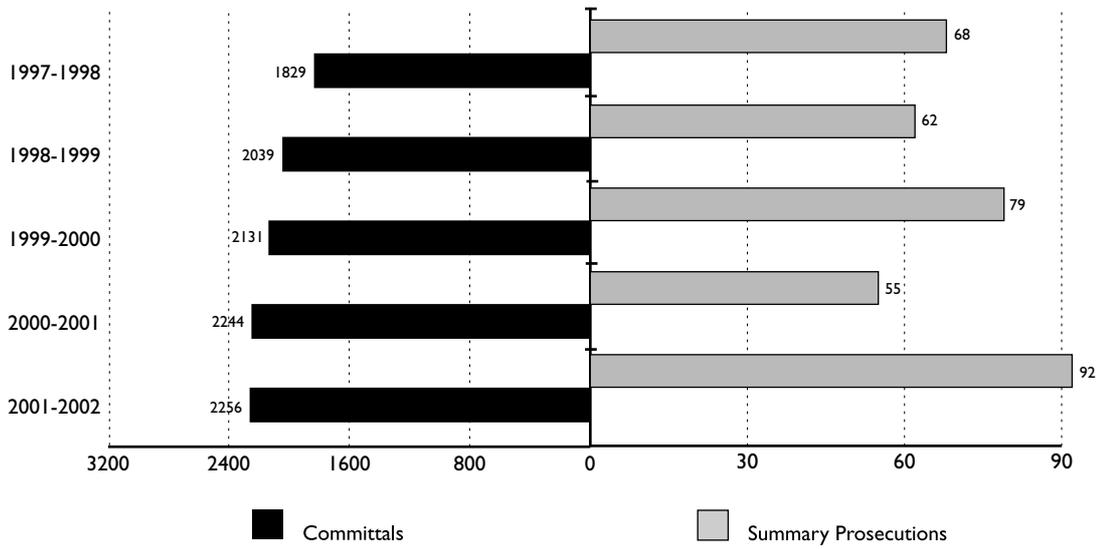
District Court Matters Completed – Country



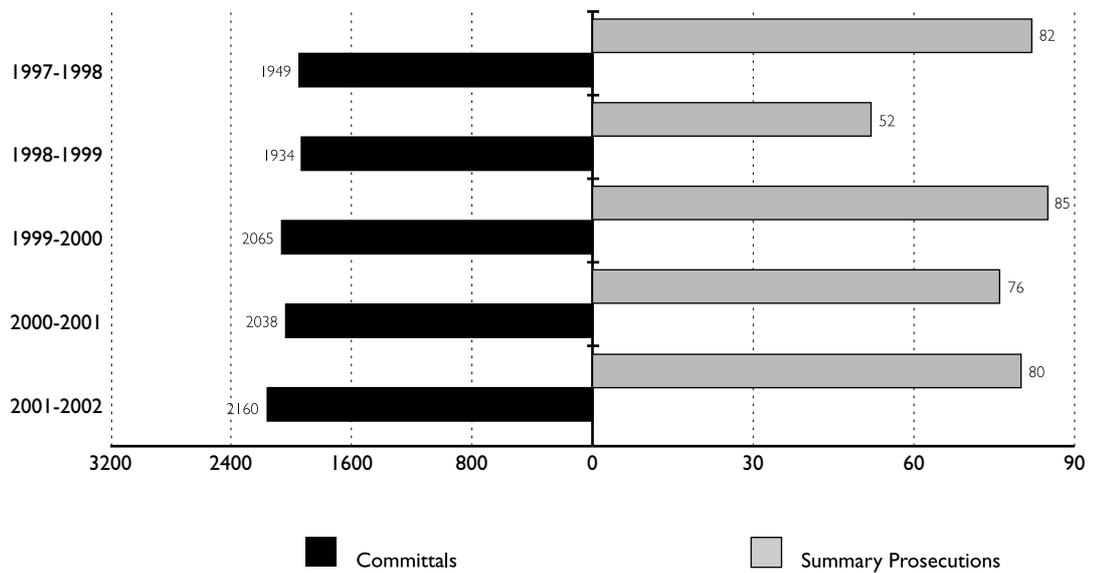
Appendix 8

Local Court – Country Summary

Local Court Matters Received – Country



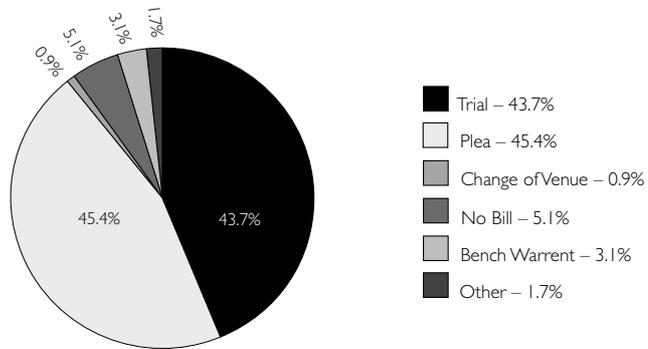
Local Court Matters Completed – Country



Appendix 9

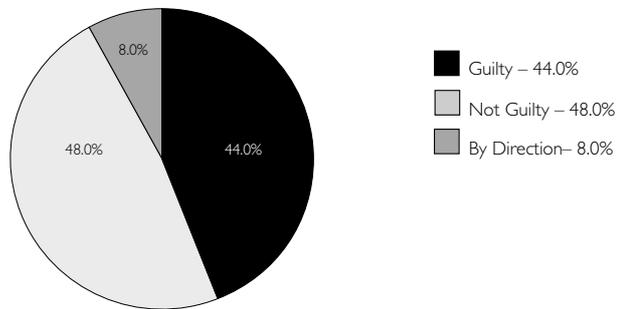
District Court – Trial Statistics

Disposal of Trials Listed

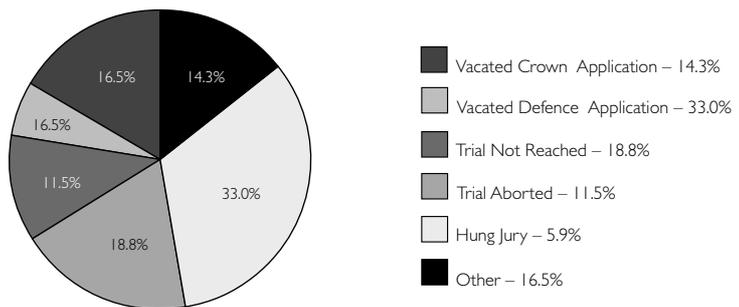


Trial Verdicts Comparison	1998–99	1999–2000	2000–2001	2001–2002
Guilty	42.8%	43.7%	41.4%	44.0%
Not Guilty	43.9%	46.7%	48.8%	48.0%
By Direction	113.3%	9.5%	9.8%	8.0%

Trial Verdicts



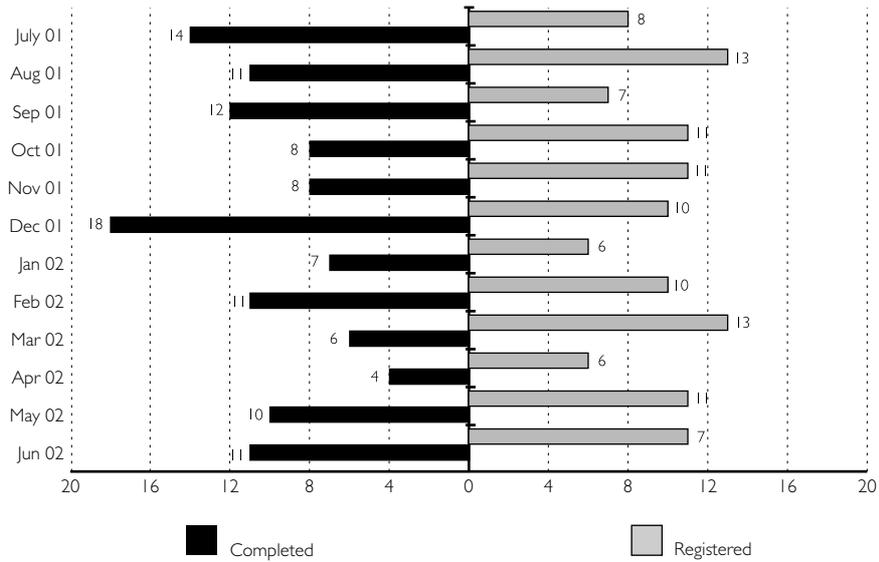
Trials Adjourned



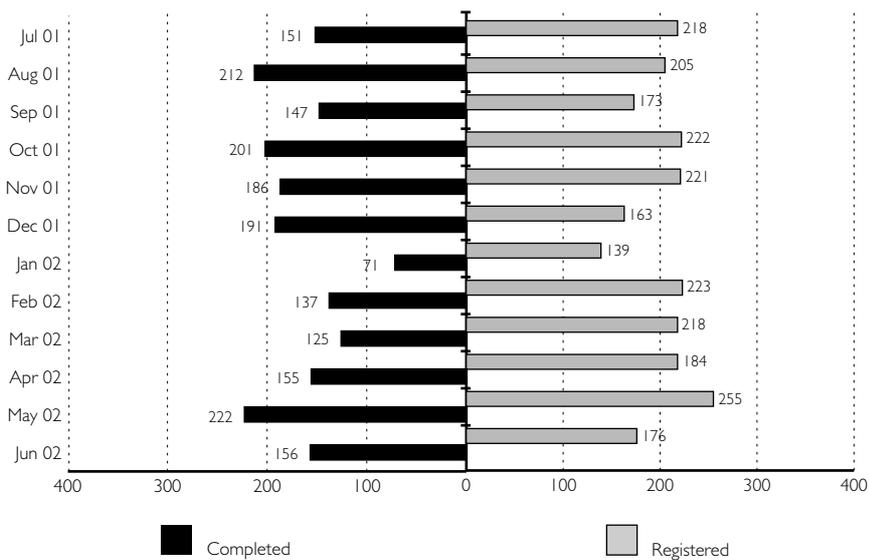
Appendix 10

Trials Registered and Completed

Supreme Court Trials Registered and Completed in 2001 – 2002



District Court Trials Registered and Completed in 2001 – 2002



Appendix II

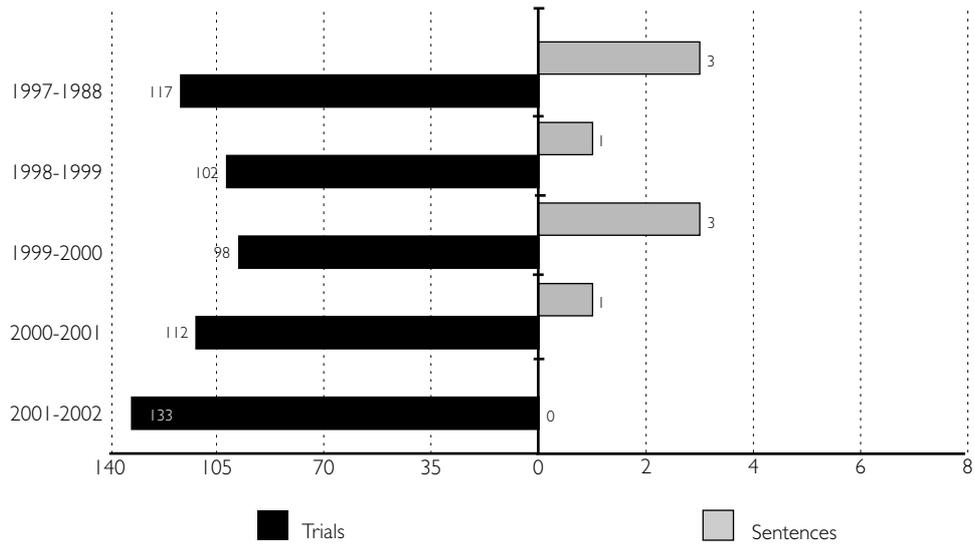
Local Court Committals – July 2001 to June 2002

Regional Office	Registrations	Disposals						Total	On hand at End of June 2002
		Committed for Trial	Committed for Sentence	Summarily	Discharged	Discont	Other		
Sydney Registrations	2126								
Group 1		179	138	81	17	27	64	506	212
Group 2		141	143	66	25	16	84	475	244
Group 3		147	134	62	15	30	82	470	255
Group 4		158	135	62	20	15	78	468	246
Group 5		0	0	0	0	0	0	0	0
Group 6		31	17	30	27	17	14	136	65
Admin Services		0	3	2	0	1	63	69	33
Sydney	2126	656	570	303	104	106	385	2124	1055
Parramatta	1024	253	196	99	15	29	116	708	332
Penrith	569	199	109	135	30	45	143	661	285
Campbelltown	682	264	128	148	26	36	126	728	387
Sydney West	2275	716	433	382	71	110	385	2097	1004
Newcastle	660	166	133	104	19	55	103	580	261
Lismore	351	138	66	59	15	25	75	378	163
Dubbo	213	87	17	38	24	23	67	256	99
Gosford	279	76	84	42	3	15	46	266	84
Wagga	281	85	52	68	11	27	52	295	102
Wollongong	472	123	110	31	42	34	45	385	179
Bathurst	0	0	0	0	0	0	0	0	65
Country	2256	675	462	342	114	179	388	2160	953
State Totals	6657	2047	1465	1027	289	395	1158	6381	3012

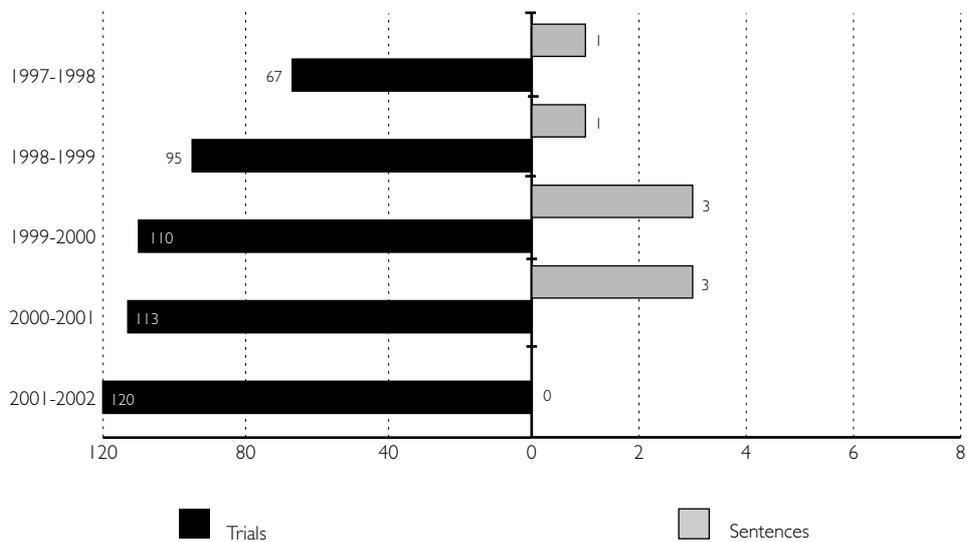
Appendix 12

Supreme Court – State Summary

Supreme Court Matters Received – State



Supreme Court Matters Completed – State



Appendix 13

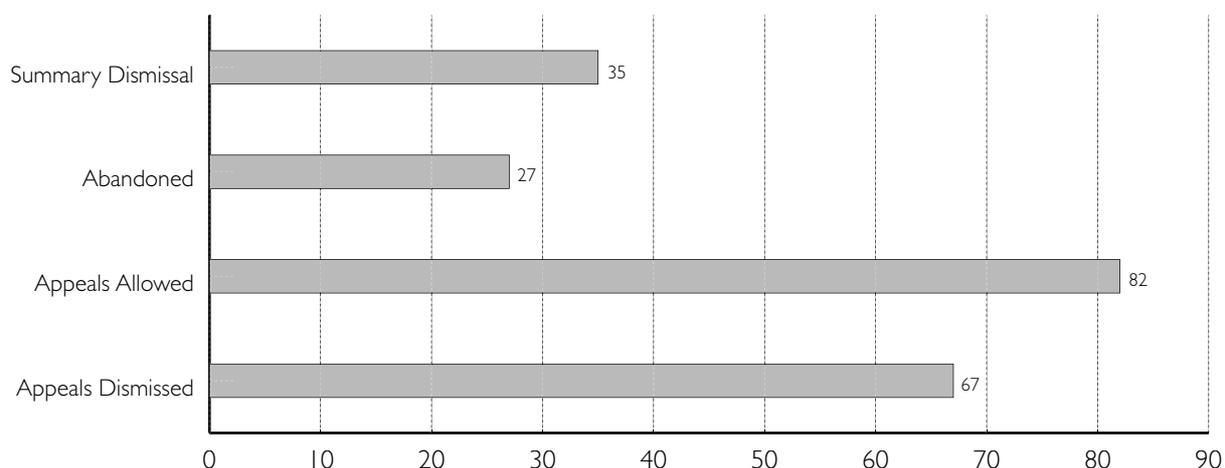
Court of Criminal Appeal and High Court

	1998-1999	1999-2000	2000-2001	2001-2002
A. Appeals by Prisoners finalised				
Conviction and sentence appeals	151	125	144	119
Sentence appeals	164	146	239	246
Summary dismissals	108	85	72	114
Appeals abandoned	180	163	169	212
TOTAL	603	519	624	691
Total successful prisoner appeals against conviction	43	57	63	82
Total successful prisoner appeals against sentence	47	60	98	116
B. Crown Appeals finalised				
Abandoned	6	4	8	14
Allowed	31	25	30	40
Dismissed	17	17	33	25
TOTAL	54	46	71	79
C. Appeals against interlocutory judgments or orders (s.5F appeals)				
	13	25	20	14
D. Stated cases from the District Court				
	6	1	6	2
E. Total of all appeals finalised				
	676	591	721	786

Statistics for High Court matters finalised

	1998-1999	1999-2000	2000-2001	2001-2002
Completed applications for special leave to appeal				
Applications by the accused	27	33	39	27
Applications by the Crown	1	1	1	0
Hearings conducted after grant of special leave to appeal				
Appeal by the accused	7	5	6	6
Appeal by the Crown	0	1	0	1

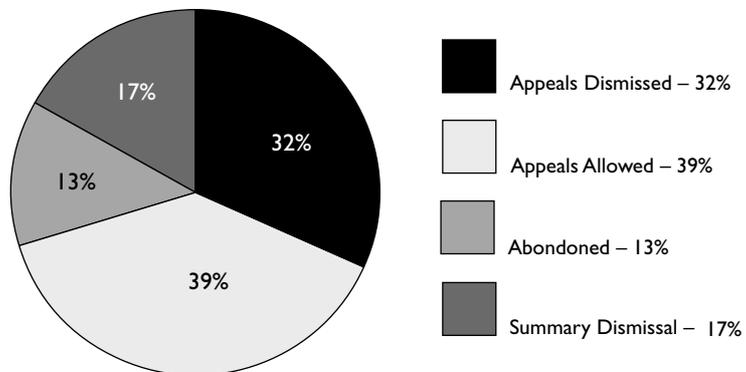
Conviction and sentence appeals finalised in 2001/02 in Court of Criminal Appeal – Break down by numbers



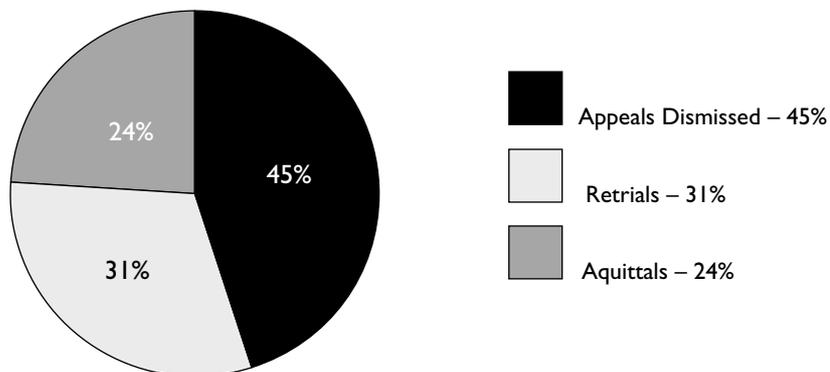
Appendix I3 Continued

Court of Criminal Appeal and High Court

Conviction and sentence appeals finalised in 2001/02 in Court of Criminal Appeal – Break down by percentage



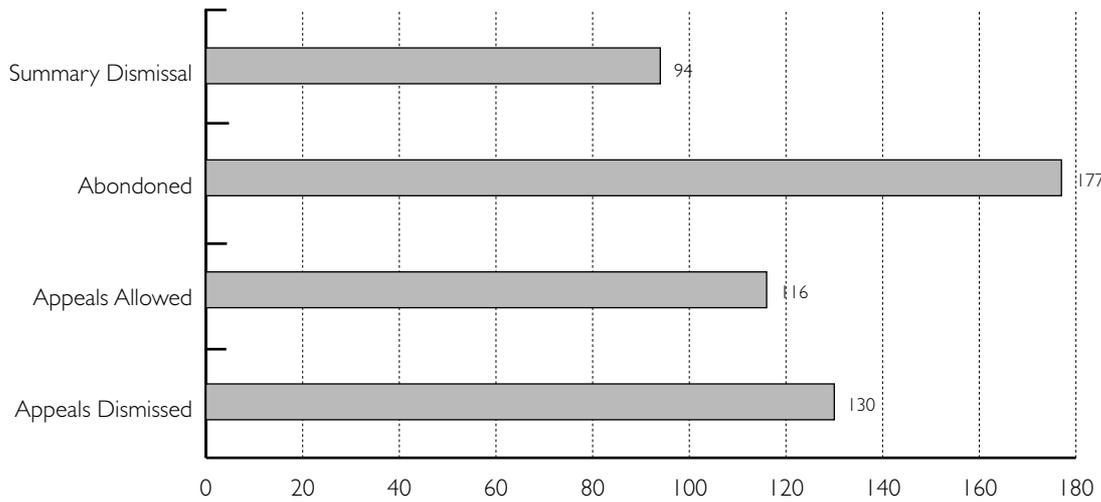
Results of finalised Conviction and Sentence appeals in 2001/02 in Court of Criminal Appeal – Break down by percentage



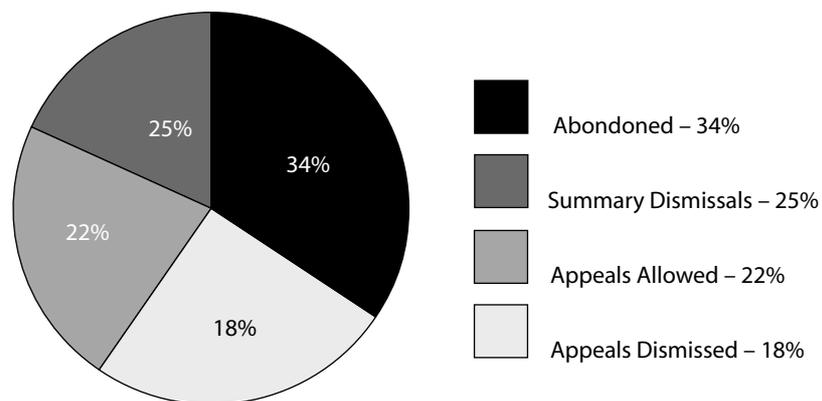
Appendix 13 Continued

Court of Criminal Appeal and High Court

Sentence appeals finalised in Court of Criminal Appeal in 2001/02– Break down by number



Sentence appeals finalised in 2001/02 in Court of Criminal Appeal-break down by percentage



Appendix 14

Government Energy Management Plan (GEMP)

The Office of the Director of Public Prosecutions (ODPP) continued its commitment to sound energy management practices.

By this commitment, the ODPP:

- Attempts to minimise energy wastage
- Attempts to utilise energy more efficiently
- Buys energy at the most economical price
- Purchases energy efficient star-rated equipment
- Makes staff aware of the Office's commitment and opportunities for their involvement in implementing energy management practices
- Monitors energy usage to ensure improvement is realised wherever possible. ODPP energy use statistics are not showing improvement in this regard. The ODPP is an expanding organisation, with growth in H.O. and five (5) of its ten (10) regional offices since the last Report. Obviously energy use has increased with the acquisition of 1500m² additional office space.
- Used recent refurbishments to improve energy management by implementing energy management methodology
- Utilised the expertise of the Department of Public Works & Services (DPW&S) in the refurbishment process of H.O. and regional offices to maximise energy management technology applicable.

The ODPP's Manager, Corporate Services, has the overall responsibility for the energy management of the Office, with the day to day GEMP-related tasks being the responsibility of the Manager, Properties & Services.

The ODPP's goals under the GEMP which are ongoing include:

1. Assisting the Government to achieve a reduction of the statewide total energy consumption for government buildings of 15% and 25% of the 1995 level for the years 2001 and 2005 respectively. As mentioned above this has been a real challenge, with the ODPP increasing its accommodation.
2. Upgrading to energy efficient facilities within Head Office and Regional Offices particularly those offices that have been refurbished. Energy efficient, reduced wattage fluorescent tubes have been used, combined with the cleaning of all light fittings.

3. Purchasing electricity within Government contracts to ensure the minimum 5% Green power content is obtained.
4. Continuing to purchase equipment which complies with SEDA's energy star rating requirements.
5. Achieving savings in vehicle fleet use by the acquisition of fuel efficient diesel and gas powered vehicles.
6. Increasing staff awareness of energy management.

The achievement of these goals directly relates to the Corporate Plan goals of the Office, in particular providing a cost efficient service. Refer to Page 17 of this Report, Key Result Area 4.1.

To demonstrate its commitment to energy management practices the ODPP has undertaken the following initiatives:

- Government contracts for the purchase of energy and equipment are utilised.
- Procedures are in place within the ODPP premises for all lights to be turned off at close of business by security officers.
- In the Head Office refurbishment, energy efficient lighting was installed and individual switching of office lights was implemented.
- Equipment is placed in energy save mode, where available, when not in use.
- Motor vehicles are leased within Government contracts and maintained to ensure efficient operation including tyre pressure. Two (2) fuel efficient vehicles 1 x diesel and 1 x LPG have been purchased.

Annual Office-wide Energy Consumption – 2001–2002

Electricity	1,391,790kWh
Petrol	103,563 ltrs
Diesel	3,096 ltrs
LPG	1,421 ltrs

Future Direction

The Office does not have a great deal of opportunity in this regard in that we utilise the basic power sources, but it is our intention to manage our energy use by buying appropriate in-contract sources of power, equipment, and implementing sound energy management practices and recording

Appendix 14 Continued

Government Energy Management Plan (GEMP)

methods. The ODPP is committed to assist the Government in attaining its energy management goals. It has proven extremely difficult to improve energy efficiency statistics due to the continual growth of the Office. Head Office and five (5) regional offices acquired additional space of approximately 1500m² and the Office increased its staff number by 31 during the reporting period.

Appendix 15

Significant Legislative Change

Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001

Assent 21 September 2001,
commencement 1 October 2001

The object of the **Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001** is to amend the **Crimes Act 1900** to make sexual assault carried out in the company of others and accompanied by the infliction of harm, the threat of harm or the deprivation of liberty, an offence carrying the maximum penalty of life imprisonment.

Section 61JA creates an offence of aggravated sexual assault in company carrying a maximum penalty of life imprisonment. The elements of the offence are sexual assault committed in company of another person/s and in circumstances where the offender (i) inflicts actual bodily harm on the victim, or other person present/nearby and/or (ii) threatens to inflict actual bodily harm on the victim or other person present/nearby with an offensive weapon/instrument and/or deprives the alleged victim of their liberty. Section 61JA (3) preserves the operation of section 21 of the **Crimes (Sentencing Procedure) Act 1999**, which authorises the passing of a lesser sentence than imprisonment of a lesser sentence than imprisonment for life. Section 61JA (4) preserves the prerogative of mercy in respect of persons sentenced to life imprisonment. Section 61P provides that a person convicted of attempting to commit the offence will be liable to the penalty provided for the commission of the offence. Section 61Q provides that a jury may reach an alternative verdict of not guilty of the said offence but guilty of an offence under section 61I (sexual assault) or 61J (aggravated sexual assault) where the jury is satisfied on the evidence that the person is guilty of the latter offence but not guilty of the offence charged.

The Act also amended s 9 of the **Bail Act 1978** to exclude a person charged with an offence of aggravated sexual assault in company from the presumption in favour of bail.

Criminal Legislation Amendment Act 2001 (No 117)

Assent 18 December 2001, staged commencement of provisions from 18 December 2001 to 1 July 2002.

The **Criminal Legislation Amendment Act 2001** effected a wide range of changes to existing statutes for the purpose of improving the overall operation

Appendix I 5 Continued

Significant Legislative Change

of the criminal law. Statutes amended by the **Criminal Legislation Amendment Act** include, for example, the **Crimes Act 1900**, **Crimes (Administration of Sentences) Act 1999**, **Crimes (Sentencing Procedure) Act 1999**, **Children (Criminal Proceedings) Act 1987**, **Criminal Procedure Act 1986** and the **Criminal Procedure Act**.

Amendments made to the **Crimes Act** by the **Criminal Legislation Amendment Act 2001** completed the process of revision and modernisation which began with changes introduced earlier by the **Crimes Amendment (Gang and Vehicle Related Offences) Act**. Under the **Crimes Act** the long standing offences of abduction of heiresses for marriage, or other carnal purposes, and of girls under the age of 16 have been repealed. A new section 87 on child abduction has been introduced which creates an offence, without the consent of a person having parental responsibility for a child, to take or detain a child with the intention of removing or keeping the child from the lawful control of any person having parental responsibility for it. The section also makes it an offence to take or detain a child with the intention of stealing from the child. Section 87 applies to children under 12 years and the maximum penalty for each offence is ten years imprisonment.

A new Part 3D concerning bombs and other hoaxes has been introduced which creates offences of conveying false information that a person or property is in danger; leaving or sending an article within intent to cause alarm and making a false statement that a person or property is in danger

Other changes made to the **Crimes Act** by the **Criminal Legislation Amendment Act 2001** include amendments to s 578B which deals with the possession of child pornography. Specifically, s 578B was amended to increase the time for commencing a prosecution for possession of child pornography to two years from the date of the alleged offence. Prior to the Act proceedings were required to be commenced within six months after the date of the alleged offence. The defence to a charge of possession of child pornography in s 578B(5) has been amended to prevent claims that a lack of knowledge of the meaning of an RC classification is enough to gain the benefit of the defence. The amended defence requires that a person did not know, or could not reasonably be expected to have

known, that the film, publication or computer game concerned is or contains pornographic material involving a child under 16.

The **Crimes (Sentencing Procedure) Act** was amended by the **Criminal Legislation Amendment Act** to confirm that the Court of Criminal Appeal has power and jurisdiction to issue guideline judgments and to validate any judgments given by the court. In the case of **R v Jurisic** [1998] NSWSC 423 the NSWCCA adopted the English Court of Appeal practice of giving a guideline judgment in a particular case, and a number of these judgments have subsequently been given in relation to various types of offences. A guideline judgment sets out principles and criteria for the sentencing of offenders. These guidelines are suggestions only and are not intended to be applied as if they were rules binding on judges.

Prior to the passage of the amending Act, the Court of Criminal Appeal considered that it had power and jurisdiction to give guideline judgments under ss 5D and 12 of the **Criminal Appeal Act 1912**. In the decision of **Wong v The Queen** [2001] HCA 64, however, the High Court of Australia expressly held that these provisions do not authorise the giving of guideline judgments. The **Crimes (Sentencing Procedure) Act 1999** currently contains provisions in Division 3 of Part 4 which enable the Attorney General to apply to the court at any time (rather than in relation to a particular case) to ask it to issue a guideline judgment in respect of a specified offence or category of offences). The amendments made to the **Crimes (Sentencing Procedure) Act 1999** achieve two objectives. Firstly they confirm, in a legislative sense, that the court has power and jurisdiction to give **Jurisic** guideline judgments: s 37A. Secondly, they validate any previously given **Jurisic** guideline judgments that could have been given, if s 37A had been in force when they were issued, and preserves the effect of those judgments: Sch 2, Part 5.

Minor amendments were also made to the **Crimes (Sentencing Procedure) Act** ensure that guideline judgments (whether given on application by the Attorney General or on the court's own motion) can be reviewed, varied or revoked in any subsequent guideline judgment of the court.

Appendix 15 Continued

Significant Legislative Change

Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002 (No 13)

Assent 15 May 2002, commencement 22 July 2002

The principal purpose of the **Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002** is to ensure that sexual assault communications privilege is capable of protecting confidential communications made in counselling provided by counsellors, who do not have formal training or qualifications in the diagnosis of psychiatric and/or psychological conditions, and where the counselling involves listening to the thoughts and feelings of the alleged victim and providing verbal or other support, rather than expert advice.

The policy underlying sexual assault communications privilege is that the benefits of counselling provided to an alleged sexual assault victim should not be compromised by the prospect that communications made in connection with the provision of counselling may later be revealed to the accused or disclosed in court.

The legislation amends the situation that arose in **R v Norman Lee** [2000] NSWCCA 444, in which the court held that sexual assault communications privilege applies only to the provision of expert advice and procedures by counsellors skilled, by training or experience, in the treatment of mental disease or trouble. That is, for the privilege to apply there had to exist "some defect or illness or disease or abnormality" in the state of mind of the person being counselled and that the counselling had to consist of "the provision of expert advice" by "persons skilled ... in the treatment of mental disease or trouble."

The **Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002** amended the **Criminal Procedure Act 1986** to make it clear that the protection against disclosure extends to confidential communications or documents recording such communications made in the course of counselling that take the form of listening to and giving verbal or other support or encouragement to another person. The Act also makes it clear that a person may be a counsellor, even if the person lacks formal training, qualifications or experience in the diagnosis of psychiatric or psychological conditions.

The amending legislation places significant discretionary restrictions on the use of "sexual assault communications" in trials and in doing so permits sexual assault victims to have the benefit of counselling without the fear of those communications being exploited in criminal proceedings.

Under s 150 of the **Criminal Procedure Act** the communications cannot be required to be produced in a trial unless the following requirements are met. First, the communications must have substantial probative value; secondly there is no other source of that type of evidence available and thirdly, the public interest in revealing that material substantially outweighs the public interest in keeping it confidential.

Police Powers (Drug Detection Dogs) Act 2001 (No 115)

Assent 14/14/2001, commencement 22 February 2002

The **Police Powers (Drug Detection Dogs) Act 2001** was introduced to provide police officers with the power to use dogs to detect drug offences, and also to specify the circumstances in which dogs may be used for the random detection of drugs on persons who are in public places. "General drug detection" is defined under the Act as the detection of prohibited drugs or plants in the possession or control of a person, except during a search of a person which is carried out after a police officer who reasonably suspects the person is committing a drug offence. The legislation defines other terms such as "public place", "premises" and "drug offence".

The legislation provides a general authority for police officers to use drug detection dogs, specifying in section 4 that where a police officer is entitled to search a person, or enter premises for the purpose of detecting a drug offence, they may use a drug detection dog.

The Act does not, however, authorise police officers to enter premises or detain persons if the officer is not otherwise authorised to enter those premises or detain those persons. A police officer is authorised under s 6 of the Act to use a dog to detect prohibited drugs or plants in certain public places without a warrant, and without the need to first form a reasonable suspicion that the person is committing a drug offence. The designated persons

Appendix I 5 Continued

Significant Legislative Change

in respect of, and places where, this drug detection may take place are set out in section 7 as persons who are at, or who seek to enter or leave premises at, which liquor is sold and consumed (other than restaurants etc); public entertainment venues (eg sporting events, concerts) and trains, buses and places for setting down passengers on routes prescribed by regulation.

Section 8 of the Act provides that drug detection dogs may be used by police officers for general drug detection in public places other than those stated in section 7, where this activity is authorised by a warrant. An application for such a warrant may be made by a police officer who has reasonable grounds for believing that persons committing drug offences may be present at a public place. The application must disclose whether drug detection will be part of a covert police operation. Where general drug detection is part of a covert operation this must be authorised by the warrant: s 9(3). A police officer carrying out general drug detection is required by section 9 to take all reasonable precautions to prevent the dog from touching a person and to keep the dog under control.

As a result of the **Police Powers (Drug Detection Dogs) Act** the definition of "search warrant" in s 10 of the **Search Warrants Act** has been amended to include a search warrant issued under section 8 of the **Police Powers (Drug Detection Dogs) Act**.

The Ombudsman is obliged to monitor the operation of the legislation for two years after its commencement and to provide a copy of his report to the Minister and Commissioner of Police at the end of this period.

Appendix I 6

Significant Judicial Decisions

HIGH COURT

Adam v The Queen [2001] HCA 57 – 11 October 2001

Adam appealed to the High Court against his conviction for the murder of Constable David Carty. A witness, Sako, gave statements to Police which supported the prosecution's case against the appellant. At trial, he gave oral evidence unfavourable to the Crown. Leave was granted to the Crown to cross-examine the witness, the object being to have his prior inconsistent statements to Police admitted into evidence as the truth of what was stated in them. On appeal the Court held that unlike the position at common law, such evidence was admissible under the **Evidence Act** as evidence of the truth. The appeal was accordingly dismissed. The judgment clarified a number of issues relating to the construction and application of the **Evidence Act, 1995**.

The Queen v Chai [2002] HCA 12 – 14 March 2002

In this matter the High Court upheld an appeal by the Crown in relation to the setting aside by the Court of Criminal Appeal of a conviction for manslaughter following the deaths of two men as a consequence of a prolonged bashing. The issue on the appeal was whether the trial judge's directions to the jury on accessorial liability for manslaughter, by procuring an unlawful and dangerous act which resulted in the unintended death of the victims, were adequate. The practical effect of the judgment was to clarify the legal principles applicable to accessorial liability for manslaughter.

Grey v The Queen [2001] HCA 65 – 15 November 2001

This matter concerned the failure of investigative (and hence prosecuting) authorities to disclose the fact that an important prosecution witness had received a significant discount on his own sentence for assistance offered to police, pursuant to a "letter of comfort" written by the investigating officer to the Court which sentenced the witness. The Court of Criminal Appeal, by majority, dismissed an appeal to that Court holding that no substantial miscarriage of justice had occurred. The High Court upheld the appeal. More particularly it concluded that knowledge of the witness' past would have enabled the defence to undertake a more sustained attack on his credibility and would almost certainly have

Appendix 16 Continued

Significant Judicial Decisions

provided a basis for an unreliability warning under s.165 of the *Evidence Act*. In the circumstances a miscarriage of justice had occurred which could not be saved by application of the proviso under s.6 of the *Criminal Appeal Act*.

Mundarra Smith v The Queen [2001] HCA 50

–16 August 2001

The appellant was convicted of one count of robbery in company. The robbery of the bank by four young men was not an issue at trial. Bank security cameras captured photographs of what happened. The appellant did not give evidence at trial. The Crown case was that the appellant was the person shown in the photographs. Two police officers gave similar evidence at trial, each saying that he had previous dealings with the appellant and that he recognised the person in the bank photographs as the accused. The only disputed fact was whether the appellant was depicted in the bank photographs.

The relevance of the evidence of the police officers was not disputed at trial or on appeal. The issue before the High Court was whether the identification evidence of the police officers should have been received. The Court held that the evidence of the police officers was not admissible because it was irrelevant to the fact for the proof of which the evidence was tendered. If evidence is not relevant, no further question arises as to its admissibility. The Court held that the police witnesses were in no better position to compare the appellant and the person in the photographs than the jury or a member of the public sitting in Court observing the proceedings. The data available to the jury was not significantly different from that upon which the police officers based their conclusion.

The case is of significance in all cases involving identification based on security camera evidence.

Velevski v The Queen [2002] HCA 4

– 14 February 2002

The appellant was convicted of the murder of his wife and three children. At trial the central issue was whether the accused was responsible or whether his wife may have murdered the children and then committed suicide. Various opinions were expressed by a number of pathologists as to the competing hypotheses. In the course of dismissing the appeal on the basis that the verdicts had not been shown to

be unreasonable, the Court examined in some detail the role of experts, the nature of expert evidence and the role of the jury in evaluating conflicts in sophisticated expert evidence.

NSW COURT OF APPEAL

DPP (NSW) v Webb [2001] NSWCA 307

NSW Court of Appeal – 12 September 2001

In the *DPP (NSW) v Webb* the respondent pleaded not guilty to charges under the *Firearms Act 1996*. The police prosecutor served a brief of evidence which consisted of statements from witnesses based on the interception of private conversations, including telephone conversations. While the interception had occurred pursuant to warrants granted under the *Listening Devices Act 1984 (NSW)* and the *Telecommunications (Interception) Act 1979 (Cth)*, the evidence served did not include any warrants or evidentiary certificates relating to execution of warrants.

In the Local Court, the Magistrate held that the omission to include the warrants resulted in non-compliance with s 66B of the *Justices Act 1902*. This provision requires the prosecuting authority to serve on the defendant a copy of the brief of evidence relating to the offence, and that without the warrants the tapes and transcripts were inadmissible. As a result the charges were dismissed.

The DPP (NSW), who took over conduct of the matter, appealed to the Supreme Court which dismissed the appeal: *DPP v Webb* [2001] NSWSC 859. Justice O’Keefe held that the warrants should have been in the brief of evidence because they were “documents regarding the evidence that the prosecution intends to adduce in order to prove the commission” of the offences charged: see definition of “brief of evidence” under s 66A *Justices Act*.

The DPP (NSW) appealed to the NSW Court of Appeal on the ground that O’Keefe J failed to have due regard to the phrase “the evidence that the prosecution **intends** to adduce in order to prove the commission of the offence” when considering the proper meaning of the term “brief of evidence”. The court dismissed the appeal, concluding that O’Keefe J was correct in holding that the warrants should be included in the “brief of evidence”. It was necessary for the prosecution to establish that the recordings of the conversations had been lawfully effected. The warrants were therefore essential to the admissibility of the material obtained in the exercise of the

Appendix 16 Continued

Significant Judicial Decisions

powers conferred by those warrants. The definition of "brief of evidence" includes evidence both of facts in issue and evidence tendered as proof of these facts in issue. The judgment of Grove J in **DPP v Southorn**, where it was held that it was not necessary to include copies of search warrants, was discussed and distinguished.

B. NSW SUPREME COURT R v Katarynski [2002] NSWSC 613 NSW Supreme Court – 9 July 2002

Kurstain Katarynski was indicted under s 19A of the **Crimes Act** for murder and tried before a jury. The accused shot the victim after a number of altercations at a hotel in Liverpool. He was intoxicated at the time of the shooting, due to his voluntary consumption of alcohol. There was no issue that the accused had committed the act that caused the death of the victim. It was agreed that the relevant law was Part 11, Division 3 of the **Crimes Act**: s 418 of that Part deals with when self defence is available.

The issue that arose for the jury, and which the judge was required to give a ruling on during the course of the murder trial, was whether the accused's intoxication was a relevant matter in the jury's determination, under s 418(2) of the **Crimes Act**, of the reasonableness of the accused's response to the circumstances as he saw them?

Under s 418 the questions to be asked by the jury are (1) is there is a reasonable possibility that the accused believed that his or her conduct was necessary to defend himself or herself; and (2) if so, is there also a reasonable possibility that what the accused did was a reasonable response to the circumstances as he or she perceived them? **The first issue** is determined from a completely subjective point of view, considering all the personal characteristics of the accused at the time he or she carried out the conduct. In evaluating whether the accused might have believed that it was necessary to act as he or she did, the jury must take into account the accused's intoxication. **The second issue** is determined by an entirely objective assessment of the proportionality of the accused's response to the situation the accused subjectively believed he or she faced. One matter that is irrelevant to an assessment of the reasonableness of the accused's response is his or her state of sobriety. This is because it is logically incongruous to contemplate the proposition that a person's exercise of judgment might be unreasonable

if he or she was sober, but reasonable because he or she was drunk: **McCullough v R** [1982] Tas R 43. Section 418(2) is concerned, not with the state of mind of a reasonable person, but with the reasonableness of the conduct of the accused having regard to his or her state of mind.

In **Katarynski** the judge ruled that self-induced intoxication is not relevant to the jury's assessment of whether accused's response was reasonable. The court held that the accused's intoxication must be taken into account by the jury when considering whether the accused might have believed that it was necessary to act as he or she did in defence of himself or herself and when considering the circumstances as he or she perceived them. However, the accused's intoxication is not a matter that is relevant to the jury's assessment of whether the accused's response to those circumstances is reasonable. This position is a departure from the common law position in **R v Conlon** (1993) 69 A Crim R 92 and flows from a consideration both of the words of the section and the history of the legislation.

B. NSW COURT OF CRIMINAL APPEAL R v Gamgee [2001] NSWCCA 251 NSWCCA – 5 July 2001

The matter of **Gamgee** explores the scope of s 12 of the **Crimes (Sentencing Procedure) Act**, a provision which empowers a court to impose a suspended sentence. **Gamgee** examines the issue of whether a suspended sentence imposed on an offender can be partially suspended for a period of time. In this case the appellant pleaded guilty to one count of kidnapping contrary to s 90A of the **Crimes Act** and was sentenced to a fixed term of two years imprisonment. This term of imprisonment was to be served by full time detention for six months followed by 18 months suspended sentence subject to a good behaviour bond. The Crown appealed against the sentence submitting that s 12 of the **Crimes (Sentencing Procedure) Act** does not permit suspension of part of the term of imprisonment and that the only power to impose a term of effective imprisonment, followed by a non-custodial period subject to conditions, is the setting of a non-parole period in accordance with s 44 **Crimes (Sentencing Procedure) Act**. In relation to the operation of s 44, the Crown submitted that the scheme of that section would be subverted if the power exercised in the present case was available. By a majority, the

Appendix 16 Continued

Significant Judicial Decisions

court dismissed the Crown appeal. Mason P and Dowd J in considering the policy behind the reintroduction of suspended sentences in NSW stated at [11] that "...Section 12(1)(a) expressly contemplates that execution of the sentence may be suspended for any specified period that does not exceed the term of the sentence imposed. Likewise, s 12(1)(b) contemplates that the good behaviour bond may be for a term 'not exceeding the term of the sentence'." Mason P and Dowd J took the view that partial suspension of an initial portion of the term of imprisonment was possible, with the practical implications being that partial suspension of the sentence would enable a particular event to take place, for example, the completion of a pregnancy or of a course of study. It was also decided that whilst s 12 of the **Crimes (Sentencing Procedure) Act** does not expressly provide for a suspension order to commence at a future date, the concept is explicit in the power to suspend execution of the sentence for a period not exceeding the term of the sentence.

R v Markuleski (2001) 52 NSWLR 82 NSWCCA – 1 August 2001

R v Markuleski was an appeal against conviction for sexual assault which dealt with, among other things, whether five verdicts of guilty and one verdict of not guilty returned against the accused at trial were reasonable in the circumstances. The case also dealt with other issues such as directions to the jury in cases of delay in complaining of sexual assault and giving directions to the jury as to the relevance of acquittal, on any count, to the jury's assessment of all counts.

A five judge bench of the Court of Criminal Appeal was convened to hear the case because in the past the courts' application of the reasoning in **Jones v The Queen** (1997) 191 CLR 439, a case which also dealt with "inconsistent or mixed verdicts" had resulted in the complete acquittal of appellants who have had mixed verdicts against them in sexual assault matters, as well as instances where appeals on the ground of inconsistent verdicts have been disallowed.

The appellant was charged with six sexual offences comprising four counts of indecent assault on a person under the age of 16 years (s 76 **Crimes Act**) and two counts of sexual intercourse without consent with a person under 16 years of age: s 61D (1) **Crimes Act**. The case was based on the word of

the complainant against the word of the appellant where the complaint was made in 1998, some 18 years after the alleged offences.

In relation to the issue of inconsistent verdicts, the court held that the jury's differentiation between the verdicts of guilty and not guilty was justified in the circumstances because there was an acceptable explanation for the different verdicts that were returned. In reaching this conclusion, the court distinguished **Jones v The Queen** (1997) 191 CLR 439. In dismissing the need for an explanation for different verdicts in every case Wood CJ at CL emphasised the requirement for careful consideration to be given to the process by which jury deliberations may properly take, the need to set that in the full circumstances of the trial, the firmness with which **Longman, Murray** and other directions are given and the "staleness" or otherwise of the complaints.

R v AEM (Senior), KEM and MM [2002] NSWCCA 58 NSWCCA – 13 March 2002

AEM was a successful Crown appeal against the leniency of sentences imposed on three offenders, each of whom pleaded guilty to two counts of sexual assault without consent in circumstances of aggravation: s 61J **Crimes Act**. Two of the offenders were juveniles at the time the offences were committed. Each offender had one or more offences under s 61J, committed against the same victims, taken into account on a Form 1 pursuant to s 33 of the **Crimes (Sentencing Procedure) Act 1999**. The facts were that two females, who were under 18 years of age, were taken to and detained in a house by the three respondents who subjected the girls to a series of aggravated sexual assaults. The girls were also subjected to death threats and threats with a knife. The sentences imposed on the offenders in the District Court and the new sentences imposed by the NSW Court of Criminal Appeal appear in Table 1.

In appealing against sentence, the Crown argued that the trial judge (1) misapplied the principle of totality; (2) failed to adequately taken into account the serious offences on a Form 1 in relation to each respondent; (3) wrongly found special circumstances and reduced the non-parole period below the statutory ratio; and (4) imposed manifestly inadequate sentences.

Appendix 16 Continued

Significant Judicial Decisions

The court, which comprised Beazley JJ, Wood CJ at CL and Sully J, allowed the Crown appeal, confirmed the convictions and set aside the sentences, imposing new sentences in their place. The reasoning of the court was that established sentencing principles and practices had not been properly applied when the offenders were originally sentenced. The court held that the sentencing principles in **Pearce v The Queen** (1994) 194 CLR 610 had not been properly invoked. In sentencing for more than one offence **Pearce** states that the judge must fix an appropriate sentence for each offence, and then consider questions of cumulation or concurrence, as well as totality. This did not occur. The sentencing judge was found to have omitted to have properly applied the principle of totality, as none of the sentences exceeded six years notwithstanding Her Honour's acceptance that they were close to a "worst category" case. Insufficient weight was also found to have been given to the Form 1 offences when sentencing for a principal offence so as to reflect the overall degree of criminality involved: s 33 **Crimes (Sentencing Procedure) Act 1999**. Each respondent had other offences taken into account on sentence for the principal offences in accordance with the procedure set down in s 33 of the **Crimes (Sentencing Procedure) Act**. These principles were stated by Hunt CJ at CL in **R v Morgan** (1993) 70 A Crim R 368. The court concluded that it is wrong in principle that there should only ever be little by way of addition to the penalty imposed on the offence charged when another offence is taken into account pursuant to s 33. Her Honour was also found to have failed, in structuring the sentences, to adequately address whether the terms of imprisonment should be served concurrently or cumulatively. A significant holding in the judgment of the court was that insufficient weight had been given to the principles of deterrence and denunciation. The CCA stated at [94] that "It must be stressed that all members of our society, including our young people, must be free to lawfully use the streets without fear of being subjected to either physical or sexual assault. In the case of young offenders the issues of youth, general deterrence and public denunciation usually play a subordinate role to the need to have regard to individual treatment aimed at rehabilitation." The court took the view that this principle cannot defeat the primary purpose of punishment nor in circumstances where young

offenders conduct themselves in a way in which an adult does, can it stand in the way of the need to protect society.

Additional findings made by the court were that the objective circumstances of the offences, even allowing for the principle of double jeopardy, warranted a significant increase in sentence. It was also found that special circumstances existed which justified a departure from the prescribed non-parole period of 75 per cent of the term of imprisonment under s 44 of the **Crimes (Sentencing Procedure) Act**. After considering the subjective features of each of the three offenders new sentences were imposed. These appear in Table 1 (pg 53).

R v Sharma [2002] NSWCCA 142 NSWCCA – 24 April 2002

The case of Sharma was a Crown appeal against the leniency of a sentence imposed on Ravinesh Dutt Sharma for a plea of guilty to one count of armed robbery in company under s 97(1) of the **Crimes Act**. On arrest, Mr Sharma (the respondent) admitted his involvement in the offence, identified his co-offender and agreed to give evidence against him. A sentence of 18 months imprisonment, with a non-parole period of 12 months, was imposed. The Crown appealed against the inadequacy of the sentence. The NSWCCA allowed the appeal and increased the term of imprisonment to two years, with a non-parole period of 18 months.

At the original sentence the judge took into account the respondent's plea, his undertaking to give evidence against the co-offender, his youth and drug addiction. His Honour commented that the circumstances in the guideline judgment of **R v Henry** [1999] NSWCCA 111 were similar to the facts of this case. His Honour indicated a starting point of four years in prison and gave a discount of 25 per cent for the early plea, contrition and utilitarian value of the plea. Considering the respondent's assistance to police, the fact that the offender would not otherwise have been caught and that the respondent was on protection, the notional sentence was reduced by a total 50 per cent. The combined effect of the discount was one of 62 per cent. Special circumstances were found in relation to the respondent's youth and history of drug addiction sufficient to justify varying the normal ratio between the term of imprisonment and non-parole period from three quarters to two thirds.

Appendix I 6 Continued

Significant Judicial Decisions

In the Crown appeal to the NSWCCA the question for the court was whether a sentencing judge is permitted, when taking into account a plea of guilty, to quantify a discount for the plea and to give weight to its utilitarian value. This also raised the issue of the continuing appropriateness of the guideline judgment for a plea of guilty (**R v Thomson** (2000) 49 NSWLR 383) in light of the High Court decision of **Wong and Leung v The Queen** [2001] HCA 64.

In allowing the appeal, the court first ruled that the sentencing judge did not err in considering the guilty plea as a separate element and in quantifying its value. It concluded that there was no need to reconsider the guideline judgment of **R v Thomson** unless it was required to do so by the doctrine of precedent, and in this case it was not. Reference was made to **R v Place** [2002] SASC 101 and the compelling public policy reasons for identifying the discount for a plea of guilty. Quantifying the discount enables identification, by offenders and their legal advisers, of an approximate range of likely reduction for a plea of guilty, it reflects the degree of benefit given for a plea and it informs the community and appellate courts. Secondly, the court held that the sentencing judge did not err in taking into account the utilitarian value of the plea in accordance with **R v Thomson**. It reasoned, in relation to this issue, that the High Court decision of **Cameron v The Queen** [2002] HCA 6, an appeal from Western Australia which dealt with general sentencing principles, did not apply in NSW because of s 22 of the **Crimes (Sentencing Procedure) Act**. This provision explicitly entitles NSW courts to take into account the objective utilitarian value of a guilty plea on sentence. Lastly, the CCA concluded that the sentence provided an excessive discount for the plea of guilty and assistance to authorities, and in light of the absence of special circumstances that may otherwise justify varying the ratio of the parole and non-parole periods of the sentence.

R v Button and R v Griffen [2002] NSWCCA 159

NSWCCA — 9 May 2002

This case involved the conviction, by a jury, of Shannon Button and William Griffen of two counts of aggravated sexual intercourse without consent contrary to s 61J of the **Crimes Act**. The aggravating feature of the sexual assaults was that they were committed “in company”. Shannon and Griffen both appealed against their convictions and each appeal was dismissed. In the course of its judgment the court considered the meaning of the phrase “in company” setting out the following propositions which have emerged from a review of the relevant case law. These are firstly, the statutory definition of s 61J(2)(c) requires that the offender be “in the company of another person or persons”. Secondly, the accused and such person or persons, must share a common purpose (either to rob, sexually assault etc). Thirdly, the cases appear to assume that each participant is physically present. Fourthly, participation in the common purpose without being physically present (for example as a look-out or as an accessory before the fact) is not enough: **The Queen v Brougham** (1986) 43 SASR 187. Fifthly, the perspective of the victim (being confronted by the combined force or strength of two or more persons) is relevant, although not determinative. If two or more persons are present and share the same purpose, they will be “in company”, even if the victim was unaware of the other person: **R v Leoni** [1999] NSWCCA 14.

Appendix 16 Continued

Significant Judicial Decisions

Table 1

name	original sentence	new sentence
AEM (Snr)	each count, 6 years, 4 years non-parole period Special circumstances found	count 1, 11 years, 7 years non-parole period count 2, 11 years, 7 years non-parole period overall sentence 13 years, 9 years non-parole period sentence partially accumulated special circumstances found
KEM	each count, 5 years, 7 months 3 years, 6 months non-parole period	count 1, 12 yrs, 8 years non-parole period count 2, 10 years, 6 years non-parole period overall sentence 14 years, 10 yrs non-parole period Portion of sentence to be served in a juvenile justice centre
MM	count 1, 5 years 6 months, 4 years non-parole period count 2, 6 years, non-parole period 4 years	count 1, 10 yrs, 7 years non-parole period count 2, 11 yrs, 8 years non parole overall sentence 13 yrs, 10 years non-parole special circumstances found Portion of sentence to be served in a juvenile justice centre.

Appendix 17

Chief Executive Service and Senior Executive Service

Number of CES/SES positions Level:	Total CES/SES 30 June 1999	Total CES/SES 30 June 2000	Total CES/SES 30 June 2001	Total CES/SES 30 June 2002
SES Level 1	3	3	3	3
SES Level 2	3	3	3	3
SES Level 3	—	—	—	—
SES Level 4	—	—	—	—
SES Level 5	—	—	—	—
SES Level 6	—	—	—	—
Statutory Appointments				
Under the DPP Act	3	4	4	4
Number of positions filled by women	3	2	2	2

* The Director of Public Prosecutions, Deputy Directors of Public Prosecutions and Solicitor for Public Prosecutions are statutory appointees, appointed under the Director of Public Prosecutions Act 1986.

CEO Statement of Performance

Name:	Nicholas Cowdery QC
Position and level:	Director of Public Prosecutions The Director of Public Prosecutions is a statutory appointment under Section 4 of the Director of Public Prosecutions Act 1986
Period in position:	Full year
Comment:	The Director is not appointed under the Public Sector Management Act 1988. The Director is responsible to Parliament and there is no annual performance review under the Public Sector Management Act

Staff Numbers	30 June 1999	30 June 2000	30 June 2001	30 June 2002
Statutory Appointed and SES	82	85	85	100
Lawyers	249	256	268	280
Administration and Clerical Staff	191	190	189	193
Total	522	531	542	573

Recruitment Statistics	1998/1999	1999/2000	2000/2001	2001/2002
Senior Executive Service	0	0	0	1
Statutory Appointments	0	1	0	1
Crown Prosecutors	4	5	5	19
Prosecution Officer (Lawyers)	43	35	30	74
Prosecution Officer (Administrative)	56	60	75	64
Summer Clerks	2	0	0	0
Total	105	101	110	159

* This category is no longer applicable and should not be removed.

Appendix I 8

Publications

Publications of the Office of the Director of Public Prosecutions as at 30.06.02

(i) Office of the Director of Public Prosecutions NSW – Annual Reports

Description:

The Annual Report is a comprehensive document which provides details of the Office's major achievements and policy developments as well as statistical, financial and management information.

The first Annual Report of the Office was prepared for the year ended 30 June 1988.

Access:

Copies of the Annual Report are available from the Office's Head Office Library and can be obtained by telephoning (02) 9285-8912 between 9 am and 5 pm on weekdays, or by writing to the Librarian, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW. The most recent Annual Report is available on www.odpp.nsw.gov.au. The Annual Reports for subsequent years will be published on the web site as they become available.

Cost: No charge

(ii) Office of the Director of Public Prosecutions – Corporate Plan, 2002-2005.

Description:

The Corporate Plan 2002-2005 contains the Office's goals, objectives and implementation strategies which will guide the operations of the Office until 2005.

Access:

Copies of the Corporate Plan are held in the Office's Head Office Library and can be obtained by telephoning (02) 9285-8912 between 9 am and 5 pm on weekdays, or by writing to the Librarian, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW. [The Corporate Plan is available on www.odpp.nsw.gov.au]

Cost: No charge.

(iii) Evidence Act Cases Summaries 1995–1999.

Description:

This publication comprises 195 summaries (in 348 pages) of almost every Court of Criminal Appeal decision on the Evidence Act 1995, all High Court cases and a selection of Supreme Court and Court of Appeal cases.

Access:

This publication costs \$75 per copy. It is available by contacting the ODPP Research Unit on telephone (02) 9285-8761 between 9 am and 5 pm on weekdays, or by writing to the Principal Research Lawyer, Research Unit, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW, enclosing a cheque payable to the Office of the Director of Public Prosecutions in the amount of \$75.

Cost: \$75 per copy.

(iv) Advance Notes.

Description:

This publication comprises summaries of judgments of the NSW Court of Criminal Appeal, and in some cases, judgments of the District, Supreme and High Courts.

Access:

Copies of the Advance Notes are available to practitioners through the Bar Association Library and the Law Society Library and the Legal Information Access Centre at the State Library. The Advance Notes are available for purchase at \$400 per annual subscription, by writing to the Principal Research Lawyer, Research Unit, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW.

Costs: \$400 per annual subscription.

(v) Prosecution Policy and Guidelines of the Director of Public Prosecutions

Description:

Contains a detailed description of the Prosecution Policy and Prosecution Guidelines issued in March 1998 by the Director of Public Prosecutions to be applied by persons acting in or representing the interests of the Crown or of the Director under the DPP Act.

Access:

The booklet is available from the Office's Head Office Library and can be obtained by telephoning (02) 9285-8912 between 9 am and 5 pm on weekdays, or by writing to the Librarian, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW. [Prosecution Policy is available on www.odpp.nsw.gov.au] [Prosecution Guidelines is available on www.odpp.nsw.gov.au] [Appendices to Guidelines is available on www.odpp.nsw.gov.au]

Appendix 18 Continued

Publications

Cost: No charge

(vi) Statement of Affairs and Summary of Affairs under the Freedom of Information Act 1989

Description:

The Statement of Affairs of the ODPP and the Summary of Affairs of the ODPP under the Freedom of Information Act provide information about ODPP compliance with the Act as at the reporting dates specified in the Act.

Access:

Access to and/or copies of these documents can be obtained by telephoning the Executive Assistant to the Solicitors Executive on (02) 9285-8733 between 9 am and 5 pm on weekdays, or by writing to the Executive Assistant to the Solicitors Executive, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW. [Statement of Affairs and Summary of Affairs are available on www.odpp.nsw.gov.au]

Cost: No charge.

(vii) Your Rights as a victim.

Description:

This pamphlet was prepared to inform victims of the Office's policy concerning their rights and to provide details of who to contact if these rights have not been observed.

Access:

Copies of the pamphlet are issued to victims of crime by this Office. Members of the public can obtain a copy from the Office's Witness Assistance Service by telephoning (02) 9285-8949 or 1800 814 534 between 9 am and 5 pm on weekdays, or by writing to the Manager, Witness Assistance Service, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW. [Your Rights as a Victim is available on www.odpp.nsw.gov.au]

Cost: No charge.

(viii) Being a Witness

Description:

This pamphlet was prepared to provide prosecution witnesses with information about their role in the prosecution process, how to prepare for their court experience, and what happens in the court room, and explains the role of the Office of the Director of Public Prosecutions.

The pamphlet also provides details of how witnesses can suggest ways to improve the service provided to them.

Access:

Copies of the pamphlet are issued to witnesses by this Office. Members of the public can obtain a copy from the Office's Witness Assistance Service by telephoning (02) 9285-8949 or 1800 814 534 between 9 am and 5 pm on weekdays, or by writing to the Manager, Witness Assistance Service, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW. [Being a Witness is available on www.odpp.nsw.gov.au]

Cost: No charge.

(ix) Information for Court Support Persons.

Description:

This pamphlet was prepared by the Department of Health and the Office of the Director of Public Prosecutions to inform persons providing court support for victims of crime. It provides information on the role of support persons and appropriate behaviour in court.

Access:

Copies of the pamphlet are issued to court support persons by this Office. Members of the public can obtain a copy from the Office's Witness Assistance Service by telephoning (02) 9285-8949 or 1800 814 534 between 9 am and 5 pm on weekdays, or by writing to the Manager, Witness Assistance Service, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW.

Cost: No Charge.

(x) About The DPP.

Description:

This document contains information about the role of the DPP in the prosecution process, the courts, victims/Crown witnesses and the Witness Assistance Service.

Access:

This document is provided to victims of crime and prosecution witnesses. Members of the public can obtain a copy from the Manager, Witness Assistance Service by telephoning (02) 9285-8949 or 1800 814 534 between 9 am and 5 pm on weekdays, or by writing to the Manager, Witness Assistance Service, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW. [About the DPP is available on www.odpp.nsw.gov.au]

Cost: No charge.

Appendix 18 Continued

Publications

(xi) Do's and Dont's for Parents and Carers

Description:

This pamphlet has been prepared to provide some "Do's and Don'ts" for parents/caregivers who are supporting a child witness through a criminal prosecution.

It provides suggestions that may assist in supporting the child while at the same time assisting the parent/caregiver in coping with his or her own anxieties.

Access:

Copies of this document can be obtained by contacting the Witness Assistance Service (02) 92858949 or 1800 814534 between 9 am and 5 pm on weekdays, or by writing to the Manager, Witness Assistance Service, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW.

Cost: No charge.

(xii) Victim Impact Statement Information Package

Description:

This package was prepared jointly by the Office of the Director of Public Prosecutions and the Victims of Crime Bureau. The package contains information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime upon the victim is placed before the sentencing court.

Access:

Copies of the Package can be obtained by contacting the Witness Assistance Service on (02) 9285 8949 and 1800 814534 between 9 am and 5 pm on weekdays, or by writing to the Manager, Witness Assistance Service, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW. A copy of the Package is also available from www.odpp.nsw.gov.au.

Cost: No charge.

(xiii) Office of the Director of Public Prosecutions Disability Action Plan

Description:

This plan has been developed in accordance with Section 9 of the NSW Disability Services Act 1993, to ensure the needs of people with disabilities are met.

Access:

The Disability Action Plan is available from the ODPP Service Improvement Unit, by telephoning (02) 9285 8874 between 9 am and 5 pm on weekdays, or by writing to the Manager, Service Improvement Unit, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW.

Cost: No charge

(xiv) Equal Employment Opportunity (EEO) – Annual Report

Description:

The Office's EEO Annual Report provides details of progress made towards the implementation of the previous financial year's EEO management plan while also detailing objectives and strategies being implemented in the current year.

Access:

Copies of the EEO Annual Report can be obtained by contacting the Manager, Personnel Services unit on (02) 9285-8867 between 9 am and 5 pm on weekdays, or by writing to the Manager, Personnel Services Unit, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW.

Cost: No charge.

(xv) Ethnic Affairs Priority Statement

Description:

This Statement describes the four principles of cultural diversity and the initiatives undertaken by the ODPP to give effect to these principles.

Access:

Copies of the Ethnic Affairs Priority Statement can be obtained by contacting the Executive Assistant to the Solicitors Executive on (02) 9285-8733 between 9 am and 5 pm on weekdays, or by writing to the Executive Assistant to the Solicitors Executive, Office of the Director of Public Prosecutions, Locked Bag A8, Sydney South 1232 NSW.

Cost: No charge.

Appendix 19

2001–2002 EEO Achievements

The EEO statistics were produced as part of the NSW Public Sector Workforce Profile. The number of women earning salaries above \$66,333 (non SES) increased from 33% to 42% and the number of men in the same salary band decreased from 67% to 58%.

The Office has submitted an application to ODEOPE to employ two cadets under the Aboriginal and Torres Strait Islander Cadetship Program.

Draft policies have been circulated for discussion on:

- Working From Home;
- Grievance and Dispute Resolution;
- Workplace Relations

Appendix 20

Report of Chief Information Officer Main IM & T Projects During 2001–2002

PROJECT	DETAILS
CASES 2	The ODPP case tracking and case management system (CASES) was migrated to new hardware and software to reduce maintenance costs. This project was completed in November 2001.
ERIC–mail	This is a interagency initiative which has facilitated the secure electronic exchange of information and material concerning indictable prosecutions between the Police and the ODPP. This project was completed in October 2001.
Intergrated Document Management System (IDMS)	This is a large scale project to implement an office wide system for the electronic classification, management, storage, retrieval and sharing of material. A feasibility study was completed in June 2002 and a system is to be implemented during the next financial year.
Electronics Briefs project (e-briefs)	This is a interagency project led by the ODPP to facilitate the availability of electronic briefs of evidence within the criminal justice system with the aim of sharing and storing material electronically. A pilot of the project is to commence next financial year.
Disaster Recovery	Phase 1 of this project ie to increase resilience of storage facilities and processors and to implement integrated systems was completed in June 2002. Phase 2 is to be completed next financial year.

Appendix 2 I

EEO Statistics

Table I

Percent of Total Staff by Level

LEVEL	Subgroup as Percent of Total Staff at each Level				Subgroup as Estimated Percent of Total Staff at each Level				
	TOTAL STAFF (Number)	Respondents	Men	Women	Aboriginal People & Torres Strait Islanders	People from Racial, Ethnic, Ethno-Religious Minority Groups	People Whose Language First Spoken as a Child was not English	People with a Disability	People with a Disability Requiring Work-related Adjustment
< \$27,606	3	33%		100%					
\$27,606 - \$36,258	15	73%	20%	80%		45%	45%	27%	18.2%
\$36,259 - \$44,535	78	94%	14%	86%		41%	30%	5%	4.1%
\$40,536 - \$51,293	145	77%	27%	73%	0.9%	30%	19%	8%	1.8%
\$51,294 - \$66,332	123	81%	45%	55%		15%	8%	5%	3.0%
\$66,333 - \$82,914	156	91%	58%	42%		21%	14%	6%	2.1%
> \$82,914 (non SES)	114	50%	78%	22%		14%	5%	4%	1.8%
> \$82,914 (SES)	5	100%	80%	20%				40%	20.0%
TOTAL	639	78%	46%	54%	0.2%	23%	15%	7%	2.9%
Estimated Subgroup Totals		500	292	347	1	149	96	42	19

Table 2

Percent of Total Staff by Employment Basis

LEVEL	Subgroup as Percent of Total Staff at each Level				Subgroup as Estimated Percent of Total Staff at each Level				
	TOTAL STAFF (Number)	Respondents	Men	Women	Aboriginal People & Torres Strait Islanders	People from Racial, Ethnic, Ethno-Religious Minority Groups	People Whose Language First Spoken as a Child was not English	People with a Disability	People with a Disability Requiring Work-related Adjustment
Permanent Full-Time	502	79%	53%	47%	0.3%	24%	15%	7%	3.3%
Part-Time	55	95%	4%	96%		25%	19%	2%	
Temporary Full-Time	64	58%	30%	70%		24%	24%	8%	2.7%
Part-Time	13	69%	23%	77%		33%			
Contract SES	5	100%	80%	20%				40%	20.0%
Non SES									
Casual									
TOTAL	639	78%	46%	54%	0.2%	24%	16%	7%	3.0%
Estimated Subgroup Totals		500	292	347	1	155	102	44	19

Notes:

1. Table I does not include casual staff.

2. Figures for EEO groups other than women have been adjusted to compensate for the effects of non-response to the EEO data collection. EEO statistics reported in years prior to 1998 may not be comparable due to a change in the method of estimating EEO group representation.

Appendix 22

Risk Management and Insurance

The Manager, Corporate Services has overall responsibility for risk management. The Manager, Personnel Services and Manager, Properties & Services are responsible for the day to day functions of risk management for Workers' Compensation and Motor Vehicles respectively.

In the 2001–2002 reporting period the Office's motor vehicle claims for the year ending 30 June 2002 numbered eighteen which is two more than in 2000–2001. Although this increase in claims was minimal, claim payments increased by \$9,000 over the 2000–2001 figure as the claims were due to substantial damage.

In the 2001–2002 reporting period, the Office's Workers' Compensation claims reported after four quarters numbered eighteen. This number is three more than the reported number in 2000–2001 and two less than the number reported in 1999–2000. The value of claim payments after the four quarters to 30 June 2001 totalled \$33,286. In January 2002, the GIO introduced Provisional Liability for claims, which will be taken into consideration when determining the next premium amount.

Security of premises and personal safety of staff remains high on the Office's agenda. Because of this the Office is preparing to review all facets of security in Head Office and regions to ensure staff, equipment and documentation are afforded the highest security available. This review is due to commence in November 2002. The Office's minimum security standards will be part of this review and continue to apply whenever staff or visitors are within Office premises.

Appendix 23

Occupational Health and Safety

Occupational health and safety has been a major consideration in the development of new accommodation standards for the Office. The wider use of modular furniture across the Office, a review of utility bench heights and the supply of new chairs are some of the strategies introduced.

A series of training courses in workplace safety continue to be conducted over the last 12 months with an emphasis on office ergonomics and manual handling. The increased use of technology within the Office and across the criminal justice system and the need to transport volumes of heavy files to and from court have identified occupational overuse injuries and back injuries as high risk factors.

The Occupational Health and Safety Committee identified that manual handling was an issue for lawyers travelling on circuit and the profile of the Office's motor vehicle fleet has been varied to include a greater number of station wagons. This is to facilitate the stowing and removing of cases of files from vehicles. Laptops with remote access to the Office's research database and other electronic references are also being provided to reduce the need for paper resources to be transported on circuit.

The need to lift cases of files on to conveyor belts for x-ray purposes when entering courts presents another manual handling challenge. The Occupational Health and Safety Committee and management are considering options to minimise the potential for strains and back injuries whilst still ensuring that security measures are not compromised.

A draft policy on the handling of exhibits has been prepared and includes procedures for ensuring that staff do not come in direct contact with contaminated items. The recommended procedures require co-operation from other criminal justice agencies in the management of exhibits. Feedback on proposals has been sought from the NSW Police Service. It is anticipated that this policy will be finalised in the near future.

During the year a number of court security issues have been raised with the Sheriff and measures put in place to manage specific incidents. A wider review will be undertaken during the next financial year.

A review of ODPP premises security is to commence in November 2002.

Appendix 24

Freedom of Information Act

Name of Agency

Office of the Director of Public Prosecutions (ODPP).

Period

1 July 2001 to 30 June 2002.

Contact

Freedom of Information Coordinator

Deputy Solicitor (Legal)

Telephone (02) 9285 8825

Summary

The ODPP is an agency under the Freedom of Information Act 1989 (FOI Act). Pursuant to section 9 and Schedule 2 of the FOI Act, the ODPP is exempt from the Act in relation to its prosecuting function. A copy of the ODPP Summary of Affairs as at 30 June 2000 under the FOI Act is included in the next Appendix.

Applications and Other Details

In the period 1 July 2001 to 30 June 2002, 5 applications under the Act were received for access to documents. The documents requested in two of the applications received were determined to be exempt because the documents related to the prosecuting function of the ODPP. The applicants were advised accordingly.

In relation to 2 applications, some of the documents sought were provided, and access to the balance was denied on the basis that the documents were exempt documents related to the prosecuting function of the ODPP.

One application was referred to another agency as the ODPP held none of the documents sought.

- No ministerial Certificates were issued.
- All applications for access were processed within 21 days.
- The application that had been pending in the previous financial year with the Administrative Decisions Tribunal for review has now been completed. That application was dismissed.
- One inquiry under the FOI Act is still pending with the Ombudsman.
- No request for amendment or notation of records was received.
- The administration of the FOI Act has had no significant impact on the ODPP's activities, policies or procedures.
- No significant issues or problems have arisen in relation to the administration of the FOI Act within the ODPP.
- The cost of processing FOI requests was not significant and no processing costs were recovered during the reporting period.
- No matters concerning the administration of the FOI Act by the ODPP have been referred to the District Court.

Freedom of Information Act 1989 Section 14

Summary of Affairs as at 30 June 2002

This Summary of Affairs was prepared pursuant to section 14(1)(b) and 14(3) of the Freedom of Information Act 1989 (the Act).

The prosecution policy of the Office of the Director of Public Prosecutions (ODPP) is set out in the

	Personal		Other		Total	
	2000-01	2001-02	2000-01	2001-02	2000-01	2001-02
Number Received	8	5	0	0	8	5
Number Completed	8	8	0	0	8	8
Transferred Out	0	1	0	0	0	1
Total Processed	8	8	0	0	8	8
Results*						
Granted in Full	0	2	0	0	0	2
Granted in Part	2	2	0	0	2	2
Refused	6	6	0	0	6	6
Completed	8	4	0	0	8	4

* Note – See “Summary” section for explanation of results.

Appendix 24 Continued

Freedom of Information Act

“Prosecution Policy and Guidelines of the Director of Public Prosecutions”, which was last issued in March 1998. A copy of the policy can be obtained from the ODPP web site, [http:// www.odpp.nsw.gov.au/](http://www.odpp.nsw.gov.au/) or from the ODPP Head Office Library at 265 Castlereagh Street, Sydney, by telephoning any member of the Library staff on (02) 9285 8912 between 9am and 5pm on weekdays. The publication is available at no charge. The publication may be inspected by arrangement with a member of the Library staff at the ODPP Head Office at 265 Castlereagh Street, Sydney.

The ODPP has published to its officers four internal procedural manuals relating to the performance of its prosecuting functions, namely the Sentencing Manual, the Child Sexual Assault Manual, the Court of Criminal Appeal Guide and the Solicitors Manual, and a number of Research Flyers on significant aspects of the ODPP's practice. The Director of Public Prosecutions, the Deputy Directors and the Solicitor for Public Prosecutions also publish memoranda to ODPP officers and Crown prosecutors in relation to procedural matters relating to the performance of the ODPP's prosecuting functions. These documents are for internal use only (for training, operational and reference purposes), and are not available to members of the public, in the normal course, for inspection or for purchase. There are exemptions in the Act applicable to operational documents of this type.

The most recent Statement of Affairs of the ODPP published under section 14(1)(a) of the Freedom of Information Act was published as at 30 June 2001.

A copy of the Statement of Affairs and/or a copy of the Summary of Affairs can be obtained from the ODPP website (<http://www.odpp.nsw.gov.au/>) or by telephoning the Executive Assistant to the Solicitor's Executive at the ODPP Head Office at 265 Castlereagh Street, Sydney on (02) 9285 8733 between 9am and 5pm on weekdays. In her absence a copy of the Statement and/or the Summary can be obtained by telephoning the Library on (02) 9285 8912 between 9am and 5pm on weekdays. The Statement and the Summary are available at no charge.

A copy of the Statement of Affairs and/or the Summary of Affairs may be inspected by arrangement with a member of the Library staff, at the ODPP Head office at 265 Castlereagh Street, Sydney.

Appendix 25

Witness Assistance Service Report

Background

WAS has been part of the ODPP since its establishment in 1994 and has been enhanced over time so that there is now a Witness Assistance Officer in every ODPP office. There are 11 offices statewide, including Sydney Head Office. 3 WAS Officers are located in Sydney Head Office, 2 at Parramatta and 1 position in each of the 9 other Offices. The Manager of the WAS, the Sexual Assault Liaison Officer/Senior Lawyer Level 3 and the WAS Officer (Indigenous Identified) positions have statewide briefs and are located at Head Office. There is 1 Administrative Officer located at Sydney Head Office. This means there is currently a total of 18 staff within WAS Statewide.

The criminal justice system needs witnesses. It relies heavily on witnesses to come forward and must continue to improve the way it looks after them. The importance of support for victims in the court process cannot be underestimated particularly for children and adults who are victims of sexual assault and violence. As illustrated in the Samuels Report (see below), the Witness Assistance Service is an important and integral professional arm of the Office to ensure that victims are treated in a sympathetic and reassuring manner.

Current role and functions of the WAS

A diverse range of services are available through WAS and include the following:

- Information about the legal process, general updates on the progress of the matter; services available, victims rights and witness entitlements;
- Psychosocial assessment and case planning for special needs and support needs at court;
- Referral for counselling, practical assistance and support;
- Liaison with solicitors and Crown Prosecutors;
- Support during conferences with lawyers for vulnerable victims and witnesses when required;
- Court preparation and court familiarisation;
- Coordination and/or provision of court support;
- Crisis counselling and intervention related to the impact of the legal process;
- Debriefing in relation to the legal process and outcomes;

Appendix 25 Continued

Witness Assistance Service Report

- Post-court follow-up;
- Inter-agency liaison and policy advice.

The WAS is theoretically available for all ODPP victims and witnesses, however arising out of the high volume demand on the service and the current staffing levels, WAS has found it necessary to prioritise services so that some groups of victims and witnesses receive a more comprehensive service than others. WAS prioritises its services in two ways:

1. Priority matters prosecuted by the DPP include:

- Child sexual assault and other crimes against children;
- Matters involving death including homicide, manslaughter and dangerous driving causing death;
- Adult sexual assault and historical child sexual assaults;
- Domestic violence offences which fall into the category of serious indictable offences or all ground appeals.
- Crimes such as serious physical assault / grievous bodily harm / malicious wounding / attempted murder / armed robberies do not generally come under the WAS early referral scheme and victims are referred to WAS by ODPP lawyers and external agencies on a needs basis.

2. Priority is also given to certain vulnerable and special needs groups:

- Children and young people under 18 years (and their carers);
- People with disabilities (intellectual, psychiatric, physical, sensory disabilities);
- Aboriginal and Torres Strait Islander people;
- Older people especially those who are frail or disabled;
- People experiencing severe trauma in relation to being a victim;
- People who experience particular difficulty with cultural or language barriers;
- People who are experiencing other disadvantage, hardship or health problems.

The WAS Manager liaises with 20 Managing Lawyers

and the ODPP Executive in ensuring that the WAS provides a consistent service across NSW.

Service Delivery 2001– 2002

New WAS Registrations recorded during 2001–2002 totalled 1797 which is 633 more than for 2000–2001. Case management services constituted 87% of total number of service hours in 2001–2002. In terms of the specific types of services provided these have included court support 30%, liaison and conferencing 19.42% information provision, court preparation and court familiarisation 19.24%, assessment, debriefing, crisis and supportive counselling 6.5%, interagency liaison and referral 4.9% and other services 6.7%. In addition WAS Officers undertake considerable travel and various administrative tasks to support service delivery.

Existing Demands on the Witness Assistance Service

The current staffing establishment as well as the increasing demand on the service, means that for sometime the WAS has had to prioritise services provided because of the increasing number of victims of serious crime referred to the service. WAS Officers' caseloads are now such that the provision of a comprehensive service is not possible in all cases. For example WAS prioritises child sexual assault victims and vulnerable witnesses with a disability and some matters involving death for the provision of support in conferences and court support. Hence a number of victims of violent crimes have had to give evidence while unsupported inside the courtroom. When WAS Officers take leave there is currently no automatic provision for locum relief. This particularly impacts on service provision for regional offices where there is a solo WAS officer.

The workloads for WAS Officers have risen for the following reasons:

- Successful implementation of the WAS Best Practice Early Referral Policy;
- Pre-trial disclosure requirements for early conferences prior to settlement of the indictment;
- Successful promotion of the service and increasing recognition and demand for the WAS services;
- Length of time matters remain in the criminal justice system;

Appendix 25 Continued

Witness Assistance Service Report

- Many victims do not take up referrals to external agencies or support groups for a variety of reasons;
- Difficulties with access to services in rural and remote areas;
- Several victims of crime who attend court may live in another town or State from where the court is located and are hence often unsupported at court;
- Increasing demands in relation to Victim Impact Statements;
- Recent increase in demand on the service following the release of the Samuels Report.

Since the implementation of the WAS database in May 1996 there have been approximately 9775 files registered for victims or witnesses for the WAS. Currently there are 2155 open files on the WAS database. On this number, WAS Officers' caseloads average at 143 open files. In many instances an open file represents multiple victims or several family members of the deceased. Hence the registered number of files is a conservative estimate of the number of victims or witnesses that a WAS Officer may be providing a service to at anyone time. There is only one WAS Officer (Indigenous Identified) for indigenous victims and witnesses in NSW which severely limits the services that can be provided by this position.

A great challenge for WAS Officers is being familiar with every matter because of the volume of cases and complexity of the matters that are referred. WAS can no longer provide comprehensive services for all priority groups and some matters can slip through the net because of workload pressures. This is despite undertaking the following strategies:

- Track matters (subject to the accuracy and availability of information on CASES);
- Early referrals and prioritising services to specific groups;
- Pro-active efforts by WAS Officers to refer to other appropriate agencies and support groups (those agencies are also reporting being very stretched).

In addition to the above issues, the WAS Manager has taken on a caseload in addition to the coordination of Statewide operations, supervision and support at a statewide level and the current large number of requests for policy analysis and review and resources development.

Statewide Operations and Standards

The WAS has regular bi-monthly Statewide meetings in Sydney. ODPP pamphlets have been updated and new pamphlets drafted. WAS assisted the ODPP in reviewing the standard letter that is sent to victims and has also developed standardised letters for the service.

The WAS Officer (Indigenous Identified) is establishing an appropriate referral protocol and process for matters involving indigenous victims and witnesses and a model of service delivery that is manageable for one position in NSW. The WAS Officer receives support from Norimbah Aboriginal Support Unit at the Attorney General's Department and belongs to the Norimbah Aboriginal Workers Network.

State wide training and education for WAS staff over the past year has included a Vicarious Trauma Workshop, Interviewing Children and Forensic Linguistics, and legal updates from the ODPP Research Unit and the Sexual Assault Liaison Officer.

The WAS staff have attended a number of conferences and workshops throughout the year to enhance knowledge and skills and to promote interagency networking and liaison. Examples of these include:

- Seeking Solutions, Domestic Violence and Sexual Assault Conference in QLD;
- National Australian Conference on the Shaken Baby Syndrome;
- International Association of Prosecutors Conference;
- Model Guidelines for the Effective Prosecution of Crimes Against Children Workshop.

Interagency Liaison and Policy Development.

At an Interagency level, there has been WAS representation on the ODPP's Sexual Assault Review Committee the Victims of Crime Inter-agency. The Assistant Solicitor (Sydney) is the ODPP representative on the Victims Advisory Board.

The Sexual Assault Liaison Officer has represented the DPP on the DV perpetrator pilot program steering committee, the Intellectual Disabilities and the Criminal Justice System Task Force, the NSW Police Sexual Assault Interagency Meetings and the sub-committee on legal issues for this interagency.

Appendix 25 Continued

Witness Assistance Service Report

The WAS Manager has attended the working group on alternative models for this same interagency group. Liaison forums for Sexual Assault and Child Protection workers have been held at Head Office and in Sydney West to enhance interagency liaison with WAS and the DPP.

At a policy level WAS has contributed to, and been acknowledged in relation to, a number of recent publications, research reports, development of resources manuals and reviews of interagency guidelines.

WAS contributed to a submission made by the Director to the *Legislative Council Standing Committee on Law and Justice's Inquiry into Child Sexual Assault Matters*. The WAS Manager also made an additional submission to the Inquiry in relation to court preparation resources for children and attended the Inquiry with myself and gave evidence to the Committee. WAS contributed to the submission made by the Director in relation to the *Review of Victims Rights Act (1996) and Victim Rehabilitation and Support Act (1996)* and the WAS Manager also contributed to the *Samuels Inquiry into DPP Prosecution Policy and Guidelines for Charge Bargaining and Tendering of Agreed Facts*.

Community Education, Training and Consultation

The WAS has provided education and training to a number of organisations and groups over the past year. WAS also provides individualised service orientation and court familiarisation for new workers from other agencies. WAS has provided information to organisations on request for displays, forums and victim information kits. The service is often called upon to provide case consultation, as well as consultation on draft policy and procedure documents and information resources for various organisations. WAS has commented on legislative or systemic reform in a number of areas.

The WAS has provided an opportunity for a number of student placements. These include longer-term practicums for social work, social work law, and master of forensic psychology students, and shorter-term orientation programs, and court familiarisation sessions for law students and work experience students. WAS also provides familiarisation to the courts and remote witness facilities and CCTV for new child protection and sexual assault workers.

The Samuels Report

The Report by the Hon Gordon Samuels AC CVO QC on his Review of the New South Wales Director of Public Prosecutions' Policy and Guidelines for Charge Bargaining and Tendering of Agreed Facts was released on 6 June 2002.

In his report at p52 Mr Samuels said:

It must be emphasised that victims are often greatly shaken and emotionally disturbed by their experience. It is not to be expected that those in the depths of sorrow at bereavement, or of anger and humiliation, can easily consider their situation with the detachment that the administration of justice demands. They seek revenge, but as the Federal Court has said: "Vengeance is not to be equated with justice". Nor can anguish be measured and compensated by terms of imprisonment. Victims may feel that objectivity denotes indifference or want of compassion. Hence explanation of how the system works, and discussion of possible outcomes, must be handled with delicacy. The Witness Assistance Service, to which such victims should be referred, can be of considerable assistance in these cases.

And at pp 53-54:

Suggested amendment to Guideline 28, communications Guideline 28 provides in the second paragraph:- *"If they so request, witnesses, victims of crime and concerned relatives of deceased victims must be kept informed of the progress of proceedings in which they are interested and of important decisions made in relation to them." The words "and of important decisions made in relation to them" clearly imply that this information may be conveyed after the deed has been done. This, of course, is quite contrary to what should be the appropriate procedure. I have been doubtful whether the words "if they so request" should be omitted. It is quite a demanding operation to require the ODPP to keep all witnesses and victims of crime and concerned relatives of deceased victims informed of the progress of proceedings throughout the course of the prosecution. This would entail informing this cohort of all mentions and arraignment hearings. However, the rule ought to be that the people in question should be kept informed whether they ask or not. "Concerned relatives" may themselves be victims by dint of section 5(3) of the **Victims Rights Act, 1996**. Hence "victims of crime as defined by s 5 of the Victims Rights Act, 1996" would be sufficient identification.*

I consider therefore that the first sentence of the second paragraph of Guideline 28 should be deleted and

Appendix 25 Continued

Witness Assistance Service Report

following inserted in lieu: "Witnesses and victims of crime (as defined by section 5 of the Victims Rights Act 1996) must be kept informed of the progress of proceedings in which they are interested and victims must be consulted about important decisions proposed to be made in relation to them". Guideline 28 mentions: "The Witness Assistance Service may assist in appropriate cases". The Witness Assistance Service seems to me to perform very competently and helpfully, and its assistance should be sought in every case of any substance; that is to say, certainly in any case in which there is an identifiable victim of serious crime, particularly cases of sexual assault.

The operational burden placed on the Office by removing the words "on request" from Guideline 28 is recognised by Mr Samuels. While it is not the WAS role to provide legal updates and information about the progress of matters or to conduct conferences with victims and witnesses, this recommendation will impact on the WAS. Removing the words "on request", will increase the number of victims and witnesses in the expanded cohort required to be referred to the WAS. WAS Officers will also be required to attend a broader range of victim conferences, and further expand the support to victims pre trial and during trial proceedings. This will require substantial additional resources for the WAS. The WAS is already seeing an increase in referrals from solicitors since the release of the Samuels Report.

To fully implement the recommendations in that Report and to meet growing community expectations additional funding has been sought to enable substantial expansion of WAS.

New challenges lay ahead for the next year for WAS and this includes securing adequate resources to enable services to be expanded so that comprehensive services can be provided to a greater cohort of victims of serious indictable crimes.

Appendix 26

Overseas Travel 2001-2002

Staff Member

Mr G Lerve

Dates, Places and Travel Details

22-26 July 2001

Boston, USA

Attendance at the US National District Attorneys' Association Conference

Reason for Travel, and Expenses Details (\$AUS)

Mr Lerve continued to develop contacts on behalf of the Office with NDAA members. This Conference included many topics of interest and relevance to the ODPP.

Mr Lerve was regarded as being on duty for 4 days while attending the Conference.

Registration – \$726.00

Accommodation – \$1,617.00

Mr Lerve paid his own airfares

Approval dated 26 June 2001

Total Cost (\$ AUS)

\$2,343.00

Staff Member

Ms H Wilson

Crown Prosecutor

Mr N, Cowdrey QC

Dates, Places and Travel Details

13-17 August 2001

Chengde, China

Participation in the conduct of workshops on the rules of evidence and criminal procedure

Reason for Travel, and Expenses Details (\$AUS)

This program is a continuation of the China-Australia Human Rights Technical Cooperation Program (HRTC).

The HRTC is fully funded by the Australian Government through AusAID and the Human Rights and Equal Opportunity Commission.

Mr Cowdrey QC and Ms Wilson were regarded as being on duty for 5 days.

Approval dated 12 July 2001

Total Cost (\$ AUS)

NIL

Appendix 26 Continued

Overseas Travel 2001-2002

Staff Member

Mr N Cowdery QC

Dates, Places and Travel Details

4-7 October 2001

Christchurch, New Zealand

Attendance at the 17th LAWASIA Biennial Conference

Reason for Travel, and Expenses Details (\$AUS)

The Conference program contained much of interest and benefit to the Office through its content and contacts made.

Mr Cowdery QC was regarded as being on duty for 2 days while attending the conference.

Registration – \$1,467.06

Accommodation – \$485.93

Taxi – \$27.94

Airfare – \$1,534.50

Approval dated 14 September 2001

Total Cost (\$AUS)

\$3,625.58

Staff Member

Mr N Cowdery QC

Dates, Places and Travel Details

12-14 November 2001

Guangzhou, China

Attendance at the Regional Conference of Attorneys-General of Countries in Asia and Europe

Reason for Travel, and Expenses Details (\$AUS)

Mr Cowdery QC made an address at the opening ceremony. Conference topics were relevant to the ODPF.

Fares, accommodation and sustenance were paid by the Chinese.

Mr Cowdery QC was regarded as on duty for the period of the Conference.

Approval dated 14 September 2001

Total Cost (\$ AUS)

Nil

Staff Member

Mr J Shaw

Manager, Service Improvement Unit

Dates, Places and Travel Details

18-20 November 2001 Entebbe, Uganda

Attendance at the CAPAM (Commonwealth

Association for Public Administration and Management) International Seminar

Reason for Travel, and Expenses Details (\$AUS)

Mr Shaw was regarded as on duty during travel and attendance at the Seminar.

The costs to the Office were for registration, accommodation and sustenance.

Mr Shaw paid his own airfares.

Approval dated 9 October 2001

Total Cost (\$ AUS)

\$1,688.00

Staff Member

Mr N Cowdery QC

Dates, Places and Travel Details

20-23 January 2002 Eastern Cape Province, South Africa

Attendance at and participation in the Annual Senior Management Conference of the National Prosecuting Authority (NPA) of South Africa

Reason for Travel, and Expenses Details (\$AUS)

The Conference contributed to the development of the NPA and enhanced the international role of the ODPF.

All costs of transportation and accommodation in South Africa were paid for by the South African authorities.

Mr Cowdery was regarded as on duty for 3 days.

Return airfares - \$4698.28

Approval dated 4 December 2001

Total Cost (\$ AUS)

\$4,821.98

Staff Member

Mr N Cowdery QC,

Dates, Places and Travel Details

17-26 February 2002 Papua New Guinea

Reason for Travel, and Expenses Details (\$AUS)

Mid-term review by Anutech of the PNG Attorney General's Department Institutional Strengthening Project*

Mr Cowdery QC was requested to be a member of the review team.

Airfares and accommodation were paid by Anutech.

Appendix 26 Continued

Overseas Travel 2001-2002

Mr Cowdery was regarded as on duty for 7 days

Approval received 8 February 2002

* The ODPP made a profit of \$11,220 from Mr Cowdery's work. This amount reduced the overall costs of overseas visits

Total Cost (\$ AUS)

Nil

Staff Member

Mr N Cowdery QC

Dates, Places and Travel Details

3-8 March 2002

Official visit to Hong Kong, China

Reason for Travel, and Expenses Details (\$AUS)

All costs paid by the Government of Hong Kong, China.

Regarded as on duty 5 days.

Approval dated 4 March 2002

Total Cost (\$ AUS)

Nil

Staff Member

Mr B Roach Crown Prosecutor

Dates, Places and Travel Details

11-12 May 2002

Dublin, Ireland

Reason for Travel, and Expenses Details (\$AUS)

Second Annual National Prosecutors' Conference of Republic of Ireland.

Mr Roach was regarded as on duty for 2 days

Two nights accommodation paid by the ODPP.

Mr Roach paid his own airfares

Approval dated 4 April 2002

Total Cost (\$ AUS)

\$632.00

Staff Member

Mr N Cowdery QC,

Dates, Places and Travel Details

12-14 May 2002

Ljubljana, Slovenia

3rd Conference of Prosecutors General of Europe

16-17 May 2002

Baku, Azerbaijan

IAP Executive Committee meeting

19-22 May 2002

Visit to IAP Secretariat in The Hague, and attendance at the Milosevic trial as an observer.

24 and 25 May 2002

Miami, USA

Presentation of programs at The Alleged

Transnational Criminal Seminar conducted by IBA

Reason for Travel, and Expenses Details (\$AUS)

Additional information:

Accommodation:

Ljubljana \$838.19

Baku \$885.68

The Hague \$Nil

Miami \$1,194.02

Registration – Miami \$780.00

Airfares \$9,083.34

Approval dated 9 April 2002

Total Cost (\$ AUS)

\$15,558.20

Staff Member

Mr N Cowdery QC

Ms H Wilson, Crown Prosecutor

Mr C Smith, Deputy Solicitor for Public Prosecutions (Operations)

Dates, Places and Travel Detail

10-12 June 2002

Chengdu, Sichuan Province, China

Reason for Travel, and Expenses Details (\$AUS)

Workshops with Chinese Procurators.

All costs paid by AusAID.

Regarded as on duty for 3 days.

Approval date 7 June 2002 (verbal) and 10 July 2002 (written)

Total Cost (\$ AUS)

Nil

Total cost to Office for overseas trips was

\$12,785.76 for Mr N Cowdery QC and \$4,663.00 for all others.

Appendix 27

Guarantee of Service

The Office's Role

The role of the Office of the Director of Public Prosecutions (ODPP) is to independently advise in, review, institute and conduct proceedings that relate to criminal offences and to improve and ensure the effectiveness of the Criminal Justice System.

The ODPP is responsible for the:

- prosecution of committal proceedings and some summary matters before the Local Courts;
- prosecution of indictable offences in the District and Supreme Courts; and
- conduct of appeals on behalf of the prosecution in the superior courts and the High Court.

Values and Commitments

The staff of the ODPP value and are committed to:

- The independent status of the Office.
- The achievement of justice.
- The highest standards of ethical and professional conduct.
- Responsiveness to the needs of those involved in the prosecution process especially victims and witnesses.
- Encouragement of and respect for diversity within the Office.
- Decision making based on merit, the public interest and the legitimate interests of others.
- Cohesiveness, flexibility and teamwork. Responsiveness to change. Co-operation with other agencies.

Co-Operation with Other Agencies

The Office plays a crucial role in the criminal justice system. However the achievement of many of our objectives depends not only on our efforts but on the willingness of other participants in the system to support them. We need to communicate and consult effectively with all participants in exploring ways of improving the criminal justice system.

Charter of Victims Rights

Prosecutors must have regard to the Charter of Victims Rights and implement it to the extent that it is relevant and practicable to do so.

- The victim should be consulted if consideration is being given to lessening or withdrawing the charges in the Local Court.
- The victim must be informed if a decision is taken not to prosecute the accused person. Reasons for not continuing to prosecute the accused person will usually be provided on written application.
- The victim can ask to be kept informed of the progress of the case by contacting the ODPP lawyer handling the case or the Witness Assistance Service.
- Information is provided about the victim's role in the prosecution process.
- The court must be informed of the victim's need for protection from the accused person when the court decides on bail.
- The victim should be informed about the accused persons bail conditions where they affect the victim or his or her family.
- The victim's home address and telephone number will be kept confidential wherever possible.
- A victim impact statement will be tendered if the victim desires it, and the legislation permits it, provided that the statement complies with the legislation.

The ODPP Witness Assistance Service

The ODPP Witness Assistance Service provides prosecution witnesses, including victims of crime, with support throughout the prosecution process. The Service helps victims to understand the criminal justice process and can also arrange counselling and other support services if requested. Our Witness Assistance staff can be contacted on:

- Sydney (02) 9285 8949
- TTY (02) 9285 8646
- Outside Sydney toll free 008 814 534

Appendix 27 Continued

Guarantee of Service

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Responsiveness to change. Co-operation with other agencies.

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Appendix 28

System Reviews and Program Evaluations

- A review of the Secretariat Unit was completed to evaluate the clerical functions, the routine checking systems and general clerical systems in place within the Secretariat and make appropriate recommendations for improvement. To identify the impact of related practices of all operational areas on the workload of the Secretariat and make appropriate recommendations for improvement. To review the structure of the Secretariat with the view to strengthen reporting relationships with the Director's Chambers.
- Reviews of the Gosford Region Office and Group 3 were completed. These reviews assessed numerous matters against the identified critical issues in the prosecution process to identify best practice and improve systems.

Appendix 29

Disability Action Plan

The Office of the Director of Public Prosecutions NSW remains committed to implementing the Disability Policy Framework and ensuring that any difficulties experienced by people with disabilities in gaining access to its services are identified and eliminated wherever possible.

The Office is again able to report a high level of achievement in relation to our DAP strategies. Our Plan, with progress reports against all strategies, is published on the Office's website: www.odpp.nsw.gov.au.

Appendix 30

Victim and Witness Satisfaction

Since 1994 the ODPP has undertaken a comprehensive victim and witness satisfaction survey every two years. There have been 4 surveys conducted. The next survey is due to be conducted next financial year.

Victims and witnesses can now also provide feedback in relation to service issues via the ODPP website (www.odpp.nsw.gov.au).

The ODPP Guarantee of Service nominates a Service Relations Officer as a point of contact for suggestions and complaints. The Deputy Solicitor for Public Prosecutions (Operations) undertakes the role of Service Relations Officer. The role and telephone number of the Service Relations Officer is published in pamphlets sent to all victims and witnesses and on the ODPP website.

Appendix 31

Internal Audit

The Internal Audit Committee comprises:

Deputy Director (Chair)

Senior Crown Prosecutor

Solicitor for Public Prosecutions

Manager, Corporate Services

Manager, Service Improvement

The following Audits were conducted:

- Payroll Post Implementation review
- SUN Systems Application review

The Committee meets to review audit reports and monitors management responses to those reports.

The Office's internal audit providers and representatives of the NSW Audit Office attend meetings by invitation. The Committee reports to the Executive

Appendix 32

Director Of Public Prosecutions Policy and Guidelines

No new Guidelines were issued during the reporting period nor were any amendments made to the current Prosecution Policy and Guidelines as issued in March 1998.

Refer to the Publications appendix regarding the method to obtain a copy of the Policy and Guidelines.

Appendix 33

Consultants 2001–2002

Consultant	Nature of Service Provided	Paid (GST exclusive)
Dollitte & Tomatsu	Internal Audit-Risk Assessment	\$26,745
CMG IT Services Pty Ltd	IM &T -Risk Assessment	\$75,000
Davidson Trahaire	EAPCounselling	\$260
Dibb Baker Gosling Lawyers	Lease Review	\$455
Government Advertising Agency	Recruitment Services	\$4,100
Internal Audit Bureau	Disciplinary Inquiry	\$6,350
John Hunter Mgt. Services	Recruitment Services	\$825
Lam Chak Wing & Sons(Aust)	Lease Review	\$3,085
Peter Symonds Media Relations	Completion of various business Reports	\$56,711
Point Zero PTY Ltd	E Briefs Project	\$19,469
Department of Public Works	Rent Review	\$2,950
Raymond WM Wong & Co	Lease Review	\$598
Tasman Financial Planning PTY	Recruitment	\$250
TOTAL		\$196,798

Appendix 34

Waste Reduction and Purchasing Plan and Recycling

KEY REPORTING AREAS

The Office of the Director of Public Prosecutions (ODPP) is committed to that responsibility by introducing waste reduction mechanisms and reviewing products purchased to ensure those products are recycled or low waste products, *if it is economically viable to do so within the Office's funding limitations and such purchase does not effect the short and/or long term operation of the Office*

The ODPP is subject to requirements to achieve waste reduction and prepare a purchasing policy, as it is regarded as an "Appendix 2" Agency, within the NSW Government's Waste Reduction and Purchasing Policy Guidelines. The Office's first Waste Reduction and Purchasing Plan (WRAPP) was prepared and submitted in August 1998. The Office's WRAPP progress report will be prepared in 2003.

The following information reports on the progress of the ODPP's WRAPP and recycling endeavours.

1. INCLUSION OF WRAPP AND RECYCLING PRINCIPLES IN CORPORATE PLANS AND OPERATIONAL POLICIES AND PRACTICES :

The ODPP's Key Result Area #3 'Accountability and Efficiency', 2002-2005 Corporate Plan, includes the effective management of waste and implementation of stringent purchasing policies to ensure the performance indicator ie 'responsible financial management' is achieved.

2. ENSURING CONTRACT SPECIFICATIONS REQUIRING THE PURCHASE OF RECYCLED CONTENT PRODUCTS WHERE APPROPRIATE:

The ODPP relies on State Government contracts for all purchases of paper products. Photocopiers are purchased or leased under State Government contract also and maintenance of such machines is provided by the manufacturer on a copy charge basis. Toner for the copiers, while being supplied in PET recyclable plastic bottles, it is not known of the content of recycled plastic in the 'filled' toner bottles.

3. IMPROVING WASTE AVOIDANCE AND RECYCLING SYSTEMS ACROSS THE AGENCY:

The ODPP vigorously encourages waste avoidance and recycling. Recycle Otto Bins and boxes for paper are positioned in strategic positions in all H.O. and Regional Office locations. Cleaners have been given clear instructions on the separation of waste and recyclable items. Staff have clearly labeled/identifiable waste bins and recycle bins near their desks, at copiers, at printers and in the kitchenettes. Staff have

been provided with easy access to the WRAPP for the ODPP, with a copy being included on the Office's DPPnet.

The Office has also approached the adjoining building's building manager to secure approval for the installation of recycle bins in the arcade which joins 265 Castlereagh Street (ODPP's building) with 370 Pitt Street. This would provide for the recycling of plastic, aluminum and glass containers whereas at the present time these items are disposed to waste. Unfortunately because of the strata title owner arrangement in the 370 Pitt Street building, this proposal has not received favorable consideration and subsequently has not been put in-place. The ODPP intends to at least maintain current recycling strategies and take-up opportunities to improve these strategies. The ODPP takes every opportunity to recycle excess furniture by reuse in another office or auction. The Office's refurbishment project completed in 2002 displayed the commitment to recycling as all items that could be reused eg doors, door hardware, compactus units, some steel furniture etc was modified to suit its new location and installed.

4. ESTABLISHING DATA COLLECTION SYSTEMS TO REPORT AGENCY PROGRESS:

The ODPP uses simple methodology to provide data to enable accurate reporting.

Purchasing details:

- Are available from purchase order records and the financial management system. The ODPP is in the process of implementing a new financial system (SUN), which will assist with the monitoring of these details.

Disposal details:

- Are available from contract information, collection invoices

Identification of Waste:

- The ODPP has conducted 2 surveys since the submission of the initial WRAPP in 1998. The surveys were conducted each working day over a period of 2 weeks over 3 floors of the 265 Castlereagh Street building. Twenty-five waste bins (circular metal) and one garbage bin (kitchenette) on each floor provided the data.

There was on average 150g of true waste material (garbage) in each of the circular metal bins and 600g in the plastic garbage bins near the kitchenettes each day. The waste types included:

Appendix 34 Continued

Waste Reduction and Purchasing Plan and Recycling

- Aluminum cans
- Polystyrene cups
- Food wrapping, i.e. paper, foil, plastic, paper cups
- Plastic utensils
- Plastic food containers
- Small amounts of suitable items to recycle, i.e. paper products
- Food scraps
- Fruit scraps
- Wooden coffee stirrers
- Tissues
- Serviettes
- Used batteries
- Used pens
- Paper clips, metal binders, pins, staples

The average waste amount *per floor over the two-week period equaled approximately 43.5 kilograms.*

The ODPP intends to undertake a further 'waste' survey in 2003.

5. INCREASING THE RANGE AND QUANTITY OF RECYCLED CONTENT MATERIALS BEING PURCHASED:

- The ODPP has not in the past purchased recycled paper for copiers, printers etc for the Offices Operations Groups, Crown Prosecutors, etc due to the unstable nature of the paper and the lack of guarantee that the paper would stand the test of time.
- When it is proven that recycled paper will not deteriorate and has a life equal to virgin paper, the ODPP will increase its use of recycled paper.

6. RAISING STAFF AWARENESS ABOUT THE WRAPP AND BEST-PRACTICE MANAGEMENT OF WASTE AND PURCHASING OF RECYCLED CONTENT MATERIALS:

- The Office's WRAPP has been published on the DPPnet, the ODPP's internal website.
- Recycle paper boxes contain posters advertising recycling.
- Publicity material on the environmental benefits is placed on Office notice boards.
- The Office's purchasing plan includes the direction for all officers responsible for the purchasing of

Office stores, stationery and consumable items to purchase recycled products where these items meet the operational requirements of the ODPP.

7. BARRIERS/IMPEDIMENTS TO IMPLEMENTING FURTHER RECYCLING PRACTICES UNDER THE WRAPP:

- Archiving restrictions in respect of the long-term serviceability of recycled paper:
- Co-operation of adjoining building owners to install recycle bins (plastic, glass and aluminum) in the arcade between 265 Castlereagh Street and 370 Pitt Street.

The estimated annual quantities of Schedule 'B' products recycled is detailed below:

Item	Percentage (%) Recycled
Photocopy Paper	95–100%
General Office Stationery	95–100%
Computer Paper	95–100%
Photocopiers	100%
Facsimile Machines	100%
Toner Cartridges (copiers and printers)	100%
Excess Office Furniture and/or Equipment	100%

Appendix 35

Community Relations and Principles of Multiculturalism Report

During 1998 the Office of the Director of Public Prosecutions (ODPP) developed its Ethnic Affairs Priorities Statement (EAPS). Since the passage of the Community Relations and Principles of Multiculturalism Act 2000, the EAPS Statement has been renamed the Community Relations and Principles of Multiculturalism Report. The ODPP is required to provide a report in each Annual Report of its progress in implementing the principles of multiculturalism set out in section 3 of the Act, and the key strategies proposed for the next year.

During 2001–02 the ODPP continued to implement the principles of multiculturalism set out in the Act. In particular, the ODPP offered externally provided interpreting services to prosecution witnesses involved in conferences with ODPP lawyers. No formal agreement between the Community Relations Commission and the ODPP has been entered into. However, the ODPP has always relied almost exclusively upon the Commission to supply its language services (both for interpreting services and translated materials).

It remained the policy of the ODPP in its conduct of criminal proceedings to deal with all witnesses and accused having proper regard to, and respect for, their different linguistic, religious, racial and ethnic backgrounds. In accordance with the Director's Prosecution Policy and Guidelines, the ODPP conducted criminal proceedings throughout the year in a way which did not discriminate against any group or individual on the basis of race, gender, culture, religion, language or ethnic origin.

All training programs conducted by the ODPP for its staff had regard to cultural diversity, and all training providers are required to adhere to the ODPP Code of Conduct, which requires respect for individual differences and non discriminatory behaviour. Training courses addressing methods of dealing with victims and witnesses sensitively continued to be run regularly this year; eg Conferencing and Interviewing Skills. It is proposed to continue these courses next year. An MCLE program for lawyers in relation to using interpreters effectively, is also planned. Diversity awareness will also be included as an essential skill in all ODPP performance management planning.

The ODPP Witness Assistance Service (WAS) provides a Statewide specialist service for witnesses and victims of crime in matters being prosecuted by the ODPP. The interpreter service number is prominently displayed on all WAS brochures published by the ODPP. All brochures are on the DPP website. Next year WAS plans to include with the letter sent to all victims in matters being prosecuted by the ODPP a sheet containing a paragraph in various languages advising how the recipient can contact the ODPP via the Telephone Interpreter Service.

The ODPP maintains its commitment to a culturally diverse workplace and to equal employment principles. The profile of the NSW population is reflected in its workforce. The ODPP's EEO achievements are separately listed in Appendix 19. The ODPP continued to promote and utilise the Employee Assistance Program.

The Director provided training to prosecutors in China this year. Prosecutors from several provinces also visited the DPP for briefings and training by ODPP officers. From April 2002, this office participated in a Prosecutors Exchange with the Federal Prosecutions Service in Canada. A Dutch prosecutor completed a 16 month internship with the ODPP in March 2002. These initiatives will continue next year.

Appendix 36

ODPP Representatives on External Committees/Steering Groups

Committee Steering Group	ODPP Representative
Advisory Committee to the DNA Laboratory	Nicholas Cowdery QC
Attorney General's Criminal Justice Forum	Nicholas Cowdery QC
Apprehended Violence Legal Issues Coordination Committee (reviews problems associated with apprehended violence orders)	Philip Dart
Bar Association: Professional Conduct Committees	William Dawe QC David Arnott Daniel Howard Lloyd Babb
Bar Association: Criminal Law Committee	Mark Marien Daniel Howard Lloyd Babb
Cabinet Office Senior Officers Group on Child Protection (continually reviews child protection in NSW)	Philip Dart
Charter of Victims Rights Reference Group	Lee Purches
Child Protection (Offenders Registration) Imp. Committee	Philip Dart
Committee on Intellectual Disability in the Criminal Justice System	Amy Watts
Conference of Australian Directors of Public Prosecutions	Nicholas Cowdery QC
Court Security Committee	John Kiely SC Stephen O'Connor
Criminal Justice System Chief Executive Officers' Standing Committee	Nicholas Cowdery QC
Criminal Law Committee of the Law Society of NSW	Robyn Gray
Criminal Law Accreditation Committee of the Law Society of NSW (Mr Favretto is also a member of the Specialist Accreditation Board of the Law Society of NSW)	John Favretto (Chair)
Criminal Listing Review Committee (reviewing listings in the District Court)	Craig Smith Peter Dare
Drug Court Trial Working Group	Robyn Gray
Forensic Services Group	Paul Conlon SC
Government Lawyers Committee of the Law Society of NSW	Johanna Pheils
Heads of Prosecuting Agencies Conference	Nicholas Cowdery QC
Innocence Panel	Nicholas Cowdery QC
National DPP Executives Conference	Craig Smith Patrick McMahon
Inter-agency Exhibit Management Committee	Claire Giroto Steve O'Connor
Interdepartmental Committee on the Crimes (Forensic Procedures) ACT 2000	Nicholas Cowdery QC
Interdepartmental Committee to review the Mental Health (Criminal Procedure) Act 1990	Craig Williams
Internal Affairs Liaison Group	Janis Watson-Wood
International Association of Prosecutors	Nicholas Cowdery QC
Joint Investigation Teams Evaluation Committee	Philip Dart

Appendix 36 Continued

ODPP Representatives on External Committees/Steering Groups

Committee Steering Group	ODPP Representative
Local Court Rules Committee	Robyn Gray
Magistrates Early Referral Into Treatment (MERIT) Regional Planning Group for South Western Sydney	Claire Giroto
Magistrates Early Referral Into Treatment (MERIT) Statewide Steering Group	Claire Giroto
National Advisory Committee for the Centre for Transnational Crime Prevention (University of Wollongong)	Nicholas Cowdery QC
National Institute of Forensic Sciences Advisory Panel	Nicholas Cowdery QC
National Sexual Assault Reform Committee	Nicholas Cowdery QC
Ombudsman Liaison Group	Janis Watson-Wood
Police Forensic Services/DAL/ODPP Committee	Roy Ellis Mark Tedeschi QC
Police Integrity Commission Liaison Group	Janis Watson-Wood
Police–DPP Prosecution Liaison Standing Committee	Stephen O'Connor David Frearson
Pre-trial Disclosure Working Party	Robyn Gray
Project Reference Group – Interagency Guidelines for Domestic Violence	Philip Dart
Sexual Assault Review Committee	Philip Dart (Chair) Julie Lannen Stephen O'Connor Lee Purches Samantha Smith Vivien Swain Amy Watts
Supreme Court Users' Group	Johanna Pheils
Supreme Court Criminal Users Committee	Roy Ellis
University of Sydney Institute of Criminology Advisory Committee	Nicholas Cowdery QC
Victims Advisory Board under the Victims Rights Act	Philip Dart
Victims of Crime Inter-agency Committee	Philip Dart Lee Purches

Appendix 36 Continued

ODPP Representatives on External Committees/Steering Groups State-Wide Prosecution Liaison Groups

Prosecution Liaison Group	ODPP Representative
Hunter	Cliff Fraser Janet Little David O'Neill Amis Tillers
Northern	Col Culpitt Chris Smith
Southern	Peter Burns Alison Dunn
South-West	Rosemary Davidson Susan Maxwell
Sydney East	Geraldine Beattie Robert Heanes
Sydney North	Craig Hyland Michael Sands
Sydney South West	Judith Nelson Philippa Smith
Western	Chris Bailey Ron England Roger Hyman

Appendix 37

Some Cases Dealt with During the Year

R v HOLTON – Murder of police officer during high speed pursuit

The accused Holton was involved in a vehicle pursuit on the Hume Highway south of Campbelltown. The police decided to lay road spikes in an attempt to stop him. As Holton approached at high speed, Senior Constable James Affleck commenced laying the spikes on the roadway. Holton's vehicle, a stolen four wheel drive, struck and killed Senior Constable Affleck. After a plea of guilty to manslaughter was rejected by the Crown, Holton was tried for murder and was convicted of that offence. He was later sentenced to imprisonment for 16 years, with a non parole period of 12 years. He was also disqualified from holding a drivers licence for 20 years.

R v CACCAMO – Supply prohibited drugs

Caccamo was a drug dealer with a network of runners in the Sydney northern beaches area. He was charged with a number of serious offences concerning the supply of heroin and indian hemp. He was also allegedly involved in bribing a number of police in connection with his drug supply business. The matters attracted a significant amount of media attention when the ABC television programme "Four Corners" ran a show on them, and during subsequent Police Integrity Commission public hearings into the police corruption investigation, codenamed "Florida". Caccamo pleaded guilty to the charges and was sentenced to imprisonment for 8 years with a non-parole period of 5 years.

Doctor charged with manslaughter

The accused in this case was an anaesthetist charged with manslaughter. It was alleged by the Crown that gross negligence by the accused had resulted in the death of a 74 year old patient, who had died after undergoing an operation to remove a cancerous colon. In particular, the Crown alleged that the accused failed to maintain an appropriate blood pressure level, over-medicated the patient, and did not recognise the symptoms of circulation failure. The matter went to trial before a jury. The legal representatives of the accused called no witnesses, and submitted that the offence had not been proved beyond reasonable doubt. The accused was found not guilty.

Death of toddler left in car

In this case a 2 year old boy had been left briefly in his mother's car whilst she attended to an errand. The weather was very hot and the air conditioner was left running. It was alleged the accused took the car, with the two year old boy still in it, and soon afterwards abandoned it, turning off the air conditioning, leaving the boy inside, and closing the doors. The boy died of heat exhaustion. The accused was later apprehended in the ACT and extradited to New South Wales. He stood trial for manslaughter and was convicted and sentenced to imprisonment for seven years with a non-parole period of 5 years (he was subsequently acquitted by the Court of Criminal Appeal).

R v AEM, KEM and MM – Crown appeals against gang rape sentences

The accused in this case took two 16 year old girls from a suburban railway station to a house and sexually assaulted them over several hours. The accused pleaded guilty in the District Court to aggravated sexual assault and related charges. They were sentenced to imprisonment for periods of 6 years (AEM and MM), and 5 years and 7 months (KEM). The Crown appealed to the Court of Criminal Appeal against the inadequacy of the sentences. The Court of Criminal Appeal allowed the Crown appeals and the sentences were increased. AEMs' overall sentence was increased to 13 years with a non-parole period of 9 years. KEM's overall sentence was increased to 14 years with a non-parole period of 10 years. MM's overall sentence was increased to 13 years with a non-parole period of 10 years.

R v HILLMAN – Child pornography

Police attended an internet café and apprehended the accused for possessing images of child pornography downloaded from the internet. He admitted to having downloaded numerous images of child pornography, and to having forwarded many of them to other persons via computer chat rooms. The accused subsequently pleaded guilty to charges of publishing and possessing child pornography and was committed for sentence to the District Court, where he was ordered to perform 400 hours of community service. He was also placed on a bond to be of good behaviour for two years.

Appendix 38

Code of Conduct

I. THE NEED FOR A CODE

The role of the Office of the Director of Public Prosecutions (ODPP) in the criminal justice system requires an ongoing commitment by its officers to the following goals:

Professionalism

Independence

Fairness

The maintenance of public confidence in the prosecution process

Professionalism demands competent and efficient discharge of duties, promotion of justice, fairness and ethical conduct and a commitment to professional self development.

Independence demands that there be no restriction by inappropriate individual or sectional influences in the way the ODPP operates and makes its decisions. Public functions must be performed competently, consistently, honestly and free from improper influences.

Fairness demands that public functions be performed with manifest integrity and objectivity, without giving special consideration to any interests (including private interests) that might diverge from the public interest. If improper factors are considered (or appear to have been considered) the legitimacy of what is done is compromised, even where the particular outcome is not affected.

The maintenance of public confidence in the prosecution process requires that public officials consider not only the objective propriety of their conduct, but also the appearance of that conduct to the public. An appearance of impropriety by an individual has the potential to harm the reputation of that individual and the reputation of the ODPP.

2. THE CODE'S PRINCIPLES

Ethical behaviour requires more than a mere compliance with rules. This Code seeks to outline the ethical standards and principles which apply to officers, and to sketch the spirit rather than the letter of the requirements to be observed.

The Code is an evolving document that will be modified periodically according to our experience. In order to assist in understanding the standards of conduct expected, the Code includes illustrations of circumstances that might be confronted.

The examples should not be regarded as exhaustive or prescriptive.

The following principles will guide the work of ODPP officers.

3. ACCOUNTABILITY

In general terms officers are accountable to the Director and, through the Attorney General, to the Parliament and people of New South Wales. When acting in the course of their employment officers must comply with all applicable legislative, professional, administrative and industrial requirements. The sources of the main requirements, duties and obligations are listed in Appendix A, page 87. Officers should be aware of them insofar as they apply to their professional status and to their particular role and duties within the ODPP.

4. INTEGRITY AND PUBLIC INTEREST

Officers will promote confidence in the integrity of the ODPP's operations and processes. They will act officially in the public interest and not in their private interests. A sense of loyalty to colleagues, stakeholders, family, friends or acquaintances is admirable; however, that sense of loyalty cannot diverge from, or conflict with, public duty. Officers will behave in a way which does not conflict with their duties as public officials.

5. EFFECTIVENESS AND EFFICIENCY

Officers will keep up to date with advances and changes in their areas of expertise and look for ways to improve performance and achieve high standards in a cost effective manner.

6. DECISION MAKING

Decisions must be impartial, reasonable, fair and consistently appropriate to the circumstances, based on a consideration of all the relevant facts, law and policy and supported by documentation which clearly reflects this.

7. RESPONSIVE SERVICE

Officers will deliver services fairly, impartially and courteously to the public and stakeholders. In delivering services they will be sensitive to the diversity in the community.

They will seek to provide relevant information to stakeholders promptly and in a way that is clear, complete and accurate.

8. RESPECT FOR PEOPLE

Officers will treat members of the public,

Appendix 38 Continued

Code of Conduct

stakeholders and colleagues fairly and consistently, in a non-discriminatory manner with proper regard for their rights, special needs, obligations and legitimate expectations.

9. TO WHOM DOES THE CODE APPLY?

The Code applies to:

- The Director
- Deputy Directors
- Crown Prosecutors
- The Solicitor for Public Prosecutions.
- All staff within the ODPP whether or not they are permanent or temporary employees.
- Persons on secondment, work experience, volunteer employment and work training schemes in the ODPP.

In their work, officers are individually accountable for their acts and omissions. In addition, managers of staff employed under the Public Sector Management Act 1988 are accountable for the acts and omissions of their subordinate staff. This does not mean that managers will be held responsible for every minor fault of subordinate staff. It means that managers will be called to account for unsatisfactory acts or omissions of their subordinate staff if these are so serious, repeated or widespread that managers should know of them and address them, if they are exercising the level of leadership, management and supervision appropriate to their managerial position.

Throughout this Code, the terms “officer” and “officers” include Crown Prosecutors, Deputy Senior Crown Prosecutors, the Senior Crown Prosecutor, the Solicitor for Public Prosecutions, all members of the Solicitor’s Executive, the Deputy Directors of Public Prosecutions and the Director of Public Prosecutions.

10. HOW ARE ETHICAL ISSUES RESOLVED?

If there is an ethical issue or problem, it should be addressed. Our professional colleagues should be encouraged likewise. For staff employed under the Public Sector Management Act, the first point of contact should be the appropriate line manager. For Crown Prosecutors, the first point of contact should be the Senior Crown Prosecutor. If the matter cannot be resolved or if it is inappropriate to raise it with such a person, then a more senior person within the ODPP or a member of an appropriate professional ethics committee or a member of the

PSA/ODPP Committee or a union official or delegate should be approached.

11. BREACH OF THE CODE

Serious breaches of the Code of Conduct must be reported. The reports may be made orally or in writing to (as appropriate):

- The Director
- Senior Crown Prosecutor
- The Solicitor
- Manager, Corporate Services
- The appropriate Line Manager

Failure to comply with the Code’s requirements, or any other legal requirement or lawful directive, may, in the case of staff employed under the Public Sector Management Act, render an officer subject to a range of administrative and legal sanctions. These sanctions may include a caution, counselling (including retraining), deferral of a pay increment, a record made on a personal file, suspension, or preferment of criminal or disciplinary charges (including external disciplinary action in the case of legal practitioners) with the imposition of a range of penalties including dismissal. Sanctions against a Director, a Deputy Director or a Crown Prosecutor are subject to the Director of Public Prosecutions Act, the Crown Prosecutors Act and the Legal Profession Act. A breach of the Code may also be reported to the ICAC, Law Society, Bar Association, Legal Services Commissioner or other relevant professional body.

12. GUIDELINES

While there is no set of rules capable of providing answers to all ethical questions in all contexts, the following will assist in identifying and determining responses. The guidelines are not meant to be exhaustive; rather they alert officers to the contexts in which problems may arise.

13. PERSONAL BEHAVIOUR

Officers are obliged:

- not to harass or discriminate against colleagues, stakeholders or members of the public on the grounds of sex, race, social status, age, religion, sexual preference or physical or intellectual impairment;
- to report harassment or discrimination to a manager or other senior officer;
- to be courteous and not use offensive language

Appendix 38 Continued

Code of Conduct

or behave in an offensive manner;

- to respect the privacy, confidence and values of colleagues, stakeholders and members of the public, unless obliged by this Code or other lawful directive or requirement to disclose or report.

14. PROFESSIONAL BEHAVIOUR

Officers must:

- comply with the Director's Prosecution Policy and Guidelines;
- work diligently and expeditiously, following approved procedures;
- maintain adequate documentation to support decisions made by them. In the case of prosecutors this should include decisions in relation to plea negotiations, elections and Form's;
- give dispassionate advice;
- be politically and personally impartial in their professional conduct;
- take all reasonable steps to avoid and report any conflicts of interest: personal, pecuniary or otherwise;
- report any professional misconduct or serious unprofessional conduct by a legal practitioner, whether or not employed by the ODPP;
- comply with the professional conduct and practice rules of those professional associations that apply;
- comply with all reasonable instructions and directions issued to them by their line management, or, in the case of Crown Prosecutors (for administrative matters), the Senior Crown Prosecutor.

15. PUBLIC COMMENT/ CONFIDENTIALITY

Officers will:

not publish or disseminate outside the ODPP any internal email, memorandum, instruction, letter or other document, information or thing without the author's or owner's consent, unless this is necessary for the performance of official duties or for the performance of union duties or is otherwise authorised by law (for example, pursuant to a legislative provision or court order);

within the constraints of available facilities, securely retain all official information, especially information

taken outside the ODPP. Information should not be left unattended in public locations, including unattended in motor vehicles or unsecured courtrooms, unless there is no reasonable alternative course available in the circumstances. The degree of security required will depend upon the sensitivity of the material concerned and the consequences of unauthorised disclosure;

use official information gained in the course of work only for the performance of official duties or for the performance of official union duties;

comply with the requirements of the Privacy and Personal Information Protection Act 1998 relating to the use and disclosure of personal information, and take reasonable steps to ensure that private contractors engaged by the ODPP are aware of these requirements;

not access or seek to access official information that they do not require to fulfil their duties;

not make any official comment on matters relating to the ODPP unless authorised;

comply with the Director's Media Contact Guidelines.

16. USE OF OFFICIAL RESOURCES, FACILITIES AND EQUIPMENT/FINANCIAL MANAGEMENT

Officers will

Follow correct procedures as handed down by Treasury and in ODPP instructions;

observe the highest standards of probity with public moneys, property and facilities;

be efficient and economic in the use of public resources and not utilise them for private purposes unless official permission is first obtained;

not permit the misuse of public resources by others;

be aware of and adhere to the ODPP Policy and Guidelines on the Use of Email;

not create, knowingly access, download or transmit pornographic, sexually explicit, offensive or other inappropriate material, using email, or the internet (examples of such material include offensive jokes or cartoons (sexist/racist/smutfy), offensive comments about other staff members and material which is racist, sexist, harassing, threatening or defamatory). If such material is received, immediately delete it and advise the line manager or the Senior Crown Prosecutor, as appropriate;

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Code of Conduct

use official facilities and equipment for private purposes only when official permission has been given. Officers must ensure that the equipment is properly cared for and that their ability and that of others to fulfil their duties is not impeded by the use of the equipment. Occasional brief private use of email or the internet is permissible, provided that this does not interfere with the satisfactory performance of the user's duties. Telephones at work may be used for personal calls only if they are local, short, infrequent and do not interfere with work;

comply with the copyright and licensing conditions of documentation, services and equipment provided to or by the ODPP.

17. OFFICE MOTOR VEHICLES

Do not under any circumstances drive an office vehicle while under the influence of alcohol or of any drug which impairs your ability to drive.

18. SECONDARY EMPLOYMENT

For staff employed under the Public Sector Management Act, prior written approval of the Director is required before engaging in any paid employment, service or undertaking outside official duties.

For Crown Prosecutors the consent of the Attorney General or the Director must be obtained before engaging in the practice of law (whether within or outside New South Wales) outside the duties of his/her office, or before engaging in paid employment outside the duties of his/her office. In relation to a Director, a Deputy Director and the Solicitor for Public Prosecutions, the consent of the Attorney General must be obtained in similar circumstances.

Officers will not seek, undertake or continue with secondary employment or pursue other financial interests if they may adversely affect official duties or give rise to a conflict of interest or to the appearance of a conflict of interest.

19. POST SEPARATION EMPLOYMENT

Officers must not misuse their position to obtain opportunities for future employment. Officers should not allow themselves or their work to be influenced by plans for, or offers of, employment outside the ODPP. If they do, there is a conflict of interest and their integrity as well as that of the ODPP is at risk. Officers should be careful in dealings with former employees and ensure that they do not give them, or appear to give them, favourable treatment or access to any information (particularly privileged or

confidential information). Where officers are no longer employed, attached to or appointed to the ODPP, they must not use or take advantage of confidential information obtained in the course of their duties unless and until it has become publicly available.

20. ACCEPTANCE OF GIFTS OR BENEFITS

An officer will not accept a gift or benefit if it could be seen by the public as intended, or likely, to cause him/her to perform an official duty in a particular way, or to conflict with his/her public duty. Under no circumstances will officers solicit or encourage any gift or benefit from those with whom they have professional contact.

Token gifts or benefits up to an approximate value of \$50 may be accepted, but only where refusal may offend and there is no possibility that the officer might be, or might appear to be, compromised in the process. This concession only applies to infrequent situations and not to regular acceptance of such token gifts or benefits. No other gifts or benefits may be accepted without the prior permission of the appropriate manager or senior officer. Such permission must be recorded in writing in the appropriate administrative file.

Acceptance of bribes and the offering of bribes are offences. The solicitation of money, gifts or benefits in connection with official duties is an offence. If an officer believes that he/she has been offered a bribe or that a colleague has been offered or accepted a bribe, that must be reported in accordance with the procedures for notification of corrupt conduct.

21. CONFLICTS OF INTEREST

In order to ensure that the ODPP's work is impartial, and is seen to be so, officers' personal interests, associations and activities (financial, political or otherwise) must not conflict with the proper exercise of their duties.

In many cases only the officer will be aware of the potential for conflict. The primary responsibility is to disclose the potential or actual conflict to a manager or other senior officer, so that an informed decision can be made as to whether the officer should continue with the matter.

Officers should assess conflicts of interest in terms of perception as well as result. With conflicts of interest, it is generally the processes or relationships that are important, rather than the actual decision or result. If there has been a potential or actual conflict then the

Appendix 38 Continued

Code of Conduct

decision or action becomes compromised, even if the decision or action has not been altered by the compromising circumstances.

Conflicts of interest may arise for example where (but this list is not to be regarded as exhaustive):

- an officer has a personal relationship with a person who is involved in a matter which he/she is conducting (e.g. the victim, a witness, a police officer, the defendant or defendant's legal representative). This has the potential to compromise an officer's ability to make objective professional judgments; for example as to the extent of prosecution disclosure to the defence;
- secondary employment or financial interests that could compromise an officer's integrity or that of the ODPP;
- party political, social or community membership or activities may conflict with an officer's public duty (e.g. prosecuting someone known to be a member or participant of the same or a rival political party, social or community organisation);
- personal beliefs or those of others are put ahead of prosecutorial and ODPP obligations;
- an officer or friend or relative has a financial interest in a matter (including goods and services) that the ODPP is dealing with.

Conflicts may also arise in those contexts covered by professional practice and conduct rules of the Law Society and Bar Association, and the conduct rules of other relevant professional bodies.

If in any doubt as to whether there is a conflict, or the appearance of a conflict, an officer should make a confidential disclosure and seek advice.

22. COURT CHARACTER REFERENCES

Crown Prosecutors, lawyers and all other officers are not to use Crown Prosecutors' or ODPP letterheads when giving written character references to be used in court proceedings.

References may be given, but in the officer's private capacity. However, it is permissible to state (in writing or in evidence) that the officer is a Crown Prosecutor or a lawyer or officer employed by the ODPP.

If an officer is to be called to give character evidence by the defence (or it is reasonably expected that he/she will be called) prior notice (being before the day of court at the very latest, but otherwise as soon as it is known) is to be given to either the

Senior Crown Prosecutor (or a Deputy Senior Crown Prosecutor in his absence) or the Solicitor for Public Prosecutions or a Deputy Solicitor for Public Prosecutions by a Crown Prosecutor (in the first case), lawyer or other staff member (in the second case).

This notice will assist in avoiding any embarrassment to the prosecutor in the matter.

When giving a written reference or evidence in court it is to be made known expressly that the officer is doing so privately and not in his/her capacity as a Crown Prosecutor, lawyer or other officer employed by the ODPP.

23. NOTIFICATION OF BANKRUPTCY, CORRUPT OR UNETHICAL CONDUCT AND PROTECTED DISCLOSURES

If an officer becomes bankrupt, or makes a composition, arrangement or assignment for the benefit of creditors, the officer must promptly notify the Director, and provide the Director, within a reasonable time, with such further information with respect to the cause of the bankruptcy, or the making of the composition, arrangement or assignment, as the Director requires.

All officers have a responsibility to report conduct that is suspected to be corrupt. Corrupt conduct is defined in sections 7 and 9 of the Independent Commission Against Corruption (ICAC) Act 1988. The definition is intentionally very broad but the key principle is misuse of public office, or breach of public duty. Corrupt conduct occurs when:

- a public official carries out public duties dishonestly or unfairly
- anyone does something that could result in a public official carrying out public duties dishonestly or unfairly
- anyone does something that has a detrimental effect on official functions, and which involves any of a wide range of matters, including fraud, bribery, official misconduct and violence.
- a public official misuses his/her position to gain favours or preferential treatment or misuses information or material obtained in the course of duty.

Conduct is not corrupt in terms of the ICAC Act unless it involves (or could involve) a criminal offence, a disciplinary offence or reasonable grounds to dismiss a public official.

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Code of Conduct

The Director has a duty under the Act to report to the ICAC any matter which, on reasonable grounds, concerns, or may concern, corrupt conduct. The ODPP also has an established procedure with the Police Service pursuant to which allegations of suspicious or corrupt conduct by police officers are reported directly to the appropriate agency.

In appropriate circumstances the ODPP will report unethical behaviour by professionals to the relevant professional association (e.g. the Law Society, Bar Association or Legal Services Commissioner).

The Protected Disclosures Act encourages and facilitates the disclosure of corruption, maladministration and waste in the public sector. Procedures for the making of protected disclosures about these matters can be found in the Protected Disclosures Procedures.

APPENDIX A

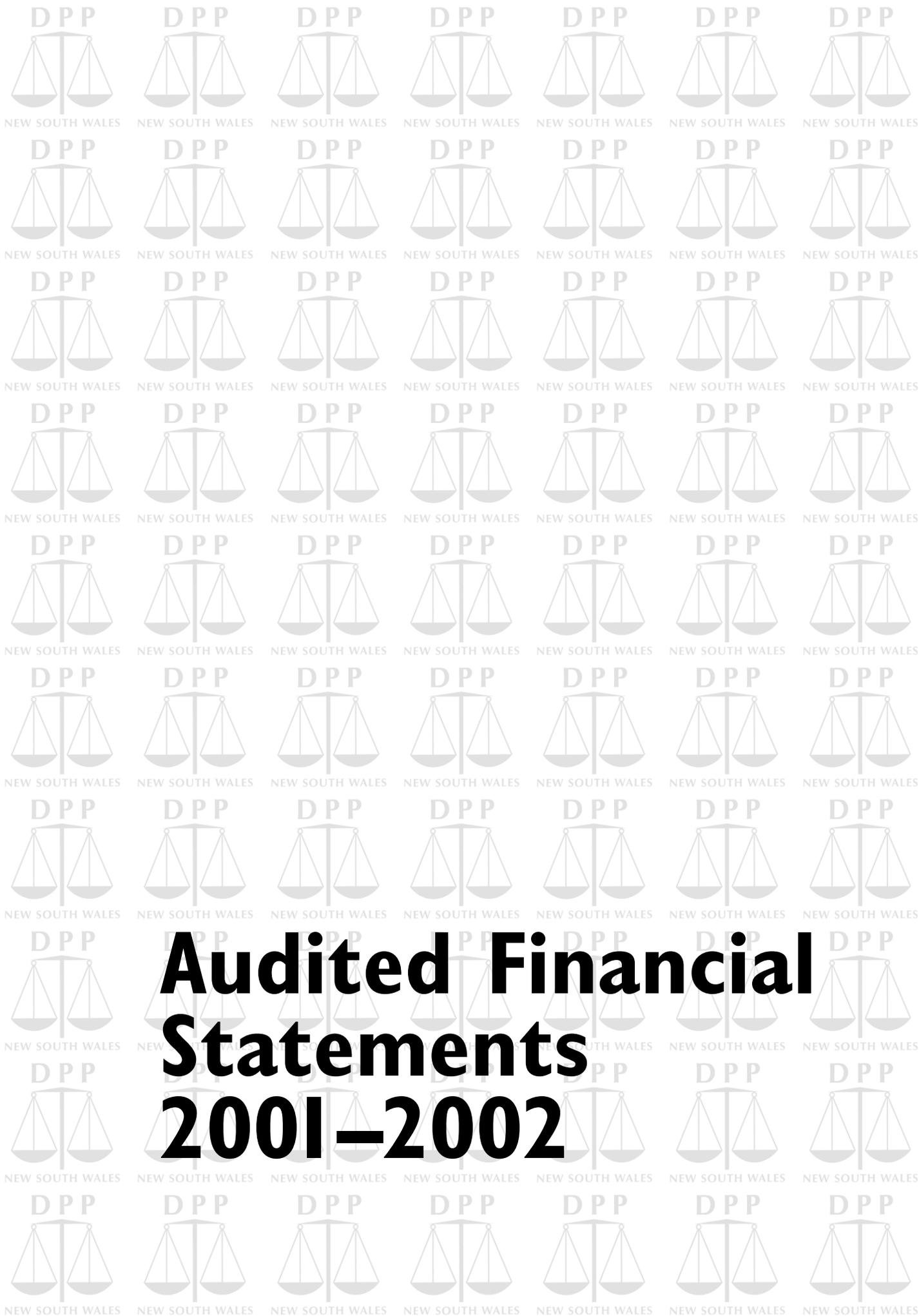
RELEVANT LEGISLATIVE, PROFESSIONAL, ADMINISTRATIVE AND INDUSTRIAL REQUIREMENTS AND OBLIGATIONS

The main requirements, obligations and duties to which we must adhere are found in:

- Director of Public Prosecutions Act 1986
- Public Sector Management Act 1988
- Crown Prosecutors Act 1986
- Legal Practitioners Act 1987
- Victims Rights Act 1996
- Independent Commission Against Corruption Act 1988
- Protected Disclosures Act 1994
- Anti-Discrimination Act 1977
- Occupational Health and Safety Act 1983
- Public Finance and Audit Act 1983
- State Records Act 1998
- Freedom of Information Act 1989
- Privacy and Personal Information Protection Act 1998
- (Cth) Racial Discrimination Act 1975
- (Cth) Sex Discrimination Act 1984

The main requirements, obligations and duties are given effect to, explained or contained in the following policies, rules, guidelines and manuals:

- Director's Prosecution Policy and Guidelines
- Professional Conduct and Practice Rules, Law Society of NSW
- NSW Bar Rules
- AASW Code of Ethics and NSW Psychologists Board Code of Ethical Conduct
- Corporate Services Division, Administrative Policies & Procedures Manual
- Solicitors Manual
- Sentencing Manual
- Child Sexual Assault Manual
- Witness Assistance Service Manual
- NSW Solicitors Manual (Riley)
- ODPP Management Bulletins
- ODPP Information Bulletins
- Personnel Handbook
- Email Policy
- Data Integrity and Security Policy
- Protected Disclosures Procedures
- Guarantee of Service
- Corporate Plan
- Charter of Principles for a Culturally Diverse Society



Audited Financial Statements 2001–2002



Office of the Director of Public Prosecutions
Financial Statements for the Year Ended 30 June 2002

Statement by the Director

Pursuant to Section 45F of the Public Finance and Audit Act, I state that:

- (a) the accompanying financial statements have been prepared in accordance with the provisions of the Public Finance and Audit Act 1983, the Financial Reporting Code for Budget Dependent General Government Sector Agencies, the applicable clauses of the Public Finance and Audit Regulation 2000 and the Treasurer's Directions;
- (b) the statements exhibit a true and fair view of the financial position and transactions of the Office; and
- (c) there are no circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

A handwritten signature in black ink, appearing to read 'N R Cowdery', with a stylized flourish at the end.

N R Cowdery QC
Director of Public Prosecutions

14th October 2002



GPO BOX 12
SYDNEY NSW 2001

INDEPENDENT AUDIT REPORT

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

To Members of the New South Wales Parliament

Scope

I have audited the accounts of the Office of the Director of Public Prosecutions for the year ended 30 June 2002. The Director is responsible for the financial report consisting of the accompanying statement of financial position, statement of financial performance and statement of cash flows, together with the notes thereto, and the information contained therein. My responsibility is to express an opinion on the financial report to Members of the New South Wales Parliament based on my audit as required by the *Public Finance and Audit Act 1983* (the Act).

My audit has been conducted in accordance with the provisions of the Act and Australian Auditing Standards to provide reasonable assurance whether the financial report is free of material misstatement. My procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of accounting policies and significant accounting estimates.

These procedures have been undertaken to form an opinion whether, in all material respects, the financial report is presented fairly in accordance with the requirements of the Act, Accounting Standards and other mandatory professional reporting requirements, in Australia, so as to present a view which is consistent with my understanding of the Office's financial position, the results of its operations and its cash flows.

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

Audit Opinion

In my opinion, the financial report of the Office of the Director of Public Prosecutions complies with section 45E of the Act and presents fairly, in accordance with applicable Accounting Standards and other mandatory professional reporting requirements, the financial position of the Office as at 30 June 2002 and the results of its operations and its cash flows for the year then ended.

A handwritten signature in black ink, appearing to read "A Oyetunji".

A Oyetunji CPA
Assistant Director of Audit

SYDNEY
14 October 2002

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Statement of Financial Performance

for the Year Ended 30 June 2002

	Notes	Actual 2002 \$'000	Budget 2002 \$'000	Actual 2001 \$'000
Expenses				
Operating expenses				
Employee related	2(a)	50,940	46,359	45,713
Other operating expenses	2(b)	10,225	10,421	9,970
Maintenance	2(c)	545	535	637
Depreciation and amortisation	2(d)	1,440	2,130	955
Other expenses	2(e)	3,064	2,991	2,817
Total Expenses				
Less:				
Retained Revenue				
Sale of goods and services	3(a)	65	171	108
Investment income	3(b)	37	132	140
Grants and contributions	3(c)	113	2,030	84
Other revenue	3(d)	502	43	71
Total Retained Revenue		717	2,376	403
Gain on disposal of non-current assets	4	5	5	1
Net Cost of Services				
	21	65,492	60,055	59,688
Government Contributions				
Recurrent appropriation	5	55,886	54,153	52,488
Capital appropriation	5	3,819	3,459	1,949
Acceptance by the Crown Entity of employee entitlements and other liabilities	6	6,665	5,265	5,804
Total Government Contributions		66,370	62,877	60,241
SURPLUS FOR THE YEAR FROM ORDINARY ACTIVITIES		878	2,822	553
NON-OWNER TRANSACTION CHANGES IN EQUITY				
Net (decrease) in asset revaluation reserve		–	–	(1,012)
TOTAL REVENUES, EXPENSES AND VALUATION ADJUSTMENTS RECOGNISED DIRECTLY IN EQUITY		878	2,822	(459)
TOTAL CHANGES IN EQUITY OTHER THAN THOSE RESULTING FROM TRANSACTIONS WITH OWNERS AS OWNERS		17	878	(459)

The accompanying notes form part of these statements.

Statement of Financial Position

as at 30 June 2002

	Notes	Actual 2002 \$'000	Budget 2002 \$'000	Actual 2001 \$'000
ASSETS				
Current Assets				
Cash	8	190	60	182
Receivables	9	1,237	1,032	948
Inventories	10	2	2	2
Other		–	(479)	–
Total Current Assets		1,429	615	1,132
Non-Current Assets				
Plant and Equipment	11	10,626	9,466	6,107
Total Non-Current Assets		10,626	9,466	6,107
Total Assets		12,055	10,081	7,239
LIABILITIES				
Current Liabilities				
Payables	12	2,411	883	837
Employee entitlements and other provisions	13	4,650	4,682	4,708
Other	14	504	65	65
Total Current Liabilities		7,565	5,630	5,610
Non-Current Liabilities				
Employee entitlements and other provisions	15	644	–	–
Other	16	1,339	–	–
Total Non-Current Liabilities		1,983	–	–
Total Liabilities		9,548	5,630	5,610
Net Assets		2,507	4,451	1,629
EQUITY				
Reserves	17	551	551	551
Accumulated funds		1,956	3,900	1,078
Total Equity		2,507	4,451	1,629

The accompanying notes form part of these statements

Statement of Cash Flows

for the Year Ended 30 June 2002

	Notes	Actual 2002 \$'000	Budget 2002 \$'000	Actual 2001 \$'000
CASH FLOWS FROM OPERATING ACTIVITIES				
Payments				
Employee related		(44,748)	(41,717)	(40,967)
Other		(15,176)	(14,830)	(13,810)
Total Payments		(59,924)	(56,547)	(54,777)
Receipts				
Sale of goods and services		58	171	281
Interest Received		73	132	157
Other		3,105	3,078	187
Total Receipts		3,236	3,381	625
Cash Flows from Government				
Recurrent appropriation		56,172	54,153	50,436
Capital appropriation		3,819	3,459	1,949
Cash reimbursements from the Crown Entity		1,439	916	1,209
Net Cash Flows from Government		61,430	58,528	53,594
NET CASH FLOWS FROM OPERATING ACTIVITIES	21	4,742	5,362	(558)
CASH FLOWS FROM INVESTING ACTIVITIES				
Proceeds from sale of plant and equipment		5	5	1
Purchases of plant and equipment		(4,739)	(5,489)	(1,861)
NET CASH FLOWS USED IN INVESTING ACTIVITIES		(4,734)	(5,484)	(1,860)
NET INCREASE/(DECREASE) IN CASH				
Opening cash and cash equivalents		182	182	2,600
CLOSING CASH AND CASH EQUIVALENTS	8	190	60	182

The accompanying notes form part of these statements

Supplementary Financial Statements
Summary of Compliance with Financial Directives
for the Year Ended 30 June 2002

	2002				2001			
	Recurrent Appropriation	Expenditure/ Net Claim on Consolidated Fund	Capital Appropriation	Expenditure/ Net Claim on Consolidated Fund	Recurrent Appropriation	Expenditure	Capital Appropriation	Expenditure
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
ORIGINAL BUDGET APPROPRIATION/ EXPENDITURE								
• Appropriation Act	54,153	54,153	3,459	3,459	52,466	52,432	4,648	1,861
• s21A PF&AA – special appropriation								
• s24 PF&AA – transfers of functions between departments								
• s26 PF&AA – Commonwealth specific purpose payments								
	54,153	54,153	3,459	3,459	52,466	52,432	4,648	1,861
OTHER APPROPRIATIONS/ EXPENDITURE								
• Treasurer's Advance	2,180	1,733	360	360	56	56	–	–
• Section 22 – expenditure for certain works and services								
	2,180	1,733	360	360	56	56	0	0
Total Appropriations Expenditure/Net Claim on Consolidated Fund (includes transfer payments)	56,333	55,886	3,819	3,819	52,522	52,488	4,648	1,861
Amount drawn down against Appropriation		56,172		3,819		52,488		1,949
Liability to Consolidated Fund*		286		–		–		88

The Summary of Compliance is based on the assumption that Consolidated Fund moneys are spent first (except where otherwise identified or prescribed) and the "Total Expenditure/Net Claim on Consolidated Fund".

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

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Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) Reporting Entity

The Office of the Director of Public Prosecutions (the Office), as a reporting entity, comprises all the operating activities under the control of the Office.

The reporting entity is consolidated as part of the NSW Total State Sector and as part of the NSW Public Accounts.

(b) Basis of Accounting

The Office's financial statements are a general purpose financial report which has been prepared on an accruals basis and in accordance with:

- applicable Australian Accounting Standards;
- other authoritative pronouncements of the Australian Accounting Standards Board (AASB);
- Urgent Issue Group (UIG) Consensus Views;
- the requirements of the Public Finance and Audit Act and Regulations; and
- the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies or issued by the Treasurer under section 9(2)(n) of the Act.

Where there are inconsistencies between the above requirements, the legislative provisions have prevailed.

In the absence of a specific Accounting Standard, other authoritative pronouncement of the AASB or UIG Consensus View, the hierarchy of other pronouncements as outlined in AAS 6 "Accounting Policies" is considered.

Except for certain plant and equipment, which are recorded at valuation, the financial statements are prepared in accordance with the historical cost convention. All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency. The accounting policies adopted are consistent with those of the previous year.

(c) Administered Activities

The Office administers, but does not control, certain activities on behalf of the Crown Entity. It is accountable for the transactions relating to those administered activities but does not have the discretion, for example, to deploy the resources for the achievement of the Office's own objectives.

Transactions and balances relating to the administered activities are not recognised as the Office's revenues, but are disclosed in the accompanying schedules as "Administered Revenues".

The accrual basis of accounting and all applicable accounting standards have been adopted for the reporting of the administered activities.

(d) Revenue Recognition

Revenue is recognised when the Office has control of the good or right to receive, it is probable that the economic benefits will flow to the Office and the amount of revenue can be measured reliably. Additional comments regarding the accounting policies for the recognition of revenue are discussed below.

(i) Parliamentary Appropriations and Contributions from Other Bodies

Parliamentary appropriations and contributions from other bodies (including grants and donations) are generally recognised as revenues when the agency obtains control over the assets comprising the appropriations/ contributions. Control over the appropriations and contributions is normally obtained upon the receipt of cash.

An exception to the above is when appropriations are unspent at year-end. In this case, the authority to spend the money lapses and generally the unspent amount must be repaid to the Consolidated Fund in the following financial year. As a result, unspent appropriations are now accounted for as liabilities rather than revenue.

The liability is disclosed in Note 13 as part of "other current liabilities". The amount will be repaid and the liability will be extinguished next financial year.

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

(ii) Sale of Goods and Services

Revenue from the sale of goods and services comprises revenue from the provision of products and services ie user charges. User charges are recognised as revenue when the Office obtains control of the assets that result from them.

(iii) Investment income

Interest revenue is recognised as it accrues.

(e) Employee Entitlements

(i) Salaries and Wages, Annual Leave, Sick Leave and On-Costs

Liabilities for salaries and wages, annual leave and vesting sick leave are recognised and measured as the amount unpaid at the reporting date at current pay rates in respect of employees' services up to that date.

Unused non-vesting sick leave does not give rise to a liability as it is not considered probable that sick leave taken in the future will be greater than the entitlements accrued in the future.

The outstanding amounts of payroll tax, workers' compensation insurance premiums and fringe benefits tax, which are consequential to employment, are recognised as liabilities and expenses where the employee entitlements to which they relate have been recognised.

(ii) Long Service Leave and Superannuation

The Office's liabilities for long service leave and superannuation are assumed by the Crown Entity. The agency accounts for the liability as having been extinguished resulting in the amount assumed being shown as part of the non-monetary revenue item described as "Acceptance by the Crown Entity of Employee Entitlements and other Liabilities".

Long service leave is measured on a nominal basis. The nominal method is based on the remuneration rates at year end for all employees with five or more years of service. It is considered that this measurement technique produces results not materially different from the estimate determined by using the present value basis of measurement.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (ie Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (ie State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

(f) Insurance

The Office's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self insurance for Government agencies. The expense (premium) is determined by the Fund Manager based on past experience.

(g) Accounting for the Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of GST, except:

- the amount of GST incurred by the Office as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of the cost of acquisition of an asset or as part of an item of expense.
- receivables and payables are stated with the amount of GST included.

(h) Acquisitions of Assets

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by the Office. Cost is determined as the fair value of the assets given as consideration plus the costs incidental to the acquisition.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition.

Fair value means the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

Where settlement of any part of cash consideration is deferred, the amounts payable in the future are discounted to their present value at the acquisition date. The discount rate used is the incremental borrowing rate, being the rate at which a similar borrowing could be obtained.

(i) Plant & Equipment

Plant and equipment costing \$5,000 and above individually are capitalised.

(j) Revaluation of Physical Non-Current Assets

Plant and equipment are valued based on the estimated written down replacement cost of the most appropriate modern equivalent replacement facility having a similar service potential to the existing asset.

Each class of physical non-current assets is revalued every 5 years. As a result of the size and nature of the Office's assets this revaluation is conducted over a 5 year period. The last such revaluation of Office's library assets was completed on 30 June 2001 and was based on independent assessment.

In accordance with Treasury policy, the Office has applied the AASB1041 "Revaluation of Non-Current Assets" transitional provisions for the public sector and has elected to apply the existing revaluation basis, while Treasury's policy on fair value is finalised. It is expected, however, that in most instances the current valuation methodology will approximate fair value.

When revaluing non-current assets by reference to current prices for assets newer than those being revalued (adjusted to reflect the present condition of the assets), the gross amount and the related accumulated depreciation is separately restated.

Conversely, where assets are revalued to market value, and not by reference to current prices for assets newer than those being revalued, any balances of accumulated depreciation existing at the revaluation date in respect of those assets are credited to the asset accounts to which they relate. The net asset accounts are increased or decreased by the revaluation increments or decrements.

The recoverable amount test has not been applied as the Office is a not-for-profit entity whose service potential is not related to the ability to generate net cash inflows.

Revaluation increments are credited directly to the asset revaluation reserve, except that, to the extent that an increment reverses a revaluation decrement in respect of that class of asset previously recognised as an expense in the surplus/deficit, the increment is recognised immediately as revenue in the surplus/deficit.

Revaluation decrements are recognised immediately as expenses in the surplus/deficit, except that, to the extent that a credit balance exists in the asset revaluation reserve in respect of the same class of assets, they are debited directly to the asset revaluation reserve.

Revaluation increments and decrements are offset against one another within a class of non-current assets, but not otherwise.

(k) Depreciation of Non-Current Physical Assets

Depreciation is provided for on a straight line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life to the entity.

All material separately identifiable component assets are recognised and depreciated over their shorter useful lives, including those components that in effect represent major periodic maintenance.

The estimated useful life to the entity for each class of asset is:

Office Equipment	7 years
Computer Equipment	4 years
Library Books	15 years
Furniture & Fittings	10 years
Software	4 years

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

(l) Maintenance and repairs

The costs of maintenance are charged as expenses as incurred, except where they relate to the replacement of a component of an asset, in which case the costs are capitalised and depreciated.

(m) Leased Assets

Operating lease payments are charged to the Statement of Financial Performance in the periods in which they are incurred.

(n) Receivables

Receivables are recognised and carried at cost, based on the original invoice amount less a provision for any uncollectable debts. An estimate for doubtful debts is made when collection of the full amount is no longer probable. Bad debts are written off as incurred.

(o) Inventories

The Office holds a small number of corporate wardrobe items for resale to staff at "cost recovery" price only. The inventories are stated at cost value.

(p) Other Assets

Other assets including prepayments are recognised on a cost bases.

(q) Payables

These amount represent liabilities for goods & services provided to the Office.

(r) Bank Overdraft

The Department does not have any bank overdraft facility.

(s) Budgeted amounts

The budgeted amounts are drawn from the budgets as formulated at the beginning of the financial year and with any adjustments for the effects of additional appropriations, s 21A, s24 and/or s 26 of the Public Finance and Audit Act 1983.

The budgeted amounts in the Statement of Financial Performance and the Statement of Cash Flows are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above). However, in the Statement of Financial Position, the amounts vary from the Budget Papers, as the opening balances of the budgeted amounts are based on carried forward actual amounts ie per the audited financial statements (rather than carried forward estimates).

(t) Lease Incentives

Lease incentives are recognised initially as liabilities and then reduced progressively over the term of the leases. The amount by which the liability is reduced on a pro-rata basis is credited against the total lease payment. Lease incentives include, but are not limited to, up-front cash payments to lessees, rent free periods or contributions to certain lessee costs such as the costs of relocating to the premises.

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

2 EXPENSES

	2002 \$'000	2001 \$'000
(a) Employee related expenses comprise the following specific items:		
Salaries and wages (including Recreation Leave)	41,253	37,245
Superannuation	4,322	4,090
Long service leave	2,343	1,714
Workers' compensation Insurance	349	189
Payroll tax and fringe benefit tax	2,673	2,475
	50,940	45,713
(b) Other operating expenses		
Auditor's remuneration – audit or review of the financial reports	33	32
Bad and doubtful debts	5	10
Operating lease rental expense – minimum lease payments	3,859	3,844
Insurance	95	91
Operating lease computer network expense	536	462
Books	276	282
Cleaning	184	165
Consultants	197	302
Fees – Private Barristers	354	456
Fees – Practising Certificates	176	166
Fees – Security	146	127
Gas & Electricity	186	133
Motor Vehicles	407	324
Postal	109	90
Courier	25	21
Printing	81	127
Stores and equipment	492	471
Telephones	725	772
Training	247	252
Travel *	862	970
Other	1,230	873
	10,225	9,970
(c) Maintenance		
Repairs and maintenance	545	637
	545	637
(d) Depreciation		
Computer Equipment	644	237
General Plant and Equipment	700	551
Library Collection	96	167
	1,440	955
(e) Other expenses		
Allowances to Witnesses	3,040	2,751
Ex-gratia payments	21	1
Maintenance Costs of Non Australian Citizens	3	65
	3,064	2,817

* Travel expenses represent expenditure incurred by all staff of the Office for 2001–2002.

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

3 REVENUES

	2002 \$'000	2001 \$'000
(a) Sale of goods and services		
Sale of goods	7	31
Rendering of services		
Commissions – Miscellaneous Deductions	5	5
Costs Awarded	25	34
Oncosts – Officers on loan	10	14
Appearance Fees	17	18
Training fees	1	6
Total sale of goods and rendering of services	65	108
(b) Investment Income		
Interest	37	140
	37	140
(c) Grants and contributions		
Grants from other agencies	113	84
	113	84
(d) Other revenue		
Lease Incentive	472	24
Other revenue	30	47
	502	71

4 GAIN ON DISPOSAL OF NON-CURRENT ASSETS

	2002 \$'000	2001 \$'000
Proceeds from disposal	6	1
Written down value of assets sold	1	–
Net gain on disposal of plant and equipment	5	1

5 APPROPRIATIONS

	2002 \$'000	2001 \$'000
Recurrent appropriations		
Total recurrent drawdowns from Treasury (per Summary of Compliance)	56,172	52,488
Less: Liability to Consolidated Fund (per Summary of Compliance)	286	–
Total	55,886	52,488
Comprising:		
Recurrent appropriations (per Statement of Financial Performance)	55,886	52,488
Total	55,886	52,488
Capital appropriations		
Total capital drawdowns from Treasury (per Summary of Compliance)	3,819	1,949
Less: Liability to Consolidated Fund (per Summary of Compliance)	–	–
Comprising:		
Capital appropriations (per Statement of Financial Performance)	3,819	1,949
Total	3,819	1,949

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

6 ACCEPTANCE BY THE CROWN ENTITY OF EMPLOYEE ENTITLEMENTS AND OTHER LIABILITIES

	2002 \$'000	2001 \$'000
The following liabilities and/or expenses have been assumed by the Crown Entity or other government agencies:		
Superannuation	4,153	3,842
Long Service Leave	2,344	1,714
Payroll Tax on Superannuation	168	248
	6,665	5,804

7 PROGRAMS/ACTIVITIES OF THE OFFICE

The Office operates on one program "26.1.1 Crown Representation in Criminal Prosecutions". The objective of the program is to provide the people of New South Wales with an independent, fair and just prosecution service.

8 CURRENT ASSETS – CASH

For the purposes of the Statement of Cash Flows, cash includes cash on hand and cash at bank within the Treasury Banking System.

Interest is earned on daily bank balances at the monthly average NSW Treasury Corporation (TCorp) 11 am unofficial cash rate adjusted for a management fee to Treasury.

The weighted average effective interest rate for 2001/02 was 3.66% (2001 – 4.88%) computed on a monthly basis.

Cash assets recognised in the Statement of Financial Position are reconciled to cash at the end of the financial year as shown in the Statement of Cash Flows as follows:

	2002 \$'000	2001 \$'000
Cash on hand and cash at bank (per Statement of Financial Position)	190	182
Closing Cash and Cash Equivalents (per Statement of Cash Flows)	190	182

9 CURRENT ASSETS – RECEIVABLES

All trade debtors are recognised as amounts receivable at balance date. Collectability of trade debtors is reviewed on an ongoing basis. Debts which are known to be uncollectable are written off. A provision for doubtful debts is raised when some doubt as to collection exists. The credit risk is the carrying amount (net of any provision for doubtful debts). No interest is earned on trade debtors. The carrying amount approximates net fair value. Sales are made on 30 day terms. Receivables are stated with the amount of GST included.

	2002 \$'000	2001 \$'000
Sale of Goods & Services	328	17
Prepayments	519	526
Interest & Lease Incentive	13	99
LSL & Super	6	11
Advances	38	58
GST Receivable from ATO	333	237
Total Current Assets – Receivables	1,237	948

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

10 CURRENT ASSETS – INVENTORIES

	2002 \$'000	2001 \$'000
Corporate Wardrobe		
At Cost	2	2
	2	2

11 NON CURRENT ASSETS – PLANT AND EQUIPMENT

	2002 \$'000	2001 \$'000
Plant and Equipment		
At Cost	21,315	15,364
At Valuation	1,045	1,045
	22,360	16,409
Accumulated Depreciation at Cost	11,644	10,302
Accumulated Depreciation at Valuation	90	–
	11,734	10,302
Total Plant and Equipment at Net Book Value	10,626	6,107

Reconciliations

Reconciliation of the carrying amounts of plant and equipment at the beginning and end of the current and previous financial year are set out below.

Carrying amount at start of year	6,107	6,263
Additions	5,961	2,029
Disposals	(2)	(3)
Net revaluation decrement	–	(1,012)
Depreciation expense	(1,440)	(955)
Other movements	–	(215)
Carrying amount at end of year	10,626	6,107

The agency continues to derive service potential and economic benefits from the following fully depreciated assets:

262 items of computer equipment consisting of personal computers & printers

14 items of office equipment

5 items of software

17 items of furniture and fittings

12 CURRENT LIABILITIES – PAYABLES

The liabilities are recognised for amounts due to be paid in the future for goods or services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in Treasurer's Direction 219.01. If trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or a statement is received. Treasurer's Direction 219.01 allows the Minister to award interest for late payment. No interest was paid during the year (30 June 2001: \$Nil). The carrying amount approximates fair value.

	2002 \$'000	2001 \$'000
Creditors	1,600	102
Accruals	811	735
	2,411	837

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

13 CURRENT LIABILITIES – EMPLOYEE ENTITLEMENTS AND OTHER LIABILITIES

	2002 \$'000	2001 \$'000
Recreation leave	3,391	2,936
Accrued salaries and wages	983	855
Payroll Tax oncosts for recreation leave and long service leave	276	917
Aggregate employee entitlements	4,650	4,708

14 CURRENT LIABILITIES – OTHER

	2002 \$'000	2001 \$'000
Liability to Consolidated Fund	286	–
Deferred Income	218	65
	504	65

15 NON-CURRENT LIABILITIES – EMPLOYEE ENTITLEMENTS

	2002 \$'000	2001 \$'000
Payroll Tax oncosts for long service leave	644	–
	644	–

16 NON-CURRENT LIABILITIES – OTHER

	2002 \$'000	2001 \$'000
Deferred Income	1,339	–
	1,339	–

17 CHANGES IN EQUITY

	Accumulated Funds		Asset Revaluation		Total Equity	
	2002 \$'000	2001 \$'000	2002 \$'000	2001 \$'000	2002 \$'000	2001 \$'000
Balance at the beginning of the financial year	1,078	525	551	1,563	1,629	2,088
Changes in equity – other than transactions with owners as owners						
Surplus/(deficit) for the year	878	553	–	–	878	553
Decrement on revaluation of Plant and Equipment	–	–		(1,012)	–	(1,012)
Total	878	553	–	(1,012)	878	(459)
Balance at the end of the financial year	1,956	1,078	551	551	2,507	1,629

Asset Revaluation Reserve

The Asset revaluation reserve is used to record increments and decrements on the revaluation of non-current assets. This accord with the Office's policy on the "Revaluation of Physical Non-Current Assets" as discussed in note 1(j).

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

18 COMMITMENTS FOR EXPENDITURE

	2002 \$'000	2001 \$'000
Operating Lease Commitments		
Future non-cancellable operating lease rentals not provided for and payable		
Not later than one year	4,967	4,755
Later than one year and not later than 5 years	12,490	12,349
Later than 5 years	6,666	8,374
Total (including GST)	24,123	25,478

Non cancellable leases relate to commitments for accommodation for Head Office and the 10 regional offices throughout the State, lease of computer equipment and motor vehicles. Commitments for accommodation are based on current costs and are subject to future rent reviews.

Contingent Asset

The total "Operating Lease Commitments" above includes input tax credits of \$2.193 that are expected to be recoverable from the ATO.

19 CONTINGENT LIABILITIES

	2002 \$'000	2001 \$'000
Possible claims arising from litigation	1,367	350
	1,367	350

The Office may be liable for compensation payments arising from claims not exceeding \$1,367,000 for which there is complete insurance cover with the Treasury Managed Fund.

20 BUDGET REVIEW

Net Cost of Services

The actual net cost of services of \$65.49M was higher than budget by \$5.44M. This was primarily due to the allocation \$1.3M for implementation of the pre Trial Disclosure Act, \$0.66M for increased witness expenditure and \$0.22M for implementing the salary increase awarded to the statutory officers by the Statutory Officers and Others Remuneration Tribunal (SOORT) from the Treasurer's Advance Account.

Further only 2% out of 3% of the salary increase paid to the staff other than statutory officers, has been funded in the budget. Recreation and Extended Leave expenditure also increased as a result of salary increase.

Assets and Liabilities

Total non-current assets was higher than budget by \$1.16M due to assets addition for Head office refurbishment project being accounted in the 2001 budget. The project was completed and accounted in 2002.

Receivables were higher than the budget due to lease incentive receivable of \$0.21 included in the actual.

Payable increased due to capital creditors invoices amounting to \$1.20M included in the payable and these amounts were paid from Land lord's grant for lease incentive.

Current Liabilities – other were higher than the budget due to the lease incentive of \$0.22M being included in the current liabilities.

Non-Current Liabilities – other were higher than budget due to the lease incentive of \$1.34M being included in the non-current liabilities.

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2002

21 RECONCILIATION OF CASH FLOWS FROM OPERATING ACTIVITIES TO NET COST OF SERVICES

	2002 \$'000	2001 \$'000
Net cash used on operating activities	4,742	(558)
Net cash used on capital expenditure	1,220	–
Cash flows from Government/Appropriations	(61,430)	(53,594)
Acceptance by the Crown Entity of employee entitlements and other liabilities	(5,226)	(4,595)
Depreciation	(1,440)	(955)
Decrease/(Increase) in provisions	(586)	(296)
Increase/(decrease) in prepayments and other assets	289	(166)
(Increase)/decrease in Creditors	(1,574)	460
Net (loss)/gain on sale of plant and equipment	5	1
Increase/(Decrease) in deferred income	(1,492)	15
Net cost of services	(65,492)	(59,688)

END OF AUDITED FINANCIAL STATEMENTS

Account Payment Performance

1 July 2001 to 30 June 2002

To facilitate comparison against actual performance, an internal target level of 85% was set for the financial year 2001/2002

	Current Year	Previous Years	
	2001/2002	2000/2001	1999/2000
Aging of Accounts Paid:			
Current (ie.within due date)	\$15,862,266	\$12,937,498	\$12,429,186
Less than 30 days overdue	\$2,265,752	\$2,848,941	\$3,323,180
Between 30 and 60 days overdue	\$344,262	\$416,148	\$455,873
Between 60 and 90 days overdue	\$95,385	\$90,256	\$92,954
More than 90 days overdue	\$69,718	\$154,381	\$157,593
Accounts Paid on time:			
Percentage of accounts paid on time	85%	79%	76%
Total of accounts paid on time	\$15,862,266	\$12,937,498	\$12,429,186
Total of account paid	\$18,637,383	\$16,447,224	\$16,458,786

There were no instances where interest was payable under Clause 2AB of the Public Finance and Audit Regulations resulting from the late payment of accounts.

Reasons for Accounts Not Paid on Time:

- Invoices received late from DPP Cost Centres.
- Delay in reconciling and resolving discrepancy with the suppliers

Initiatives Implemented to Improve Payment Performance:

- Reminders are given to DPP Cost Centres by Financial Services branch.
- Continual review of accounting system to ensure the integrity of accounts payable area.
- Improved payment guidelines in the ordering of goods and services from clients.
- Revised and improved guidelines in the ordering of goods and services from clients.

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Printing Requirements

Total Number of copies of Annual Report printed in 2001–2002.	500
Total Number of copies of Annual Report printed in 2000–2001	500
Cost in 2001–2002	\$15,333
Cost in 2000–2001	\$17,460

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